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Access Now & Gisa Group Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 40th Session Third Cycle for the Republic of South Sudan

15 July 2021

About Access Now

Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age.¹

About Gisa Group

Gisa Group powers civic engagement across East Africa by building platforms that promote justice and accountability while protecting and improving opportunities to create and access trusted information. Over a decade, Gisa Group's highly collaborative projects have trained and empowered hundreds of individuals and organizations working on digital rights, access to information, human rights, and transitional justice.

Follow-up from South Sudan's second UPR cycle

1. The Universal Periodic Review (UPR) is an important U.N. mechanism aimed at addressing human rights issues across the globe. Access Now welcomes the opportunity to contribute to the Republic of South Sudan's (South Sudan's) third review cycle. This submission examines the state of digital rights in South Sudan, including freedom of expression and opinion and access to information. It follows from our previous stakeholder submission ahead of South Sudan's second review cycle.²

¹ Access Now, *About Us*, available online: <https://www.accessnow.org/>, 2021.

² Access Now, *Access Now Submission to the United Nations Human Rights Council, on the Universal Periodic Review 2016 Cycle for South Sudan*, available online: <https://www.accessnow.org/cms/assets/uploads/2016/05/SouthSudanUPR.pdf>, 2021.

2. During the second UPR cycle, South Sudan received 233 recommendations, adopting 203 and noting 30.³ Regarding digital rights, South Sudan received:
 - a. 6 recommendations on freedom of expression and opinion, of which 4 were accepted and 2 noted;
 - b. 2 recommendations on freedom of assembly, of which 1 was accepted and 1 noted;
 - c. 6 recommendations on the safety of journalists, of which 4 were accepted and 2 noted;
 - d. 4 recommendations on the safety of human rights defenders, of which 2 were accepted and 2 noted.

3. Since its previous UPR cycle, South Sudan has taken some, albeit minimal, positive steps towards enhancing internet connectivity while also strengthening the country's formal commitment to the international human rights legal framework:
 - a. As of 2017, according to the International Telecommunication Union (ITU), 8% of the population of South Sudan has access to the internet, which is double the percentage since 2014, when less than 4% of the population had access to the internet.⁴ This follows South Sudan's Minister of Telecommunications and Postal Services' 2014 intention to increase national connections to major global telecommunications cables.⁵ Such efforts should continue to be encouraged in the country as connecting to submarine and terrestrial fibre-optic cables provides faster and more reliable connections than satellite-based communications networks.

 - b. South Sudan has followed-through on previous UPR recommendations to ratify international human rights instruments thereby strengthening the country's commitment to the international human rights framework and the U.N. system.

South Sudan's international, regional, and domestic human rights obligations

4. In 2019, following recommendations from the last UPR cycle, South Sudan ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as the First Optional

³ UPR Info, *2RP: Responses to Recommendations & Voluntary Pledges, South Sudan*, available online, https://www.upr-info.org/sites/default/files/document/south_sudan/session_26_-_november_2016/recommendations_and_pledges_south_sudan_2016.pdf, 2016.

⁴ The World Bank, citing ITU World Telecommunication/ICT Indicators Database - South Sudan, available online: <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=SS>

⁵ Radio Tamazuj, *South Sudan government says planning for better internet*, available online: <https://radiotamazuj.org/en/news/article/south-sudan-government-says-planning-for-better-internet>, 5 June 2021.

Protocols to both Covenants.⁶

5. South Sudan is the latest African Union (A.U.) Member State to become a Party to the African Charter on Human and Peoples' Rights (Banjul Charter), which the country ratified in October 2014, thereby affirming commitments to guarantee individuals' rights to freedom of expression and opinion, and free association.⁷ However, it is yet to ratify the A.U. Convention on Cyber Security and Personal Data Protection (the Malabo Convention).⁸
6. The 2011 Transitional Constitution of the Republic of South Sudan (TCSS) provides protections for the right to privacy (Article 22), freedom of expression and the media (Article 24), as well as access to information (Article 32).⁹ Nonetheless, the TCSS is not comprehensive enough to provide adequate safeguards against human rights violations.

Freedom of expression and opinion and access to information

7. As South Sudan expands its internet connectivity, and more individuals come online, it will be imperative to provide education, training, and capacity building opportunities so individuals can learn how to securely and effectively exercise their human rights online. South Sudan must also ensure that human rights are protected online and implement open, transparent and accountable internet governance processes with meaningful opportunities for all stakeholders — particularly civil society centered on women's voices — to input into regulatory and policy decisions that impact human rights online.
8. Gender and other digital divides represent a significant challenge to ensuring meaningful connectivity. As the Office of the High Commissioner for Human Rights (OHCHR) notes in its report on the gender digital divide, "women activists, including women human rights defenders, increasingly rely on [ICTs] to advocate, communicate, mobilise, protect, access information and gain visibility."¹⁰ Therefore, South Sudan must ensure that the needs and interests of women, in all their intersecting identities, are represented in such education, training and capacity building opportunities in order to address digital divides.

⁶ OHCHR, *Press briefing note on South Sudan*, available online:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24683&LangID=E>, 7 June 2019.

⁷ ACHPR, *Ratification Table - African Charter on Human and Peoples' Rights*, available online:

<https://www.achpr.org/ratificationtable?id=49>; see also ACHPR, *African Charter on Human and Peoples' Rights*, available online:

<https://www.achpr.org/legalinstruments/detail?id=49>

⁸ *African Union Convention on Cyber Security and Personal Data Protection*, available online: <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>

⁹ *The Transitional Constitution of the Republic of South Sudan, 2011 (with 2013 Amendments)*, available online:

https://www.constituteproject.org/constitution/South_Sudan_2013.pdf?lang=en

¹⁰ OHCHR, *Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective*, UN Doc. A/HRC/35/9, at para 23.

9. South Sudan must aim to develop infrastructure necessary to allow for meaningful connectivity. Without meaningful connectivity — which includes robust digital education and literacy, updated software, devices and hardware, affordable and stable service, secure and trustworthy cybersecurity, and software and content relevant to language and cultural needs – simply having mobile coverage or high internet penetration rates may be meaningless.

The safety of journalists and human rights defenders

10. Since the last UPR cycle, the media, and various human rights organisations, have reported multiple instances of journalists, activists, and human rights defenders being arrested and prosecuted for online speech:
 - a. In July 2018, political activist Peter Biar Ajak was arrested by the South Sudan National Security Service, without any formal charges, after he made a series of posts on Twitter criticising the government.¹¹
 - b. In October 2019, Emmanuel Manychol Akop, the managing editor of the newspaper *The Dawn* was arrested and detained after a Facebook post in which he made fun of a dress worn by the foreign affairs and cooperation minister, Awut Deng Achuil.¹²
 - c. In September 2020, two journalists — Zechariah Makuach Maror and Jackson Ochaya — were detained and sentenced to prison by South Sudanese authorities. Maror was convicted of criminal defamation. Ochaya first went missing and was later confirmed to have been detained in South Sudan's National Security Service headquarters after publishing a report for No.1 Citizen in which he included a comment from the spokesperson of the National Salvation Front, a militant group fighting South Sudan's government.¹³
 - d. In July 2021, a controversial cleric Pastor Abraham Chol Kush was arrested by the members of joint security forces after statements he made in a video posted on social media that a new president will take over the country on 9 July 2021.¹⁴

¹¹ Chantal Da Silva, Newsweek, *Harvard Political Activist Arrested in South Sudan After Tweets Criticizing Government*, available online: <https://www.newsweek.com/harvard-political-activist-arrested-south-sudan-after-tweets-criticizing-1048701>, 30 July 2018.

¹² Human Rights Watch, *South Sudan: Free Arbitrarily Detained Journalist*, available online: <https://www.hrw.org/news/2019/11/28/south-sudan-free-arbitrarily-detained-journalist>, 28 November 2019.

¹³ Committee to Protect Journalists, *Journalists harassed, detained and sentenced to jail in South Sudan*, available online: <https://cpj.org/2020/11/journalists-harassed-detained-and-sentenced-to-jail-in-south-sudan/>, 5 November, 2020.

¹⁴ Sudans Post, *BREAKING | 'Prophet' Abraham Chol Kush arrested overnight by joint security forces*, available online: <https://www.sudanspost.com/prophet-abraham-chol-kush-arrested-overnight-by-joint-security-forces/>, 8 July, 2021.

11. South Sudan has therefore violated people's rights to freedom of expression and opinion, (particularly those who engage in exercising free speech and dissenting opinions) by prosecuting them for their social media posts. Defamation should never be a criminal offense.

COVID-19 misinformation and disinformation

12. Amid the COVID-19 pandemic, access to ICTs is increasingly important as digital technologies have become life saving tools to safely disseminate public health information, such as preventative measures and governmental responses and guidelines, to contain the spread of the virus.¹⁵ The pandemic also highlighted how the internet is also an essential tool for employment, education, health, communication, political engagement, and accessing other important resources. Inadequate access to information and broad criminalisation of speech can make the ongoing health crisis and its impacts even worse.
13. Further, during the COVID-19 pandemic, vulnerable groups have been targeted with hate speech leveraging disinformation and misinformation, significantly contributing to the rhetoric of social stigma.¹⁶ International and regional bodies have alluded to human rights concerns, including misinformation, hate speech and disinformation, in South Sudan, amid the COVID-19 pandemic:
 - a. On 23 June 2020, the Special Representative and Head of the U.N. Mission in South Sudan informed the U.N. Security Council that COVID-19 is potentially "the greatest threat to South Sudan's already fragile health system." At the U.N. Security Council meeting, it was noted that "greater efforts must be made on transitional security arrangement, combating hate speech, misinformation and incitement to violence, and tackling impunity through enhanced accountability for sexual and gender-based crimes."¹⁷
 - b. On 24 June 2020, the African Commission on Human and Peoples' Rights, through the Country rapporteur for human rights in South Sudan, issued a statement on the human rights situation in South Sudan, noting with particular

¹⁵ Access Now, *#KeepItOn: internet shutdowns during COVID-19 will help spread the virus!* Available online: <https://www.accessnow.org/keepiton-internet-shutdowns-during-covid-19-will-help-spread-the-virus/>, 17 March 2020. See also, Access Now, *Expanding Connectivity to Fight COVID-19: Recommendations for Governments and Telcos*, available online: <https://www.accessnow.org/cms/assets/uploads/2020/04/Expanding-connectivity-to-fight-COVID19-Recommendations-for-govs-and-telcos.pdf>, April 2020.

¹⁶ Access Now, *Fighting misinformation and defending free expression during COVID-19: recommendations for states*, available online: <https://www.accessnow.org/recommendations-misinformation-free-expression-during-covid-19/>, 31 April 2020.

¹⁷ See U.N. Security Council, COVID-19 Potentially Greatest Threat to South Sudan's Already Fragile Health System, Special Representative Warns Security Council, Press Release, U.N. Doc. SC/14221, available online: <https://www.un.org/press/en/2020/sc14221.doc.htm>,

concern South Sudan's response to COVID-19 and interrelated human rights concerns.¹⁸

Internet shutdowns

14. The #KeepItOn Coalition — composed of more than 240 organisations from 105 countries around the world — track internet shutdowns worldwide. The 2021 #KeepItOn report, authored by Access Now, noted an alarming government-trend to shut down the internet as a tool to suppress peoples' human rights amid conflict, as well as during pivotal moments, such as protests and elections.
15. Governments attempt to justify internet shutdowns by claiming they are necessary to restore "public order" or "national security," to "prevent the spread of misinformation/disinformation," to "curb cheating on exams," or for "technical reasons." Yet governments typically order internet shutdowns under circumstances that reveal the shutdowns are in fact aimed at quelling protests or gagging citizens during important national events like elections.¹⁹
16. In alignment with its human rights obligations, South Sudan must refrain from blocking or shutting down the internet and mobile communications services, particularly during elections and protests. Several U.N. bodies and independent experts have condemned internet shutdowns as a violation of international human rights law.²⁰ Similarly, regional bodies, including the AU, have also emphasised that intentional shutdowns violate human rights norms.²¹ Despite clear guidance that internet shutdowns are never justified under international human rights law, South Sudan has reportedly shut down the internet.
 - a. On January 5, 2018, the National Communication Authority of South Sudan reportedly shut down 3G mobile internet services across the country for hours following violent conflict between government and rebel forces in Yei River

¹⁸ ACHPR, *Statement on the human rights situation in South Sudan*, available online: <https://www.achpr.org/pressrelease/detail?id=514>

¹⁹ Access Now, *#KeepItOn FAQ*, available online: <https://www.accessnow.org/keepiton-faq/>, 2021.

²⁰ Most recently summarised in the 15 June 2021 Report *Ending Internet shutdowns: a path forward*, the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/47/24/Add.2, available online: <https://undocs.org/A/HRC/47/24/Add.2> at paras 13 - 14. See also, Access Now, *U.N. propels internet shutdowns into the spotlight, calls on key stakeholders to act, 1 July 2021*, available online: <https://www.accessnow.org/un-internet-shutdowns/>.

²¹ The U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Ending Internet shutdowns: a path forward*, U.N. Doc. A/HRC/47/24/Add.2, available online: <https://undocs.org/A/HRC/47/24/Add.2> at paras 13 - 14. See also, Access Now, *U.N. propels internet shutdowns into the spotlight, calls on key stakeholders to act, 1 July 2021*, available online: <https://www.accessnow.org/un-internet-shutdowns/>. Note in particular, the ACHPR affirmed the principle of non-interference with access to internet and stressed that States "shall not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population" the ACHPR, *Declaration of principles on freedom of expression and access to information in Africa*, 2019.

state.²²

17. Internet shutdowns hurt the safety and security of citizens, limit access to information and emergency services, negatively impact small and large businesses and their customers, and interfere with the provision of health, education, and e-services. Internet shutdowns also enhance the concealment of potential violence and human rights violations perpetrated by both State and non-State actors against individuals.

Recommendations

18. We urge that the rights to freedom of expression and opinion and access to information be prominent issues in the upcoming UPR review cycle. We therefore recommend that South Sudan:
 - a. Adhere to international human rights standards and uphold its commitments to promote and protect the right to freedom of expression and opinion, allowing people to access the internet freely and without fear of surveillance or censorship;
 - b. Ensure universal access to a free, secure, and open internet, extending digital economic, educational, health, social, and cultural resources to all, and particularly to those in vulnerable communities and people in at-risk groups;
 - c. Provide education, training, and capacity building opportunities, particularly focused on the needs and interests of women and their intersecting identities, so everyone can learn how to securely and effectively exercise their human rights online;
 - d. Prioritise funding for digital development that meets the diverse needs and interests of all individuals, particularly women, and reallocate existing funds toward building inclusive digital infrastructure, particularly amid the COVID-19 pandemic;
 - e. Ensure the prompt, impartial, and effective investigation into and stop the arbitrary detention, harassment and persecution of human rights defenders, activists and journalists, and decriminalize defamation;
 - f. Make a state pledge to refrain from blocking, or shutting down the internet and telecommunications services, particularly during elections and peaceful protests;
 - g. Continue to improve cooperation with U.N. and A.U. mechanisms, in particular, ratify the A.U. Malabo Convention, strive to adopt the Convention 108+

²² Saruni Maina, *South Sudan's National Communication Authority Reportedly Shuts Down 3G Internet Services in the Country*, available online: <https://techweez.com/2018/01/05/south-sudan-internet-shutdown/>, 5 January 2018.

principles for privacy and data protection, and issue standing invitations to U.N. Special Procedures, such as the U.N. Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and association, and the right to privacy.

19. The UPR is an important U.N. process aimed to address human rights issues worldwide. It is a rare mechanism through which citizens around the world get to work with the government to improve human rights and hold them accountable to international law. *For more information, please contact: un@accessnow.org.*