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SAFEGUARDING AND PROTECTION POLICY





SAFEGUARDING AND PROTECTION POLICY:

Introduction

The perfect design of the growing risks faced by journalists working in conflict regions. It is therefore, important to call renewed attention to the fact that attacks against journalists and media equipment are illegal under international humanitarian law, which protects civilian persons and objects, as long as they are not making an effective contribution to military action. The media cannot be considered a legitimate target, unless they are being exploited to instigate grave breaches of humanitarian law. Journalists and media personnel also benefit from precautionary measures – not confined to them alone; such as the principle of proportionality and the obligation to give advance warning. There is nonetheless an evident need for the adoption of a new instrument, on the one hand to reaffirm those elements of humanitarian law that apply to journalists and media personnel, and thus to re-establish the media authority of certain basic rules that are all too often flouted, and, on the other hand, to improve existing law and adapt it to the requirements of today, for instance the phenomenon of “embedded” journalists. Such is the goal of the “Declaration on the safety of journalists and media personnel in situations involving armed conflict,” drawn up in 2003 by Reporters without Borders.

In South Sudan, the role of journalists is pivotal in fostering transparency and accountability within society. These individuals risk their personal safety to uncover truths that are crucial for informed public treatise. By investigating corruption, human rights abuses, and other significant societal issues, they contribute to a more informed citizenry and greater governmental accountability. Their work ultimately serves as a safeguard against oppression and abuse of power, emphasizing the need for vigorous protections that enable them to operate without fear of retaliation.

However, journalists in South Sudan face several challenges, including legal threats, harassment and acts of violence. These challenges not only jeopardize their safety but also inhibit their ability to perform vital functions. The environment in which they operate can often be hostile, particularly when their investigations implicate powerful entities or reveal uncomfortable truths. This precarious situation underscores the urgency of implementing comprehensive legal frameworks that protect these individuals’ rights and ensure their safety. Without such protections, the fundamental principles of democracy are at risk, as the fear of persecution may lead to self-censorship and a scary effect on freedom of expression.

Furthermore, legal safeguards are essential not only for the protection of journalists but also for the preservation of a healthy society. By ensuring the Security and rights of those who speak out, a culture of accountability and openness can thrive. Without such, the potential for abuse of power remains unchecked, and citizens are deprived of crucial information that empowers them to engage in civic affairs responsibly. The importance of protecting journalists in South Sudan cannot be overstated, as their contributions are integral to the enhancement of societal welfare and democratic values.

1. Current Legal Framework in South Sudan

The legal framework governing the protection of journalists and whistleblowers in South Sudan primarily hinges on the Constitution, along with various media laws. The Constitution of South Sudan explicitly enshrines fundamental rights pertaining to freedom of expression, which is crucial for journalists operating within the country. Article guarantees every individual the right to express their opinions and to receive and impart information without interference. Despite this constitutional protection, journalists often face numerous challenges in exercising these rights, particularly concerning government censorship and consequences for publishing sensitive information. In addition to the Constitution, the Media authority of South Sudan aims to regulate and establish certain protections for those media.



2. Anonymity Rights for Journalists:

The rights to anonymity play a crucial role in ensuring that journalists can perform their work effectively, particularly in contexts where revealing their identities may expose them to retaliation or persecution. Anonymity not only fosters an environment conducive to open dialogue but also encourages individuals to come forward with critical information without the fear of consequences. In South Sudan, where political sensitivity can escalate quickly, the ability to remain anonymous allows whistleblowers to disclose wrongdoing and corruption without jeopardizing their safety and personal lives.

Legal frameworks supporting anonymity are essential in providing these protections. For instance, there are specific laws that safeguard journalists, acknowledging their right to confidentiality. While these laws aim to protect their identities, challenges persist in the enforcement of these protections, particularly against government pressures and the potential for surveillance. In many cases, the law may provide guidelines for how anonymity is maintained, but the implementation can falter, rendering journalists vulnerable.

Furthermore, the relationship between journalists and their sources often craves on trust. This trust is reinforced by the assurance of confidentiality, which incentivizes individuals to share sensitive information regarding malpractice or governmental abuses that would otherwise remain hidden. Whistleblowers may face sophisticated tracking methods, and as such, they must equip themselves with knowledge of best practices for safeguarding their identity. Whilst, legal provisions exist to ensure anonymity rights for journalists in South Sudan, ongoing challenges require vigilant advocacy and protection measures. Sustaining the integrity of these rights is vital for encouraging transparency and accountability within both the media and governmental sectors.

3. Protections Against Retaliation:

Journalists in South Sudan face significant risks, particularly regarding retaliation for their work in exposing corruption, misconduct, or human rights violations. The legal framework in South Sudan provides several protections aimed at shielding these individuals from threats, harassment, or dismissal. These protections are crucial in ensuring that those who report wrongdoing can do so without fear of retribution.

One essential legal safeguard is the Labor Relations Act, which offers job security to employees who report illegal activities or unsafe working conditions. This act stipulates that individuals who disclose information in good faith are entitled to protection from dismissal or other forms of adverse action by their employers. Journalists are encouraged to report their concerns internally first, and if their employer fails to address the issue, they may seek legal recourse through the courts.

In cases where retaliation does occur, affected individuals can pursue various legal remedies. They may file complaints with the relevant labor courts or human rights commissions, seeking redress for violations of their rights. Additionally, support networks, including non-governmental organizations (NGOs) dedicated to protecting press freedom and human rights, provide legal assistance and advocacy for journalists and who face retaliation.

4. International Standards and Comparisons:

International standards for the protection of journalists and whistleblowers have progressed significantly over the years, with various organizations advocating for strong legal frameworks that prioritize freedom of speech and the right to information. Essential instruments such as the United Nations Declaration on Human Rights and the International Covenant on Civil and Political Rights emphasize the necessity of safeguarding those who expose wrongdoing or report on issues of public interest. These standards serve as a benchmark against which individual countries, including South Sudan, can measure their own legal provisions and protections.



Comparatively, countries like Canada and the Netherlands have established comprehensive legislative frameworks that protect journalists and media. For instance, Canada's journalists' protection law provides paths for anonymous reporting, safeguards against retaliation, and ensures that Journalists can seek legal recourse if they suffer adverse consequences due to their disclosures. Similarly, in the Netherlands, journalists have legal safeguards that ensure they can operate without the threat of persecution or intimidation, thereby fostering an environment conducive to investigative journalism.

South Sudan's legal framework offers certain protections, yet significant gaps remain when compared to these international standards. For instance, while South Sudan's Constitution contains provisions for freedom of expression, practical application often falls short, resulting in a frightening effect on journalists and those who speak out against the government. In contrast, the protections afforded to journalists in other jurisdictions emphasize the importance of not only legal provisions but also the political will to enforce them effectively.

In well-lit of these comparisons, it is clear that while South Sudan has made some advancements in recognizing the rights of journalists, further efforts are required to align its legal framework with established international norms. Addressing these gaps can enhance the overall safety and efficacy of those committed to transparency and accountability in governance, ultimately strengthening democracy and public trust in institutions.

5. Role of Civil Society and Media Organizations:

Civil society organizations, Media and Union of Journalists of South Sudan play a pivotal role in safeguarding the rights of journalists in South Sudan. These entities act as vital watchdogs, ensuring that the freedoms of expression and press are respected and protected. They engage in advocacy, engage with policymakers, and mobilize public opinion to create a conducive environment for media professionals to operate without fear of persecution. Through their efforts, these organizations not only raise awareness about the challenges faced by journalists but also foster a culture of accountability in public and private sectors.

They also highlight cases of injustices against media practitioners, thus amplifying the need for legal reforms. Similarly, focuses on monitoring the media landscape, documenting incidents of censorship and violations of press rights, and advocating for legal changes that strengthen protections for journalists.

Additionally, these organizations conduct public awareness campaigns aimed at educating citizens about their rights and the importance of a free press. By hosting workshops and seminars, they engage various stakeholders, including journalists, students, and community leaders. This engagement promotes a better understanding of the critical roles' journalists play in fostering democracy and transparency in governance. The impact of civil society extends beyond immediate protection; they foster a climate of support that is essential for sustaining and advancing the rights of journalists and in.

6. Challenges Faced by Journalists:

The landscape for journalists in South Sudan is fraught with significant challenges that threaten their safety and efficacy in promoting transparency and accountability. One of the most pressing issues is censorship, which manifests through government regulations and practices aimed at stifling free expression. Journalists often find themselves facing the daunting prospect of self-censorship; they may choose to withhold critical information to avoid consequences, thereby impacting the quality of the information disseminated to the public.

Intimidation is another prominent threat. Numerous accounts detail instances of journalists receiving threatening messages or facing harassment due to their work. This atmosphere of fear serves to deter individuals from reporting on sensitive subjects, particularly those related to government corruption or human rights violations. Such threats can extend beyond verbal intimidation, leading to actual physical harm. Reports have surfaced of journalists being assaulted or subjected to violence, underscoring the risks involved in pursuing investigative reporting within the nation.



Legal aftermaths also cast a long shadow over the work of journalists. In many cases, those who dare to voice dissenting opinions or expose wrongdoing face punitive measures, which can include detention or fringing upon personal liberties. Laws designed to protect national security are often weaponized to silence journalists, leaving them vulnerable to criminal charges for merely executing their professional duties. This legal environment creates significant obstacles for those willing to confront corruption or societal issues in South Sudan.

Through personal accounts and testimonies of these brave individuals, the persistent threat to freedom of speech and the pursuit of truth becomes painfully evident. The combination of censorship, intimidation, physical harm, and potential legal consequences makes it increasingly difficult for journalists in South Sudan to operate without fear, ultimately impairing the essential role they play in society.

7. Strengthening the Protection of Journalists in South Sudan:

To enhance the legal and institutional framework safeguarding journalists in South Sudan, a series of coherent and actionable endorsements are proposed. First and foremost, a comprehensive review of existing legislation is imperative. This review should aim to identify gaps in current laws that may inadequately protect these individuals. Legislative bodies must prioritize the enactment of specific laws that directly address the unique challenges faced by journalists, including rigorous penalties for acts of intimidation or violence against them.

Furthermore, increased government accountability is essential for fostering an environment conducive to free expression. It is critical that the government establishes independent oversight bodies tasked with monitoring the treatment of journalists. These bodies should have the authority to investigate claims of harassment or abuse, thereby ensuring that there are consequences for violations of rights. In conjunction, the government must actively engage in dialogue with media institutions and civil society organizations to establish a cooperative approach to protect these individuals.

Also, enhancing the training for law enforcement personnel is vital. Law enforcement agencies should routinely incorporate training programs that emphasize the importance of protecting media rights and the role of Journalists in reporting misconduct. Such training would create greater awareness among officers regarding the significance of these protections, thus enabling them to act more effectively and appropriately when incidents arise.

To end, establishing full-bodied support systems for journalists is crucial. This could include implementing legal aid services, psychological support resources, and safety protocols to assist individuals facing threats or intimidation. By enhancing the support available, South Sudan can cultivate an ether where journalists feel secure to perform their duties without fear of reprisal, ultimately contributing to a stronger, more transparent society.

8. THE INTERNATIONAL HUMANITARIAN LAW ON THE PROTECTION OF JOURNALISTS:

It is this particularly worrisome state of affairs in South Sudan that prompted Union of Journalists of South Sudan to draw up their attention to the Declaration on the safety and protection of journalists and media personnel in situations involving armed conflict.

The Declaration has been open for signature since 20 January 2003 and was amended on 8 January 2004 in the light of events in Iraq. Its aim is to recall the principles and rules of international humanitarian law protecting journalists and the news media during armed conflicts and to propose improvements to the law in line with present-day requirements. In this respect, there is a need to reaffirm that attacks against journalists and the media are unlawful and to recall that the authorities preparing or deciding on an attack that may affect journalists or the media have an obligation to take all possible precautions.

8.1 The unlawfulness of attacks against journalists and the news media:



Attacks against journalists and the news media are unlawful because, under international humanitarian law, civilians and civilian objects are protected and, with few exceptions, not even the propaganda media can be considered military objectives. In other words, while journalists and the equipment they use have no special status, they benefit from the general protection enjoyed by civilian persons and objects, unless they make an effective contribution to military action.

8.2 protection of journalists as civilians

International humanitarian law distinguishes between but does not specifically define two categories of journalists working in war zones: war correspondents accredited to the armed forces and “independent” journalists; the first category covers any “specialized journalist who is present, with the authorization and under the protection of the armed forces of an aggressive, on the theatre of operations and whose mission is to provide information on events relating to ongoing hostilities.”

8.3 Protection of war correspondents:

“War correspondents” belong to that ill-defined category of “persons who follow armed forces without actually being members thereof.” As they are not part of the armed forces, they have civilian status and therefore benefit from the corresponding protection. In addition, because they are, in a way, associated with the war effort, war correspondents benefit from prisoner-of-war status if they fall into enemy hands, provided they have been authorized to follow the armed forces.

8.4 Protection of journalists engaged in dangerous professional missions:

The participants at the 1974-1977 Diplomatic Conference in Geneva wished to supplement Article 4.A (4) of the Third Geneva Convention in order to meet the requirements of the time, by including a special provision in Protocol I on “measures of protection for journalists.” The result, Article 79, does not change the regime governing war correspondents. The article reads as follows: **“Article 79 – Measures of protection for journalists**

8.4.1 Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

8.4.2 They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 (A) (4) of the Third Convention.

8.4.3 They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.” Article 79 stipulates that journalists engaged in dangerous professional missions in areas of armed conflict “are” civilians within the meaning of Article 50 (1) and thereby benefit from all the protection conferred by international humanitarian law on civilians. Journalists are thus protected against the effects of the hostilities and against arbitrary conduct on the part of a party to the conflict if they are captured or arrested by it.

8.5 Presumption of civilian use in case of doubt:

In the light of Article 52 (3) of Protocol I, objects generally recognized as being civilian in nature, such as television and radio broadcasting facilities, benefit from a “presumption of civilian use” in case of doubt, even if they are situated in contact zones. Obviously, the presumption can be set aside, but again, the armed forces must act in accordance with the measures of precaution set down in Article 57 (“Precautions in attack”) of Protocol I and take into account the general aim of the Protocol, which is to protect the civilian population and civilian objects. The presumption of civilian use, like that applying to civilians under Article 50 (1), was a new rule in 1977 and not the codification of a customary norm; if it were to be genuinely respected, it would make a significant contribution to the protection of objects and persons.



9. The obligations of precaution in attacks liable to affect journalists and the media:

The lawfulness of an attack depends not only on the nature of the target - a military objective - but also on whether or not the attack conforms to the obligation of precaution in attack, in particular the principle of proportionality and the obligation of warning. In this respect, journalists and the media benefit, not from a specific status, but from the general protection conferred by Protocol I on civilians and civilian objects against the effects of the hostilities.

CONSTITUTIONAL AND LEGAL PROTECTION OF SOUTH SUDAN:

An independent body, such as a Board of Governors, shall be responsible for protecting editorial independence and for ensuring accountability to the public, in accordance with modern democratic standards. Any laws that prescribe criminal penalties for media or journalistic offences shall be suspended.

10. Laws of South Sudan Media Authority bill 2012:

Mar 26, 2012 — This Act is drafted under the powers granted in Schedule (A) and Article 24 (2) of the Transitional Constitution of the Republic of South Sudan, which grants the National Government of South Sudan powers to legislate on matters of national information, publications and mass media and to regulate

11. Media legislation of South Sudan:

The Media Authority Act enshrines the principle that the right to freedom of expression, including the public right to a pluralistic media, is a fundamental human right, protected under Article 24 of the Transitional Constitution of the Republic of South Sudan. This new legislation is a stark contrast from the Penal.

The transitional constitution 2011: Article 24 guarantees freedom of expression and the media, including the right of every citizen to receive and disseminate information and publications. The constitution obligates the government organs to respect, uphold and promote this right

The Media Authority 2013 and the **right to access to information act 2014**, provide legal protections for journalists, including the right to freedom of expression and the media. Key provisions guarantee freedom of the press and prohibit unlawful arrest, detention, harassment, and intimidation of journalists. However, these laws are often contradicted in practice by other acts, like the penal code Act, and the actions of security forces.

12. Constitutional and legislative protections

Article 24 of the transitional constitution: Guarantees freedom of expression, reception, and dissemination of information, and mandates that governments must guarantee press freedom and other media.

13. Media Authority Act (2013):

- Promotes press freedom and independent media.
- Prohibits censorship by any official or non-official authority.
- Protects journalists from unlawful arrest, detention, harassment, and intimidation.
- Allows for the formation of professional associations and the promotion of journalistic ethics.

Right of Access to Information Act (2014): Provides a legal framework for access to information, which is crucial for journalists' ability to report.

Limitations and challenges to the law



- **Contradictory laws:** The progressive protections in the Media Authority Act and the 2014 Act are undermined by other laws, such as the Penal Code Act, which criminalizes defamation and libel, and the National Security Act.
- **Governmental actions:** There are frequent reports of government authorities, particularly the National Security Service (NSS), involved in unlawful interference with journalists, including arrests and the seizure of newspapers.
- **Unlawful detention:** The National Security Service (NSS) is cited as operating without a clear legal mandate and carrying out unlawful arrests and detentions that undermine freedom of expression, according to amnesty international
- **Practical restrictions:** In practice, journalists face censorship and self-censorship on sensitive topics due to pressure from security officials,