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Entrenched repression: systematic curtailment of the democratic and civic space in South Sudan

Commission on Human Rights in South Sudan

Summary

As South Sudan's transition period draws towards its end, with a new constitution and national elections planned to take place by December 2024, the question of democratic and civic space has assumed heightened importance. Based on the Commission's independent investigations, this paper examines the current situation of South Sudanese media and civil society actors. The repressive treatment of media and civil society are key indicators of prospects for accountable governance and a democratic society. The paper details how the National Security Service has instituted a pervasive and unlawful censorship regime to curtail independent media, and imposed widespread restrictions and surveillance on civil society groups and their activities. It further highlights the persistence of attacks on journalists and human rights defenders both in and outside South Sudan, as well as online, often involving human rights violations carried out with absolute impunity.

Resistance to democratization is a legacy of the failure by the South Sudan's liberation leaders to overcome decades of repression, and to transform its leadership following independence. Many of the tactics of repression have been transposed from those employed by the Khartoum regime when the south was part of Sudan. This is reflected in an aversion to dissent and debate among key leaders, and a readiness to use coercion and violence to pursue political objectives, which have fuelled gross human rights violations and devastated the country.

The 2018 Revitalized Peace Agreement envisaged a framework to deal with these legacies, but core commitments are yet to be implemented, including the development of a permanent constitution. According to the timetable of the Agreement, the country's first ever elections are to take place in late 2024. While South Sudanese crave an accountable government that can deliver on its human rights obligations, holding elections without addressing security concerns, creating an enabling environment, and completing the technical arrangements risks compounding grievances and fuelling further violence. The paper concludes with recommendations to address the curtailment of democratic and civic space in South Sudan, which serve as preconditions for any credible electoral process.

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Introduction, methodology and legal framework

1. This Conference Room Paper examines the State's systematic repression and curtailment of democratic space in South Sudan, by examining the systemic and structural impediments to freedom of the media and to freedom of association in civil society, and through highlighting the persistence of human rights violations against journalists and members of civil society. Severe restrictions on democratic space and human rights violations against actors whose activities are critical for democratic processes reflect the dominant ruling party's intolerance of all forms of critical views and public scrutiny. This position is antithetical to democratization and to the development of an inclusive and sustainable peace, for a country whose peoples have been devastated by cyclical violence carried out with absolute impunity. In a context where South Sudan is approaching the end of a transition period which should culminate in the making of a new permanent constitution, and the holding of the country's first national elections, the credibility of these critical processes will hinge on the degree of democratic space that the State will guarantee for citizens, and key civic and political actors.

2. Since 2017, as part of its mandate from the United Nations Human Rights Council, the Commission on Human Rights in South Sudan has reported on, and made recommendations regarding, a series of critical junctures facing the country and its peoples. These political moments have presented both opportunities and challenges, always carrying incredibly high stakes for peace and human rights. The Commission has continually reported on delays and obfuscation in the implementation of the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (the "Revitalized Agreement"), which provides a comprehensive framework for the country to transition from conflict and division toward the reconciliation, justice and democratization processes required to enable sustained peace. In addition to the development of a permanent constitution, the Revitalized Agreement stipulates the unification of the warring party forces. These fundamental processes are prerequisites for the credible conduct of the national elections that would conclude the transition. Under the Revitalized Agreement, transitional justice processes and mechanisms – including a Commission for Truth Reconciliation and Healing (CTRH), a Hybrid Court, and a Compensation and Reparation Authority (CRA) – are to be established to grapple with the past and address prevailing impunity for gross human rights violations and abuses, alongside other key measures. None of these building blocks are in place, and the nation remains fractured and divided, with political contestation playing out throughout the country, often taking the form of mass violence and gross human rights violations devastating populations. In this context, and amidst the continuing repression, the prospects for credible elections at the end of 2024 whose outcomes reflect the will of the South Sudanese people, and consolidate a peaceful post transition dispensation are imperilled.

3. Against this backdrop and given the importance of this political moment in South Sudan, this paper draws attention to the range of human rights obligations associated with the conduct of democratic elections, drawing from the body of international and regional norms. The paper examines the progress towards preparations for elections, particularly the need to ensure an enabling environment in which parties and citizens can freely exercise their core rights. Beyond the elections, the paper focuses on the experiences of South Sudanese independent media and civil society, whose situation is a core indicator of the everyday democratic space of any society, during and outside electoral processes. The Commission regards the treatment of media and civil society as additional barometers of the tolerance of dissent and differences, and the management of diversity and plurality in society, and ultimately prospects of South Sudan's democratisation as the transition period draws towards its conclusion with envisaged competitive elections. Media is a core component in the development and maintenance of democratic societies, including through the dissemination of information between the State and society; this is particularly the case in South Sudan, where internet penetration remains extremely limited. A vibrant civil society is also a key enabler of democratic and societal development, including for its role in bringing people together to discuss and debate important issues, and for being able to serve nation building functions. Both the media and civil society play critical roles in promoting democracy, including through enabling the sharing and debate of ideas among the population, both at home and in public. They are also essential in democratic societies to enable freedom of

information, involving both its dissemination and discussion, including by raising awareness of potential misconduct and human rights violations by authorities. Media and civil society can also provide important forums for the inclusion of otherwise marginalized groups, helping to amplify their voices, and by challenging societal norms. This is particularly the case for South Sudanese women, whose drastic underrepresentation in positions of authority reflects and contributes to the widespread discrimination and misogynistic violence against them. Fundamentally, free media and vibrant civil society are essential mechanisms to promote accountability in governance, with their everyday importance is further heightened during electoral processes. During periods of electoral contestation, they can assist in disseminating accurate information, deescalating tensions, promoting voter education, and in hold parties accountable to democratic practices.

4. Yet authorities in South Sudan have remained intensely intolerant of critical views and all forms of public scrutiny as well as any attempts at holding them accountable. Among other forms, this is reflected in the State's implementation of an unlawful censorship regime, the imposition of arbitrary administrative requirements for independent media and on civil society actors as methods of control, and the regularization of harassment and attacks on journalists and human rights defenders. These actions often constitute human rights violations and are carried out with impunity. Journalists, editors, and media owners involved in publishing stories with political aspects continue to face consequences ranging from intimidation through to torture and attempted killing, particularly when information published reflects poorly on the dominant ruling political party. Members of civil society face intolerable interference with their legitimate activities, including through the imposition of arbitrary authorization requirements in order meet and discuss critical issues facing the country, pervasive surveillance of their physical and digital communications, and violent reprisal attacks for speaking out on human rights violations. Further, members of political parties in opposition to the dominant ruling party face severe impediments on their ability to organize and assemble, and there is presently an absence of laws and institutions required for them to organise and mobilise constituents.

5. The Commission identified an unstated yet evident policy of State intimidation and attacks against journalists and civil society actors. The main State actor systematically restricting their activities is the National Security Service (NSS), often in coordination with other authorities, typically in flagrant violation of the Constitution as well as their respective mandates under national law. The evolution of NSS and its systematic interference with the population bears striking resemblance to the methods employed by Sudan's security services, that were employed against citizens, particularly southerners in the period before the secession of the South. It is a deep and tragic irony that an independent South Sudan is replicating the practices of its previous repressors. This pervasive repression has engendered a climate of fear amongst the population and suffocated the space to report on, hold discussions about, and organise politically in the country. Where an independent and adequately resourced judiciary should hold authorities to account and adjudicate grievances, South Sudan's justice system is chronically under resourced and severely lacking independence, deliberately crippled by politically calculated strategies to retain supremacy of the State executive. Without a sense of accountability to the people, political leaders and public officials behave as if they should be answerable to nobody. Without an effective justice system, South Sudanese have no recourse to remedies for human rights violations.¹

6. The findings in this paper illustrate that the post-independence failings of the State-and nation-building project remain unaddressed. Under transitional governance arrangements

¹ In recent reporting, the Commission has described the situation of the judicial system in South Sudan: basic infrastructure, equipment and personnel are lacking; jurists are underpaid, underprepared and often unsafe; judges and prosecutors of the ordinary courts – where they exist – are not in a position to provide citizens with the judicial protection expected of them according to their constitutional role and the applicable international law. Military courts of themselves are not an alternative to a civilian justice system, and usually fail to guarantee fair trial standards. See "State of Impunity: the persistence of violence and human rights violations in South Sudan – detailed findings of the Commission on Human Rights in South Sudan," 3 April 2023, A/HRC/52/CRP.3, paras. 299–364, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session52/A_HRC_52_CRP.3.pdf.

of the Revitalized Agreement, the country is led by a provisional government and parliament. But the absence of an independent judiciary, even a provisional one, capable of mediating disputes and resolving them with the instruments of legality, is patent. The mechanisms of transitional justice provided in the Revitalized Agreement are pending implementation as well. Instead, practices of repression and divisiveness are entrenching. This bodes poorly for South Sudan's future and its prospects for lasting peace, including for the millions of South Sudanese in dire humanitarian and human rights situations both in the country and abroad. Yet, the vision of the Revitalized Agreement, including the making a permanent constitution and the holding of credible elections to complete the period of transition, are opportunities for South Sudanese to define their future, and for their leaders to rediscover the idea of governing for the people. These aspirations are carried in the hopes that South Sudanese invest in elections, and need to be matched by a commitment of the political leaders, with the support and accompaniment of the international community and the region, to take the steps necessary for credibly concluding the transition in a manner that will enhance rather than undermine South Sudan's stability.

7. Part I of this paper provides the context of civic and political space in South Sudan, including the history of factionalism in the Sudan People's Liberation Movement (SPLM) and its dominance of the country's governance since achieving independence in 2011, linked closely to the evolution of security services. In Part II, the prospects of national elections are briefly examined, along with key democratic principles for guiding the process. Part III considers the media landscape in the country, by identifying persistent attacks on journalists in violation of the State's obligations under international human rights law, and detailing structural restrictions imposed by the State to censor and control independent media, in violation of protections under the 2011 Transitional Constitution of the Republic of South Sudan ("the Transitional Constitution"). Part IV presents the Commission's findings on the experiences of South Sudanese civil society actors, including the unlawful restrictions on their activities, and the attacks they face in South Sudan, extra-territorially, and online, in violation of the State's obligations under international human rights law, and under national law. In Part V, The Commission reviews the civic engagement in officially sanctioned public processes of the National Dialogue and consultations on CTRH. Finally, part VI reflects the Commission's conclusions and recommendations to the State and other key stakeholders, summarising issues which if left unaddressed will severely undermine prospects for enabling sustainable peace, ensuring human rights, and facilitating the meaningful democratic and justice processes envisaged under the Revitalized Agreement.

A. Mandate

8. In 2016, in its resolution 31/20, the Human Rights Council established the Commission for a period of one year. In 2017, in its resolution 34/25, the Council extended the Commission's mandate for another year and requested it to continue to monitor and report on the situation of human rights in South Sudan, to make recommendations to prevent further deterioration of the situation, and to report and provide guidance on transitional justice. The Council subsequently extended the mandate of the Commission, each time for an additional year, in its resolutions 40/19, 43/27, 46/23, 49/2, and most recently on 3 April 2023 in 52/1.

9. Further, the Commission has been mandated to preserve evidence of and clarify responsibility for alleged gross violations and abuses of human rights and related crimes, with a view to ending impunity and providing accountability. The Human Rights Council has requested the Commission to make such information available to enable accountability measures and for transitional justice mechanisms, including those to be established pursuant to chapter V of the Revitalized Agreement, including the Hybrid Court for South Sudan.

10. The current members of the Commission, appointed by the President of the Council, are Yasmin Sooka (Chair), Barney Afako and Carlos Castresana Fernández. The Commission is supported by a Secretariat based in Juba, South Sudan.

11. The Commission extends its gratitude to the Government of South Sudan for the cooperation extended to its Secretariat. The Commission is also grateful for the cooperation that it has received from governments in the region, and expresses appreciation for the

logistical and related assistance of the United Nations Mission in South Sudan (UNMISS). In preparing this paper, the Commission was privileged to have the opportunity to speak with and listen to members of South Sudan's media and civil society, including survivors and witnesses of human rights violations both in South Sudan and abroad. The Commission thanks all those individuals who have shared their experiences, as well other individuals who shared their expertise and analysis, without whom the Commission's work would be neither possible nor meaningful.

B. Methodology

12. This paper is primarily informed by documentation and evidence gathered independently by the Commission from its interviews and meetings conducted with survivors and witnesses of human rights violations, South Sudanese activists, members of the media and civil society and their family members. It also draws on material in the public domain. The Commission consulted extensively with key stakeholders including parliamentarians and members of the Government, as well as with service providers, lawyers, and related experts including United Nations Member States and entities.

13. Investigations informing this paper were conducted during 2023. The Commission received detailed witness statements, conducted meetings, organized focus group discussions, and gathered confidential testimony. Legal and opensource materials were reviewed as part of the Commission's inquiries. The findings of this paper primarily draw upon these inquiries, while referring to materials previously gathered. The Commission also sought information from the Government of South Sudan and provided to the Government a draft paper in advance.

14. The Commission employed international best practices of fact-finding, ensuring confidentiality and at all times seeking to ensure the safety, security, and well-being of witnesses. Where quotes are used, they have been provided by witnesses, survivors, or their family members. Detailed information has been omitted when required to protect sources from potential harm, and as part of this the Commission developed a coding system to reflect sources. The Commission was at all times guided by the principles of confidentiality and "do no harm".

15. In its reporting, the Commission has adopted a 'reasonable grounds to believe' evidentiary standard. The Commission's work is also guided by the requirement to collect and preserve evidence to a standard that would support future accountability mechanisms.

16. Capturing the breadth and diversity of experiences of South Sudanese media and civil society has been a challenge given the Commission's limitations, and the recognition that 'civil society' includes a diverse range of groups. Civil society includes: grassroots villages, community groups and associations; faith-based groups and institutions; networks in refugee and displacement camps; trade unions, and professional associations comprised of teachers, lawyers, health workers, media and other professions; academic guilds; student associations; issue-based coalitions and campaigns; ethnic identity-based associations; women's groups, associations and networks; gay, lesbian and other gender-based networks; youth groups; artist communities; humanitarian organizations; and broader social movements – both online and on the ground. South Sudan's media landscape is also diverse, and is often very localized, particularly radio. The press and the journalism profession do not constitute homogenous or united spheres of civic activity, as their diversity is necessary for the independence of the media and to truly reflect, represent and cater for a pluralistic society.

17. This paper therefore does not purport to capture an assessment of the totality of democratic space throughout South Sudan, nor to fully capture the scale and prevalence of human rights violations and abuses associated with people's engagement in civic and political activities. As the electoral and constitution-making and transitional justice processes unfold, the Commission will continue to follow and report on the developments. This paper also does not claim to fully capture the experiences of those who have fled to other States following experiences or credible threats of human rights violations in connection with their civic or political activities in their home country, and the impact on their families.

18. In its focus on media and civil society, the Commission intends to illuminate in detail the situations of these key spheres, which in turn serve as indicators or measures of the current state of democratic space and the quality of related democratic processes. While the elections, constitution-making and transitional justice processes are yet to begin in earnest, these indicators foreshadow the constraints that might afflict these vital processes for the democratic transformation of South Sudan. This report compiles illustrative incidents, noting distinct patterns and trends, including in reference to findings previously reported, enabling conclusions on the ongoing drivers of human rights violations, and the measures required to address the structural and political impediments to democratic space, accountability, and the protection of human rights for all South Sudanese.

C. Legal framework

19. For this paper, the Commission conducted its work with reference to the national law of South Sudan and international human rights law. Factual determinations on specific incidents and patterns of conduct provide the basis for the legal qualification of human rights violations. Where acts or omissions led to responsibility or organs or offices of the Government, these have been identified, while noting that the State is ultimately responsible. As noted above, a ‘reasonable grounds to believe’ evidentiary standard has been adopted.

20. South Sudan’s international human rights law obligations flow from the United Nations Charter, human rights treaties, and customary international law. Universal human rights to be enjoyed by all persons are set out in the Universal Declaration of Human Rights and principal human rights treaties, particularly the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). All States must respect these internationally recognized rights, regardless of the extent to which they have ratified specific international human rights treaties. States Parties to human rights treaties are further bound by specific obligations under international law aimed to ensure the protection of those rights. Regional human rights regimes also apply in South Sudan, including the 1981 African Charter on Human and People’s Rights and the 2007 African Charter on Democracy, Elections and Governance.²

21. Of the core United Nations human rights treaties, ICCPR is of particular relevance to this paper, as it imposes specific obligations on the State to respect, protect and fulfil the human rights codified in the treaty. These include for example the equal right of women and men to enjoy all civil and political rights, including freedom of expression and the rights to freedom of assembly and association. Among other rights, the Covenant also codifies the right to life and protections from arbitrary detention and torture, which are also reflected in customary international law.

22. South Sudan appears to have completed the steps necessary under national law to accede to ICCPR. On 24 February 2023 the Office of the President announced that ICCPR was among several core human rights treaties which had been acceded to.³ This followed a reported unanimous vote in Transitional National Legislative Assembly (TNLA) to accede to the Covenant, held in June 2019.⁴ State media showed the TNLA Speaker present at the occasion where the President signed documentation authorizing accession to the treaties. However as of the end of September 2023, the State was yet to deposit the instruments of accession with the United Nations Secretary General, meaning that South Sudan is not yet a State Party to the Covenant.⁵ Nevertheless, having expressed consent to be bound by the

² For example, the African Charter on Human and People’s Rights protects a range of rights including the rights to information and expression, and to freedom of association, under articles 9 and 10.

³ Facebook page of the Office of the President – Republic of South Sudan, “PRESIDENT KIIR ACCEDES INTERNATIONAL COVENANTS INTO LAW,” 24 February 2023, available at: <https://www.facebook.com/StateHouseJ1/posts/pfbid0Hys3nntGCvY3cCBRtS6ySj8GqsJVpjs8ZV44BjktvjFwzn2MNUGkgCTZb8sRHkZl>

⁴ See <https://peacekeeping.un.org/en/unmiss-welcomes-ratification-of-international-human-rights-covenants-south-sudan>

⁵ International Covenant on Civil and Political Rights, article 48(4). The United Nations Treaty Collection reflected that South Sudan was not yet a State Party.

treaty's provisions, the State is obliged to act in good faith by refraining from acts that would defeat its object and purpose.⁶ Upon accession, the State is obliged to proactively take measures to respect and ensure the rights codified in the treaty, including by adopting legislative, administrative, educative and other appropriate measures in order to conform with its legal obligations. This necessarily entails enacting and reforming national laws.

23. The national law of South Sudan presently derives its authority from the 2011 Transitional Constitution. Development of a permanent constitution is envisaged in the Transitional Constitution and this constitutes a core aspect of the Revitalized Agreement. This process has been persistently delayed, as highlighted previously by the Commission. A Constitution-Making Process Act was passed in 2022 to guide constitution-making but the process had still not commenced as of September 2023. In this paper, the Commission has therefore referred to the Transitional Constitution, which among other rights enshrines the principles of freedom of expression, freedom of the press and other media, and the right to freedom of association. In its findings, the Commission has also referred to and analysed relevant national laws and regulations, including the 2013 Media Authority Act and the 2014 National Security Service Act.⁷

24. This paper identifies and illustrates that State authorities routinely flout or disregard national laws in their implementation, often in violation of the State's human rights obligations. Unlike in other countries, the South Sudanese authorities do not use criminal prosecution in ordinary or military courts or other legal methods as an instrument of political repression or for the persecution of dissidents. Rather, they prefer *de facto* procedures outside of any judicial or administrative legality. These violations take place at the same time in a context where the possibility of access to legal redress is for victims of abuses extremely limited, if available at all. This is in large part linked to politically calculated restrictions imposed on the independence and resourcing of the judiciary, -in some regions, even its existence is questionable- which reflects and is driven by a prevailing state of impunity in which the mechanisms of rule of law are absent or have become irrelevant, with devastating consequences for South Sudan's peoples.

I. Context

A. One-party military domination

25. South Sudan's political history is heavily dominated by the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A)⁸, the main liberation movement that fought for the emancipation of the south from Sudan. In the vein of other liberation movements, SPLM/A has always been a highly militarized political movement, and since the south achieved semi-autonomy through the Comprehensive Peace Agreement in 2005, and then independence in 2011, the movement has dominated southern political space. Yet SPLM/A has long been beset by factionalism and fragmentation — often armed and fomented by the Khartoum Government — with splits along ideological, regional and ethnic lines. These cleavages have remained unresolved, complicating the nation-building project. Their dynamics have manifested in the ferocity of the political violence and repressive methods of governance with devastating impacts on the population including violations of a wide range of human rights. The factionalism and fracturing of SPLM/A, including the current splits of SPLM-in Government (SPLM-IG) and SPLM/A-in Opposition (SPLM-IO), and other related groups, reflect a broader failure to properly manage the diversity and

⁶ Vienna Convention on the Law of Treaties, article 18.

⁷ The NSS Act came into force in early 2015 following its signature by the President. The Commission's first report in March 2017 highlighted incompatibilities with human rights principles. A/HRC/34/63, para. 46.

⁸ SPLM was the political wing, with SPLA as its military wing. SPLM/A is used here for simplicity.

pluralism of South Sudan.⁹ It also demonstrates failures of the movement and its leaders to achieve the transformation from armed struggle to democratic and inclusive governance.

26. These failings are further demonstrated in the political intolerance of the dominant party, and the creation and activities of a powerful militarized National Security Service (NSS), that protects the interests of a few, while manifesting extreme intolerance towards expressions of criticism, and treating dissent as treasonous. Appropriating methods cultivated by the repressive Bashir Regime in Khartoum, against which they had fought, SPLM-IG has instrumentalised NSS against both real and perceived opponents. A self-identity as liberators among the ruling class, and a deep sense of entitlement to govern and to enjoy the ostensible dividends of historical armed struggle, have fostered predation, an aversion to dissent and debate, a readiness to resort to coercion, and resulted in a woeful neglect of the nation and State-building agenda. Political positions in Government are habitually sought after, violently contested, shared around, and abused by individuals to access power and the accompanying opportunities to accumulate resources for personal gain – incongruous to democratic principles, good governance and human rights. These failures of leadership have left a State that provides little for its people, as evident in the widespread absence of basic services and infrastructure, and these failures both catalyse and entrench human rights violations including the stifling of democratic space.

B. Legacies of a fractious struggle: human rights impacts of decades of factionalism

27. Between 1983 and 2005, SPLM/A was at the forefront of armed struggle against the Government in Khartoum, a struggle it inherited from the Anyanya I and II resistance movements against the central authorities of Sudan.¹⁰ In areas under its control, SPLM/A developed separate governance and security structures, reportedly including its own intelligence services, which later evolved into State institutions upon independence.¹¹ Like other parts of Sudan, the southern civil war was characterized by horrendous human rights violations and atrocities by Sudanese Government forces, often using northern and southern militia to carry out attacks targeting civilians. The scars of these systematic violations by northern forces have never been properly reckoned with. Khartoum also actively armed and facilitated the splintering of groups and attacks by SPLM/A factions against fellow southern populations. In 1991, a major split over political objectives and other differences saw Riek Machar lead the breakaway ‘Nasir faction’ from SPLM/A. The ensuing intense political violence regrettably took on ethnic dimensions, with devastating impacts on civilian populations targeted by attacks carried out by Nuer- and Dinka-aligned SPLM/A factions.

28. The 2005 Comprehensive Peace Agreement marked the end of war between north and south and paved the way for South Sudan’s referendum, resulting in its independence in 2011. By 2003, the major SPLM/A factions had reunited. But the bloody intra-fighting and human rights abuses had entrenched grievances and animosities that would shape political violence soon after independence. Under interim autonomy arrangements of the 2005 Agreement to precede the referendum, SPLM/A formally took on governance functions in the south and participated in Sudan’s 2010 general elections; SPLM/A Chair Salva Kiir Mayardit won the southern region ballot with Riek Machar as his running mate. Despite tensions within SPLM/A, its leaders managed to paper their differences, and South Sudanese voted for independence the following year, 2011, and SPLM/A and President Kiir have held power since.

29. In late 2013 the country was plunged back into armed conflict, after months of growing political tensions in which other leaders of SPLM/A became critical of the lack of party democracy and the direction of the country. Many senior ministers and officials were

⁹ SPLM/A led by President Kiir is referred to in the Revitalized Agreement as the ‘Incumbent Government of National Unity’; for simplicity and comprehension the Commission applies the common term SPLM-IG.

¹⁰ This followed the breakdown of the 1972 Addis Ababa Agreement which had ended an earlier civil war.

¹¹ See for example Human Rights Watch, “‘What Crime Was I Paying For?’ Abuses by South Sudan’s National Security Services,” 2020, pages 13-14.

dismissed and detained by President Kiir. When fighting broke out in Juba in December 2013, Riek Machar, who by then had been dismissed as Vice President, fled the capital and established SPLM/A-in Opposition (SPLM/A-IO). The ensuing conflict of 2013 to 2018 devastated the country and was again characterized by gross human rights violations and abuses, involving multiple armed groups and militias. Factional cleavages reminiscent of the 1990s had again yielded extreme violence, with ethnic dimensions. An Agreement on the Resolution of the Conflict in South Sudan was signed in 2015 but broke down in July 2016, when fighting started in Juba and spread to other parts of the country leading Riek Machar to flee the country. Another cessation of hostilities was agreed in 2017, followed by the signing of the Revitalized Agreement in September 2018.¹² The Revitalized Agreement was to conclude after five years, but with implementation beset by numerous delays, in August 2022 its parties extended timeframes, postponing planned elections to late 2024 and the conclusion of transitional arrangements to February 2025.¹³

30. The collapse of the 2016 Agreement and the failures in implementing the Revitalized Agreement reflect the depth of the political and ethnic fractures and the unhealed wounds in South Sudan that have severe ramifications for the civilian population. Gross human rights violations and serious crimes against civilians have characterised the relentless and violent pursuit of ‘winner takes all’ political strategies by key leaders. As was the case prior to the collapse of the previous peace agreement, SPLM-IG dominates the executive and legislative branches of government in the capital and in most of the states, while controlling the main State security forces.

31. The Commission has extensively documented and reported on recent atrocities carried out as part of political conflict involving SPLM-IG, SPLM/A-IO and other SPLM/A factions. Often taking ethnic dimensions, this includes mass violence including widespread sexual violence against women and girls in Tambura, Western Equatoria State from May to October 2021, in Unity State’s Leer County from February to April 2022, and in Upper Nile State and northern parts of Jonglei State in the latter half of 2022.¹⁴ Clashes and defections involving SPLM-IG and SPLM/A-IO members were key dynamics of all these conflicts, often driven or facilitated by the manipulation of military-political leaders in Juba. Further, in each situation the Commission publicly identified individuals bearing responsibility for gross human rights violations. Yet to date, nobody has been held accountable, including implicated government and military officials, who remain in office. The failure to standdown let alone prosecute these individuals is even more telling given the backdrop of the frequent dismissals and reshuffles that characterise government appointments, and to a lesser extent those of SPLM/A-IO and other political actors. The devastating human rights impact of political violence between members emerging from SPLM/A – and the prevailing impunity for these crimes – are common threads linking South Sudan’s pre- and post-independence periods. A near constant state of violent competition in South Sudan has enabled leaders who lack genuine commitment to democracy to keep the country in a heightened state of alert, and to squash legitimate dissent and criticism, even when these commitments are enshrined in peace agreements. The lack of implementation of the mechanisms of transitional justice included in Chapter V of the Agreement of August 2015 and renewed in the Revitalized Agreement of September 2018 have led to a generalized absence of accountability in the performance of public functions.

C. Evolution of the National Security Service (NSS)

32. As the dominant ruling party since independence, SPLM-IG’s disposition to crush factional opponents militarily and politically extends to systematically repressing voices and

¹² Under transitional governance arrangements of the Revitalized Agreement, the highest executive offices are held by President Kiir for the SPLM-in Government (SPLM-IG), and First Vice President Machar for the SPLM/A-IO.

¹³ Agreement on the Roadmap to a Peaceful and Democratic end of the Transitional Period of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (the “Roadmap”), prepared by the High-Level Standing Committee of the Parties Signatory to the Revitalized Agreement, 2 August 2022.

¹⁴ On Tambura, see A/HRC/49/78, paras. 63—76 and A/HRC/49/CRP.4, paras 107—121. On the other states see A/HRC/52/CRP.3, paras. 38—115 and 160—138.

activities in South Sudan's civic and political space. Reflecting a deeply engrained siege mentality and intolerance of different views, members of the independent media and civil society are portrayed as enemies of SPLM-IG and thereby the State. This mindset underpins the activities and militarisation of NSS as a tool to monitor and control the population, and to punish individuals, and their family members, who fall out of favour with SPLM-IG.¹⁵ NSS comes under the direct purview of the Presidency, and victims of violations perpetrated by NSS members lack access to judicial or other forms of remedy.

33. South Sudan's NSS evolved from intelligence services run from Khartoum and those operated by SPLM/A during both the 1983-2005 civil war and the 2005-2011 interim period. Sudan's National Intelligence and Security Service (NISS) was core to the State's repressive regime and was mandated to serve under direct supervision of President Omar al-Bashir. NISS had broad powers of search, arrest and detention that were used against critics and opponents of the Government – including SPLM/A supporters – as well as journalists. The Director was authorized to detain individuals for up to nine months without judicial oversight.¹⁶ Officers were immune from prosecution for acts carried out in the course of their work. NISS was notorious for human rights violations, particularly arbitrary detentions, enforced disappearances and torture.¹⁷ The term 'ghost houses,' which many South Sudanese still use to refer to the State's clandestine detention centres, is a legacy from this period. NISS also imposed the State's censorship regime including through daily visits to newsrooms, and was present in the north and south. SPLM/A's intelligence services functioned to counter their operations, alongside monitoring opposing SPLM/A factions.¹⁸ The Commission has previously noted that security forces deployed censorship measures and shut down civil society organizations deemed to be critical during the period of the Government of Southern Sudan, including during the 2010 general election for Sudan.¹⁹

34. Established at independence, South Sudan's NSS is constituted by an amalgamation of personnel and practices from Sudan's NISS and SPLM/A intelligence services. The 2005 Comprehensive Peace Agreement envisaged one 'National Security Service,' anchored in the Presidency and to be established through legal reform.²⁰ During the 2005-2011 interregnum NISS continued operating in the south, while SPLM/A's Southern Government maintained its own intelligence operations, reportedly including a secret branch to monitor and counter potential spying from the north.²¹ At independence, existing intelligence organs were dissolved and its officers redeployed to SPLM/A military intelligence, or into the two operational organs of a new NSS.²² As stipulated in the 2011 Transitional Constitution, these are the General Intelligence Bureau and the Internal Security Bureau (ISB).²³ The former focuses on external threats and insurgencies, while the latter has purview over national security and internal threats, and is by far the more powerful of the two.

35. The members of the new NSS were never subjected to any vetting or lustration process, neither at the time of the national independence and the creation of the new body, nor later. The adoption of Chapter V of the Agreement in 2015 and the Revitalized Agreement in 2018 providing for measures of transitional justice, including guarantees of non-recurrence, didn't provoke any change in NSS since they are yet to be implemented.

¹⁵ 2011 Transitional Constitution, sections 160(1b) and 160(3). See also 2014 NSS Act.

¹⁶ 1999 National Security Forces Act, section 31. Note there were different incarnations of this law throughout the period identified; for simplicity and illustrative purposes, only the 1999 Act is referred to. See also E/CN.4/2005/11.

¹⁷ 1999 National Security Forces Act, section 33(b).

¹⁸ Amnesty International, "Agents of fear: the National Security Service in Sudan," 2010. Human Rights Watch, op. cit. 11.

¹⁹ A/HRC/46/CRP.2, para. 27.

²⁰ 2005 Comprehensive Peace Agreement, part two section 2.7.2. Also included in the 2005 Transitional Constitution, section 151.

²¹ Human Rights Watch, op. cit. 11, page 14.

²² See "Kiir dissolves national intelligence, special branch and public security organs," Sudan Tribune, 26 July 2011.

²³ 2011 Transitional Constitution, section 160.

36. ISB's establishment in NSS and the significant resources and powers it wields reflect SPLM-IG's maintenance of a wartime footing in its approach to governance. As noted above, the threat assessments of key leaders changed following independence, and consequently South Sudanese raising voices critical or different to the dominant ruling party line have more frequently become targets of the security apparatus. ISB imposes or is involved in most of the restrictions and activities described in this paper that stifle democratic space. The mechanics and methods of repression have been transposed from Sudan's NISS. NSS and in particular its ISB have become notorious for carrying out the same patterns of arbitrary and incommunicado detentions, torture, and the use of 'ghost house' clandestine sites – all of which occur without effective judicial oversight, if any. Its structural arrangement of reporting directly to the Presidency also mirrors that of NISS under the Sudan military regime.

37. The incumbent ISB Director General Akol Koor Kuc was appointed to the post at its creation in 2011 by President Kiir. Like the President, he is a Dinka from Warrap State; the Commission has previously noted the dominance of one ethnic group in the State security apparatus.²⁴ He has overseen NSS' emergence as one of South Sudan's most powerful State institutions, perhaps next only to the Presidency. The arrogation of so much unaccountable or under-accountable power and resources in the hands of a single institution runs counter to democratic values and has led to the systematic violation of the rights of South Sudanese. As South Sudan contemplates a period of elections and constitution-making, the impartial and constructive role of the NSS will be a critical litmus test of the credibility of those processes.

D. Political failings of key leaders transposed on the State

38. The pattern of national liberation movements failing to effect the transformation from guerrillas to democrats in the post-liberation dispensation is attracting increasing critical attention. This phenomenon is evident in many African States, although it is not limited to this continent. Four key related patterns that reflect the failure of transformation can be observed in South Sudan. The first is the failure of political leaders to shift from militarized political styles toward democratic practices. Secondly, there is a prevailing intolerance of dissent and deep paranoia among political leaders, manifesting in the adaption of the methods of the previous repressors against the populations. The third pattern is the reluctance to reckon honestly with the past, by establishing genuine holistic transitional justice processes to foster healing and address divisions among political elites and in society. Finally, for its political survival the Government continually asserts its liberation credentials, to assert its legitimacy and to answer domestic and external criticism. These patterns also underpin the failure to implement transitional justice obligations under the Revitalized Agreement, which might subject the true record of the SPLM to independent scrutiny.

39. South Sudan's transition to independence has bequeathed a legacy of devastation for its peoples. These are primarily failures in leadership across political divides: in particular the inability or unwillingness to transcend past cleavages and to invest instead in an inclusive nation-building project. Despite two detailed peace agreements – in 2015 and 2018 – which set out the building blocks for national renewal, their implementation has fallen short of the aspirations of citizens. A lack of respect for diversity and pluralism will need to be replaced by political tolerance and respect for identity. An essential aspect of that journey must be the transformation from militarized to democratic politics. Core commitments in the Revitalized Agreement to establish holistic transitional justice processes are another critical component for achieving the transformation and healing of South Sudan. But there are entrenched tendencies of authoritarianism, militarisation, political violence, and strategies of domination over, including elimination of political adversaries. Among elites, a sense of personal entitlement over the economic dividends of independence is inimical to the public good. These are among the core failings that military-political leaders and elites must overcome if South Sudanese are to complete their march towards a free society in which diverging views are neither marginalised nor punished.

²⁴ For discussion of cooperation between NSS ISB and the Presidency in Warrap State, see A/HRC/52/CRP.3, paras. 184–196. On the dominance of one ethnic group in NSS, see A/HRC/46/CRP.2, para. 26.

II. Prospects for democratic elections and constitution-making

40. As the transition period established by the Revitalized Agreement draws towards its final stages, the prospect of adopting a new constitution and holding the country's first national elections is generating both anticipation and anxiety. Having waited more than a decade, South Sudanese are keen to choose their own leaders. Under the Revitalized Peace Agreement, elections are envisaged to take place on the basis of a new permanent constitution. This is a logical sequence insofar as it gives citizens the opportunity to determine the system of government they want to live under, before choosing the parties and individuals who should govern. Yet, carrying out these two exercises entails a significant degree of preparation, political will and resources, to ensure that their outcomes genuinely reflect the will of the people. Indeed, the logistical requirements of constitution and elections are already exerting considerable pressure on timelines agreed for concluding these processes.

41. With elections comes the need for vigilance: across the world elections have become a trigger for polarisation and conflict. On the African continent, disaffection with election processes and outcomes have spawned violence (Kenya, 2007), triggered armed rebellion (Uganda, 1981), and more recently the phenomenon of military coups has re-emerged, with some coup leaders citing unfair electoral practices. For South Sudan, which is yet to transcend the last period of violent conflict, it is critical that its first national elections, should not be allowed to stoke new instability. In this regard, the lessons from the past are salutary: when the SPLM mismanaged the 2010 elections, several of its senior members stood as independent candidates for Governorship positions, with most of them losing, amidst their claims that the polls had been rigged against them. Most of those disaffected candidates took up arms against the Government. A lot is therefore at stake in the management of these elections, and the constitution making process on which they are to be based.

42. While the elections are scheduled to take place in December 2024, delays in the preparations for both constitution-making and electoral processes mean that with each passing week the constraints increase and prospects for timely completion diminish, heightening the anxiety of citizens. The legitimacy of the political dispensation that will follow the transition will depend on the credibility of the constitution-making and electoral processes. Apart from the logistical and practical preparations, this requires an enabling environment, which in turn requires a new political disposition from the authorities, to eschew intimidation, violence, manipulation, and the interference with the exercise of fundamental civil and political rights. In particular, entrenched patterns of disruption and interference with citizens' freedoms of assembly association and expression must be abandoned to create an atmosphere conducive to free and fair elections.

43. The right of South Sudanese to participate in public affairs – including through elections – is guaranteed and protected by several international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.²⁵ The 1981 African Charter of Peoples and Human Rights and the 2007 African Charter on Democracy, Elections and Governance also enshrines this right in African contexts. These commit State Parties to respect human rights and democratic principles, and to ensure the effective participation of citizens in democratic and development processes and in governance and public affairs.²⁶ Among the obligations deriving from the 2007 African Charter is to nurture and strengthen a culture of democracy and peace, and to guarantee the processes of elections, through credible national electoral bodies and mechanisms, including for adjudicating election disputes.²⁷ Genuine electoral processes are thus recognised as a central pillar of democracy, ensuring for individuals the opportunity freely to exercise core civil and political rights; chiefly, the right to participate in public affairs without discrimination or other impediments. Genuine processes are also underpinned by ancillary individual and collective rights including to express opinions, assemble and associate

²⁵ Universal Declaration of Human Rights, article 21. International Covenant on Civil and Political Rights, article 25.

²⁶ 1981 African Charter, article 13. 2007 African Charter, article 3.

²⁷ 2007 African Charter, chapter 6.

peacefully. The extent to which these rights are respected will determine whether election process and results can be adjudged to be credible, reflecting the will of the people, and thereby command legitimacy and acceptance.

44. Non-discrimination is a norm of international law and a key principle applicable to the conduct of elections, enshrined in international instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the 1981 African Charter.²⁸ These instruments prohibit discrimination including on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Additionally, the Convention on the Elimination of all forms of Discrimination against Women protects women from all forms of discrimination.²⁹ For the estimated 2.3 million South Sudanese who are internally displaced within the territory of South Sudan, their rights to participate in electoral and constitutional processes should not be impaired by reason of their status; efforts should also be undertaken to enable the participation in these processes of the 2.33 million South Sudanese refugees outside their home country, most of whom live in neighbouring States and have great stakes in their country's future.³⁰ Further, all efforts should be made to remove impediments associated with their displacement.

45. In terms of gender equality, States must also guarantee that women enjoy equal access to political participation and to promote equal representation in political and public life, including through special measures that help to mitigate the structural disadvantages that impede women's participation in public life. While the Revitalized Agreement contains quotas for women – notably through the obligation to have at least 30 women's representation – these, however, do not extend to the forthcoming elections process, and there is no obligation on political parties to ensure a minimum participation of women. Effective measures would include recruiting, financially assisting and training women candidates, amending electoral procedures and developing campaigns directed at equal participation. South Sudan should also be encouraged to adopt legislative requirements for political parties to cater for women in leadership positions with realistic prospects for election.

46. The treatment of civic actors as well as members of the political opposition, particularly groups that might seek to challenge SPLM-IG, is a troubling indicator of the continued repression that is likely to characterise the polls unless urgent steps are taken to guarantee political and democratic space during the election period. For example, on 18 September 2023, State security forces disrupted and shut down an assembly in Juba organized by the South Sudan Opposition Alliance (SSOA) to welcome its Secretary General, Lam Akol, back to South Sudan. While SSOA is a party to the Revitalized Agreement, its treatment stands in contrast with SPLM-IG, which in December 2022 endorsed President Kiir as its flagbearer, following which there have been rallies in various states to confirm the endorsement. SPLM-IG is already in an active membership registration drive. With the beginnings of political activity, including recruitment drives, the opening of offices and launching of manifestos, it is critical that the environment for free electioneering is protected; this also entails ensuring the integrity of the legal and administrative mechanisms for overseeing the elections.

47. Already, opposition groups have complained about the handling of important legislative processes relating to the elections: on 27 September 2023, President Kiir signed the 2023 National Elections Act into law. The Transitional National Legislative Assembly had passed the National Elections Act 2012 (Amendment Bill 2023), during a session in which opposition groupings walked out in protest, citing provisions in the bill granting powers to the President to unilaterally appoint up to five percent of members of a future Assembly, ostensibly from disadvantaged groups, while also citing the Speaker's handling of the process. Opposition actors consider that this provision would give the President and the ruling party a built-in majority. In addition, more recently, SPLM-IO has for the first time

²⁸ UDHR, article 2. ICCPR, article 2(1). 1981 African Charter, article 2.

²⁹ Convention on the Elimination of all forms of Discrimination Against Women, articles 1 and 2.

³⁰ United Nations Office for the Coordination of Humanitarian Affairs, "South Sudan: Humanitarian Snapshot," August 2023, available at: <https://www.unocha.org/publications/report/south-sudan/south-sudan-humanitarian-snapshot-august-2023>

publicly complained that its leader, Riek Machar, is not allowed to travel out of Juba, and indeed he has not left the city since he returned to Juba to implement the Revitalized Agreement.

48. Completing the establishment of the reconstituted National Elections Commission, the Political Parties Council, and the National Constitutional Review Commission will be critical. The parties to the Revitalized Agreement have already reached agreement on the nominations structures for these bodies and were awaiting formal endorsement and appointment of personnel by the President. All three are already behind schedule, and need to urgently get to work towards meeting what has now become an even a tighter timeline.

49. South Sudan's leaders, as well as regional and international bodies accompanying these processes, notably the United Nations, the African Union and the Inter-Governmental Authority on Development in East Africa (IGAD), will therefore need to reaffirm and vigorously promote the core democratic principles and practices relating to the conduct of elections. This includes identifying objective criteria regarding resources and the time required to establish the necessary infrastructure for holding credible elections. But beyond the technical preparations the key test will be whether the conditions for fair and secure polls will be nurtured. This includes establishing and guaranteeing mechanisms for adjudicating electoral disputes, including independent and properly resourced courts. Given South Sudan's track record of political intolerance, and neglect of public and judicial institutions, public trust in the ability of national authorities to oversee these critical elections, including by guaranteeing a level playing field, and providing security, remains low and will continue to be so, unless visible and energetic steps are taken to establish key benchmarks and safeguards for holding credible elections.

50. A starting point for addressing these issues is for South Sudan's leaders to demonstrate a clear political will and partnership with opposition parties to agree upon, resource and expedite the electoral processes. Among others, they should promote an electoral code of conduct and practice to which all parties and key stakeholders would adhere, and that underlines and elaborates key commitments to respecting the electoral process. Political leaders must also allocate and secure resources for managing the elections, and guarantee a conducive environment for all parties and citizens to freely participate in the elections. Should South Sudan's leaders take these essential steps, they would find citizens highly motivated to vote and choose the country's leadership for the first time, who should lead them in attaining their aspirations for the future. Applying a preventive and mitigative approach is critical to manage the risks associated elections including unrest, violence and related violations, and to ensure that this important milestone for South Sudan is not marred by irregularity or disruption.

51. Beyond the technical and logistical preparations, it is essential to recall that these elections are intended to enhance stability in South Sudan, end violence and to consolidate the democratisation and nation building aspirations that the Revitalized Agreement envisaged. It is therefore troubling that SPLM-IG leaders have continued to emphasise the urgency of elections to end the transition period, and its power-sharing arrangements, which they have increasingly portrayed as a political encumbrance. They envisage a 'winner takes all' outcome, in which the obligation to govern by consensus or share in the responsibility of leadership would fall away. A context in which elections become a zero-sum exercise increases the political stakes and foments a recourse to irregularities and even violence, as the loss of elections represents the marginalisation of whole constituencies from participating as equals in national life. The constitution-making process becomes even more critical as a prerequisite for mature political understandings. It requires that South Sudanese should reflect on the system of governance and electoral system that will ensure that elections do not exacerbate cleavages which have fomented violence and human rights violations in the years since independence.

52. Another key concern regarding the elections has been how to ensure the security of the polls, to avoid violence and other potential disruptions. In June 2023, the South Sudan National Police Service established an Election Security Committee to institute and oversee arrangements for the security of the polls. UNMISS and the United Nations Development Programme (UNDP) are supporting police to strengthen its security arrangements for the polls. While these are welcome developments, that should however not detract from the need

to complete the transitional security arrangements, particularly the completion of the integration of the necessary unified forces, which has been delayed inordinately.

53. International and regional instruments set out the core principles and benchmarks for credible elections. A credible election process based on an agreed constitutional text, and supervised and validated by an independent and impartial electoral authority, are key pillars of South Sudan's democratic transition. As elections approach, it will become more critical for the Government to abandon its repressive practices that have constricted democratic space for South Sudanese, and to replace these with robust safeguards, and a more facilitative outlook in regard to the democratic process. Continuing repression bodes ill for South Sudan's transition, and for the critical processes of constitution-making and transitional justice which are necessary for placing the country on a new footing, through a strong bill of rights, and credible avenues of judicial and administrative redress for human rights violations related to political and civic space. Without these crucial benchmarks, the political situation beyond this transition period will be a continuation of South Sudan's nightmare, and risk continuing fracture and instability.

The imperative and challenge of credible constitution-making

52. Chapter VI of the Revitalized Agreement sets out a framework for South Sudanese to undertake a permanent constitution-making process, based on several core principles and obligations, including to guarantee peace and security, and 'promoting the people's participation in the governance of the country through democratic, free and fair elections and the devolution of powers and resources to the states and counties.' Constitutions represent an important opportunity for a society to build and reaffirm a common vision of itself, and to define the basis for a social contract between citizens and the state. For countries like South Sudan that are emerging from protracted conflict, constitution-making serves to consolidate peace. Indeed, the Revitalized Agreement expressly envisages that the permanent constitution would commit 'the people of South Sudan to peaceful resolution of national issues through dialogue, tolerance, accommodation and respect of others' opinions.'³¹

53. In response to conflict, a constitution should seek to address the root causes of division and instability and to promote national reconciliation through mechanisms that ensure equitable participation in national life, and benefit from national resources. Among the key debates South Sudanese are expected to consider ways of promoting respect for ethnic plurality and regional diversity, including communal rights, as well as establishing a framework for fair and equitable economic growth and access to national resources and services. The intention of the Revitalized agreement envisaged constitution-making as a consolidation of the nation-building objectives of the transition.

54. The notion that, at the end of the transition, South Sudanese should first determine the system of government before electing their leaders and representatives informs the sequence in the Revitalized Agreement whereby national elections are to be organized 'in accordance with the provisions of the Permanent Constitution adopted pursuant to this Agreement,' and that the 2012 National Elections Act would be further amended to conform to the provisions of the Agreement.³² While inordinate delays in implementing the Revitalized Agreement are frustrating, treating constitution-making as a mere distraction from elections is highly problematic. Any discussion of the question of timelines and sequencing should take seriously the rationale of peace-making envisaged by the Revitalized Agreement, and the potentially transformative and stabilizing impacts of the constitution-making process. Yet the debate that has arisen about the possibility of going to elections without a credible constitution-making process often glosses over these deeper challenges. Political choices should be about achieving the goals of the Revitalized Agreement, and avoid fomenting instability or entrenching authoritarianism, all of which involve violation or deprivation of fundamental rights.

55. More fundamentally, a new constitutional arrangement ensures that the end of the transition is not replaced with damaging legal uncertainty about the status of South Sudan's

³¹ 2018 Revitalized Agreement, article 6.2.

³² 2018 Revitalized Agreement, articles 1.20.5 and 1.20.6.

fundamental law and of key outstanding obligations of the Revitalized Agreement, including its transitional justice provisions.

56. Furthermore, the making of a new constitution would also renew and foster a culture of respect for human rights; it is expected to elaborate a new Bill of Rights for South Sudan, reaffirming the intrinsic dignity and equality of individuals and groups, among others. These deliberations would enable South Sudanese to consider effective bodies for protecting and promoting human rights, including through a credibly independent national human rights institution. To consolidate the rule of law, provisions guaranteeing the independence of the judiciary, within an effective justice system, that protects, interprets and adjudicates upon fundamental rights, and which provides remedies to address human rights violations, will need to feature prominently in the constitution.

57. Because of concerns about a lack of independence and effectiveness of the judiciary, the Revitalized Agreement sought to underscore the ‘supremacy of the rule of law,’ the separation of powers, and the independence of the judiciary. In this connection, the Agreement provided for an ad hoc Judicial Reform Committee, which has been established and is chaired by a Ugandan Judge, Mr. James Ogoola. This Committee is expected to produce a report with far reaching recommendations relating to strengthening the justice system, particularly the judiciary. Its report will invariably make recommendations which will have constitutional implications, which will need to be considered in the constitution-making process. Strong rule of law provisions would also ensure the independence and effectiveness of prosecutorial authorities.

58. Given South Sudan’s fractures and instability, a constitution-making process for South Sudan is an extension of both peace-making and peacebuilding. An inclusive constitution-making process would enhance national ownership and manifest political will in the outcomes. Shortcuts in the process based on expediency, that do not meet the expectations of citizens or the needs of the nation, would raise legitimate concerns about the legitimacy of the outcomes and risk generating new destabilizing grievances. Apart from affording a nation-building opportunity, the process of agreeing the terms of a constitution will also give South Sudanese the chance to lay down cornerstones for State-building, and the strengthening of national institutions to deliver on the aspirations of the people.

59. Thus, the importance of a consensus-based constitution goes well beyond clarifying the electoral and governance architecture. It also has the potential to consolidate respect for rights and the rule of law in South Sudan, which are essential building blocks for durable peace. Because the time left for preparation and completion of the constitution-making and conduct of elections is extremely limited, there will be a need to explore what adjustments are necessary to deliver credible outcomes in the adoption of a fundamental law and in the processes for holding genuine elections. Any decisions, including on whether to extend the agreed timelines, must be informed not by expediency and political calculation, but by a commitment to consolidating democracy, privileging the needs of the South Sudanese people, and realizing a more just and stable South Sudan.

60. With so much still to be done, the Government has partnered with UNMISS, the African Union and IGAD to constitute the ‘Government-Trilateral’ – a joint task force for advancing constitution-making and electoral processes. The taskforce oversees the preparations for both processes, considers progress in implementation, and reviews the resources needed by the different entities responsible for planning for elections and constitution making, including the work of the National Elections Commission and the National Constitutional Review Committee. Through the taskforce, the international community and regional actors can support at closer range the preparations for both processes, while also assessing the degree of preparedness and political will to conduct both processes as well as the full participation of stakeholders. Future decisions on how to deal with the effects of the delay in establishing these key processes will have to be informed by the judgement and advice of the Trilateral component of the joint task force.

61. Other welcome steps include the fact that the parties have agreed upon the names of individuals to serve on the National Constitutional Review Committee for preparations for the constitution-making process. They have also agreed on the nominations for the Political Parties Council, to be endorsed by the Transitional National Legislative Assembly. As of late September 2023, these nominations were with the President for formal appointment, with the expectation that the completion of this process was imminent, and that preparations could then be pursued in earnest.

III. Democratic space indicator 1: the media

62. The Commission examined the national legal framework and the media landscape in South Sudan, including issues of access, representation, and the gendered experiences of women. It identified, with recent examples, five patterns that demonstrate the repression of media and thereby democratic space: attacks against journalists; the Government's intolerance of public scrutiny including the denial of access to information; an entrenched censorship regime implemented by NSS; arbitrary bureaucratic control imposed by the Media Authority; and the State's tactics of cyberattacks and website-blocking against independent media.

A. National law

63. The 2011 Transitional Constitution of the Republic of South Sudan enshrines the principles of freedom of expression, and freedom of the press and other media, under section 24. The constitutional protection of media freedom is explicitly referred to in related laws.³³

64. The 2013 Media Authority Act explicitly protects mass media from censorship by "any official or non-official authority".³⁴ It states categorically that no government license shall be required for any person to enter or practice journalism as a profession, while noting that all media professionals must adhere to a professional code of conduct.³⁵ The Act provides various legal protections for journalists, including against criminal defamation prosecutions, although this clause is subject to limitations that may be open to interpretation and misuse.³⁶ The Media Authority was created in 2016 and commenced operations in 2017. The Authority's primary purpose is to regulate, develop and promote "an independent pluralistic media in the public interest."³⁷ Print media is specifically stated to be self-regulating,³⁸ while broadcast media is to be regulated by the Authority.³⁹ Provisions on the regulation of 'internet and new media' are less clear, although the Act recognizes the promotion of freedom of expression and open access for its use.⁴⁰ Many of these provisions are misapplied in practice.

54. The Media Authority is also required to establish and work with a Press and Broadcast Complaints Council, which is to handle ethics and legal complaints related to journalism, but this was still not operational as of mid-2023.⁴¹ In 2018, the Authority issued regulations on journalist accreditation, which is voluntary for nationals and compulsory for foreigners, consistent with the Act.⁴² For persons wishing to attain accreditation, the regulations require that they have obtained a university degree in journalism, or in another subject combined with 'training/internship' of at least one year in a media organization.⁴³ This presents a significant barrier to accreditation for many practicing and aspiring journalists (see below).

55. The 2014 National Security Service Act, although not referring to the constitutional protection of media freedom, lists protecting the Constitution as a core function of the NSS.⁴⁴

56. Several media entities exist for self-regulation and to serve the interests of journalists and media outlets, including: the Association for Media Development in South Sudan, the

³³ Primarily the 2013 Media Authority Act and the 2013 Right of Access to Information Act.

³⁴ 2013 Media Authority Act, section 6 (13b).

³⁵ 2013 Media Authority Act, section 6, subsections (13h) and (13i). Separate registration may be required for business operators under different legal frameworks, and without prejudice to constitutional freedoms.

³⁶ 2013 Media Authority Act, section 6(13g)

³⁷ 2013 Media Authority Act, section 3(1).

³⁸ 2013 Media Authority Act, section 6(13j).

³⁹ 2013 Media Authority Act, section 34(2).

⁴⁰ 2013 Media Authority Act, section 6(14a).

⁴¹ 2013 Media Authority Act, section 19(1)(f). C141395516.

⁴² 2018 Media Authority Regulations on Accreditation of Journalists, chapters 2 and 3. The Commission has previously identified the Media Authority denying accreditations to foreign journalists as a calculated strategy to prevent scrutiny of authorities. See A/HRC/40/CRP.1, para. 124 and A/HRC/43/56, para 74.

⁴³ 2018 Media Authority Regulations on Accreditation of Journalists, sections 6(1b) and 6(1c)

⁴⁴ 2014 National Security Service Act, section 13(d). Note that amendments to the Act are contemplated. Regularized or routine censorship by NSS officers is not contemplated in that Act.

National Press Club of South Sudan, and the Union of Journalists of South Sudan.⁴⁵ Freelance journalists who primarily develop stories for international media, many of whom are women working independently of newsrooms, reported not having a dedicated membership body.

B. Representation and access to media

“South Sudan really needs more independent media, so the people can be well informed. Now people are talking about elections... Unless people are able to listen to independent media, they can’t know what is happening” – a media publisher.⁴⁶

Reach and range of media

57. Access to media varies greatly throughout South Sudan. Juba and major towns are served best, while in many remote areas media access is extremely limited or non-existent.⁴⁷ SPLM-IG, the ruling political party, wields outsized influence on media content, resulting from its direct editorial control of State media, an effective monopoly on the issuance of broadcasting licenses, and through the imposition of a comprehensive regime of censorship.

“The Government doesn’t allow civil society to speak freely, for journalists to pass information, and for ordinary citizens to speak on radio or television – these activities are heavily restricted by the current regime” – an activist and organization founder.⁴⁸

58. Given the various media forms, radio is by far the most widespread and accessible. Available wherever there is a transmission and an available powered radio, it has the possibility to cater to remote and poor populations, and is accessible in multiple vernaculars. Radio Miraya, which is operated by UNMISS, is understood to have the widest reach. Privately-owned newspapers are available in cities, with printing presses mostly confined to the capital Juba; many of these are also available to the relatively few people with internet access.⁴⁹ The only national television station is operated by the South Sudan State Broadcasting Corporation, and largely broadcasts government activities and announcements. Several international media outlets broadcast into parts of South Sudan, including some operated by South Sudanese outside the country, which publish content online. For those with access, social media and messaging applications, particularly Facebook and WhatsApp, have become significant platforms for information and discourse.⁵⁰ In the context of this media landscape, the manipulation of media in many countries as a method to fuel political violence, and the rise of online disinformation across the world, the independence and reach of an independent media will be critical for peace in South Sudan.

Gender and women’s representation in media

“The situation is horrible for women journalists... (multiple times) I have been physically attacked” – a freelance woman journalist.⁵¹

59. The role of women in media should be assessed around the four axes of media: media freedom, media pluralism, media independence, and media safety. In this regard, the voices and perspectives of women and girls are seldom featured in media. This reflects their underrepresentation in the media space, their limited positions of political and cultural authority, broader socio-economic restrictions imposed on them, and the dominance of men

⁴⁵ This is a non-exhaustive list which is not intended to fully reflect the diversity and scope of media groups.

⁴⁶ C894285834.

⁴⁷ In parts of the country, access to media continues to be interrupted by equipment failures and limited funds for repairs, as well as by population displacements and the destruction of infrastructure linked to the persistence of armed conflict and insecurity.

⁴⁸ C180727108.

⁴⁹ Information available on the World Bank Data Bank indicates that 6.5 percent of people in South Sudan used the internet in 2020 (for details, see reporting of the International Telecommunication Union).

⁵⁰ See for example the public response to human rights violations in Mayom County in 2022, which came to light when images of extrajudicial killings were shared via social media. A/HRC/52/CRP.3, part II(b).

⁵¹ C245992070.

in editorial positions in media. This gender imbalance in media reinforces and perpetuates societal bias.⁵²

“I really had to fight for the editors to trust me enough to do the stories that male colleagues do. As a woman, I have to work extra hard to get stories published... And almost all officials were asking why I am getting into political stories, and why I am not married. They were trying to tell me that journalism is not my role” – a female political reporter.⁵³

60. As in most countries, journalism in South Sudan has historically been a male-dominated profession. Although women journalists have played a significant role in shaping the country’s media industry, those interviewed by the Commission reported experiencing persistent gender-based discrimination, both in the newsroom and while reporting. Forms of discrimination include being assigned lifestyle and entertainment rather than political stories, and being rebuked by sources who disrespect them and question their marital status. Sexual and other forms of gender-based harassment are common experiences for women journalists, who face unique safety and security challenges, particularly while travelling – which is common to all journalists who can experience harassment and violations by officials and armed actors. Despite these and other challenges, and their underrepresentation in editorial posts, many of the country’s leading political reporters are women.

“For journalists the stories in South Sudan are overwhelming, they are really tragic. Then we also have our own family and other issues. My body and brain has reached a point where I can’t take it any more” – a journalist on break from the profession.⁵⁴

C. Attacks against journalists

“We must think twice before posting or publishing. Journalists in South Sudan have a saying, ‘My children are still little, I don’t want to die and leave them as orphans.’ This is a common phrase we use” – a journalist working in radio.⁵⁵

61. South Sudan continues to rank as one of the most difficult and dangerous places in the world for journalists to work.⁵⁶ Since 2017, the Commission has consistently documented the State security establishment pursuing a relentless policy of harassment against journalists and media outlets, to censor news that is critical or perceived to be negative about authorities.⁵⁷ The history of human rights violations against journalists is fresh in the minds of media professionals. Many of the individuals interviewed by the Commission in 2023 referred to specific cases, including infamous killings of journalists in 2015 and 2016. Recurring patterns of human rights violations have included arbitrary detentions and torture, as well as wrongful prosecutions, along with persistent harassment which often involve death threats. Further, ongoing armed conflict and insecurity throughout the country continue to present security risks, and no institution has credibly fulfilled the State’s obligations to protect journalists.

62. South Sudanese in media outlets do their jobs under incredibly unworkable and intolerable conditions imposed through the State’s systematic regime of censorship, including related bureaucratic impediments designed to control and curb independent reporting. Various forms of intimidation by authorities, including interrogations and death threats, have evidently left many journalists with a heightened sense of vulnerability and fears for safety and security.⁵⁸ The Commission received reports from multiple journalists about them or colleagues leaving or taking breaks from media as a direct result of harassment and

⁵² See A/76/258, paras 43–46.

⁵³ C564631032.

⁵⁴ C208863005.

⁵⁵ C493551549.

⁵⁶ See *Freedom in the World*, Freedom House Report 2023, available at: <https://freedomhouse.org/report/freedom-world/2023/markings-50-years>

⁵⁷ See for example A/HRC/34/63, para. 47.

⁵⁸ C531676537, C247589858, C693358926, C463261470, C865218612, C326183623.

related trauma. Some recounted facing pressure from authorities, colleagues and even family to stop their work.⁵⁹

63. Several high-profile cases in 2022 and 2023 highlight the persistence of attacks against journalists, including arbitrary detentions and attempted killing. The Commission previously reported the arbitrary detention of journalist Diing Magot, who had just completed an interview with student activists on 7 August 2022 when she was bundled into a car on the streets of Juba by plain-clothed security officers who took her to a local police station.⁶⁰ Her phone and voice recorder were confiscated, she was accused of being a foreign spy, and subjected to further ill-treatment during eight days of arbitrary detention without charge.⁶¹ In January 2023, seven SSBC journalists were arbitrarily detained at NSS headquarters (see below).⁶² On 18 March, Garang John was the final SSBC journalist to be released, and he appears to have been subjected to ill-treatment and possibly torture. Numerous Juba-based female journalists interviewed by the Commission said they were shocked by Diing Magot's experience because usually only male journalists are subjected to arbitrary detentions; they said that their perceptions of safety moving around town had changed as a result, adding to their existing worries (see above).

“The Government doesn't follow lawful ways – there are no legal proceedings, and cases are not going to court. Most cases are arbitrary” – a political reporter.⁶³

64. In May 2023, South Sudanese political reporter Woja Emmanuel announced on his social media accounts that he had left the journalism profession, evidently because he held fears for his life. Numerous reports detail that he had been abducted at gunpoint near his office on 3 March 2022. Cuffed and hooded, he was taken to a ‘ghost house’ for interrogation by men thought to be NSS agents and forced to drink a toxic substance.⁶⁴ At night, he was driven to an area outside of Juba, where his captors walked him through thick bushland until they incidentally got into a gun fight with armed men. Amidst the commotion, he escaped the captors and soon fled the country to seek safety and medical treatment. This clearly appears to have been an attempted killing, and it came after he had several other threatening encounters with authorities and State security services.⁶⁵ Woja Emmanuel's close encounter with death and his withdrawal from journalism are instructive of both the prevailing threats to journalists in South Sudan and impacts on democratic space.

65. The State's human rights violations suffered by Diing Magot, Garang John and Woja Emmanuel have resulted in the complete upheaval of their lives, including flight to other countries for safety, and in at least in one case an exit from the journalism profession. Their treatment serves as a warning to others. While these cases took place in Juba, their character and national profile carry broad resonance. Carried out by State actors in the capital city with absolute impunity, these attacks further set the tone for the treatment of journalists by authorities throughout the country. In other parts of South Sudan, attacks on journalists take on further localized dynamics. The number of journalists in each state is limited, and they are often the targets when attacks take place. Given this, and more so than in Juba, when individuals or their colleagues in the states experience human rights violations, related public reporting tends to be avoided out of fear of retaliation and escalation. This means attacks on them are often outside the spotlight.

66. High-profile cases of attacks have a further chilling effect on independent journalism. Journalists interviewed consistently referred to such cases as affecting their sense of safety

⁵⁹C613691756, C875977383, C913243034.

⁶⁰A/HRC/52/CRP.3, para. 401.

⁶¹C979633342, C876791355.

⁶²A/HRC/52/CRP.3, paras. 403–406.

⁶³C155980885.

⁶⁴ ‘Ghost houses’ is common parlance in South Sudan to refer to some of the secret NSS detention facilities. Committee to Protect Journalists, “South Sudanese journalist Woja Emmanuel abducted by unidentified men,” 11 March 2022, available at: <https://cpj.org/2022/03/south-sudanese-journalist-emmanuel-woja-abducted-by-unidentified-men/>.

⁶⁵C304921063, C464934022, C126625903. Radio Tamazuj, “Kidnapped Eye Radio editor quits job after reflection on ordeal,” 5 April 2022, available at: <https://radiotamazuj.org/en/news/article/kidnapped-eye-radio-editor-quits-job-after-reflection-on-ordeal>.

and security, and that this also affects their families. Many interviewees said the persistence of such flagrant attacks in the public view has bearing on their editorial considerations, influencing choices about what stories to cover and who to speak to, and for some making them question staying working in the profession. The threat of personally encountering serious human rights violations adds to the persistent challenges of intimidation, bureaucratic obstacles, and gender-based harassment faced by journalists.

67. In all, throughout South Sudan, persistent human rights violations against members of the media, and the related regimes of censorship and control, have massively impacted what stories get published. The public's access to independent information has been undermined severely and deliberately, contributing to extreme limits on democratic space.

D. Intolerance of public scrutiny

68. South Sudanese media professionals interviewed by the Commission consistently referred to journalistic ethics, including the obligation to provide coverage to a range of views and voices, and to report information on issues and events in the public interest. This is made incredibly difficult by the immense pressure asserted on them by State authorities to give prominence to the Government's positions and narratives, to exclude coverage of critical views and opposition voices, and to avoid issues and events that may lead to public scrutiny of State officials and institutions, or which authorities say will reflect poorly on the country.

Intimidation of journalists and restrictions on access to information

“Authorities view my journalism as a weapon against the Government rather than to serve the public” – a political reporter.⁶⁶

69. Access to information from official sources is a huge challenge for independent journalists. There are no centralized depositories or websites that publish important official data, such as on budgets and legislative processes, and authorities routinely deny access to information that should be publicly available, especially when it may expose corruption.⁶⁷ Journalists reported that most ministries do not accept their invitations for interviews, and officials typically ignore requests for comment from independent media via phone or text-message.⁶⁸ Journalists known for independent reporting are less likely to get access to official sources, and queries about sensitive issues or events can lead to threats of defamation or physical harm.⁶⁹ Female journalists reported a consistent pattern of male State officials treating them with contempt and subjecting them to sexual harassment on account of their gender.⁷⁰

“The Governor refused to speak with me. But if I don't have his side of the story I risk going to jail if I publish,” – a journalist, on covering a human rights story.⁷¹

70. This situation has led many journalists to rely on government events and ad hoc press conferences as opportunities to access new information and seek comments. But questions are not always allowed, and some journalists are not selected to ask them.⁷² Frequently, journalists are subjected to intimidation and harassment while attending government events. The Government's main spokesperson at press conferences, Minister of Information Michael Makuei, regularly threatens to arrest journalists for not complying with media protocols which are unlawful or unclear (including journalist accreditation rules, discussed below). This treatment of journalists reflects an entrenched dislike of independent media at the highest levels of the Government, and an apparent prevailing attitude that media's role should be limited to publicizing government views, even verbatim.

⁶⁶ C104338736.

⁶⁷ C204292933.

⁶⁸ C864920496, C232695380, C938642662, C592142466, C691159662, C675392471.

⁶⁹ C403152449.

⁷⁰ C985018831, C297706418, C877236598.

⁷¹ C961621104.

⁷² C813320344.

“Media is the fourth estate – we are supposed to work together with government” – an independent journalist.⁷³

71. The Commission documented further cases of reporters and photographers being threatened, detained, interrogated, and or assaulted while covering government events.⁷⁴ Having previously noted multiple instances of journalists being detained while covering events at the parliament or Freedom Hall in 2022, the Commission received credible information implicating members of the Media Authority in related interrogations.⁷⁵ Journalists also recounted harassment by guards at points of entry to events, including invasive inspections and the confiscation of cameras and notepads.⁷⁶ A reporter recalled guards obstructing her entry to an event because they said women are unqualified to do journalism.⁷⁷ Female professionals consistently referred to the assault of women journalists by a General at the military’s Bilpham Headquarters in October 2019, as having an ongoing impact on their safety and security assessments when covering government and security issues.⁷⁸ As well as illustrating the hazards faced by journalists when covering State events, these examples highlight how independent reporting on government is almost unworkable.

Censorship of critical and opposition voices

72. The unlawful censorship regime and policy of harassment against journalists are applied particularly vigorously when media outlets provide coverage on political parties and armed groups in opposition to the ruling party. There is a pattern of obstructing, censoring, or retaliating against reporting on the views of political opposition to SPLM-IG. Media professionals described their difficulties in achieving balanced, objective, and ethical reporting in a context where government censors remove opposition voices from articles, and when journalists allocating coverage to opposition groups face systematic threats and reprisals.⁷⁹

73. Media outlets in South Sudan provide limited coverage to views of opposition political parties and non-State armed groups which are not party to the Revitalized Agreement. Authorities routinely censor or encourage independent media to exclude these groups in their coverage, and journalists have faced reprisals for reporting their comments.⁸⁰ For example, the Commission received multiple reports of NSS interrogating journalists and editors for reporting comments attributed to the National Salvation Front (NAS).⁸¹ The suspension of No. 1 Citizen Newspaper in 2021 followed its coverage of a NAS statement. According to a journalist who reports on conflict, authorities view engagement with these groups as being potentially conspiratorial against the Government.⁸² Journalists covering ‘hold-out groups’ risk harassment, detentions, and other human rights violations.⁸³

74. Relatedly, commentary by SPLM/A-IO members tend to feature in media only when accompanied by views of SPLM-IG, with whom they are in a power-sharing agreement. Several journalists recounted being subjected to censorship, intimidation, detention, and other forms of harassment by State authorities while reporting on SPLM/A-IO activities, comments, and events in different parts of the country.⁸⁴ In June 2022, NSS officers briefly

⁷³ C789652464.

⁷⁴ C947052370, C725686623, C250574704, C494110288, C850500858.

⁷⁵ See A/HRC/52/CRP.3, para 402. C263121503.

⁷⁶ C496521074.

⁷⁷ C635625638.

⁷⁸ C511427599, C300426492, C397568329 (2), C801927407, C366693305. Eye Radio, "Army Gen. beats up female reporters with camera tripod," 31 October 2019, available at: <https://www.eyeradio.org/army-gen-beats-up-female-reporters-with-camera-tripod/>.

⁷⁹ C333826286, C201377272, C631433772.

⁸⁰ Coverage of hold-out groups that are being brought back into the Government fold does not trigger this.

⁸¹ C335450719, C429308475. “NAS” is the name derived from Arabic by which the group is commonly known; it is not an acronym.

⁸² C210051753.

⁸³ ‘Hold-out groups’ is common parlance for non-State armed groups not party to the 2018 Revitalized Peace Agreement.

⁸⁴ C153680581, C503316771, C251117437.

detained journalists who SPLM/A-IO members had invited to attend a planned press conference at the Transitional National Legislative Assembly in Juba.⁸⁵ It is unclear if the detentions were backlash for reporting on SPLM/A-IO, an effect of ambiguous protocols at parliament and a reflection of the treatment of journalists generally, or a combination of factors.⁸⁶ Although, this is not the only time journalists reportedly faced such treatment while covering SPLM/A-IO.⁸⁷ The South Sudan Broadcasting Cooperation is dominated by the SPLM-IG and its editorial team provide little if any substantive coverage to SPLM/A-IO.

75. In some areas, media's ability to navigate arbitrary censorship directives and expectations are made more difficult by the complicated power-sharing arrangements set in place under the Revitalized Agreement. For example, in May 2022 Radio Jonglei was again suspended from operations and several senior staff were detained and interrogated by NSS officers. Their purported error was that after broadcasting a speech for SPLM Day by the deputy Governor, an SPLM-IG appointee, they did not promptly accompany this with a speech from the Governor, a member of the South Sudan Opposition Alliance.⁸⁸ This is one of several instances involving media suppression and attacks on journalists in the context of a fierce political rivalry between these senior officials. Against this backdrop, the Commission received credible information that in early 2023, authorities directed local newsrooms to cease reporting that may reflect poorly on the Government.⁸⁹

Censorship of reporting on corruption

76. The staggering levels of corruption in South Sudan are widespread and well-known, and the Commission has reported on how extreme levels of theft from State finances contribute to the persistence of conflict and the dire human rights and humanitarian crises in the country.⁹⁰ But this critical and systemic issue is rarely covered in reporting by media based in South Sudan. Summarizing the barriers to reporting on corruption, a newsroom manager said that investigations routinely face obstruction by government officials, intimidation from private sector and armed forces, threats of defamation proceedings, or serious human rights violations.⁹¹

77. Journalists who have investigated corruption say that obtaining responses from State officials is virtually impossible, and that queries can trigger harassment and serious threats.⁹² For example, the author of an article on corruption published in 2022 was summoned and interrogated by NSS, and eventually retracted the story under threat of incarceration.⁹³ Another journalist said they had dropped a recent investigation after receiving a call from an official, who threatened legal action and other repercussions if the story was published.⁹⁴ Inside sources and potential whistle blowers are rare; officials suspected of sharing information on State corruption have allegedly been victims of enforced disappearances.⁹⁵

78. The Commission has previously reported on the abuse of defamation law in South Sudan, including spurious prosecutions against journalists reporting on corruption. This

⁸⁵ Radio Tamazuj, "TNLA: 9 journalists briefly detained for covering SPLM-IO press conference," 14 June 2022, available at: <https://www.radiotamazuj.org/en/news/article/tnla-9-journalists-briefly-detained-for-covering-splm-io-press-conference>. Eye Radio, "UJoSS condemns harassment of 9 journalists at R-TNLA premises," 13 June 2022, available at: <https://www.eyeradio.org/ujoss-condemns-harassment-of-9-journalists-at-r-tnla-premises/>.

⁸⁶ This is one of numerous instances of authorities harassing and detaining journalists at parliament. See A/HRC/52/CRP.3, para. 402.

⁸⁷ C217855145.

⁸⁸ C311210026, C867626647. Eye Radio, "Authorities shutdown radio Jonglei for violating news bulletin order," 19 May 2022, available at: <https://www.eyeradio.org/authorities-shutdown-radio-jonglei-for-violating-news-bulletin-order/>.

⁸⁹ C974900365, C855576307 (3).

⁹⁰ See A/HRC/48/CRP.3 and A/HRC/52/CRP.3, section V.

⁹¹ C288642382.

⁹² C678606617, C128382078, C959173240.

⁹³ C333575987.

⁹⁴ C735782444.

⁹⁵ A/HRC/49/78, para. 31.

includes the case of Zechariah Makuach Maror, who reported allegations of corruption by the then-Minister of Finance. In September 2020 he was prosecuted and convicted of defamation, only to be acquitted two months later, following the President's dismissal of the same Minister.⁹⁶ Since then, reported abuses of defamation law received by the Commission have been limited to threats against journalists, rather than actual prosecutions. This reflects a trend observed by the Commission whereby journalists arbitrarily detained by authorities do not appear before a Court; these detentions are therefore unlawful. It also suggests that tactics to censor corruption stories have been effective, with articles typically rejected by editors or cut by NSS censors.⁹⁷

79. In a high-profile case, in January 2023 a former government official was reportedly detained for several days, after authoring an article in Sudans Post which included allegations of corruption by the Speaker of the Transitional National Legislative Assembly.⁹⁸ In April 2023, the Speaker suspended a parliamentarian who aired related allegations in greater detail. The Commission received information that journalists pursuing this story were harassed and denied an official response or access to related information from the Office of the Speaker.⁹⁹ Given the climate of censorship and repression of media detailed in this report, when a ruling party official refuses to comment on allegations, the effect of this can be to kill the story.

Censorship of human rights issues and uncomfortable stories

80. In engagements with the Commission, journalists working in South Sudan have almost uniformly referred to the limited media coverage of serious human rights violations in the country relative to the enormity of their scale and gravity, particularly when State actors are involved. This confirms the Commission's independent observations. Relatedly, media professionals know that authorities view 'investigative journalism' as a dirty or dangerous word, and so their use of the term is avoided, including in media trainings.¹⁰⁰ This further illuminates the context in which journalists report on human rights violations.

"To authorities, investigative journalism isn't for journalists – it is exclusively for the security services. This term frightens them" – a media professional.¹⁰¹

81. The Commission received numerous reports of members of the various State security forces, and officials from local to national level, demanding journalists cease their inquiries or retract stories on human rights issues, including under threat of death.¹⁰² The Commission received reports that the Unity State Governor allegedly directed the harassment and pursuit of people who spoke out about atrocities in Leer County in 2022, reported in detail by the Commission.¹⁰³

82. A consistent complaint from journalists was that many of their stories on human rights violations and abuses do not see the light of day because they don't manage to get Government comment. One journalist said they had developed a story on land grabbing and corruption in governance, but could not complete it, because the relevant authority refused to speak, and that publishing without their comments would likely lead to reprisals.¹⁰⁴ Numerous cases like this were reported to the Commission, often by women journalists, who face an additional hurdle to accessing information when misogynist male sources refuse to take them seriously, use their phone number to harass them, or propose meeting for interviews in inappropriate places such as nightclubs.¹⁰⁵ For many freelance journalists, an

⁹⁶ See A/HRC/46/CRP.2, paras. 49–60.

⁹⁷ C788001061, C135483161.

⁹⁸ Sudans Post, "Ex-minister 'kidnapped' in Juba after criticizing Kiir ally Nunu Kumba," 12 January 2023, available at: <https://www.sudanspost.com/ex-minister-kidnapped-in-juba-after-criticizing-kiir-ally-nunu-kumba/>.

⁹⁹ C952122025, C138067032.

¹⁰⁰ C316433687.

¹⁰¹ C137644586.

¹⁰² C142764101, C876271132, C992983958, C678149682, C674890131.

¹⁰³ C569943605, C562330236, C133632873.

¹⁰⁴ C256083093.

¹⁰⁵ C940169758, C493781820, C600639024.

incomplete story means they don't get paid, so significant time investments are wasted. Another observed impact is they are less inclined to develop stories which are unlikely to get comment from government officials, in turn leading to less coverage of human rights issues.

“If you speak the reality about child abductions these people won't allow it... that publication will then face a big problem” – a child rights activist.¹⁰⁶

83. A concerning human rights issue that has gone underreported in South Sudan has been the situation of abducted women and children in Jonglei State, and in particular the circumstances of initiatives by Government and other actors to facilitate their return home. The Commission received numerous credible reports that in two different situations in 2023, abductors received payments for the release of women and children, as part of mediations. One situation seems to have involved senior members of the Jonglei State Government, related to abductions around the Greater Pibor Administrative Area. In the other situation, representatives of the Upper Nile State Government had reportedly dispatched to Jonglei to arrange the release of women and children allegedly being held by Makuach.¹⁰⁷ The Commission has previously identified Makuach as a key mobilizer of forces involved in attacks on civilians in Upper Nile in late 2022.¹⁰⁸ Interviewees working in journalism, child rights and protection told the Commission that people have not dared to speak publicly on the alleged payments.¹⁰⁹ A journalist in Jonglei explained that media outlets avoided the story out of fear of retaliation from the Government.¹¹⁰ If the allegations of payments are true, these constitute ransoms and corruption, and may risk the unintentional effect of creating markets for further abductions. The media's understandable reluctance to report on the issue reflects how the lack of transparency and accountability in governance can further contribute to human rights violations.

“Censorship thrives, spearheaded by the agents of NSS. The Government claims that only reports that put the State in a positive light should be published” – a journalist.¹¹¹

84. Purported concerns about the country's image have often been referred to by censors as a rationale for restricting reporting on human rights violations and abuses. Sometimes the timing of events is important. For example on 2 February 2023, civilians were massacred by armed cattle-keepers embroiled in conflict with a community in Kajo-Keji, Central Equatoria State – which hosts the capital city.¹¹² The next day, Pope Francis arrived in Juba. The Commission received credible reports that NSS officers sought to delay coverage of the massacre, including by cutting the story from the front page of a newspaper, and launching cyberattacks against an outlet that did not remove its reporting.¹¹³ The rationale provided for the censorship was to avoid damaging the image of the country. The Commission was informed that this same reason was cited in 2021 when NSS officers blocked a newsroom reporting on the killing of two Catholic nuns during a road ambush in the Equatorias.¹¹⁴

85. In its last report, the Commission detailed the arrests and arbitrary detentions in January 2023 of seven journalists working for the South Sudan Broadcasting Corporation.¹¹⁵ Most of them were camera operators, and they were purportedly suspected of having circulated embarrassing video footage involving the President's attendance at an official event in December 2022, which circulated on social media, and in regional and international press. Their detentions brought about further scrutiny on the case from international media. The last remaining journalist in detention was Garang John, who was released from NSS

¹⁰⁶ C724286948.

¹⁰⁷ No. 1 Citizen, “Upper Nile Gov't dispatches committee to return 41 children,” 14 April 2023, available at: <https://onecitizendaily.com/index.php/2023/04/14/upper-nile-govt-dispatches-committee-to-return-41-children/>.

¹⁰⁸ A/HRC/52/CRP.3, paras. 173, 175 and 182.

¹⁰⁹ C563211029, C982678034, C885116163.

¹¹⁰ C838867645.

¹¹¹ C515168437.

¹¹² C664555260, C320613327, C756507944.

¹¹³ C181572419, C961877593.

¹¹⁴ C693749004.

¹¹⁵ A/HRC/52/CRP.3, paras. 403—406.

custody on 18 March 2023. He was reportedly in poor health upon his release and is understood to have fled the country, after receiving persistent credible death threats.¹¹⁶ A source with close knowledge of the circumstances related to his ill-treatment assessed that international media attention on the case may have saved him from being killed in detention.¹¹⁷ Media outlets in South Sudan were observed exercising great caution reporting on these detentions, if reporting on them at all, because the circumstances were extremely sensitive at the highest levels of Government. The case further illustrates how public information that is unwelcomed by senior officials and family members attract a heightened risk of reprisals.

86. The above examples identified by the Commission further illustrate some of the issues faced by journalists and media outlets in the investigation and publishing of information that may implicate Government officials in human rights violations, or that may otherwise be perceived as inconvenient or embarrassing information to have exposed in the public realm. One of the many knock-on effects of this situation is that public officials face less public scrutiny and thereby political or other accountability for their actions. This lack of transparency does not create an environment conducive to fostering both good governance and democratic processes, and undermines necessary scrutiny on the Government's approaches to human rights issues.

E. Entrenched censorship regime

87. The Commission found that NSS operates a pervasive censorship regime in newsrooms and at printing presses, designed to silence opponents to the Government, and to deprive the public of access to critical voices and information about important public interest issues. This regime also results in self-censorship by media outlets, including the avoidance of stories anticipated to be subjected to censorship, or which may lead to harassment and attacks against editors and journalists involved in the stories. For newsrooms managed online from outside South Sudan, NSS and other authorities have used website blockages and cyberattacks to censor and repress their publications remotely.

NSS in newsrooms

88. Newsrooms in South Sudan are subjected to a systematic, pervasive, and unlawful regime of censorship, primarily implemented by NSS, in coordination with other authorities. Most, if not all, newspapers are forced to host one or more NSS officers who review all content prior to its dissemination and issue directives including text amendments, article removals, and even the withdrawal of entire print editions.¹¹⁸ This takes place in newsrooms, at printing presses, and via phone and WhatsApp.¹¹⁹ These on-site censors tend to be junior- or mid-ranking NSS officers, who lack knowledge and respect of journalism ethics, editorial principles, and the role of media in society.¹²⁰ Content is frequently censored for giving coverage to views critical of or different to the ruling political party, or for including information that may reflect poorly on government officials and institutions. The most common justification heard for censorship directives is that the content does not sufficiently incorporate views of the Government. News about corruption, the security sector, and human rights violations also attract heightened scrutiny and censorship (see above).

89. The mechanics of routine State censorship have evolved to disguise its prevalence. Previously, the removal of a newspaper article would typically result in the appearance of blank columns in the print version, and the resulting blank space in newspapers were a clear

¹¹⁶ C506554834, C951908737.

¹¹⁷ C215671316.

¹¹⁸ C154912480, C311378872, C666854050, C166085079, C183481667, C811768604, C511697391, C271242503. For example, Radio Miraya reported that City Review was prevented from publishing its 5 July 2023 edition.

¹¹⁹ C586284791, C810159539.

¹²⁰ C614645334, C772057660, C140594807. Their lower positions in NSS hierarchy may incentivise increased censorship to ensure they satisfy institutional expectations of their seniors.

indication of censorship.¹²¹ Editors sometimes left columns blank as a subtle form of protest; other times it resulted from last-minute directives from NSS officers at printing presses.¹²² In a tactical change, NSS officers now require that unauthorized articles be replaced with alternative print. Censored material is substituted with advertisements, government announcements, recycled articles, or international news.¹²³ Newspapers finalise layouts at night, as delayed review can result in postponed or cancelled print-runs, or in the NSS Officer directing printers to make changes.¹²⁴ This tactic is calculated to mask censorship and to deceive readers of independent news reporting.

90. Independent media outlets in South Sudan operate under intense fear of suspension or closure.¹²⁵ The Commission documented multiple examples between 2021 and 2023 of newspapers and radio stations subjected to retaliation for reporting, including cases where publishers ended up retracting stories or restructuring teams under the threat of closure. A media manager reported that after refusing to host an NSS Officer in their newsroom in 2021, their operations were suspended until they made management changes dictated by NSS.¹²⁶ Another journalist reported being summoned to an NSS Office in 2022 and ordered to retract a story on corruption or face the threat of detention and the closure of the publication.¹²⁷ The Media Authority suspended No.1 Citizen newspaper in December 2021, reportedly in retaliation for covering views of an armed opposition group.¹²⁸ In January 2022, Eye Radio issued a public apology after its Chief Editor was summoned by the Media Authority for an article that reported on a Twitter post.¹²⁹ Radio stations are also subject to scrutiny in their studios, and the Commission received information about discussions on human rights issues being shut down by NSS officers while on air.¹³⁰ In each of these illustrative cases, authorities violated the prohibition on censorship in national law, and flagrantly exceeded their legal mandates.¹³¹

91. Being summoned by NSS and the Media Authority for reprimands is an intimidating, time-wasting and at times unsafe experience for the journalists and editors involved.¹³² NSS officers and other officials routinely call journalists and editors to discourage reporting on certain issues, and obeying their instructions can reduce the likelihood of being summoned.¹³³ Persistent suspensions, closures and reprimands reflect the unlawful regime of censorship and intimidation of media by authorities, and indicate persistent cooperation between NSS and the Media Authority, consistent with patterns previously identified by the Commission.¹³⁴

Resulting self-censorship

92. A high prevalence of self-censorship among journalists and in newsrooms was consistently highlighted to the Commission as a direct impact of the State's interference with news content and of its widespread harassment of the press, including attacks on journalists.

¹²¹ See for example UNMISS and OHCHR, "Report on the right to freedom of opinion and expression in South Sudan since the July 2016 Crisis, February 2018, page 16.

¹²² C350140999, C763058050, C972333787.

¹²³ C708089283, C604553977, C262278797, C361434906, C855488224.

¹²⁴ C143289336, C169818826, C854488248.

¹²⁵ C435282326, C940515867, C577037998.

¹²⁶ C716595525.

¹²⁷ C261794907.

¹²⁸ C744940601.

¹²⁹ See "Editor's Note: Apology to Media Authority," 17 January 2022, available at: <https://www.eyeradio.org/editors-note-apology-to-media-authority/>

¹³⁰ C574774692.

¹³¹ Under the 2013 Media Authority Act, newspapers are self-regulatory. Under the 2014 NSS Act, the scope for interference with media is restricted to situations of national security and subject to strict limitations.

¹³² C314099374, C320240714.

¹³³ C506165899, C987279644.

¹³⁴ See A/HRC/40/CRP.1, para. 113. See also A/HRC/43/56 and A/HRC/46/CRP.2.

“The commercial entities say ‘the government is not happy with you... and by advertising with us it can also create problems for our business’” – a media owner.¹³⁵

93. For some news publishers in South Sudan, the repressive context can lead to degrees of self-censorship as a method to sustain financial viability and therefore operations. This is because media businesses which rely on advertising revenue risk losing clients who fear being associated with publications that fall out of favour with Government.¹³⁶ Media outlets that do not generate advertising revenue have become overly reliant on limited donor funding, in some cases leading to operational cuts.¹³⁷ Some media outlets – and journalists – appear to have ceased independent news reporting, instead reproducing information issued by the Government, and focusing more on lifestyle and entertainment coverage.¹³⁸

“Self-censorship is at the level of the media houses. Some journalists are brave but then the publisher doesn’t run the story out of fear – they worry that their license won’t be renewed” – member of a media professionals group.¹³⁹

94. Although censorship is arbitrary, senior news editors understand which topics and content are most likely to be censored, spark defamation cases, lead to harassment or attacks against journalists, affect the issuance of licenses where applicable, or carry other consequences. This context influences editorial direction, including decisions on investigative priorities, the commissioning of stories, the framing of articles, and the prominence given to content when disseminated. Multiple journalists reported lobbying editors to approve stories considered to be sensitive.¹⁴⁰ Freelance reporters recounted investing significant time into developing stories, only to have them rejected by editors, leaving them uncompensated for time and expenses.¹⁴¹ One freelancer said newsrooms stopped commissioning their stories after authorities criticized one of their articles.¹⁴² Journalists told the Commission that self-censorship has eroded the quality and credibility of news reporting.

“We were told we could not discuss accountability and the Hybrid Court on radio” – a radio talk show panellist.¹⁴³

95. Radio newsrooms are also affected by self-censorship, but the mechanics are different to that experienced by print media, given that as broadcasters they are obliged under law to go acquire a license from the Media Authority, which must be renewed regularly (see below).

F. Arbitrary bureaucratic controls

96. Instead of acting to advance the development of pluralistic independent media in South Sudan, the Media Authority has instituted measures to further tighten State control over journalists and media outlets, while doing little if anything to protect their interests.

97. The Media Authority works in close coordination with NSS, and effectively operates as an auxiliary to the NSS-managed regime of media censorship. As reported previously, the NSS has a significant presence in the Authority.¹⁴⁴ Having gathered additional credible testimonies, and conducting independent analysis of multiple cases, the Commission confirmed these arrangements remain in place in 2023.¹⁴⁵ The unlawful imposition of journalist accreditation and media registration procedures sees the Media Authority and NSS working in coordination, with the evident backing of senior members of the Cabinet,

¹³⁵ C711821261.

¹³⁶ C160971344, C479777990.

¹³⁷ C340657715, C155066017.

¹³⁸ C591660543, C987786638.

¹³⁹ C100474550.

¹⁴⁰ C221588849.

¹⁴¹ C558675768.

¹⁴² C382007536.

¹⁴³ C814337768.

¹⁴⁴ A/HRC/46/CRP.2, para. 53.

¹⁴⁵ C619235758, C842547531, C675133139, C571018438.

particularly the Minister of Information. Serving the political interests of the ruling party is manifestly contrary to the Media Authority’s legal mandate and purpose. Its establishment has largely added another bureaucratic layer for journalists and media outlets to deal with.

“More censorship will be coming, and it will be bad. The media accreditation, and the need for an education certificate – this is all for the election year” – a journalist.¹⁴⁶

Wrongful application of journalist accreditation rules

98. Accreditation for South Sudanese journalists is voluntary under the 2013 Media Authority Act and the 2018 Media Authority Regulations on Accreditation of Journalists, as noted above.¹⁴⁷ Yet the implementation of the accreditation process undermines this principle. In October 2022, the Authority announced the launch of the accreditation process for South Sudanese journalists. Previously, the process had only been in place for foreign journalists, for whom accreditation is mandatory. The Commission has previously reported instances in which the Authority revoked foreign journalists’ accreditation and facilitated their deportation, often on spurious grounds calculated to prevent media scrutiny.¹⁴⁸

99. The announcement was made at a press conference by Elijah Alier, Managing Director of the Media Authority.¹⁴⁹ All media reporting of the event reviewed by the Commission, including audio snippets, implied that accreditation would be mandatory. On 29 March 2023, the Authority announced 30 June 2023 as the “Accreditation of Journalists Deadline.”¹⁵⁰ Its directive makes no mention of the voluntary nature of such accreditation. At the time, the Commission warned of early signs that the accreditation process was being abused to control media activities, including by restricting access to Government events.¹⁵¹

100. In consistent statements to the press, the Minister of Information has made clear that unaccredited journalists would be barred from accessing all government events. As highlighted above, journalists rely on government press conferences to access information and seek comment, given the general refusal of officials to engage them outside these forums. Articles that do not sufficiently cover government views are rejected by editors or NSS censors. Incorporating government views is also important for fair and accurate reporting, but independent reporting also requires asking questions of public officials, and the denial of access to officials undermines this. Media outlets also face reprisals for being perceived as bias against the State. News journalists say their jobs will be unviable without accreditation.¹⁵²

101. Furthermore, journalists told the Commission that official documentation and permissions to travel are often required to travel and report, including to demonstrate to security forces and members of armed groups that their movements serve a legitimate professional purpose.¹⁵³ In this context, which is already dangerous for journalists, those not carrying an accreditation card are likely to be more vulnerable to safety and security risks.

102. Given these factors and context, all journalists who spoke with the Commission said they are applying for accreditation, noting that it is now effectively mandatory in practice.

¹⁴⁶ C151715126.

¹⁴⁷ Chapter II, section 4(1) of the 2018 regulation clearly states the voluntary nature of accreditation for South Sudanese journalists: “Any journalist, being a citizen or resident of South Sudan, (emphasis added) *who wishes to be* recognized as an “accredited journalist” *may apply* to the Authority for such status.” In contrast, Chapter III, section 9(1) clearly states the compulsory nature of accreditation for foreign journalists: “Any journalist, who is not a citizen or who, being a citizen, is not ordinarily resident in South Sudan, (emphasis added) *shall apply* for accreditation...”

¹⁴⁸ See for example A/HRC/46/56, paras. 74–76. The activities of foreign journalists in South Sudan can be heavily restricted. The Commission received credible information that some foreign journalists accredited to cover Pope Francis’s visit in 2023 were restricted on what they could report on in and around Juba.

¹⁴⁹ The Radio Community, “Media Authority to accredit all national, foreign journalists at a fee,” 12 October 2022, available at: <https://theradiocommunity.org/media-authority-to-accredit-all-national-foreign-journalists-at-a-fee/>.

¹⁵⁰ Republic of South Sudan Media Authority, Public Notice of 29 March 2023.

¹⁵¹ A/HRC/52/CRP.3, para. 402.

¹⁵² C865339901, C168615785, C448104975 (2), C813075235 (22).

¹⁵³ C573223546, C237282453.

But the overly cumbersome eligibility criteria will exclude some of them from accreditation. A document issued by the Media Authority lists five prerequisites for the issuance of accreditation.¹⁵⁴ This includes proof that the applicant has obtained a university degree. If the applicant's degree is not in journalism, they must demonstrate 'training/internship' of at least one year in a media organization. The 2018 Regulation prescribes this requirement, as noted above, which disqualifies a significant amount of practicing or aspiring journalists, particularly given that access to university education is limited and many journalists lack a degree.¹⁵⁵ The implications for professional photographers and community radio managers are unclear. This requirement may compromise the livelihoods of many existing journalists, and institutes an unnecessary and exclusionary structural barrier for entry into the field.

103. A journalist who applied for accreditation detailed making multiple trips to the Media Authority Office in Juba, which is located on the city outskirts. Characterizing the process as frustrating and time-consuming, they said staff persistently questioned their past political reporting and added new documentation requirements not reflected on the application form.¹⁵⁶ This illustrative example highlights concerns in the media industry that the annual reaccreditation process may involve interrogation and NSS scrutiny of journalists' reporting.

104. Multiple credible reports were received to indicate NSS is involved in the review and sign-off process for accreditations.¹⁵⁷ While this was not independently verified, NSS has a presence at the Authority and this information is consistent with their patterns of cooperation.

105. The Commission found that the accreditation of South Sudanese journalists is being weaponized as another tool to exercise State control over media, contrary to the principle of voluntary accreditation, and in violation of legal protections on media freedom. The effects will be to undermine rather than develop an independent pluralistic media in South Sudan, and to further inhibit access to information at a time when electoral processes are envisaged.

Unlawful imposition of media registration rules

106. Under the 2013 Media Authority Act, non-broadcast media is self-regulatory, as noted above. Yet under coercion and threat of closure, the Authority compelled media outlets and associations to register with the Authority, despite this being in violation of national law.

107. In June 2017, soon after commencing its operations, the Media Authority requested all media including newspapers and media associations to register with the Authority. In September 2017, media outlets were warned that non-compliance would result in penalties.¹⁵⁸ Nonetheless, the Authority exerted significant pressure on media outlets and associations, including by cooperating with NSS to conduct surveillance on their operations.¹⁵⁹ The Authority reportedly issued several suspension orders. Despite the clear illegality, prospects for an effective legal challenge in courts were limited, given the state of the judiciary, including its limited resources and independence. Facing intimidation and threats of closure, media outlets and associations registered with the Authority, in order to continue their work.

108. Media outlets and associations subjected to this registration regime must endure a registration renewal process each year, in which they receive criticisms and editorial directions from the Authority and agents or counterparts of NSS.

109. Industry associations are involved in hosting trainings, forums and other forms of events, sometimes attracting prominent speakers. In asserting regulatory control, the Media

¹⁵⁴ Republic of South Sudan Media Authority, Accreditation Requirements, October 2022.

¹⁵⁵ The other requirements for South Sudanese nationals are: a letter from employer (or for freelancers, a reference letter from an organisation publishing their work); records of previous work published either in print or broadcasting; passport-type photos; copies of identification. For student journalists, permits are issued to do their field practicums on demand.' Other additional requirements not on this form can include a request letter written to the Media Authority. Foreign journalists require further documentation including a work permit and accreditation from their country of origin. Requirements list from the Media Authority of October 2022, on file.

¹⁵⁶ C749294050.

¹⁵⁷ C126811178, C472763472, C588112872.

¹⁵⁸ A/HRC/40/CRP.1, para. 121.

¹⁵⁹ C274917837.

Authority wrongfully demands organizers seek prior authorization to conduct events, reportedly issued as a ‘no objection certificate.’¹⁶⁰ Without this, venues will not accept bookings, and events are likely to be shut down. The process to obtain this certificate can require sharing detailed event information, including the proposed agenda and participant list. The Commission received reports of permission provided only if certain participants were uninvited. The Authority has nominally assumed a role earlier played by NSS in imposing prior-authorization requirements. If approved, it is NSS officers who monitor events, take notes of discussions, and sometimes offer unsolicited advice. Trainings to prepare journalists to cover electoral processes have been subjected to heightened scrutiny.¹⁶¹ This arrangement broadly mirrors restrictions imposed on civil society activities (see below).

110. The Commission found that the Authority in coordination with NSS unlawfully imposed registration of independent media outlets and associations, as a tool of control. The Authority assumed functions previously instituted by NSS, while NSS maintained its censorship roles. An effect is additional and unlawful bureaucracy and complications for media.

Abuse of broadcast licensing rules

111. The Commission found that implementation of the broadcast licensing system has contributed to self-censorship by radio newsrooms, due to experiences or perceptions that reporting on certain issue could prejudice their license renewal by the Media Authority. Unlike print media, local radio stations are obliged to acquire a license from the Media Authority, which are generally issued on an annual basis. The Commission received consistent reports that licensing and renewal processes can involve deep scrutiny of the station’s prior news reporting. This can involve Authority officials criticising the station’s reporting on stories deemed to be unfavourable to the Government, and the issuance of editorial directives as a condition of licensing or renewal. Licensing was described to the Commission as a method of censorship and control, rather than being an administrative procedure as outlined in law.¹⁶² The Commission also heard that many stations are in arrears in their fee payments, which are typically carried over to the next year.¹⁶³ The risk is that authorities may refer to this to refuse renewals, when the actual intention is censorship.

Unfounded interference with the Radio Miraya

112. Radio Miraya is operated by the United Nations Mission in South Sudan (UNMISS), and it is understood to have the widest media reach across the country, as noted above. Given this, the station is uniquely placed to broadly disseminate information to the public, and it played an important role in supporting awareness-raising efforts about the COVID-19 pandemic. This broad reach outside the limits of State censorship is not appreciated by all authorities.

113. In March 2018, the Media Authority issued a suspension order to Radio Miraya on the basis that it had not acquired a broadcast licence to operate. This is despite that fact that as part of UNMISS, Radio Miraya has rights to operate radio under its exclusive control and to disseminate public information in South Sudan, under section 11 of the Status of Forces Agreement between the United Nations and the Government of the Republic of South Sudan concerning the United Nations Mission in South Sudan (SOFA). It therefore does not need to obtain a license to operate. Broadly, this enables Radio Miraya to operate independently. Although, the Commission observed that its dispute with the Government may at times have had a bearing on editorial decisions, including its coverage of human rights reporting.

114. The Minister of Information, Michael Makuei, has publicly campaigned for more than five years to bring Radio Miraya under greater government control, in a blatant effort to curb its independent reporting. Since the Commission reported the NSS detention of a Radio

¹⁶⁰ C960349535, C683075011.

¹⁶¹ C499604051.

¹⁶² C827184127.

¹⁶³ C299020958. Note radio stations also need a frequency license from the National Communications Authority.

Miraya journalist in May 2018, for attempting to cover a press conference by the Minister, the station's journalists and leadership have experienced persistent harassment by authorities.¹⁶⁴ During an event on 1 April 2023, noted above, the Minister threatened a Radio Miraya journalist in attendance with arrest if they attended another of his press conferences.¹⁶⁵ Authorities have also instructed media associations to exclude its journalists from events.¹⁶⁶

115. Throughout this time, Radio Miraya has continued broadcasting while the dispute over its status has been a subject of negotiations between the Government and United Nations. On 3 August 2023, the Media Authority announced the suspension order had been lifted.¹⁶⁷ Terms of the resolution, if any, are unclear. It appears the station will be better able to cover government press conferences, although implications for journalist accreditation are unclear. The apparent resolution may be understood in the context of SPLM-IG's stated plans to hold elections in late 2024. In a press conference on 3 August 2023, the Minister of Information said the Government "will be using Miraya FM... to disseminate the plans for the elections... because Miraya FM is the only radio station that is actually audible all-over South Sudan," while warning "we will not allow you to step on the toes of others in the name of freedom."¹⁶⁸

116. The Commission has observed that Radio Miraya's reporting on human rights issues, including its coverage of United Nations reporting on human rights violations, broadcast to a wide South Sudanese audience, is unappreciated by key members of the Government. This appears to be the primary motivator for the Minister of Information's pursuit for control over the station.

G. Cyberattacks and website-blocking

117. Several independent newsrooms are managed by South Sudanese located outside of the country, to protect media owners and editors from attacks, and to circumvent censorship. These are among the online publications which have been targeted with website blocking and persistent cyberattacks.¹⁶⁹ Authorities have instituted website blocking since at least 2017, and the practice has continued up to 2023, without any clear legal basis.¹⁷⁰ The Qurium Media Foundation reported assisting three of these media outlets to circumvent website blocking in 2020.¹⁷¹ Sudans Post, one of the affected publications, has since experienced persistent cyberattacks. Hackers of its Facebook pages changed administrative privileges, posted pornographic content, and deleted accounts – the most recent hacking event was in August 2023.¹⁷² Radio Tamazuj is also among the publishers which has been affected by internet blocking, and its Twitter account was last hacked in February 2023.¹⁷³ The Commission noted that attacks typically occur after NSS officers have contacted editors to demand that published content be removed or amended.¹⁷⁴ Online media based in South Sudan, and popular social media publishers such as 'Hot in Juba,' have also been confronted by NSS

¹⁶⁴ See A/HRC/40/CRP.1, para. 123. C156135964, C776306092.

¹⁶⁵ "I had already issued an order that Miraya FM should not be allowed to attend any Government function... Any Miraya FM journalist who comes, not authorized, not registered, will definitely be sent away or arrested, because he is operating illegally. And Miraya FM is one of the radios that is spreading lies and supporting, causing, havoc in South Sudan, because it is not registered... You are lucky that you have attended this but next time don't attempt, otherwise you will be arrested." Verified videos on file.

¹⁶⁶ C305793064.

¹⁶⁷ Media Authority, "Lifting of Suspension Order on Radio Miraya," 3 August 2023.

¹⁶⁸ Transcript on file.

¹⁶⁹ C585612744.

¹⁷⁰ See UNMISS and OHCHR, "Report on the right to freedom of opinion and expression in South Sudan since the July 2016 Crisis," February 2018, pages 17-18.

¹⁷¹ See Qurium – the Media Foundation: <https://www.qurium.org/alerts/south-sudan/>

¹⁷² C907126725, C137836510.

¹⁷³ C189749093, C578427432.

¹⁷⁴ C798056433, C288760299.

officers demanding that they remove and apologize for content, including innocuous memes.¹⁷⁵

118. The Sudans Post and Radio Tamazuj cases illustrate a broader pattern observed by the Commission, of NSS censorship and unlawful activities outside the country (see below). A cybersecurity expert who verified the hackings to the Commission noted difficulties involved in identifying the sources of attacks on social media pages, including technical constraints.¹⁷⁶ Analysis conducted by the Quirum Media Foundation in 2020 found that several IP addresses located in South Sudan had continued to access websites blocked to the public, and traced the address to key government offices including NSS.¹⁷⁷ In April 2023, the United Nations Panel of Experts on South Sudan noted increased inter-ministerial cooperation to strengthen Government control of the internet and online communications.¹⁷⁸ These reports corroborate information gathered by the Commission indicating NSS carries responsibility for the website blockages and cyberattacks, in coordination with other authorities (see below).¹⁷⁹

IV. Democratic space indicator 2: civil society

119. As with its review of the media in South Sudan, the Commission examined the national legal framework for civil society actors in South Sudan, and the political context in which this is implemented. Five patterns were identified that demonstrate the repression of civic activities and thereby democratic space: State-sponsored reprisal attacks against civil society members constituting human rights violations; unlawful interference with civic activities of civil society organizations primarily by NSS; surveillance and control of civil society organization activities, also primarily led by NSS; phone tapping and digital surveillance; and extra-territorial attacks on civic and political actors. While mindful of the need to ensure the security of witnesses, including their protection against reprisals and other attacks, the Commission identified recent examples to illustrate these patterns.

A. National law and context

120. The right to freedom of association is recognized under section 25 of the 2011 Transitional Constitution, together with freedom of assembly and related political rights. There are two key national laws related to the regulation of non-government and community-based organizations: the 2016 Non-Government Organizations Act and the 2016 Relief and Rehabilitation Commission (RRC) Act.¹⁸⁰ In each law there is a lack of clarity on key aspects, including the purpose and functions of the relevant State institutions. There is also ambiguity on how different authorities interact and intersect, such as the Registrar and RRC. This situation allows for selective or arbitrary interpretations of Government functions, particularly in a context where authorities operate with high levels of discretion, and access to legal redress is severely restricted. The resulting legal framework undermines the constitutional protection of the right to freedom of association and constrains the development of genuine democratic space. Furthermore, the ambiguous and overlapping administrative arrangements enable and even facilitate rent-seeking behaviour by authorities.

121. Complicating this situation is the pervasive presence throughout South Sudan and in State institutions of NSS, which operates a sophisticated architecture to excessively control the public. While the deeply flawed 2014 NSS Act provides for broad powers of monitoring and surveillance, the institution's overarching purpose as expressed in law relates to

¹⁷⁵ C278907920.

¹⁷⁶ C819751084.

¹⁷⁷ Quirum, ““SUDANS POST” GETS BLOCKED AFTER RECEIVING PERSONAL THREATS FROM NSS – TRANSCRIPT REVEALED,” 17 August 2020, available at: <https://www.quirum.org/alerts/south-sudan/blocked-sudans-post-received-threats-for-achai-wiir-related-articles/>

¹⁷⁸ S/2023/294, para. 113.

¹⁷⁹ C209590110.

¹⁸⁰ As of September 2023, the National Constitutional Amendment Committee established under the Revitalized Agreement had recently submitted proposed amendments to both 2016 laws to the Cabinet.

protecting the nation, and to maintaining safety and security of the Republic.¹⁸¹ The Act provides no reasonable basis for the pervasive and systematic monitoring of South Sudanese, including those exercising their right to freedom of association, such as by hosting meetings and workshops, and speaking with each other on the phone about human rights issues.

122. Amendments to the NSS Act, first proposed in 2019, were under consideration in the Transitional National Legislative Assembly (TNLA) as of September 2023. A legal review of proposed amendments found that revisions to the Act's language on NSS monitoring powers and functions would be insufficient to address existing issues identified in this report. Furthermore, although authorities announced in February 2023 that amendments would withdraw the powers of NSS officers to conduct arrests without warrants, it is unclear if this commitment has been fully incorporated into the Bill under consideration in the TNLA.¹⁸² Information received indicates that the Council of Ministers resolved on 24 March 2023 to remove section 55 of the current Act, which provides such powers. But the Commission's review of a version of the 2014 NSS Act Amendment Bill (2023) transmitted to the TNLA on 28 April 2023 found that section 54 remains in the text (moved to section 57).¹⁸³ This section also allows for arrest without warrant, and, read with other provisions, the limitations provided for in amendments reviewed by the Commission do not appear to sufficiently limit the powers of NSS officers under the Act. Given that the legislative process in South Sudan is opaque and access to information is limited, as of September 2023 it remained unclear whether the amendments would effectively curtail the arrest and detention powers of the NSS. Based on available information there is reason to believe that NSS will retain significant powers to arrest without a warrant. In any case, existing provisions are flagrantly flouted by NSS and access to judicial review for persons under its detention are rarely available in practice, if at all. While abolition of NSS powers to arrest are necessary and would be welcome, the Act's content must also be viewed in the context of its persistent abuse and misapplication.

123. The Commission has previously noted that at the conclusion of the Universal Periodic Review of South Sudan by the Human Rights Council in 2022, the Government rejected specific recommendations from United Nations Member States to guarantee and protect the rights of individuals engaged in civic activities.¹⁸⁴ This is very discouraging, particularly because the process of amending the NSS Act would provide a timely opportunity to institute safeguards.

124. Aside from law and policy, a central political problem is that SPLM-IG and powerful individuals within the party have designed and use NSS to entrench and protect their political dominance and other interests.

B. Reprisal attacks against civil society

“The Government knew about me from my advocacy calling for accountability.... This is why they are looking for me. They said I shared information to the international community... causing shame for the country and contributing to sanctions” – a civil society activist.¹⁸⁵

125. The Commission has reported in detail on attacks against members of South Sudanese civil society, including human rights defenders and lawyers, both in the country and abroad. Its documentation of human rights violations and abuses dates back to the period of fighting from 2013 to 2018, perpetrated by members of multiple State institutions and non-State armed groups. Up to 2023, the Commission has continued investigating cases of arbitrary arrest and detention, as well as torture and cruel, inhuman or degrading treatment perpetrated

¹⁸¹ 2014 National Security Services Act, section 13: Powers and Functions of the Service. (Note the Act was subject to an amendments process which was ongoing at the time of publication).

¹⁸² See “Rights defenders welcome decision to scrap security powers,” Sudan Tribune, 26 February 2023, available at: <https://sudantribune.com/article271321/>

¹⁸³ Correspondence and proposed amendments on file.

¹⁸⁴ See A/HRC/50/14, 28 March 2022, paras. 113.147, 113.150; and A/HRC/50/14/Add.1, 1 June 2022.

¹⁸⁵ C773385639.

primarily by State security forces. Examples illustrating the persistence of these practices are included throughout this report. The Commission has also recently detailed the suppression of peaceful assemblies, and freedom of association, while attacks against members of civil society throughout South Sudan and abroad are identified throughout this present report.

“When the Commission’s human rights reports come out, it is a time we need to be particularly careful. Authorities want us to defend them, and we can’t speak against them” – a civil society member.¹⁸⁶

126. Here, the Commission has chosen to highlight the reprisals faced by individuals in civil society for exercising their rights to freedom of expression and association as part of activities organized by civil society as well as in forums attended by the Government. Their experiences demonstrate the quality of democratic space available for civil society actors to both safely and meaningfully participate in public debate, and illustrate the broader public’s ability to participate in democratic processes.

“If you are sick and cannot reach a doctor, the doctor won’t know you are sick. If we are not talking, the world will not know what is happening in South Sudan. But we are being controlled not to speak” – an exiled civil society activist.¹⁸⁷

127. The Commission received numerous reports of recent reprisals by State actors against civil society members who have spoken in forums inside the country. This includes individuals observed to have openly and constructively shared information and perspectives about serious human rights issues, in some cases in the presence of foreign dignitaries and United Nations personnel. Over the years, there are several known instances of South Sudanese being attacked after returning home from addressing United Nations forums.¹⁸⁸ Reprisals documented by the Commission that occurred in 2022 or 2023 are consistent with these patterns but have not been detailed here due to serious protection concerns for the victims and their families.¹⁸⁹

128. These reprisals are typified by surveillance activities including security officers loitering around the victim’s home, intimidation and harassment of the victim and family members, phone tapping and invasions of digital privacy. The Commission also documented arbitrary detention, torture, and extortion.

129. Of particular concern, the Commission identified the perpetration of sexual violence against women by State security forces in the context of reprisals. This highlights the gender-based violence and gender-specific risks faced by women who challenge existing gender norms within their communities, and reflects broader patterns of gender-based harms against women participating in public life. These acts take place in the context of broader socio-economic and political restrictions imposed on women in South Sudan, and the persistent perpetration of sexual violence by State security forces who enjoy near-absolute impunity, as documented and detailed in the Commission’s prior reporting.¹⁹⁰

“For human rights defenders, any engagement with the UN can result in threats” – a service provider for human rights defenders.¹⁹¹

130. While the Commission’s focus is not limited to reprisals against people cooperating with the United Nations, a review of the Secretary General’s annual reports on such reprisals from 2021 to 2023 is instructive of the risks people face from engaging with international media, United Nations Member States, and regional bodies such as the African Union, as well as the United Nations system. Examples listed in these reports include: in 2020, an individual who was detained, interrogated and subsequently robbed of their identity documents by NSS officers after meeting a United Nations Security Council delegation, with whom they were believed to have raised the issue of sexual violence and accountability; in 2021, a person assisting a United Nations event with interpretation who was reportedly

¹⁸⁶ C431885005.

¹⁸⁷ C317238064.

¹⁸⁸ C673473471.

¹⁸⁹ C351993695, C361032634, C383919782 (6), C394519169 (9), C968615407, C783244762.

¹⁹⁰ A/HRC/49/CRP.4

¹⁹¹ C504988795.

detained by for nine days by South Sudan People's Defence Forces and accused of being a spy; and in 2022, a broad pattern of individuals being reluctant to engage with United Nations entities or to have their cases raised by the United Nations, including the Commission, because they feared reprisals to them and their families.¹⁹²

"I would recommend... discussing these issues to prevent future conflict. But the Government looks at us as representing a Western agenda" – an activist.¹⁹³

131. In the context of such reprisals, and high surveillance of activities in South Sudan, many civil society members are reluctant to attend forums and to freely expressing their views. Furthermore, events in the country tend to exclude key members of civil society who have had to go into exile and so cannot attend. Civil society actors with available resources have thereby at times turned to meeting abroad, usually in neighbouring countries, where they are better able to deliberate on critical issues facing their country, relatively free from the monitoring and control led by NSS. United Nations entities, including the Commission, have also hosted forums outside the country with the participation of representatives of civil society, Government, United Nations entities and the African Union.¹⁹⁴ However, the Commission received reports dating back to 2018 that participants in meetings abroad have been called into security forces offices for interrogation upon return, in which they are often accused of being a spy.¹⁹⁵

"Once you speak the truth or criticize Government in any shape or form you become seen as an enemy of the State" – member of a support network for people at risk.¹⁹⁶

132. In 2023, State reprisals constituting serious human rights violations persist against members of civil society who speak out on human rights issues in forums which are meant to be safe. This is the persistence of a practice documented by the Commission since its first report in 2017.¹⁹⁷ Consistent with the above findings on the Government's intolerance of public scrutiny and the airing of information considered to be embarrassing or inconvenient, the practice further reflects immaturity amongst public officials. This situation is another current barometer of the democratic space available for public debate in South Sudan.

C. Unlawful interference with civic activities

"There are huge hurdles to conducting events or workshops throughout the country – we need to get permissions from the authorities, especially the NSS" – a women's rights advocate.¹⁹⁸

133. Throughout the country, authorities insist that civil society actors require prior authorisation from NSS to conduct meetings, workshops, and other events and activities (also referred to as a 'clearance'). Even village and community leaders have been compelled to seek authorization to organize meetings.¹⁹⁹ Being registered as an organization under applicable laws does not protect civil society actors from being subjected to this regime in practice, although registration offers some protection from NSS blanket-bans.²⁰⁰ This system imposed by NSS is arbitrary, with no basis in law. No legal test of reasonableness applies to NSS decisions on authorizations, which in any case are unlawful, and there are no realistic opportunities to seek effective judicial remedy.

¹⁹² A/HRC/48/28, para. 96, A/HRC/51/47, para. 64 and A/HRC/54, paras. 102–106.

¹⁹³ C293982831.

¹⁹⁴ The Commission convened the third "Conference on Sustaining Momentum for Transitional Justice in South Sudan, held in Kenya and via Microsoft Teams in February 2023. See outcomes document: https://www.ohchr.org/sites/default/files/2022-02/Summary_Resolutions_Conference_13-15_Dec_2021.pdf

¹⁹⁵ C872302104.

¹⁹⁶ C670287587.

¹⁹⁷ A/HRC/34/63, para. 51.

¹⁹⁸ C886712155 (22).

¹⁹⁹ C760147619.

²⁰⁰ C709270927.

“NSS approves all public events. There have been instances where our events have not been approved. Particularly where we discuss have topics that do not to suit the government narrative, like the Hybrid Court” – an organization director.²⁰¹

134. To receive approval, organizers of civil society events must provide detailed information to NSS. Booking venues is made nearly impossible without this clearance (see below). A disability advocate described being required to provide NSS with the draft workshop agenda, proposed participant list and venue details.²⁰² Demands for information can be more extensive, even including whole project proposals and budget documentation.²⁰³ For example, an organizer of youth training programs recounted NSS officers interrogating them about training topics, why the program was necessary, and the timing of the event, before demanding to scrutinize power-point slides prepared for the training modules.²⁰⁴ The Commission received numerous reports of officers dictating changes to activities, including advising organizers to avoid certain topics, and proposing additions or deletions to speaker and invitee lists. While this can be a process of negotiation, organizers generally must be compliant to receive NSS approval. It is also commonplace for NSS officers to refuse authorization outright, or to revoke prior authorizations, including at the time of an event. Authorization is most likely to be denied to activities referring to human rights, accountability, or even ‘safety and security’ – as ‘security’ is viewed by NSS as its exclusive realm. Reference to these terms thereby tends to be avoided, which in itself shows the chilling effect of this system on the public’s ability to discuss and debate important issues.

“The level of bureaucratic impediments contributes greatly to our challenges – we have to notify authorities about the details of our meetings, including the list of participants, details of the venue and the reason for conducting the event” – a disability rights advocate.²⁰⁵

“Workshops need to have consent of authorities to go ahead. And even to attend a meeting, NSS are the gatekeepers” – an organizer of civil society events.²⁰⁶

135. The extent and character of the authorization process varies across states and counties.²⁰⁷ To a degree, this is influenced by the individuals involved, including the nature of the relationship between the officials and civil society organizers, including gender. A male civil society member reported having established a cordial and even constructive relationship with their NSS ‘counterpart,’ making the approvals process smoother, and even at times creating otherwise rare space for dialogue with authorities on human rights and justice issues.²⁰⁸ Conversely, a woman who organizes civil society events in the same area described how when she had approached NSS to seek prior permission for an event, officers belittled her and fixated on trivial paperwork errors, on account of her gender.²⁰⁹ Consistent with past observations, the Commission found that these processes are often accompanied by experiences of intimidation, obstruction, and corruption. Even when interactions are cordial, they can be very uncomfortable, particularly for women given the prevalence of misogyny in NSS, and given the backdrop of NSS involvement in systematic human rights violations.

“A hotel won’t give space without a clearance document from the security. (Some groups) have normalized these formalities. At the end of the day, we have to operate” – a rights advocate.²¹⁰

²⁰¹ C909356583.

²⁰² C320588345 (71).

²⁰³ C846004527 (21).

²⁰⁴ C235716407.

²⁰⁵ C601032585 (71).

²⁰⁶ M-100190 (2).

²⁰⁷ C199791684 (10), C244449596 (14), C296498224 (15), C961584364 (19).

²⁰⁸ C325352750 (9).

²⁰⁹ C246203392 (10).

²¹⁰ C498010807 (9).

136. Authorization documents are typically required to book event and meeting spaces, and are requested by staff at hotels and venues, who fear encountering issues with NSS.²¹¹ The organizer of a training on transitional justice, who had not sought NSS permission, described being detained and interrogated together with the manager of the hotel hosting the event.²¹² This highlights some possible repercussions for organizers and hosts who do not comply with the authorization requirements. Many hotels host an officer dedicated to monitor clients and activities, so few such gatherings fly under the NSS radar. This makes other venues more viable for organizers who seek to resist NSS interference in their activities.

“Even with all the paperwork in order, the NSS will send someone to monitor discussions,” – a human rights defender.²¹³

137. The authorization itself is issued on government letterhead by the responsible NSS officer, and in general they only refer to a single activity. From observation, and interviews with people from across the country, the Commission noted that there does not appear to be a uniform template for this. An informed source indicated that where research activities are involved, permission letters are also required from the National Bureau of Statistics and RRC.²¹⁴ In April 2022, a ‘Training Request Application Form’ reportedly issued by the RRC Office in Juba stated that all forms of assembly and research organized by local- and international-NGOs would be required to submit a completed template form for prior-approval, and that two RRC staff would be deployed at every event.²¹⁵ The directive seems to have been withdrawn soon after. It broadly mirrors and appears to have been an attempt to formalize the NSS process and, or alternatively, to assert RRC involvement in activities, for the opportunities of control and corruption this may bring. The Commission has received consistent and credible information that RRC hosts a significant NSS presence.²¹⁶

138. Adding further to the constraints and challenges from operating under these arrangements, civil society members reported persistent corruption in this already-unlawful system. The Commission received consistent reports of officers requesting or demanding money, including as a precondition to issuing an approval letter. For authorized activities, NSS officers are in attendance (see below). Demands by officers for money for ‘transportation costs’ was a common complaint. As receipts are not given, this can be costly for the organizers personally, given the normal conditions on funding.²¹⁷ While such requests usually occur during authorization, this was also reported as taking place during activities.²¹⁸

139. United Nations entities including the UNMISS Human Rights Division have also faced demands from NSS to seek prior written authorization before conducting activities in hotels, including by providing information about the agenda, content of discussions, and participant lists. In an example instance in late 2021, UNMISS reportedly refused to comply with this demand and NSS failed to provide evidence of a Directive that stipulates these requirements.²¹⁹ While UNMISS can exercise this warranted response to unlawful and unreasonable demands, it can do so as a privilege of being part of the United Nations system. Civil society actors refusing to comply with such NSS interference – and there are those doing so – are resisting at great risk.

²¹¹ C221212304, C656584285 (9), C711458597 (71).

²¹² C466704319.

²¹³ C891563796.

²¹⁴ C245471923 (25).

²¹⁵ Letter from the Relief and Rehabilitation commission (RRC) Director General for Planning, Training and Research to the South Sudan NGO Forum Secretariat Director, 7 April 2023. On file.

²¹⁶ C381261572, C925123842.

²¹⁷ C513091180, C168706570 (1), C178548033 (9), C194951004 (22). For accounting purposes, funders generally require a level of detail of participants; although, workarounds negotiated with partners can be instituted to mitigate these associated risks.

²¹⁸ C784239694 (19), C160675750 (21).

²¹⁹ A/HRC/51/47, para. 62.

D. Surveillance and control of civic activities

“I was summoned by National Security Service when we organized a forum. At the time we were critical of the Government’s policies. I was called to explain myself at the military’s (facility) which has an NSS unit,” – a civil society organization director.²²⁰

“Sometimes after meeting I would come home and not feel safe because you would have facilitated people to raise their voices and tell their stories,” – an activist.²²¹

140. Where an activity has been approved, NSS officers are routinely deployed to monitor and conduct surveillance at the workshop, training, or other event. This comes after organizers have already endured the process of requesting approval, and the scrutiny and directives often involved. Participants and organizers of activities described officers often lingering around the venue, and enjoying any food and beverages allocated for participants. They reported cases of officers sitting-in on presentations and participant dialogue, making interventions, and warning organizers when discussions address topics deemed sensitive.²²² Organizers and participants of events reported repercussions for discussing sensitive issues.

“The security actors always want approval. But when we look at the law there are no approvals required,” – a youth leader.²²³

“Their presence limits our freedom of expression. We feel the tension, we feel suffocated,” – an artist.²²⁴

141. A common and particularly troublesome pattern observed by the Commission was illustrated by a women’s rights advocate, who described officers taking photos of participant attendance lists.²²⁵ Inconsistency between this list and what was pre-approved can be invoked as grounds to shut down the activity. As in an example described by a civil society leader, officers can also select participants to eject from an event.²²⁶ More worryingly, the participant list may be used for intelligence collection and surveillance targeting to inform profiling including the collection of personal data such as phone numbers (see below). Some participants avoid registration at the activities, thereby forgoing their entitlement to cost reimbursements, given the evident concerns about writing their details in this context.²²⁷ Risks involved in speaking one’s mind are understood, and civil society members reported self-censoring as a result. Even in their own forums, civil society voices are suppressed.

“The NSS maintains that failure to oblige to their policies will result in the dislodgement of the assembly, including arrest of the organizer,” – an exiled activist.²²⁸

142. Another method of control previously highlighted by the Commission is the practice of freezing the bank accounts of civil society members and the organizations they are affiliated with.²²⁹ As well as affecting individuals and their families, this severely impedes the operations of affected organizations, and in some cases has resulted in closures. In addition to the bank account freezes imposed in late 2021, detailed in previous reporting, information was received about further individuals having been subjected to the unlawful freezing of bank accounts, as a form of retaliation for their civic or political activities. Staff

²²⁰ C273103391.

²²¹ C303515333.

²²² C831797362, C436927613, C236292795 (3), C490595479 (23), C617255987.

²²³ C352515543 (3).

²²⁴ C198765476 (23).

²²⁵ C628170019 (1).

²²⁶ C372179971 (8).

²²⁷ C227839223 (1).

²²⁸ C518955877.

²²⁹ A/HRC/49/78, paras. 27–28 and A/HRC/52/CRP.3, para. 393.

of a bank involved said they were directed to institute and maintain freezes on the instructions of the State's Bank of South Sudan, which was acting in cooperation with other authorities.²³⁰

E. Phone tapping and digital surveillance

“Surveillance is the new normal. We try not to talk on phones, we don’t know who is in the WhatsApp groups... and who is tapping,” – a transitional justice advocate.²³¹

143. Anyone who expresses, reports, or is associated with voices critical of the Government faces heightened risk of having their privacy rights violated through targeted monitoring of phone and digital communications.²³² Among the primary targets of such attacks in South Sudan are members of civil society, particularly human rights defenders, along with journalists. These attacks can carry gendered dimensions, and numerous reports were received of women in civil society and in media being targeted by forms of gender-based online harms.²³³ As well as misogynistic comments made against women in online fora, other noted tactics include maliciously publishing online content of a sexual or gender-based character about women – or threatening to, as a form of blackmail. Attacks often take the form of gendered disinformation, designed to embarrass, shame, and or discredit targets. Information received indicates such attacks come from both State and non-State actors.²³⁴

“Surveillance creates a toxic environment for freedom of expression,” – a journalist.²³⁵

144. Credible public reports have identified NSS possesses advanced capabilities for digital surveillance, potentially including mobile device hacking technologies.²³⁶ The Commission independently corroborated many of these key findings, including through interviewing sources with expert and first-hand knowledge, and received credible information that NSS operates targeted digital surveillance in cooperation with other State institutions including the National Communications Authority.²³⁷ These operations include deploying NSS agents in telecommunication companies, and requesting information from phone and internet service providers, through both regulatory and intimidatory measures.

145. The Commission encountered recent attempts of digital hacking or surveillance, and received many reports from members of civil society that the threat of such attacks present serious concerns for their digital and physical security.²³⁸ Cases documented include instances of phone tapping, possible email interception, attempted WhatsApp account transfer/capture, social media hacking (see above), and other forms of digital attacks.²³⁹

“National Security hacked my number. I knew because a message popped on my phone that another person was using my SIM, and to please register your number. That was the end of my phone,” – a civic campaigner.²⁴⁰

146. Multiple cases were documented of phone confiscations by State agents, and of individuals being forced to enter their passwords under duress, including during kidnappings

²³⁰ C928556405.

²³¹ C551744715 (6).

²³² A/HRC/43/56, para. 72.

²³³ Gender-based online harms can include: unwanted sexual remarks including in messages; persistent messaging or social media interaction constituting harassment; cyberstalking; non-consensual sharing of explicit or sexualized content; doxing (sharing or threatening to share personal information); and posting or other sharing of discriminatory or derogatory memes based on gender.

²³⁴ C885794712 (11), C756715738, C606517964.

²³⁵ C828460889.

²³⁶ See for example Amnesty International, “‘These walls have ears’: the chilling effect of surveillance in South Sudan,” 2021, pages 19–22 and Human Rights Watch, “‘What Crime Was I Paying For?’ Abuses by South Sudan’s National Security Service,” 2020, page 57. For an overview of types of targeted surveillance technologies and practices, see for example A/HRC/41/35, paras. 8–14.

²³⁷ C128634670, C193244918, C641435180.

²³⁸ C588469268, C685481536, C661153228 (6).

²³⁹ C776484953, C617689534, C217633187, C795544357, C271002581, C753034070, C154091827, C859376251.

²⁴⁰ C909715346.

and torture.²⁴¹ In some cases, these acts were performed to prevent individuals from sharing information that is in the public interest.²⁴² As well as these acts constituting human rights violations, a compromised phone exposes contacts and communications, which can be exploited for targeted digital surveillance and other forms of harm to others. The Commission identified many pervasive and unlawful ways that State actors may be able to identify the phone numbers and phones of individuals in order to facilitate targeted digital surveillance. These include reviewing mobile SIM card registration records, infiltrating WhatsApp groups involving civil society actors, reviewing phone numbers recorded on participants lists for events which are routinely monitored by NSS, or acquiring numbers directly or through intermediaries or friends of the target. Targets who change their mobile SIM card can still be tracked by the unique IMSI (international mobile subscriber identity) linked to their phone, by tracing the newly inserted SIM to a phone tower. Many individuals at heightened risk of such attacks reported an awareness of phone hacking and digital surveillance, and of taking measures to protect against potential exposure. Still, the Commission observed a lack of access to comprehensive and clear information, which identifies common vulnerabilities and provides straight-forward practical guidance to mitigate attacks and associated risks. A civil society leader noted that awareness of digital security is especially limited outside of Juba.

“After I had been tortured, my digital phone was given to me to enter my password... after which my phone was again taken away from me,” – an exiled activist.²⁴³

147. Interlocutors with the Commission, including cybersecurity experts and members of civil society, highlighted the need for greater awareness of digital security issues and mitigation strategies for individuals at heightened risk of related State-backed attacks, and people they engage with. Suggestions included increasing funding support and scaling-up dedicated initiatives to provide trainings, guidance, and related resources and interventions – particularly for journalists, human rights defenders, and their associated institutions.

148. Cyberattacks constitute another form of attack against organizations and individuals associated with views critical of the Government, as noted above in the case of Sudans Post and Radio Tamazuj. The Commission received further information about recent cyberattacks affecting members of civil society, including organization webpages.²⁴⁴ In April 2023, the United Nations Panel of Experts on South Sudan identified increasing cyberattacks as a trend affecting a range of civil society actors, noting a recent study by a cybersecurity expert.²⁴⁵ As noted above, and consistent with the Commission’s recent findings, the Panel referred to cooperation between several State institutions in controlling the internet. Relatedly, the Commission has previously sought but did not receive information from the Government regarding the internet infrastructure, outlined in a letter dated 19 October 2021. The cause of a widespread internet shutdown in late August 2021 appeared designed to block access to information and the capacity of citizens to mobilize.²⁴⁶ No similar incident has been observed since, but the Commission notes that the Government appears to have demonstrated an ability to make telecommunications providers shutdown internet access, including to repress civic space.

F. Renditions and extra-territorial operations

Background of extra-territorial human rights violations

149. Over decades of armed conflict and insecurity characterized by gross human rights violations, millions of South Sudanese have fled to neighbouring countries to seek security,

²⁴¹ C488180651, C836751576, C635849742, C276215395.

²⁴² C868631505.

²⁴³ C709086253.

²⁴⁴ C102362791

²⁴⁵ S/2023/294, para. 132.

²⁴⁶ This first affected the MTN network and later the country’s other main network at the time, Zain. This sequencing suggests it was deliberate rather than a technical fault, as suggested by the Minister of Information. The shutdown occurred prior to a peaceful assembly that had been called for by the People’s Coalition for Civic Action, which the State prevented from going ahead. See A/HRC/49/78, para. 24.

protection, and greater livelihoods and education opportunities. Of the estimated 2.4 million refugees from South Sudan as of 2023, the vast majority remain in the region, including around 1 million people who live in Uganda.²⁴⁷ An outcome is the existence of deep family, friendship, and political links between South Sudanese across the region. Many current residents of South Sudan, including political leaders and members of security forces, as well as in media and civil society, have connections with these diaspora communities. These links, along with geographical proximity and other factors, make Uganda and Kenya the main destinations for individuals fleeing threats in South Sudan linked to their association with civic and political activities. These same factors also contribute to the omnipresence of the State's security and surveillance apparatus in these countries. South Sudanese in Uganda and Kenya who were interviewed by the Commission consistently reported fearing for their safety and security.

150. Dating back to 2016, the Commission documented State security forces from South Sudan conducting operations targeting its citizens in neighbouring countries.²⁴⁸ Human rights defenders, civil society activists, journalists, political opponents, and members of armed groups have been the targets of surveillance, harassment, interrogations, detentions, and renditions to South Sudan. Primarily but not only carried out by NSS officers and agents abroad, these extra-territorial operations have included the participation of security forces of other countries.²⁴⁹ This is highlighted in recent high-profile cases of illegal renditions from Kenya and Sudan, which have resulted in arbitrary detention and extra-judicial killings. NSS operations also target South Sudanese citizens in other countries, particularly in Uganda.

151. A Government audit obtained by the Commission showed State funding allocated to 'external activities' by NSS.²⁵⁰ NSS is evidently significantly well-resourced relative to other State institutions, and it is highly likely that 'off-budget' funds also go toward extra-territorial activities, given the prevalence of this practice and the State's flawed budgeting and expenditure processes, as identified in previous reporting.²⁵¹

152. These extra-territorial human rights violations are fuelled by the state of impunity in South Sudan, and the dominant ruling political party's unrelenting quest to silence critical voices and suppress democratic space.²⁵² Sanctioned at high levels of Government, the perpetrators are emboldened based on the knowledge that they will not face any form of accountability. Since 2017, two emblematic cases are that of the enforced disappearances of human rights lawyer Dong Samuel Luak and opposition politician Aggrey Idri, who are assumed to have been killed after being abducted and renditioned from Nairobi, Kenya in 2017, and transferred to NSS custody in Juba.²⁵³ There has been no accountability for these crimes. Any cooperation or tolerance extended to South Sudan State security forces by officials in neighbouring countries must be viewed in this context.

Persistence of extra-territorial human rights violations

153. Extensive documentation collected through witness interviews and opensource analysis of cases occurring in 2022 and 2023 demonstrates the ongoing pervasiveness of extra-territorial operations by the State security forces. The Commission interviewed many women and men in exile including journalists, civil society members and advocates, and their family members, as well as other critics and opponents of the dominant ruling political party.

²⁴⁷ United Nations High Commissioner for Refugees, "South Sudan Regional Refugee Response Plan: January—December 2022," page 14.

²⁴⁸ See for example A/HRC/40/CRP.1, para. 263 and A/HRC/52/CRP.3, para. 398.

²⁴⁹ See also Frontline Defenders, "No refuge: South Sudan's targeting of refugee HRDs outside the country," March 2021. Human Rights Watch, 2020, op. cit., page 50.

²⁵⁰ In its report of 26 April 2023, the United Nations Panel of Experts on South Sudan noted that USD 1.3 million had been allocated, based on a review of a government audit of International Monetary funds. S/2023/294, para.129. The Commission has reported in detail on the flawed budgeting and expenditure process in South Sudan, and the diversion of State funds, so these amounts may be well more. See A/HRC/52/CRP.3.

²⁵¹ A/HRC/52/CRP.3, paras. 285—286.

²⁵² A/HRC/52/CRP.3.

²⁵³ A/HRC/40/CRP.1, para. 263 and A/HRC/52/CRP.3, para. 398.

Their continued exile from home and ongoing experiences of threats are further barometers of the democratic space in South Sudan and of the State's commitment to its advancement.

154. The primary targets of extra-territorial operations are individuals who have spoken out online or in public forums about the repression of civic and political space, called for accountability for gross human rights violations, and those who have aired views critical of or expressed opposition to the dominant ruling political party, the SPLM-IG. Individuals interviewed by the Commission had fled their country in fear of their life and liberty there, after experiencing or receiving threats of human rights violations, of the kinds illustrated above. Most encountered multiple such incidents before deciding to leave. Many detailed how the intensification of threats or other serious incidents prompted their flight.²⁵⁴

“Despite being released from the NSS facility, my life continued to be under threat... I was receiving calls from NSS with threats to kill me if I was seen anywhere in Juba,”
– an exiled activist.²⁵⁵

155. Many of the people interviewed in 2023 recounted having previously gone into hiding in Juba. This includes people who travelled far from other areas with the expectation of being able to better blend-in and access support in the capital. But even there, the surveillance and credible threats persisted, eventually compelling them to leave their home country.²⁵⁶ The Commission noted that safety and support options in South Sudan remain extremely limited, and that individuals and institutions laudably supporting those under threat also face risks.

“Relocation abroad is the last option, but there are no real safe houses in South Sudan. Nowhere is safe for those targeted,” – a service provider.²⁵⁷

156. Several interviewees recounted arduous and dangerous journeys of escape, including days of walking through bush and swamplands, and hiding in vehicles to navigate ubiquitous checkpoints.²⁵⁸ This is necessitated by the knowledge that airport and border posts are issued with lists of individuals identified to be detained or denied movement, including on account of their civic and political activities. There are numerous cases of activists and political opponents of the Government being detained at the airport, including that of Peter Biar Ajak, who was arrested by NSS at Juba International Airport on 28 July 2018 and detained for more than 17 months (see below).²⁵⁹ Such high-profile cases weigh on the minds of people at risk, who told the Commission that in 2023 flying out of South Sudan remains a nerve-wracking experience.²⁶⁰

“If we return to South Sudan, we will be restricted like Kuel – we will not speak, we will not travel,” – an exiled civil society organizer.²⁶¹

157. In 2023, the ongoing practice of arbitrarily denying freedom of movement is illustrated in the case of Kuel Aguer Kuel, a member of the People's Coalition for Civic Action (PCCA).²⁶² After being released on 9 December 2022 after more than 400 days of arbitrary detention in connection with his civic and political activity, on 19 April 2023 his passport was confiscated at Juba International Airport, apparently on orders from the Office of the President.²⁶³ Months later, he had still been unable to travel to seek medical treatment required for health issues which deteriorated untreated during the course of this detention.

158. Several PCCA members reported having left the country in 2021 before launching their campaign, which was to culminate in a peaceful assembly coinciding with the tenth

²⁵⁴ C269644448, C348128083, C994828189.

²⁵⁵ C587088506.

²⁵⁶ C981518966, C568332130, C515172626, C917873933.

²⁵⁷ C543370397.

²⁵⁸ C231898751, C530018311, C821666837, C243567348.

²⁵⁹ See A/HRC/40/CRP.1, para. 132 and A/HRC/43/56, para. 78.

²⁶⁰ C729911443.

²⁶¹ C479917711.

²⁶² See A/HRC/52/CRP.3, para. 394.

²⁶³ C809292473.

anniversary of South Sudan's independence; ultimately, this was rigorously suppressed.²⁶⁴ They believed that after the launch they would immediately become targeted for human rights violations by authorities.²⁶⁵ Other interviewees in exile described PCCA members escaping after receiving intimidation and death threats, being detained and interrogated, or obtaining information about plans for their arrest.²⁶⁶ Some people who were not part of the movement were targeted for associating with its members and also felt compelled to leave the country.²⁶⁷

“I no longer have friends as people fear associating with me,” – a civil society member in exile.²⁶⁸

159. In exile, many of the people associated with PCCA have been targeted by extra-territorial operations overseen by the State's security apparatus, as described below. The reasons for their flight, and their encounters with the long arm of the State abroad, are emblematic of experiences faced by many of the South Sudanese who the Government has targeted as enemies because of their participation in legitimate civic and political activities.

Surveillance, harassment and death threats

160. The Commission found that in 2023, South Sudanese associated with activities in civic and political space not tolerated by the Government continue experiencing various forms of intimidation and surveillance, particularly in Kenya and Uganda. Many interviewees reported receiving death threats from members of security forces of South Sudan. Typically, they attributed these to NSS, or said they assumed the threats came from members of NSS.²⁶⁹

“Sometimes I get calls from unknown people who ask to meet me, but I never go. I do background checks before meeting anyone,” – an exiled activist.²⁷⁰

161. Online harassment and threats are some of the tactics used, and the Commission examined private messages and social media posts attributed to State agents that illuminate this.²⁷¹ For example in one series of private messages, the recipient was told they should enjoy life for a while in Uganda, knowing that once they feel comfortable, they will be attacked. Another individual described receiving a call in which he was told he would be ‘squashed like an insect.’²⁷² Other interviewees reported receiving anonymous messages and phone calls telling them that the Government knows where they live and where their families are, and threatening that they could be attacked or arrested at any time. The Commission received multiple reports of home intrusions; an individual recounted finding threatening notes in his house after a break-in.²⁷³ People in exile also reported being threatened by South Sudanese in public places. In one instance described by an interviewee, he was confronted by a man who told him, “I can guarantee that you will not be safe anywhere.”²⁷⁴ The relatives of civil society members have also been targets of surveillance and intimidation. An example shared with the Commission detailed men in a car with a South Sudan numberplate pulling out on a street in front of their wife, who they intimidated and asked questions about his whereabouts.²⁷⁵ All these illustrative examples occurred in Kenya or Uganda between 2021 and 2023 and are emblematic of the testimonies gathered by the Commission.

162. Interviewees consistently described having to adapt their lifestyles to mitigate threats, including by not associating with other South Sudanese, and avoiding public places.²⁷⁶

²⁶⁴ A/HRC/49/78, paras. 23—26.

²⁶⁵ C265597702.

²⁶⁶ C338378905, C775493394, C133391440.

²⁶⁷ C340351342.

²⁶⁸ C675239458.

²⁶⁹ C403725620.

²⁷⁰ C785887292.

²⁷¹ C895631422, C199577118.

²⁷² C264276151.

²⁷³ C447401785.

²⁷⁴ C737182711.

²⁷⁵ C761760182.

²⁷⁶ C134197201, C701532997, C222528460, C651007918, C422723348, C215744303.

Numerous documents and social media posts were reviewed by the Commission that list individuals purportedly identified as extra-territorial kidnapping or rendition targets.²⁷⁷ While these ‘blacklists’ could not be authenticated, even their circulation and possession by individuals at risk, in the context of known attacks, further contributes to the climate of fear. The Commission also received several credible first-hand reports of kidnapping attempts.²⁷⁸

“Exiled women have broken families. Us mothers must seek ways to become breadwinners, and the children grow up without a father figure. The situation has taken its toll on me severely,” – a woman in exile.²⁷⁹

“The NSS excels at the method of persecuting people by targeting associates of critics within and outside the country... and punishing them based on guilt by association, particularly people linked to activists who have fled the country,” – a musician.²⁸⁰

163. Several interviewees said that family members and friends had cut off all contact, because they feared the consequences of being associated with them. Family members of targeted people are harassed, including by being followed or otherwise subjected to surveillance by NSS agents, or approached to relay threats.²⁸¹ Some families have had to relocate, at least temporarily, upheaving their lives.²⁸² Friends and relatives have received harassment and threats for their association with exile.²⁸³ This also includes and extends to people in South Sudan who have withdrawn support to their relatives in exile for fear or under pressure of retaliation. An interviewee said their relative stopped sending critical financial support after receiving reprisals.²⁸⁴ An activist in exile reported details of his brother being beaten by NSS officers in 2022 in South Sudan in connection with his activities.²⁸⁵ Another exiled activist reported receiving information that a relative was detained, and interrogated at least in part on the basis of having the activist’s phone number on their phone.²⁸⁶ Many exiles have stayed away from their families as a result, and in some cases they have been warned to stay away.²⁸⁷ One person reported having to cut contact with his wife in Juba.²⁸⁸ Being separated from family has visible impacts on mental health, particularly for people with multiple layers of trauma.²⁸⁹

Illegal renditions to South Sudan

“Myself and other South Sudanese dissidents taking refuge here are alarmed and wary of this style of attacks on human rights activists. We are seeing State-sponsored abduction and forceful return of human rights activists to Juba from Nairobi,” – a youth activist.²⁹⁰

164. The Government’s practice of facilitating extraordinary renditions of South Sudanese citizens from different African countries was found by the Commission to have intensified the climate of fear experienced in the daily lives of individuals in exile, and of their family members. As noted above, the Commission has documented this practice dating back to at least 2016, and identified cases that led to enforced disappearances and suspected killings. States hosting individuals fleeing human rights violations in South Sudan provide them a lifeline. These States are also bound by the obligation of *non-refoulement*, a norm of customary international law, to not transfer refugees or persons at risk of torture and other

²⁷⁷ C509873852, C849529538, C300996981, C152252537.

²⁷⁸ C467690150, C330378137, C852685402.

²⁷⁹ C605784390.

²⁸⁰ C786503927.

²⁸¹ C832289640, C779682788, C741569287, C407388867.

²⁸² C350881321, C739200555, C821340826.

²⁸³ C136077688, C914999766.

²⁸⁴ C701852853.

²⁸⁵ C265134204.

²⁸⁶ C332798685.

²⁸⁷ C648160737, C597023072.

²⁸⁸ C211514218.

²⁸⁹ C275361741, C749980879, C110301378, C909855006, C630358118.

²⁹⁰ C622840701.

cruel, inhuman or degrading treatment and punishment, to another jurisdiction where they face a real risk of serious human rights violations.²⁹¹ This principle should be adhered to in all circumstances. It is also enshrined in the 1984 Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, the 1951 Refugee Convention, and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.²⁹²

165. On 4 February 2023, South Sudanese citizen Morris Mabior was abducted and renditioned around his home in Nairobi, Kenya. The following day, he was taken into NSS custody in Juba. In documents filed at the East African Court of Justice by the Pan African Lawyers Union, Mabior is described as a trained teacher and former civil servant, and a public critic of the Government, including NSS Internal Security Bureau Director General Akol Koor Kuk.²⁹³ Mabior's criticism and activities opposing Akol Koor Kuk appears to be the key factor in his rendition and detention.

166. Consistent and credible information in the Commission's possession indicates that on 5 February Mabior was flown from Nairobi to Juba, where he was taken to NSS headquarters. The Commission identified one charter flight that day which took this route. Multiple reports indicating that Mabior had been severely tortured could not be independently verified but are consistent with NSS practices and the Commission's knowledge of the particular circumstances.²⁹⁴ The 'Blue House' is widely documented as being a site of arbitrary detentions, torture, and unlawful killings.²⁹⁵ As of September 2023, Mabior appears to have remained in detention, with serious concerns about his health and well-being. He does not appear to have access to a lawyer or his family members, and no public legal proceedings have been instituted against Mabior in the courts of South Sudan. Mabior's arbitrary detention, extraordinary rendition and apparent torture and ill-treatment are flagrant violations of national and international law.

167. The Commission received detailed information about the case and interviewed individuals with close knowledge of events surrounding the abduction in Nairobi.²⁹⁶ Several Kenyan police officers appear to have been closely involved in the detention of Mabior, and in the confiscation of belongings in his home, including his laptop.²⁹⁷ A formal complaint was lodged at Hurlingham East Police Post, Chokka. The Commission received credible information that at least one officer based at this post had been present at Mabior's home during the abduction.²⁹⁸ The raid of Mabior's home and his subsequent abduction and rendition took place in the presence of his wife, who received threats from South Sudanese agents to discourage speaking out. Such threats add to the trauma of witnessing a husband being abducted, and then being denied contact as well as access to information about his whereabouts and wellbeing. The United Nations Panel of Experts on South Sudan highlighted that Mabior's family members temporarily went into hiding.²⁹⁹ Other South Sudanese in Kenya received death threats attributed to NSS, after a press conference in Nairobi on 18 March 2023 held to highlight Mabior's situation.³⁰⁰

168. In a meeting with the Kenyan Police Service, a senior official told the Commission that the reported circumstances of Mabior's movement from Kenya to South Sudan are illegal

²⁹¹ Kenya, Uganda and several other African States are also parties to the 1951 Refugee Convention.

²⁹² The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for example, includes amongst its States Parties: Kenya, Sudan and Uganda – as well as South Sudan.

²⁹³ IR-100042.

²⁹⁴ C234811669, C396536639.

²⁹⁵ A/HRC/40/69, A/HRC/40/CRP.1, A/HRC/46/CRP.2.

²⁹⁶ C888131872, C456049584, C666728986, C217143391.

²⁹⁷ IR-100042, C224557708.

²⁹⁸ IR-100042, C278530396.

²⁹⁹ S/2023/294, paras. 125–128.

³⁰⁰ C419892497, C842370769.

under Kenyan law. They added that lawful extradition involves a lengthy process, and referred to the State's protection obligations under international law.³⁰¹

“No form of protection is set up to protect dissidents from the illegal abduction of South Sudanese human rights activists residing in Kenya by agents of the NSS” – an exiled human rights defender.³⁰²

169. In light of the findings of the Commission and the Panel of Experts, particularly on the involvement of Kenyan police in the rendition, a credible inquiry is evidently required to further determine the circumstances, with a view to accountability for any individuals involved in related crimes. Such an inquiry should be conducted independently of the Hurlingham East Police Post, whose officers were involved in the abduction. Kenya has duties to respect and protect the human rights of all persons within its jurisdiction, and it should take effective measures to prevent the repetition of illegal renditions from its territory to South Sudan, which endanger the lives of South Sudanese who have sought seeking safety in Kenya. As noted above, the abduction of two South Sudanese citizens in Nairobi in 2017, who were renditioned to Juba, led to their enforced disappearance and likely death. The full truth about how this could have occurred in Kenya remains unclear.

“I am worried that much still needs to be done to protect South Sudanese activists taking shelter in Nairobi,” – an exiled activist.³⁰³

“I do not feel safe in Uganda. The NSS can easily access me here, and I avoid moving around,” – a civil society leader.³⁰⁴

170. Numerous interviewees who are living in Kenya or Uganda because they were targeted for human rights violations in South Sudan cited the rendition of Mabior as greatly adding to their security concerns, and some people noted that this fear compounds existing trauma.³⁰⁵ Many of these individuals said they view Kenya as unsafe for people who are in the sight of South Sudan's Government, including an interviewee who left Nairobi following Mabior's rendition.

“I believe they wanted to lure me into the airport and then deport me and then there would be no chance for the UNHCR protection unit to reach out to authorities to block my deportation,” – a refugee engaged in civic activities.³⁰⁶

171. In another country on the continent, an individual who is targeted by NSS in relation to his civic activity recounted being called from an unknown local number, and invited to a meeting in an airport to discuss a matter related to his work. After assessing the invitation, including the person's suggestion that they bring travel documents to the meeting, they concluded that it was a set-up to facilitate a rendition.³⁰⁷ The individual said he lives a low profile life where he resides and avoids associating with other South Sudanese outside close family circles. Deportations of South Sudanese are understood to have taken place in that country on the initiative of the Embassy of South Sudan.

172. Several people left Uganda after receiving a tip-off from an insider that agents of the NSS had apparently been deployed to Kampala to kidnap and forcibly return them to Juba.³⁰⁸ The Commission also received further information about exiles being at risk from other State actors.³⁰⁹ For those facing serious threats, moving across borders is often risky, particularly if their passport has expired. Passport renewals abroad are made difficult given the association of embassies with supporting surveillance operations on South Sudanese living

³⁰¹ C672655261.

³⁰² C607732274.

³⁰³ C134275187.

³⁰⁴ C409007268.

³⁰⁵ C988415700, C715585538, C247787409, C889009915, C562199354.

³⁰⁶ C807845753.

³⁰⁷ C363889503.

³⁰⁸ C782073136.

³⁰⁹ C518491917.

abroad.³¹⁰ Furthermore, the upheaval of having to again change locations, and a sense of life in limbo, were observed to significantly affect people's connections with family members and access to livelihoods. Nonetheless, for many of the people interviewed by the Commission, restricting movements or again changing locations are considered necessary to avoid physical harms or death, including the threat of being forcibly returned to South Sudan.

173. In a contextually different situation, which is nonetheless significant to highlight the practice of renditions carried out with impunity, in August 2022 four males were renditioned from Sudan to South Sudan. Most if not all of them were associated with a non-State armed group responsible for attacks killing Government officials in South Sudan's Unity State.³¹¹ The Commission previously reported extensively on their rendition and subsequent extrajudicial killings by State security forces in Mayom County, which were captured on camera. Further information received suggests additional potential killings during the operation involving the security forces of the two States.³¹² The Commission's detailed published findings implicated senior government officials and military officers in the extrajudicial killings.³¹³ To date, they have faced no genuine process of accountability and remain in their positions as officials.

174. The Commission also notes allegations that South Sudanese State authorities have been implicated in the extraordinary rendition of non-nationals from South Sudan. In late 2019, two Equatoguinean citizens who had been living in Spain were extraordinarily renditioned from South Sudan to Equatorial Guinea, and at least one of the victims subsequently died in detention.³¹⁴

175. The Commission is not aware of any case of unlawful arrest or detention, enforced disappearance or rendition that has given rise to the filing of a *habeas corpus* petition, nor of any case in which a judge or court of justice has interceded on behalf of a person deprived of liberty, or made possible to ascertain the fate or whereabouts of a missing person.³¹⁵ There is presently no effective mechanism in South Sudan to challenge the lawfulness of an individual's detention. Again, regarding the practice of unlawful deprivation of liberty, the South Sudanese judiciary seems to be irrelevant, and the impunity of security forces complete.

G. "Apology" in exchange for security assurances

"I have been asked to apologize before I go back to Juba. My difference with the President is not personal but fundamental on issue related to good governance. I find it strange to apologise when my fundamental rights and freedoms are violated," – a civic campaigner.³¹⁶

176. Another distinct pattern exists whereby exiled South Sudanese are offered assurances of safety and security on return to their country if they first publicly apologize for statements

³¹⁰ C407968253, C998666429, C447189669.

³¹¹ The South Sudan People's Movement/Army. See A/HRC/52/CRP.3, paras. 116—132.

³¹² C815397714.

³¹³ The Commission found that Unity State, Governor Joseph Monytil and Assistant Chief of Operations of the South Sudan People's Defence Forces, Lieutenant General Thoi Chany Reat bear responsibility for the extrajudicial killings. The Commission concluded that they should be immediately removed from public offices, and that a credible and independent investigation should be initiated with a view to establishing responsibility. A motion of the Council of States to impeach Monytil was rejected by the Office of the President, which established an ad hoc investigation committee that has done nothing credible to facilitate truth or accountability. A/HRC/52/CRP.3, paras. 116—159 and 324—325.

³¹⁴ European Parliament resolution of 16 February 2023 on violence against opposition activists in Equatorial Guinea, notably the case of Julio Obama Mefuman (2023/2552(RSP)). See also Al Jazeera, "Equatorial Guinea dissident Obama Mefuman dies in prison," 17 January 2023, available at: <https://www.aljazeera.com/news/2023/1/17/prominent-equatorial-guinea-dissident-dies-in-prison>.

³¹⁵ Although national law of South Sudan does not explicitly refer to *habeas corpus*, the right to judicial review of an individual's detention, including to challenge the legality of detention, is a core fair trial right. Section 83 of the Code of Criminal Procedure requires that an arrested person be brought before a judge or prosecutorial authority, albeit subject to caveats that are prone to misapplication and misuse.

³¹⁶ C737827510.

or activities that are considered treacherous by the Government. The Commission previously reported that in 2022 civil society members in exile were informed that they could return home if they apologized for challenging the President's authority.³¹⁷ Interviewees who have received similar overtures generally assessed that this would amount to a commitment to cease their genuine participation in democratic processes, and that any digression from this would run the risk of them experiencing more human rights violations.³¹⁸ The practice of requesting apologies for public activities has also applied to South Sudanese facing threats and freedom of movement restrictions inside the country.³¹⁹ Separately, a detailed public apology was issued to the President on May 2023 by exiled citizen Peter Biar Ajak regarding comments made on Kenyan television in May 2022 (see also above).³²⁰ He subsequently announced the formation of a new political party and is understood to be planning a return to South Sudan.³²¹ Requests for apologies can also be delivered as threats. For example, the Commission received credible information that family members of Morris Mabior, who was illegally renditioned from Kenya in early 2023 (see above), were told that if they ever want to return to South Sudan, they must first apologize for publicising Mabior's situation to the world.³²²

177. Such demands, requests or expectations of public apologies are a form of coercion in the context of systematic State attacks on individuals engaged in civic and political activities in South Sudan and extra-territorially. The accompanying assurances evidently come with strings attached, as appears to be the case when leaders of armed groups have been welcomed back to the capital Juba. Overall, the 'apology' practice reflects immaturity among political elites at high levels, and further demonstrates the Government's intolerance of critical views, as well as its resistance to opening the space required for democratic processes.

V. Civic engagement in State-facilitated processes: mixed indicators and cautionary lessons

178. Even as the State has clamped down on media and civic space, in at least two official processes in recent years, the State has permitted a more open, albeit limited, civic engagement, illustrating that where there is political will and the exercise aligns with their interests, authorities see the value of civic engagement, and indeed may seek to instrumentalise such engagement. The first was the National Dialogue called by President Kiir and held from 2017 to 2020. The second were public consultations, initiated in 2022 aiming on inform the enabling laws for the Commission for Truth, Reconciliation and Healing. These processes demonstrate that the Government can calibrate its repression to fit with its political objectives, allowing a degree of discourse while continuing curtail civic space in other areas. This parallel positioning is designed to safeguard the political objectives of the State.

179. The National Dialogue and public consultations to inform the draft bill on CTRH were initiated when the Government considered that these were necessary to demonstrate its political will to pursue national healing, reconciliation and transitional justice to address conflict-related human rights violations, and thereby to pre-empt and deflect more intrusive accountability mechanism, primarily the Hybrid Court. As these state-driven processes have unfolded, the political interests of the Government have taken centre-stage, further undermining the prospects of a people-centred agenda for reconciliation and transitional justice. When the outcomes and recommendations of public consultations included views considered to be unfavourable to the regime, the Government intervened to thwart their implementation, thus negating the essence of civic engagement. When citizens freely expressed their views within these processes, state security agents were used to intimidate and crackdown on journalists, media outlets, civil society actors and human rights activists

³¹⁷ A/HRC/52/CRP.3, para. 294.

³¹⁸ C443025198, C897364379, C938456467, C230211392.

³¹⁹ C826825159.

³²⁰ On file with the Commission.

³²¹ C495424658.

³²² C485824127.

airing views critical of the State. Given the opportunity to speak, citizens had raised criticisms on issues of social justice, corruption, poor governance, and limited implementation of the Revitalized Agreement.

A. The National Dialogue

180. A National Dialogue was announced by President Kiir on 14 December 2016, with the overall objective to end conflict and prevent further disintegration of the country, at a time when South Sudan was at war, and the Government was resisting peace talks with the opposition armed groups.³²³ Reflecting the escalation of violence that followed the collapse of the 2015 peace agreement, that same day a special session was being convened at the Human Rights Council to discuss the deteriorating human rights situation South Sudan.³²⁴ The President's announcement was met with suspicion and scepticism at the time in the population, and by political opponents who feared it was designed to scuttle power-sharing negotiations between the warring parties, and to undermine the accountability measures envisaged under the 2015 peace agreement.³²⁵ Despite this, the National Dialogue went ahead, conducted over a three-year period from 2017 to 2020.

181. When launching the National Dialogue, President Kiir gave an explicit assurance that "government will guarantee safety and freedom" of all participants, including those in opposition to the Government.³²⁶ Observers of consultations confirmed to the Commission that the reiteration of this undertaking to ensure that no one faced any form of reprisals for participation in the consultations steadily gave reassurances enabling freer expression of views. The Commission is presently aware of only one reported case where people faced reprisals in connection with expressing views during consultations.³²⁷ Nonetheless, there was still a deep sense of fear and mistrust of the Government during the consultations at the grassroots level. Independent researchers who evaluated the consultations found that participants reported that they knew of many other citizens who would have liked to share their views, but avoided the consultations or opted to present "neutral" views due to fear of reprisals from warring parties. The sense of fear of victimization for speaking out was even more palpable in locations that had experienced fighting between Government and opposition or rebel forces; some citizens feared expressing views that could be perceived as pledging support for or to the opposition.³²⁸

182. The National Dialogue's Steering Committee reported receiving views from 20,000 citizens in 15 regions across the country and in neighbouring countries hosting South Sudanese refugees. The outcomes and final resolutions of the consultation elaborate on views obtained from South Sudanese on measures required for conflict resolution and related political, economic, security and social concerns. Key recommendations included the need for accountability for human rights violations and restructuring of the governance system to address historical grievances that fuel ongoing conflict.³²⁹ Upon completion of the dialogue there were disagreements between members of the Steering Committee on the content of a cover letter accompanying the final resolutions, which called on President Kiir and Vice President Machar to step aside following the peace agreement transitional period due to their

³²³ The goals of the National Dialogue process were articulated in President Kiir's speech to Parliament on 14 December 2016 and a Concept Note detailing 10 goals to be achieved through the Dialogue.

³²⁴ In this special session, the Human Rights Council reaffirmed the Commission's mandate, including an emphasis on establishment of facts and circumstance of violations, including soaring incidences of sexual and gender-based violence, geared towards ensuring accountability. See A/HRC/34/63, 6 March 2017.

³²⁵ See National Dialogue Conference, Final Draft of the Co-Chairman's Statement, available at <https://www.ssnationaldialogue.info/wp-content/uploads/Co-Chair's-Statement.pdf>.

³²⁶ South Sudan National Dialogue Concept Note, page 2, December 2016, on file. President Salva Kiir Mayardit, opening speech at the workshop of the parties to the R-ARCSS on the permanent constitution making process in the Republic of South Sudan, May 25, 2021, video on file.

³²⁷ Three people were reportedly detained for three days for speaking out against unlawful detentions during consultations in Western Equatoria State. See South Sudan Civil Society Forum and Detcro Research and Advisory, "Citizens' Perspectives on the National Dialogue in South Sudan," page 28.

³²⁸ See South Sudan Civil Society Forum et al, *op. cit.*, pages 27–29.

³²⁹ National Dialogue National Conference Final Resolutions and Communique, Juba, 3-17 November 2020.

failed political leadership and inability to build a cohesive nation. The President eventually received the final resolutions in May 2021 and expressed his commitment to ensure their implementation. Aside from the President's statement that the resolutions should form part of the basis for drafting the permanent constitution in May 2021—which was widely regarded as a ruse to avoid engaging with the recommendations—neither the final resolutions of the consultations nor a plan for their implementation have been made public to the citizens who shared their views. The permanent constitution-making process has also stalled. It presently appears that the fate of the dialogue process, like that of many past dialogue processes, has been left in the hands of the President and political elites. Moreover, the permanent constitution-making process has also stalled despite the enactment in December 2022, of legislation setting out ambitious timelines for the drafting and adoption of a new constitution.

B. Public consultations on the Commission for Truth, Reconciliation and Healing

183. On 5 April 2022, President Kiir and other parties to the Revitalized Agreement jointly launched public consultations to inform the design of the legislation for establishment of CTRH. This was a welcome albeit late step toward implementing obligations under the Revitalized Agreement to conduct public consultations with civil society and stakeholders to inform development of legislation for its three transitional justice mechanisms: CTRH, the Compensation and Reparation Authority and Hybrid Court.³³⁰ Meanwhile, the State has resisted establishing the Hybrid Court and any public discussion of the Court is considered a sensitive 'no-go' area for civil society (see below). Publicly launching the consultation process, the President, First Vice President and other key political leaders noted the centrality of victims' views and meaningful public participation in the consultations and in truth-seeking.³³¹ The Ministry of Justice and Constitutional Affairs established a Technical Committee which carried out public consultations from 6 May and 2 June 2022. Covering 37 locations across South Sudan's ten States and two administrative areas, the Committee reported engaging with 3,080 men and 1,463 women (total of 4,543) representing a broad range of groups in society. The final report of the consultations incorporates the views and recommendations captured, including on the temporal and topical mandate of CTRH, composition and selection criteria for its Commissioners, public participation, the protection of victims and witnesses, financing, and the relationship of the CTRH with other mechanisms including traditional justice systems.³³²

184. In May 2023, the Government convened a conference with the stated objectives of reviewing progress in the establishment of the transitional justice mechanisms under the Revitalized Agreement, learn from regional experiences, and build consensus on the content and enactment of the draft bills to establish the CTRH and CRA.³³³ Participants included: parties to the Agreement; national and state level members of the executive, legislature and judiciary; monitoring bodies; regional and international development partners and experts; religious leaders; as well as civil society and victims' representatives. Draft bills for the CTRH and CRA were disseminated, together with the report of the public consultations on the CTRH. The Minister for Justice and Constitutional Affairs noted that the views obtained from the public consultations informed the drafting of the CTRH and CRA Bills and committed to widely disseminate the report on the outcomes of the consultations to encourage further public participation in enriching the Bills. The conference concluded with the

³³⁰ See 2018 Revitalized Agreement, section 5.2.1.3.

³³¹ Remarks at the official launch of the public consultations, at Freedom Hall in Juba on 5th April 2022.

³³² Technical Committee on the Establishment of the Commission on Truth Reconciliation and Healing, Public Sensitization and Consultations Report, July 2022.

³³³ "Building a Sustainable Model for Transitional Justice in South Sudan" from 15 to 17 May 2023. The conference was launched by the President and presided over by the First Vice President and the Minister for Justice and Constitutional Affairs.

adoption of resolutions including proposals put forward to improve the bills and enrich transitional justice processes more broadly.³³⁴

185. Most resolutions and recommendations from the conference largely resonate with the views obtained in the public consultations, while also drawing on experiences from other countries. But two new clauses were included that do not reflect public views. One is a proposal to include amnesties to individuals who “fully and truthfully disclose” involvement in abuses and crimes, while the other proposal states that CTRH and CRA should be established before the Hybrid Court.³³⁵ These new clauses instead align with views expressed by key political leaders including the President, who claim that accountability processes might spark violence. Instead, they focus on the CTRH as their preferred way for the country to move forward. These positions are at odds with obligations under the Revitalized Agreement to implement all three mechanisms in a complementary manner to “promote the common objective of facilitating truth, reconciliation and healing, [and] compensation and reparation for gross human rights violations in South Sudan.”³³⁶ Both proposals are also at odds with the call by public consultation participants for “the strengthening of the justice institutions and the establishment of the Hybrid Court to hold violators accountable”.³³⁷ Yet, the Government’s proposals were included in the two bills submitted to Cabinet following the conference.

186. Whether the Government will carry forward the proposals on amnesty and sequencing will be clearer as review and finalization of the draft bills progresses. These proposals have caused survivors, victims and other stakeholders to question the Government’s commitment to faithfully pursue holistic transitional justice, which includes robust accountability, and credibly addresses impunity. Civil society members also complain that the Ministry of Justice declined their requests to access the bills submitted to the Cabinet, and that their content remains unclear. Concerns have also been raised that refugee populations in neighboring countries have not been consulted.³³⁸ To address their concerns about being shut out of the process following formal consultations, civil society members have proposed that the Government convene an inclusive validation workshop prior to finalizing the bills for review by the Transitional National Legislative Assembly. They have also called for hearings in the Assembly to be made public, to enhance the transparency, inclusivity and ultimately public ownership in establishing these critical institutions for national truth-seeking and reparation processes.³³⁹

C. Lessons for future civic engagement in transitional justice and key national processes

187. Consultations on transitional justice and the National Dialogue processes show that the Government can open democratic space when there is political will to do so. But these experiences also demonstrate that such efforts can only be genuine and the outcomes legitimate if matched by addressing the broader repressive climate. The limitation of civic space to participation in processes sanctioned by the State, and within the temporal and topical limits which authorities dictate, can be perceived as disingenuous and the outcomes are unlikely to reflect the views of the people, thereby defeating the purpose of these processes. Both processes offer valuable lessons: that civic space can be protected if there is high-level buy-in from authorities; and that in order to live up to democratic principles and the public’s aspirations the voices of the people need to be reflected in outcomes.

³³⁴ United Nations Development Program, “Conference Report: Transitional Justice Mechanisms in South Sudan, 15 – 17 May 2023.”

³³⁵ UNDP, “Conference Report,” page 20 and its Annex, Resolutions of the Conference, paras. 14 and 31.

³³⁶ 2018 Revitalized Agreement, section 5.1.3.

³³⁷ Public Sensitization and Consultations Report, page 40.

³³⁸ Consultations with refugees took place in Ethiopia in September 2023. It was unclear if consultations would take place in Kenya, Uganda, Sudan, Democratic Republic of Congo, and Central African Republic.

³³⁹ Transitional Justice Working Group, Workshop Resolutions on Transitional Justice Legislation in South Sudan, 4 – 6 September 2023.

VI. Conclusions and recommendations

A. Conclusions

188. As the Commission has reported on several occasions, civic and political space in South Sudan has virtually disappeared, and instead the State has entrenched systematic repression in regard to the media, human rights defenders and civil society. Reversing this situation is essential for the future of South Sudan's democracy, and the country's stability. South Sudan is now at a crucial point in its difficult transition where citizens are eagerly waiting to participate in the critical processes of constitution-making, transitional justice and national elections through which they will make choices about the kind of country they want to live in. These are essential democratic processes that will lay the foundations for South Sudan's future, but if not well-managed, may give rise to legitimate grievances which become a new trigger for further instability. Owing to inordinate delays, the time constraints are real, and opinions differ as to how to address this challenge, with options including further delay, or truncated processes. Resolving this question should be based on objective criteria, with a non-adversarial, politically responsible, and consensual approach to any adjustments that might be needed: these should serve the goal of achieving credible outcomes that reflect the will of the South Sudanese people.

189. Only by nurturing an accountable system of government can a genuinely democratic society be built, which overcomes the history of violent power contestation. An independent media and a vibrant civil society are fundamental to achieving that end, as are political parties reflecting a broad spectrum of opinion. The Commission considers the experiences of the media, human rights defenders, and civil society to be barometers of the broader conditions for civic space in a society. In South Sudan, the state of pervasive impunity recently reported by the Commission has contributed to the severe constriction of democratic space. The detailed findings in this report describe the systematic narrowing and regression in civic space, a singular lack of political tolerance and dissent, as well as the ongoing repression of journalists, civil society actors and human rights defenders, and political actors – particularly opponents of the dominant ruling party. This systematic repression destroys individuals and families, undermines democratic impulses, suffocates society, and destabilizes peace. It calls into question whether envisaged processes of democratization – chiefly constitution-making, transitional justice, and national elections – will be credible and meaningful. Without a drastic reorientation of its politics and governance away from illiberal and repressive impulses, the SPLM-IG risks bequeathing a bleak future to South Sudan.

190. The signs are not encouraging. While citizens are anticipating a transition to a democratic dispensation to be defined in a new Constitution, State authorities across South Sudan continue to exert unnecessary controls and to interfere profoundly with legitimate political, media and civil society activities in disregard of fundamental democratic principles, and their human rights obligations under the Constitution and international law. At the heart of this system of repression is the National Security Service; although it is meant to act as a protector of the interests of South Sudanese, the NSS is instead primarily responsible for arbitrary and systematic restrictions on media and civil society. These unlawful and undemocratic practices have become normalized, with other entities and political leaders also condoning or actively instigating abusive practices in a sign of the entrenchment of repression. The absence of any credible checks or mechanisms for controlling or asserting accountability for the abuses by governmental agencies and entities is compounded by the absence of an independent judiciary. Rule of law, a pillar of democracy, is conspicuous only by its near total absence.

191. The Government's curtailment of citizen's participation in governance and society, and its intolerance of critical voices and peaceful dissent, are not only human rights violations, but inhibit citizens from realising their full potential, and thus damage the country's development, while acting as key drivers of violent conflict. A deep-seated aversion to public scrutiny is pervasive among South Sudan's leaders, leading to the silencing of independent media and vibrant civil society that would promote transparency and accountability. A shift in mentality from militarized and autocratic attitudes to democratized politics and governance is fundamental to address the country's dire human rights situation,

and to enable a sustainable peace in which South Sudanese can realize their dignity and core rights, and thereby achieve a fairer and more prosperous society. This also necessarily entails tackling pervasive discrimination and prejudice against women in society, including by incorporating women in public office and encouraging their participation in the media and political landscapes, and ending impunity for widespread sexual harassment, sexual violence and gender-based harms which prevent women from achieving their full potential. Given their way of governing following a hard-won independence, South Sudan's leaders risk repeating the ways of their oppressors.

192. The international community, comprised of UN Member States, and regional States that have accompanied South Sudan's transition, should note the Commission's findings and the need for concrete corrective measures, both in their engagements with South Sudanese officials and citizens, and in managing their support towards electoral and other processes. This moment in South Sudan's transition is an important opportunity for reflection, and for considering the potential impacts of failures to implement core aspects of the Revitalized Agreement effectively and inclusively. Key regional and international stakeholders should catalyse and encourage and take the necessary steps including credible constitution making that will create the basis for democratic transformation of South Sudan, and for human rights to flourish.

193. To open up South Sudan's democratic space, several other measures should immediately be undertaken: first, is guaranteeing political space for opposition parties and other entities to mobilise, assemble and campaign freely. A second is lifting the practice of arbitrary restrictions on independent media, characterized by the censorship regime and the manipulation of journalism accreditation rules. Thirdly, restrictions and arbitrary demands on civil society actors, including prior authorization of their legitimate activities, and the pervasive monitoring and surveillance of their meetings and discussions should be stopped. These measures should be durable, reflecting a new commitment at the highest levels of Government to democratic governance, and ending attacks against democratic space that violate core human rights. These attacks must end not only within South Sudan but also abroad.

194. Sustaining a democratic space requires ending the culture of impunity that foments ongoing repression and enables and encourages the persistence of human rights violations. Accountability is therefore essential for ending cycles and repetitions of these violations. Consolidating a practice of immediately standing-down State officials implicated in gross human rights violations should be a first step, to be followed by subsequent credible accountability processes. While the African Union has made available assistance to the Government in establishing the Hybrid Court, this has not been taken up. Yet, the Court is intended to leave behind a legacy of strengthening South Sudan's domestic justice system which would contribute to addressing impunity in the long term. Other entities too are standing by to provide support in other rule of law areas should the Government demonstrate genuine political will to address accountability.

195. Critically, the role of the National Security Service must be revisited and refashioned away from its current instrumentalization as a militarized institution that serves narrow political interests, views the public as enemies, and resorts to extreme repression and human rights violations, to an institution that better reflects its intended origins as a protector of the South Sudanese people. The human security of South Sudan's diverse population would be better supported by combatting the rampant corruption, ending human rights violations and holding perpetrators accountable, investing in the socioeconomic realisation of rights including health, education and food security, and genuinely supporting the development of core rule of law institutions, rather than channelling disproportionate public resources in militarisation and the repression of its people.

196. This paper, read with other reports by the Commission, highlights the persistence of repression as a tool for political domination and the devastating impacts this has had on individuals and South Sudanese society. As national polls approach, experiences from elsewhere in the world and the region show that electoral processes that are not considered to be inclusive or credible can compound existing grievances, exacerbate cleavages in society and spawn violence. In South Sudan, there is a risk of that far from deepening democracy, an

electoral process which is not perceived to be genuine, fair and truly inclusive may trigger further cycles of violence and gross human rights violations.

B. Recommendations

197. The Commission recommends that the Revitalized Transitional Government of National Unity of South Sudan, which includes all parties to the Revitalized Agreement:

On the completion of key transition processes:

- a) Take urgent steps to complete of preparations for the constitution-making process, particularly the appointment of the National Constitutional Review Commission, and ensure that the Permanent Constitution, among other things, clarifies the future governance architecture and electoral system that will serve as the basis for national elections, define the exercise of executive power, reaffirming core individual and group rights, and entrenching the rule of law, thus establishing the basis for a new social contract between the South Sudanese people and their State;
- b) Work conscientiously to complete preparations for national elections, including to establish, resource and facilitate the work of the National Elections Commission, the Political Parties Council, and other entities responsible for the management, oversight and security of the electoral processes, and in this regard cooperate with the Trilateral Mechanism established for coordinating assistance to these processes;
- c) Ensure that any adjustment to the timelines or agreed requirements for the above processes are reached solely through consensus and based on objective criteria – not political expediency – and with the aim of enhancing the quality and democratic credibility of the process;
- d) Urgently complete the establishment of the necessary unified forces and ensure that they are equipped to provide protection and additional support to the constitution-making and national elections, and ensure that forces cultivate and maintain national and pro-citizen outlook and doctrine.

On an enabling and inclusive environment for citizen engagement:

- e) Embrace a transformative and inclusive agenda and disposition in all areas of political activity and governance, involving a shift in militarized mentalities toward democratic and accountable governance, based on recognizing State actors as duty bearers and its citizenry as rights holders.
- f) Recognise and manage plurality and diversity;
- g) Take all measures necessary to guarantee political and civic space, including free expression, association and assembly across South Sudan, thereby creating conditions for the credible conduct of the constitution-making, transitional justice, and national electoral processes;
- h) End harassment of journalists, human rights defenders, civil society actors, and the public, and the disruption of, and impediments to, their activities, and expeditiously hold accountable officials, including security personnel, and other individuals complicit in related violations, thereby reversing the culture of impunity.

On the National Security Service:

- i) Reorient and oversee the transformation of the National Security Service into an accountable protection agency serving the needs of the South Sudanese people, and ensure that NSS:
 - a. Operates strictly within its constitutional mandate, and applicable laws, and ends all practices that violate South Sudan's international human rights obligations, particularly arbitrary detentions, enforced disappearances, and related violations;

- b. Ends arbitrary interference with the rights of the public, civil society and political actors to carry out legitimate activities, such as arbitrarily requiring authorisations and clearances, phone tapping, closure of social media including digital and other forms of surveillance, as well as cyberattacks;
- c. Ceases all forms of censorship, including by withdrawing NSS officers from newsrooms and printing presses, and ending cyberattacks against online media;
- d. Ends all extra-territorial and related unlawful operations, particularly extraordinary renditions, and intimidation and targeting of South Sudanese abroad.

On the protection of media:

- j) Ensure that the Media Authority operates strictly within its legal frameworks, and acts autonomously to protect the independence of journalism, including by establishing and facilitating a credible Press and Complaints Council and ceasing the imposition of arbitrary or politically motivated restrictions on the practice of journalism, including entry into the profession.

198. The Commission recommends that Member States and international partners:

- a) Encourage and assist the Government and other South Sudanese parties and stakeholders to urgently complete the preparations for constitution-making, national elections and transitional justice, and to create an enabling environment for these processes;
- b) Engage the Government to abandon pervasive acts of repression within and outside South Sudan and desist from facilitating such violations, including extraordinary renditions;
- c) Support the efforts, capacities and security of civil society and victims' and survivors' groups to ensure their effective engagement in constitution-making, transitional justice and national election processes in South Sudan.

199. The Commission recommends that UNMISS and the United Nations system in South Sudan:

- a) Continue to play an accompaniment role, providing technical expertise, resources, encouragement and political advice to the Government regarding expediting credible constitution-making, transitional justice, and national elections, particularly by guaranteeing democratic and political space, and fostering an enabling environment for these critical processes;
- b) Continually engage the national authorities to protect democratic space, including rights of journalists, members of civil society, human rights defenders and provide requisite assistance to individuals and entities affected by relevant violations to enhance their protection;
- c) Continue critical support for the development and strengthening of the justice system and the establishment and consolidation of the Rule of Law in South Sudan.