

RETHINKING TRANSITIONAL JUSTICE AND REFORM IN SOUTH SUDAN: A FOURTH PILLAR APPROACH

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ABSTRACT

In the wake of decades of conflict, South Sudan requires comprehensive transitional justice to break the cycle of violence and build sustainable peace. However, as detailed by this Note, the South Sudanese government has undermined the potential for effective transitional justice by curbing the power of the judiciary and over-empowering the National Security Service—mirroring the repressive methods practiced by its Sudanese predecessor. In light of the consequent absence of rule of law in the country, this Note argues that international and domestic actors should shift their approach to transitional justice in South Sudan to focus on guarantees of non-recurrence rather than truth, justice, and reparation. This type of approach would encompass the judicial and security reforms necessary to strengthen rule of law and thus create conditions in which further transitional justice efforts, like those contained in the 2018 Revitalized Peace Agreement, are viable.

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INTRODUCTION

Critical to the future of our people and the endeavor to fulfill their aspirations, match their hopes and ambitions, is a government that is democratic, inclusive, and accountable. My pledge to you, when you cry, we cry, when you bleed, we bleed. I pledge to you today that we will find a just peace for all.¹

These are the words of Salva Kiir Mayardit, the first and current President of South Sudan, at the birth of the world's youngest nation. In early 2011, the population of southern Sudan voted almost unanimously to leave Sudan,² and the region officially gained its independence on July 9, 2011.³ According to reports from that day, the feeling of excitement for the just and peaceful future Kiir described was palpable.⁴ People poured into the streets of Juba to celebrate before sunrise,⁵ singing and dancing despite ongoing security threats and intense heat.⁶ Pictures show massive crowds waving flags and covered in patriotic body paint, with some spectators climbing high into the trees to get a better view of the festivities.⁷ One man in the crowd told the *New York Times* that after losing over a dozen family members in the war, his “whole body [felt] happy” to have finally reached independence.⁸

1. *President Kiir's Independence Speech, July 9th, 2011*, PAANLUEL WEL (July 11, 2011) [hereinafter *Independence Speech*], <https://paanluelwel.com/2011/07/11/president-kiirs-independence-speech-july-9th-2011> [<https://perma.cc/X7CA-TQLR>].

2. INT'L COMM'N OF JURISTS, SOUTH SUDAN: AN INDEPENDENT JUDICIARY IN AN INDEPENDENT STATE 10 (2013) (“With more than 3.85 million people participating—97.5 per cent of registered voters—an overwhelming 98.8 per cent voted for secession.”).

3. Jeffrey Gettleman, *After Years of Struggle, South Sudan Becomes a New Nation*, N.Y. TIMES (July 9, 2011), <https://www.nytimes.com/2011/07/10/world/africa/10sudan.html> (on file with the *Columbia Human Rights Law Review*).

4. *Id.*; Xan Rice, *South Sudan Celebrates a Sweet Celebration*, GUARDIAN (July 9, 2011), <https://www.theguardian.com/world/2011/jul/10/south-sudan-celebrates-independence> [<https://perma.cc/ZLT6-PHFV>]; Nima Elbagir & Faith Karimi, *South Sudanese Celebrate the Birth of Their Nation*, CNN (July 10, 2011), <http://www.cnn.com/2011/WORLD/africa/07/09/sudan.new.nation/index.html> (on file with the *Columbia Human Rights Law Review*).

5. Gettleman, *supra* note 3.

6. Jok Madut Jok, *South Sudan's Independence*, U.S. INST. OF PEACE (July 11, 2011), <https://www.usip.org/publications/2011/07/south-sudans-independence> [<https://perma.cc/2RKN-3AL7>].

7. Gettleman, *supra* note 3.

8. *Id.*

In his speech, Kiir emphasized that after decades of conflict and oppression, independence was a long-awaited “dream”—one that would be defined by justice and rule of law.⁹ Kiir’s promises echoed the vision that Dr. John Garang de Mabior—the deceased leader of the revolution—had articulated at the signing of the Comprehensive Peace Agreement (CPA) in 2005. The CPA ended the Sudanese civil war and laid the groundwork for the independence referendum.¹⁰ At that time, Garang described the CPA’s intended result as a “political and socio-economic paradigm shift” marked by the “entrenchment of human rights and peoples’ rights in the constitution, [and] the upholding of the independence of the judiciary, including the . . . commitment to the rule of law by the government and the governed.”¹¹

Yet the nascent government has spent well over a decade proving these lofty and poetic promises to be empty. Just six years after Kiir’s independence speech, the National Security Service (NSS)—South Sudan’s intelligence agency—abducted, detained, and presumably executed two outspoken critics¹² of the South Sudanese government for pursuing the just and peaceful South Sudan that Kiir had described.¹³ In late January 2017, Dong Samuel Luak and Aggrey Idri—a human rights lawyer and a member of the opposition party, respectively—“disappeared off the streets” of Nairobi.¹⁴ The

9. *Independence Speech*, *supra* note 1 (“The Republic of South Sudan shall be partner in all human endeavors that promote security, justice, liberty and prosperity.”)

10. INT’L COMM’N OF JURISTS, *supra* note 1, at 8–9.

11. Daniel Danis, *Remembering CPA Day: John Garang’s Full Speech*, EYE RADIO (Jan. 9, 2020), <https://www.eyeradio.org/remembering-cpa-day-john-garangs-full-speech> [<https://perma.cc/3LR5-3A5B>].

12. For example, Luak publicly criticized the executive-driven constitutional reform process in South Sudan, going as far as to declare that “[i]f the Transitional Constitution . . . would have been a patient, the doctors would have written a death certificate a long time ago.” Dong Samuel Luak, *South Sudan: The Fiasco of Constitutional Amendments*, NYAMILEPEDIA (Nov. 19, 2015), <https://www.nyamile.com/south-sudan/politics/south-sudan-the-fiasco-of-constitutional-amendments> [<https://perma.cc/FQ5U-AL32>]. Similarly, Aggrey was openly critical of the government’s handling of South Sudan’s finances. *SPLM-IO Official Decries State of Economy in South Sudan*, SUDAN TRIB. (Feb. 28, 2016), <https://sudantribune.com/article56494> [<https://perma.cc/3JYH-46G4>].

13. *South Sudan: Investigate Apparent 2017 Killings of Activists*, HUM. RTS. WATCH (Apr. 30, 2019) [hereinafter *Investigate Apparent 2017 Killings*], <https://www.hrw.org/news/2019/04/30/south-sudan-investigate-apparent-2017-killing-activists> [<https://perma.cc/5JH4-53A3>].

14. *South Sudan: A Year on, Two Men’s Whereabouts Unknown*, HUM. RTS. WATCH (Jan. 23, 2018), <https://www.hrw.org/news/2018/01/24/south-sudan-year->

two men had been living in Kenya after fleeing the repressive South Sudanese government.¹⁵ Although South Sudanese authorities have never confirmed their fate, the U.N. Panel of Experts on South Sudan gathered reliable evidence that members of the NSS kidnapped Dong and Aggrey in Nairobi, transported them back to Juba through a chartered commercial flight, and held them *incommunicado* in unofficial NSS detention facilities.¹⁶ Credible sources relayed to the Panel of Experts that on January 30, 2017, both men were executed at a facility in Luri on direct orders from NSS leadership.¹⁷

Dong and Aggrey's cases illuminate how South Sudan has preserved the brutal response to dissent of its Sudanese predecessor, undercutting the assumption that the transition to independence was necessarily a transformative one. Their cases are also emblematic of the reality that South Sudan adopted many of the institutional deficits that undermine Sudan's codified human rights commitments—namely, a weak, easily manipulated judiciary and overly empowered state security forces.¹⁸ The result is an almost complete absence of rule of law.¹⁹

In addition to facilitating day-to-day human rights violations in the lives of the South Sudanese people, this absence constitutes a tremendous obstacle to the country's prospects for meaningful transitional justice and sustainable peace.²⁰ The First and Second

two-mens-whereabouts-unknown [https://perma.cc/E98T-JS8Q]. Mausi Segun, Human Rights Watch's Africa director, is quoted as saying the men "simply vanish[ed] into thin air without a trace." *Id.*

15. Panel of Experts on South Sudan, Final Report, ¶¶ 42–43, U.N. Doc. S/2019/301 (Apr. 9, 2019) [hereinafter 2019 Final Panel Report].

16. *Id.* ¶¶ 44–46.

17. *Id.* ¶ 47 ("[I]t is highly probable that [Aggrey and Dong] were executed by Internal Security Bureau agents at the Luri facility . . . on orders from the commander of the . . . facilities in Luri, the Commander of the [NSS] Central Division and, ultimately, Lieutenant General Akol Koor Kuc.").

18. See, e.g., FREEDOM HOUSE, FREEDOM IN THE WORLD 2005: THE ANNUAL SURVEY OF POLITICAL RIGHTS AND CIVIL LIBERTIES 600 (2005) (finding that at the time the interim system of governance was established in South Sudan, the Sudanese "judiciary [was] not independent" and that "[a]rbitrary arrest, detention, and torture [were] widespread and security forces act[ed] with impunity").

19. *Freedom in the World 2023: South Sudan*, FREEDOM HOUSE (2023) [hereinafter *Freedom in the World 2023*], <https://freedomhouse.org/country/south-sudan/freedom-world/2023> [https://perma.cc/U3WL-2ETC].

20. See generally U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, U.N. Doc. S/2004/616 (Aug. 23, 2004) [hereinafter U.N. Doc. S/2004/616] (emphasizing the necessity of rule of law in supporting efforts towards accountability, reconciliation, and long-term peace).

Civil Wars left major political and ethnic rifts unresolved as South Sudan entered independence, which has led to further prolonged and deadly conflict.²¹ South Sudanese leaders have acknowledged the need for transitional justice in the wake of this devastation; however, the government has continued to create conditions in which the proposed transitional justice mechanisms are untenable.²² Specifically, the Revitalized Peace Agreement (RPA) commits the South Sudanese government to the creation of a hybrid court, a truth-seeking commission, and a reparations mechanism.²³ The government has so far failed to meaningfully implement any of these three bodies,²⁴ but even if implemented, without strengthened rule of law, they will not have the infrastructure and public confidence necessary to function effectively.

This Note proposes a shift in the short-term approach to transitional justice in South Sudan from an end which relies upon the rule of law, to a means which facilitates it. Whereas the RPA

21. See *infra* Section I.A (discussing South Sudan's First and Second Civil Wars).

22. See *infra* Section II.E (explaining how the South Sudanese government's operation of its judicial and security sectors undermines the possibility for effective transitional justice in the country).

23. Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS), Sept. 12, 2018, ch. V [hereinafter 2018 Revitalised Agreement], <https://southsudan.igad.int/index.php/agreements/345-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan> [perma.cc/T49M-X5ZN].

24. In September 2024, the South Sudanese parliament approved two bills to establish the truth-seeking commission and the reparations mechanism, which marked the first concrete step towards the actualization of any of the RPA's transitional justice measures. *South Sudan: Parliament Approves Transitional Justice Laws*, HUM. RTS. WATCH (Sept. 9, 2024) [hereinafter *Parliament Approves Transitional Justice Laws*], <https://www.hrw.org/news/2024/09/09/south-sudan-parliament-approves-transitional-justice-laws> [https://perma.cc/7GH2-BFEH]. The President signed these bills into law in November of the same year. David Deng, *New Transitional Justice Legislation Provides an Entry Point for Reengaging with State- and Nation-Building Efforts in South Sudan*, JUST SEC. (May 14, 2025), <https://www.justsecurity.org/113173/transitional-justice-legislation-nation-building-south-sudan/> [https://perma.cc/Q8B2-8AW5]. However, as emphasized in a joint statement signed by 129 non-governmental organizations to U.N. Member States in February 2026, these two bodies "are yet to be operationalised" and progress in establishing the hybrid court "continues to be paralysed due to lack of political will." *South Sudan: Extend UN Investigations Amid Deteriorating Human Rights Crisis*, INT'L COMM'N OF JURISTS (Feb. 19, 2026) [hereinafter *Extend UN Investigations*], <https://www.icj.org/south-sudan-extend-un-investigations-amid-deteriorating-human-rights-crisis/> [https://perma.cc/3XJR-DDEE].

measures prioritize the first three pillars of transitional justice—truth, justice, and reparation—this Note advocates for the prioritization of the fourth pillar: guarantees of non-recurrence.²⁵

As suggested by its name, the guarantees of non-recurrence pillar encompasses a wide variety of measures intended to prevent further harms and avoid a return to conflict.²⁶ These measures include institutional reforms in the judicial and security sector.²⁷ As this Note will argue, a focus on guarantees of non-recurrence is better tailored to South Sudan's needs as a country that has already experienced multiple outbreaks of violence. Such a focus would also pave the way for effective engagement with other forms of transitional justice by strengthening the rule of law.

Part I will detail South Sudan's history, including longstanding patterns of discrimination, the violent struggle for independence, and the pathway to that independence following the signing of the Comprehensive Peace Agreement in 2005. It will also

25. In addition to the four pillars mentioned in the text, there is a widely recognized fifth pillar: memorialization. The former Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence advocated for its inclusion in the pillar framework and began to incorporate it into his official reports. *See generally Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/HRC/45/45 (July 9, 2020) [hereinafter U.N. Doc. A/HRC/45/45] (presenting memorialization as a fifth pillar of transitional justice and emphasizing its importance in transitional contexts); *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/HRC/54/24 (July 10, 2023) (including memorialization as a pillar within an analysis of the legal underpinnings of transitional justice). Given that the RPA measures and the proposals presented here fall within the first four pillars, this Note does not discuss the potential for transitional justice measures supporting memorialization at length. However, such measures will also be critical to South Sudan's path forward as memorialization is deeply interwoven with the other four pillars—"without the memory of the past, there can be no right to truth, justice, reparation, or guarantees of non-recurrence." U.N. Doc. A/HRC/45/45, *supra*, ¶ 21.

26. *See Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, ¶ 23, U.N. Doc. A/HRC/30/42 (Sept. 7, 2015) [hereinafter U.N. Doc. A/HRC/30/42] (describing how "guarantees of non-recurrence is a function that can be satisfied by a broad variety of measures" including "reforming institutions, disbanding unofficial armed groups, repealing emergency legislation incompatible with basic rights, vetting the security forces and the judiciary, protecting human rights defenders and training security forces in human rights").

27. *See generally Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, U.N. Doc. A/70/438 (Oct. 21, 2015) [hereinafter U.N. Doc. A/70/438] (emphasizing the importance of security sector reforms in transitional justice, including vetting).

examine the country's post-independence experience with civil war and instability. This background will provide critical insight into the political and legal challenges fueling the country's current lack of rule of law.

Part II will argue that South Sudan's independence has failed to deliver on its transformative promise. Specifically, Part II will analyze the rule of law in South Sudan by examining how the judiciary and the NSS undercut existing domestic and international human rights protections. For the judiciary, it will show how improper investment and a lack of political independence prevent the judicial system from offering proper safeguards and redress for human rights violations. For the NSS, it will demonstrate how security forces have developed into a *de facto* judicial arm of the executive—one that has been used to brutally repress dissenting voices in the country. Part II will further illustrate that these problems are mutually reinforcing and together undermine the rule of law. It will then provide an overview of the three transitional justice mechanisms enshrined in the 2018 Revitalized Peace Agreement, which the government has thus far failed to effectively implement. Part II will conclude by asserting that the lack of rule of law in South Sudan would nevertheless greatly undermine these measures even if they are operationalized.

In Part III, this Note will argue that international actors—including international and regional institutions, foreign governments, and global non-governmental organizations—should shift their approach to transitional justice in South Sudan to prioritize guarantees of non-recurrence. It will argue that these actors should invest in building judicial infrastructure and apply pressure on the South Sudanese government to comply with its international human rights obligations—in particular, by reigning in the NSS. Given the government's lack of political will for change, Part III will specifically advocate for pursuing judicial and security reform through mobilizing international actors and empowering civil society²⁸ within the country. This Note will conclude that pursuing

28. This Note adopts the U.N. Office of the High Commissioner for Human Rights' broad understanding of civil society actors "as individuals and groups who voluntarily engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the UN: the maintenance of peace and security, the realization of development, and the promotion and respect of human rights." Off. of the High Comm'r for Human Rights, A Practical Guide for Civil Society: Civil Society Space and the United Nations Human Rights System 3 (Jan. 1, 2014),

strategies around guarantees of non-recurrence could initiate a transformative break from the systems of repression inherited from Sudan and bolster the rule of law—a step that would greatly increase the potential efficacy of the other proposed transitional justice methods.

I. COMPLEX HISTORY OF THE WORLD'S YOUNGEST STATE

South Sudan faces intricate and overlapping challenges that imperil its future and the lives of its people. Comprised of what were formerly the ten southernmost states of Sudan, it is located in a zone historically mired by conflict and instability.²⁹ It shares borders with Sudan to the north, the Central African Republic to the west, Ethiopia to the east, and Kenya, Uganda, and the Democratic Republic of Congo to the south.³⁰ The country sits above large oil reserves, which serve as the primary driver of the South Sudanese economy.³¹ However, revenue-sharing agreements with Sudan and rampant corruption mean that little of the money generated by oil benefits the general South Sudanese population.³² Instead, many

<https://www.ohchr.org/en/publications/policy-and-methodological-publications/civil-society-space-and-united-nations-human> (on file with the *Columbia Human Rights Law Review*).

29. *South Sudan Country Profile*, BBC (Apr. 18, 2023) [hereinafter *Country Profile*], <https://www.bbc.com/news/world-africa-14069082> [https://perma.cc/UGR3-NKBU].

30. Robert O. Collins, Mohy el Din Sabr, & Jay L. Spaulding, *South Sudan*, BRITANNICA (Dec. 22, 2023), <https://www.britannica.com/place/South-Sudan> [https://perma.cc/3D2F-JP5G]. This grouping of countries spans East and Central Africa, both of which have been identified by scholars as hotbeds of violence and socioeconomic suffering. See *Political and Security Trends in East Africa*, CTR. FOR STRATEGIC & INT'L STUDIES, <https://www.csis.org/programs/africa-program/archives/security-and-conflict/political-and-security-trends-east-africa> [https://perma.cc/2HEE-2FCE] (describing East Africa as “one of the most conflicted and poorly-governed corners of the world”); Meetings Coverage, Security Council, Coups, Violence, Climate Change Among Factors Destabilizing Central Africa, Delegates Underline in Security Council, U.N. Meetings Coverage SC/15528 (Dec. 13, 2023) (detailing the “extremely worrying humanitarian situation” in Central Africa resulting from coups, armed conflict, climate change, and other factors).

31. See Sophy Owuor, *What Are the Major Natural Resources of South Sudan?*, WORLD ATLAS (Aug. 27, 2019), <https://www.worldatlas.com/articles/what-are-the-major-natural-resources-of-south-sudan.html> [https://perma.cc/58QV-QP2Y] (reporting that oil made up 98% of the government’s revenue in 2019).

32. Alex Irwin-Hunt & Munyaradzi Makoni, *The Promise of Oil and Gas in South Sudan*, FDI INTEL. (Oct. 31, 2022),

South Sudanese sustain themselves through agricultural activity, which often proves unreliable given the country's extreme vulnerability to climate change and natural disasters.³³

As of mid-2026, the country contains roughly 12.4 million people belonging to over sixty different ethnic groups, though the Dinka and Nuer ethnic groups make up roughly 36% and 16% of the population, respectively.³⁴ In September 2023, the World Bank found that 76% of the population required humanitarian assistance.³⁵ In World Population Review's 2026 Human Development Index, South Sudan ranked as the least developed country in the world based on assessments of the population's health, education, infrastructure, wealth, and other similar factors.³⁶ Combined with and exacerbated by the country's ongoing violence, these conditions have led to widespread internal and external displacement. According to the United Nations, there are 2.3 million internally displaced South Sudanese citizens and 2.4 million living outside South Sudan as refugees.³⁷

Amid these dire circumstances, the South Sudanese government has undermined the judicial system,³⁸ ignored its legal obligations,³⁹ and allowed a culture of impunity to flourish.⁴⁰ None of

<https://www.fdiintelligence.com/content/feature/the-promise-of-oil-and-gas-in-south-sudan-81521> [<https://perma.cc/72SC-FFMR>].

33. *The World Bank in South Sudan: Overview*, WORLD BANK, <https://www.worldbank.org/en/country/southsudan/overview> [<https://perma.cc/XK3U-KHBH>] ("Since its independence in 2011, [South Sudan] has suffered from severe droughts (2011, 2015) and floods (2014, 2017, 2019, 2020, 2021, and 2022), resulting in high numbers of fatalities, displacements and loss of livestock which have severely impacted people's livelihoods.").

34. *South Sudan*, WORLD POPULATION REV. (2026), <https://worldpopulationreview.com/countries/south-sudan> [<https://perma.cc/RHD3-ZKM5>].

35. WORLD BANK, *supra* note 33.

36. *Human Development Index (HDI) by Country 2026*, WORLD POPULATION REV. (May 22, 2026), <https://worldpopulationreview.com/country-rankings/hdi-by-country> [<https://perma.cc/GFD2-UE7A>].

37. *South Sudan Refugee Crisis*, USA FOR UNHCR, <https://www.unrefugees.org/emergencies/south-sudan> [<https://perma.cc/3UEB-ZP9L>].

38. *See generally* INT'L COMM'N OF JURISTS, *supra* note 2 (detailing the overall weakness of the South Sudanese judicial system).

39. *See, e.g.*, Press Release, Security Council, Security Council Extends Sanctions on South Sudan for One Year, Adopting Resolution 2683 (2023) by 10 Votes in Favour, with 5 Abstentions, U.N. Press Release SC/15297 (May 30, 2023) (extending a sanctions regime against South Sudan and condemning "past and

these challenges developed in a vacuum; the current situation in South Sudan relates back to a long history of conflict in the territory and the entrenchment of repressive methods under the Sudanese government. This Part will recount how South Sudan fought for, gained, and has since navigated its independence. This journey is key to understanding the evolution of its judicial system, the consequent deterioration of rule of law, and the persistent obstacles to transitional justice.

A. History of the Northern and Southern Sudan Divide

Although longstanding tensions existed between the northern and southern populations of the territory that eventually became Sudan, these tensions heightened once the region fell under joint Egyptian-British rule in 1899, which effectively turned it into a British colony.⁴¹ The primary divide is generally characterized along religious lines, with a Christian south and an Islamic north, but there are also deep historical, cultural, and ethnic divisions.⁴² British authorities reinforced the religious divide through separationist policies and practices, as well as deepened existing economic disparity between the two groups by ignoring appeals for development assistance from the south.⁴³ Even prior to independence, there were instances of southern military units mutinying in response to the

ongoing violations of human rights and international humanitarian law by all parties, including . . . national security forces”).

40. See, e.g., Press Release, Amnesty Int’l, South Sudan: Crippled Justice System and Blanket Amnesties Fueling Impunity for War Crimes (Oct. 7, 2019), <https://www.amnesty.org/en/latest/press-release/2019/10/south-sudan-crippled-justice-system-and-blanket-amnesties-fuelling-impunity-for-war-crimes> [https://perma.cc/78FS-U8AU] (“The South Sudanese authorities have allowed impunity to flourish over serious human rights violations, war crimes and crimes against humanity committed since brutal conflict broke out in December 2013, prosecuting only one case . . .”).

41. *Country Profile*, *supra* note 29.

42. INT’L COMM’N OF JURISTS, *supra* note 2, at 8; Robert Collins, *Civil Wars in the Sudan*, 5 HIST. COMPASS 1778, 1778 (2007).

43. See INT’L COMM’N OF JURISTS, *supra* note 2, at 8 (explaining how Britain made “Sudan’s south and some southern parts of the north, a closed district that northern Muslims could not legally enter without a permit” and refused demands from southerners “for federation and increased economic and educational development to allow them to catch up with the North”); Mark Leopold, *Review: Slavery in South Sudan, Past and Present*, 102 AFR. AFFS. 653, 656 (2003) (arguing that “the colonial administration created a new, hard and fast separation—political, economic and legal—between north and south Sudan” which was advanced in part by Christian missionary education in the south).

British and northern Sudanese authorities refusing southern demands for better resources and support.⁴⁴

The 1952 Egyptian revolution bolstered support for Sudanese independence and Britain ultimately permitted a country-wide vote on the matter.⁴⁵ As a result, Sudan gained its independence in 1956, becoming Africa's largest country.⁴⁶ The new government in Khartoum continued past policies of oppression, treating marginalized populations—including those in the south—with “indifference and neglect made manifest by the dearth of human and material resources.”⁴⁷ The government's harsh repression of early southern resistance subdued conflict for a time, but state programs of “Arabization and Islamization” in southern Sudan ultimately inspired organized armed resistance by 1963, which escalated into the First Civil War.⁴⁸ In the early 1970s, the resistance—which eventually became known as the Southern Sudan Liberation Movement (SSLM)—intensified its guerilla tactics.⁴⁹ Violence between the SSLM forces and the Sudanese military claimed the lives of roughly five hundred thousand people.⁵⁰ When it became clear that northern Sudan could not defeat the SSLM militarily, the two sides negotiated and signed the Addis Ababa Agreement in February 1972, which established an autonomous southern government based in Juba.⁵¹

After several years of peace under this arrangement, northern resentment grew towards the southern autonomous government, and Khartoum began to walk back its commitments.⁵² On June 5, 1983, Sudanese President Ja'afar Numayri announced an executive order that effectively “consigned the 1972 Addis Ababa Agreement to the wastebasket of history.”⁵³ Resentment was not limited to the northerners, however. Two months prior to Numayri's executive order, Colonel John Garang de Mabior—at that time the senior commanding officer of the southern forces—had established the Sudan People's Liberation Movement (SPLM) and Sudan People's Liberation Army (SPLA), which respectively represented the political

44. INT'L COMM'N OF JURISTS, *supra* note 2, at 8.

45. *Country Profile*, *supra* note 29.

46. *Id.*

47. Collins, *supra* note 42, at 1779.

48. *Id.* at 1779–80.

49. *Id.* at 1782.

50. *Country Profile*, *supra* note 29.

51. Collins, *supra* note 42, at 1783.

52. *Id.* at 1783–84.

53. *Id.* at 1784. Numayri's actions are partially attributed to the discovery of oil in South Sudan. INT'L COMM'N OF JURISTS, *supra* note 2, at 8.

and military wings of a campaign for a new, united Sudan (collectively referred to as the SPLM/A).⁵⁴ In May 1983, SPLA forces backed by Ethiopia launched the Second Civil War—a conflict that would ultimately last over two decades.⁵⁵

This war was marked by internal tensions on both sides, coups, shifting alliances, mass displacement, and a high civilian death toll—a result fueled in large part by Sudanese-armed paramilitary groups slaughtering women and children of the Dinka ethnic group.⁵⁶ Ultimately, an estimated two million people died, both from the violence of the Second Civil War and the illness and famine that stemmed from it.⁵⁷ The war displaced an additional four to six million.⁵⁸ After a series of strategic SPLA victories in 2002, and the gradual deterioration of the will to fight among northern Sudanese forces, the SPLM/A and the Sudanese government entered into a ceasefire and began long-term negotiations.⁵⁹ The Intergovernmental Authority on Development (IGAD) facilitated the negotiations, along with the United Nations, African Union, United States, United Kingdom, Italy, and Norway.⁶⁰

54. Collins, *supra* note 42, at 1784.

55. *Id.*; *Country Profile*, *supra* note 29.

56. Collins, *supra* note 42, at 1784–91; INT'L COMM'N OF JURISTS, *supra* note 2, at 8–9. One key internal conflict within the SPLA that continues to influence modern South Sudanese politics was the breakaway of senior SPLA commander Riek Machar Teny-Dhurgon, who led various Khartoum-backed forces in attacks against the SPLA from 1991 until the 2002 Nairobi Declaration, at which point he was reabsorbed into the SPLM/A as a vice president. Collins, *supra* note 42, at 1786–89. Since independence, the persisting rift between Kiir and Machar has fueled civil war in South Sudan and disrupted efforts to achieve a peaceful, democratic South Sudan. *See infra* Section I.C.

57. *Country Profile*, *supra* note 29.

58. Collins, *supra* note 42, at 1791.

59. *Id.*

60. INT'L COMM'N OF JURISTS, *supra* note 2, at 8–9; Marina Ottaway & Amr Hamzawy, *The Comprehensive Peace Agreement*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 4, 2011), <https://carnegieendowment.org/2011/01/04/comprehensive-peace-agreement-pub-42223> [<https://perma.cc/36U9-DWVA>]; The Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Jan. 9, 2005, at xiii [hereinafter *Comprehensive Peace Agreement*], <https://peacemaker.un.org/sites/default/files/document/files/2024/05/sd060000the20comprehensive20peace20agreement.pdf> [perma.cc/422N-5D9A]. IGAD is a regional organization aimed at increasing development and promoting economic and policy cooperation across East Africa. *About IGAD: Aims and Objectives*,

B. Comprehensive Peace Agreement and the Interim Period

The negotiations culminated in the Comprehensive Peace Agreement (CPA), signed by the Sudanese government and the SPLM/A on January 9, 2005.⁶¹ The CPA formalized the north-south divide by creating the nationwide Government of National Unity (GNU) and the semi-autonomous Government of Southern Sudan (GoSS).⁶² Under the agreement, the GNU and GoSS were to exist for an interim period of six years, with a six-month pre-interim period to establish the institutions necessary for both systems to operate as intended.⁶³ Following the six-year interim period, the people of southern Sudan would vote to either maintain the interim system as a united Sudan or secede.⁶⁴ Although the CPA provided this avenue for independence, it was designed to encourage unity.⁶⁵

At the end of the pre-interim period, SPLM/A leader Dr. John Garang was inaugurated as the President of Southern Sudan and the First Vice President of Sudan.⁶⁶ However, he died in a helicopter crash a mere three weeks later.⁶⁷ Salva Kiir Mayardit, who had

INTERGOV'TAL AUTH. ON DEV., <https://igad.int/about/> [<https://perma.cc/FSF2-8HH5>].

61. INT'L COMM'N OF JURISTS, *supra* note 2, at 9. The CPA was comprised of six protocols in total, which had been developed and signed individually since the ceasefire. Comprehensive Peace Agreement, *supra* note 60, at iii. Those protocols were as follows: Machakos Protocol (July 20, 2002), *id.* at 1, Power Sharing (May 26, 2004), *id.* at 9, Wealth Sharing (January 7, 2004), *id.* at 45, Resolution of the Abyei Conflict (May 26, 2004), *id.* at 63, Resolution of the Conflict in the Two States of Southern Kordofan and Blue Nile (May 26, 2004), *id.* at 71, and Security Arrangements (September 25, 2003), *id.* at 85. The CPA also contained two annexures on implementation of the agreement, both signed on December 31, 2004. *Id.* at 91, 135.

62. Ottaway & Hamzawy, *supra* note 60.

63. Comprehensive Peace Agreement, *supra* note 60, at 3–4.

64. *Id.* at 4.

65. *Id.* at xii (“THE PARTIES FURTHER ACKNOWLEDGE that the successful implementation of the CPA shall provide a model for good governance in the Sudan that will help create a solid basis to preserve peace and *make unity attractive . . .*”) (emphasis added).

66. INT'L COMM'N OF JURISTS, *supra* note 2, at 9; Comprehensive Peace Agreement, *supra* note 60, at 21 (“The current SPLM Chairman (or his successor) shall be the First Vice President and shall at the same time hold the posts of President of the Government of Southern Sudan (GOSS) and Commander-in-Chief of the Sudan People's Liberation Army (SPLA).”).

67. *The 74th Birthday Anniversary of Dr. John Garang – The Towering Legacy of Dr. John Garang De Maboor*, PAANLUEL WEL (June 23, 2019), <https://paanluelwel.com/2019/06/23/the-74th-birthday-anniversary-of-dr-john-garang-the-towering-legacy-of-dr-john-garang-de-maboor/>

defected alongside Garang in the 1980s to help form the SPLM/A,⁶⁸ became his successor.⁶⁹ Garang's dream of a united Sudan appeared to perish along with him; the GNU proved unwilling to overcome its biases and fully implement the CPA in a way that would have made unity an appealing option to southerners.⁷⁰ In light of the GNU's authoritarianism and refusal to engage and invest in actual power-sharing, the six years following the CPA became "simply a waiting period before the goal of independence could be achieved" rather than a genuine test run of the CPA's vision for unity.⁷¹ The continuation of conflict throughout the interim period, including a particularly brutal GNU crackdown in Darfur, heightened tensions further.⁷²

Unsurprisingly, during the week-long referendum in January 2011, almost 99% of registered southern voters opted for secession.⁷³ Sudanese President Omar Hassan al-Bashir, the United Nations, the African Union, the European Union, and various countries accepted the result the following month.⁷⁴ The newly named Republic of South Sudan officially became the world's youngest country on July 9,

[<https://perma.cc/GK8A-PW9H>]. Garang was and is widely considered a hero, and his death was consequently perceived as a devastating blow to the future of southern Sudan. *See, e.g., id.* (describing Dr. Garang as a "Moses of and to the suffering people of Southern Sudan and the marginalized regions of the Sudan"). In the immediate aftermath of his death, Suliman Baldo—International Crisis Group's Africa Program Director—stated that it had come at the "worst possible moment" and indicated that neither Kiir nor anyone else was prepared to handle the fallout. Esther Pan, *SUDAN: John Garang's Death*, COUNCIL ON FOREIGN RELS. (Aug. 2, 2005), <https://www.cfr.org/background/sudan-john-garangs-death> [<https://perma.cc/7RXT-3U2W>] ("No one is ready to cope with this situation. There are no fallback scenarios to go to.")

68. Amy McKenna, *Salva Kiir Mayardit*, BRITANNICA (Nov. 2, 2023), <https://www.britannica.com/biography/Salva-Kiir-Mayardit> [<https://perma.cc/9AW3-TYGE>].

69. INT'L COMM'N OF JURISTS, *supra* note 2, at 9.

70. *Id.*; *see also* Ottaway & Hamzawy, *supra* note 60 ("The signing of the agreement was due to skillful international mediation and diplomacy, rather than to a sincere change in the position of the two sides.")

71. Ottaway & Hamzawy, *supra* note 60. The CPA-mandated elections were delayed until 2010, undermining the possibility to test the power-sharing system imagined by the vision prior to the referendum. *Id.*

72. *Id.*; CONFLICT SENSITIVITY RES. FACILITY, *AIDING THE PEACE: REVISITING KEY LESSONS FROM THE CPA YEARS FOR INTERNATIONAL ENGAGEMENT IN SOUTH SUDAN* 4 (2023).

73. INT'L COMM'N OF JURISTS, *supra* note 2, at 10.

74. TED DAGNE, CONG. RSCH. SERV., R41900, *THE REPUBLIC OF SOUTH SUDAN: OPPORTUNITIES AND CHALLENGES FOR AFRICA'S NEWEST COUNTRY* 1 (2011).

2011,⁷⁵ with Kiir at its helm and Riek Machar Teny-Dhurgon—a senior SPLM/A official—as his deputy.⁷⁶

C. Post-Independence Era in South Sudan

Independence failed to resolve many of the major challenges facing South Sudan in 2011, regardless of the intentions and protections enshrined in the Transitional Constitution of the Republic of South Sudan (Transitional Constitution). In addition to lacking the resources and basic infrastructure to provide for and govern its population, South Sudan continued to experience violence and struggled to resolve outstanding issues with Sudan,⁷⁷ such as wealth sharing of the oil within South Sudan's territory.⁷⁸ Despite reconciliation efforts, the Congressional Research Service predicted in September 2011 that “political infighting within the ruling party” would likely erupt.⁷⁹

That prediction proved true. On July 23, 2013, Kiir fired Machar, along with many other top officials.⁸⁰ When Machar accused Kiir of leading like a dictator in December 2013, fighting broke out in Juba, and Kiir claimed Machar had attempted a coup.⁸¹ The country quickly descended into civil war.⁸² The fighting was largely defined along the lines of the country's two predominant ethnic groups, with Kiir's supporters being primarily Dinka, and Machar's being mainly Nuer.⁸³ The conflict escalated quickly in both brutality and scope, with armed groups targeting civilians of the opposing ethnicity and utilizing sexual violence and child soldiers.⁸⁴ In response, the U.N.

75. *Id.*

76. *Timeline: South Sudan Since Independence*, AL JAZEERA (Feb. 22, 2020) [hereinafter *Al Jazeera Timeline*], <https://www.aljazeera.com/news/2020/2/22/timeline-south-sudan-since-independence> [<https://perma.cc/AXE7-7D3X>].

77. DAGNE, *supra* note 74, at 1–2.

78. *Al Jazeera Timeline*, *supra* note 76 (describing clashes between Sudanese and South Sudanese forces regarding oil).

79. DAGNE, *supra* note 74, at 2–3.

80. *Al Jazeera Timeline*, *supra* note 76.

81. *Id.*

82. *Id.* (detailing that Machar's criticism of Kiir, Kiir's claim of a coup, and the escalation of violence into war all happened in December 2013).

83. *Id.*

84. Ctr. for Preventative Action, *Instability in South Sudan*, CFR GLOB. CONFLICT TRACKER, <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan> [<https://perma.cc/TP4S-8J99>] (last updated July 11, 2024) (“From the outbreak of conflict, armed groups targeted civilians along ethnic

Security Council mandated the rapid deployment of a 6,000-person security force to support the existing 7,600 peacekeepers there to assist development; in May 2014, the Security Council updated the security force's mandate to protect civilians—with force if necessary.⁸⁵

In 2015, under immense international pressure, Kiir signed a peace agreement negotiated with the assistance of IGAD, which facilitated Machar's return to the vice presidency in April 2016.⁸⁶ Violence resumed almost immediately, resulting in further destruction, multiple ceasefire negotiations, and Machar's flight from the country and eventual arrest in South Africa.⁸⁷ In August 2018, formal negotiations between Kiir and Machar in Uganda and Sudan led them to sign the Khartoum Declaration of Agreement.⁸⁸ The Khartoum Declaration established a ceasefire and committed both parties to further negotiations in pursuit of a power-sharing agreement.⁸⁹

The result was the Revitalised Agreement on the Resolution of the Conflict in South Sudan (otherwise known as the Revitalised Peace Agreement, or RPA), which largely mirrored the 2015 agreement. The RPA recommitted the parties to establishing “the foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law” and expressed regret for the “scale of untold human suffering” that had occurred “as a result of disregarding this commitment.”⁹⁰ By the time the parties signed the RPA in September 2018, over 380,000 people had died and around four million had been displaced due to the civil war.⁹¹ Both sides committed abuses that rose to the level of war crimes and crimes against humanity, involving “indiscriminate attacks against civilians including aid workers, unlawful killings, beatings, arbitrary detentions, torture, sexual violence, recruitment and use of child soldiers, looting and destruction of civilian

lines, committed rape and sexual violence, destroyed property, looted villages, and recruited children into their ranks.”).

85. *Id.*; see S.C. Res. 2155, ¶ 4 (May 27, 2014) (authorizing the U.N. Mission in South Sudan to employ “all necessary means” to protect civilians).

86. Ctr. for Preventative Action, *supra* note 84.

87. *Id.*

88. *Id.*

89. *Id.*

90. 2018 Revitalised Agreement pmb., *supra* note 23.

91. *Al Jazeera Timeline*, *supra* note 76.

property.”⁹² Additionally, the conflict generated the “worst [food crisis] in the world,” causing devastating food shortages for millions of people from the start of the conflict to the present day.⁹³

In response to these dire circumstances, Chapter V of the RPA is dedicated to “Transitional Justice, Accountability, Reconciliation and Healing.”⁹⁴ The chapter commits the South Sudanese government to three transitional justice mechanisms: (1) the Commission for Truth, Reconciliation and Healing, (2) the Hybrid Court for South Sudan, and (3) the Compensation and Reparation Authority.⁹⁵ Described in more detail in Part II,⁹⁶ the drafters intended the three mechanisms to “independently promote the common objective of facilitating truth, reconciliation and healing, compensation and reparation in South Sudan.”⁹⁷

Since its signing, the implementation of the RPA has faced extreme delays. After multiple extensions, Machar was finally installed as vice president of the transitional government on February 22, 2020.⁹⁸ Ongoing differences have resulted in continuing negotiations and the delay of elections, which are now scheduled for December 2026.⁹⁹ Key portions of the agreement have not been

92. *South Sudan: Events of 2018*, HUM. RTS. WATCH (2019), <https://www.hrw.org/world-report/2019/country-chapters/south-sudan> [<https://perma.cc/3Y2K-6K5A>].

93. Ctr. for Preventative Action, *supra* note 84 (quoting *South Sudan’s Food Crisis ‘Worst in the World’ – UN*, BBC (July 26, 2014), <https://www.bbc.com/news/world-africa-28502260>); *see also* *South Sudan Emergency*, WORLD FOOD PROGRAMME, <https://www.wfp.org/emergencies/south-sudan-emergency> [<https://perma.cc/F3Q9-MVQ7>] (reporting that over seven million people are food insecure and more than one and a half million children are malnourished due to the conflict and unprecedented natural disasters); *Over Half of South Sudan’s Population Faces Acute Hunger Crisis*, UN NEWS (Apr. 28, 2026), <https://news.un.org/en/story/2026/04/1167402> [<https://perma.cc/B9WS-7D2U>] (reporting that “[h]unger is pushing 56 per cent of South Sudan’s population into high levels of acute food insecurity” and that “[a]mong those projected to face acute food insecurity, 73,300 people are facing catastrophic levels (Phase 5), the most severe level under the internationally-backed alert system”).

94. 2018 Revitalised Agreement ch. V, *supra* note 23.

95. *Id.* § 5.1.1.

96. *See infra* Section II.D (discussing the proposed transitional justice model for South Sudan).

97. 2018 Revitalised Agreement § 5.1.3, *supra* note 23.

98. *Al Jazeera Timeline*, *supra* note 76.

99. *South Sudan Postpones December Election by Two Years*, AL JAZEERA (Sept. 14, 2024) <https://www.aljazeera.com/news/2024/9/14/south-sudan-postpones-december-election-by-two-years> [<https://perma.cc/V2QN-RUYQ>] (reporting the second two-year delay in presidential elections); Press Release,

realized, including security sector reforms and the creation of a permanent constitution,¹⁰⁰ as well as the implementation of the three transitional justice mechanisms.¹⁰¹ Deadly violence persists throughout the country—killing an estimated 2,240 people in 2022, for example—and is compounded by various humanitarian crises.¹⁰² As exemplified by the abuses against Dong Samuel Luak and Aggrey Idri,¹⁰³ the government itself has harshly repressed opposition voices and severely restricted the space for civil society.¹⁰⁴ These conditions have raised serious doubts about the world's youngest country's capacity to maintain and bolster its fragile peace.

II. RULE OF LAW AND TRANSITIONAL JUSTICE: VICTIMS OF THE SOUTH SUDANESE JUDICIARY AND NATIONAL SECURITY SERVICE

The horrific conditions in South Sudan urgently beg the question of how systemic failures have facilitated instability, and

Security Council, South Sudan Recommits to Revitalized Peace Agreement with 24-Month Extension, Security Council Emphasizes, Urging Country to Avoid Further Delays, U.N. Press Release SC/15219 (Mar. 6, 2023) (announcing the first two-year delay in presidential elections); Ctr. for Preventative Action, *supra* note 84 (describing overall delays and setbacks in the transitional process).

100. Sam Mednick, *South Sudan's Sluggish Peace Deal and Unsteady Road to Elections*, A.P. NEWS (June 13, 2023), <https://apnews.com/article/south-sudan-elections-civil-war-peace-process-db6d7f4c620de2f12fcfedbb1966d241> [<https://perma.cc/T8T3-56JX>].

101. Tigere Chagutah, Opinion, *South Sudanese's Justice Is Delayed, Denied for Decades*, NATION (Dec. 15, 2023), <https://nation.africa/kenya/blogs-opinion/blogs/south-sudanese-s-justice-is-delayed-denied-for-decade-4464402> [<https://perma.cc/8PZW-CLBG>]; *see also* Press Release, Off. of the High Comm'r for Hum. Rts., South Sudan's Fragile Peace Prospects Rest on Addressing the Impunity and Corruption that Drive Human Rights Violations, Experts Tell General Assembly (Oct. 30, 2024), <https://www.ohchr.org/en/press-releases/2024/10/south-sudans-fragile-peace-prospects-rest-addressing-impunity-and-corruption> [<https://perma.cc/4FM2-HLHT>] (reporting that the U.N. Commission on Human Rights in South Sudan had expressed concern over the state's failure to implement transitional justice measures, which it felt "contribute[d] to the ongoing armed violence, conflict, displacement and human misery present across the country").

102. Mednick, *supra* note 100.

103. *See supra* text accompanying notes 12–17 (discussing the abduction and execution of Dong Samuel Luak and Aggrey Idri at the hands of government forces).

104. Press Release, Off. of the High Comm'r for Human Rights, South Sudan: UN Inquiry's Report Finds that Entrenched Repression Imperils Prospects for Peace, Human Rights and Credible Election (Oct. 5, 2023), <https://www.ohchr.org/en/press-releases/2023/10/south-sudan-un-inquirys-report-finds-entrenched-repression-imperils> [<https://perma.cc/XWL6-8DZY>].

what can be done to attain sustainable peace and much-needed transitional justice. The answers to both questions are closely intertwined with the rule of law in the country. In setting up this analysis, it is important to understand what these concepts mean.

Definitions of the rule of law vary across different areas of scholarship and practice,¹⁰⁵ and should be guided by cultural context.¹⁰⁶ Nevertheless, there appears to be a universal understanding that the rule of law requires all actors, both governmental and non-governmental, to be “accountable to the law.”¹⁰⁷ The U.N. system operates on an understanding of the rule of law as a “principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”¹⁰⁸ To be effective, this principle is thought to require “supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.”¹⁰⁹ Given that this Note draws heavily on U.N. reporting, it will rely on this definition when discussing rule of law in South Sudan.

105. See, e.g., U.N. Doc. S/2004/616, *supra* note 20, ¶ 5 (explaining that there is a “multiplicity of definitions and understandings” of concepts such as rule of law).

106. See, e.g., Makau Mutua, *Africa and the Rule of Law*, 13 SUR 159, 170 (2016) (arguing that “core norms” of rule of law are necessary for nations’ stability and development but emphasizing that these “core norms must grapple with Africa’s unique history and be adopted to its historical circumstances to achieve cultural legitimacy”).

107. LEANNE MCKAY, U.S. INST. FOR PEACE, TOWARD A RULE OF LAW CULTURE: EXPLORING EFFECTIVE RESPONSES TO JUSTICE AND SECURITY CHALLENGES 12 (Adewale Ajadi & Vivienne O’Connor eds., 2015), <https://www.usip.org/publications/2015/12/toward-rule-law-culture> [<https://perma.cc/LWF6-2Q4J>].

108. *What Is the Rule of Law*, U.N. & THE RULE OF LAW [hereinafter U.N. & THE RULE OF LAW], <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> [<https://perma.cc/7SH5-3ZQ3>].

109. *Id.*; see also *What Is the Rule of Law?*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/about-us/overview/what-rule-law> [<https://perma.cc/P82X-GNKX>] (defining rule of law as a “durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability, just law, open government, and accessible and impartial justice”).

Transitional justice similarly has many definitions.¹¹⁰ However, the U.N. Secretary-General has defined it as the “full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”¹¹¹ In the transitional justice context, abuses are classically considered to be serious violations of human rights and international humanitarian law committed in times of authoritarian rule or conflict.¹¹² To be effective, it is important that any transitional justice process is “context-specific, nationally owned, and focused on the needs of victims.”¹¹³

One common framework for understanding the different instruments and goals of transitional justice is by pillars. The four traditional pillars are truth, justice, reparation, and guarantees of non-recurrence;¹¹⁴ experts have more recently recognized

110. U.N. Doc. S/2004/616, *supra* note 20, ¶ 5 (explaining that there is a “multiplicity of definitions and understandings” of concepts such as transitional justice).

111. *Id.* ¶ 8. The African Union similarly described transitional justice in its 2019 Transitional Justice Policy, stating that it “refers to the various (formal or non-formal) policy measures and institutional mechanisms that societies, through inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.” AFR. UNION, TRANSITIONAL JUSTICE POLICY ¶ 18 (Feb. 2019), https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf [<https://perma.cc/Y33R-XD3C>]. The policy goes on to state that transitional justice is “meant to assist societies with legacies of violent conflicts and systemic or gross violations of human and peoples’ rights in their efforts to achieve transition to the future of justice, equality, and dignity.” *Id.*

112. *About the Mandate: Special Rapporteur on Truth, Justice and Reparation*, OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/special-procedures/sr-truth-justice-reparation-and-non-recurrence/about-mandate> [<https://perma.cc/4Z3J-Q945>].

113. *Transitional Justice and Human Rights*, OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/transitional-justice> [<https://perma.cc/DB4V-6E9N>]; see also Human Rights Council Res. 51/23, U.N. Doc. A/HRC/RES/51/23, at 4 (Oct. 12, 2022) (“*Acknowledging also that the potential of transitional justice to sustain peace and to foster sustainable development depends on the degree to which transitional justice processes are context-specific, comprehensive, victim-centred, gender-sensitive, participatory and nationally owned[.]*”).

114. *What Is Transitional Justice?*, TRIAL INT’L, <https://trialinternational.org/topics-post/transitional-justice/> [<https://perma.cc/RF6J-TD4F>]. The language around these four pillars sometimes varies. For example, in a 2022 report intended to guide U.N. policy, transitional justice expert Priscilla Hayner stated that the “four classic pillars of transitional

memorialization as a fifth pillar.¹¹⁵ The first pillar, truth, involves promoting social unity and reconciliation by establishing a record of what happened and why it happened.¹¹⁶ The second pillar, justice, is dedicated to attaining accountability for grave human rights violations, generally through the prosecution of perpetrators.¹¹⁷ The third pillar, reparation, seeks to make victims whole through a variety of methods, including but not limited to monetary compensation, public apologies, and government support programs.¹¹⁸ The fourth pillar, guarantees of non-recurrence, aims to prevent the repetition of violence and other human rights violations, primarily through the implementation of institutional reforms.¹¹⁹ Finally, the fifth pillar, memorialization, acknowledges past harms and recognizes victims, their equal rights, and their unique identities, cultures, and histories; it can be pursued through a range of methods, from public monuments to art exhibits to school curriculum.¹²⁰

As the South Sudanese context lays bare, these two concepts have a close relationship. Rule of law is key to the effective implementation of transitional justice,¹²¹ as well as to sustained

justice are criminal prosecutions, truth seeking, reparations and various forms of reform and prevention, sometimes referred to as guarantees of non-repetition.” PRISCILLA HAYNER, TRANSITIONAL JUSTICE IN PEACE PROCESSES: UNITED NATIONS POLICY AND CHALLENGES IN PRACTICE 5 n.1 (2022). This Note will be using the labels identified in the text.

115. For example, Fabián Salvioli, in his capacity as the United Nations’ top expert on transitional justice issues, presented memorialization as the fifth pillar of transitional justice in his 2020 annual report to the Human Rights Council. U.N. Doc. A/HRC/45/45, *supra* note 25, ¶ 21. Others in the transitional justice field have since mirrored this language. *See, e.g.*, Tine Destrooper & Gretel Mejía Bonifazi, *Memorialization in Transitional Justice Contexts: Interactions Between Local Practices and International Standards in Guatemala*, JUST. VISIONS (Aug. 30, 2024), <https://justicevisions.org/research/memorialization-in-transitional-justice-contexts-interactions-between-local-practices-and-international-standards-in-guatemala/> [<https://perma.cc/LVM8-DQN4>] (“Memorialization is an important element of [transitional justice], and was recently labelled the fifth pillar . . . due to its alleged potential to further peace, rule of law and respect for human rights.”).

116. TRIAL INT’L, *supra* note 114.

117. *Id.*

118. *Id.*

119. *Id.*

120. U.N. Doc. A/HRC/45/45, *supra* note 25, ¶¶ 32, 60.

121. MCKAY, *supra* note 107, at 28; see generally U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, U.N. Doc. S/2011/634 (Oct. 12, 2011) (describing the close and important relationship between rule of law and transitional justice).

peace and the protection of human rights generally.¹²² Relevant scholarship emphasizes this claim, but a primary challenge in international work and interventions is that practitioners frequently fail to tie efforts to strengthen the rule of law to transitional justice and peacebuilding.¹²³ Colette Rausch—an expert on legal and security reforms—lamented in a 2015 report that “transitional justice is often looked at as a silo of activities separate from the justice and security sector” with “rule of law people in one camp, justice people in another, security people in their camp and then transitional justice people in their own camp, too.”¹²⁴

This Part will argue that this separation between transitional justice and the rule of law is one of the fatal flaws in the current efforts to establish effective transitional justice mechanisms and build lasting peace in South Sudan. It will begin by assessing the current state of South Sudan’s rule of law. Although the South Sudanese government has committed itself to a wide array of human rights protections on paper, it has actively undermined them. Drawing on the methods of its Sudanese predecessor, the South Sudanese executive has disempowered the judiciary and weaponized the national security sector against the opposition, destroying rule of law in the country. This Part will analyze the harms flowing from these decisions and argue that the conditions they create render the RPA transitional justice mechanisms both impracticable and insufficient to address existing and potential human rights violations.

A. South Sudan’s Domestic and International Human Rights Obligations and the Evolution of its Judiciary

Even as an interim government, southern Sudan purported to respect and prioritize rights. In the Power Sharing Protocol of the CPA, the northern and southern governments committed themselves to the “[p]ursuit of good governance, accountability, transparency, democracy, and the rule of law.”¹²⁵ Within this Protocol, the CPA laid out a series of protected human rights, including fair trial rights and legal equality.¹²⁶ The 2005 Interim Constitution of Southern Sudan (Interim Constitution) operationalized and elaborated on the CPA’s

122. U.N. & THE RULE OF LAW, *supra* note 108.

123. MCKAY, *supra* note 107, at 28.

124. *Id.*

125. Comprehensive Peace Agreement, *supra* note 60, at 12.

126. *Id.* at 14–17.

vision and promises. It contained a detailed Bill of Rights,¹²⁷ and established several independent, issue-specific commissions to monitor, investigate, and combat violations of GoSS' central objectives. These commissions included the Anti-Corruption Commission¹²⁸ and the Southern Sudan Human Rights Commission,¹²⁹ both of which were intended to protect the rule of law. The Transitional Constitution, which came into force after independence, preserved these protections. Notably, the Bill of Rights,¹³⁰ Anti-Corruption Commission,¹³¹ and Human Rights Commission remained virtually identical.¹³²

South Sudan is also subject to number of international and regional human rights obligations. It became a member of the United Nations shortly after gaining independence,¹³³ but it did not officially accede to either of two major international human rights treaties—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—until February 2024.¹³⁴ It had previously acceded to the Convention Against Torture and its Optional Protocol, the Convention on the Elimination of Discrimination Against Women, and the Convention on the Rights of the Child and its two Optional Protocols.¹³⁵ Regionally, South Sudan is a member of the African Union,¹³⁶ as well as IGAD.¹³⁷ It has signed and ratified the African

127. CONST. OF SOUTHERN SUDAN (Interim) July 6, 2005, arts. 13–37 (Sudan).

128. *Id.* arts. 147–48.

129. *Id.* arts. 149–50.

130. CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, arts. 9–34 (S. Sudan) (protecting life, dignity, personal liberty, equality before the law, family rights, women' rights, children's rights, fair trial rights, litigation rights, privacy, religious rights, freedom of expression and media, freedom of assembly and association, political participation, voting rights, freedom of movement and residence, property rights, education rights, disability rights, rights for the elderly, rights to health, access to information, collective rights, and the right to housing (the only right that was previously not mentioned), while prohibiting slavery and torture and restricting the death penalty).

131. *Id.* arts. 143–44.

132. *Id.* arts. 145–46.

133. INT'L COMM'N OF JURISTS, *supra* note 2, at 3.

134. *Ratification Status for South Sudan*, OFF. OF THE HIGH COMM'R FOR HUM. RTS., https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en [<https://perma.cc/Z6FB-GGM9>].

135. *Id.*

136. Press Release, Afr. Union, African Union Welcomes South Sudan as the 54th Member State of the Union (July 27, 2011), <https://au.int/en/pressreleases/20110727-1> [<https://perma.cc/77RU-WSVU>].

Charter on Human and People's Rights,¹³⁸ as well as the related protocol on women's rights.¹³⁹ South Sudan has additionally signed the African Charter on the Rights and Welfare of the Child,¹⁴⁰ the A.U. Convention on Preventing and Combatting Corruption,¹⁴¹ and the protocols on the establishment and statute of the African Court of Justice and Human Rights.¹⁴²

As outlined in its foundational documents, the South Sudanese judiciary shows promise in its ability and intention to uphold these various rights-related commitments. The South Sudanese judicial system began to evolve away from the Sudanese

137. *About IGAD: Introduction*, INTERGOV'TAL AUTH. ON DEV., <https://igad.int/about/> [<https://perma.cc/E5BF-9J85>].

138. Afr. Union, *List of Countries Which Have Signed, Ratified/Acceded to the African Charter on Human and People's Rights* (June 15, 2017), https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf [<https://perma.cc/9XG7-2URJ>].

139. Afr. Union, *List of Countries Which Have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* (Sept. 19, 2023), https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_WOMEN_IN_AFRICA.pdf [<https://perma.cc/X8DC-N83T>].

140. *List of Countries Which Have Signed, Ratified/Acceded to the African Charter on the Rights and Welfare of the Child*, AFR. UNION (Feb. 14, 2023), https://au.int/sites/default/files/treaties/36804-sl-AFRICAN_CHARTER_ON_THE_RIGHTS_AND_WELFARE_OF_THE_CHILD.pdf [<https://perma.cc/U3N9-WXXM>].

141. *List of Countries Which Have Signed, Ratified/Acceded to the African Union Convention on Preventing and Combatting Corruption*, AFR. UNION (Feb. 14, 2023), https://au.int/sites/default/files/treaties/36382-sl-AFRICAN_UNION_CONVENTION_ON_PREVENTING_AND_COMBATING_CORRUPTION.pdf [<https://perma.cc/MKX9-PLDG>].

142. *List of Countries Which Have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights*, AFR. UNION (Feb. 14, 2023), https://au.int/sites/default/files/treaties/36393-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLESRIGHTS_ON_THE_ESTABLISHMENT_OF_AN_AFRICAN_COURT_ON_HUMAN_AND_PEOPLES_RIGHTS_0.pdf [<https://perma.cc/27NE-V77N>]; *List of Countries Which Have Signed, Ratified/Acceded to the Protocol on the Statute of the African Court of Justice and Human Rights*, AFR. UNION (June 18, 2020), <https://au.int/sites/default/files/treaties/36396-sl-PROTOCOL%20ON%20THE%20STATUTE%20OF%20THE%20AFRICAN%20COURT%20OF%20JUSTICE%20AND%20HUMAN%20RIGHTS.pdf> [<https://perma.cc/BCD8-VPQM>].

system under the CPA. During that time, GNU laws applied across the country; national-level courts also still held jurisdiction over northern and southern states and featured representation from both.¹⁴³ However, the CPA created a GoSS-specific court system with jurisdiction extending to matters involving the southern constitution, laws, and government officials.¹⁴⁴ The CPA also laid out a framework for resolving conflicts between GoSS and GNU laws, which required balancing Sudanese sovereignty, southern autonomy, and the promotion and protection of human rights, among other factors.¹⁴⁵

The Interim Constitution,¹⁴⁶ which implemented the CPA, set guidelines for the composition, mandate, and function of an independent judiciary comprised of a Supreme Court of Southern Sudan, Courts of Appeal, High Courts (state-level), and county courts,

143. Comprehensive Peace Agreement, *supra* note 60, at 28–30.

144. *Id.* at 34–35, 40–41 (listing the matters over which the GoSS had control under Schedule B).

145. *Id.* at 44 (detailing the balancing process for conflicting laws in Schedule F).

146. Both the Interim and Transitional Constitution also recognized customary law, which could be invoked before courts and traditional authorities. CONST. OF SOUTHERN SUDAN (Interim) July 6, 2005, arts. 174–75 (Sudan); CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, arts. 167–68 (S. Sudan). However, these documents failed to articulate standards of implementation and oversight for customary law, as well as its relationship to statutory law. The GoSS passed the Local Government Act in 2009, which sought to clarify the role of customary law courts. INT'L COMM'N OF JURISTS, *supra* note 2, at 23. However, the lack of clarity over the function and oversight of customary law, which is predominantly used in the adjudication of both criminal and civil cases, has resulted in confusion, corruption, and the over-extension of power, including the unlawful application of a death sentence in at least one instance. INT'L COMM'N OF JURISTS, *supra* note 2, at 23–24; *South Sudan's Judicial Reform Committee Heralds Hope for the Justice Sector*, U.N. DEV. PROGRAMME (Aug. 30, 2022), <https://www.undp.org/south-sudan/blog/south-sudans-judicial-reform-committee-heralds-hope-justice-sector> [<https://perma.cc/V9JT-NNNM>] (stating that legal problems are “resolved mainly through traditional systems”). Due to space constraints and the breadth of separate customary law theories that could be explored, this Note does not attempt to substantively engage with rule of law challenges posed by the customary law regime within South Sudan, nor does it examine the transitional justice potential of customary law in the country. Nevertheless, transitional justice models incorporating customary law “show[] real promise in addressing the challenges that arise when confronting the legacies of past human rights abuses and atrocities,” and the specific application of such models in South Sudan deserves to be explored. Joanna Quinn, *The Prospects for Customary Law in Transitional Justice: The Case of Fiji*, 36 WINDSOR Y.B. ACCESS TO JUST. 249, 249 (2019).

as well as lower-level judicial bodies as established by law.¹⁴⁷ During the interim period, the GoSS passed the 2008 Judiciary Act, which clarified the structure, function, composition, and administration of this system,¹⁴⁸ as well as provided for oversight bodies to ensure the system's effectiveness and independence.¹⁴⁹

Beyond the removal of interim provisions and the integration of matters previously handled by the GNU, such as foreign policy, the Transitional Constitution featured few substantive updates from the Interim Constitution.¹⁵⁰ Laws passed in the interim period, such as the Judiciary Act, remained in place following independence,¹⁵¹ although some portions of those laws were incorporated directly into the Transitional Constitution.¹⁵² Accordingly, the structure of the judicial system remains roughly the same as before 2011.¹⁵³ The Transitional Constitution did, however, expand measures to protect

147. CONST. OF SOUTHERN SUDAN (Interim) July 6, 2005, arts. 44–49 (Sudan).

148. Judiciary Act, 2008 (S. Sudan).

149. *See, e.g.*, National Judicial Service Commission Act, 2005, §§ 4–5 (S. Sudan) (establishing the National Judicial Service Commission with the duty to “undertake the overall management of the National Judiciary”); Judicial Service Council Act, 2008, §§ 6–8 (S. Sudan) (establishing the Judicial Service Council and giving it broad powers over national judicial policies).

150. *Compare* CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011 (S. Sudan) (maintaining most of the Interim Constitution's provisions but incorporating certain government functions and roles that had previously been handled by the Sudanese national government, such as foreign policy and declaration of war), *with* CONST. OF SOUTHERN SUDAN (Interim) July 6, 2005 (Sudan) (excluding certain government functions and roles handled by the Sudanese national government).

151. CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, art. 200 (S. Sudan).

152. For example, the Transitional Constitution incorporated the National Judicial Service Commission as a constitutionally recognized body. *Id.* at art. 132. As noted above, the Commission had previously been written into law in the National Judicial Service Commission Act in 2005, *supra* note 149.

153. Notably, the Transitional Constitution was not intended to be permanent. Its last two articles provide for a National Constitutional Review Commission and National Constitutional Conference, respectively. CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, arts. 202–03 (S. Sudan). The Commission, which was to be established within a period of six months, was tasked with reviewing and updating the Transitional Constitution in accordance with the views of relevant stakeholders across the country. *Id.* art. 202. Once a draft was submitted, the conference would be held for such stakeholders to directly review and vote on the draft text. *Id.* art. 203. However, a permanent constitution has not been adopted, despite amendments extending the Commission's mandate through 2014. Transitional Constitution of South Sudan, 2011 (Amendment) Act, 2013, § 3 (S. Sudan).

judicial independence by making the judiciary's finances subject to public audits and creating the National Judicial Service Commission as a constitutional body.¹⁵⁴

These various protections for the rule of law reflect positively on the South Sudanese judiciary's character and capacity to live up to its human rights obligations. However, the same foundational documents contain several small clauses that have disrupted judicial independence and facilitated South Sudan's abysmal human rights record. Notably, the 2008 Judiciary Act mandated that the head of the Supreme Court answer to the President,¹⁵⁵ permitting the executive to exert influence over the country's highest court. The Transitional Constitution preserved and broadened this dynamic. It featured enlarged sections on declarations of war and states of emergency,¹⁵⁶ as well as on the role of the national security agencies,¹⁵⁷ which are "directly accountable to the President."¹⁵⁸ Each of these sections emphasized that the executive must respect the rule of law and refrain from derogating from relevant rights;¹⁵⁹ yet, as detailed further in the following sections, this obligation has been ignored entirely.¹⁶⁰

Although South Sudan's judicial system today bears several marked differences from its Sudanese roots,¹⁶¹ these judicial

154. CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, art. 124 (S. Sudan).

155. Ajo Noel Julious K., Opinion, *The Mythos of Judicial Independence in South Sudan*, SUDAN TRIB. (June 29, 2015), <https://sudantribune.com/article54033/> [<https://perma.cc/F39R-CK4F>]. It is worth noting that the 2008 Judiciary Act also makes the top state court officials answerable to their respective state governor. *Id.*

156. CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, arts. 189–92 (S. Sudan).

157. *Id.* arts. 159–61.

158. *Id.* art. 160(3).

159. *Id.* arts. 190(a), 159(c).

160. *See infra* Sections II.B–C (analyzing issues relating to rule of law arising from the judiciary and the National Security Service, respectively).

161. Under Sudan's 1998 Constitution, Islamic law was listed as the first source of law, with Arabic as the only official language. CONST. OF THE REPUBLIC OF SUDAN July 1, 1998, arts. 65, 3 (Sudan). South Sudan's Interim Constitution discarded Islamic law and adopted English as an official working language of the government. CONST. OF SOUTHERN SUDAN (Interim) July 6, 2005, art. 8 (Sudan). The Transitional Constitution preserved these changes, eliminating Arabic entirely. CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, art. 6 (S. Sudan). South Sudan also abandoned some of the inquisitorial models of customary law in favor of a more adversarial, common law system. INT'L COMM'N OF JURISTS, *supra* note 2, at 3.

independence concerns—namely, the direct accountability of the Supreme Court to the President and the broad powers of the national security institutions—have been inherited from the Sudanese system.¹⁶² As detailed below, despite the codified safeguards, these problematic similarities are amplified in practice. Paired with extreme underinvestment in the judicial system, they have proven fatal to the rule of law in South Sudan.

B. The Judiciary in Practice: A Rule of Law Desert

In practice, Kiir's government has undermined rule of law both by weakening the judiciary's power and overexerting its own. The result has been devastating. Freedom House has considered the rule of law effectively non-existent in South Sudan since at least 2017.¹⁶³ Echoing this assessment, in a 2023 report, the U.N. Commission on Human Rights in South Sudan noted that within the

162. CONST. OF THE REPUBLIC OF SUDAN July 1, 1998, art. 100 (Sudan) ("The Judiciary shall be responsible for the performance of its work before the President of the Republic.")

163. In its 2025 report, Freedom House gave South Sudan a 0/4 score in all categories under rule of law: judicial independence, due process, legitimate use of force, and equal treatment of all members of the population. *Freedom in the World 2025: South Sudan*, FREEDOM HOUSE (2025), <https://freedomhouse.org/country/south-sudan/freedom-world/2025> [<https://perma.cc/X7NM-E379>] (discussing the events of 2024). See also *Freedom in the World 2024: South Sudan*, FREEDOM HOUSE (2024) [hereinafter *Freedom in the World 2024*], <https://freedomhouse.org/country/south-sudan/freedom-world/2024> [<https://perma.cc/3GGZ-T3WX>] (discussing the events of 2023); *Freedom in the World 2023*, *supra* note 19 (discussing the events of 2022); *Freedom in the World 2022: South Sudan*, FREEDOM HOUSE (2022), <https://freedomhouse.org/country/south-sudan/freedom-world/2022> [<https://perma.cc/4YVE-XSUZ>] (discussing the events of 2021); *Freedom in the World 2021: South Sudan*, FREEDOM HOUSE (2021), <https://freedomhouse.org/country/south-sudan/freedom-world/2021> [<https://perma.cc/6HCU-EACC>] (discussing the events of 2020); *Freedom in the World 2020: South Sudan*, FREEDOM HOUSE (2020), <https://freedomhouse.org/country/south-sudan/freedom-world/2020> [<https://perma.cc/TMU3-88X6>] (discussing the events of 2019); *Freedom in the World 2019: South Sudan*, FREEDOM HOUSE (2019), <https://freedomhouse.org/country/south-sudan/freedom-world/2019> [<https://perma.cc/H3UT-Z4WV>] (discussing the events of 2018); *Freedom in the World 2018: South Sudan*, FREEDOM HOUSE (2018), <https://freedomhouse.org/country/south-sudan/freedom-world/2018> [<https://perma.cc/8WT5-XKUP>] (discussing the events of 2017).

country, the rule of law is “conspicuous only by its near total absence.”¹⁶⁴

Many of the issues with the rule of law stem from how the government translates—or, more accurately, fails to translate—its judicial obligations into practice. Kiir’s government has effectively rendered the judiciary unable to uphold the positive powers and safeguards enshrined in the law by refusing to allocate the resources necessary to develop and operate the country’s judicial infrastructure.¹⁶⁵ When the International Commission of Jurists released a report assessing the rule of law in 2013, it found that only 124 judges were operating across the entirety of South Sudan, leaving substantial segments of the country without access to the judicial system, let alone justice.¹⁶⁶ Where people did have access to judicial institutions, the report stated, the over-capacitated and under-resourced nature of those institutions created long delays that undermined their legitimacy.¹⁶⁷ This problem has persisted, with Freedom House reporting a “severe shortage of judges” compounded by low pay and poor working conditions in 2023.¹⁶⁸ Inadequate

164. Comm’n on Hum. Rts. in S. Sudan, *Entrenched Repression: Systematic Curtailment of the Democratic and Civic Space in South Sudan*, ¶ 190, U.N. Doc. A/HRC/54/CRP.6 (Oct. 5, 2023) [hereinafter *Entrenched Repression*].

165. See *Freedom in the World 2024*, *supra* note 163 (“There is a severe shortage of judges, partly due to poor pay and working conditions.”); U.S. DEP’T OF STATE, 2022 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SOUTH SUDAN 11 (2023) (“While the law requires the government to maintain courts at federal, state, and county levels, lack of infrastructure and trained personnel made this impossible, and few statutory courts existed below the state level.”).

166. INT’L COMM’N OF JURISTS, *supra* note 2, at 4. To provide some perspective on this number, the country of Belgium has a similar population to South Sudan with an estimated 11,745,540 inhabitants as of November 2024. *Belgium Population*, WORLDOMETER (2024), <https://www.worldometers.info/world-population/belgium-population/> [<https://perma.cc/2F7S-ZYT9>]; see also *South Sudan Population*, WORLDOMETER (2024), <https://www.worldometers.info/world-population/south-sudan-population/> [<https://perma.cc/7A4B-A79Q>] (estimating the population of South Sudan as 11,943,408 as of 2024). Belgium, however, has 1,669 professional judge roles according to 2021 data, which places them well below the median number of judges per 100,000 inhabitants for the European Union generally. COUNCIL OF EUR., BELGIUM JUDICIARY AT A GLANCE 5 (2021), <https://rm.coe.int/belgium-2021-data-/1680ab89af> [<https://perma.cc/K9Z2-QJBM>] (listing 14.4 judges per 100,000 inhabitants in Belgium as opposed to 24.1 judges as the E.U. median for 2021).

167. INT’L COMM’N OF JURISTS, *supra* note 2, at 4 (discussing the judiciary’s “shortage of human and financial resources” and describing it as “overstretched”).

168. *Freedom in the World 2023*, *supra* note 19 (“There is a severe shortage of judges, partly due to poor pay and working conditions.”); see also *Judicial Committee Finds Strong Public Support for Reforms*, RADIO TAMAZUJ (Oct. 24,

resources have also undermined other relevant government bodies, such as the Human Rights Commission, decreasing oversight of the judiciary.¹⁶⁹

Given South Sudan's infancy, instability, and poor economic state, it is unsurprising that it has struggled to properly resource and provide adequate infrastructure for the judicial system, as described above. These realities acknowledged, however, the current state of the judicial system is not a result of simple lack of capacity or failure to act in the face of crisis conditions.¹⁷⁰ On the contrary, the South Sudanese government has made concerted efforts to undermine judicial independence—both through intentional underfunding and more overt forms of interference.¹⁷¹ South Sudan's executive, along

2024) [hereinafter *Judicial Committee Finds*], <https://www.radiotamazuj.org/en/news/article/judicial-committee-finds-strong-public-support-for-reforms> [<https://perma.cc/7YRD-ZZ4U>] (describing similar findings in 2024, as well as underrepresentation of women in the judiciary).

169. See INT'L COMM'N OF JURISTS, *supra* note 2, at 19–20 (describing the resources of the Human Rights Commission as “drastically reduced” due to budget cuts, which has impacted its ability to conduct investigations into gross human rights violations).

170. It is worth noting that States must always protect human rights regardless of their socioeconomic condition, so even if that were the sole source of its challenges, South Sudan would not be absolved of its failure to maintain an independent, operational judiciary. Even on matters regarding economic, social, and cultural rights—which necessarily relate to a country's resources and infrastructure—States are legally obligated to protect those rights and take steps to fulfill them *regardless of their developmental status*, though that status may permit them more flexibility in how they pursue fulfillment over time. See, e.g., U.N. Dep't of Econ. & Soc. Affs., *From Exclusion to Equality: Realizing the Rights of Person with Disabilities*, at 19, U.N. Doc. HR/PUB/07/6 (2007) (“While progressive realization gives States parties, particularly developing countries, some flexibility in achieving the objectives of the [ICESCR], it does not absolve States parties of the responsibility to protect those rights. For example, a State must not forcibly evict a person with a disability, [or] arbitrarily withdraw social-security protection . . .”).

171. See, e.g., AMNESTY INT'L, SOUTH SUDAN: “DO YOU THINK WE WILL PROSECUTE OURSELVES?” NO PROSPECTS FOR ACCOUNTABILITY IN SOUTH SUDAN 5 (2019) (“[C]ourts . . . are crippled by a severe lack of independence. Prosecutors follow the directives of the executive, and in the absence of such directives, do not investigate serious crimes. Judges experience political interference and risk being dismissed when they act, or are perceived to act, against the executive's interests.”); Manyang David Mayar, *South Sudan Judge Seeks Reinstatement After Court Ruling Against President Kiir*, VOA (July 29, 2020), https://www.voaafrica.com/a/africa_south-sudan-focus_south-sudan-judge-seeks-reinstatement-after-court-ruling-against-president/6193644.html [<https://perma.cc/XG89-D6Q4>] (detailing how Kiir fired striking judges rather than increasing pay, which the East African Court of Justice found to be illegal);

with the military, has taken direct action to influence the judiciary;¹⁷² for example, in 2016, Kiir demoted a Supreme Court judge “without proper and transparent process.”¹⁷³

Oftentimes, South Sudanese authorities do not even pretend to operate within the country’s legal obligations and judicial processes. Rather, as highlighted in an October 2023 report by the U.N. Commission on Human Rights in South Sudan, they engage in unlawful, extrajudicial methods of maintaining power and silencing dissent:

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.¹⁷⁴

This use of “*de facto* procedures” is why South Sudan has become such a dangerous place for voicing opposition and pushing for

Entrenched Repression, *supra* note 164, ¶ 5 (“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.”).

172. INT’L COMM’N OF JURISTS, *supra* note 2, at 28 (reporting that on multiple occasions prior to December 2013, the executive and military branches of the South Sudanese government had “exercised undue pressures on and illegitimate interference with the exercise of judicial functions, in violation of international standards”).

173. Mark Atem Wek Deng, Policy Brief, *The Importance of Judicial Independence to the Administration of Justice: The Case of South Sudan*, SUDD INST. 1 (July 5, 2016), https://suddinstitute.org/assets/Publications/577cab35eff46_TheImportanceOfJudicialIndependenceToTheAdministration_Full.pdf [https://perma.cc/TS5X-PD88].

174. *Entrenched Repression*, *supra* note 164, ¶ 24 (emphasis added).

change.¹⁷⁵ It is also the reason that reform of the judiciary alone will not resolve concerns about the rule of law, though it could and should play an important part in eventually bringing the actors engaged in these types of procedures to justice.

C. The National Security Service's Chokehold on South Sudanese Rule of Law

One of the primary perpetrators of the “*de facto* procedures” described by the U.N. Commission, and the subject of its aforementioned report, is South Sudan’s national security and intelligence agency, the NSS.¹⁷⁶ As such, the NSS is also one of the central threats to the rule of law in the country. Its repressive methods undermine two critical functions of judicial independence—a key element of rule of law. First, judicial independence serves as a protective measure against abusive and authoritarian behavior by powerful actors, ensuring that everyone is equal before the law and can be held to account for violations.¹⁷⁷ Second, judicial independence preserves due process and fair trial rights for all, including the less powerful, by shielding judges from external influences and thus allowing them to make balanced, informed decisions by simply applying the law to the presented facts.¹⁷⁸

Regarding the first function, the lack of transparency and oversight around the NSS—combined with its brutal silencing of dissenting voices—generates a strong culture of impunity for both itself and the South Sudanese executive. Though the NSS undoubtedly exerts undue influence over the judiciary, it primarily undermines the second protective function by taking what should be

175. See, e.g., *supra* notes 12–17 and accompanying text (describing the cases of Dong Samuel Luak and Aggrey Idri).

176. *Id.* at 1 (“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.”).

177. See Wek Deng, *supra* note 173, at 3 (asserting that “judicial independence ensures the protection of the rule of law against lawless political power seekers” and explaining that “[t]he rule of law . . . operates on the simple basis that every citizen is subject to the law and that all persons, regardless of their positions in a society, powerful or weak, rich or poor, are equal before the law”).

178. *Id.* at 4 (“[J]udicial independence . . . ensures that judges are free to determine controversies that come before them through rational and objective evaluation of facts and applying known law/s to the facts in order to arrive at a balanced legal decision.”).

judicial proceedings into its own hands. Accordingly, this section will first analyze how the NSS' structure, powers, and oversight allow it to operate without consequence as a powerful tool against real or imagined threats to the President's authority. The analysis will then turn to specifically how the NSS has weaponized all these features to engage in quasi-judicial activity.

Pursuant to the Transitional Constitution, the NSS is a national security body "directly accountable to the President."¹⁷⁹ Responsible for "internal and external security" of South Sudan and its people, it is divided into two organs: the Internal Security Bureau and the General Intelligence Bureau.¹⁸⁰ The 2014 National Security Service Act granted the NSS sweeping powers and has drawn international backlash.¹⁸¹ Although legislators adopted a bill to amend the 2014 NSS Act in July 2024, Kiir paused the signing process to study the bill due to continued outcry over its failure to address all human rights concerns regarding the existing law and current NSS conduct.¹⁸² However, due to constitutional language about the solidification of bills into law through presidential inaction, at least some observers believe the amendment has become law.¹⁸³

179. CONST. OF THE REP. OF S. SUDAN (Transitional) July 9, 2011, art. 160(3) (S. Sudan).

180. *Id.* at art. 160(2)(a).

181. Joint Letter from Amnesty Int'l & Hum. Rts. Watch to the Revitalized Transitional National Legislative Assembly 2 n.2 (July 27, 2023) [hereinafter Joint Letter], <https://www.amnesty.org/en/documents/afr65/7048/2023/en/> [https://perma.cc/7FDV-J9LA] ("[T]he NSS has used its broad powers in the 2014 Act to commit abuses with impunity.").

182. *Kiir to Study Contested Security Bill After Uproar*, RADIO TAMAZUJ (July 16, 2024) [hereinafter *Kiir to Study Contested Security Bill*], <https://www.radiotamazuj.org/en/news/article/kiir-to-study-contested-security-bill-after-uproar> [https://perma.cc/4YBM-CYXL] (describing how Kiir paused to "examine" the controversial 2024 amendment bill following international outcry over "the NSS's overreaching powers").

183. According to the Constitution, bills "become law if not signed or rejected by the President within 30 days," so there has been speculation that the bill became law by default. *Security Bill Set to Become Law by Default: Lawyer*, RADIO TAMAZUJ (Aug. 12, 2024), <https://www.radiotamazuj.org/en/news/article/security-bill-set-to-become-law-by-default-lawyer> [https://perma.cc/6FG9-UHMX]; see also Duop Chak Wuol, Opinion, *The Republic of Silence: Inside President Kiir's War on Dissent*, RADIO TAZAMUJ (Aug. 11, 2025), <https://www.radiotamazuj.org/en/news/article/opinion-the-republic-of-silence-inside-president-kiirs-war-on-dissent> [https://perma.cc/Y9RX-CHTE] ("In 2024, an amendment to the NSS Act quietly became law—slipping into effect by default after the president deliberately declined to act."). Notably, however, the bill is not reflected as law on the South Sudanese Ministry of Justice and Constitutional

The vague language regarding the NSS' powers¹⁸⁴ and the activities it can target¹⁸⁵ provides for broad interpretation and easy manipulation. For instance, one of the NSS' primary functions is to “[m]aintain security, protection of the Constitution, national social fabric and safety of South Sudanese from any internal or external danger.”¹⁸⁶ Additionally, the NSS can withhold information it deems may threaten public order or individual privacy¹⁸⁷—decreasing transparency—as well as arrest suspects without a warrant.¹⁸⁸ The NSS also has the ability to establish Service Tribunals through its Director General, Minister, or the President.¹⁸⁹ The only mechanisms for oversight are an annual report to the legislative branch and a Complaints Board, which is appointed by the President.¹⁹⁰ The NSS budget is not subject to public audits, obscuring its activities further.¹⁹¹

Under the 2014 NSS Act, the NSS is obligated to respect human rights and the rule of law;¹⁹² however, in the words of Human Rights Watch, the powers and structure described above have allowed the NSS to become “one of the government’s most important tools of

Affairs website and there has not been an official announcement to suggest that the bill became law. *Laws of the Republic of South Sudan*, MINISTRY OF JUST. & CONST. AFFS., <https://mojca.gov.ss/laws-of-the-republic-of-south-sudan/> [https://perma.cc/HMF2-NHXA].

184. See National Security Service Act, 2014, art. 13 (S. Sudan) (providing that the NSS shall *inter alia* “[g]ather internal and external information related to security of the Nation” and “[d]etect and prevent any danger resulting from espionage terrorism, conspiracy, piracy, cyber and environmental crimes or destructive actions”).

185. *Id.* art. 7.

186. *Id.* art. 13(3).

187. *Id.* art. 31.

188. *Id.* art. 54. The ability to arrest suspects without a warrant is one of the primary concerns of international human rights organizations and was not fully addressed by the amendment. Press Release, Amnesty Int’l, South Sudan: President Should Send Draconian National Security Service Bill Back to Parliament for Review (July 11, 2024) [Send NSS Bill Back to Parliament], <https://www.amnesty.org/en/documents/afr65/8317/2024/en/> [https://perma.cc/4BMD-677F].

189. National Security Service Act, 2014, arts. 77–79 (S. Sudan).

190. *Id.* arts. 19–21.

191. HUM. RTS. WATCH, “WHAT CRIME WAS I PAYING FOR?”: ABUSES BY SOUTH SUDAN’S NATIONAL SECURITY SERVICE 15 (2020) [hereinafter WHAT CRIME] (“The NSS . . . is funded through the office of the president [whose budget is] not publicly audited . . . limiting transparency and parliamentary oversight in respect of the agency’s operations.”).

192. National Security Service Act, 2014, art. 6(c) (S. Sudan).

repression” against any perceived threat.¹⁹³ Like presidential oversight of the country’s top judges, the NSS represents a relic of the Sudanese national security systems, which have historically engaged in unlawful activities to stamp out opposition.¹⁹⁴ As power struggles and conflict in the country have increased, so has the NSS’ abusive behavior.¹⁹⁵ The NSS has routinely utilized a “well-rehearsed playbook” of repressive methods,¹⁹⁶ including unlawful arrests and detention, surveillance, censorship, threats and intimidation, economic control, restriction of civil society space and the press, enforced disappearances, killings, and psychological and physical torture, including through sexual violence.¹⁹⁷ In a 2022 report, the human rights watchdog The Sentry described the NSS as an “omnipresent threat” to the South Sudanese people:

The NSS has infiltrated almost every aspect of life. It can eavesdrop on phone conversations and monitor movements throughout Juba via its network of surveillance cameras and informants. It is present in civil society meetings, influencing agendas and installing agents. It shuts down news outlets that print unfavorable stories, and, through a series of front companies, it controls its own newspaper. While

193. WHAT CRIME, *supra* note 191, at 1 (describing how the NSS “has targeted government critics, suspected opponents and rebels, aid workers, human rights defenders, businessmen, journalists and students”).

194. *See id.* at 13 (“The [Sudanese] security service under Jafaar Nimeiri’s government (1969-1985) was particularly brutal. Under former Sudanese President Omar al-Bashir, [it] was no different; officers focused on repressing political dissent . . . and were known for unlawful arrests, torture and enforced disappearance of government opponents in secret detention sites.”) (internal citations omitted).

195. *See id.* at 20 (“As the war escalated, so did the crackdown on dissenting voices and those deemed to support rebel movements. . . . The NSS, contrary to its mandate, effectively evolved into a law enforcement agency arresting suspects for criminal offences and maintaining law and order in major towns . . .”).

196. SENTRY, UNDERCOVER ACTIVITIES: INSIDE THE NATIONAL SECURITY SERVICE’S PROFITABLE PLAYBOOK 8 (2022).

197. *See generally id.* (detailing the NSS’ unlawful activity); WHAT CRIME, *supra* note 191, at 1 (“Within months of [the NSS] establishment, its agents were arresting and imprisoning journalists, government critics and others, and conducting physical and telephonic surveillance. Today, it has become one of the government’s most important tools of repression.”); Press Release, Amnesty Int’l, South Sudan: Rampant Abusive Surveillance by NSS Instils Climate of Fear (Feb. 2, 2021), <https://www.amnesty.org/en/latest/press-release/2021/02/south-sudan-abusive-surveillance-by-national-security-service-climate-of-fear/> [<https://perma.cc/E42V-N8SY>] (describing the NSS’ extensive surveillance efforts, which chill civil society activity and facilitate other human rights abuses).

the government fails to provide many of its citizens with basic necessities, the surveillance state thrives, intimidating, detaining, or disappearing those who dare to oppose it.¹⁹⁸

As was the case with NSS agents targeting Dong Samuel Luak and Aggrey Idri in Kenya,¹⁹⁹ the NSS' repression is not limited to South Sudanese territory. Human rights organizations have documented NSS engagement in cross-border harassment, intimidation, and kidnapping in both Uganda and Kenya, creating a "climate of fear and suspicion among the diaspora . . . in effect stifling criticism of South Sudan's government even outside the country."²⁰⁰ Overall, the NSS' lack of oversight and transparency paired with its broad powers have promoted and preserved a deadly culture of impunity for repression, which leaves those desiring change in South Sudan with few, if any, options of advocating for it.

In a system that respects due process and maintains separations of powers, the judiciary would at least be able to shape the fate of the NSS' targets through the issuance of warrants and control over trials and sentencing.²⁰¹ However, the NSS often chooses to endow itself with quasi-judicial powers in its purported pursuit of national security, exercising complete authority from the point of arrest to potential execution.²⁰² Although the 2014 NSS Act establishes a process to apply to the court for an arrest warrant,²⁰³ the NSS has overwhelmingly, if not exclusively, relied on its power to arrest without a warrant. Indeed, in conducting the research for its

198. SENTRY, *supra* note 196, at 5 (internal citations omitted).

199. See *Investigate Apparent 2017 Killings*, *supra* note 13 ("[The NSS] kidnapped Dong and Aggrey in Nairobi [and later flew the two men] to South Sudan on a commercial plane chartered with the help of South Sudan's embassy in Nairobi . . .").

200. WHAT CRIME, *supra* note 191, at 2; see also Rep. of the Comm'n on Hum. Rts. in South Sudan, ¶ 62, U.N. Doc. A/HRC/55/26 (Mar. 13, 2024) ("[South Sudanese refugees] involved in political activities said they do not feel safe in their host countries, citing the pervasive extraterritorial operations of the National Security Service.") [hereinafter U.N. Doc. A/HRC/55/26].

201. See, e.g., AM. L. INST., PRINCIPLES OF THE LAW, POLICING § 14.04, cmts. d, f–g, j (discussing the judiciary's role in evaluating requests for warrants, enforcing disclosure obligations, imposing lawful remedies, and taking steps to promote systemic reforms to policing).

202. See generally WHAT CRIME, *supra* note 191, at 22–60 (describing the NSS' ability to engage in actions ranging from arbitrary arrest to extrajudicial killings without judicial oversight).

203. National Security Service Act, 2014, art. 55 (S. Sudan) (detailing the process for applying for a warrant from a judge of the High Court).

2020 report on the NSS, Human Rights Watch did not find a single instance in which the NSS applied for a warrant before making an arrest.²⁰⁴

Rather than using the country's designated prisons, the NSS also frequently holds detainees in its own facilities, which are not legally recognized detention centers.²⁰⁵ The NSS unofficially operates three primary sites of detention, including NSS headquarters in Juba—colloquially called the Blue House for its blue-tinted windows.²⁰⁶ The NSS also runs a variety of additional, smaller sites, with at least one facility in each of the ten South Sudanese states.²⁰⁷ From these sites, it is nearly impossible for detainees to access judicial safeguards against unlawful detention; the NSS regularly holds individuals for prolonged periods of time without charges and the opportunity to appear before a court.²⁰⁸ Oftentimes, the detainees are held *incommunicado*,²⁰⁹ without access to lawyers and family members.²¹⁰

Conducting all these activities outside the prescribed justice system facilitates other human rights violations, and the NSS sites have foreseeably become known for torture, inhumane conditions, and sexual violence.²¹¹ NSS officials understand the violations the agency is perpetrating and take concerted efforts to avoid accountability. For example, former detainees held in NSS sites reported to Human Rights Watch that prior to their release, NSS agents warned them to never speak about their experiences in detention.²¹² Some stated that they had been physically surveilled once freed.²¹³

204. WHAT CRIME, *supra* note 191, at 17.

205. *Id.* at 22.

206. *Id.* at 1; see also Audrey Kawire Wabwire, *Witness: Silencing Dissent in South Sudan*, HUM. RTS. WATCH (Dec. 14, 2020), <https://www.hrw.org/news/2020/12/14/witness-silencing-dissent-south-sudan> [<https://perma.cc/V4MC-95KQ>] (reporting on the detention of a journalist by the NSS at the “Riverside” and “Blue House” facilities). These detention sites are sometimes referred to as “ghost houses,” a term used originally for similar unofficial facilities maintained by Sudan’s national security forces. *Entrenched Repression*, *supra* note 164, ¶ 33.

207. WHAT CRIME, *supra* note 191, at 22–23.

208. *Freedom in the World 2023*, *supra* note 19.

209. *Entrenched Repression*, *supra* note 164, ¶ 36.

210. SENTRY, *supra* note 196, at 9.

211. WHAT CRIME, *supra* note 191, at 1–2.

212. *Id.* at 38.

213. *Id.*

The NSS has also extrajudicially executed members of the political opposition and civil society, both within and outside of its custody.²¹⁴ According to the U.N. Panel of Experts on South Sudan, two killing squads—Outside Tiger and Inside Tiger—operate under the ISB Director General.²¹⁵ Identified as “unknown gunmen,” the groups have crossed borders to eliminate targets, including individuals living in refugee camps in neighboring countries.²¹⁶ The NSS has also forcibly disappeared individuals for years, with those victims now presumed dead.²¹⁷

Insofar as the NSS has created its own *de facto* judicial and legal processes for those speaking out against the South Sudanese regime, it completely undermines the role of the judiciary and the rights of the South Sudanese people. The case of South Sudanese businessman and philanthropist Kerbino Wol Agok presents an illustrative example of the consequences of this illegitimate system. On April 27, 2018, the NSS arrested and detained Wol in the Blue House.²¹⁸ He was held without access to a lawyer, information regarding any charges against him, and adequate healthcare, causing his health to deteriorate.²¹⁹ Wol was eventually convicted of charges relating to a prison riot that occurred months after his arrest.²²⁰ Although he received a presidential pardon in early 2020, the NSS refused to return the physical and financial assets it had seized from him.²²¹ Following his release, Wol launched a movement for “revolutionary change”; the NSS shot and killed him shortly after.²²² Although the South Sudanese government reported that Wol had been killed in action,²²³ witnesses maintain that he was unarmed and executed with his hands bound behind his back.²²⁴

214. *Id.* at 45–47.

215. 2019 Final Panel Report, *supra* note 15, ¶ 60.

216. *Id.*

217. WHAT CRIME, *supra* note 191, at 47–49.

218. *South Sudan: Businessman Arbitrarily Detained for 4 Months: Kerbino Agok Wol*, AMNESTY INT’L (Aug. 28, 2018), <https://www.amnesty.org/en/documents/afr65/9000/2018/en/> [https://perma.cc/HRW2-DEDY].

219. *Id.*

220. WHAT CRIME, *supra* note 191, at 46.

221. *Id.*

222. *Id.*

223. *South Sudan: Wol Killed in Actions, Army Says*, AFRICANEWS (June 15, 2020), <https://www.africanews.com/2020/06/15/south-sudan-kerbino-wol-killed-in-actions-army-says/> [https://perma.cc/YV6Y-JBDG].

224. WHAT CRIME, *supra* note 191, at 46.

The United Nations,²²⁵ international human rights groups,²²⁶ and other countries have condemned the NSS' rampant human rights abuses.²²⁷ An NSS tribunal created in 2019 in response to these complaints “has not led to visible improvements in the conduct of its officers” and the NSS continues “to operate without any judicial oversight.”²²⁸ Although reforms have been proposed to curb the NSS' violations, they are long-delayed and inadequate. As mentioned previously, the South Sudanese parliament adopted a bill to amend the 2014 NSS Act.²²⁹ It contains constructive updates such as an explicit ban on torture and cruel treatment, a prohibition of direct NSS detention, and the introduction of public audits of the NSS budget.²³⁰ It also removes the current provisions that permit broad powers to arrest and detain individuals without a warrant, which South Sudanese leadership purportedly supports.²³¹ However,

225. See, e.g., *Entrenched Repression*, *supra* note 164, at 56–57 (calling on the NSS to end its myriad human rights abuses); S.C. Res. 2731, at 2 (May 30, 2024) (“Strongly condemning past and ongoing human rights violations and abuses and violations of international humanitarian law by all parties, including . . . national security forces . . .”)

226. See, e.g., Joint Letter, *supra* note 181, at 2 (“Our organizations have extensively documented how the NSS has used its broad powers in the 2014 Act to commit abuses with impunity.”); Just. for Journalists, *South Sudan’s NSS Funded Campaign of Surveillance, Intimidation, and Violence against Journalists*, FOUND. FOR INT’L INVESTIGATIONS OF CRIME AGAINST MEDIA (Aug. 12, 2022), <https://jff.fund/south-sudans-nss-funded-a-campaign-of-surveillance-intimidation-and-violence-against-journalists/> [<https://perma.cc/7A4G-BG22>] (“The NSS has unleashed a campaign of surveillance, intimidation, and horrific violence against civilians, activists, and journalists, with some who dare to speak out being illegally detained or permanently silenced.”)

227. See, e.g., U.S. DEP’T OF STATE, *supra* note 165, at 5; U.S. Embassy Juba, *Statement by the Troika and Canada Regarding Continuing Violence in South Sudan*, U.S. EMBASSY IN SOUTH SUDAN (Apr. 13, 2017), <https://ss.usembassy.gov/statement-troika-canada-regarding-continuing-violence-south-sudan/> [<https://perma.cc/77JE-7HCA>] (expressing “deep concern” over violent actions by the South Sudanese government, including the NSS).

228. U.N. Doc. A/HRC/55/26, *supra* note 200, ¶ 69.

229. *Kiir to Study Contested Security Bill*, *supra* note 182.

230. Joint Letter, *supra* note 181 (noting that the while the bill includes a series of “positive provisions”—such as “introduc[ing] guiding principles founded on a respect for human rights,” “prohibit[ing] torture, cruel, inhuman and degrading treatment,” barring detention or confinement by security agents, and granting “the justice minister and civilian courts a greater role in prosecuting agency officials accused of crimes”—it “still contains vague and broad provisions that would allow the agency to continue to abuse human rights, the organizations said”); see also Send NSS Bill Back to Parliament, *supra* note 188 (reiterating the concerns from the 2023 joint letter).

231. *Entrenched Repression*, *supra* note 164, ¶ 122.

discretion to continue exercising the warrantless arrest power in emergency situations raises concerns that nothing will change even if the bill becomes or is already considered law.²³² Additionally, the amendment fails to address both the lack of legislative and judicial oversight and the vague language regarding NSS powers and crimes under the NSS mandate.²³³ Human rights groups therefore remain concerned that without further reform, the NSS will continue to operate in an abusive manner that undermines human rights, rule of law, and stability in the country.²³⁴ These concerns so far appear well-founded, with Human Rights Watch reporting that in 2025, the NSS continued to “severely curtail[] civil and political rights, escalating arrests, detentions, harassment, surveillance, and other abuses against civil society and political actors.”²³⁵

D. South Sudan’s Envisioned Transitional Justice Model

The African Union has identified transitional justice as a “necessary step in moving from a divided and painful past to a commonly shared and developed future.”²³⁶ As the world’s youngest country, fraught with a range of challenges threatening the safety of its people, South Sudan is at a critical juncture for determining whether it will enjoy such a future. Since the transition from colonial rule, the region has endured decades of conflict, resulting in millions of deaths and a devastating humanitarian crisis.²³⁷ Effective transitional justice mechanisms are necessary to begin remedying these longstanding harms and to achieve the RPA’s expressed goals of peace and democracy.²³⁸ This need is evidenced by the post-independence devastation and authoritarian power struggles that have resulted from the lack of adequate investment and political will

232. Joint Letter, *supra* note 181; *see also* Chak Wuol, *supra* note 182 (describing the bill as having become law through inaction).

233. *Id.*

234. *Id.*

235. *South Sudan: Events of 2025*, HUM. RTS. WATCH (2026), <https://www.hrw.org/world-report/2026/country-chapters/south-sudan> [<https://perma.cc/5GSX-8YND>].

236. Minata Cessouma, *preface* to AFR. UNION, TRANSITIONAL JUSTICE POLICY, at vi (2019).

237. *See supra* Part I (summarizing the various civil wars that preceded and followed independence).

238. U.N. Doc. A/HRC/55/26, *supra* note 200, ¶ 72 (“In a country carrying inter-generational trauma and experiencing ongoing violence, dealing with the past and building sustainable peace requires a comprehensive and holistic transitional justice process.”).

in addressing past conflicts. At least on paper, the parties to the RPA recognized this reality and detailed three transitional justice instruments to be implemented by the transitional government, which map on neatly to the first three pillars of transitional justice: (1) the Commission for Truth, Reconciliation and Healing, (2) the Hybrid Court for South Sudan, and (3) the Compensation and Reparation Authority.²³⁹

The Commission for Truth, Reconciliation and Healing is intended to “spearhead efforts to address the legacy of conflicts, promote peace, national reconciliation and healing,”²⁴⁰ with its work informing the “full enjoyment by victims of the right to remedy, including by suggestions for reparations and compensation.”²⁴¹ The Commission is mandated to investigate the full scope of governmental and non-governmental human rights violations and actors,²⁴² dating back to the establishment of the interim government in July 2005.²⁴³ The Commission is comprised of seven commissioners, with three of them being from other African states.²⁴⁴ Ultimately, it is supposed to issue a final report that summarizes its findings and recommendations.²⁴⁵ The Commission must implement protective measures to preserve the safety of victims that engage with it,²⁴⁶ but the scope and nature of those protections are not defined.

The Hybrid Court is intended to be established in collaboration with the African Union to “investigate and where necessary prosecute individuals bearing responsibility for violations of international law and/or applicable South Sudanese law” since the outbreak of the civil war in December 2013.²⁴⁷ The majority of the judges and all the prosecutors and defense counsel are to be from other African states.²⁴⁸ The Hybrid Court’s jurisdiction includes genocide, crimes against humanity, war crimes, and “[o]ther serious crimes under international law and relevant [domestic laws]

239. 2018 Revitalised Agreement § 5.1.1, *supra* note 23.

240. *Id.* § 5.2.1.1.

241. *Id.* § 5.2.1.5.

242. *Id.* § 5.2.2.1.

243. *Id.* § 5.2.2.3.1.

244. *Id.* § 5.2.3.2.

245. *Id.* § 5.2.2.5.

246. *Id.* § 5.2.4.1.

247. *Id.* § 5.3.1.1.

248. *Id.* § 5.3.3.

including gender based crimes and sexual violence.”²⁴⁹ Neither these crimes nor their penalties are defined.

The Compensation and Reparation Authority is supposed to be accompanied by a Compensation and Reparation Fund to support its work.²⁵⁰ It is the only body with mandated civil society and other non-governmental representation.²⁵¹ Notably, the Authority’s mandate under the RPA appears to be limited to providing “material and financial support” to remedy property damage, rather than to address the broad range of human rights violations that have occurred.²⁵²

Although South Sudan’s rival political factions have committed to these transitional justice mechanisms, none of them have been operationalized since the RPA was signed in 2018.²⁵³ Further, the entirety of these proposals are contained in less than ten pages and require extensive legislation to clarify the mandates, timelines, composition, methods, and other key details of each body.²⁵⁴ In 2024, the South Sudanese government appeared poised to close some of these gaps. In September 2024, the parliament approved two bills to establish the Commission and the Authority, respectively: the Commission for Truth, Healing, and National Reconciliation Bill and the Compensation and Reparations Bill.²⁵⁵ That November, Kiir signed the bills into law.²⁵⁶ These two laws clarify some details of these two bodies’ scope, powers, and composition.²⁵⁷ For example, the law regarding the Commission

249. *Id.* § 5.3.2.1.

250. *Id.* § 5.4.1.

251. *Id.* § 5.4.2.2 (“Shall be composed of an Executive body that shall include but not limited to . . . [r]epresentatives of CSOs, Women groups, Faith-based leaders, Business Community, youth and traditional leaders.”).

252. *Id.* § 5.4.2.4 (“The CRA shall provide material and financial support to citizens whose property was destroyed by the conflict and help them to rebuild their livelihoods.”).

253. *South Sudan, INT’L CTR. FOR TRANSITIONAL JUST.*, <https://www.ictj.org/location/south-sudan> [<https://perma.cc/Q6R4-YPXG>]; *Extend UN Investigations*, *supra* note 24.

254. 2018 Revitalised Agreement ch. V, *supra* note 23.

255. *Watchdog Calls for Signing of Transitional Justice Bills into Law*, SUDANS POST (Sept. 18, 2024), <https://www.sudanspost.com/watchdog-calls-for-signing-of-transitional-justice-bills-into-law/> [<https://perma.cc/F8M7-YFP6>].

256. *Kiir Signs Six Key Bills into Law in Major Reform Move*, SUDANS POST (Nov. 11, 2024), <https://www.sudanspost.com/kiir-signs-six-key-bills-into-law-in-major-reform-move/> [<https://perma.cc/P9XQ-TLY5>].

257. Commission for Truth, Reconciliation and Healing Act, 2024 (S. Sudan); Compensation and Reparations Act, 2024 (S. Sudan).

extend its mandate to six years as opposed to tying it to the transitional process,²⁵⁸ establish penalties for interference with the Commission's work,²⁵⁹ provide for the distribution of interim compensation in special cases,²⁶⁰ and create the power to grant amnesties for participation, though such amnesties are not available for perpetrators of more serious crimes.²⁶¹ It also appears that the Authority can provide reparations for harms broader than those articulated in the RPA, but there are still strict limitations and a strong preference for collective reparations rather than individual ones.²⁶²

Although these laws offer some additional clarity, Human Rights Watch critiqued the two laws for failing to address key elements of the bodies' powers, setting low standards for amnesty, and being underinclusive in terms of the reparations provided by the Authority.²⁶³ Considering the repression of opposition voices in South Sudan, one particularly concerning area of ambiguity surrounds what measures will be taken to protect those who participate in the Commission's work.²⁶⁴ Further, the slow pace of these steps—taken over six years since the signing of the Revitalized Peace Agreement and yet to result in meaningful progress more than a year and a half later—raises doubts that the laws will have practical impact any time soon.²⁶⁵ As for the Hybrid Court, no concrete steps have been taken since the African Union drafted a statute and memorandum of understanding in 2016 and 2017, respectively.²⁶⁶ Moreover, as of

258. Commission for Truth, Reconciliation and Healing Act, 2024, § 6(5) (S. Sudan).

259. *Id.* § 33.

260. *Id.* § 8(19).

261. *Id.* §§ 8(2), 31.

262. *Parliament Approves Transitional Justice Laws*, *supra* note 24 (“The reparations authority bill only provides symbolic reparation measures and collective reparation after completion of its mandate. The reparations authority can recommend ‘personal reparation’ to the truth commission ‘only where it is not possible to provide collective measures.’”). Although the text of the Commission for Truth, Reconciliation and Healing Act was available online, the text of the Compensation and Reparations Act was not readily accessible, so this Note relies on analysis by human rights organizations.

263. *Id.*

264. Commission for Truth, Reconciliation and Healing Act, 2024, §§ 8(6), 28 (S. Sudan).

265. *Extend UN Investigations*, *supra* note 24.

266. *Parliament Approves Transitional Justice Laws*, *supra* note 24; *Extend UN Investigations*, *supra* note 24..

February 2024, the South Sudanese government had seemingly failed to allocate any funds to transitional justice.²⁶⁷

Judicial and security sector reforms are only briefly mentioned in the RPA—in a separate chapter from the transitional justice measures—and have proven similarly ineffective.²⁶⁸ Most significantly, the RPA commits the transitional government to establishing an ad hoc Judicial Reform Committee (JRC) to make recommendations about necessary reforms.²⁶⁹ In July 2022, the JRC was inaugurated,²⁷⁰ with Ugandan Judge James Ogoola as the chair.²⁷¹ The JRC submitted its report in 2024, which, according to media reports, highlighted many of the challenges discussed in Section II.B, identified widespread public support for judicial reform, and generally recommended increasing the number of judges, improving working conditions and training, and “enhanc[ing] the role of the police and the prison services in the judiciary.”²⁷² However, it does not appear that the JRC report has been made public, limiting its utility and clarity regarding its exact recommendations.²⁷³

E. South Sudan’s Transitional Justice Vision as Contextually Inadequate

South Sudan’s weakened judiciary, abusive NSS, and the harms that flow from these institutions exacerbate the conditions that make transitional justice necessary; they also demonstrate why transitional justice as currently envisioned by the RPA is not possible. Given the state of South Sudan’s rule of law, the failure to implement the RPA’s transitional justice mechanisms is not surprising; even if the proposed measures were to be operationalized in the near future, they would likely be ineffectual in South Sudan’s

267. U.N. Doc. A/HRC/55/26, *supra* note 200, ¶ 65 (“No State funding appears to be allocated for the establishment of transitional justice institutions.”).

268. The RPA section on the judiciary requires reforms to review the 2008 Judiciary Act and more immediate efforts to “build capacity of the judicial, personnel and infrastructure.” 2018 Revitalised Agreement § 1.17.2, *supra* note 23. Meanwhile, the RPA largely ignores the NSS, only mandating that the National Constitutional Amendment Committee review and draft amendments to the 2014 NSS Act by a long past deadline. *Id.* § 1.18.1.2.

269. *Id.* § 1.17.3.

270. U.N. DEV. PROGRAMME, *supra* note 146

271. Entrenched Repression, *supra* note 164, ¶ 57.

272. *Judicial Committee Finds*, *supra* note 168.

273. Mark Deng, *Judicial Independence Under Threat in South Sudan*, ICONNECT (July 19, 2025), <https://www.iconnectblog.com/judicial-independence-under-threat-in-south-sudan/> [<https://perma.cc/YVJ8-ZDRA>].

current conditions. Weak or, in the case of South Sudan, effectively absent rule of law creates an environment of impunity and government distrust. In a 2004 report on the rule of law and transitional justice, the U.N. Secretary-General stated that democracy, peace, and justice “are not mutually exclusive objectives, but rather mutually reinforcing imperatives.”²⁷⁴ The report goes on to state that:

Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law.²⁷⁵

The current state of the South Sudanese judiciary and security sector therefore necessitates significant reform for transitional justice to be effective. The NSS’ decision to ignore existing judicial and legal processes and to instead arrest, detain, and, at times, kill and disappear critical voices in South Sudan, all without consequence, has decimated rule of law in the country. Within the culture of fear and repression the NSS creates, the South Sudanese people have no viable avenue for seeking justice and accountability—a reality exacerbated by the extreme under-resourcing of the judiciary.²⁷⁶ The South Sudanese government has thus not provided any reason for its citizens to view any transitional justice efforts as legitimate and trustworthy even if they were pursued. That the NSS has exercised its quasi-judicial powers as an agency that answers directly to the President degrades the rule of law

274. U.N. Doc. S/2004/616, *supra* note 20, at 1.

275. *Id.* ¶ 2.

276. *See, e.g.*, U.S. DEPT OF STATE, 2023 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SOUTH SUDAN (2024) (detailing abusive behavior by the NSS and explaining that South Sudan is unable to maintain the independent judiciary envisioned in its constitution due to “lack of infrastructure and trained personnel,” resulting in a judicial system that is “weak and concentrated in a few urban centers”).

further and entrenches the political and ethnic divides that sparked the civil war. Consequently, it is hard to imagine that Kiir and his administration could engage in transitional justice in good faith since they have unlawfully appropriated and abused powers that should be reserved for an independent judiciary.

Additionally, the NSS' weaponization of those powers against human rights defenders, journalists, political opponents, and other civil society actors has severely restricted the civil society space in South Sudan. This repressive environment raises concerns about the ability of civil society to engage meaningfully in transitional justice efforts without fear of reprisal. This fear is especially relevant since, if effectively implemented, all three of the RPA's transitional justice mechanisms would highlight grave human rights violations by the NSS and other agencies under the Kiir's control. Given that robust civil society involvement is essential to creating successful, victim-centered transitional justice,²⁷⁷ the absence of rule of law undermines the potential for the RPA's imagined transitional justice mechanisms to succeed in South Sudan.

III. A FOURTH PILLAR APPROACH TO SOUTH SUDANESE TRANSITIONAL JUSTICE

South Sudan requires a new and innovative approach to transitional justice that responds to the absence of rule of law rather than relying upon the rule of law to materialize out of thin air. For this reason, South Sudanese authorities should shift and expand their immediate focus from the first three pillars of transitional justice—truth, justice, and reparation—to the fourth: guarantees of non-recurrence. This recommendation is neither intended to downplay the importance of the RPA transitional justice mechanisms embodying the first three pillars, nor to suggest that steps toward their implementation should be paused. Each of the three mechanisms has a key role to play in holistically addressing the suffering of the South Sudanese people and building sustainable

277. U.N. Secretary-General, *Guidance Note on Transitional Justice: A Strategic Tool for People, Prevention and Peace* 8 (Oct. 11, 2023), <https://peacemaker.un.org/sites/default/files/document/files/2024/03/202307guidancenotetransitionaljusticeen.pdf> [<https://perma.cc/U8ER-53P4>] (“Ensuring a victim-centred approach requires strong involvement on the part of civil society, including women’s and youth-led organizations. Victims and civil society organizations play a critical role in advocacy, in accessing and mobilizing victims, in education and capacity building, and in providing technical, logistical and other support.”).

peace. On the contrary, this Part is arguing that the fourth pillar should be prioritized to provide the conditions in which the three RPA mechanisms can function effectively.

The pillar of guarantees of non-recurrence is conceptually different than the other pillars of transitional justice; whereas the other three pillars “refer to *measures*,” guarantees of non-recurrence represent a “*function* that can be satisfied by a broad variety of measures.”²⁷⁸ In a 2015 report to the U.N. Human Rights Council, the U.N. Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence stated explicitly that this difference manifests in that “criminal trials, truth commissions and reparations programmes *all rest upon certain institutional preconditions that are not satisfied in all settings.*”²⁷⁹

Thus, focusing on guarantees of non-recurrence better recognizes the challenges of post-conflict states, such as weak infrastructure and a general lack of resources. Within this recognition, fourth pillar approaches offer more flexibility to meet the evolving needs and circumstances of a society. Whereas many transitional justice mechanisms associated with the other pillars have time-limited and specific mandates, the implementation of guarantees of non-recurrence is less static. Many of the measures employed to advance guarantees of non-recurrence are institutional reforms, which can be legal, judicial, and constitutional in nature.²⁸⁰ These reforms can—and often should and do—involve amending laws, vetting government and military personnel, and restructuring bodies involved in a state’s judicial and security sectors.²⁸¹ These measures are meant to work in tandem with and benefit from

278. U.N. Doc. A/70/438, *supra* note 27, ¶ 7 (listing a range of measures used to advance guarantees of non-recurrence, including “reforming institutions, disbanding unofficial armed groups, repealing emergency legislation incompatible with basic rights, vetting security institutions and the judiciary, protecting human rights defenders and training members of security institutions in human rights.”)

279. U.N. Doc. A/HRC/30/42, *supra* note 26, ¶ 29 (emphasis added).

280. U.N. Doc. A/70/438, *supra* note 27, ¶ 11. In this context, legal reforms entail altering a country’s laws, including reviewing “emergency, security, and counter-terrorism laws in order to make sure that they are compatible with human rights and that they do not provide incentives for the violation of rights.” *Id.*

281. *See generally id.* (summarizing “possible elements of a non-recurrence policy”).

mechanisms within the other pillars of transitional justice—not to replace them.²⁸²

The nature of a guarantees of non-recurrence approach is therefore extremely well-suited to the South Sudanese context. South Sudan's history, both before and after independence, has been marred by constant violence, even in so-called times of peace. This propensity for violence—fueled by systemic issues like ethnic tensions and widespread poverty—highlights the importance of advancing the central goal of guarantees of non-recurrence: to prevent the repetition of abuses.

An approach that centers institutional reform, especially judicial and security sector reform, is precisely what South Sudan needs given the weakness of its judiciary and the over-empowerment of the NSS. Kiir himself stated in his independence speech that “[w]hile the pillars of a house are important, its foundation is even more critical.”²⁸³ Measures to support guarantees of non-recurrence could lay a strong foundation for South Sudan's future. They carry the potential to correct the imbalance of power between the security and judicial institutions and strengthen the rule of law, improving safeguards for human rights and opening the door for the effective implementation of the three RPA mechanisms and other transitional justice processes. Moreover, a focus on guarantees of non-recurrence could finally silence post-independence echoes of Sudanese authoritarianism. The South Sudanese government has abused its population through many of the same judicial and security sector methods used by its Sudanese predecessor. Reforming these institutions and rooting out the lingering ghosts of Sudan's repressive systems could allow the people of South Sudan to embark on their own peaceful, democratic, and truly independent path.

This Part will provide some preliminary recommendations as to how the South Sudanese government and international actors can implement a fourth pillar approach to transitional justice. It is important to emphasize, although it is not discussed in depth, that the implementation of such measures under guarantees of non-recurrence must be sensitively tailored to the ethnic, socioeconomic, and other nuances that exist in South Sudanese society and must recognize the deep-seated inequalities that shape how violations are

282. *Id.* ¶ 8.

283. *Independence Speech*, *supra* note 1.

experienced.²⁸⁴ Accordingly, any non-recurrence measures must “pay attention to the provision of effective security for all in full compliance with all relevant rights-related standards including equality and fairness.”²⁸⁵ To ensure this happens, all measures should be designed in close consultation with victim communities and local civil society actors who have insight into the social and cultural dynamics that color repression and participation in South Sudan.

A. The Revitalized Peace Agreement as an Opportunity for Domestic Reinvestment

Although marred by a clear lack of political will for change that could disrupt its power, Kiir’s government could and should take steps to implement a guarantees of non-recurrence approach on its own. The RPA remains a fertile opportunity for transformation that could strengthen South Sudan’s rule of law and pave the way for effective peace and justice. The transitional period features flexibility and invites international guidance, oversight, and support that eases the process of substantive reform; once the transitional period ends and the unity government solidifies, reform will likely become more difficult. Therefore, both parties should seize this moment to recommit to the RPA and establish institutions that will sustain a peaceful, democratic South Sudanese society.

First and foremost, the transitional government should rein in the NSS and prevent it from further undermining the rule of law in the country. Assuming the 2019 bill has become law, further amendments should be made to the 2014 NSS Act pursuant to the recommendations provided by Amnesty International and Human Rights Watch, such as completely eliminating warrantless arrest powers, removing overly broad language regarding the scope of NSS’ work, and increasing parliamentary and judicial oversight of NSS’ conduct.²⁸⁶ These changes would help limit the NSS’ ability to engage in quasi-judicial activity. The transitional government should also conduct an extensive review of NSS activities and officials and exercise the penalty provisions of the 2014 NSS Act accordingly. The

284. U.N. Doc. A/HRC/30/42, *supra* note 26, ¶ 38 (“Moreover, it should be highlighted that it is usually the most marginalized who bear the brunt of the violations; the better-off have always more exit options and can translate economic power into some degree of security.”).

285. *Id.*

286. Joint Letter, *supra* note 181 (describing how the additional amendments detailed in the letter are critical in restricting the NSS’ “broad and unqualified powers” to “contribute to creating a rights-respecting state”).

creation of genuine opportunities for civil society and victim participation in this review process could help demonstrate the government's commitment to the rule of law and bolster public confidence. Once the NSS is prevented from actively undermining the rule of law, the transitional government will be able to pursue judicial reform more effectively.

Accordingly, the transitional government should begin immediately building judicial capacity in the country and increasing access to justice for people everywhere in South Sudan. These steps should include a major reallocation of financial and human resources to the judicial system. The transitional government should also make the 2024 JRC report public to better illuminate the challenges facing the judiciary and to facilitate advocacy around and implementation of the JRC's recommendations. These steps would allow the rule of law to begin to take hold in South Sudan and reinvigorate public confidence in the judicial system.

These reforms to the NSS and judicial system should resolve some of the primary existing challenges to transitional justice as envisioned under the RPA. Therefore, while these reforms take hold, the South Sudanese parliamentary, executive, and other competent authorities should introduce legislation or other forms of guidance to address the remaining ambiguities and substantive human rights concerns within the transitional justice laws for the Truth Commission and the Reparations Authority.²⁸⁷ Given the government's history of brutally silencing critics, particular care should be paid to the establishment of robust protections for victims and witnesses participating in the Commission's truth-seeking process. This clarification and strengthening process should happen in close consultation with international, regional, and civil society actors. Additionally, the transitional government and the African Union should begin drafting the frameworks necessary to launch and operate the Hybrid Court.

As these three frameworks are finalized, the transitional government should also be putting aside domestic funds and soliciting international funding and technical support. Once all these elements are settled, the Truth Commission, Hybrid Court, and

287. *Parliament Approves Transitional Justice Laws*, *supra* note 24 (expressing concern regarding the failure to include crimes against humanity as exempt to amnesties, uncertainty over the selection process for commissioners, the delay in the distribution of reparations, and non-compliance of the proposed reparations with international standards, among other flaws).

Reparations Authority should be operationalized as soon as possible.²⁸⁸ It is essential that the infrastructure and funding are in place prior to the launch; otherwise, the mechanisms could be rendered dysfunctional and serve to undermine state legitimacy and public confidence yet again.

B. Role of International Actors

Given that both parties to the RPA have been slow to implement meaningful reform, international actors also have an important role to play in promoting a guarantees of non-recurrence approach in South Sudan. International institutions, regional organizations, and foreign governments should take steps to ensure that South Sudan implements the above recommendations.

Beyond general diplomatic pressure to fully implement the RPA without further extensions, there are various measures that each of these actors could take in pursuit of that goal. All should consider targeted sanctions against leaders within the NSS who have ordered and facilitated the agency's abuses, as well as sanctions against the companies that the NSS uses to fund its unlawful activities.²⁸⁹ Additionally, given the weakened state of the South Sudanese judicial system and the rule of law, international actors should consider how accountability can be pursued for NSS violations externally, including through the use of regional courts and universal jurisdiction. Such avenues have already been leveraged by civil society,²⁹⁰ and could provide a more immediate response to abuses, as well as increase pressure on South Sudan to commit to reforms. The African Union has a particularly critical role to play in reversing the

288. *Id.*

289. This Note focuses on the NSS' more direct violations of human rights; however, the NSS also engages in rampant corruption that fuels its abusive behavior and helps it maintain power. After an investigation into the NSS' business dealings, The Sentry discovered a "vast network of companies with NSS shareholders, ranging from media and publishing to natural resources and logistics." SENTRY, *supra* note 196, at 3.

290. Press Release, Pan Afr. Laws. Union, PALU Seeks Urgent Interim Orders at the East African Court of Justice (EACJ) against the Governments of South Sudan and Kenya for the Production of Mr Morris Mabior Awikjok Bak (Feb. 25, 2023), <https://www.lawyersofafrica.org/palu-seeks-urgent-interim-orders-at-the-east-african-court-of-justice-eacj-against-the-governments-of-south-sudan-and-kenya-for-the-production-of-mr-morris-mabior-awikjok-bak/> [https://perma.cc/DU4Z-FRSH] (detailing a Pan African Lawyers Union request for urgent interim orders before the East African Court of Justice on behalf of a government critic detained in the Blue House).

culture of impunity, given that its failure to uphold its RPA commitment to help establish the Hybrid Court has fortified that culture.²⁹¹

Furthermore, international actors should provide financial aid and technical support in a manner that facilitates a fourth pillar approach. It will be costly to complete the overhaul of the judicial and security sectors necessary to bring South Sudan into alignment with international norms and standards,²⁹² especially due to the dilapidated state of the judicial system. Careful oversight of any such aid is essential due to the South Sudanese government's recurrent issues with corruption.²⁹³ However, local authorities should retain enough autonomy to direct funds where they are most needed. Finally, when the South Sudanese government reaches a stage in which it is ready to implement other forms of transitional justice, the international and regional institutions, as well as foreign governments, should provide financial and technical support to those mechanisms as well.

International support should not just be dedicated to the South Sudanese government, but also, and likely more importantly, to civil society. Civil society plays a key role in the implementation of guarantees of non-recurrence,²⁹⁴ especially given that building the rule of law is not just about building institutions, but also building a society-wide culture that supports the rule of law.²⁹⁵ Actors within

291. AMNESTY INT'L & TRANSITIONAL JUST. WORKING GRP. SOUTH SUDAN, AFRICAN UNION'S ABANDONED COMMITMENT TO JUSTICE IN AFRICA: THE CASE OF THE HYBRID COURT FOR SOUTH SUDAN 7–10 (2022) (explaining how the lack of actual progress in the establishment of the Hybrid Court signals an abandonment of victims and “bolsters impunity”).

292. U.N. DEV. PROGRAMME, *supra* note 146.

293. Press Release, Off. of the High Comm'r for Human Rights, South Sudanese Political Elites Illicitly Diverting Millions of US Dollars, Undermining Core Human Rights and Stability – UN Experts Note (Sept. 23, 2021), <https://www.ohchr.org/en/statements/2021/09/south-sudanese-political-elites-illicitly-diverting-millions-us-dollars> [<https://perma.cc/PZ5Z-X9RN>].

294. *See generally* U.N. Doc. A/HRC/30/42, *supra* note 26 (emphasizing the importance of civil society participation, including in guarantees of non-recurrence, and providing recommendations for strengthening opportunities for such participation); U.N. Doc. A/70/438, *supra* note 27 (discussing how civil society can contribute to security sector reform, including vetting processes).

295. Colette Rausch & Robert Strang, *Foreword to MCKAY*, *supra* note 107, at viii (highlighting the “reality that strong rule of law can be achieved only if all people within a society, from both government and civil society, collaborate to reestablish a social contract that embodies the belief that rule of law is not only desirable but also possible”).

South Sudanese civil society will inherently understand the on-the-ground context—including how systems work and what changes are necessary—better than foreign governments and organizations. Therefore, international actors should direct substantial resources and training to encouraging civil society engagement in transitional justice. Such assistance could include programs on documenting security sector abuses, filing complaints on such abuses, conducting advocacy with the government for institutional reforms, and educating the public on their rights and how the judicial system is supposed to protect those rights.

CONCLUSION

Inadequate economic investment and political will regarding reconciliation and democratic institutions have plunged South Sudan into a devastating conflict for most of its short existence. Currently, those same problems have undermined the rule of law, resulting in an under-resourced judicial system and a national security agency with unlawful, quasi-judicial powers that have been brutally weaponized against dissent—two conditions directly inherited from the Sudanese system. In the face of these circumstances, the three transitional justice mechanisms envisioned by the RPA—a truth commission, hybrid court, and reparations authority—remain just that: visions.

Even if these three mechanisms were to be implemented, the near absent rule of law in the country would likely render them ineffective; the fear of retaliation, especially from the NSS, remains well-founded as long as impunity persists. Yet without transitional justice, lasting peace in South Sudan is hard to imagine. Therefore, domestic and international actors should shift their approach to transitional justice in South Sudan to one centered on the fourth pillar of transitional justice: guarantees of non-recurrence. In addition to being a natural transition given the country's long history of cycles of violence, redirecting efforts to guarantees of non-recurrence—with its flexible, comprehensive nature and focus on institutional reform—would be better suited to South Sudan's contemporary challenges. Namely, such a strategy would facilitate the strengthening of rule of law, which could curb the rampant human rights violations occurring under the current system and open the door for further transitional justice, and eventually, lasting peace.