

Setting The Record Straight

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EXECUTIVE SUMMARY

Chapter 1

This Chapter examines the impact and legacy of the failed 2013 and 2016 coup attempts in South Sudan and international involvement in the peace negotiations, against a backdrop of denials that coup attempts took place.¹ By not acknowledging the reason for the conflicts, the basis and strategies of the subsequent peace agreements were inherently flawed. The agreements resulted in many concessions being required of the Government of President Salva Kiir Mayardit favouring actors who had set out on a violent armed path to take power. Building stable government institutions following these agreements has inevitably proved fraught with difficulties.

The misrepresentation of these conflicts by the international community has had damaging consequences for South Sudan's economic development that has been further restricted by the imposition of sanctions and an arms embargo.²

Chapter 2

The history of Sudan leading to the creation of the state of South Sudan is mired in conflicts, coups, division, instability and political factionalism. Identity politics, ethnic and tribal affiliations and control of resources are framed as key factors for the conflicts.³ State armies, former rebel movements, militias and armed regional groups have all featured in ongoing conflicts for over seventy years.⁴ External actors have also used militias for their own proxy wars, resource gains, and/or power consolidation. It is also important to recognise the clear roles played by outsiders and their legacy in South Sudan today.

This Chapter examines the history of division and those armed groups that continue to influence South Sudan's development. It also explains in part the complexities faced by the state to bring order and security to its lands.

Chapter 3

The prevailing way of life in South Sudan is traditional agriculture involving the raising of livestock. This way of life has led to acute competition and violent conflict over natural resources, such as water, fishing and grazing, among the various communities. Cattle are an important index of wealth and cattle raiding has long been rife among the ethnic groups, accompanied by violence and the abduction of women and children. These clashes have become more violent and deadly as traditional weapons have been replaced with modern hardware including rocket-propelled grenades and machine guns.⁵ Since its independence in 2011, scores of civilian armed groups have been identified as active across South Sudan. Splinter and sub-proxy groups continue to emerge. The state has had difficulty in controlling

¹ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

² Tower Post, South Sudan's Kiir Appeals to International Community to End Sanctions, 7 February 2023 [<https://thetowerpost.com/2023/02/07/south-sudans-kiir-appeals-to-international-community-to-end-sanctions/>].

³ Martell, P, 'First Raise a Flag: How Sudan Won the War but Lost the Peace, 2018, p.xxii.

⁴ Alden, C. et al, Militias and the Challenges of Post Conflict Peace: Silencing the Guns, 2011, Chapter 1.

⁵ Wild, H. et al, The Militarization of Cattle Raiding in South Sudan: How a Traditional Practice Became a Tool for Political Violence, Journal of International Humanitarian Action, 2 March 2018.

this violence while external actors have perpetuated a conflict narrative focusing on ethnicity rather than seeking to engage with the historical legacy of the country and the deep-seated grievances.⁶

This chapter identifies the core groups who continue to operate in violent hotspots, predominantly across the Upper Nile State and Jonglei State and provides the necessary context as to why these groups continue to thrive. On 31 December 2022, President Salva Kiir appealed to the South Sudanese parties to desist from violence⁷ and made a direct appeal deploring the violence in Upper Nile region and stating they could not stop it alone.⁸

Chapter 4

This Chapter examines South Sudan's oil sector and the challenges it has faced since independence in developing its economic potential. South Sudan has a unique geographic position and the area is rich in hydrocarbons and offers enormous potential as a hub for the region's petroleum services and exploration industry. The successful management and development of crude oil is crucial for the economic development and sustainability of the country.⁹ However, owing to the lack of domestic oil refining capacity, South Sudan has to export oil at fixed cost through the pipeline that runs from its oilfields through Sudan to the Red Sea.¹⁰ The terms of the Transitional Fee Arrangement (TFA) with Sudan for use of the pipeline to Port Sudan did not change in line with the reduction in global oil prices.¹¹ South Sudan was bound by a fixed cost use of the pipeline meaning that a disproportionately larger share of the crude oil earnings were paid to Sudan.¹²

The oil industry is further hindered by poor infrastructure, conflict in oil producing areas, lack of investment and restrictive measures imposed by the U.S.'s Office of Foreign Assets Control and the Bureau of Industry and Security.¹³ In January 2012, the GoSS shut down its entire oil

⁶ UNSC Resolution 2683 (2023) Adopted by the UNSC at its 9332nd meeting on 30th May 2023 refers to "Expressing concern over the continued intensification of violence prolonging the political, security, economic, and humanitarian crisis in most parts of the country, condemning the mobilization of armed groups and encouragement of defections, including by members of the government forces and armed opposition groups, and further recognizing that intercommunal violence in South Sudan is politically and economically linked to national level violence and corruption" [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_RES_2683.pdf].

⁷ S/2023/135, Situation in South Sudan, Report of the Secretary General, 22 February 2023

[<https://undocs.org/Home/Mobile?FinalSymbol=S%2F2023%2F135&Language=E&DeviceType=Desktop&LangRequested=False>].

⁸ Republic of the South Sudan, Office of the President Press Release, 7 December 2022.

⁹ President of South Sudan, Presidential Decree No. 27/2011, 8 November 2011.

¹⁰ The terms of the 2012 Agreement on Oil and Related Economic Matters (AOREM) between Sudan and GoSS provided that South Sudan would have access rights to PETCO (Nile Blend) and BAPCO (Dar Blend) processing and transportation facilities located in Sudan and perpetuated the need for South Sudan to continue exporting its crude oil through Sudan's pipelines to export terminals.

¹¹ Processing, Transportation and Transit Fees total: Nile Blend - \$26 p/b and Dar Blend - \$24.10 p/b see Agreement between the Government of the Republic of South Sudan and The Government of the Republic of the Sudan on Oil and Related Economic Matters, 27 September 2012, para. 4 [<https://peacemaker.un.org/sudan-southsudan-agreement-oil2012>].

¹² Issues of transparency by Sudan regarding its oil figures were raised in 2011 see Global Witness, New analysis raises further questions over oil transparency in Sudan, 6 January 2011

[<https://www.globalwitness.org/en/archive/new-analysis-raises-further-questions-over-oil-transparency-sudan/>].

¹³ U.S. Dept. of Commerce, 83 FR 12475 15 South Sudanese Entities Added to the Entity List, 22 March 2018 [<https://www.bis.doc.gov/index.php/regulations/1407-15-south-sudanese-entities-added-to-the-entity-list>]. See also Federal Register/Vol. 83, No. 56, Department of Commerce Bureau of Industry and Security 15 CFR Part 744 [<https://www.govinfo.gov/content/pkg/FR-2018-03-22/pdf/2018-05789.pdf>].

production in disagreement with Sudan over the transit fees it was required to pay for the use of the pipeline to Port Sudan amid allegations that Sudan had diverted oil.¹⁴ The pipeline remained closed for approximately 14 months and the dispute had a devastating impact on the domestic economy as oil revenues ceased.¹⁵ When the two attempted coups ignited the conflict in the oil producing regions, production was also interrupted.

Chapter 5

This Chapter examines the significant challenges overcome by the GoSS in achieving the unification of forces and the graduation of the first batch of the Necessary Unified Forces (NUF) under Chapter 2 of the R-ARCSS. It assesses the challenges posed by incorporation of the SPLM/A-IO (predominantly made up of militia elements) and other non-government aligned troops since 2018 and the real reasons behind key defections from the SPLM/A-IO. The difficulties of the unification process were underestimated with unrealistic timelines imposed. The unification of forces, previously in conflict, led to attempts by the SPLM/A-IO to unjustifiably skew the figures in the balance of troops to be numerically equal with the government forces.

Chapter 6

Shortly after gaining independence in 2011 many challenges to the development of South Sudan's justice system were forecast by the Minister of Justice, John Luk Jok, who conveyed his firm intention to uphold the rule of law despite ongoing conflict. South Sudan had to transition from an Arabic language sharia-based law system to a pluralist legal system built on the combination of statutory and customary laws and courts. This significant shift in legal systems has impacted the speed at which the country has been able to rebuild its justice sector. Many court proceedings and judgments still use the Arabic language, even though South Sudan adopted English as its official language,¹⁶ and common law as its legal system.¹⁷

This chapter provides a unique insight into significant developments which have taken place within South Sudan's justice sector since independence, noting the wide-ranging extent of the government's cooperation with UN bodies to bring about change and the challenges it continues to face. Targeted international support which meets the particular needs of the country will be required in the years ahead in order to cement the progress that has been made.

The acronyms and abbreviations used in this report are set out in Annex I.

¹⁴ BBC News, South Sudan 'to complete shutdown' of oil production, 28 January 2012 [<https://www.bbc.co.uk/news/world-africa-16769935>].

¹⁵ Ministry of Petroleum Annual Report June 2014-May 2015. Held on File.

¹⁶ Article 6.2, Transitional Constitution of the Republic of South Sudan, 2011 [<https://www.refworld.org/pdfid/5d3034b97.pdf>].

¹⁷ Laws passed before independence have been confirmed by the Transitional Constitution as having binding force of law in South Sudan see Article 200, Transitional Constitution of the Republic of South Sudan, 2011 [<https://www.refworld.org/pdfid/5d3034b97.pdf>].

FOREWORD

After the signing of the Comprehensive Peace Agreement in 2005 (CPA), the then semi-autonomous region of southern Sudan made several significant achievements including the establishment of the essential institutions of government at the central, state and local government level, culminating in a successful, transparent referendum on independence in January 2011.¹⁸

One of the least developed countries in the world at the time of its independence,¹⁹ South Sudan set out to build a country almost from scratch, creating economic and governance institutions with a view to establishing an environment conducive to growth, peace and stability.²⁰ The CPA marked an indelible turning point. The agreement declared “there shall be a national government” with full rights to exercise those functions and pass laws that “must necessarily be exercised by a sovereign state”.²¹ The CPA articulated the general structure of the government, calling for the creation of legislative, executive and judicial branches, and for the writing of an interim constitution. The International Monetary Fund remarked, “South Sudan’s challenges are formidable [...] [m]uch has been done since 2005 and achieving independence on July 9 [2011] [...] was a very important step, but the South Sudanese still have a long road ahead of them”.²²

The challenges faced by South Sudan in 2011 were multidimensional, and complex. Among the myriad of demands, the Government would be responsible for preserving a fragile peace and building a functional government charged with providing a basic acceptable level of security and services for its people. A 2013 working paper from the Centre for International Development at Harvard University laid bare the challenges faced by the Government, stating that “[b]asically there is not a single government office in South Sudan that does not face critical capacity gaps – from the President’s office to the local administrators”.²³

Since 2005, there has been an attempt to address the ‘capacity gap’ by the international community through significant levels of donor aid which to date has failed to fully engage with complex political and implementation issues. A meeting in December 2022 between the GoSS and UN Agencies in South Sudan underscored this point showing that the level of technical assistance and capacity building received thus far, did not reflect, or meet, the needs of

¹⁸ OECD, 2011 Report on International Engagement in Fragile States Republic of South Sudan, 2011 [<https://www.oecd.org/countries/southsudan/48697972.pdf>].

¹⁹ IMF, IMF Survey: South Sudan Faces Hurdles as World's Newest Country, 18 July 2011 [<https://www.imf.org/en/News/Articles/2015/09/28/04/53/socar071811a>].

²⁰ IMF, IMF Survey: South Sudan Faces Hurdles as World's Newest Country, 18 July 2011 [<https://www.imf.org/en/News/Articles/2015/09/28/04/53/socar071811a>].

²¹ Part C, para 3.2.1 (National Government) of 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, 9 January 2005 [https://peacemaker.un.org/sites/peacemaker.un.org/files/SD_060000_The%20Comprehensive%20Peace%20Agreement.pdf].

²² Kristina Kostial, IMF Mission Chief for South Sudan see IMF, IMF Survey: South Sudan Faces Hurdles as World's Newest Country, 18 July 2011 [<https://www.imf.org/en/News/Articles/2015/09/28/04/53/socar071811a>].

²³ Centre for International Development Harvard University, South Sudan’s Capability Trap: Building a State with Disruptive Innovation, October 2013 [<https://www.hks.harvard.edu/centers/cid/publications/faculty-working-papers/south-sudans-capability-trap>].

Government institutions.²⁴ This has long been the case and is part of a misunderstanding and failure to acknowledge the political realities caused by the two attempted coups.

Instead of long-term investment, donors have preferred to invest in short-term projects such as “random conferences and dialogues” that have struggled to deliver longer-term initiatives.²⁵ UNMISS’s three-year strategic vision for South Sudan was only set out on 12 March 2021.²⁶ Effective assistance and capacity building has fallen far short of the expectations of all sides.

Consequently, there are huge gaps in South Sudan’s institutional capacity, despite a large presence of international aid and development organisations operating across the country. These gaps are relied upon to criticise the GoSS for its “unwillingness” to build institutional capacity of its own.²⁷ The Government has acknowledged capacity gaps and requested assistance in certain areas; namely calling for Item 10 Technical Assistance and Capacity Building each year at the UN Human Rights Council meetings in Geneva.²⁸

The flawed approach to South Sudan can be traced back to the handling of peace negotiations by the international community following the attempted coup of December 2013. The rejection of the President’s statements of an attempted coup became the basis for the imposition of sanctions on key members of the GoSS along with an arms embargo, as the cause of the conflict was characterised as an ethnic attack, which it never was. Thereafter, the nascent Government’s inability to restore a lasting peace paved the way for a multitude of international institutions and governments to ‘take control’ of the situation by orchestrating negotiations between the GoSS and SPLM/A-IO and ultimately in 2015, imposing a peace agreement based on a flawed understanding and biased narrative. When that failed, the ‘revitalised’ Peace Agreement in 2018 has ensured continued international intervention ever since.

²⁴ Minutes of the Meeting between the Government and the UN Agencies for the establishment of Coordination Mechanism on delivery of technical assistance and capacity building, 16 December 2022. Held on file.

²⁵ The National Interest, Why Washington Should Care About South Sudan, 25 February 2023 [<https://nationalinterest.org/feature/why-washington-should-care-about-south-sudan-206249>].

²⁶ “Decides that UNMISS’s mandate is designed to advance a three-year strategic vision to prevent a return to civil war in South Sudan, to build durable peace at the local and national levels, and to support inclusive and accountable governance and free, fair, and peaceful elections in accordance with the Revitalised Agreement”, see S/Res/2567, Resolution 2567 (2021), 12 March 2021 [<https://digitallibrary.un.org/record/3905149?ln=en#record-files-collapse-header>].

²⁷ See for example, the UN Panel of Experts Reports submitted before Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan [<https://www.un.org/securitycouncil/sanctions/2206/panel-of-experts/reports>].

²⁸ Response of the Government of South Sudan to the Report of the Commission on Human Rights in South Sudan, During the 52nd Session of the Human Rights Council, By Hon. Justice Ruben Madol Arol, Minister of Justice and Constitutional Affairs, Geneva 7 March 2023 see also Response of the Government of South Sudan to the Report of the Commission on Human Rights in South Sudan, During the 52nd Session of the Human Rights Council, Supporting Note to the Speech of Hon. Justice Ruben Madol Arol Minister of Justice and Constitutional Affairs, Geneva 7th March 2023. The addendum is referred to in the Speech of Hon. Minister Ruben Madol Arol see Human Rights Council, 52nd Session, 7 March 2023, audio recording, marker 1:14:16 to 1:19:50 [<https://conf.unog.ch/digitalrecordings/>]. See also HRC, High Commissioner for Human Rights Presents an Oral Update on the Activities of his Office and Recent Human Rights Developments, 7 March 2023 [<https://www.ohchr.org/en/news/2023/03/high-commissioner-human-rights-presents-oral-update-activities-his-office-and-recent>]. Item 10 Agenda Point in the HRC’s regular meetings concerns “Technical Assistance and Capacity Building.” With the aid of the OHCHR, the HRC can take a variety of measures to assist particular countries in improving the promotion and protection of human rights in their territory. At its 18th session, the HRC adopted the resolution on technical assistance and capacity building for South Sudan in the field of human rights.

This report is by a team at 9BR Chambers, who have worked with me on the international political and legal challenges the Government of South Sudan (GoSS) faces and seeks to set the record straight on some of them. The report should be read in conjunction with an earlier report we produced in 2022 titled: “Pushing the Reset Button for South Sudan”.²⁹ The 9BR team are Gillian Higgins, John Traversi, Sarah Bafadhel, Lennart Poulsen, Doug Wotherspoon and includes our colleagues from outside Chambers, Ruby Sandhu and Jessica Lepehne.

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²⁹ <https://southsudanreports.com>

CHAPTER 1

THE IMPACT AND LEGACY OF THE MISCHARACTERISATION OF COUP ATTEMPTS IN SOUTH SUDAN

1.1 Introduction

This Chapter examines the impact and legacy of the failed 2013 and 2016 coup attempts in South Sudan and international involvement in the peace negotiations, against a backdrop of denials that coup attempts took place.³⁰ By not acknowledging the reason for the conflicts, the basis and strategies of the subsequent peace agreements were inherently flawed. The agreements resulted in many concessions being required of the Government of President Salva Kiir Mayardit favouring actors who had set out on a violent armed path to take power. Building stable government institutions following these agreements has inevitably proved fraught with difficulties.

At the signing of the ARCSS in 2015, President Kiir warned that this was the “most divisive and unprecedented peace deal ever seen in the history of our country and the African continent at large” and that, “[t]his agreement ha[d] also attacked the sovereignty of [the] country”.³¹ These concerns were not heeded, and another attempted coup occurred soon after. Years of negotiations led to the R-ARCSS in 2018 and eventually the Revised Transitional Roadmap in August 2022.

From 2013 to the present day, the GoSS has operated against an insistent international narrative that focuses on ethnicity as the cause of the insecurity, rather than the attempted coups – a position reinforced by the release of the African Union Commission of Inquiry on South Sudan report in 2014 that also dismissed the coup allegations.³² This false narrative has, as a consequence, been used to support allegations against the GoSS of either failure to control violence or instigation of violence when SPLM/A-IO forces or related militia groups have in fact been responsible for insecurity across the country.³³ These allegations have had a direct

³⁰ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

³¹ Accord, ‘A Hurried and Imposed Peace Pact?’, 19 October 2016 [<https://reliefweb.int/report/south-sudan/conflict-resurgence-and-agreement-resolution-conflict-republic-south-sudan>].

³² AU, Final report of the African Union Commission of Inquiry on South Sudan, 15 October 2014 [<https://reliefweb.int/report/south-sudan/final-report-african-union-commission-inquiry-south-sudan>] The AU Situation Report of 29 January 2014 referred only to “conflict beginning on 15 December 2013”, and that the “parties offered different explanations on the root causes of the current crisis”, see paragraphs 12 and 15. See also 9BR Chambers, Pushing the Reset Button for South Sudan 2022, Chapter 4.

³³ The R-TGoNU has created the Joint Verification and Monitoring Mechanism to help ensure greater access to communities in need of urgent protection or humanitarian assistance. However, where such assistance is refused (as it often is) any attacks by militia on humanitarian workers are generally blamed on the R-TGoNU. As reported by the Minister of Justice and Constitutional Affairs to the OHCHR, 52nd Session, Geneva, March 2023 see Response of the Government of South Sudan to the Report of the Commission on Human Rights in South Sudan, During the 52nd Session of the Human Rights Council, Supporting Note to the Speech of Hon. Justice Ruben Madol Arol Minister of Justice and Constitutional Affairs, Geneva 7th March 2023. The addendum is referred to in the Speech of Hon. Minister Ruben Madol Arol see Human Rights Council, 52nd Session, 7 March 2023, [<https://conf.unog.ch/digitalrecordings/>]. See also HRC, High Commissioner for Human Rights Presents an Oral Update on the Activities of his Office and Recent Human Rights Developments, 7 March 2023 [<https://www.ohchr.org/en/news/2023/03/high-commissioner-human-rights-presents-oral-update-activities-his-office-and-recent>].

bearing on the nature and agenda of the negotiations that led to the prescribed peace agreement in 2015 and its revitalised successor in 2018 and thereafter. The failure to heed the concerns of President Kiir not only impacted the drafting of the peace negotiations but also caused significant delays in the implementation of the peace process which in turn has had a knock-on effect on the economy and prosperity of South Sudan. The resulting sanctions and arms embargo have restricted development in South Sudan, attempted to weaken the Government and led to an inherent mistrust of the international community's motives.

1.2 Incorrect Assessment of December 2013 Attempted Coup

As set out in 9BR Chamber's report 'Pushing the Reset Button for South Sudan',³⁴ despite being informed on 16 December 2013 by President Salva Kiir that there was an attempted coup by forces of Riek Machar and his supporters, Special Representative of the UN Secretary General and Head of UNMISS Hilde Johnson,³⁵ decided upon a policy to view the conflict as between two political sides.³⁶ In her book, she referenced "targeted ethnic killings" and stated that "what clearly had been at first a fight between forces of the Presidential Guard loyal to the President and those siding with Riek Machar had degenerated into a deliberate massacre of Nuer, and particularly Nuer males".³⁷ Hilde Johnson later admitted in her book that what she knew on 17 December 2013, was "anecdotal at best".³⁸

Johnson explained that even though she had seen summaries of audio recordings of Taban Deng Gai organising troops and weapons supplies prior to the conflict, she questioned their authenticity and remained 'unconvinced' of a coup.³⁹ Incorrectly, Johnson focused on politics and ethnicity as root causes and consequences of the violence, with her policy and assessment quickly setting the international agenda against the GoSS.⁴⁰

On 24 December 2013 the UN Security Council issued Resolution 2132 "[d]etermining that the situation in South Sudan continues to constitute a threat to international peace and security in the region," exercising its Chapter VII powers. In a subsequent press statement in January 2014, President Kiir questioned the role of the UN at the time stating, "I think the UN want to be the Government in South Sudan and they fell short of naming the chief of the UNMISS as the co-President of the Republic of South Sudan".⁴¹

In an attempt to inform and prevent the ethnic conflict narrative from becoming the purported truth, UNMISS and the AUCISS were provided with summaries and audio material of telephone intercepts between Taban Deng Gai, military commanders, Riek Machar and other political leaders involved in planning and executing the attempted coup on 15 December

³⁴ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

³⁵ Johnson, H.F, South Sudan The Untold Story, Bloomsbury 2016, pp. 182, 191.

³⁶ Al Jazeera, The real reasons behind South Sudan crisis, 27 December 2013

[<https://www.aljazeera.com/opinions/2013/12/27/the-real-reasons-behind-south-sudan-crisis>]; Reuters, South Sudan President Kiir urges end to tribal atrocities, 25 December 2013 [<https://www.reuters.com/article/us-sudansouth-unrest-idUSBRE9BN0GR20131225>].

³⁷ Johnson, H.F, South Sudan The Untold Story, Bloomsbury 2016, p. 191.

³⁸ Johnson, H.F, South Sudan The Untold Story, Bloomsbury 2016, p. 191.

³⁹ Johnson, H.F, South Sudan The Untold Story, Bloomsbury 2016, p. 348, fn. 131.

⁴⁰ SC/11227-AFR/2775, Security Council Press Statement on Situation in South Sudan, 20 December 2013 [<https://www.un.org/press/en/2013/sc11227.doc.htm>].

⁴¹ Sudan Tribune, South Sudan's Kiir criticises UN over camp access dispute, 20 January 2014 [<https://sudantribune.com/article48559/>].

2013.⁴² This crucial evidence was not however taken into consideration and the ethnically driven narrative prevailed.

1.3 Regional Responses to December 2013 Coup

In the aftermath of the December 2013 attempted coup, President Kiir reached out and declared his readiness to hold talks with Riek Machar and his supporters on 18 December 2013.⁴³ Following this declaration, the Intergovernmental Authority on Development convened a summit in Nairobi on 27 December 2013 to set out a framework and parameters to guide peace negotiations. Despite repeated exhortations by IGAD and President Kiir himself, no representatives on behalf of Riek Machar or the opposition attended this summit.⁴⁴ Unlike the UN the context of the conflict had been clearly understood by IGAD in its Communique of 27 December 2013 that condemned “all unconstitutional actions to challenge the constitutional order, democracy and the rule of law and in particular condemn[ed] changing the democratic government of the Republic of South Sudan through use of force”. IGAD, “welcomed the commitment by the Government of the Republic of South Sudan to an immediate cessation of hostilities and called upon Dr. Riek Machar and other parties to make similar commitments”.⁴⁵

It is notable that in addition to IGAD, the attempted coup was acknowledged as such and condemned by several African countries – many of which had a thorough knowledge of the different political alignments in South Sudan and Riek Machar’s personal political ambitions.⁴⁶ Even the U.S., while not explicitly acknowledging the coup, made a statement which included an indirect reference condemning the “effort to seize power through military force”.⁴⁷

Gambia's Secretary General and Head of the Civil Service and Minister of Presidential Affairs, Momodou Sabally, stated that the “attempted overthrow” of President Kiir's government was

⁴² 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

⁴³ Reuters, South Sudan president ready to talk as clashes spread, 18 December 2013 [<https://www.reuters.com/article/uk-southsudan-unrest-idUKBRE9BH0IV20131218>].

⁴⁴ IGAD, Communique of the 23rd Extra-Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan, 27 December 2013 [<https://southsudan.igad.int/index.php/igad-communicue/98-demo-contents/summit-communicues/213-communicue-of-the-23rd-session-of-igad-assembly-of-heads-of-state-and-government-on-the-situation-in-south-sudan>].

⁴⁵ IGAD, Communique of the 23rd Extra-Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan, 27 December 2013, para. 7 [<https://southsudan.igad.int/index.php/igad-communicue/98-demo-contents/summit-communicues/213-communicue-of-the-23rd-session-of-igad-assembly-of-heads-of-state-and-government-on-the-situation-in-south-sudan>].

⁴⁶ Al Jazeera, Profile: South Sudan rebel leader Riek Machar, 5 January 2014 [<https://www.aljazeera.com/news/2014/1/5/profile-south-sudan-rebel-leader-riek-machar>]; The Conversation, Kiir and Machar: insights into South Sudan’s strongmen, 10 May 2022 [<https://theconversation.com/kiir-and-machar-insights-into-south-sudans-strongmen-182522>]; BBC News, Riek Machar: South Sudan warlord turned peacemaker?, 21 June 2018 [<https://www.bbc.com/news/world-africa-25402865>]; France 24, South Sudan's Riek Machar: rebel, statesman, 'coup leader', 17 December 2013 [<https://www.france24.com/en/20131217-south-sudan-riek-machar-rebel-statesman-coup-leader>].

⁴⁷ The White House Office of the Press Secretary, Readout of President Obama's Updates on South Sudan, 21 December 2013 [<https://obamawhitehouse.archives.gov/the-press-office/2013/12/21/readout-president-obamas-updates-south-sudan>]. See also, 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022, p.34 [<https://southsudanreports.com/report/>].

unacceptable and that the protagonists of the attempt should desist from destabilising the country.⁴⁸

Nigeria condemned what it defined as a “coup” and said that its “information further reveals that government forces were able to beat back the rebels. [...] [d]estruction of property on a level yet to be determined has also been reported”.⁴⁹

South Africa also identified the conflict as a coup attempt stating that “respect for democracy and human rights are essential to the governance of all African countries and that all violent means to overthrow legitimate governments must be rejected [...] [i]t is therefore highly unfortunate that an attempt was allegedly made to undermine the stability of the country”.⁵⁰

Ugandan President, Yoweri Museveni, similarly condemned what he referred to as a coup attempt and, according to a Reuters press release on 30 December 2013, claimed, “the nations of East Africa had agreed to move in to defeat South Sudanese rebel leader Riek Machar if he rejected a ceasefire offer”.⁵¹

Although a significant number of African states recognised what had occurred in December 2013, these countries had no control over the development of the international narrative that was about to unfold, which caused South Sudan to be locked into a never-ending cycle of international criticism, scrutiny, and interference.

1.4 A Flawed Western-Led Narrative Takes Hold and Sanctions are Threatened

The United Nations, African Union, the Troika, and the European Union preferred collective responses to the coup attempt of December 2013, narrating a political crisis that had escalated into ethnic violence carried out by the military and various armed groups.⁵² This account became the orthodox version of events and led the UN High Commissioner for Human Rights, on 30 April 2013 to take the view that South Sudan was “on the verge of catastrophe” due to a “personal power struggle”.⁵³

⁴⁸ All Africa, Gambia Condemns Violence in South Sudan CAR, 23 December 2013 [https://allafrica.com/stories/201312231462.html].

⁴⁹ Nigeria Tribune, FG condemns coup in South Sudan, 21 December 2013 [https://web.archive.org/web/20131224112601/http://tribune.com.ng/news2013/index.php/en/news/news-headlines/item/29061-fg-condemns-coup-in-south-sudan.html].

⁵⁰ News24, Government condemns South Sudan coup, 19 December 2013 [https://www.news24.com/News24/Government-condemns-South-Sudan-coup-20131218].

⁵¹ Reuters, Uganda says region ready to take on, defeat S. Sudan rebel leader, 30 December 2013 [https://www.reuters.com/article/southsudan-unrest-idINDEE9BT0E020131230].

⁵² UNMISS, Remarks from Hilde F. Johnson Special Representative of UN Secretary- General and Head of United Nations Mission in South Sudan (UNMISS) Press Conference on South Sudan, 1 January 2014 [https://www.un.org/sg/en/content/sg/note-correspondents/2014-01-01/remarks-hilde-f-johnson-special-representative-un].

⁵³ UN News, With South Sudan on verge of catastrophe, UN rights chief urges country’s leaders to act, 30 April 2014 [https://news.un.org/en/story/2014/04/467242].

This statement followed a three-day visit by Navi Pillay and the UN Special Advisor on the Prevention of Genocide, Adama Dieng, at the request of the Security Council, in which they also referred to recrimination, hate speech and revenge killings along with “mass killings of civilians in Juba in mid-December which set off escalation of ethnic based revenge killings that have ensued over the four and a half months since” see OHCHR, South Sudan on verge of catastrophe, 30 April 2014 [https://www.ohchr.org/en/statements/2014/04/south-sudan-verge-catastrophe-pillay?LangID=E&NewsID=14550]. The statement expressly mentioned that “[e]thnicity should not be used as a

Following that statement, it was taken to another level by former U.S. Secretary of State, John Kerry, who warned of a possible “genocide” in South Sudan and raised the threat of sanctions. He stated that “[t]hose who are responsible for targeted killings based on ethnicity or nationality have to be brought to justice, and we are actively considering sanctions against those who commit human rights violations and obstruct humanitarian assistance”⁵⁴ Kerry’s statement was made notwithstanding the position taken by UN Commissioner Adama Dieng the previous day that “[i]t is too early to determine whether recent violence in South Sudan amounted to genocide, but risk factors like hate speech and targeted killings based on ethnicity are causes for concern”.⁵⁵

1.5 Agreement on Cessation of Hostilities January 2014 and its Subsequent Collapse

On 31 January 2014 in Addis Ababa, an IGAD summit was held to mark the Agreements on Cessation of Hostilities signed on 23 January 2014.⁵⁶ Present at this meeting were Heads of State of the IGAD nations as well as representatives from the Troika, the United Nations and China.⁵⁷ The summit noted with “appreciation” the eight-point roadmap outlined by President Salva Kiir “to wide consultations with all stakeholders...[in order to]... resolve the conflict in South Sudan in an all-inclusive manner”.⁵⁸

On 18 February 2014, less than a month after the signing of the agreement, a South Sudanese Government official accused forces affiliated with the SPLM/A-IO of attacking Malakal, a key town in the Upper Nile. The fighting quickly spread across Upper Nile, Jonglei, Warrap and Unity States.⁵⁹ IGAD’s statement on 19 February 2014 deplored the breach of the Cessation of Hostilities Agreement (CoHA).⁶⁰

reason to incite violence”, “that those responsible for serious violations must be held accountable” and that there were an “increasing number of examples of incitement to violence on the basis of ethnicity carried out by elements on all sides” see OHCHR, South Sudan on verge of catastrophe, 30 April 2014 [<https://www.ohchr.org/en/statements/2014/04/south-sudan-verge-catastrophe-pillay?LangID=E&NewsID=14550>].

⁵⁴ The Guardian, John Kerry warns of possible genocide in South Sudan, 1 May 2014

[<https://www.theguardian.com/world/2014/may/01/south-sudan-catastrophe-un-child-soldiers-famine>].

⁵⁵ UN News, South Sudan Leaders Have No Excuse For Inaction – Dieng, 30 April 2014

[<https://unmiss.unmissions.org/south-sudan-leaders-have-no-excuse-inaction-%E2%80%93-dieng>].

⁵⁶ IGAD, Communique of the 24th Extra-Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan, 31 January 2014 [<https://southsudan.igad.int/index.php/about-us/98-demo-contents/summit-communiques/214-communique-of-the-24th-session-of-igad-assembly-of-heads-of-state-and-government-on-the-situation-in-south-sudan>]. This agreement incorporated the set-up of various mechanisms such as a Joint Technical Committee (JTC) and a Monitoring and Verification Mechanism (MVM).

⁵⁷ IGAD, Communique of the 24th Extra-Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan, 31 January 2014, preamble [<https://southsudan.igad.int/index.php/about-us/98-demo-contents/summit-communiques/214-communique-of-the-24th-session-of-igad-assembly-of-heads-of-state-and-government-on-the-situation-in-south-sudan>].

⁵⁸ IGAD, Communique of the 24th Extra-Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan, 31 January 2014, para. 14 [<https://southsudan.igad.int/index.php/about-us/98-demo-contents/summit-communiques/214-communique-of-the-24th-session-of-igad-assembly-of-heads-of-state-and-government-on-the-situation-in-south-sudan>].

⁵⁹ Addis Standard, IGAD Special Envoys worried over South Sudan breach of the Cessation of Hostilities agreement, 20 February 2014 [<https://addisstandard.com/igad-special-envoys-worried-over-south-sudan-breach-of-the-cessation-of-hostilities-agreement/>].

⁶⁰ IGAD, Special Envoys express serious concerns over reports of continued fighting in the Republic of South Sudan, 19 February 2014 [https://southsudan.igad.int/attachments/article/245/02_19_2014_Press%20Release-%20IGAD%20Special%20Envoys%20express%20concern%20over%20reports%20of%20continued%20fighting%20in%20South%20Sudan.pdf].

After the collapse of the CoHA, IGAD with the support of the Troika, sought to develop a framework for peace. IGAD documents from March 2014 show both the GoSS and SPLM/A-IO broadly accepting seven thematic areas within a Framework for Political Dialogue.⁶¹ The Government proposed a phased approach focused on humanitarian access, negotiating a permanent ceasefire and national political conference to discuss governance, constitutional and institutional reforms; whereas the SPLM/A-IO viewed the Framework as a working document and proposed changes calling for a complete overhaul of institutions of governance.⁶² This suited their agenda and afforded them a level of international legitimacy which would thereafter shape the future of South Sudan when President Kiir and Riek Machar convened in Addis Ababa on 9 May 2014 and signed the ARCSS.⁶³ A Transitional Government was outlined as the best chance for the people of South Sudan to take the country forward. The U.S. Secretary of State John Kerry, described it as the “breakthrough” to stop the fighting and to negotiate a transitional government.⁶⁴ On 2 May 2014, Kerry had issued a statement following his meeting with President Kiir noting the need for a transitional government to bring peace to the country and recognising the position of the “sitting president, constitutionally elected and duly elected by the people of the country and a rebel force that is engaged in [the] use of arms in order to seek political power or to provide a transition”.⁶⁵

1.6 Government Concessions to SPLM/A-IO

Since December 2013, peace talks have been externally led and sanctions imposed on key members of the GoSS’ negotiation team raising objections or proposing changes on the basis that they were “obstructing the implementation” of the ARCSS.⁶⁶ The fairness of such tactics to force terms is questionable. From December 2013, continued criticism and pressure by the international community of the GoSS benefited Riek Machar and his supporters, allowing them to stall peace talks in the hope that the Government would collapse, in a bid to enable Riek Machar to fulfil his self-proclaimed ambition of becoming president.⁶⁷ In 2018, one commentator expressed his view in the following terms: “[t]he government is increasingly convinced that the Troika⁶⁸ and UN are undermining efforts to reach peace, and emboldening

⁶¹ IGAD, Mediator Report, 13 March 2014

[https://www.usip.org/sites/default/files/03-13-2014_igad_mediator_report_to_igad_summit_3.pdf].

⁶² IGAD, Mediator Report, 13 March 2014

[https://www.usip.org/sites/default/files/03-13-2014_igad_mediator_report_to_igad_summit_3.pdf].

⁶³ BBC News, South Sudan's Kiir and Machar meet in Ethiopia, 9 May 2014 [<https://www.bbc.co.uk/news/world-africa-27334044>].

⁶⁴ USIP, Secretary Kerry Statement: U.S. Welcomes Agreement between President Kiir and Machar, 9 May 2014

[<https://www.usip.org/south-sudan-peace-process-digital-library/secretary-kerry-statement-us-welcomes-agreement-between/>].

⁶⁵ USIP, Remarks by US Secretary of State Following Meeting with President Salva Kiir, 2 May 2014

[<https://www.usip.org/south-sudan-peace-process-digital-library/remarks-us-secretary-state-following-meeting-president/>].

⁶⁶ Office of Financial Sanctions Implementation HM Treasury, Consolidated List of Financial Sanctions Targets in the UK last updated 8 March 2023

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140972/South_Sudan.pdf].

⁶⁷ VOA News, Former South Sudan Official wants to be Ruling Party’s Presidential Candidate, 26 November 2013

[<https://www.voanews.com/a/former-south-sudan-official-wants-to-be-ruling-party-presidential-candidate/1798422.html>]; Reuters, South Sudan's Machar sets sights on presidency, challenges Kiir, 26 July 2013

[<https://www.reuters.com/article/us-southsudan-government-machar-idUSBRE96P0SY20130726>].

⁶⁸ The Troika was created “as a partnership that Norway forged with Britain, and the USA to revive Sudan peace talks”, in order to provide support to the first of IGAD’s efforts on Sudan see Johnson, H.F, Waging Peace in Sudan: The Inside Story of the Negotiations that Ended Africa's Longest Civil War, Sussex Academic Press 2011.

Riek to not make compromise. This was demonstrated by a choreographed release of the UN report of alleged atrocities committed by the government forces against civilians in Unity state. The report did not blame the rebels”.⁶⁹

During the peace negotiations, the GoSS made several notable concessions including President Kiir’s ordering a stay of criminal charges and releasing the suspects charged with the attempted 15 December 2013 coup. This concession had a tangible effect and contributed to the conclusion of the ARCSS on 9 May 2014.⁷⁰

Nhial Deng Nhial, the GoSS chief negotiator during the peace talks, emphasised other concessions made by the Government, as contributing to a “breakthrough”.⁷¹ These included President Kiir’s concession that Riek Machar would be able to run for the position of Prime Minister under the Protocol on Principles on Transitional Arrangements.⁷²

At the IGAD summit in Addis Ababa on 10 June 2014, President Kiir and the GoSS were commended for “releasing all the political detainees” as well as “their engagement in the negotiation process”.⁷³ Paradoxically in the same communique, IGAD simultaneously expressed its disappointment in what it considered failures of both the Government and the SPLM/A-IO to engage in the peace process meaningfully.⁷⁴ Such contradictions in the tone and approach of IGAD diluted the positive actions and progress made by the GoSS. Riek Machar and the SPLM/A-IO, for their part, had not offered any meaningful concessions to further the peace negotiations.

1.7 The Arusha Agreement – A Missed Opportunity for Peace?

In the spring of 2014, an alternative mediation initiative was established, designed to pursue a settlement by reconciling the SPLM at a distance from the influences of the international community.⁷⁵ The parties converged in Arusha, Tanzania, to discuss unification at the party level as a way of resolving the conflict and signed what is now known as the “Arusha Agreement”. This Agreement provided for a return of all political leaders to the SPLM, where

⁶⁹ Radio Tamazuj, Opinion: Is the IGAD peace process being undermined by the Troika countries?, 27 July 2018 [<https://radiotamazuj.org/en/news/article/opinion-is-the-igad-peace-process-being-undermined-by-the-troika-countries/>].

⁷⁰ IGAD, Phase II of IGAD-led South Sudan talks resume in Addis Ababa (Press Release), 28 April 2014 [<https://igad.int/press-release-phase-ii-of-the-igad-led-south-sudan-peace-talks-resume-in-addis-ababa/>]; IGAD, Press Release on Signing Of Agreement Between President Salva Kiir Mayardit And Dr. Riek Machar, 9 May 2014 [<https://igad.int/press-release-on-signing-of-agreement-between-president-salva-kiir-mayardit-and-dr-riek-machar/>]. See 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

⁷¹ Radio Tamazuj, Breakthrough’ involves concession to SPLM-IO, 26 October 2014 [<https://radiotamazuj.org/en/news/article/breakthrough-involves-concession-to-splm-io>].

⁷² IGAD, Protocol On Agreed Principles On Transitional Arrangements Towards Resolution Of the Crisis In South Sudan, 25 August 2014 [<https://www.peaceagreements.org/viewmasterdocument/1186>].

⁷³ IGAD, Communique of the 26th Extra-Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan, 10 June 2014, para. 3 [<https://southsudan.igad.int/index.php/press/98-demo-contents/summit-communicues/216-communique-of-the-26th-session-of-igad-assembly-of-heads-of-state-and-government-on-the-situation-in-south-sudan>].

⁷⁴ IGAD, Communique of the 26th Extra-Ordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan, 10 June 2014, para. 8 [<https://southsudan.igad.int/index.php/press/98-demo-contents/summit-communicues/216-communique-of-the-26th-session-of-igad-assembly-of-heads-of-state-and-government-on-the-situation-in-south-sudan>].

⁷⁵ International Peace Institute, A Poisoned Well: Lessons in Mediation from South Sudan’s Troubled Peace Process, April 2018 [https://www.ipinst.org/wp-content/uploads/2018/04/1804_Poisoned-Well.pdf].

they would discuss democratisation to rectify national problems. All members would be reinstated in their previous positions and would be eligible to contest elections. SPLM Secretary General, Pagan Amum, returned to Juba to a warm welcome with the aim of reuniting and reorganising the party. However, the Troika countries' negative attitude towards a non-Western led peace agreement was evident as reflected in a comment made by one Troika diplomat, stating “[w]hy do you want to resurrect a dead monster”.⁷⁶

The Troika countries came up with a new proposal, presented by IGAD, to circumvent the ideals of Arusha. The proposal created the position of the First Vice President, to be filled by Riek Machar and it is alleged that upon “seeing this, Dr. Riek jumped onto the proposal and abandoned Arusha”.⁷⁷ This marked the end of the Arusha Agreement and with it, an opportunity for peace. It also set a precedent for a form of government that was totally unworkable and revealed a western bias favouring Riek Machar, one which he set to exploit.

1.8 Calls for “Actions not Sanctions” – Spring 2014

On 3 April 2014, the Office of Foreign Assets Control of the U.S. Department of the Treasury implemented the South Sudan sanctions regime following Executive Order 13664.⁷⁸ Grounds for implementation were based on the preceding widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers and the obstruction of humanitarian operations.

On 2 May 2014, South Sudan's former Minister of Foreign Affairs gave an interview in which he gave a commitment to investigate all cases of human rights abuses and hold people to account. He reiterated the importance of bilateral relations between South Sudan and the U.S., the need for goodwill and assistance to be provided to South Sudan to build security, strengthen the capacity of the police and the new army and that “what South Sudan needs is help and assistance – not punishment or conditionalities”.⁷⁹

In spite of calls from a number of United National Security Council members resisting the imposition of further measures and calls for “Actions not Sanctions”,⁸⁰ additional UN sanctions

⁷⁶ Mach, M P and Prof. Mutundu, K, Analysis of the Effects of the Sino-Troika Interests on the South Sudan Peace Process, International Journal of Liberal Arts and Social Science, Vol. 8 No. 11 November 2020, p. 123.

⁷⁷ Mach, M P and Prof. Mutundu, K, Analysis of the Effects of the Sino-Troika Interests on the South Sudan Peace Process, International Journal of Liberal Arts and Social Science, Vol. 8 No. 11 November 2020, p. 123.

⁷⁸ The US South Sudan sanctions regime commenced on 3 April 2014 following Executive Order (E.O.) 13664 see OFAC, South Sudan Sanctions Program [<https://home.treasury.gov/system/files/126/overview-of-sanctions-southsudan.pdf>] and has been used in conjunction with the Global Magnitsky Program (Executive Order (E.O.) 13818 [https://home.treasury.gov/system/files/126/glomag_co.pdf]) to target South Sudanese individuals and entities throughout 2014 to date. See also restrictive measures imposed by the U.S Department of Commerce against South Sudanese entities

[<https://www.bis.doc.gov/index.php/regulations/1407-15-south-sudanese-entities-added-to-the-entity-list>].

⁷⁹ DW, South Sudan's foreign minister denies genocide, 2 May 2014 [<https://www.dw.com/en/south-sudans-foreign-minister-says-genocide-is-not-the-issue/a-17609354>].

⁸⁰ For example, in 2016 Japan, Russia, China, Angola, Malaysia, Venezuela, Egypt and Senegal abstained in respect of a UNSC draft resolution to impose an arms embargo and further sanctions against South Sudan.

were later imposed from 2015 onwards, including a UN arms embargo⁸¹, EU sanctions⁸² and a UK financial sanctions regime.⁸³

1.9 Attempts at Power Sharing with Rebels – Summer 2014

By 10 June 2014, both President Salva Kiir and Riek Machar agreed that within sixty days, dialogue on the terms of a Transitional Government of National Unity would be achieved, providing the “best chance for the people of South Sudan to take the country forward”.⁸⁴

On 20 June 2014, at the rescheduled launch of the Multi-Stakeholder negotiations for South Sudan, the Government of President Kiir and the SPLM/A-IO were congratulated for demonstrating the courage to commit to an inclusive peace process. However, the SPLM/A-IO boycotted the process, demanding involvement of only the “two warring parties” in the negotiations of all the issues in the IGAD Framework Agenda for the resolution of the crisis in South Sudan.⁸⁵ The SPLM/A-IO stance led to the commencement of peace talks without them. The government delegation then stated it could not participate in further meetings in the absence of the SPLM/A-IO. This led to the adjournment of the process which had aimed to set out the transitional institutions and government as well as finalise the modalities for the implementation of the CoHA.

Talks resumed in August 2014 resulting in the 27th Extraordinary Summit of the IGAD Heads of State and Government endorsing the Protocol on Agreed Principles on Transitional Arrangements Towards Resolution of the Crisis in South Sudan.⁸⁶ The Protocol was signed by President Kiir but not by Riek Machar. The Protocol called for the Head of State and Commander-in-Chief of the Armed Forces of TGoNU to be the elected incumbent President of the Republic who was to be deputised by a Vice President of the Republic. The office of Prime Minister would be established and nominated by the SPLM/A-IO. The Executive of the Transitional Government comprised the President, the Vice President, the Prime Minister and Council of Ministers. The Transitional Government was to include representatives nominated

⁸¹ UN sanctions were first adopted against designated South Sudanese individuals in 2015 pursuant to UNSC resolution 2206 (2015). The arms embargo was adopted in 2018 pursuant to resolution 2428 (2018) [<https://www.un.org/securitycouncil/sanctions/2206>].

⁸² The Council of the EU first adopted restrictive measures in relation to South Sudan on 10 July 2014 and has continued to update and maintain such measures to date see EU Consolidated list of persons, groups and entities subject to EU financial sanctions [<https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>].

⁸³ The UK financial sanctions South Sudan regime was adopted in July 2014 and has continued to sanction designated individuals to date see UK Financial sanctions, South Sudan [<https://www.gov.uk/government/publications/financial-sanctions-south-sudan#full-publication-update-history>]. Other domestic sanction regimes have also adopted and maintained restrictive measures against South Sudanese individuals and entities in accordance with UN and EU obligations.

⁸⁴ This is referred to in this document: IGAD, Opening Remarks By Ambassador Seyoum Mesfin, Chairperson Of The IGAD Special Envoys For South Sudan At The Launch Of Multistakeholder Negotiations For South Sudan Addis Ababa, 20 June 2014 [https://www.usip.org/sites/default/files/06-20-2014_opening_remarks_seyoum_mesfin.pdf].

⁸⁵ SPLM Political Leaders (FD), Press Release Procedural Issues Impede the Peace Process Again!, 24 June 2014 [https://www.usip.org/sites/default/files/06-24-2014_press_release_by_fds_south_sudan.pdf].

⁸⁶ IGAD, Protocol On Agreed Principles On Transitional Arrangements Towards Resolution Of the Crisis In South Sudan, 25 August 2014 [<https://www.usip.org/south-sudan-peace-process-digital-library/protocol-agreed-principles-transitional-arrangements>].

by the Government, the SPLM/A-IO, SPLM leaders and other Political Parties.⁸⁷ This proposal⁸⁸ was rejected by the SPLM/A-IO. Other stakeholders, namely the SPLM Leaders (Former Detainees), the Political Parties and representatives of Civil Society rejected other power sharing principles.⁸⁹ On 22 September 2014, a revised draft was circulated by IGAD setting out how power was to be shared.⁹⁰

The resolution of the precise arrangements for power sharing remained an ongoing issue that significantly delayed the signing and implementation of the peace agreements,⁹¹ as reflected in the Reservations of the GoSS on the Compromise Peace Agreement on the Resolution of the Conflict in South Sudan, 26th August 2015.⁹² This substantive document, in which the GoSS noted its detailed reservations to the proposed peace agreement had been shown to international negotiators who had refused to acknowledge it.⁹³ In the absence of a comprehensive resolution of such matters of substance, it is unsurprising that the foundation of the resulting peace agreement was untenable.

1.10. Riek Machar Uses the International Narrative – December 2014

In December 2014, Riek Machar gave a speech in Pagak at the start of the SPLM/A-IO conference in which he stated “[w]e are about to mark the first anniversary of the Juba genocide carried out by President Salva Kiir against his people killing over 20,000 innocent lives of Nuer people in less than a week. The massacres against Nuer in Juba triggered the present civil war, which Kiir feigned as a coup against the state. Our people and the whole world knew there was no coup”.⁹⁴ A year earlier, he had described himself at the ‘scapegoat’ for the violence and denied the coup attempt.⁹⁵

Following the December 2014 conference, Riek Machar set out lengthy resolutions in his ‘Search for Sustainable Peace and Good Governance in South Sudan’.⁹⁶ He held President Salva Kiir directly responsible for an alleged Juba genocide, crimes against humanity and war

⁸⁷ IGAD, Protocol On Agreed Principles On Transitional Arrangements Towards Resolution Of the Crisis In South Sudan, 25 August 2014 [<https://www.usip.org/south-sudan-peace-process-digital-library/protocol-agreed-principles-transitional-arrangements>].

⁸⁸ The proposal that “[t]he Head of State and Government, Commander-Chief of the Armed Forces of TGoNU was the elected, incumbent President of the Republic who was to be deputised by a Vice President of the Republic”.

⁸⁹ IGAD, Follow-up to the 27th Extra Ordinary Summit of the IGAD Heads of State and Government, 28 August 2014

[https://www.usip.org/sites/default/files/08-28-2014_memo_to_prime_minister_hailemariam_dessalegn.pdf].

⁹⁰ Breakdown of Parties to form the Government see IGAD, Text Arising from the 25th August Protocol and Stakeholders Positions, Draft I, 22 September 2014 [https://www.usip.org/sites/default/files/09-22-2014_text_arising_from_the_25th_august_protocol_and_stakeholders_positions_draft_i.pdf].

⁹¹ USIP, Notes of the Mediators’ Consultations, 6 December 2014 [<https://www.usip.org/south-sudan-peace-process-digital-library/notes-mediators-consultations>].

⁹² Government of the Republic of South Sudan, The Reservations of the Government of the Republic of South Sudan on the “Compromise Peace Agreement on the Resolution of the Conflict in South Sudan, Juba 26 August 2015 [<https://carleton.ca/africanstudies/wp-content/uploads/GRSS-reservations.pdf>]

⁹³ Interview, GoSS, Juba, December 2022.

⁹⁴ Riek Machar Speech Pagak, 10 December 2014

[https://www.usip.org/sites/default/files/12-10-2014_riek_machar_speech_pagak.pdf].

⁹⁵ The Guardian, South Sudan's sacked VP denies plotting coup, 18 December 2013

[<https://www.theguardian.com/world/2013/dec/18/south-sudan-sacked-vp-denies-plotting-coup>].

⁹⁶ SPLM/SPLA Resolutions of the Conference Pagak Upper Nile State, December 6 to 12 2014

[https://www.usip.org/sites/default/files/12-12-2014_pagak_conference_resolutions.pdf].

crimes, stating that he had therefore lost his legitimacy.⁹⁷ Regarding the cause of the conflicts, Machar claimed that President Kiir had launched a military campaign on 15 December 2013 with the objective of stifling democracy and eliminating his opponents in order to institute a totalitarian regime. Machar claimed that these actions plunged South Sudan into a civil war.⁹⁸

9BR Chambers' report 'Pushing the Reset Button for South Sudan' clearly shows this account to be a deliberate misrepresentation of events.⁹⁹

1.11 July – August 2015: Concluding the ARCSS

As part of the peace process, in July 2015, U.S. President Barack Obama invited the leaders of IGAD to a summit in Addis Ababa. After the meeting, it was determined that the parties should finalise a negotiated settlement by 17 August 2015.

Concern arising from the adverse impact of the pressure to conform to the IGAD/Troika/UNMISS-led agreement was evident. On 10 August 2015, just one week before the deadline, Ugandan President Museveni proposed substantial changes to the draft agreement. This included alterations to the proposed power-sharing formula and, more consequentially, to its prescribed security arrangements. While this last-minute intervention was denounced by the international community and ultimately did not derail the eventual signing of the ARCSS, the concerns and alterations proposed by President Museveni were to be echoed by President Kiir during the signing ceremony.

On 17 August 2015, Riek Machar signed the ARCSS on behalf of the opposition, together with a representative of the SPLM former detainees. President Kiir decided not to sign the peace deal because in his view it threatened "to divide the country further".¹⁰⁰ It is noteworthy that even Riek Machar and his allies in the SPLM/A-IO expressed reservations about the agreement, though they declined to set these out publicly as it was more beneficial for them to increase their political standing (and avoid alienating the international community) by agreeing with it.¹⁰¹

The Troika, United Nations, IGAD and wider international community united to force through the ARCSS by giving President Kiir fifteen days to sign the agreement.¹⁰² This position put President Kiir and the GoSS under intense pressure, increased by the United States submitting a draft resolution to the UN Security Council calling for wider sanctions and an arms embargo if the ARCSS was not agreed by 1 September 2015.¹⁰³ President Kiir considered that the power-sharing model would leave South Sudan without an effective and functional government. Working through IGAD, the international community increased this pressure by arranging to send Ethiopian Prime Minister Hailemariam Desalegn, Ugandan President Yoweri Museveni,

⁹⁷ Riek Machar Speech Pagak, 10 December 2014

[https://www.usip.org/sites/default/files/12-10-2014_riek_machar_speech_pagak.pdf].

⁹⁸ Radio Tamazuj, Document: SPLM-In Opposition announces its political platform, 13 December 2014

[<https://radiotamazuj.org/en/news/article/document-splm-in-opposition-announces-its-political-platform>].

⁹⁹ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022

[<https://southsudanreports.com/report/>].

¹⁰⁰ Africa Research Bulletin, South Sudan: Fragile Peace Agreement, Vol. 52, No. 8 19 September 2015.

¹⁰¹ Accord, Conflict Resurgence and the Agreement on the Resolution of the Conflict in the Republic of South Sudan, 19 October 2016 [<https://reliefweb.int/report/south-sudan/conflict-resurgence-and-agreement-resolution-conflict-republic-south-sudan>].

¹⁰² Africa Research Bulletin, South Sudan: Fragile Peace Agreement, Vol. 52, No. 8 19 September 2015.

¹⁰³ Africa Research Bulletin, South Sudan: Fragile Peace Agreement, Vol. 52, No. 8 19 September 2015.

Sudan's First Vice-President Bakri Hassan Salih and Kenyan President Uhuru Kenyatta to Juba.¹⁰⁴

Confronted with international pressure, the threat of an arms embargo and targeted sanctions, President Kiir relented and signed the agreement at a ceremony in Juba on 26 August 2015.¹⁰⁵ At the signing ceremony President Kiir outlined a number of substantive reservations about how the conduct of the mediation and about the ARCSS, including the viability of power-sharing which eroded the sitting government's authority.¹⁰⁶

President Kiir's concerns were echoed by others, highlighting the fragility of the peace agreement and casting doubt over the prospects of long-term security and stability in South Sudan.¹⁰⁷ The security arrangements provided for in the agreement during the transitional government period demanded that both government and opposition forces be redeployed outside a 25km radius around Juba. This meant that South Sudan effectively had two armies, with President Kiir in command of the South Sudan army and Riek Machar retaining control of his forces until the two could become unified – a process that would take several years. While the two militaries remained under separate command, the ceasefire would inevitably be compromised.¹⁰⁸

President Kiir commented that the agreement “is the most divisive and unprecedented peace deal ever seen in the history of our country and the African continent at large [...] [t]his agreement has also attacked the sovereignty of our country [...] [t]here were many messages of intimidations and threats for me in the last few weeks, to just sign the Agreement silently without any changes or reservations [...] [t]here is no doubt in my mind that the implementation of some of the provisions of the Agreement will be confronted by practical difficulties that will make it inevitable to review or amend such provisions”.¹⁰⁹ He added, “[w]ith all those reservations that we have, we will sign this [ARCSS] document [...] some features of the document are not in the interest of just and lasting peace. We had only one of the two options, the option of an imposed peace or the option of a continued war”.¹¹⁰

President Kiir explained that Article 5.5 of ARCSS provided for a *de facto* demilitarisation of Juba, yet the “army has the responsibility to protect the nation, its people and leadership”, “which is a matter of sovereignty” and therefore should remain stationed in the capital. His stance was however misinterpreted and his references to the “failed coup” taken as a “signal that mistrust and suspicion will still characterise his working relationship with Machar in the

¹⁰⁴ Africa Research Bulletin, South Sudan: Fragile Peace Agreement, Vol. 52, No. 8 19 September 2015.

¹⁰⁵ See S/RES/2206(2015), Resolution 2206, 3 March 2015 [<https://www.un.org/securitycouncil/s/res/2206-%282015%29>].

¹⁰⁶ BBC News, South Sudan President Salva Kiir signs peace deal, 26 August 2015 [<https://www.bbc.co.uk/news/world-africa-34066511>]; Accord, A Hurried and Imposed Peace Pact?, 19 October 2016 [<https://reliefweb.int/report/south-sudan/conflict-resurgence-and-agreement-resolution-conflict-republic-south-sudan>].

¹⁰⁷ Peace Direct, A fragile peace in South Sudan, 16 October 2015 [<https://reliefweb.int/report/south-sudan/fragile-peace-south-sudan>].

¹⁰⁸ Peace Direct, A fragile peace in South Sudan, 16 October 2015 [<https://reliefweb.int/report/south-sudan/fragile-peace-south-sudan>].

¹⁰⁹ Accord, A Hurried and Imposed Peace Pact?, 19 October 2016 [<https://reliefweb.int/report/south-sudan/conflict-resurgence-and-agreement-resolution-conflict-republic-south-sudan>].

¹¹⁰ Accord, A Hurried and Imposed Peace Pact?, 19 October 2016 [<https://reliefweb.int/report/south-sudan/conflict-resurgence-and-agreement-resolution-conflict-republic-south-sudan>].

TGoNU”.¹¹¹ The complete denial by the international community that a coup had occurred served to undermine the GoSS, embolden the coup plotters and shift the power balance in favour of international actors to dictate the peace process.

1.12. Riek Machar: 2016 Coup Attempt, Exile and Return to Juba

The inherent lack of ownership by the parties of the ARCSS led to foreseeable problems with its implementation. Soon after signing the ARCSS, Riek Machar arrived in Juba with sophisticated weapons and troops in violation of the agreement.¹¹² He also launched a charm offensive promoting peace, unity and solidarity with the government. On 8 May 2016, he called for “forgiveness and reconciliation in South Sudan”.¹¹³ On 22 May 2016, he attended prayers at a predominantly ethnic Dinka church telling the congregation “that peace and reconciliation will enable national healing and ensure stability”.¹¹⁴

However, the report “Pushing the Reset Button for South Sudan”,¹¹⁵ reveals the evidence from telephone intercepted communications that established the First Vice President was plotting a coup to seize power. Whilst he was presenting a unified front to the international community, in the background he was preparing forces of the SPLM/A-IO and using support from a foreign government, the Republic of Sudan, to provide arms and ammunition. On 8 July 2016, during his meeting with President Kiir and Second Vice President James Wannu Igga in the President’s office to resolve issues over the deaths of four government soldiers three days earlier,¹¹⁶ Riek Machar’s forces launched a second coup attempt in Juba. The conflict that took hold over the next few years resulted in great loss of life including the deaths of civilians.

Riek Machar never resumed the reconciliation talks that were taking place between the leaders of the TGoNU and was provided with safe havens outside South Sudan.¹¹⁷ The institutions of the United Nations having been bound by the narrative they had followed from the time of the first attempted coup in December 2013, continued with the same humanitarian agenda against the GoSS. This narrative remained locked in the prism that the conflicts were ethnically driven, and responsibility shared between the protagonists. While the GoSS reported the attempted coups to the UN Security Council, these reports were neither accepted nor referenced.¹¹⁸

¹¹¹ Accord, A Hurried and Imposed Peace Pact?, 19 October 2016

[<https://reliefweb.int/report/south-sudan/conflict-resurgence-and-agreement-resolution-conflict-republic-south-sudan>].

¹¹² Mach, M P and Prof. Mutundu, K, Analysis of the Effects of the Sino-Troika Interests on the South Sudan Peace Process, International Journal of Liberal Arts and Social Science, Vol. 8 No. 11 November 2020.

¹¹³ ReliefWeb, Sudan Tribune Machar calls for forgiveness and reconciliation in South Sudan, 9 May 2016

[<https://reliefweb.int/report/south-sudan/machar-calls-forgiveness-and-reconciliation-south-sudan>].

¹¹⁴ Sudan Tribune, Machar’s Sunday prayer in ethnic Dinka church attracts controversy, 22 May 2016

[<https://sudantribune.com/article57350/>].

¹¹⁵ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022, Chapter 4

[<https://southsudanreports.com/report/>].

¹¹⁶ Mach, M P and Prof. Mutundu, K, Analysis of the Effects of the Sino-Troika Interests on the South Sudan Peace Process, International Journal of Liberal Arts and Social Science, Vol. 8 No. 11 November 2020. Eye Radio, Defense Minister clarifies Juba night shootouts, 8 July 2016 [<https://eyeradio.org/defense-minister-clears-juba-security-situation/>].

¹¹⁷ Mach, M P and Prof. Mutundu, K, Analysis of the Effects of the Sino-Troika Interests on the South Sudan Peace Process, International Journal of Liberal Arts and Social Science, Vol. 8 No. 11 November 2020.

¹¹⁸ Presentation to Ambassador Fode Seck, UNSC Chairman for UNSC Resolution 2206 (2015), Ministry of Cabinet Affairs, Juba, 15 December 2016. Held on file.

The institutions of the United Nations did not recognise that the coup attempts were the result of the pursuit of an ambition that stoked and utilised ethnic divisions. They also failed to adequately recognise the rights of a sovereign state to control its territory and prevent unlawful and violent attempts to usurp the structures of power and government.

It is notable that Machar's rumoured return to South Sudan (upon the insistence of the Troika) was met with opposition not only from the GoSS but from several IGAD countries. For instance, Ethiopia's Prime Minister Hailemariam Desalegn (who at the time was the sitting IGAD Chairperson) stated, "we will not support an armed struggling group or anyone who opts for the path of war and therefore we will not allow any armed movement which is detracting from peace in our region both in Ethiopia and South Sudan".¹¹⁹ A separate diplomatic source was reported to have confirmed that the IGAD 'peace negotiators' were opposed to the return of Riek Machar because he "keeps going back and mobilising his people and stirring up problems".¹²⁰

While Riek Machar remained under an IGAD-imposed house arrest in South Africa,¹²¹ the SPLM/A-IO in Juba appointed lead negotiator Taban Deng Gai to replace him and the Government accepted him as acting Vice-President. Deng Gai fully defected to the Government in July 2016, and officially replaced Riek Machar as First Vice President.¹²² While IGAD eventually conceded that there was no choice but to accept Machar's return if ARCSS was to succeed, it is revealing that the perception of Machar among many of those directly involved in the peace negotiations was negative. In March 2018, IGAD reluctantly decided to lift Riek Machar's house arrest in South Africa but made it clear that this was "on conditions that ensure he will renounce violence and not obstruct the peace process".¹²³

1.13. Revitalised Peace Negotiations: 2016-2018

1.13.1 Establishment of the High-Level Revitalisation Forum

Even before the attempted coup in July 2016 and consequent conflict, IGAD had come under pressure from the EU and the Troika to revive the peace process.¹²⁴ To this end, a framework to reconvene negotiations and drive the process of revitalisation of the ARCSS, known as the High-Level Revitalisation Forum (HLRF) was established in June 2017. This body consisted of seven countries from the region: Djibouti, Ethiopia, Kenya, Somalia, Sudan, South Sudan, and Uganda.¹²⁵ The HLRF brought the Government together with opposition leaders – some

¹¹⁹ Konrad Adenauer Stiftung, IGAD Political Settlements and Peace building in South Sudan Lessons from the 2018 Peace Negotiation Processes, 31 January 2019 [https://www.kas.de/c/document_library/get_file?uuid=aa8118eb-f1b8-5845-b628-606fd3c17361&groupId=280229].

¹²⁰ Reuters, Exclusive: South Africa holds South Sudan rebel Machar as "Guest", 13 December 2016 [https://www.reuters.com/article/us-safrica-southsudan-exclusive-idUSKBN1421YZ].

¹²¹ IOL, Machar's house arrest lifted, days in SA numbered, 27 March 2018 [https://www.iol.co.za/news/machars-house-arrest-lifted-days-in-sa-numbered-14114037].

¹²² Al Jazeera, South Sudan opposition replaces missing leader Machar, 23 July 2016 [https://www.aljazeera.com/news/2016/7/23/south-sudan-opposition-replaces-missing-leader-machar].

¹²³ IOL, Machar's house arrest lifted, days in SA numbered, 27 March 2018 [https://www.iol.co.za/news/machars-house-arrest-lifted-days-in-sa-numbered-14114037].

¹²⁴ Mach, M P and Prof. Mutundu, K, Analysis of the Effects of the Sino-Troika Interests on the South Sudan Peace Process, International Journal of Liberal Arts and Social Science, Vol. 8 No. 11 November 2020.

¹²⁵ Accord, Reviving Peace in South Sudan through the Revitalised Peace Agreement, 11 February 2019

of whom formed new rebel groups, and opposition political parties who were hoping to benefit from any future power-sharing agreement.¹²⁶ In 2017, Nikki Haley, then U.S. Ambassador to the UN, met with President Kiir and demanded he commit to the IGAD-launched HLRF.¹²⁷

The mandate of the HLRF was threefold: first, to restore a permanent ceasefire; second, to fully implement the ARCSS; and third, to revise the ARCSS implementation schedule in order to hold elections at the conclusion of the agreement's timetable.¹²⁸ Staff from IGAD and the Joint Monitoring and Evaluating Commission were tasked by IGAD leaders to administer the HLRF;¹²⁹ an indication that it was a repurposing of existing mechanisms, with no appreciation for the view espoused by the GoSS that key features of the 2015 peace agreement were no longer political or practical realities.

The U.S. Institute of Peace noted that “[w]hile the HLRF initiative demonstrates IGAD’s continued attention to the crisis in South Sudan, serious ambiguities, including the questions of who will participate and the extent of the agenda, exist in its design. If such uncertainties remain unaddressed prior to the commencement of the Forum, the prospects for this initiative to reduce violence and restore peace to South Sudan will be poor”.¹³⁰ Those uncertainties were not addressed.

Although the HLRF’s mandate was to ensure “full implementation” of ARCSS, with just over a year until elections were due in August 2018, this requirement was unrealistic given the dire humanitarian and security crisis in South Sudan. Even if sufficient time for implementation were available, many of the ARCSS provisions of governance (Chapter I) and security arrangements (Chapter II) had been overtaken by events.¹³¹ Certain ARCSS provisions negotiated and drafted in 2014–15 also needed re-examination. For example, local ceasefires independent of the bilateral permanent ceasefire arrangements of ARCSS were subsequently necessary where third parties were involved. Such arrangements were not foreseen in the originally negotiated security protocols and could not be included without significant revisions to the text.¹³²

[<https://www.accord.org.za/conflict-trends/reviving-peace-in-south-sudan-through-the-revitalised-peace-agreement/>]; ICG, *Salvaging South Sudan’s Fragile Peace Deal*, 13 March 2019

[<https://www.crisisgroup.org/africa/horn-africa/south-sudan/270-salvaging-south-sudans-fragile-peace-deal>].

¹²⁶ JMEC, Statement by H.E. Festus G. Mogae, Chairman of JMEC, to the 31st Extraordinary Summit of IGAD on 12th June 2017, 12 June 2017 [<https://jmecsouthsudan.org/index.php/jmec-statements/item/146-statement-by-h-e-festus-g-mogae-chairman-of-jmec-to-the-31st-extraordinary-summit-of-igad-on-12th-june-2017>].

¹²⁷ VOA Africa, Haley to S. Sudan's Kiir: Stop Violence or Lose US Funding, 26 October 2017

[<https://www.voaafrica.com/a/haley-to-kiir-stop-violence-or-united-states-funding-will-cease/4086785.html>].

¹²⁸ United States Institute of Peace, *South Sudan’s High Level Revitalization Forum Identifying Conditions for Success*, August 2017 [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3791704].

¹²⁹ United States Institute of Peace, *South Sudan’s High Level Revitalization Forum Identifying Conditions for Success*, August 2017 [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3791704].

¹³⁰ United States Institute of Peace, *South Sudan’s High Level Revitalization Forum Identifying Conditions for Success*, August 2017 [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3791704].

¹³¹ United States Institute of Peace, *South Sudan’s High Level Revitalization Forum Identifying Conditions for Success*, August 2017 [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3791704].

¹³² United States Institute of Peace, *South Sudan’s High Level Revitalization Forum Identifying Conditions for Success*, August 2017 [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3791704].

1.13.2 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) Signed in September 2018

From 18-21 December 2017, the first HLRF summit was conducted in Addis Ababa which led to the Agreement on the Cessation of Hostilities, Protection of Civilians and Humanitarian Access, signed on 21 December 2017. Over the next few months, several meetings and discussions were held in Khartoum that resulted in several preliminary agreements that would set the stage for the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS).¹³³

Ethiopian Prime Minister, Abiy Ahmed played a key role in negotiating the peace process and set up a meeting between President Kiir and Riek Machar in 2018. At this meeting, Machar insisted he be allowed to remain as First Vice President as advocated by John Kerry in 2014.¹³⁴ President Kiir is reported to have stated that he would accept Riek Machar's return as a private citizen but would not work with him again and requested the appointment of an alternative to the position of First Vice President. Riek Machar did not agree, and the meeting ended in a stalemate.

Sudan then took up the negotiating lead – despite its previous political and military support for Riek Machar.¹³⁵ The potential lifting of U.S. sanctions against Sudan and proceeds from the oil revenues were motivating factors in the country's rapprochement with South Sudan.¹³⁶ By 2018, the situation in South Sudan was being referred to as a "bloody power struggle" between President Kiir and Riek Machar.¹³⁷

The R-ARCSS was eventually signed on 12 September 2018 by nine political signatories and 16 civil society stakeholders.¹³⁸ Its provisions are very similar to those of its predecessor: a permanent ceasefire; a power-sharing transitional government; followed by elections after

¹³³ These were: Agreement on the Cessation of Hostilities, Protection of Civilians and Humanitarian Access, signed on 21 December 2017 in Addis Ababa, Ethiopia; Addendum to the Agreement on the Cessation of Hostilities, Protection of Civilians and Humanitarian Access, signed on 22 May 2018 in Addis Ababa, Ethiopia; Khartoum Declaration of Agreement between Parties to the Conflict in South Sudan, signed on 27 June 2018 in Khartoum, Sudan; Agreement on Outstanding Issues of Security Agreements, signed on 6 July 2018 in Khartoum, Sudan; and Agreement on Outstanding Issues on Governance, signed on 5 August 2018 in Khartoum, Sudan.

¹³⁴ ICG, Salvaging South Sudan's Fragile Peace Deal, 13 March 2019 [<https://www.crisisgroup.org/africa/horn-africa/south-sudan/270-salvaging-south-sudans-fragile-peace-deal>].

¹³⁵ The East African, Who is arming Riek Machar's soldiers and how?, 16 July 2016 [<https://www.theeastafrican.co.ke/tea/news/east-africa/who-is-arming-riek-machar-s-soldiers-and-how--1352650>].

¹³⁶ The East African, Who is arming Riek Machar's soldiers and how?, 16 July 2016 [<https://www.theeastafrican.co.ke/tea/news/east-africa/who-is-arming-riek-machar-s-soldiers-and-how--1352650>]. Certain sanctions remain on Sudan but determination regarding Sudan as a State Sponsor of Terrorism was rescinded.

¹³⁷ The Peace Research Institute Oslo, The Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 6 May 2022 [<https://reliefweb.int/report/south-sudan/revitalised-agreement-resolution-conflict-republic-south-sudan-r-arcss>].

¹³⁸ The principal parties and signatories to the R-ARCSS are Kiir, as president of the TGoNU; Machar of the SPLM-IO; Deng Alor Kuol of the SPLM-Former Detainees (SPLM-FDs); and Gabriel Changson Chang of the South Sudanese Opposition Alliance (SSOA). The other six South Sudan signatories to the peace agreement were Peter Mayen Majongdit, representing the Umbrella Coalition of Political Parties; Kornelio Kon Ngu, representing the National Alliance of Political Parties; Ustaz Joseph Ukel Abango, representing the United Sudan African Party (USAF); Martin Toko Moyi, representing the United Democratic Salvation Front; Stewart Sorobo Budia, representing the United Democratic Party; and Wilson Lionding Sabit, representing the African National Congress (ANC). In addition to this, 16 stakeholders in the form of civil society organisation representatives also appended their signatures to the agreement.

three years. It also included the provision that “[t]he Chairman of SPLM/A-IO Dr Riek Machar Teny shall assume the position of the First Vice President of the Republic of South Sudan”. In addition, it had a more ambitious timeline for establishing a unified army, and included provisions to determine the country’s internal borders, which were the subject of considerable gerrymandering during the war.

Riek Machar returned to Juba in October 2018 following the signature of the R-ARCSS the previous month.

By March 2019 however, the International Crisis Group (ICG) tellingly described the R-ARCSS as having established a “wobbly Kiir-Machar truce and graft[ed] onto the previous failed peace terms, without delivering much benefit to other groups that have been shut out of power”.¹³⁹ Ultimately, Riek Machar was appointed First Vice-President of South Sudan on 22 February 2020 as part of the Revitalised Government of National Unity (RTGoNU).¹⁴⁰

1.14. Conclusion

The process leading up to the signing of the ARCSS in 2015 was characterised by significant pressure from the international community, underpinned by a lack of understanding, or acknowledgement that the attempted coup in 2013 was the reason for the ensuing conflict. Even as late as September 2014, when the GoSS set out the 42 milestones it had achieved to bring South Sudan to peace in a briefing to UNSC representatives in Juba, still the attempted coup was not acknowledged in UN reports.¹⁴¹ This misrepresentation of the conflict resulted in an initial peace deal that was fragile, flawed and susceptible to manipulation.

President Salva Kiir’s concerns and warnings went unheeded and another attempted coup in 2016 occurred soon after the signing of ARCSS. Years of negotiations ensued leading to the eventual signing of the R-ARCSS in September 2018. Ultimately however, both peace agreements imposed a framework for the Government of President Salva Kiir to share power with individuals who had led two attempted coups, a situation described as “Reward for Rebellion” which resulted in a legacy that continues to prevent South Sudan’s political, economic and social development.

¹³⁹ ICG, *Salvaging South Sudan’s Fragile Peace Deal*, 13 March 2019 [<https://www.crisisgroup.org/africa/horn-africa/south-sudan/270-salvaging-south-sudans-fragile-peace-deal>].

¹⁴⁰ AA, *South Sudan: New government takes shape as VPs sworn in*, 22 February 2020

[<https://www.aa.com.tr/en/africa/south-sudan-new-government-takes-shape-as-vps-sworn-in/1741960>].

¹⁴¹ The Republic of South Sudan, Cabinet Affairs, ‘A Presentation to the Delegation of the UNSC Visiting South Sudan’, by Dr Martin Elia Lomurö, MoCA. Held on file.

CHAPTER 2

HISTORY OF DIVISION, CONFLICT AND CHANGING SIDES IN THE MAKING OF SOUTH SUDAN

2.1 Introduction

The history of Sudan leading to the creation of the state of South Sudan is mired in conflicts, coups, division, instability and political factionalism. Identity politics, ethnic and tribal affiliations and control of resources are framed as key factors for the conflicts.¹⁴² State armies, former rebel movements, militias and armed regional groups have all featured in ongoing conflicts for over seventy years.¹⁴³ External actors have also used militias for their own proxy wars, resource gains, and/or power consolidation. It is also important to recognise the clear roles played by outsiders and their legacy in South Sudan today. This Chapter examines the history of division and those armed groups that continue to influence South Sudan's development. It also explains in part the complexities faced by the state to bring order and security to its lands.

2.2 Colonialism

The colony of Equatoria was established in 1870, encompassing much of what is now South Sudan. It was made a state under the Anglo-Egyptian condominium in 1899 and largely left alone for decades. Colonial administrators ruled Equatoria separately from what is now known as Sudan. More powers were due to be conferred on the South following independence in 1956 but when the Arab-Khartoum government reneged on this promise soon after, a mutiny began in Torit,¹⁴⁴ that would lead to two periods of conflict (1955 to 1972 and 1983 to 2005), during which millions were killed or died from starvation and drought.¹⁴⁵

2.3 Independence

Britain's decision to grant independence to Sudan was based on political expediency, not economic preparedness. It occurred before disparities in development could be addressed and without safeguarding the interests and representations of the southern Sudanese.¹⁴⁶ Elections followed independence with Egyptian supported Ismail al-Azhari, leader of the National Unionist Party (NUP) winning against the British supported Ummah Party, headed by Sayyid Abd al-Rahman al-Mahdi. Sudan was declared an independent republic with a representative parliament on 1 January 1956.

¹⁴² Martell, P, 'First Raise a Flag: How Sudan Won the War but Lost the Peace, 2018, p.xxii.

¹⁴³ Alden, C et al, 'Militias and the Challenges of Post Conflict Peace: Silencing the Guns', 2011, see Chapter 1.

¹⁴⁴ "The violent episode – known at the time as the 'Southern disturbances' and more commonly now as the 'Torit Mutiny' – has come to be regarded as a crucial moment in Sudan's transition to independence in 1956. It is commemorated by many South Sudanese as the beginning of the struggle against northern dominance. ... The Torit mutiny is thus understood as a rupture, separating the relative stability of the Pax Britannica from an increasingly violent and repressive post-colonial southern Sudan". Rolandsen and Leonardi, Discourses of violence in the transition from colonialism to independence in southern Sudan 1955-60, Durham University Online, 13 November 2015, p. 2 [<https://dro.dur.ac.uk/16881/1/16881.pdf>].

¹⁴⁵ Rolandsen and Leonardi, Discourses of violence in the transition from colonialism to independence in southern Sudan 1955-60, Durham University Online, 13 November 2015, p. 2 [<https://dro.dur.ac.uk/16881/1/16881.pdf>].

¹⁴⁶ Johnson, D, The Root Causes of Sudan's Civil Wars: Old Wars and New Wars, 2003, p. 29.

Sudan started its independence with a temporary constitution. Two issues arose which prevented agreement on a permanent constitution at this time: firstly, whether Sudan should be a federal or a unitary state and secondly, whether it should have an Islamic constitution.¹⁴⁷ Southerners favoured federalism as a way of protecting southern interests. This was rejected by the North, who saw federalism as a first step to independence.

Despite the elections of 1957, General Ibrahim Abbud, Commander in Chief of the Armed Forces came to power in 1958 by military coup, bringing an end to civilian rule and electoral politics. Alliances then formed across the south with new generations of leaders emerging. General Abbud came to power criticising the mistakes of the preceding parliamentary government alongside the corruption, bitter political strife, and encouragement of foreign intervention.¹⁴⁸

The new military government soon began to suppress opposition movements, which engendered a groundswell of resistance against military rule across Sudan, including in the south. Abbud followed an education policy of Arabisation and Islamisation in the south and had a deep mistrust towards the missionaries whom he believed were central to the separatist movement. Christian missionaries were eventually expelled in 1964, which only served to accelerate conversion to Christianity as churches were also seen to be under assault from the Government of Sudan.¹⁴⁹

Initially, the government campaign against armed opposition in the south was limited but this increased in the late 1950s with an intensification of assaults against villages. This saw several senior figures, such as Catholic priest Fr. Saturnino Lohure, Joseph Oduho and William Deng as the leaders of the militant diaspora and other students, leave for the bush and form an exiled political movement and establish a core guerrilla army.¹⁵⁰ The exile movement called itself the Sudan African Nationalist Union. The guerrillas became known colloquially by the vernacular name of a type of poison: Anyanya.¹⁵¹ The Anyanya became a rallying point for southern frustrations. The various Anyanya groups were scattered across the bush and, although they communicated through messengers, operated autonomously and mainly in small hit and run operations and acts of sabotage.¹⁵²

2.4 First Civil War: 1963-1972

The renegeing of the Khartoum based, Arab-led, Sudanese government on promises to create a federal system for the south led to the first civil war, from 1963 to 1972, as the Anyanya began their fight against Sudan for greater autonomy.

By 1969, the Anyanya controlled most of southern Sudan but the Anyanya groups were relatively autonomous and not unified. There were also competing tensions between the South, Khartoum and the diaspora. New political leaders emerged but most politically active Southerners organised under SANU. There were several attempts to unite the Anyanya but these were unsuccessful. The diaspora also remained fragmented with competing governments

¹⁴⁷ Hasan, Y.F, The Sudanese Revolution of October 1964, The Journal of Modern Africa Studies, Vol.5 no.4 December 1967, p. 493.

¹⁴⁸ Hasan, Y.F, The Sudanese Revolution of October 1964, The Journal of Modern Africa Studies, Vol.5 no.4 December 1967, p. 495.

¹⁴⁹ Johnson, D, The Root Causes of Sudan's Civil Wars: Old Wars and New Wars, 2016, p. 35.

¹⁵⁰ Johnson, D, The Root Causes of Sudan's Civil Wars: Old Wars and New Wars, 2016, p. 31.

¹⁵¹ Johnson, D, The Root Causes of Sudan's Civil Wars: Old Wars and New Wars, 2016, p. 31.

¹⁵² Rolandsen and Daly, A History of South Sudan: From Slavery to Independence, 2016, p. 85.

in exile proclaimed.¹⁵³ External patronage proved essential for the southern guerrilla movement as it was supported by a steady supply of arms and weapons. In return, exiled leaders garnered for themselves much needed support, influence and leverage over the Anyanya groups.

2.5 Mohammed Nimeiri and Joseph Lagu

General Abbud stepped down in 1964 as Sudan's economy was failing badly and demonstrations against his rule increased. Civilian rule was returned temporarily but in May 1969, a group of young officers led by Colonel Jaafar Mohammed Nimeiri came to power in Sudan in a coup described as the 'May Revolution', promising that everything must change. By this time, there was no workable constitution, a stagnant economy, a political system torn by sectarian interests and a continuing civil conflict in the south. Nimeiri was seen as popular in the South and "a man who guarantees a fair deal for the region" but this was double sided as his policy towards the south was a way to consolidate his political power in the north through his alliances in the south.¹⁵⁴

Colonel Joseph Lagu was formerly Eastern Commander of the Anyanya armed forces and would eventually unite all the Anyanya officers under his command, including the political wing, Southern Sudan Liberation Movement, declaring the Anyanya as sole authority in southern Sudan.¹⁵⁵ With the help of Israeli arms, advice and assistance, Joseph Lagu had persuaded a number of Anyanya to join him throughout 1970 and engineered a series of internal coups leaving the old, exiled southern politicians with no military constituency.¹⁵⁶ In January 1971 he formed the Southern Sudan Liberation Front (later renamed the Southern Sudan Liberation Movement and the precursor to today's Sudan People's Liberation Movement/Army) under his command. This unified command, with a secure supply of weapons, ensured the political wing was subordinate to the military branch.

2.6 Addis Ababa Agreement 1972

In 1971, Nimeiri entered dialogue with Colonel Lagu regarding regional autonomy and the ending of hostilities with southern Sudanese rebels. Enthusiasm for negotiating with Sudan was not shared across the rejuvenated Anyanya army. Dialogue between Nimeiri and Lagu, however, culminated in the signing of the Addis Ababa Agreement in February 1972, with the SSLM seen as an equal negotiating partner. The Addis Ababa Agreement granted significant regional autonomy to southern Sudan on internal issues, leading to far better conditions than had been previously seen.

The Addis Ababa Agreement brought Nimeiri both prestige abroad and popularity at home as well as with the SSLM. The Agreement was an historic occurrence in post-colonial Africa for the successful resolution of an internal conflict. However, the triumph was short lived as many were disappointed that the goal of independence had been abandoned and the unravelling of the Agreement began almost immediately. In practice, Northern interests prevailed over Southern grievances and autonomy for the South did not take place.

¹⁵³ Rolandsen and Daly, *A History of South Sudan: From Slavery to Independence*, 2016, p. 87.

¹⁵⁴ Shinn, D.H., *Addis Ababa Agreement: Was it Destined to Fail and Are There Lessons For the Current Sudan Peace Process?* *Annales d'Ethiopie*, 2005, vol. XX: 239-258, p. 241.

¹⁵⁵ *The Southern Sudan: The Problem of National Integration*, ed. Dunstan M. Wai, 1973.

¹⁵⁶ Rolandsen and Daly, *A History of South Sudan: From Slavery to Independence*, 2016, p. 87.

2.7 Security – No Guarantee for the South

The most contentious issue in the negotiations was the question of security for the Southern region, “[s]ecurity was where the fight for effective power centred during the peace talks”.¹⁵⁷ The merging of the Anyanya and Sudanese government soldiers was not successful. One of the major factors leading to the resumption of fighting later in 1983 was the failure to demobilise and reintegrate the Anyanya forces effectively.¹⁵⁸

“Most southerners assumed that integration of the two armed forces would take place after a period of five years, that the proportions of northern and Southern soldiers in the Southern command would remain equal, and that Southern troops would remain garrisoned in the South. The army insisted that the absorption process would be complete within five years but there were no clear provisions in the Agreement for the status of the army after that period”.¹⁵⁹ Following the five-year transition period many in the region were dissatisfied. The full quota of Anyanya (6,000) had been absorbed but the northern troops in the south were not reduced. Many senior Anyanya were either retired early, purged, or transferred out of the south.¹⁶⁰ Nimeiri wanted to neutralise the power of Southern soldiers by transferring them to the North.

Distrust was – as it always had been, inherent and hindered the integration process. There were many guerrillas who remained in the bush who were unwilling to comply with the security provisions in the Addis Ababa Agreement.¹⁶¹ Divisions between North and South had become entrenched in the years following independence and conflict had torn apart cohesion amongst Southerners with differing ambitions regarding unity and separation from the north. Some Anyanya fighters refused to be integrated and were exiled, principally to Ethiopia and became key in the resurgence of guerrilla activity in the 1980s.¹⁶² By 1972, “a *modus operandi* had been established: Southern politics had been militarised”.¹⁶³

Rising military resistance among former Anyanya forces occurred throughout the 1970s with mutinies taking place in Akobo in 1975, Wau in 1976 and Juba in 1977. Those mutineers - neither captured nor killed, escaped into the bush and found their way to Ethiopia. This led to the creation of the Anyanya II movement.¹⁶⁴ Again, this was a loose organisation that was broadly separatist in its aims who linked up with other armed and disaffected groups in the country. They also attracted deserters from the army and the police,¹⁶⁵ as well as “opportunistic bandits”.¹⁶⁶

¹⁵⁷ Alier, A (1992), p. 196, in Shinn, D.H., Addis Ababa Agreement: Was it Destined to Fail and Are There Lessons For the Current Sudan Peace Process? *Annales d’Ethiopie*, 2005, vol. XX: 239-258, p. 248.

¹⁵⁸ Shinn, D.H., Addis Ababa Agreement: Was it Destined to Fail and Are There Lessons For the Current Sudan Peace Process? *Annales d’Ethiopie*, 2005, vol. XX: 239-258, p. 245.

¹⁵⁹ Johnson, D.H., *The Root Causes of Sudan’s Civil War: Old Wars and New Wars*, p. 39.

¹⁶⁰ Johnson, D.H., *The Root Causes of Sudan’s Civil War: Old Wars and New Wars*, p. 42.

¹⁶¹ Johnson, D.H., *The Root Causes of Sudan’s Civil War: Old Wars and New Wars*, p. 41.

¹⁶² Johnson, D.H., *The Root Causes of Sudan’s Civil War: Old Wars and New Wars*, p. 42.

¹⁶³ Rolandsen and Daly, *A History of South Sudan: From Slavery to Independence*, 2016, p. 87.

¹⁶⁴ Shinn, D.H., Addis Ababa Agreement: Was it Destined to Fail and Are There Lessons For the Current Sudan Peace Process? *Annales d’Ethiopie*, 2005, vol. XX: 239-258, p. 245.

¹⁶⁵ Ryle, J et al, *The Sudan Handbook*, 2011, p. 126.

¹⁶⁶ Johnson, D.H., Chapter 44, p.58 in Clapham, Christopher (eds) in *African Guerrillas*, 1998.

2.8 Oil Discovery

Confirmation of the discovery of large oil deposits within the north-south borderlands of Upper Nile and Kordofan was made in 1979. This followed the signing of the Addis Ababa Agreement and after the regional government had been established. The regional government was not consulted on the concessions granted to the companies, Total and Chevron, which served to deepen mistrust. Most of Sudan's known oil deposits are in Upper Nile and Jonglei Provinces. As to the capacity, "[a]t one time, Chevron, who did the initial surveys, estimated the Sudan's total oil reserves at 10 billion barrels".¹⁶⁷ Hassan al-Turabi, then Attorney General, subsequently attempted to redraw the southern region's borders to include the oil fields of Kordofan. This underscored Northern dominance and that the oil fields would be placed under central, rather than regional control.

Nimeiri constantly interfered in the politics of the southern region and supported the idea of re-dividing the south into its original three provinces [Equatoria, Bahr el-Ghazal and Upper Nile]. Joseph Lagu first proposed this idea as he was resentful of the influence of the leaders of the Upper Nile and Bahr el-Ghazal in the Regional Government. Lagu did not receive Southern backing for this, but Nimeiri overrode this opposition in 1983 while unilaterally abrogating the Addis Ababa Agreement and thus dividing the South into three weaker regions.¹⁶⁸ Nimeiri issued "Republican Order Number One" in June 1983, which called for the redivision of the south into three regions – Equatoria, Bahr el-Ghazal and Upper Nile, and enabled the central government to deal with each region separately, using tribalism to foment intertribal fighting.¹⁶⁹ Alongside Nimeiri's actions and disappointment in the peace process, plus conflicting agendas across the rebel factions, further civil war was inevitable.

The oil fields lay in predominantly Nuer territory. The Anyanya II factions would go on to lead the attack against Chevron's operations as they saw the company as allied with the north despite Chevron's efforts to stay neutral. The Anyanya II rebels stated they had targeted Chevron as a symbol of US cooperation with the Sudanese government, claiming that company survey planes were feeding Khartoum with intelligence – an allegation Chevron categorically denied.¹⁷⁰

The continued fighting prevented development of the oil sector and therefore revenue from oil halted. Nimeiri negotiated with Anyanya II leaders from the Bentiu area to sign a separate agreement to pacify 'Nuerland' to enable Chevron to resume work which would mean that Nimeiri would get the money required to stay in power and consolidate divisions across the South.

2.9 Second Civil War: 1983-2005

In 1983, Nimeiri's policies of re-dividing the south and imposing Islamic law served to erode southern sovereignty and increase community division and factionalism. The North had a deliberate policy of sponsoring various southern armed factions against the SPLA to drive the 'ethnic' dimension of the war. The government's strategy of supplying tribal militias gave the war the trappings of a tribal conflict with little relation to national policies and, by fighting proxy wars in the South, the government could claim – with little opposing evidence, that it

¹⁶⁷ Johnson, D.H., *The Root Causes of Sudan's Civil War: Old Wars and New Wars*, p. 45.

¹⁶⁸ Ryle, J et al, *The Sudan Handbook*, 2011, p.126.

¹⁶⁹ Metelits, C, *Inside Insurgency: Violence, Civilians and Revolutionary Group Behaviour*, 2010, p. 40.

¹⁷⁰ Patey, L, *New Kings of Crude*, 2014, p. 40.

was not fighting a civil war.¹⁷¹ Khartoum's divide-and-rule tactics created rivalries and competition for resources in the South.

The SPLM/A was founded in 1983 out of an amalgamation of Anyanya II and mutineers based in Ethiopia. From the outset, there were divisions within the SPLM/A over its leadership and the group's aims. Some wanted to pursue calls for independence and others called for a "New Sudan" to be created encompassing equal powers for the whole of Sudan and separation between religion and the state. The SPLA learned from the localism and factionalism of the Anyanya and deliberately set out to create a unified force.

The formation of Sudanese People's Liberation Army in Ethiopia, made up of some Anyanya II fighters and other Southern rebel units, was led by John Garang, a Twic-Dinka by descent. Garang was leader and head of the political wing, the Sudanese People's Liberation Movement. Garang's support for a New Sudan ran at odds with the Southern autonomy expressed at independence by the Anyanya.

2.9.1 Disunity, Arms and Militias

Full unity of Southern forces did not exist in the SPLM/A, as dissatisfaction and resentments ran deep. The GoS provision of arms and funds to other rebel groups, was also a cheap way of attacking the SPLA without committing their own forces. This approach continued to be a major factor in the conflicts of the 1980s. Khartoum's support for these groups, however, did not mean loyalty to the North. Many of the militias were composed of the rural populace and used the war to pursue their own objectives. Some militia members went to war to settle enmities with neighbouring ethnic groups under the guise of a religious war.¹⁷²

In 1984, Nimeiri exploited the infighting between the Anyanya II and the SPLA, as well as ethnic divisions between the Nuer and the Dinka, which were argued to represent the Anyanya II and the SPLA respectively.¹⁷³ Some Anyanya II rebels joined the SPLA and others contacted Khartoum for arms, ammunition and uniforms to form a pro-government Southern militia.¹⁷⁴ Nimeiri was able to use these divisions to his economic advantage in order to achieve his own political agenda.

2.9.2 Anyanya II: Nuer

The Anyanya II were predominantly from the Nuer, the second largest ethnic group in the south and fought in rural areas with the support of the government of Sudan. Groups of Anyanya II were recruited from quite specific sections: from the Gaajak Nuer of Maiwat, the Mor Lou Nuer of Akobo, the Lak and Thaing Nuer of Zeraf Valley, and the Bul Nuer of Western Nuer. Presented by foreign observers as a Nuer-Dinka split, in fact most Anyanya II - SPLA fighting took place with groups of Nuer on both sides. Military successes for the SPLA in 1987, eventually saw most Anyanya II fighters defecting to the SPLA and by mid 1989 only one Anyanya II faction remained loyal to the GoS.¹⁷⁵ In 1987-90, the SPLA achieved a

¹⁷¹ Metelits, C, *Inside Insurgency: Violence, Civilians and Revolutionary Group Behaviour*, 2010, p. 47.

¹⁷² Metelits, C, *Inside Insurgency: Violence, Civilians and Revolutionary Group Behaviour*, 2010, p. 46.

¹⁷³ Johnson, *The Root Causes of Sudan's Civil War*, p68, in Patey, L, *New Kings of Crude*, 2014. p. 43.

¹⁷⁴ Patey, L, *New Kings of Crude*, 2014, p. 43.

¹⁷⁵ Global Security, *Military Anya Nya* [<https://www.globalsecurity.org/military/world/para/anya-nya.htm>]

rapprochement with the majority of Anyanya II units, using mainly Nuer commanders and politicians as intermediaries.¹⁷⁶

2.9.3 Omar al-Bashir

The SPLA fought against the GoS until 1989, when the parties reached a peace agreement that suspended sharia law in the South. However, on 30 June 1989, a military coup led by Brigadier Omar al-Bashir overthrew the Sudanese government and repudiated the peace agreement. Omar al-Bashir remained in power for almost thirty years, until he was removed by security forces who withdrew their support for his regime after months of protests in 2019. His longevity in office has been attributed to the fact that powerful rivals in the ruling National Congress Party distrusted each other more than they did al-Bashir.¹⁷⁷ His rule was defined by war and his desire to keep Sudan unified came to an end with the signing of the Comprehensive Peace Agreement in 2005, which laid the foundation for independence of the south in 2011.

2.10 SPLM/A

The SPLM/A has been described as progressing from a Marxist group supported by Ethiopian backers, to a dis-united faction-prone organisation, to a group with its own constitution and self-proclaimed democratic system of governance.¹⁷⁸

The SPLA leadership learned the lessons of the first war extremely well and made the control of internal factions one of their initial political objectives. Their political cohesion was one of the factors in their military successes.¹⁷⁹ John Garang was clear from the outset that he was fighting for a unified Sudan, not its separation. This put him at odds with others who wanted separation. Yet, despite Garang's authority, the SPLA and its disparate armed wings were spread across the country: command and control on the ground was dependent mainly on local commanders and these were not always aligned with the centre. The SPLA were successful in fighting against the north and in expanding their areas of control but the focus on the militarisation of the organisation posed political challenges.¹⁸⁰

Garang tolerated no dissent. The SPLA had controlled internal dissent to avoid the internal ruptures that had fuelled the first civil war. CIA assessments praised Garang as an adept tactician but again forewarned of "internecine strife ahead".¹⁸¹ Personal rivalries, identity politics and ideological differences ultimately destroyed cohesion from within. Each of the leaders believed their vision for the south was the better one. The divisions would lead to some of the worst fighting the south had ever seen. It divided the SPLA along bitter ethnic lines.¹⁸²

¹⁷⁶ Johnson, D.H., Chapter 44, p. 61 in Clapham, Christopher (eds) in *African Guerrillas*, 1998.

¹⁷⁷ Modern Ghana, South Sudan struggles to avert 'catastrophe', 18 July 2016

[<https://www.modernghana.com/news/704812/south-sudan-struggles-to-avert-catastrophe.html>]

¹⁷⁸ Metelits, C, *Inside Insurgency: Violence, Civilians and Revolutionary Group Behaviour*, 2010, p. 31.

¹⁷⁹ Johnson, D.H., *The Root Causes of Sudan's Civil Wars: Old Wars and New Wars*, 2016, p. 76.

¹⁸⁰ Johnson, D.H., *The Root Causes of Sudan's Civil Wars: Old Wars and New Wars*, 2016, Chapter 7.

¹⁸¹ CIA, *Sudan: The Southern Insurgency*, May 1984; CIA, *Sudan: Roots and Future of the Southern Insurgency*, February 1986.

¹⁸² Martell, P, *First Raise a Flag: How Sudan Won the War but Lost the Peace*, 2018, p. 133.

2.11 SPLA Internal Coup of 1991 and Factionalism

In 1991, the Derg government in Ethiopia, led by Mengistu Haile Mariam, was overthrown and the SPLA lost one of its main sources of support and arms. The new government expelled SPLA forces.

The internal SPLA coup of 1991 (so called Nasir Declaration) represents the foremost divisive and damaging split to the movement. Three senior SPLA commanders, Lam Akol in Upper Nile and Riek Machar in Nasir along the Ethiopian border, along with Gordon Kong, called for the replacement of John Garang as leader. They accused Garang of aligning himself too closely to Ethiopia and independence was therefore forestalled. The rebel movement split into two factions: the SPLA-Torit or Mainstream, commanded by John Garang, and the breakaway SPLA-Nasir, or United, commanded by Riek Machar. Their political ambitions were divided: Garang was fighting for a united Sudan and the SPLA-United were fighting for independence.

The conflicts following the 1991 split were “qualitatively different from that of conflict that had gone before”.¹⁸³ Previous conflicts had been shorter, subject to local ethical codes and receptive to reconciliation rituals being carried out. The post-1991 violence was more brutal and indiscriminate, “[e]veryone recognised that this violence had little to do with the daring, cross-border, cattle raids staged by generations of Nuer and Dinka youths seeking to demonstrate their courage and fighting prowess”.¹⁸⁴ The conflict and the militarisation of society that accompanied it had long and profound consequences for structures of authority and peace-making, resulting in the conflicts becoming protracted and entrenched. The legacy of this break-away continues to weigh heavily on South Sudan today.

The motives and outcomes of the Nasir Declaration were murky. Tribal animosities came to the fore during discussions and affected the outcome. The split enabled Khartoum to direct and regain military dominance in the South.¹⁸⁵ Following the reconciliation of the Anyanya II with the SPLA in 1987-90, many Anyanya troops were not incorporated into the SPLA but remained in their home areas. During the 1991 split, Anyanya II troops sided with the Nasir faction under Machar, attacking civilians in Bor and Kongor district, repeating tactics they had used under Khartoum’s direction.¹⁸⁶

In 1993, the SPLA-Nasir became the SPLA-United when it merged with other militia groups in the south. The factional fighting spread during 1992 and 1993 from Jonglei to Western Upper Nile (today’s Unity State), Bahr el-Ghazal and eastern Equatoria. Some militias were allied to the GoS throughout the war, as were Paulino Matip’s forces in Unity. After Kerubino Kwanyin Bol - a veteran of Anyanya, officer in the Sudanese army and a founder of the SPLM/A, was freed from prison by forces loyal to Riek Machar and Lam Akol, Warrap and western Bahr el-Ghazal were overwhelmed by factional fighting.¹⁸⁷

¹⁸³ Hutchinson, S (Chapter Two) in Schlee et al, *Changing Identifications and Alliances in North-East Africa: Sudan, Uganda and the Ethiopia-Sudan borderlands*, 2009.

¹⁸⁴ Hutchinson, S (Chapter Two) in Schlee et al, *Changing Identifications and Alliances in North-East Africa: Sudan, Uganda and the Ethiopia-Sudan borderlands*, 2009.

¹⁸⁵ Metelits, C, *Inside Insurgency: Violence, Civilians and Revolutionary Group Behaviour*, 2010, p. 50.

¹⁸⁶ Johnson, D.H., Chapter 44, p. 62 in Clapham, C (eds) in *African Guerrillas* (1998).

¹⁸⁷ Rolandsen and Daly, *A History of South Sudan: From Slavery to Independence*, 2016, p. 123.

In 1994, following a Nuer reconciliation meeting, SPLA-Nasir adopted the title the South Sudan Independence Movement/Army. The Nasir movement failed to create a cohesion, with many Nuer commanders and soldiers returning to the SPLA.

Factionalism continued amongst the SSIM and the tensions between Paulino Matip and Riek Machar intensified. Most of Machar's commanders had defected ahead of him to join Khartoum's forces. Mercurial warlord, Peter Gatdet, a Bul Nuer from Mayom County who had been armed and fought for the SPLA in the 1990s, joined forces with Machar in support of Khartoum in the late 1990s and then went on to lead a mutiny against Paulino Matip's pro-government militia in September 1999. Most of Paulino's Bul Nuer soldiers mutinied with Gatdet, which left Paulino with a shell of a militia. Kerubino Kwanyin Bol, who had also defected to the GoS, died during Gatdet's mutiny in Mankien.

Following reconciliation in 1994, in 1996 Riek Machar went on to sign a peace charter with Khartoum, that allied him and his forces to the north and against the SPLA and then he followed this by signing the Khartoum Peace Agreement in 1997. The SSIM became the South Sudan Defence Forces, an army formed under the KPA.¹⁸⁸ For the GoS, it did not matter that they were supporting a secessionist-based movement, as what was important to them was the support for a group fighting against the SPLA and ultimately its demise. The Sudanese government focused on destabilisation in the south to sow discord amongst the different factions. The changing allegiances of the SSDF demonstrated that destroying rivals was more important than promoting ideology. Various southern armed factions enjoyed Khartoum's patronage until 2000 when Machar left government in Khartoum and took up arms against the North, forming the Sudan People's Democratic Front. Then, in 2002, Machar signed a peace agreement with John Garang merging the SPLA with the SPDF militia to conduct military operations against the GoS.¹⁸⁹

2.12 External Involvement in the Wars of the South

During the 1980s, US military sales to Sudan continued against the backdrop of the Cold War. The Reagan administration was fearful of both an insurgency and another anti-American government in power in north Africa. It was therefore prepared, to a certain extent, to ensure a friendly government remained in power. Nimeiri was able to exploit Libyan aggression and Ethiopia's Marxist regime's relations with the SPLA to ensure cooperation with the Americans. This support waned however as USA and USSR relations thawed and Sudanese government economic failures continued.

The Cold War saw a shift in alliances as Sudan pivoted against an international structure split between USA and USSR sympathies. However, allegiances were never predetermined. Nimeiri initially courted the Eastern Bloc with his socialist goals but the attempted coups by the Communists in 1971 saw a break with the USSR. Diplomatic relations were resumed with the USA in 1972, which saw a period of strengthening relations with the West.

This created a rift with Qaddafi's Libya but the economic and military assistance from America offset this divide.¹⁹⁰ Chevron's increasing involvement in Sudan saw stronger US interest with financial assistance for development projects, infrastructure and servicing of the national debt.

¹⁸⁸ Sudan Peace Agreement, 1997 [<https://peacemaker.un.org/sudan-peace-agreement97>].

¹⁸⁹ ReliefWeb, Sudan: Peace adviser condemns rebel merger agreement', 9 January 2002, [<https://reliefweb.int/report/sudan/sudan-peace-adviser-condemns-rebel-merger-agreement>].

¹⁹⁰ Johnson, DH., *The Root Causes of Sudan's Civil Wars: Old Wars and New Wars*, 2016, p. 57.

The overthrow of Haile Selassie in 1974, a subsequent alliance between Ethiopia and the Soviet Union and the election of Reagan in the US in 1980, all combined to influence Sudan's role in international politics.¹⁹¹

Israel trained Anyanya recruits and shipped weapons via Ethiopia and Uganda to the rebels.¹⁹² Qaddafi bankrolled the SPLM/A initially as the proxy wars and politics of other countries were laid bare through the conflicts of north and south. Qaddafi's issues with Nimeiri led to greater regional tensions and the guaranteed funding of rebel forces.

Sudan's relations with the West changed in the 1990s following the collapse of the Soviet Union. American political relations firmly shifted following Khartoum's support for a more militant Islam and for Saddam Hussein in the First Gulf War. The SPLA now fought against a government that openly hated the USA. In return, the USA now viewed the southern Sudanese rebel movement through a more receptive lens. The fear posed by the spread of extremist religious ideology and consequent security issues would ensure American support for the rebel movements in the South.

The SPLM seized this opportunity and spoke internationally about the hope of peace, development, and equality; all bound in religious discourse to appeal to an influential American religious lobby. The language used described the suffering of an oppressed Southern Christian minority in misery and threat, against resurgent slavery from the Islamist North. These themes resonated in America and won them influential religious backers.¹⁹³

The American religious lobby group became an ardent and vocal ally for the south Sudan SPLM cause, with "the conflict in Sudan remain[ing], 'Africa's forgotten war' – until, that is, the American religious community engaged the cause".¹⁹⁴ John Garang was able to use his international platform to emphasise the Christian beliefs of many south Sudanese and highlighted efforts by Khartoum to impose sharia law upon the whole of Sudan. Against the backdrop of rising international tensions surrounding the rise of militant Islam, his words captured the attention of the Evangelical Americans.

The diplomatic support and development aid from the USA to the SPLM/A in the later 1990s/early 2000s, would eventually see the American's become the "midwives" at the birth of an independent South Sudan. They helped facilitate the Comprehensive Peace Agreement in 2005, which enabled eventual secession from Sudan in January 2011. Crucially, factionalism was not addressed during this period and rivalries between armed groups ran deep, alongside the proliferation of arms. The divisions across the many heavily armed groups in South Sudan, continue to hinder and impact the country's peace and progress today.

¹⁹¹ Johnson, DH., *The Root Causes of Sudan's Civil Wars: Old Wars and New Wars*, 2016, p. 57.

¹⁹² Global Security, *Military Anya Nya* [<https://www.globalsecurity.org/military/world/para/anya-nya.htm>]

¹⁹³ Martell, P, *First Raise a Flag: How Sudan Won the War but Lost the Peace*, 2018, p. 149.

¹⁹⁴ Hertzke, A, *Freeing God's Children: The Unlikely Alliance for Global Human Rights*, Rowman & Littlefield Pubs. 2006, p. 240.

CHAPTER 3 THE OPERATION OF ARMED CIVILIAN GROUPS AND MILITIA IN SOUTH SUDAN

3.1 Introduction

The prevailing way of life in South Sudan is traditional agriculture involving the raising of livestock. For decades and longer, this way of life has led to acute competition and violent conflict over natural resources, such as water, fishing and grazing, among the various communities. Farmers and nomadic herdsman in undeveloped rural areas have historically clashed for long-standing reasons, unconnected with politics. Cattle are an important index of wealth and cattle raiding has long been rife among the ethnic groups, accompanied by violence and the abduction of women and children. These clashes have become more violent and deadly as traditional weapons have been replaced with modern hardware including rocket-propelled grenades and machine guns.¹⁹⁵ The state has had difficulty in controlling this violence while external actors have perpetuated a conflict narrative focusing on ethnicity rather than seeking to engage with the historical legacy of the country and the deep-seated grievances.¹⁹⁶

Since its independence in 2011, scores of civilian armed groups have been identified as active across South Sudan. Splinter and sub-proxy groups continue to emerge. The identification of every civilian armed group or militia goes beyond the intended scope of this report. This chapter identifies the core groups who continue to operate in violent hotspots, predominantly across the Upper Nile State and Jonglei State and provides the necessary context as to why these groups continue to thrive.

Whilst significant progress towards peace has been achieved by the RTGoNU, the existence of civilian armed groups and militia is repeatedly cited as a contributing factor derailing peace efforts. On 31 December 2022, President Salva Kiir appealed to the South Sudanese parties to desist from violence.¹⁹⁷ He also made a direct appeal deploring the violence in Upper Nile region and stating they could not stop it alone.¹⁹⁸ This chapter provides an overview of the circumstances in which these groups continue to function and the context of the Government's response.

¹⁹⁵ Wild, H. et al, The Militarization of Cattle Raiding in South Sudan: How a Traditional Practice Became a Tool for Political Violence, *Journal of International Humanitarian Action*, 2 March 2018.

¹⁹⁶ UNSC Resolution 2683 (2023) Adopted by the UNSC at its 9332nd meeting on 30th May 2023 refers to "Expressing concern over the continued intensification of violence prolonging the political, security, economic, and humanitarian crisis in most parts of the country, condemning the mobilization of armed groups and encouragement of defections, including by members of the government forces and armed opposition groups, and further recognizing that intercommunal violence in South Sudan is politically and economically linked to national-level violence and corruption" [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_RES_2683.pdf].

¹⁹⁷ S/2023/135, Situation in South Sudan, Report of the Secretary General, 22 February 2023 [<https://undocs.org/Home/Mobile?FinalSymbol=S%2F2023%2F135&Language=E&DeviceType=Desktop&LangRequested=False>].

¹⁹⁸ Republic of the South Sudan, Office of the President, Press Release, 7 December 2022.

3.2 The White Army

The ‘White Army’ is used as an umbrella term to refer to various Nuer community defence groups operating in the Greater Upper Nile Region.¹⁹⁹ Historically, it is seen as a continuation of traditional Nuer mobilisation structures whereby male Nuer youths are given the prime responsibility of protecting the family’s cattle herd, which can extend to “participating in ‘blood feuds’, inter-communal wars and revenge attacks”.²⁰⁰ Whilst participation in the group is voluntary, every able-bodied male is expected to join local units during large scale attacks.²⁰¹

Traditionally, the Nuer Youth coordinate their protection responsibilities as part of territorial units at various levels which are divided into primary sections and sub-sections within each of the eleven different sub-ethnic groups.²⁰² In turn, each sub-division is represented by their local leader, known as a *kuaar burnam*. The structural breakdown and leadership allow for “efficient command and control”.²⁰³ This has meant that the various sub-ethnic groups are able to mobilise large numbers extremely quickly where their interests align. Nuer prophets also play a key role in promoting and morally sanctioning participation of White Army members in large scale violent attacks.²⁰⁴

This mode of operation was seen during the joint mobilisation of the White Army in support of Riek Machar’s SPLM/A-IO during the coup attempts in 2013 and 2016.²⁰⁵ Whilst it has been reported that the White Army was acting to avenge the death of Nuer in Juba, its alliance with the SPLM/A-IO had little to do with a shared political agenda.²⁰⁶ The White Army’s involvement during the coup attempts in 2013 and 2016 resulted in the estimated death of thousands of civilians. The tactics employed by the White Army include the looting and burning of hospitals, the killing of civilians and the forcible recruitment of children.²⁰⁷

The White Army has reportedly been involved in the commission of atrocities across Malakal (Upper Nile State), Bor (Jonglei State) and Bentiu (Unity State) since 2016.²⁰⁸ Most recently, the White Army attacked an IDP camp at Adidiang near Malakal on 8 September 2022

¹⁹⁹ ICRC, South Sudan, The Nuer “White Armies”
[<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

²⁰⁰ ICRC, South Sudan, The Nuer “White Armies”
[<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

²⁰¹ ICRC, South Sudan, The Nuer “White Armies”
[<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

²⁰² For example, Lou Nuer and Eastern Jikany Nuer to the east of the Nile, or Bul Nuer and Dok Nuer to the west.

²⁰³ ICRC, South Sudan, The Nuer “White Armies” [<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

²⁰⁴ ICRC, South Sudan, The Nuer “White Armies” [<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

²⁰⁵ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022
[<https://southsudanreports.com/report/>].

²⁰⁶ Historically, the White Army has not sought to form long term alliances and acted for short term benefits.

²⁰⁷ A/HRC/31/CRP.6, Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings, 10 March 2016
[<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F31%2FCRP.6&Language=E&DeviceType=Desktop&LangRequested=False>].

²⁰⁸ A/HRC/31/CRP.6, Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings, 10 March 2016
[<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F31%2FCRP.6&Language=E&DeviceType=Desktop&LangRequested=False>].

resulting in the killing of 300 civilians. Initial reports describe “unimaginable scenes of Adidiang (town) set ablaze” with civilians fleeing by canoes and boats.²⁰⁹ The White Army continued its attacks on Nygiern Dauth, Patoaw and Nyagara, near Lul in Fashoda Country (Upper Nile State) on 8 and 9 October 2022 which included the kidnapping of three women, looting of approximately 3,000 cattle and the displacement of 8,000 civilians.²¹⁰

3.3 Agwelek Division

The Agwelek Division was established in 2008 “as a youth revolution protesting against land grabbing issues in Upper Nile State and particularly Chollo (Shilluk Tribal) lands”.²¹¹ The armed group was organised by Johnson Olony but “unlike the Nuer White Army [it] was organized from the outside, developed a formal hierarchy and system of ranks, and its fighters did not own the weapons they used”.²¹²

The Agwelek Division was subsequently subsumed within the SPLM/A-IO and a formal agreement was signed between both sides on 1 July 2015.²¹³ Whilst its members claim that throughout this allegiance the Agwelek Division remained independent,²¹⁴ it publicly asserted its loyalty to Riek Machar.²¹⁵ The Agwelek Division as led by Olony subsequently became part of the SPLM/A-IO Kitgwang Faction led by General Simon Gatwich.²¹⁶

In the lead up to the second attempted coup in 2016 and thereafter, the Agwelek Division was responsible for a number of attacks against Dinka settlements on the eastern Bank of the White Nile across Upper Nile State, resulting in the killing and displacement of thousands of

²⁰⁹ AP News, Fleeing civilians drown amid new attacks in South Sudan, 8 September 2022

[<https://apnews.com/article/africa-United-nations-south-sudan-civil-wars-tonga-f83e97a95adcf86a98421ccba26ffd4f>] and United Nations Peace Keeping, UNMISS condemns fresh attack on site for internally displaced persons in Adidiang, Upper Nile State, 9 September 2022

[<https://peacekeeping.un.org/en/unmiss-condemns-fresh-attack-site-internally-displaced-persons-adidiang-upper-nile-state>].

²¹⁰ OCHA, South Sudan Flash Update Developments in Kodak, Upper Nile, 11 October 2022

[<https://reliefweb.int/report/south-sudan/south-sudan-flash-update-developments-kodok-upper-nile-11-october-2022>] and CTSAMVM, Report and Outcomes of the Meeting on 31 October 2022 [https://ctsamvm.org/wp-content/uploads/2022/11/SIGNED-CTC-REPORT-AND-OUTCOMES-OF-THE-MEETING-ON-31-OCTOBER-2022_compressed.pdf].

²¹¹ Radio Tamazuj, Interview: Agwelek Division: Their Mission And Vision, 27 January 2022

[<https://radiotamazuj.org/en/news/article/interview-agwelek-division-their-mission-and-vision>].

²¹² Young, J., Popular Struggles and Elite Co-optation: The Nuer White Army in South Sudan’s Civil War, 2016

[<https://www.smallarmssurvey.org/sites/default/files/resources/HSBA-WP41-White-Army.pdf>].

²¹³ Craze, J., Displaced and Immiserated, The Shilluk of Upper Nile in South Sudan’s Civil War, 2014-2019, 2019

[<https://static1.squarespace.com/static/535dcd87e4b08cab3cb3e421/t/61617df8e14d1633d0a9408b/1633779221348/HSBA-Report-South-Sudan-Shilluk.pdf>].

²¹⁴ Radio Tamazuj, Interview: Agwelek Division: Their Mission and Vision, 27 January 2022

[<https://radiotamazuj.org/en/news/article/interview-agwelek-division-their-mission-and-vision>] and Craze, J., Displaced and Immiserated, The Shilluk of Upper Nile in South Sudan’s Civil War, 2014-2019, 2019

[<https://static1.squarespace.com/static/535dcd87e4b08cab3cb3e421/t/61617df8e14d1633d0a9408b/1633779221348/HSBA-Report-South-Sudan-Shilluk.pdf>].

²¹⁵ Sudan Tribune, Agwelek senior official disowns members of Collo who associate with new FVP, 11 August 2016

[<https://www.thefreelibrary.com/Agwelek+senior+official+disowns+members+of+Collo+who+associate+with...-a0461528123>].

²¹⁶ Radio Tamazuj, SPLA-IO Kit-Gwang announces split in ranks after fresh infighting, 23 August 2022

[<https://radiotamazuj.org/en/news/article/splm-a-io-kit-gwang-announces-split-in-ranks-after-fresh-infighting>].

civilians.²¹⁷ The Agwelek Division has since diverted its forces against the SPLM/A-IO, in particular the Kitgwang faction, and is allegedly responsible for attacks across the Upper Nile State and parts of Jonglei State, including Ater in late September to October 2022.²¹⁸

3.4 National Salvation Front (NAS)

The NAS, led by Lt Gen. Thomas Cirillo Swaka, was established in March 2017 to remove President Salva Kiir from office.²¹⁹ In March 2018, the NAS subsequently worked in concert with the South Sudan Opposition Alliance (SSOA), however, this was short-lived and by September 2018, they pulled out of SSOA after refusing to join the Peace Agreement and they formed SSNDA.

The NAS has been accused of looting civilian properties, abducting civilians and attacking refugee camps across Central and Western Equatoria throughout 2019 to 2022.²²⁰ Most recently, the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism has linked National Salvation Front members to the kidnapping and killing of civilians and looting and destruction of property across Central Equatoria State in September and October 2022.²²¹

3.5 Tahrir, Murle and Fertit Militia

The Tahrir, Murle and Fertit are three distinct groups who operate in Unity State, Jonglei State and Western Bahr el Ghazal State respectively. The Tahrir militia is predominantly made up of Haak Nuer (also known as Aak Nuer) fighters from Unity State. The group has been linked by UNMISS to continued human rights violations in Koch County in September 2022.²²² Tahrir

²¹⁷ Global Centre for the Responsibility to Protect, 1.5 Years After the Peace Agreement, Famine and Atrocities Threaten South Sudan, 3 May 2017 [<https://www.global2p.org/publications/1-5-years-after-the-peace-agreement-famine-and-atrocities-threaten-south-sudan/>].

²¹⁸ CTSAMVM, Report and Outcomes of the Meeting on 31 October 2022 [https://ctsamvm.org/wp-content/uploads/2022/11/SIGNED-CTC-REPORT-AND-OUTCOMES-OF-THE-MEETING-ON-31-OCTOBER-2022_compressed.pdf].

²¹⁹ National Salvation Front/Army Official Website [https://www.nassouthsudan.com/declarations/?cp_11=3].

²²⁰ Eye Radio, NAS allegedly abducts 30 civilians, burns two MSF vehicles in Yei River, 1 March 2022 [<https://www.eyeradio.org/nas-allegedly-abducts-30-civilians-burns-two-msf-vehicles-in-yei-river/>]; Sudan Post, 2 transport vehicles looted, burnt out by suspected NAS forces [<https://www.sudanspost.com/2-transport-vehicles-looted-burnt-out-by-suspected-nas-forces/>]; Radio Tamazuj, NAS denies attacking Yei refugee camp, laying ambushes along Juba-Nimule road, 25 August 2021 [<https://radiotamazuj.org/en/news/article/nas-denies-attacking-yei-refugee-camp-laying-ambushes-along-juba-nimule-road>]; South Sudan News Agency, NAS accused of looting civilians' properties in Western Equatoria, 30 April 2020 [<https://www.facebook.com/SouthSudannewsagency2019/posts/nas-accused-of-looting-civilians-properties-in-western-equatoria-local-official/732073837329730/>].

²²¹ CTSAMVM, Report and Outcomes of the Meeting on 31 October 2022 [https://ctsamvm.org/wp-content/uploads/2022/11/SIGNED-CTC-REPORT-AND-OUTCOMES-OF-THE-MEETING-ON-31-OCTOBER-2022_compressed.pdf];

Financial Times, South Sudan's 'wasted' decade: 'We have been at war for far too long', 26 August 2021 [<https://www.ft.com/content/5c8041a4-10af-4950-8502-87ff75a5438b>];

Reconstituted Joint Monitoring and Evaluation Commission Quarterly reports [<https://www.jmecsouthsudan.com/index.php/reports/rjmec-quarterly-reports>].

²²² UNMISS, Report on Attacks on Civilians in Southern Unity State, South Sudan, 6 September 2022 [https://www.ohchr.org/sites/default/files/documents/countries/ss/2022-09-09/Infographic_on_southern_Unity_report_South_Sudan_06-sept-2022.pdf]; Mapping Actors and Alliances Project in South Sudan, Update, 16 June 2020 [<https://www.smallarmssurvey.org/sites/default/files/resources/HSBA-MAAPSS-Update-June2020-Cabinet.pdf>].

is Arabic for liberation, they are members of the White Army and can be found in Jonglei and Upper Nile.

The Murle militia all stem from the same ethnic group and historically joined the SPLA early in the war against Sudan. However, this allegiance shifted following the 2005 peace agreement leading to a Murle rebellion led by David Yau Yau in 2012.²²³ The Murle militia have continued in conflict with Bor Dinka and Lou Nuer throughout 2012 to date, although its allegiance has recently shifted back to the government and it appears to be reverting to the historic conflicts over land and pastures.²²⁴

The Fertit militia dates back to pre-independence, however the group as it is currently formed, regrouped in 2012 when a demonstration against what was perceived as government encroachment on Fertit land was fired on by the SPLA and twenty-four protesters were killed.²²⁵ Following this incident, Fertit youth took to the bush and by 2014, the Fertit coordinated its activities with the “better-armed SPLA-IO”.²²⁶ As militia, they had effectively joined the ranks of the SPLM/A-IO.

3.6 Splinter Groups, Cross-over Allegiances and Sub-Proxy Groups

The armed civilian groups in South Sudan still involve splinter groups, cross-over allegiances, and sub-proxy groups, all working within fluid alliances which are often devoid of centralised command.²²⁷ Initially these so-called “alliances of coalition” were formed as part of the political crisis between the SPLM/A-IG and SPLM/A-IO.²²⁸ Most notable is the SPLM/A-IO’s use of the White Army following the attempted coup in December 2013 and the commission of atrocities in Malakal, Bor and Bentiu.²²⁹

However, whilst the SPLM/A-IO led by Riek Machar sought political control, this was not a motivating factor shared by the White Army whose primary responsibility was to its members

²²³ Minority Rights, Official Website [<https://minorityrights.org/minorities/murle/>].

²²⁴ Climate Diplomacy, Conflict between Lou Nuer and Murle in South Sudan [<https://climate-diplomacy.org/case-studies/conflict-between-lou-nuer-and-murle-south-sudan>]; OHCHR, South Sudan: UN urges accountability for key figures supporting militias in Greater Jonglei, 15 March 2021 [<https://www.ohchr.org/en/press-releases/2021/03/south-sudan-un-urges-accountability-key-figures-supporting-militias-greater>]; Reuters, Tribal militia kill 43 in South Sudan's Jonglei state, abduct women, children, 29 November 2017 [<https://www.reuters.com/article/us-southsudan-security-idUSKBN1DT15B>]; Sudan Tribune, Ethiopia launches military action against S. Sudan’s Murle group, 18 April 2016 [<https://sudantribune.com/article57004/>]; All Africa, East Africa: News - South Sudan Murle Militia Kill Two People, Kidnap Two Children in Gembella Region Cross Border Attack, 10 August 2022 [<https://allafrica.com/stories/202208110092.html>].

²²⁵ A/HRC/40/CRP.1, Report of the Commission on Human Rights in South Sudan, 21 February 2019 [<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F40%2FCRP.1&Language=E&DeviceType=Desktop&LangRequested=False>]; IRIN, A fight to the Death?, 11 July 2016 [<https://www.refworld.org/docid/57864eff4.html>].

²²⁶ IRIN, A fight to the Death?, 11 July 2016 [<https://www.refworld.org/docid/57864eff4.html>]; Vuylsteke, S., Identity and Self-Determination The Fertit Opposition in South Sudan, 2018 [<https://www.smallarmssurvey.org/sites/default/files/resources/HSBA-BP-Fertit.pdf>].

²²⁷ See e.g. Quinn, B., et al, Introduction: promoting restraint in war, International Interactions, 2021 [<https://www.tandfonline.com/doi/full/10.1080/03050629.2021.1931864>].

²²⁸ ICG, South Sudan: A Civil War by Any Other Name, 10 April 2014 [<https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-civil-war-any-other-name>].

²²⁹ ICRC, South Sudan, The Nuer “White Armies” [<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

and communities,²³⁰ in relation to problems which could “at best be resolved at the state or local level”.²³¹ The armed communities and political detainees which had initially aligned with the SPLM/A-IO had wanted to change the status quo but their interests otherwise diverged “in key respects”.²³²

The diverging interests came to a head when a significant number of the White Army refused to be part of the SPLM/A-IO units under the NUF given that they did not support the peace process.²³³ Whilst the SPLM/A-IO had emboldened the armed group, most White Army youths were driven by local security obligations, and had little interest in Machar’s political agenda or being based in areas far away from their local communities.²³⁴ Efforts to incorporate these youths within the SPLM/A-IO structure i.e. with promise of high ranks, uniforms or ammunition were also short lived.²³⁵ As such, many of the White Army Youths returned to the Upper Nile and have since continued to launch violent attacks against civilians and government forces.²³⁶

Such short-lived allegiances are further compounded by the splinter groups arising from divisions within the SPLM/A-IO. In contrast to government forces, the SPLM/A-IO was predominantly made up of armed militia which lacked command and structure under Machar’s leadership. This led to significant fractures within the opposition, the results of which continue to play out today.

This is demonstrated by the SPLM/A-IO’s initial coordination with the Agwelek Division. Whilst the Agwelek Division under Olony’s command formed an alliance with Machar, by August 2021 it had formed a splinter group along with forces led by Gen. Simon Gatwich Dual to form the SPLM/A-IO Kitgwang Faction.²³⁷ This faction was formed in opposition to Machar’s leadership.²³⁸ However by August 2022, the Kitgwang Faction itself split between forces loyal to Gatwich and those loyal to Olony.²³⁹ This division has resulted in bloody clashes across the Upper Nile State with each side blaming the other for initiating attacks. For example, in September 2022, Gatwich issued a press statement condemning his reported implication in

²³⁰ ICG, South Sudan: A Civil War by Any Other Name, 10 April 2014

[<https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-civil-war-any-other-name>].

²³¹ ICG, South Sudan: Jonglei – “We Have Always Been at War”, 22 December 2014

[<https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-jonglei-we-have-always-been-war>].

²³² ICG, South Sudan: A Civil War by Any Other Name, 10 April 2014 [<https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-civil-war-any-other-name>].

²³³ ICG, South Sudan: Jonglei – “We Have Always Been at War”, 22 December 2014

[<https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-jonglei-we-have-always-been-war>].

²³⁴ ICRC, South Sudan, The Nuer “White Armies”

[<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

²³⁵ ICRC, South Sudan, The Nuer “White Armies”

[<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>].

²³⁶ For example, Sudan Post, 3K ‘massacred’ as white army attacks IDP camp in Upper Nile – official, 2022

[<https://www.sudanpost.com/3k-massacred-as-white-army-attacks-idp-camp-in-upper-nile-official/>].

²³⁷ Radio Tamazuj, SPLA-IO Kit-Gwang announces split in ranks after fresh infighting, 23 August 2022

[<https://radiotamazuj.org/en/news/article/splm-a-io-kit-gwang-announces-split-in-ranks-after-fresh-infighting>].

²³⁸ Number One Citizen Daily, Disgruntled SPLA-IO generals accuse Machar of nepotism, 19 September 2022

[<https://onecitizendaily.com/index.php/2022/09/19/disgruntled-spla-io-generals-accuse-machar-of-nepotism/>];

Radio Tamazuj, SPLA-IO Kit Gwang faction claims to have overrun VP Machar's bases, 28 December 2022

[<https://radiotamazuj.org/en/news/article/spla-io-kit-gwang-faction-claims-to-have-overrun-bases-of-vp-machars-forces>].

²³⁹ Radio Tamazuj, SPLA-IO Kit-Gwang announces split in ranks after fresh infighting, 23 August 2022

[<https://radiotamazuj.org/en/news/article/splm-a-io-kit-gwang-announces-split-in-ranks-after-fresh-infighting>].

the attack on SPLM/A-IO forces in Atar which he stated was carried out by the Agwelek Division.²⁴⁰

The Special Representative of the UN Secretary General and Head of UNMISS in 2022 expressed his concern in relation to the fighting between SPLM/A-IO opposition forces and Kitgwang-Agwelek factions in Upper Nile.²⁴¹ According to UNMISS the clashes have displaced thousands of people within Upper Nile, to Jonglei, Unity states, and Sudan – with others fleeing to the Malakal Protection of Civilians site, worsening the already crowded conditions.²⁴² Clashes between factions of the SPLM/A-IO continue and as reported by the United Nations Interim Security Force for Abyei, have resulted in the “deterioration in security and the displacement of the community”.²⁴³

Divisions within the SSOA have also resulted in on-going violence as a result of subsequent divisions and the break-off of prior alliances. For example, on 1 March 2018, the NAS joined the SSOA which itself was a coalition of rebel groups aligned in opposition to the government. However, in August 2018 the NAS split between those forces loyal to Khalid Boutros and the main NAS group loyal to Thomas Cirillo. The Boutros-led group, known as NAS-KB, shifted its position and signed the R-ARCSS in September 2018. However, the main NAS group went on to suffer further divisions giving rise to the ENAF (led by Moses Yanga Yoana) and the DRM (led by Lako Jada Kwajok) both of which went on to support the peace process. The remaining forces under Cirillo went on to form the SSNDA which has since been involved in major clashes with the SSPDF and NAS in Yei River State in 2018 and 2019 which reportedly resulted in the displacement of 15,000 civilians. Cirillo’s forces have continued to ambush the SSPDF and attack civilian sites across Central Equatorial State.

3.7 Exploited Communities

For opposition groups, reliance on armed groups allowed for a temporary boost in manpower and geographical coverage. In turn, this gave Machar and other leaders of the SPLM/A-IO and SSOA seats at the political table. In contrast, for armed groups the motivation behind the establishment of alliances is narrow and predominantly concerns local grievances relating to poor economic and weak security conditions. Local grievances were able to be manipulated by military and political actors,²⁴⁴ with Machar reportedly targeting disaffected areas to recruit armed youths,²⁴⁵ and instrumentalising ethnic dimensions.²⁴⁶

²⁴⁰ Sudan Post, Gen. Gatwech says Olony attacked Machar ‘not me’, 2022

[<https://www.sudanspost.com/gen-gatwech-says-olony-attacked-machar-not-me/>].

²⁴¹ Eye Radio, Haysom expresses concern over increase sub-national violence, 19 September 2022

[<https://www.eyeradio.org/haysom-expresses-concern-over-increase-sub-national-violence/>].

²⁴² Eye Radio, Haysom expresses concern over increase sub-national violence, 19 September 2022

[<https://www.eyeradio.org/haysom-expresses-concern-over-increase-sub-national-violence/>].

²⁴³ With reference to clashes in Abeyi see Eye Radio, UNISFA raises concern over SPLM-IO factional clashes at Sudan-S.Sudan buffer zone, 29 September 2022

[<https://www.eyeradio.org/unisfa-raises-concern-over-splm-io-factional-clashes-at-sudan-s-sudan-buffer-zone/>].

²⁴⁴ ICRC, South Sudan, The Nuer “White Armies”

[<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies/>].

²⁴⁵ ICG, South Sudan: A Civil War by Any Other Name, 10 April 2014

[<https://www.crisisgroup.org/africa/horn-of-africa/south-sudan/south-sudan-civil-war-any-other-name/>].

²⁴⁶ Djouneup, H., South Sudan: Rivalry between strategic and conflicting groups, 7 April 2022

[https://trendsresearch.org/research.php?id=337&title=South_Sudan:_Rivalry_between_strategic_and_conflicting_g_groups].

Inter-communal violence, road ambushes, targeting convoys and cattle raiding are often described as direct triggers of violence in South Sudan. In January 2021, the Community Empowerment for Progress Organization reported that over 2,400 civilians died as a result of inter-communal violence and armed cattle raiding in 2020.²⁴⁷ Similarly, a news report in May 2021 described the killings of 42 persons in the space of one week across Lakes, Central, and Eastern and Western Equatoria states, and Ruweng Administrative Area as being “related to communal fights, road ambushes, and banditries”.²⁴⁸

Inflicted areas are often under resourced and cut-off from economic developments in and around Juba. Local forces often feel abandoned by central state as community demands are not met,²⁴⁹ and poverty prevails.²⁵⁰ This serves to entrench positions of authority in local communities – noting that historically, ethnic groups in South Sudan are often driven by their belief in their right to security and self-preservation to control their own land and defend their identity.²⁵¹ However, in order to exercise this right and secure resources, armed groups are reliant on arms and criminal activity. For example, the Fertit Militia formed an alliance with SPLM/A-IO on the promise that the latter would supply weapons and ammunition.²⁵² When this supply did not materialise, the Fertit Militia resorted to alternative means to access weapons. Initially this was through its pre-existing networks in Sudan, smuggling network links in CAR and Darfur, and related clandestine regional markets.²⁵³ Having failed to access weapons through the SPLM/A-IO, this allegiance essentially stopped.

Other reports suggest that criminal activity is an easier route to access basic resources, with unemployed youth, being a primary target to smuggle, sell arms, and/or engage in large-scale raids. In particular, cattle raiding is a longstanding practice historically governed by cultural authorities and ritual prohibitions. Raiding is intimately tied to social norms, masculine ideals and the need to accumulate cattle to marry. However, after decades of on-and-off integration into armed forces, raiders are now heavily armed, and military-style attacks claim dozens if not hundreds of lives at a time.²⁵⁴

²⁴⁷ Eye Radio, 2020: More than 2,400 Killed in inter-communal, cattle-related violence—CEPO, 4 January 2021 [<https://www.eyeradio.org/2020-more-than-2400-killed-in-inter-communal-cattle-related-violence-cepo/>].

See also Eye Radio Hundreds of cattle stolen from Mayom County, 22 November 2021 [<https://www.eyeradio.org/hundreds-of-cattle-stolen-from-mayom-county/>].

²⁴⁸ Eye Radio, Eye Radio records over 40 killings in one week alone, 18 May 2021 [<https://www.eyeradio.org/eye-radio-records-over-40-killings-in-one-week-alone/>].

²⁴⁹ ICG, Double-edged Sword: Vigilantes in African Counter-insurgencies, 7 September 2017 [<https://www.crisisgroup.org/africa/west-africa/sierra-leone/251-double-edged-sword-vigilantes-african-counter-insurgencies>].

²⁵⁰ Djounguep, H., South Sudan: Rivalry between strategic and conflicting groups, 7 April 2022 [https://trendsresearch.org/research.php?id=337&title=South_Sudan:_Rivalry_between_strategic_and_conflicting_groups].

²⁵¹ See ICRC, South Sudan, The Nuer “White Armies”, [<https://casebook.icrc.org/case-study/south-sudan-nuer-white-armies>] - in reference to White Army; see also Vuylsteke, S., Identity and Self-Determination The Fertit Opposition in South Sudan, 2018 [<https://www.smallarmssurvey.org/sites/default/files/resources/HSBA-BP-Fertit.pdf>] in reference to the Fertit Militia.

²⁵² Vuylsteke, S., Identity and Self-Determination The Fertit Opposition in South Sudan, 2018 [<https://www.smallarmssurvey.org/sites/default/files/resources/HSBA-BP-Fertit.pdf>].

²⁵³ Vuylsteke, S., Identity and Self-Determination The Fertit Opposition in South Sudan, 2018 [<https://www.smallarmssurvey.org/sites/default/files/resources/HSBA-BP-Fertit.pdf>].

²⁵⁴ Wild, H. et al, The Militarization of Cattle Raiding in South Sudan: How a Traditional Practice Became a Tool for Political Violence, Journal of International Humanitarian Action, 2 March 2018.

3.8 Constrained Government

The role of armed groups across local communities has become entrenched over the years across South Sudan. Groups have become adept at recruiting civilians and mobilising quickly as well as using established networks, corporate intermediaries and smuggling routes to access ammunition and weapons.²⁵⁵ Moreover, the shifting of allegiances has meant that arms are often circulated amongst and across local groups,²⁵⁶ and/or seized during ambushes of government forces,²⁵⁷ or intercepted from UNMISS.²⁵⁸ As a result, local armed groups have reportedly taken on “military-style tactics and military-grade weapons”.²⁵⁹

In contrast, the Government is forced to deal with powerful militia groups while under an arms embargo that fully restricts its access to weapons and ammunition as well as military vehicles and aircraft.²⁶⁰ In practice this means that government forces are unable to access remote areas in which armed groups operate, and/or are unable to sufficiently overpower the armed groups which have been hoarding weapons for decades during the war with Sudan. Moreover, its efforts to monitor clashes, particularly in relation to the Cessation Agreement have been significantly curtailed following the withdrawal of USAID funding to the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM).²⁶¹

These factors have created difficult conditions for government forces to maintain stability.²⁶² For example, in October 2022, civil actors blamed the Government for creating a power vacuum in the Upper Nile State following clashes in Malakal, Panyikang, and Fashoda Counties,²⁶³ which reportedly allowed the armed groups to thrive. President Kiir has also discussed the fact that “local communities have acquired weapons that are making them more powerful than the government”,²⁶⁴ and whilst “sustainable peace” was urged, the President recognised the very real limits to the Government’s ability to stop on-going violence in the Upper Nile State.²⁶⁵

²⁵⁵ Conflict Armament Research, *Weapon Supplies Into South Sudan’s Civil War*, November 2018 [<https://www.conflictarm.com/reports/weapon-supplies-into-south-sudans-civil-war/>].

²⁵⁶ Conflict Armament Research, *Weapon Supplies Into South Sudan’s Civil War*, November 2018 [<https://www.conflictarm.com/reports/weapon-supplies-into-south-sudans-civil-war/>].

²⁵⁷ Nyamilepedia, *Government Troops Incurred Massive Losses In Defense of Oil Fields in Upper Nile State - Agwelek!*, 20 May 2015 [<https://nyamile.co/2015/05/20/government-troops-incurred-massive-losses-in-defense-of-oil-fields-in-upper-nile-state/>]; S/2019/301, Final report of the Panel of Experts on South Sudan submitted pursuant to resolution 2428 (2018), 9 April 2019

[<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/075/66/PDF/N1907566.pdf?OpenElement>].

²⁵⁸ Small Arms Survey, *Diversion of Arms and Ammunition in Peace Operations*, November 2015 [<https://smallarmssurvey.org/sites/default/files/resources/SAS-Research-Note-54.pdf>].

²⁵⁹ Eye Radio, *VP Taban suggests buying weapons from civilians and burning them*, 23 November 2021 [<https://www.eyeradio.org/vp-taban-suggests-buying-weapons-from-civilians-and-burning-them/>].

²⁶⁰ The Tower Post, *South Sudan’s Kiir Appeals to International Community to End Sanctions*, 7 February 2023 [<https://thetowerpost.com/2023/02/07/south-sudans-kiir-appeals-to-international-community-to-end-sanctions/>].

²⁶¹ Ceasefire and Transitional Security Arrangements, *Official Website – Technical Committee* [<https://ctsamvm.org/ctsamvm-technical-committee/>].

²⁶² Eye Radio, *National gov’t urged to intervene in Kitgwang fighting*, 6 September 2022 [<https://www.eyeradio.org/national-govt-urged-to-intervene-in-kitgwang-fighting/>].

²⁶³ Eye Radio, *Activist blames Upper Nile conflict on leadership vacuum*, 17 October 2022 [<https://www.eyeradio.org/activist-blames-upper-nile-conflict-on-leadership-vacuum/>].

²⁶⁴ Sudan Post, *Kiir’s party says communities more powerful than government*, 2022 [<https://www.sudanpost.com/kiirs-party-says-communities-more-powerful-than-government/>].

²⁶⁵ Eye Radio, *“I can’t stop those fighting in Upper Nile”, says President Kiir*, 7 December 2022 [<https://www.eyeradio.org/i-cant-stop-those-fighting-in-upper-nile-says-president-kiir/>].

3.9 Efforts to Curtail Civilian Armed Groups

The Government has sought to prevent and curtail the operation of local armed groups in a variety of ways and as recognised by the CTSAMVM on 1 November 2022, this has resulted in the reduction of insecurity in Unity and Upper Nile State although clashes still take place amongst armed youths.²⁶⁶ As recently noted by representatives during the CTSAMVM Technical Committee in October 2022, such progress is often overlooked in the reporting of the activities of armed groups.²⁶⁷

3.10 Monitoring and Investigations

As part of the peace agreement, the CTSAMVM was established to monitor compliance with the R-ARCSS by the signatory Parties and those armed groups, which are either under their control or invited to support them. The CTSAMVM relies on its Monitoring and Verification Teams, located in nine of the most conflict affected areas of South Sudan, to patrol areas of responsibility and gather information on potential violations of the agreement which they immediately report to the CTSAMVM Headquarters in Juba. This can include reports of military fighting, movement of forces, blockage of aid routes, forced recruitment of child soldiers and attacks on civilians, as well as the dissemination of hostile propaganda and other activities prohibited by the agreement.²⁶⁸ The role of CTSAMVM is therefore both preventative and protective.

However, despite its creation as a multinational body under the terms of the Peace Agreement, the U.S. authorities recently withdrew its funding in August 2022.²⁶⁹ This resulted in the suspension of the CTSAMVM's operations for the period August and September 2022. The CTSAMVM was only able to continue its work following the allocation of resources by the Government.²⁷⁰

In recent years, the Government has invested resources for the investigation of atrocities committed by local armed groups.²⁷¹ These high-level investigative commissions are established by presidential decree and are tasked with collecting evidence on the commission of crimes and identifying alleged perpetrators and victims. As a long-term solution, the investigative bodies are also tasked with identifying the underlying causes of the conflict. This was most recently evidenced by the establishment of an *ad hoc* committee headed by Sarafino Simon Mizan – Senior Legal Counsel at the Ministry of Justice and Constitutional Affairs – to investigate the extrajudicial killings, rape and destruction of civilian property in Mayom

²⁶⁶ Eye Radio, CTSAMVM welcomes improved security in Unity, Upper Nile, 1 November 2022 [<https://www.eyeradio.org/ctsam-vm-welcomes-improved-security-in-unity-upper-nile/>].

²⁶⁷ Ceasefire and Transitional Security, Arrangements, Official Website – Technical Committee [<https://ctsamvm.org/ctsamvm-technical-committee/>].

²⁶⁸ Ceasefire and Transitional Security, Arrangements, Official Website – Mandate [<https://ctsamvm.org/mandate/>].

²⁶⁹ Ceasefire and Transitional Security, Arrangements, Official Website – Technical Committee [<https://ctsamvm.org/ctsamvm-technical-committee/>]; Sudan Post, South Sudan ceasefire monitors express concerns over US suspension of funding, 2022 [<https://www.sudanspost.com/south-sudan-ceasefire-monitors-express-concerns-over-us-suspension-of-funding/>].

²⁷⁰ Ceasefire and Transitional Security, Arrangements, Official Website – Technical Committee [<https://ctsamvm.org/ctsamvm-technical-committee/>].

²⁷¹ Fact Finding Committee formed by the President Arrives in Leer State to probe violence – 7 March 2023 [<https://www.eyeradio.org/committee-to-probe-leer-violence-arrives-in-unity-state/>].

County and southern Unity State and “finding the root cause of an enduring insecurity in the oil-rich state”.²⁷²

Whilst not all investigative findings have yet been published, thus far it is apparent that the *ad hoc* committees have not shied away from identifying instigators of violence and have apprehended suspects pending further investigation.²⁷³

3.11 Dispatch of Security Forces and Buffer Zones

In recent discussions with the U.S. Ambassador, President Kiir underscored the fact that the Government has taken serious steps to address incidents of communal violence. This included the dispatch of security forces to the areas of communal conflicts to stabilise the security situation.²⁷⁴ Teams included “prominent intellectuals and elders” to initiate peaceful dialogue and to promote peaceful co-existence among communities.²⁷⁵ The seriousness of the handling of the situation is further demonstrated by the dispatch of VIP forces,²⁷⁶ which recently included the Chief of Defence Forces, Lt. Gen. Santino Deng Wol, to Tonj North County in July 2022 following the outbreak of violence and armed cattle raiding in the area.²⁷⁷

On 16 October 2022, the SSPDF command deployed troops to the border between the disputed region of Abyei Administrative Area and Twic County of Warrap State following a series of clashes in the region.²⁷⁸ This deployment followed the establishment of a buffer zone in the same area in May 2022.²⁷⁹ More recently, the SSPDF was deployed to Fashoda County in early December 2022 to cease hostilities and protect civilians from attacks from the White Army pursuant to a Presidential order.²⁸⁰

However, despite such efforts, SSPDF deployments are undermined by the fact that they lack the necessary means to take on the better equipped armed groups in conflict areas such as the Upper Nile State. This situation is further complicated by two critical factors. First, despite shifting alliances, the SPLM/A-IO has maintained one foot in each camp, and continued to support armed groups, including the White Army, and more recently, spoken out against SSPDF operations from Jonglei state in Upper Nile State.²⁸¹ Second, the SSPDF deployments

²⁷² Eye Radio, Kiir orders fresh inquiry into Unity State violence, 9 September 2022
[<https://www.eyeradio.org/kiir-orders-fresh-inquiry-into-unity-state-violence/>].

²⁷³ Ruregene, Government officials Pay Solidarity Visit to Tombura County for Reconciliation, Peace and Unity, 19 April 2021
[<https://rurugene.com/government-officials-pay-solidarity-visit-to-tombura-county-for-reconciliation-peace-and-unity>].

²⁷⁴ Eye Radio, Kiir, US ambassador hold talks on communal conflicts, 23 October 2022
[<https://www.eyeradio.org/kiir-us-ambassador-hold-talks-on-communal-conflicts/>].

²⁷⁵ Eye Radio, Kiir, US ambassador hold talks on communal conflicts, 23 October 2022
[<https://www.eyeradio.org/kiir-us-ambassador-hold-talks-on-communal-conflicts/>].

²⁷⁶ Ceasefire and Transitional Security, Arrangements, Official Website – Technical Committee
[<https://ctsamvm.org/ctsamvm-technical-committee/>].

²⁷⁷ Eye Radio, Top security chiefs vow to restore security in Tonj North, 3 July 2022
[<https://www.eyeradio.org/top-security-chiefs-vow-to-restore-security-in-tonj-north/>].

²⁷⁸ Eye Radio, SSPDF troops deployed to volatile Warrap-Abyei border, 16 October 2022
[<https://www.eyeradio.org/sspdf-troops-deployed-to-volatile-warrap-abyei-border/>].

²⁷⁹ Eye Radio, SSPDF troops deployed to volatile Warrap-Abyei border, 16 October 2022
[<https://www.eyeradio.org/sspdf-troops-deployed-to-volatile-warrap-abyei-border/>].

²⁸⁰ Radio Tamazuj, SSPDF to use force if 'white army' refuses to return to Jonglei, 12 December 2022
[<https://www.radiotamazuj.org/en/news/article/sspdf-to-use-force-if-white-army-refuses-to-return-to-their-areas>].

²⁸¹ Sudan Post, SPLA-IO denies being part of SSPDF operations against ‘White Army’ in Upper Nile, 2022

receive little to no support in conflict areas from UNMISS which refuses to enter areas of conflict.²⁸² This is despite the fact that UNMISS has an explicit mandate to protect civilians and is the only force in the country which has the capability to stabilise and secure violent hotspots.²⁸³

3.12 Disarmament Efforts and Securing Arms

In July 2020, President Kiir launched a disarmament campaign across Lakes State, Terekeka County, Warrap State and Jonglei State, to tackle the cycle of violence in those areas. Initial efforts to disarm armed groups resulted in the death of 148 individuals with the army emphatically losing the battle, leading to the necessary suspension of the disarmament campaign and demonstrating the Government's lack of means to intervene to prevent local outbreaks of violence.²⁸⁴

However, whilst disarmament has continued, with the assistance of UNDP, it has been a protracted and politicised process.²⁸⁵ This is largely due to the security risks which continue to exist as a result of the presence of armed groups and therefore there is little incentive for civilians to voluntarily disarm. This circular challenge can only be addressed with a clear understanding of the root cause of violence amongst and within armed groups and the strengthening of the SSPDF's capability to protect unarmed civilians.²⁸⁶

3.13 Mediation

The Government has engaged in local mediation efforts to encourage stability across hotspots in South Sudan. Notably, it has engaged in direct talks with armed groups to include them as part of the peace process.²⁸⁷ Such efforts have previously resulted in the signing of the R-ARCSS by ENAF [Equatoria Non-Aligned Force], DRM and NAS-KB [NAS-Khalid Boutros-Bora]. Most recently, the President met with the Agwelek Division peace team in September 2022 to discuss the conflict and security situation in Malakal and Panyikang.²⁸⁸ According to media reports, the President assured the Agwelek Division that he would discuss the matter with First Vice President Riek Machar in order to ascertain his role in stopping the insecurity.²⁸⁹ On 24 September 2022, Olony accepted President Salva Kiir's call for his return to Juba to participate in the peace process.²⁹⁰

[<https://www.sudanspost.com/spla-io-denies-being-part-of-sspdp-operations-against-white-army-in-upper-nile/>].

²⁸² Interview, Juba, December 2022.

See also "More than ten thousand civilians are in grave danger in Fashoda county in South Sudan in the face of an imminent attack. @unmissmedia can take steps to fulfil their mandate of protecting civilians under threat of physical violence. But action is needed now" Twitter, Ferenc David Marko, 8 December 2022

[<https://twitter.com/markoferenc/status/1600811333766680579?s=12&t=0Rxdy14NnowzwyV7qV0CJg>].

²⁸³ UNMISS, Official Website – Mandate [<https://unmiss.unmissions.org/mandate>].

²⁸⁴ Craze., J., How South Sudan's peace process became a motor for violence, 3 February 2022

[<https://www.thenewhumanitarian.org/analysis/2022/2/3/how-south-sudan-peace-process-became-violence>].

²⁸⁵ Eye Radio, Forceful disarmament of herders is a no, FVP Machar, 25 August 2021

[<https://www.eyeradio.org/forceful-disarmament-of-herders-is-a-no-fvp-machar/>].

²⁸⁶ Interview, Juba, December 2022.

²⁸⁷ ICG, South Sudan, Rearranging the Chessboard, 20 December 2016 [<https://www.crisisgroup.org/africa/horn-africa/south-sudan/243-south-sudan-rearranging-chessboard>].

²⁸⁸ Eye Radio, Kiir to work with Agwelek to restore peace in Upper Nile 23 September 2022

[<https://www.eyeradio.org/kiir-to-work-with-agwelek-to-restore-peace-in-upper-nile/>].

²⁸⁹ Eye Radio, Kiir to work with Agwelek to restore peace in Upper Nile 23 September 2022

[<https://www.eyeradio.org/kiir-to-work-with-agwelek-to-restore-peace-in-upper-nile/>].

²⁹⁰ The City Review, Olony accepts Kiir's call to Juba, set terms before return, 24 September 2022

[<https://cityreviewss.com/olony-accepts-kiirs-call-to-juba-set-terms-before-return/>].

Local mediation efforts have also been successfully hailed in western Bahr el Ghazal,²⁹¹ and Jonglei.²⁹²

3.14 Conclusion

The kaleidoscope of armed civilian groups and militia with their frequently changing alliances operating in terrain lacking key infrastructure and organisation would provide any government, not least that of a newly formed state, with problems of control and law enforcement. The challenges presented to the GoSS in the context of internal conflict when the armed groups have fed into militia used by the SPLM/A-IO has made it more difficult to exercise control and protect civilians. The violence forces civilians to flee, prevents them from developing their local agriculture and creates a landscape of violence requiring resources and expertise to install peace and order.

In his keynote address following the Governors' Forum in November 2022, President Salva Kiir directed state governors to prioritise addressing sub national conflicts including communal violence and land disputes in their respective states.²⁹³ The unification of forces has drawn some of the sting of the militias. However, they remain such a potent force in South Sudan that they will only be quelled when the effective reach of governance through economic development and sustainability has been achieved.

²⁹¹ Eye Radio, Twic and Ngok communities vow to end hostilities, 1 November 2022 [<https://www.eyeradio.org/twic-and-ngok-communities-vow-to-end-hostilities/>].

²⁹² Eye Radio, Jonglei security improves—Clerics, 9 April 2021 [<https://www.eyeradio.org/jonglei-security-improves-clerics/>].

²⁹³ UNDP, Sixth Governors' Forum - Accelerating the Implementation of the Revitalized Peace Agreement in Accordance With Roadmap 2022, 30 November 2022 [<https://www.undp.org/south-sudan/press-releases/6th-governors-forum-accelerating-implementation-revitalized-peace-agreement-accordance-roadmap-2022>].

CHAPTER 4 OVER A BARREL – CHALLENGES FOR SOUTH SUDAN IN THE OIL SECTOR

4.1 Introduction

This Chapter examines South Sudan's oil sector and the challenges it has faced since independence in developing its economic potential. A brief overview of the institutional and legal framework regulating the oil sector is set out in Annex II.

South Sudan has a unique geographic position at the centre of the Nile Basin in East Africa. This area is rich in hydrocarbons and offers enormous potential as a hub for the region's petroleum services and exploration industry. The successful management and development of crude oil is crucial for the economic development and sustainability of the country.²⁹⁴ According to South Sudan's Ministry of Petroleum and Mining (MinPet), the country has over 3.5 billion barrels of crude oil reserves, ranking it third in Sub Saharan Africa behind Nigeria and Angola.²⁹⁵ The ten states are separately divided into Blocks and at present, the industry is dominated by a consortium of international companies from China, Malaysia and India.²⁹⁶ South Sudan has the potential for vast economic and social development from this valuable resource²⁹⁷ and oil accounts for 90 percent of the GoSS's revenue.²⁹⁸

However, owing to the lack of domestic oil refining capacity, South Sudan remains dependent on the pipeline that runs from its oilfields through Sudan to the Red Sea, in order to export its oil.²⁹⁹ The oil industry is further hindered by poor infrastructure, conflict in oil producing areas,

²⁹⁴ President of South Sudan, Presidential Decree No. 27/2011, 8 November 2011.

²⁹⁵ According to the Ministry of Petroleum and Mining, South Sudan currently ranks ninth in total crude oil output across Africa averaging 130,000 barrels p/d throughout 2020-2021 see Ministry of Petroleum, Annual Report June 2020-May 2021, p. 7 [<https://mopng.gov.in/files/TableManagements/Final-Annual-Report-2021.pdf>].

²⁹⁶ At the present time, three consortiums are responsible for the oil producing blocks as follows: (i) Greater Pioneer Operating Company (GPOC) in charge of Block 1, 2A, 2B & 4; (ii) Sudd Petroleum Operating Company (SPOC) in charge of Block 5A; and (iii) Dar Petroleum Operating Company (DPOC) in charge of Blocks 3 & 7. Three further consortiums have each been awarded separate Blocks B2, B3 & B5 for exploration: Strategic Fuel Fund, Nile Petroleum Corp. (10% equity) – Block B2; Oranto Petroleum, Nile Petroleum Corp. (10% equity) – Block B3; and Ascom, Nile Petroleum Corp. (10% equity) – Block 5B.

Five blocks were made available to bidders for licensed exploration in June 2021: See Oil and Gas Journal, Ministry of Petroleum launches South Sudan's first oil licensing round, 23 June 2021

[<https://www.ogj.com/general-interest/article/14205698/ministry-of-petroleum-launches-south-sudans-first-oil-licensing-round>].

A further 14 Block licensing round was announced in 2022, with licenses expected to be awarded in 2023: South Sudan Oil Power, Event 14-16 June 2023 [<https://www.southsudanoilpower.com/event/south-sudan-oil-power-2023/>].

The Government has indicated that it plans to take over several oil fields from investors in 2027 when the current licenses expire: Northern Corridor Morning Post, NilePet to seize oil fields by 2027, 17 February 2022 [<https://ncmorningpost.com/NILEPET-to-seize-oil-fields-by-2027/>].

This strategy is a clear bid for South Sudan to control its own assets and economic future: No.1 Citizen Daily, Gov't to nationalize oil exploration by 2027, 27 April 2022

[<https://onecitizendaily.com/index.php/2022/04/27/govt-to-nationalize-oil-exploration-by-2027/>].

²⁹⁷ Ministry of Petroleum and Mining, Audits [<https://mopaudits.gov.ss/south-sudan-oil-and-gas-industry/>].

²⁹⁸ International Monetary Fund, Country Report No. 22/266 Republic of South Sudan, July 2022.

²⁹⁹ The terms of the 2012 Agreement on Oil and Related Economic Matters (AOREM) between Sudan and GoSS provided that South Sudan would have access rights to PETCO (Nile Blend) and BAPCO (Dar Blend) processing and transportation facilities located in Sudan and the need of South Sudan to continue exporting its crude oil through Sudan's pipelines to export terminals.

lack of investment, its legacy with Sudan and restrictive measures imposed by the U.S.'s Office of Foreign Assets Control and the Bureau of Industry and Security.³⁰⁰

Even though oil was discovered in the late seventies,³⁰¹ it was not until 1994 that operations progressed significantly, with investments in the Sudanese oil and gas industry predominantly from China, India and Malaysia. In 1999, oil was produced and transported via a 1,510-kilometre pipeline to Port Sudan. However, shortly after independence, in January 2012, the GoSS shut down its entire oil production in disagreement with Sudan over the transit fees it was required to pay for the use of the pipeline to Port Sudan amid allegations that Sudan had diverted oil.³⁰² The pipeline remained closed for approximately 14 months and the dispute had a devastating impact on the domestic economy as oil revenues ceased.³⁰³ Cessation of production incurred legal obligations including pursuant to the Exploration and Production Sharing Agreements (EPSAs) (originally agreed to by Sudan with foreign companies) an extension of the terms, to address losses and damages to the companies.³⁰⁴

Whereas in 2011, 98% of South Sudan's annual budget came from its oil revenues with production at its peak at over 300,000 barrels per day (bpd), this decreased to less than half following the two attempted coups of December 2013 and July 2016,³⁰⁵ market changes and fluctuating volatility of oil prices. The economic boom originally forecast for South Sudan from the exploitation of its key national resource to fund a new economy was derailed.

4.2 Market Changes

In December 2013, the global average price of Brent crude oil was just over USD \$110 per barrel (pb); but prices began to drop sharply in mid-2014, averaging around USD \$50 pb through to 2017. By June 2020, prices had reached a low of around USD \$40 but rose to USD \$70 in mid-2021. The terms of the Transitional Fee Arrangement (TFA) with Sudan in relation to compensation and payment for use of the pipeline to Port Sudan did not change in line with the reduction in global oil prices.³⁰⁶ South Sudan was bound by a fixed cost use of the pipeline meaning that a disproportionately larger share of the crude oil earnings were paid to Sudan.³⁰⁷

³⁰⁰ U.S. Dept. of Commerce, 83 FR 12475 15 South Sudanese Entities Added to the Entity List, 22 March 2018 [<https://www.bis.doc.gov/index.php/regulations/1407-15-south-sudanese-entities-added-to-the-entity-list>]. See also Federal Register/Vol. 83, No. 56, Department of Commerce Bureau of Industry and Security 15 CFR Part 744 [<https://www.govinfo.gov/content/pkg/FR-2018-03-22/pdf/2018-05789.pdf>].

³⁰¹ In 1975 the American oil company, Chevron was granted concessions in the southern and south-western parts of Sudan, which marked the second wave of investment in Sudan's oil and gas industry (first being in 1959 by AGIP, the Italian oil company with exploration in the Red Sea area). Chevron made its first oil discovery in Sudan in 1979 west of the Muglad area, followed by successful exploration efforts that resulted in the discovery of Unity and Heglig fields see Pereira and Talus, *Upstream Law and Regulation: A Global Guide*. Globe Law and Business 2013.

³⁰² BBC News, South Sudan 'to complete shutdown' of oil production, 28 January 2012 [<https://www.bbc.co.uk/news/world-africa-16769935>].

³⁰³ Ministry of Petroleum Annual Report June 2014-May 2015. Held on File.

³⁰⁴ EPSA contracts. Held on File. See also Northern Corridor Morning Post, NilePet to seize oil fields by 2027, 17 February 2022 [<https://ncmorningpost.com/NILEPET-to-seize-oil-fields-by-2027/>].

³⁰⁵ 9BR Chambers Report, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

³⁰⁶ Processing, Transportation and Transit Fees total: Nile Blend - \$26 p/b and Dar Blend - \$24.10 p/b see Agreement between the Government of the Republic of South Sudan and The Government of the Republic of the Sudan on Oil and Related Economic Matters, 27 September 2012, para. 4 [<https://peacemaker.un.org/sudan-southsudan-agreement-oil2012>].

³⁰⁷ Issues of transparency by Sudan regarding its oil figures were raised in 2011 see Global Witness, New analysis raises further questions over oil transparency in Sudan, 6 January 2011

The low oil prices coupled with the payment of USD \$24.1 pb to Sudan as per the terms of the TFA and commercial tariffs (processing, transit and transportation) made it difficult for the GoSS to meet its own obligations under its own annual budget. The TFA repayment of USD \$3.028bn which was scheduled to be repaid in 3.5 years could not be fully paid until March 2022. Today South Sudan remains obliged to pay 28,000 bpd (18,000 bpd to Kosti Power Plant and 10,000 bpd to Khartoum Refinery) plus a price per barrel for processing, transit and transportation fees to Sudan.

4.3 Exploration and Production Sharing Agreements (EPSAs) and Audits

The current Exploration and Production Sharing Agreements include terms inherited from Sudan which are not viewed as favourable to South Sudan's interest.³⁰⁸ An audit of the petroleum sector is underway in respect of production and effectiveness since independence.³⁰⁹ The Government has complained that foreign companies working in the oil sector have made little progress in terms of adopting up-to-date comprehensive management systems and that they have failed to respect key terms of the EPSAs. These failings include (i) a lack of regular testing and calibration by independent third parties, maintenance and repairs of the metering facilities (ii) lack of transparency and audits (iii) lack of investment in machinery to ensure effective extraction; (iv) lack of training of South Sudanese nationals as intended so they could have the skills to take over the production jobs and to pay their nationals market rates; and (v) a failure to relinquish contracts where drilling had not started.³¹⁰

The audit will check discrepancies in recorded production or diversion of oil, compliance with contractual terms and for material breach of contract to effect termination of the contract including where there is environmental pollution, a strict liability offence under the Petroleum Act 2012.³¹¹ In 2022, SSP \$450 million was allocated (USD \$2 million) to carry out an oil fields audit over three months with a strategic assessment to include the impact of climate change on the environment, provision of environmental monitoring equipment, laboratories, and education to assess the impact of the oil industry on the environment and local communities. It is intended that these audits would then be provided to the Minister of Environment and Forestry.³¹²

4.4 Lack of Domestic Refinery Capacity

South Sudan lacks commercial refineries to process its crude oil and produce gasoline, diesel, heavy fuel oil and naphtha. Nearly all electricity used in South Sudan is from generators reliant on diesel. The lack of domestic refining capacity means an almost complete reliance on imported diesel and is a key expense for the economy. The irony of an oil producing state having an energy dependency that is a drain on the government's cash reserves is that it impedes the country's sustainable development.³¹³

[<https://www.globalwitness.org/en/archive/new-analysis-raises-further-questions-over-oil-transparency-sudan/>]

³⁰⁸ Ministry of Petroleum, Projects [<https://mop.gov.ss/projects>].

³⁰⁹ Northern Corridor Morning Post, South Sudan Hires An American Firm To Audit Petroleum Sector, 2 March 2021 [<https://ncmorningpost.com/south-sudan-hires-an-american-firm-to-audit-petroleum-sector/>].

³¹⁰ Interview, GoSS, Juba, 29 August 2022.

³¹¹ Interview, GoSS, Juba, 29 August 2022.

³¹² The City Review – Keji Janefar, September 20 2022.

³¹³ UN, Department of Economic and Social Affairs Sustainable Development [<https://sdgs.un.org/goals>].

Refineries would enhance the nation’s sustainability and development programmes, negating the costs of expensive shipment of product through Sudan. The state would have an opportunity to become a regional supplier to neighbouring countries and reduce reliance upon international transports and shipments. Despite the fact there are five (5) planned refineries nationwide, the programme for developing a refinery capacity has been interrupted by the conflicts. Thiangular Refinery in Upper Nile State was financed by U.S. contractors, but work halted due to the attempted coup in 2013. The Bentiu refinery in Unity state was constructed in January 2014, but armed conflict prevented its use until March 2021. Conflict has impeded related infrastructure development. Unprecedented flooding in Unity state in 2022 has caused major transportation issues, while the impetus to build a sustainable route from the oilfields to Bentiu refinery remains a priority.

4.5 Impact of Sanctions

The U.S. imposed restrictive measures on 15 South Sudanese oil-related entities in 2018 that it alleged were a source of substantial revenue to fund weapons and militia and fuelling conflict.³¹⁴ The GoSS disputed these allegations, and the impact of these restrictive measures has been catastrophic for the full development of the state’s economy and energy sector.³¹⁵ Contracts under negotiation in 2018 had to be reviewed following their announcement.³¹⁶ There was also “dampened interest” in the licensing round announced in 2021, as the market was aware of the logistical challenges given the U.S. restrictive measures.³¹⁷

Sanctions impede South Sudan’s ability to do business internationally in U.S. dollars, which is essential for the full viability of the oil sector.³¹⁸ Significant losses are incurred as dollars are converted to other currencies for transactions.³¹⁹ South Sudan has sought to either repair current structures, build new ones or update its technology but it is hampered by the U.S. restrictive measures.³²⁰ The ability to maintain current structures in Block 5A in Unity state is impeded by the fact that the required material must be obtained from U.S. manufacturers.

Gas utilisation projects have also stalled as the sole companies with the necessary technology to deal with the gas produced from DPOC fields in Upper Nile state are American.³²¹ Similarly, efforts to build much-needed refineries in Unity state’s capital Bentiu, and Upper Nile’s Thiangular, Paloch and Pagak have been impacted.³²² Sanctions have resulted in higher production costs associated with additional pre-engagement checks, freight costs and warranty losses.³²³

³¹⁴ U.S. Dept. of Commerce, 83 FR 12475 15 South Sudanese Entities Added to the Entity List, 22 March 2018 [<https://www.bis.doc.gov/index.php/regulations/1407-15-south-sudanese-entities-added-to-the-entity-list>].

³¹⁵ Comments made by NJ Ayuk, Executive Director of the Africa Energy Chamber, September 2022 see Eye Radio, Energy Firm Urges US to Lift Sanctions on S. Sudan Oil Sector, 14 September 2014 [<https://www.eyeradio.org/energy-firm-urges-us-to-lift-sanctions-on-s-sudan-oil-sector/>].

³¹⁶ NILEPET Paper dated November 2022. Held on file.

³¹⁷ Access Wire, African Energy Chamber Urges United States (US) to Lift South Sudan Oil Sanctions, 8 September 2022 [<https://www.accesswire.com/715199/African-Energy-Chamber-Urges-United-States-US-to-Lift-South-Sudan-Oil-Sanctions/>].

³¹⁸ President Kiir has repeatedly issued public statements calling for them to end see The Tower Post, South Sudan’s Kiir Appeals to International Community to End Sanctions, 7 February 2023 [<https://thetowerpost.com/2023/02/07/south-sudans-kiir-appeals-to-international-community-to-end-sanctions/>].

³¹⁹ NILEPET paper dated November 2022. Held on file.

³²⁰ NILEPET paper dated November 2022. Held on file.

³²¹ NILEPET paper dated November 2022. Held on file.

³²² NILEPET, Refineries Department [<https://NILEPET.com/service/refineries/>].

³²³ NILEPET paper dated November 2022. Held on file.

Several road construction companies also face U.S. sanctions and restrictive measures imposed by OFAC.³²⁴ These measures have impeded the development of essential infrastructure necessary not only for oil transportation but for the whole economy.³²⁵ The increased cost of transporting refined oil is at least USD \$4 pb.³²⁶ The offshoot challenges and obstacles to the development of South Sudan have prevented “the country from harnessing its natural resources on behalf of its people”.³²⁷ The devastating impact of sanctions on South Sudan has recently been noted by the African Energy Chamber.³²⁸

4.6 Conclusion

In summary the impact of U.S. sanctions and its foreign policy has severely debilitated investment and development in the country, including diversification to other sectors to reduce dependency on oil. This is further compounded by the impact of ongoing conflict, and the attempted coups of 2013 and 2016 which destabilised and impeded the development of the oil sector. Inherent to the country’s problems is the legacy of the inherited EPSA contracts, the rigid TFA payments to Sudan despite fluctuating global oil prices, the high transit fees along with the conduct of major foreign oil companies including their non-compliance with material terms of the contracts.

³²⁴ For example, ARC Resources Corporation Ltd, Home and Away Ltd, ABMC Thai-South Sudan Construction Company Limited and Winners Construction Company Limited which are all associated to Dr. Benjamin Bol Mel.

³²⁵ Xinhua, South Sudan pushes for lifting sanctions on oil, gas sector, 14 September 2022 [<https://english.news.cn/20220914/94d9afb2044e0eab9a1a02a553b0f3/c.html>]. See further Executive Order 13818 of December 20, 2017 - 82 FR 60839 (Global Magnitsky Human Rights Accountability Act) and OFAC (US) notice of 9 December 2021.

³²⁶ Interview, GoSS Ministry Officials, Juba, December 2022. See further The East African, South Sudan says US sanctions on tycoon's firms 'unfortunate', 13 December 2021 [<https://www.theeastafrikan.co.ke/tea/news/east-africa/south-sudan-says-us-sanctions-on-tycoon-s-firms-unfortunate-3651560>].

³²⁷ Access Wire, African Energy Chamber Urges United States (US) to Lift South Sudan Oil Sanctions, 8 September 2022 [<https://www.accesswire.com/715199/African-Energy-Chamber-Urges-United-States-US-to-Lift-South-Sudan-Oil-Sanctions>].

³²⁸ Access Wire, African Energy Chamber Urges United States (US) to Lift South Sudan Oil Sanctions, 8 September 2022 [<https://www.accesswire.com/715199/African-Energy-Chamber-Urges-United-States-US-to-Lift-South-Sudan-Oil-Sanctions>].

The African Energy Chamber has recently declared that sanctions cause:

- (a) Suppression of economic growth and employment opportunities across commercial, agricultural and civil sectors. This is a key factor that has a direct impact on the continued stability and security of South Sudan.
- (b) Continued energy poverty across the country as South Sudan continues to have one of the lowest electrification rates in the world. This issue would otherwise be alleviated with an increase in gas production and construction of gas-fired power plants.
- (c) Delay in switching to renewable energy across South Sudan. Green energy plans developed by the Ministry for Energy and Dams to switch to alternative resources of energy by 2050 have been stalled by the restrictive measures.

CHAPTER 5

CHALLENGES AND PROGRESS: THE UNIFICATION OF THE ARMED FORCES

5.1 Introduction

This Chapter examines the significant challenges overcome by the GoSS in achieving the unification of forces and the graduation of the first batch of the NUF under Chapter 2 of the R-ARCSS, concerning the ‘Permanent Ceasefire and Transitional Security Arrangements.’ It assesses the challenges posed by incorporation of the SPLM/A-IO (predominantly made up of militia elements) and other non-government aligned troops since 2018 and the real reasons behind key defections from the SPLM/A-IO.

Phase 1 of the Unification of Forces began on August 2022 and on 14 January 2023, 3,000 necessary unified forces graduated in Bentiu, completing Phase 1, under Chapter 2 of the R-ARCSS. Environmental factors such as flooding have played a large part in the delay of the unification of forces. The progress and success of the unification process will ensure that the GoSS can regain control of its state security to eventually become the sole arbiter providing security in the country.

5.2 Background

The SPLA which became the national armed forces for South Sudan at independence in 2011, was renamed the SSPDF on 2 September 2018 and so became the official regular forces of the GoSS under the President as the Commander-In-Chief.³²⁹ This renaming process followed a period of restructuring and professionalisation of the army in 2017.³³⁰ Notwithstanding these developments, a large number of disparate militia groups continued to operate in different parts of the country outside the formal SSPDF.

A unified military and police force in South Sudan was provided for in Chapter 2 of R-ARCSS.³³¹ It stated that all armed groups in South Sudan were to assemble at designated sites where fighters could be either disarmed and demobilised or integrated into unified military and police forces. Clause 2.2.2 stated that the Parties agreed to the “disengagement and separation of their forces...and the assembly and cantonment of their forces within thirty (30) days of the signing of th[e] Agreement to enable registration of personnel, weapons and equipment accountability, screening, re-organization and/or disarmament and demobilization”.

³²⁹ The SSPDF is a structured military force and is organised according to the common force doctrine in divisions, brigades, battalions and companies. The Area of Responsibility of SSPDF is divided into Sectors covering all ten states.

³³⁰ In May 2017, President Kiir issued three decrees creating major changes in the army leadership. Following resolutions approved at the Fifth SPLA Command Council Conference, the army was restructured into three separate forces: a ground force, an air force and navy units with the President at the helm as Commander-in-chief. These changes helped to move the image of the army from a tribal one to a professional institution. According to one of the decrees, the Ground Force shall be headed by the Commander of Ground Forces, the Air Force and Air Defence, shall be headed by the Commander of Air Force and Air Defence while the Riverine Unit shall be headed by a Commander of Riverine Unit. A separate decree was issued concerning the restructuring of the leadership of the SPLA General Staff to consist of the Commander-in-Chief of the SPLA, the Minister of Defence and Veterans Affairs, the Chief of Defence Force (CDF) known previously as Chief of General Staff, the Deputy of Defence Force/ Inspector General, the Assistant Chief of Defence Force for Administration, Personnel and Finance, among others.

³³¹ Signed in September 2018 between the GoSS and opposition political parties in Addis Ababa. See Chapter 1.

The Agreement also provided that forces in cantonment (barracks) “shall receive non-military logistical supplies including food, shelter and access to medical care”. In addition, the agreement required all belligerent parties to maintain the permanent ceasefire of the Khartoum Declaration, signed on 27 June 2018 and to refrain from recruitment; conditions that were breached by all parties to the agreement. It was envisaged that the unified forces were then to be retrained and deployed *prior to* the formation of a National Unity Government. All fighters were ordered to meeting sites in July 2019.

Despite provision in R-ARCSS for the graduation of a unified force *before* the formation of the Revitalized Transitional Government of National Unity, by the time the National Unity Government was formed in February 2020, unification had still not taken place.³³² By the end of April 2020, significant progress in terms of unification had been made. At least 78,500 troops had been registered at different cantonment sites, training centres and barracks for screening, for training and redeployment to the NUF. Over 45,000 troops from the government and opposition were moved from cantonment sites to training centres to commence training and redeployment to the NUF.³³³

In May 2020, the GoSS announced that it would be graduating some unified forces at various training centres across the country³³⁴ and in June 2020, the SSPDF incorporated a number of senior officers from the main opposition force, the SPLM/A-IO into its rank structure.³³⁵

By February 2021, it was reported that the SSPDF had an estimated 190,000 active personnel including ground, air and riverine forces.³³⁶ This estimate was based on the combined figures provided by the SSPDF and the SPLM/A-IO. By April 2022, the command structures had been unified,³³⁷ the parade of the core-trained unified forces compiled, and the graduation planned for August 2022.³³⁸ The graduation of the first batch of the NUF took place on 30 August 2022.

³³² Chapter 1 of the R-ARCSS provided for the formation of a Revitalised Transitional Government of National Unity (RTGoNU) on 12 May 2019, marking the end of the eight-month pre-transitional period for South Sudan. An initial extension was agreed until 12 November 2019, a deadline that was extended by another 100 days, until 22 February 2020, at which point the Transitional Government was established. The RTGoNU, led by Salva Kiir Mayardit as the president, saw the swearing in of the leader of the Sudan People’s Liberation Movement-in-Opposition (SPLM-IO), Riek Machar Teny Dhurgon, as the first vice president. Four other vice presidents were also sworn in: James Wani Igga (second vice president, from the Sudan People’s Liberation Movement/SPLM), Taban Deng Gai (third vice president, from SPLM-IO), Rebecca Nyandeng De Mabior (fourth vice president) and Hussein Abdelbagi Akol Agany (fifth vice president, from the South Sudan Opposition Alliance/SSOA). On 12 March 2020, as part of the RTGoNU, the president appointed 10 deputy ministers and 35 members of the Council of Ministers. The Unity Government will also comprise 550 members of parliament, 10 governors and three area administrators.

³³³ Accord, The Formation of the Revitalized Transitional Government of National Unity in South Sudan, 20 August 2020

[<https://www.accord.org.za/conflict-trends/the-formation-of-the-revitalized-transitional-government-of-national-unity-in-south-sudan/>].

³³⁴ Peacekeeping and Stability Operations Institute, South Sudan Country Profile – Military / Security [<https://pksoi.armywarcollege.edu/index.php/country-profile-of-south-sudan-military/>].

³³⁵ Peacekeeping and Stability Operations Institute, South Sudan Country Profile – Military / Security [<https://pksoi.armywarcollege.edu/index.php/country-profile-of-south-sudan-military/>].

³³⁶ Peacekeeping and Stability Operations Institute, South Sudan Country Profile – Military / Security [<https://pksoi.armywarcollege.edu/index.php/country-profile-of-south-sudan-military/>].

³³⁷ Sudan Tribune, South Sudan’s Kiir forms unified military command structure, 13 April 2022 [<https://sudantribune.com/article257636/>].

³³⁸ It was declared in the Extended Presidency Roadmap that the “unification of the command structures” had been completed and the parade of the core-trained unified forces had been compiled, with the graduation planned for August”. The roadmap extends the pre-transitional phase of the R-ARCSS with a commitment to guide the country to full and unconditional implementation of the R-ARCSS - leading to free, fair, credible and democratic

Whilst severe floodings delayed the graduation of forces in Upper Nile, Unity State and Bahr el Ghazal,³³⁹ the graduation of the second batch of the NUF, comprising 11,000 officers, took place on 4 November 2022 in Bahr el Ghazal.³⁴⁰ A further 3,601 Necessary Unified Forces graduated in South Sudan's Unity State in January 2023.³⁴¹ In addition, 7,500 uniformed personnel across different security branches were unified under a single command in Upper Nile State on 21 November 2022.³⁴²

5.3 Challenges to Implementation of the R-ARCSS Provisions on Unified Command

5.3.1 Unreasonable Deadlines and Figures

One of the first difficulties faced by the GoSS was unrealistic and artificial timelines within the R-ARCSS for both the unification of forces and the formation of a national unity government. These timelines failed to take sufficient account of the impact of the ongoing conflict and the political divisions which continued to affect the efficient running of the country. The R-ARCSS timelines, such as the cantonment of forces within 45 days³⁴³ and the “commencement of joint training of the necessary unified forces of the military, police and other security services” within 60 days³⁴⁴ were unrealistic from the outset.³⁴⁵ These difficulties were further compounded by the fact that Chapter 2 of the R-ARCSS stipulates the training and unification of 83,000 forces.³⁴⁶

The unreasonable timeline failed to take contextual factors into account including: (i) the challenges in accessing barracks located in remote or rural areas as a result of poor infrastructure, ill-suited vehicles and/or flooding; (ii) the impact of the arms embargo impeding necessary training resources; and (iii) the overarching instability within the country and the precariousness of the political situation in South Sudan.

elections in December 2024. As a South Sudanese led and developed initiative, the roadmap was agreed to by the five signatories to R-ARCSS as well as the remaining forty political parties that were involved in the process. Held on file.

³³⁹ Radio Tamazuj, Logistical challenges, floods hamper graduation of unified forces in Upper Nile and Bahr el Ghazal, 1 September 2022 [<https://radiotamazuj.org/en/news/article/logistical-challenges-floods-hamper-graduation-of-unified-forces-in-upper-nile-and-bahr-el-ghazal>]. See also VOA Africa, Floods Hamper Graduation of S. Sudan's Forces, 27 October 2022 [<https://www.voaafrica.com/a/ssudan-floods-graduation/6806866.html>].

³⁴⁰ Eye Radio, 11,000 more unified forces to graduate Friday – Lt. Gen. Garang Ayii, 2 November 2022 [<https://www.eyeradio.org/11000-more-unified-forces-to-graduate-friday-lt-gen-garang-ayii/>].

³⁴¹ Sudan Tribune, S. Sudan's army chief urges unified force to protect territorial integrity, 16 January 2023 [<https://sudantribune.com/article269539/>].

³⁴² UN Peacekeeping, UNMISS supports graduation of forces in Malakal Upper Nile, 22 November 2022 [<https://peacekeeping.un.org/en/unmiss-supports-graduation-of-forces-malakal-upper-nile>].

³⁴³ Article 2.2.3 of R-ARCSS.

³⁴⁴ Article 2.2.9 of R-ARCSS.

³⁴⁵ Compare for example to the restructuring and training of the Sierra Leone Armed Forces which took years to complete with on-going assistance from the International Military Assistance and Training Team and concerned a smaller army base see for example Netherlands Institute of International Relations, Working Paper 31 Resolving Intractable Conflicts in Africa: A case study of Sierra Leone, September 2004 [www.clingendael.org/sites/default/files/pdfs/20040900_cru_working_paper_31.pdf]. See also ICG, Sierra Leone: The State Of Security And Governance, 2 September 2003 [www.refworld.org/pdfid/3f8e660f4.pdf].

³⁴⁶ Compare to neighbouring Kenya whereby the military size is 29,000 see Mactrotrends, Kenya Military Size 1985-2023 [<https://www.macrotrends.net/countries/KEN/kenya/military-army-size>].

5.3.2 Resistance to Unification from Riek Machar – Disagreements Over Force Ratios

Chapter 2 of the R-ARCSS does not specify a ratio in relation to the unified command structure. This omission was weaponised by Riek Machar throughout negotiations. Having already stalled discussions with a delay in forming a unified government, Machar repeatedly pulled out of discussions and rejected efforts put forward by President Kiir.³⁴⁷

Riek Machar's resistance arose clearly during the negotiations concerning ratios for the unified command structure as between the SPLM/A-IG and the SPLM/A-IO.³⁴⁸ While certain high-level officials within the SPLM/A-IO initially argued for a 55% (SPLM/A-IG) - 45% (SPLM/A-IO) split, it has been alleged that both Riek Machar and his wife, Angelina Teny, former Minister of Defence refused to agree this proposed division. During negotiations in Khartoum in June and July 2020, Riek Machar had pushed for a 50% - 50% split. This was at a time when reports were also emerging that he had previously committed the SPLM/A-IO to receiving a reduced 40% of the positions, but Machar subsequently denied this.³⁴⁹

Machar's push for a 50% - 50% split did not reflect the position of senior members of the SPLM/A-IO who considered that this division would undermine efforts to unify the army at a time when peace was nearly secured.³⁵⁰ In particular, it was considered that a 50% - 50% split did not reflect the accuracy of the numbers or standing of SPLM/A-IO officers. This disagreement resulted in the defection of four senior generals: Lt. Gen. James Koang Chuol (former armed opposition deputy chief of General Staff for Administration and Finance and former co-chair of Joint Defense Board (JDB)), Maj. Gen. Joseph Yata Erasto, (former commander of the SPLA-IO Division 2B and former member of JDB), Maj. Gen. Gatkhor Gatluak Koryom (former co-chair of Joint Military Ceasefire Commission (JMCC)), and Maj. Gen. Wang Chany Thian, (former Deputy Director-General for National Security Service (NSS) and ex-member of the JDB Technical team).³⁵¹

The final agreement was signed on 3 April 2022 following mediation led by Gen. Mohamed Hamdan Dagalo, Vice-President of the Sudan Sovereignty Council. The agreement reflected a 60-27-13³⁵² split amongst the SPLM/A-IG/SPLM/A-IO/SSOA in respect of the SSPDF, the Police, Internal Security, External Security, Wildlife, and the Prison Service.

The breakdown is as follows:

SSPDF:

- SPLM/A-IG = Chief of Staff, Training, Administration and Finance, Ground Forces, Air Force, Military Intelligence, and Operations.
- SPLM/A-IO = Deputy Chief of Staff, Inspector General of the Army, Moral Guidance, and Logistics

³⁴⁷ Sudan Tribune, Machar rejects Kiir's directive on unification of command structure, 28 March 2022 [<https://sudantribune.com/article257017/>]; Radio Tamazuj, Machar's SPLM/A-IO suspends participation in joint security bodies, 23 March 2022

[<https://radiotamazuj.org/en/news/article/machars-splm-a-io-suspends-participation-in-security-mechanisms>].

³⁴⁸ Interview, Juba, September 2022.

³⁴⁹ Sudans Post, Opinion | Delayed security reforms come with deadly costs in South Sudan, 2021 [<https://www.sudanspost.com/delayed-security-reforms-come-with-deadly-costs-in-south-sudan/>].

³⁵⁰ Interview, Juba, December 2022.

³⁵¹ Interview, Juba, December 2022.

³⁵² S/2022/468, Situation in South Sudan Report of the Secretary General, 9 June 2022, para. 9 [https://unmiss.unmissions.org/sites/default/files/sg_report_9_june_2022.pdf].

- SSOA – Assistant Chief of Staff of the Riverine Forces

National Police Service:

- SPLM/A-IG = Inspector General, Operations Administration and Finance, Passports, Immigration and Civil Registry, Customs, Logistics, Criminal Investigation, and Public Relations.
- SPLM/A-IO = Deputy Inspector General, Social Services, Training, Traffic, and Medical Services
- SSOA = Border services

Internal Security:

- SPLM/A-IG = Director General, States Security Authority, Specialized Files Authority, Operations Authority, Central Security, Administration and Finance, and Information Authority
- SPLM/A-IO = Deputy Director-General, Economic Security, Protection, and Petroleum and Minerals Security
- SSOA = Training Security

External Security:

- SPLM/A-IG = Director-General, Information Authority, Technical Intelligence, Counter-Intelligence, Administration and Finance
- SPLM/A-IO = Crisis Management, Foreign Intelligence, and Counter-Terrorism
- SSOA = Deputy Director-General

National Wildlife Service:

- SPLM/A-IG: Director-General, Training, Administration, and Finance, Protected Areas
- SPLM/A-IO = Deputy Director-General, Assistant Director-General for Wildlife Law Enforcement
- SSOA = Assistant Director-General for Environmental Conservation and Education

National Prison Service:

- SPLM/A-IG = Director General, Procurement and Supply, Administration and Finance, Operations, Training and Human Resources, Communications and Information, Investment
- SPLM/A-IO = Deputy Director-General, Labour and Technology, Social and Medical Affairs
- SSOA = Assistant Director-General for Inmate Affairs

Following conclusion of the agreement ratio, Riek Machar delayed progress and completion of the unification process.³⁵³ By December 2022, he had still failed to present the SPLM/A-IO list of all nominated officers for each divisional unit.

5.3.3 Exaggeration of Troop Numbers and Ranks

By the time President Kiir and Riek Machar signed the Khartoum Declaration on 27 June 2018, preparing the groundwork for the R-ARCSS, the reality on the ground was that Riek Machar's

³⁵³ Eye Radio, SPLM-IO cries foul over unified command structure appointments, 18 April 2022 [<https://www.eyeradio.org/splm-io-cries-foul-over-unified-command-structure-appointments/>].

forces were both fragmented and weak.³⁵⁴ In August 2019, there was an agreement that the total force (including all branches of the armed forces and the police) would be 83,000 and that 29,000 of those men would compose the national army. It was also agreed that the combined army would only have two divisions, four brigades and fourteen senior staff officers.³⁵⁵

On 3 August 2021, the SPLM/A-IO effectively split when Simon Gatwich Dual,³⁵⁶ Thomas Mabor Dhuro³⁵⁷ and Johnson Olonyi³⁵⁸ issued the Kitgwang Declaration, dismissing Riek Machar as the chairman of the party. Machar quickly condemned the announcement and declared that Gatwich did not have the power to remove him as chairman. This stand-off effectively split the SPLM/A-IO into two factions: SPLM/A-IO (RM) and the splinter group, SPLM/A-IO (Kitgwang),³⁵⁹ which further weakened Machar as both Gatwich and Olonyi commanded what were the SPLM/A-IO's most important military divisions at that time.

On 16 January 2022, the SPLM/A-IO (Kitgwang) group signed the Khartoum Peace Agreement with the Juba Government which stipulated that the group's soldiers would be integrated into the national army i.e. SSPDF within three months. In June 2022, Gatwich called for the 30-strong delegation group which had been in Juba to meet with President Kiir's officials, to return to Khartoum as the agreement had not been implemented.³⁶⁰ In September 2022, the Head of UNMISS raised concerns over ongoing violence by the SPLM/A-IO (Kitgwang) in parts of Malakal and Mayom County of Unity State displacing thousands of civilians.³⁶¹

In addition to the weakening of Riek Machar and the SPLM/A-IO, reports emerged that "the military rankings of Machar's senior troops were inflated in anticipation of the troop unification".³⁶² This "left the SPLM/A-IO with a disproportionate number of officers and a bloated command structure".³⁶³

The Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism responsible for monitoring the parties' compliance with the agreement, estimated that the SSPDF had 90,000 troops, the SPLM/A-IO had around 35,000 and SSOA had 15,000.³⁶⁴

³⁵⁴ The traditional strongholds of the SPLM-IO have been in Unity, Jonglei, Upper Nile and Eastern Equatoria regions.

³⁵⁵ These points were agreed during the IGAD negotiations in August 2019.

³⁵⁶ Chief of General Staff of the SPLA-IO.

³⁵⁷ Commander of SPLA-IO Sector III.

³⁵⁸ Commander of SPLA-IO Sector I.

³⁵⁹ While the SPLA-IO (Kitgwang) is almost entirely comprised of Shiluk and Nuer soldiers, the addition of Henry Odwar, a prominent Equatorian politician has boosted the splinter group's political wing.

³⁶⁰ The Khartoum Peace Agreement had also specified a ceasefire and granted amnesty to the leaders of the Gatwich faction.

³⁶¹ UNMISS, Near Verbatim Transcript Press Briefing By SRSB And Head Of UNMISS, Nicholas Haysom Juba, 28 September 2022

[<https://unmiss.unmissions.org/near-verbatim-transcript-press-briefing-srsb-and-head-unmiss-nicholas-haysom-juba-%E2%80%9328-september>].

³⁶² Defenceweb, ISS: Splintered armed forces still obstruct peace in South Sudan, 18 July 2022

[<https://www.defenceweb.co.za/joint/diplomacy-a-peace/iss-splintered-armed-forces-still-obstruct-peace-in-south-sudan/>].

³⁶³ Defenceweb, ISS: Splintered armed forces still obstruct peace in South Sudan, 18 July 2022

[<https://www.defenceweb.co.za/joint/diplomacy-a-peace/iss-splintered-armed-forces-still-obstruct-peace-in-south-sudan/>].

³⁶⁴ Defenceweb, ISS: Splintered armed forces still obstruct peace in South Sudan, 18 July 2022

[<https://www.defenceweb.co.za/joint/diplomacy-a-peace/iss-splintered-armed-forces-still-obstruct-peace-in-south-sudan/>].

Despite “these much more moderate and reasonable estimates of force strength, numbers given by the parties constituted the official numbers of each force, and effectively functioned as both masks and promissory notes. The inflated numbers masked the true size of each force and allowed each side to make the maximal possible case about its strength in any future negotiations over what proportion a future army should be made up of its forces...Once these claims were made and registered, each side was then incentivised to make their claims into reality via the mechanism of recruitment. Thus, while the R-ARCSS asked each of the belligerent parties to commit to not recruiting, it also incentivised recruitment”.³⁶⁵

5.3.4 Lack of Funds and Arms

In March 2021, the then Minister of Defence and Veteran Affairs, Angelina Teny admitted in an interview that “lack of funds was part of the reason why graduating forces had remained an uphill task”.³⁶⁶ By November 2021, committees tasked with the graduation of the NUF stated that they had finally received their funding from the government. These committees included the Joint Defence Board, the Joint Transitional Security Committee, and the Joint Military Ceasefire Commission. Following the arms embargo first imposed in 2018, it was forecast that many of the graduating forces would be forced to graduate with sticks due to a lack of arms.³⁶⁷ This prediction was evident during the graduation ceremony of the first batch of the NUF in August 2022, with approximately two-thirds of troops participating in the parade using makeshift wooden weapons in place of arms.³⁶⁸

The arms embargo has also had a significant impact on the training of the unified forces as graduating troops have either had no training in the proper use of arms and/or had to develop non-traditional means of military protection, including martial art skills, in the absence of ammunition. This was demonstrated during various training displays conducted by each graduating unit of the armed force on 30 August 2022³⁶⁹ where sticks were used to represent weapons. The lack of arms and its impact on deployment of the Unified Force has recently been raised by the government with IGAD and the AU Member States to try to secure the lifting of the arms embargo imposed by the United Nations Security Council.³⁷⁰

5.3.5 Lack of Food, Water, Medicine and Shelter

The screening, selection, training and redeployment of the NUF was one of the outstanding tasks of the Pre-Transitional Period which was carried forward into the Transitional Period after

³⁶⁵ Defenceweb, ISS: Splintered armed forces still obstruct peace in South Sudan, 18 July 2022 [<https://www.defenceweb.co.za/joint/diplomacy-a-peace/iss-splintered-armed-forces-still-obstruct-peace-in-south-sudan/>].

³⁶⁶ City Reviews, Forces long walk to much awaited graduation, 30 August 2022 [<https://cityreviewss.com/forces-long-walk-to-much-awaited-graduation/>].

³⁶⁷ City Reviews, Forces long walk to much awaited graduation, 30 August 2022 [<https://cityreviewss.com/forces-long-walk-to-much-awaited-graduation/>]. In May 2022, the UN Security Council adopted a resolution to renew until May 2023, the arms embargo against South Sudan. Resolution 2633 also renewed targeted sanctions of travel ban and asset freeze against individuals, entities and extended the mandate of the Panel of Experts, which assists the work of South Sudan Sanctions Committee, until 1 July 2023.

³⁶⁸ UNMISS Welcomes Critical Graduation Of First Batch Of Necessary Unified Forces For South Sudan, 30 August 2022 [<https://unmiss.unmissions.org/unmiss-welcomes-critical-graduation-first-batch-necessary-unified-forces-south-sudan/>].

³⁶⁹ For example, the riot police displayed martial art skills to disperse crowds without weapons whilst the Bayada Unit of the National Police Service demonstrated the art of self-defence without use of ammunition.

³⁷⁰ South Tribune, South Sudan says in talks with AU, IGAD over arms embargo, 21 November 2022 [<https://sudantribune.com/article267144/>].

the formation of the RTGoNU. Practical difficulties on the ground have seriously impacted the progress of unification of the forces in the Transitional Period, such as the provision of adequate food, water, sanitary services, medicine, and other support facilities in both the training and cantonment sites.

In April 2020, the RJMEC report on the status of implementation of R-ARCSS explained that at least 78,500 personnel had been registered at various cantonment sites, barracks and training centres. In excess of 45,000 organised forces from both the Government and the opposition forces had reportedly moved from cantonment sites to training centres in preparation for unification training and subsequent deployment.³⁷¹

By January 2021, RJMEC were reporting that there was a failure of cantonment, that NUF training had stalled, and that defections and changes of allegiance were threatening to undermine the unification process.³⁷² A UN Secretary General's report released in May 2022 noted that little progress was made until December 2021, when the screening of former combatants began. The report noted the practical difficulties stating that while it was reported that 78,500 personnel had been registered at 25 assembly/cantonment sites and training centres, sources had informed the UN that conditions were "extremely dire" because of the lack of food, medicine and shelter. This resulted in constant movement of the personnel, making it difficult to determine how many had been screened or trained.

5.3.6 Insufficiency of Screening and Professional Training

The RJMEC Evaluation Report covering February 2020-June 2022 noted that of the 83,000 Phase I NUF that were expected to graduate, "approximately 50,000 had received rudimentary military training, were screened and organized into unified sub-units".³⁷³ Training, graduation and redeployment of the NUF was however "delayed due to lack of funding, food, medicine, shelter and other necessities; [as well as] disagreements over the Unified Command and force ratios".

Whilst the NUF has established standardised criteria and syllabuses for the training of its graduates, its efforts have been hampered by the on-going arms embargo which prohibits the provision of technical assistance, training and other military assistance. Technical assistance from the U.S. and UK ceased in 2018.

Training efforts have also been hindered by the lack of sufficient screening policies that focus on quantitative rather than qualitative components to increase troop numbers. This has meant that unfit personnel are regularly recruited in addition to SPLM/A-IO militia elements many of which have been given senior military ranks within the SPLM/A-IO. The low standard of

³⁷¹ RJMEC, Report Summary: RJMEC releases R-ARCSS status of implementation report covering 1st Quarter of 2020, 20 April 2020 [<https://jmecsouthsudan.org/index.php/media-center/news/item/508-report-summary-rjmecc-releases-r-arcss-status-of-implementation-report-covering-1st-quarter-of-2020>].

³⁷² RJMEC, Training Of The National Unified Forces (NUF) Has Stalled, PCTSA Implementation Slowest, 28 January 2021 [<https://jmecsouthsudan.org/index.php/press-release/item/547-training-of-the-national-unified-forces-nuf-has-stalled-pctsa-implementation-slowest>].

³⁷³ RJMEC, Evaluation Report On The Status Of Implementation Of The Revitalised Agreement On The Resolution Of The Conflict In The Republic Of South Sudan (R-ARCSS) During The Transitional Period Of 22 February 2020 - 22 June 2022, 23 June 2022, p. 12 [<https://jmecsouthsudan.org/index.php/reports/r-arcss-evaluation-reports/209-progress-report-by-h-e-maj-gen-charles-tai-gituai-rtd-interim-chairperson-of-rjmecc-on-two-years-of-the-transitional-period-of-the-r-arcss-covering-the-period-22-february-2020-22-june-2022/file>].

recruits requires intensive training which is currently unavailable and has delayed the deployment of forces.

5.4 The Graduation of the Necessary Unified Force

The graduation of the first batch of the NUF, a key and integral part of the R-ARCSS and Transitional Roadmap, took place on 30 August 2022. The ceremony brought together forces from different parties to the peace agreement, namely the SPLM/A-IO, the SSOA and the SPLA, unified under one Commander in Chief, President Salva Kiir Mayardit.

This unification included the army (3,308 VIP Protection forces into the unified SSPDF), the National Police Service (4,366 personnel), the National Security Service (6,315 personnel), the National Prison Service (1,120 personnel), the Unified National Wildlife Service (3,575 personnel), and the Unified National Civil Defence Service (3,289 personnel) being 21,976 personnel in total. A further 3,500 unified forces graduated in Western and Eastern Equatoria state in September 2022 as part of the first batch.³⁷⁴

The Special Representative of the UN Secretary General, Nicholas Haysom congratulated the RTGoNU on behalf of the United Nations for “giving life to this commitment to create a single national defence apparatus and a civilian government authority”.³⁷⁵ He recognised that a “united defence force is one of the most visible and meaningful expressions of national unity, especially in societies emerging from conflict”. He forecast that the NUF would be an “active contributor to national peace”, noting that the capacity of the RTGoNU to protect its own citizens and guarantee the territorial integrity of South Sudan “will be strengthened”. He also recognised that constructing a national army was “complex” and would require a continued commitment by the RTGoNU to fund, deploy and sustain the forces over time. He forecast the critical role of the NUF in building democracy and meeting the security and logistical needs for legitimate and credible elections. He stated that the graduation opened the possibility of effective deployment to curtail subnational and inter-communal violence. Haysom pledged continued UN support for capacity building of the police and other forces and advising on the technicalities of security sector reform and a broader Disarmament, Demobilisation and Reintegration of Forces process (DDR).

The Chairman of RJMEC, Maj. Gen. Charles Tai Gituai stated that the graduation was a “testament and clear indication of the determination by the government of the Republic of South Sudan to stay the course of peace”. Ambassador Masood Issaka, representative of the African Union described the process as the “most important milestone after the formation of the transitional government and the reconstitution of the Transitional National Legislature”. At the ceremony, referring to the unification as a “significant step”, China’s Ambassador Ma Wenjun also referred to its ongoing collaboration with the UNDP to implement a project titled Sustainable Demobilisation and Reintegration of Former Combatants and Vulnerable at Risk Groups in Juba. U.S. Ambassador Michael Adler described the graduation as signifying “progress on the implementation of the security arrangements in the revitalised peace

³⁷⁴ Radio Tamazuj, Over 1,500 unified forces graduate in Torit, 20 September 2022 [<https://radiotamazuj.org/en/news/article/over-1-500-unified-forces-graduate-in-torit>]; Sudan Post, Over 1500 Unified Forces Graduate in Eastern Equatoria, October 2022 [<https://www.sudanspost.com/over-1500-unified-forces-graduate-in-eastern-equatoria/>].

³⁷⁵ UNMISS Welcomes Critical Graduation Of First Batch Of Necessary Unified Forces For South Sudan, 30 August 2022 [<https://unmiss.unmissions.org/unmiss-welcomes-critical-graduation-first-batch-necessary-unified-forces-south-sudan>].

agreement” and commended the “spirit of compromise that was required” for the unification process to take place.

In his speech at the ceremony, President Kiir explained that out of all the chapters of the R-ARCSS, the “graduation of the unified forces...has been the most challenging and yet the most important”. In total, 52,000 cadets will be graduating, in phases, with 22,000 soldiers in the first batch. He referred to the mistake of engaging in conflict in December 2013 and July 2016 and the importance of a national army, and in particular, the Disarmament, Demobilisation and Rehabilitation Commission to make sure it was empowered to be able to fulfil its mandate. President Kiir emphasised that a professional security sector will “make South Sudan a standard UN member state that has the attributes of secure environment for its people realising socio-economic development, the efficient delivery of services to its people, respect for human rights and engaging in infrastructure development nationwide”. He also stated that he wanted the people of South Sudan to elect their leaders “24 months from now as defined in the roadmap for peaceful and democratic elections” and that this cannot happen “if the security sector is not professional”.

In early November 2022, 13,600 of the NUF graduated from the Bahr el Ghazal region. On 21 November 2022, the Unity Government passed out at least 9,500 members of the NUF in Malakal town of Upper Nile, bringing a total number of graduated security forces to 49,300.³⁷⁶ Although South Sudan has been graduating forces drawn from parties to the conflict since August 2022, these forces have not yet been deployed due to a lack of weapons, amid concerns over the arms embargo.

³⁷⁶ Eye Radio, Machar says country will be safer after NUF deployment, 22 November 2022 [<https://www.eyeradio.org/machar-says-country-will-be-safe-after-nuf-deployment/>].

CHAPTER 6

CHALLENGES TO ESTABLISHING THE RULE OF LAW DURING TIMES OF CONFLICT: THE DEVELOPMENT OF THE JUSTICE SECTOR IN SOUTH SUDAN

6.1 Introduction

Shortly after gaining independence in 2011, South Sudan participated for the first time in the UN's General Assembly which deliberated on the "the rule of law at both national and international levels".³⁷⁷ Many challenges to the development of South Sudan's justice system were forecast by the Minister of Justice, John Luk Jok, who conveyed his firm intention to uphold the rule of law despite ongoing conflict. This chapter examines how far South Sudan's justice sector has evolved since independence, the wide-ranging extent of the government's cooperation with UN bodies to bring about change and the challenges it continues to face.

6.2 Background

At the UN's General Assembly meeting in 2012, Minister John Luk Jok set out South Sudan's commitment to "promoting justice, freedom, human dignity and the rule of law".³⁷⁸ The Minister referred to the independence of the judiciary and the enormous challenges facing South Sudan as a conflict-torn nation rebuilding a justice system "from the ground up following its disconnection from the old Sudanese legal system". Importantly, the Minister emphasised the need for capacity building support in the years ahead and stressed how continued armed conflict in parts of the country affected the implementation of rule-of-law programmes, the security of citizens and human rights.

As a new nation, the Justice Minister explained that South Sudan was "committed to strengthening the nexus between the rule of law at the national, regional and international levels in order to ensure accountability for perpetrators of international crimes and other gross violations of human rights". He emphasised that he stood "ready to cooperate in investigations and prosecutions of international crimes" but that "due to inadequate capacity within domestic institutions, assistance was needed to support rule-of-law institutions in investigating, prosecuting and trying perpetrators of international or trans boundary crimes". This rebuilding of the justice sector has been severely impacted by two coup attempts in December 2013 and July 2016 and ongoing violence in different parts of the country.³⁷⁹ There are however positive developments and initiatives since independence which are often overlooked in the country's plight to rebuild peace and justice.

6.3 The Legal System of South Sudan

Following independence in 2011 and the implementation of the Transitional Constitution, South Sudan underwent a major transition from an Arabic language sharia-based law system to a pluralist legal system built on the combination of statutory and customary laws and courts.

³⁷⁷ Note of the High Level Meeting on the Rule of Law at the National and International Levels. Address by His Excellency Mr John Luk Jok Minister of Justice New York, 24 September 2012 [https://www.un.org/ruleoflaw/wp-content/uploads/2017/05/Statement_South-Sudan.pdf].

³⁷⁸ Note of the High Level Meeting on the Rule of Law at the National and International Levels. Address by His Excellency Mr John Luk Jok Minister of Justice New York, 24 September 2012 [https://www.un.org/ruleoflaw/wp-content/uploads/2017/05/Statement_South-Sudan.pdf].

³⁷⁹ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

This significant shift in legal systems has impacted the speed at which the country has been able to rebuild its justice sector. Many court proceedings and judgements still use the Arabic language, even though South Sudan adopted English as its official language,³⁸⁰ and common law as its legal system.³⁸¹

The Transitional Constitution structures the government according to the principle of separation of powers and the country is divided into 10 states which manage affairs pursuant to a principle of decentralised government and a devolution of powers.³⁸² The highest state level *executive* authority is the Governor. The judiciary of South Sudan was established as an independent organ from the National Judiciary of Sudan in 2011, following independence.³⁸³ Further details about South Sudan’s legal system and court structures are set out in Annex III.

6.4 The Work of UNMISS, UNDP, UNPOL, UNHCR in Civil and Military Justice

Tracking the key developments in South Sudan’s justice sector necessitates an examination of the country’s working relationship with those UN bodies tasked to assist with rebuilding and strengthening the ‘justice chain’ and promoting accountability. This section sets out examples of the projects, work and cooperation which has taken place between South Sudan, UNMISS, UNDP, UNPOL and the UNHCR in rebuilding the justice sector.

6.4.1 The Gender Based Violence and Juvenile Court

The first specialised Gender Based Violence and Juvenile Court in South Sudan was established in December 2020 with the assistance of funding from the Governments of the Netherlands and the United Kingdom. It provides access to justice for Gender Based Violence and juvenile crimes. UNDP has been working directly with the government to strengthen this institution and recently donated two vehicles to curb “high rates of absenteeism of judicial staff and to ease transportation of inmates from police and prison facilities”. UNDP is also supporting the construction of a waiting room for Gender Based Victims (GBV) due to appear before the court. Since the opening of the court in 2020 to April 2022, 668 cases have been reported with 180 concluded.³⁸⁴

The Police Special Protection Units, which are supported by UNDP, complement the GBV services provided at the court by serving as entry points for specialised policing services to

³⁸⁰ Article 6.2, Transitional Constitution of the Republic of South Sudan, 2011 [https://www.refworld.org/pdfid/5d3034b97.pdf].

³⁸¹ Laws passed before independence have been confirmed by the Transitional Constitution as having binding force of law in South Sudan: Article 200, Transitional Constitution of the Republic of South Sudan, 2011 [https://www.refworld.org/pdfid/5d3034b97.pdf].

³⁸² Articles 47-49, Transitional Constitution of the Republic of South Sudan, 2011 [https://www.refworld.org/pdfid/5d3034b97.pdf]. In December 2015 the government announced it was increasing the number of states from 10 to 28, with a further 4 added in January 2017.

³⁸³ The judiciary is centralised in administration and all appointments are made by national government officials: Section 20-27a, Judiciary Act, 2008 [https://ogonoonlawsofsouthsudan.files.wordpress.com/2016/08/the-judiciary-act-2008.pdf]. States do not all have their own judiciaries. There are at least 22 states without High Courts.

³⁸⁴ UNDP, GOVT, UN, Donors Elevate Awareness and Response to Gender - Based Violence in South Sudan, 26 July 2022 [https://www.undp.org/south-sudan/stories/govt-un-donors-elevate-awareness-and-response-gender-based-violence-south-sudan].

GBV survivors, women, children, and vulnerable groups.³⁸⁵ The important work of this court has been recognised by the international community and marks a significant development in access to justice for victims of GBV and juvenile crime. Training has also recently been provided to 50 South Sudanese police officers in Rumbek, the capital of Lakes state, on the prevention of sexual and gender-based violence, with a focus on sharing skills and expertise on interviewing survivors, managing forensic evidence, case preparations and court procedures.³⁸⁶

The UNDP has also supported the development of a national Family Law for South Sudan, which aims to protect family matters and domestic relations, with a focus on women's and children's vulnerabilities.

6.4.2 Training of the Judiciary

South Sudan's transition to a common law, English-speaking legal system has led to many systemic challenges, including the need to provide extensive training to the judiciary. In October 2015, the IDLO reported that since independence, "[t]he Judiciary has been challenged by the adoption of an English-language, Common Law legal system that differs dramatically from the Arabic-language, civil/ Sharia law system of northern Sudan in which most justices and judges were trained".³⁸⁷ The obligation for court judgments to be in English poses additional challenges as most members of the judiciary were originally trained in Cairo or Khartoum in the Arabic language and are not familiar with working in legal English. The IDLO plays a significant role in the training of judges and works closely with the Ministry of Justice and the College of Law at the University of Juba.³⁸⁸ It is clear however that major staffing problems within the judiciary persist, in large part due to pockets of ongoing conflict and the consequent migration of professionals outside the country.³⁸⁹

In May 2019, UNMISS held a judicial training workshop in Bor (the capital of Jonglei State) which brought together representatives of the court, rule of law institutions, local government and representatives from the Bor Lawyers' Association. The aim of the training was to strengthen the capacity of the traditional courts and facilitate discussion between formal and traditional justice systems. The workshop brought together partners from detention, investigation, trial and the defence to facilitate and enrich dialogue and ensure better cooperation. In November 2021, UNMISS held a two-day training course for the 25 judges who adjudicate cases in customary courts in Rumbek (the capital of Lakes State). Participants spanned the eight counties of the Lakes state with the aim of receiving training on matters such as jurisdictional limits, the role of the judiciary and the functions that fall within the purview

³⁸⁵ UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020, p. 14 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

³⁸⁶ UN Press, Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, 22 November 2022 [<https://press.un.org/en/2022/db221122.doc.htm>].

³⁸⁷ International Development Law Organisation, Evaluation Of The Project "Enhancing The Capacity Of The Judiciary Of South Sudan", October 2015 [https://www.idlo.int/sites/default/files/pdf/initiatives/IDLO%20Evaluation%20Brief_South%20Sudan-2.02.16.pdf].

³⁸⁸ International Development Law Organisation, Course: Enhancing The South Sudan Judiciary, July 2014 [<https://www.idlo.int/news/events/course-enhancing-south-sudan-judiciary.pdf>].

³⁸⁹ UNMISS, UNMISS Gives A Boost To Judicial Processes In The Jonglei Area, 17 May 2019 [<https://unmiss.unmissions.org/unmiss-gives-boost-judicial-processes-jonglei-area>].

of customary courts.³⁹⁰ With the assistance of funds availed by the United Nations, in June 2023, a new customary court building was constructed in Yei River County as part of the UNMISS Reconciliation, Stabilization and Resilience Program that covers Yei, Kajokeji, Lainya and Morobo.³⁹¹

6.4.3 Creation of the Ad Hoc Judicial Reform Committee

On 28 July 2022, in a historic move, the GoSS inaugurated the Judicial Reform Committee tasked with reviewing relevant laws, advising on judicial reforms and the restructuring of the Judiciary to enhance its effectiveness. The twelve-member Committee which is critical for the implementation of judicial reform is led by Lord Justice James Ogoola and Lady Justice Joyce Aluoch – two eminent jurists from the region with vast experience. This milestone under the R-ARCSS has the potential to usher in an independent judiciary and post-conflict justice transformation to advance a strong rule of law.³⁹² Such efforts must continue to receive capacity building support.

The first induction workshop for the JRC took place from 22-25 August 2022, entitled “Institutional Capacity of the Judiciary and Judicial Infrastructure in South Sudan”, facilitated by the Max Planck Foundation’s representatives in Juba.³⁹³ The second workshop entitled “The Establishment of a Constitutional Court in South Sudan and the Customary Court System”, also arranged by the Max Planck Foundation took place in Juba from 10-12 October 2022. Presentations were delivered on the future establishment of a constitutional court, including the existing legal framework of constitutional jurisdiction and the customary court system.

6.4.4 Review of Six Key Laws

In 2020, South Sudan’s Law Review Commission, the Ministry of Justice and Constitutional Affairs and the Ministry of Gender and Social Welfare received technical assistance from UNDP to review six priority laws. The laws include the Penal Code Act, the Code of Criminal Procedure Act, the Evidence Act, the Legal Aid Act, and the Interpretation of Laws Act, all of which were envisioned in the R-ARCSS.

³⁹⁰ UNMISS, 25 customary court judges in Rumbek trained by UNMISS Human Rights on judicial standards, 3 November 2021 [<https://unmiss.unmissions.org/25-customary-court-judges-rumbek-trained-unmiss-human-rights-judicial-standards>].

³⁹¹ Eye Radio, Yei River County gets new customary court building, 19 June 2023 [<https://www.eyeradio.org/yei-river-county-gets-new-customary-court-building/>]

³⁹² UNDP, South Sudan’s Judicial Reform Committee Heralds Hope for the Justice Sector, 30 August 2022 [<https://www.undp.org/south-sudan/blog/south-sudans-judicial-reform-committee-heralds-hope-justice-sector>].

³⁹³ This initiative formed part of the EU funded project “Strengthening the Rule of Law in South Sudan”. The workshop provided the JRC with an overview of the state of the Judiciary of South Sudan with regards to institutional capacity and judicial infrastructure as well as a review of the South Sudanese legal framework regulating the Judiciary see Max Planck Foundation for International Peace and Rule of Law, First Induction Workshop for the Judicial Reform Committee of South Sudan, 29 August 2022 [<https://www.mpfpr.de/2022/08/29/judicial-reform-committee/>].

6.4.5 Efforts to Codify Customary Law

Customary law is recognised as a source of law under the Transitional Constitution,³⁹⁴ and remains a primary source of social order and stability throughout the country.³⁹⁵ In terms of ranking sources of law, customary comes in third place after meeting the threshold of not being repugnant to the Constitution or other statutory law.³⁹⁶ Each tribal group has its own discrete customary law, with more than 50 different versions. South Sudan's statutory criminal law system co-exists with customary law, where laws founded on local cultural norms are applied by tribal chiefs acting as judges. While some codification of customary law took place before independence,³⁹⁷ this process has not been comprehensive. In recent years with the assistance of UNHCR, South Sudan has begun a wider programme of codification to assist with ensuring consistency in the application of the law.

Shortly after independence, UNHCR ran a one-day workshop bringing together 65 participants from all the States including the counties, consisting of chiefs, elders, youth, students and women, as well as representatives of UNMISS, the UNDP and INTERSOS. The aim of the workshop was to help codify customary law, address women's access to justice and the resolution of land disputes as well as inter-ethnic clashes in line with the law.³⁹⁸ In 2013, 25 customary chiefs from Aweil, (capital of Northern Bahr El-Ghazal State) took part in a two-day workshop on basic human rights and court jurisdiction. The aim was to assist the chiefs to redraw the legal boundary between customary and statutory courts. In February 2022, UNMISS held a training course for Upper Nile State Chiefs on bridging the customary and statutory law gap.³⁹⁹ 75 chiefs from Upper Nile State's thirteen counties were hosted at the conference in Malakal. The need for disarmament of the civilian population, solutions to cattle raiding and the discouragement of early and forced marriages were also discussed alongside the need for greater participation of women in both the judiciary and customary law mechanisms, including the appointment of women as chiefs.⁴⁰⁰

6.4.6 Publication of the Law Reports of South Sudan

At the time of South Sudan's independence, no case law registries of judgments had been established. The inability to consult precedent from higher courts risked depriving parties of the protection of their individual rights. Since independence, with the assistance of the Max

³⁹⁴ The Transitional Constitution recognises the "institution, status and role of Traditional Authority, according to customary law see Article 167(1), Transitional Constitution of the Republic of South Sudan, 2011 [<https://www.refworld.org/pdfid/5d3034b97.pdf>].

³⁹⁵ International Commission of Jurists, South Sudan, 6 October 2014 [<http://www.icj.org/cijl/countryprofiles/south-sudan/>].

Customary law has been described as "a set of rules, regulations, norms and usages that exist among South Sudanese communities since time immemorial, it is obligatory and widely applied in the country".

³⁹⁶ Article 122, Transitional Constitution of the Republic of South Sudan, 2011 [<https://www.refworld.org/pdfid/5d3034b97.pdf>].

³⁹⁷ Codification of Dinka Customary Law was made under the former John Wuol Makec, CJ, the then speaker of Bahr El-Ghazal region under what later became known as "the Re-Statement of Bahr el Ghazal Region in Customary Law (Amendment Act, 1984)".

³⁹⁸ UNHCR also helped to build a 'bench court' in the country to strengthen the rule of law see UNMISS, Customary justice training targets community leaders in Bor, 20 April 2012 [<https://unmiss.unmissions.org/customary-justice-training-targets-community-leaders-bor>].

³⁹⁹ UNMISS, UNMISS trains Upper Nile State chiefs on bridging customary and statutory law, 28 February 2022 [<https://unmiss.unmissions.org/unmiss-trains-upper-nile-state-chiefs-bridging-customary-and-statutory-law>].

⁴⁰⁰ UNMISS, UNMISS trains Upper Nile State chiefs on bridging customary and statutory law, 28 February 2022 [<https://unmiss.unmissions.org/unmiss-trains-upper-nile-state-chiefs-bridging-customary-and-statutory-law>].

Planck institute and support from UNDP, the Editorial Board of the Judiciary of South Sudan has published two volumes of civil, criminal and constitutional judgments passed by the Supreme Court in 2011 and 2012. Subsequent volumes of the Law Reports of South Sudan are in the process of being collated.⁴⁰¹

6.4.7 Support for Investigation Committees Established by the Government

A growing number of high-level investigation committees has been established by the GoSS in areas of ongoing conflict. Many of these investigations have received logistical support from UNMISS and the government's role in seeking to further the investigation of crime has been noted and welcomed by the UN.⁴⁰² For example, in September 2022, President Salva Kiir formed an Investigation Committee to investigate "incidents of Insecurity, including Extra Judicial killing in Mayom County, Unity State".⁴⁰³ In June 2021, the Minister of Justice, Justice Ruben Madol Arol formed an Investigation Committee to investigate the death of Dr. Louis Edward Saleh in Ganyliel Payam of Unity State's Panyinjar County. This investigation is ongoing.

6.4.8 Rule of Law Forums

Rule of Law forums have been reactivated recently in South Sudan with the support of UNDP. In 2020, UNDP reported that in six states these forums served as a coordination platform for representatives from the justice system, state legislatures, civil society, UNMISS, and UN agencies to address rule of law issues. In 2020, twenty-five Rule of Law meetings were held, with a total of 421 participants, including 119 women. During the COVID-19 outbreak, the sittings resulted in notable actions, namely: i) a consensus to decongest detention facilities, which led to the release of 4,383 people, 474 of whom were women; ii) the fast-tracking of the investigation and trial of 78 rape cases in Wau; iii) the appointment and deployment of a resident High Court judge in Yambio; and iv) the facilitation of an outreach campaign in Torit targeting youth gangs, that contributed to a decrease in youth-led crimes according to the Torit youth coordinator.⁴⁰⁴

In Lakes state, UNMISS's Human Rights Division facilitate the holding of a monthly Rule of Law and Human Rights Forum which is chaired by the Head of Legal Administration and Public Attorneys. In February 2022, it was attended by representatives from the SSPDF, the South Sudan National Police Service, as well as delegates from customary, special and high

⁴⁰¹ Max Planck Foundation for International Peace and Rule of Law, Official Handover of First Ever Law Reports of South Sudan, 3 February 2020 [<https://www.mpfpr.de/2020/03/06/official-handover-of-first-ever-law-reports-of-south-sudan/>]; Max Planck Foundation for International Peace and Rule of Law, Official Handover of Second Volume of the South Sudan Law Reports, 1 July 2021 [<https://www.mpfpr.de/2021/07/05/official-handover-of-second-volume-of-the-south-sudan-law-reports/>].

⁴⁰² Radio Tamazuj, UNMISS Chief reports some progress in South Sudan to UNSC, 21 June 2022 [<https://radiotamazuj.org/en/news/article/unmiss-chief-reports-some-progress-in-south-sudan-to-unscc>]; S/PV.9067, Report of the Secretary-General on the situation in South Sudan, 20 June 2022 [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_9067.pdf]. The Special Representative of the Secretary General for South Sudan and Head of UNMISS recently stated that "UNMISS will provide logistical support in the cases of Leer, Unity and in Magwi (Eastern Equatoria) for those investigations".

⁴⁰³ The Committee Chairperson is Senior Legal Counsel Serafino Simon Mizan and the committee is composed of senior SSPDF officer, Police Officers and others. The committee is currently continuing its work.

⁴⁰⁴ UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

courts, women and youth. The aim of the gathering was to deliberate on transitional justice mechanisms, the role of the state government in upholding human rights, in addition to challenges faced by rule of law actors.⁴⁰⁵ Rule of Law Forums are held in all ten States.

In terms of promoting the rule of law more generally, in 2020, UNDP strengthened its collaboration with the GoSS and other UN partners by collaborating with UNMISS on mobile courts and the decongestion of detention facilities; UNPOL on community policing; UN Women on gender mainstreaming in Security Sector reforms; UNICEF on justice for children; and with UNHCR on the protection of displaced people in Bentiu and Malakal.⁴⁰⁶

6.4.9 Training on the Local Government Act 2009

Following the 2005 CPA and the Interim Constitution of South Sudan, a “democratic, decentralised system of government” was set out in the Local Government Act of 2009, which was retained after independence in the 2011 Transitional Constitution. The Act contains provisions on the structure and functioning of local government in South Sudan and defines, inter alia, the functions of local government councils. In June 2022, 50 traditional and community leaders drawn from all nine counties in South Sudan’s Jonglei state gathered for a two-day conference jointly facilitated by UNMISS and UNDP. The focus of the workshop was to raise awareness among community influencers on the contents of the Local Government Act of 2009 as well as ensure participants were clear about their roles and responsibilities as stipulated in the Act.⁴⁰⁷

6.4.10 Taskforces for Combating Human Trafficking and Money Laundering

Recent developments in the justice sector in South Sudan include the creation of Taskforces to combat both human trafficking and money laundering. The International Organisation for Migration has recently been aiding the Ministry of Justice to draft an Anti-Human Trafficking Bill.

In relation to money laundering, a Financial Intelligence Unit has been established within the Ministry of Finance, a commissioner appointed, and a building established as an office. A plan is currently being drafted to combat money laundering and to fill in the gaps identified within the Money Laundering Act of 2012. On 9 December 2022, UNMISS supported the South Sudan Anti-Corruption Commission in holding a high-level event attended by 86 participants, including 18 women, to mark International Anti-Corruption Day. The pending draft of the Anti-Corruption Commission bill was discussed as well as lack of adequate protections for whistle blowers. The importance of combating corruption for the delivery of basic services and economic development was underscored.⁴⁰⁸

⁴⁰⁵ UN Peacekeeping, Rule of law in Rumbek gets a boost through monthly UNMISS forum on upholding human rights, 22 February 2022 [<https://peacekeeping.un.org/en/rule-of-law-rumbek-gets-boost-through-monthly-unmiss-forum-upholding-human-rights>].

⁴⁰⁶ UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

⁴⁰⁷ UNMISS, UNMISS, UNDP, state government team up to sensitize community and traditional leaders on the Local Government Act, 17 June 2022 [<https://unmiss.unmissions.org/unmiss-undp-state-government-team-sensitize-community-and-traditional-leaders-local-government-act>].

⁴⁰⁸ S/2023/135, Situation in South Sudan Report of the Secretary General, 22 February 2023, para. 34 [<https://undocs.org/Home/Mobile?FinalSymbol=S%2F2023%2F135&Language=E&DeviceType=Desktop&LangRequested=False>].

The country has also received advice on ratification of the United Nations Convention Against Transnational Organised Crime.⁴⁰⁹

6.4.11 Training on SGBV and CRSV Investigations

In recent years, the provision of training to all members of the judicial sector on the subject of sexual and gender-based violence and conflict-related sexual violence has been a high priority for the government working with capacity building institutions within the UN. In 2020, UNDP reported that it had supported capacity building in Juba, Bor, and Aweil for 90 judges, investigators, prosecutors, social workers, and customary chiefs on how to conduct fair investigations, prosecutions, and prevention of GBV-related cases.⁴¹⁰ In May 2022, the Office of the United Nations High Commissioner for Human Rights co-organised a “Training of the Trainers” session on the subject of sexual and gender based violence and conflict related sexual violence.⁴¹¹ This training was part of an overall action plan developed in January 2022 to assist South Sudan (and other states) to strengthen the capacity of investigators on Human Rights violations and abuses and International Humanitarian Law applicable in the context of armed conflicts.

In November 2022, the RJMEC lauded efforts by the SSPDF in fighting sexual and gender-based violence. In particular, RJMEC praised the move by the SSPDF in creating and operationalising military courts to try soldiers involved in SGBV. It also praised the “development and implementation of special protection units by the South Sudan National Police Service with the core objectives to prevent and investigate gender and child-based offenses”. The GoSS has fully implemented the Action Plan for the Armed Forces on Addressing Conflict Related Sexual Violence in South Sudan through public awareness initiatives, centralisation of forces and prosecution of offenders.

6.4.12 The Development of Justice and Confidence Centres (JCC)

In recent years, a growing number of Justice and Confidence Centres have been established with the assistance of Civil Society Organisations (CSOs) and UNDP. These centres have a range of purposes including the provision of free legal aid services, psychological support to victims of conflict and enhancing the capacity of local courts, chiefs, judges and paralegals. In 2020, UNDP reported that five new Justice and Confidence centres set up by CSOs, along with two existing ones were now providing auxiliary help desks at police stations and legal clinic services enlisting community volunteers and strengthening ties with Specialised Protection Units, Women and Girls’ Friendly Spaces, and other relevant government institutions to ensure that vulnerable groups could easily report their cases and receive prompt, thorough investigation and processing services. The centres also provided representation to 162 beneficiaries who accessed justice.⁴¹²

⁴⁰⁹ United Nations Convention against Transnational Organized Crime and the Protocols Thereto, 2000 [<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>].

⁴¹⁰ UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

⁴¹¹ This training was co-organised with the Ethiopian Ministry of Women and Social Affairs, the Ethiopian Human Rights Commission, the International Committee for Red Cross and UN partners.

⁴¹² UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

In 2021, UNDP reported that “2,158 people, of whom 72 percent are female, benefited from legal aid services delivered with CSO partners. These were provided through ten Justice and Confidence Centers in Malakal, Bentiu, Bor, Yambio, Torit, and Juba”. UNDP noted that the “most vulnerable groups including women, survivors of SGBV, people affected by conflict, persons living with HIV/AIDS, IDPs, returnees and host communities pursued their legal claims in court and through other administrative structures”.⁴¹³

6.4.13 Introduction of Community Policing

The introduction of community policing in South Sudan constitutes a significant development in recent years. This approach to policing replaces the vexed and politically divisive “Popular Police” or “Community Police” which existed during the former Sudanese regime. Community Policing, unlike its predecessor, is “entrenched in the principles of democratic policing” and is described as a philosophy, not just a unit within the National Police Service of South Sudan.⁴¹⁴ It aims to create and foster partnerships within the community to restore citizens’ trust across South Sudan.

In 2013, the Inspectorate General of Police approved the concept paper for the implementation of Community Policing. In 2021, the 2013 policy was updated in response to the growth of community policing. In the same year, the Directorate of Research and Planning and the Directorate of Community Policing of the NPS undertook community consultations in each state to better understand community needs and to improve the service delivery of community policing. The Standard Operating Procedure issued in 2021 aims to support Community Policing operations and provides officers with a guide to using the community policing philosophy to partner with citizens to solve crime and other issues of public disorder. In December 2022, the Directorate of Community Policing in South Sudan set up a consultative meeting to provide an update on the Community Policing Policy of 2022 and the Standard Operating Procedure, to evaluate the work done and progress made during the year. Capacity building support for the development of Community Policing remains essential to build greater security and reduce crime.

6.4.14 Efforts to Build Police-Community Relations Committees to Bolster the Protection of Civilians (PCRC)

In recent years, the need to build better relations between the police and communities within the different states has become a key priority for the government. One interviewee within the policing community spoke frankly about how those aggrieved in South Sudan have transitioned from using bows and arrows to the use of guns and how such challenges need to be met by developing community policing.

A growing number of Police Community Relations Committees have been established. These committees are constituted by a team of community leaders who work with local police to prevent crime. Originally headed by State Governors, in a bid to promote local ownership of law and order, these committees are now headed by community leaders. Each committee

⁴¹³ UNDP, Support to Access to Justice Security and Human Rights Strengthening in 2021, 6 June 2022 [https://www.undp.org/south-sudan/publications/undp-support-access-justice-security-and-human-rights-strengthening-2021#:~:text=UNDP's%20Access%20to%20Justice%2C%20Security,accountability%20for%20human%20rights%20violations].

⁴¹⁴ Proposal Logo and Structure for Directorate of Community Policing, December 2021.

consists of 12 members drawn from paramount chiefs, members of organised forces, civil society and faith-based organisations, trade unions, women, academics and media partners among others. Meetings are usually held either monthly or bi-weekly as determined by the security situation in the individual states.

In 2020, UNDP reported that in Unity State (Bentiu and Rubkona), Upper Nile (Malakal), Warrap State (Akon), and Lakes State (Rumbek), its programme had partnered with four CSOs to establish 23 new PCRCs.⁴¹⁵

In the same year, UNDP reported that the role of the PCRC had expanded to include alternative dispute resolution methods and other efforts that have been shown to reduce security concerns and de-escalate conflict. Aided by Emergency Call Centres in Juba and Wau, emergency responders were able to respond to 2,268 community members who had placed calls to the police on security-related matters such as thefts, medical emergencies, and traffic accidents, by patrolling and arresting suspects. In 2020, the PCRCs held 64 meetings and outreaches, involving 4,155 community members (57% of whom were women).⁴¹⁶ In August 2021, UNPOL, serving with UNMISS and UNDP jointly supported a review of 20 police-community relation committees in Bor, Pibor and Akobo.

As of August 2021, there were 14 PCRSs in Bor, one in Twic East, three in Greater Pibor Administrative Area and two in Akobo which have proven to be effective in resolving individual and community disputes that could have possibly spiralled into violent conflict.⁴¹⁷ Other areas which benefit from Community Policing are as follows:

- LAKES STATE, Rumbek Community Policing in areas: Denghniel, Makuriric, Athioltheen, Malih and Akuaec
- WESTERN BAHR EL GHAZAL STATE, Wau Community Policing since May 2021 in areas Bafra, Khamsin, Lokoloko(a), Lokoloko (b), Matamdia and Jebel Kheir, Kosti(b), El Jau, K.Ngana Jadid, Jabel (b) Eljazira, El Salam Nazareth (a), Nazareth (b), Kriesh (a), Kriesh (b), Bagari Jadid, and Bazia Jadid.
- NORTHERN BAHR EL GHAZAL STATE, AWEIL Community Policing in areas: Pada Ayuung, Hai Salam, Makuach Malou Awer, Maper Nevasha, Mathiang. There are 22 community policing centres in Aweil, Northern Bahr El Ghazal state.
- EASTERN EQUATORIA STATE, TORIT: There are 10 Community Policing Centres in and around Torit.⁴¹⁸

⁴¹⁵ UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

⁴¹⁶ UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

⁴¹⁷ UNMISS, UNMISS and UNDP jointly support review of Police-Community Relations Committees to bolster protection of civilians, 3 August 2021 [<https://unmiss.unmissions.org/unmiss-and-undp-jointly-support-review-police-community-relations-committees-bolster-protection>].

⁴¹⁸ This source says 28 Police Community Relations Committees in Eastern Equatoria see UNMISS, UNPOL officers train South Sudanese counterparts to support planned extension of community policing in Eastern Equatoria, 15 September 2022 [<https://unmiss.unmissions.org/unpol-officers-train-south-sudanese-counterparts-support-planned-extension-community-policing>].

6.4.15 Transformative Vocational Training for Prisoners

The opportunity for prisoners to undertake vocational training in South Sudan is increasing each year. In April 2022, a total of 251 inmates graduated after completing a transformative training designed to rehabilitate prisoners, increase their prospects of employment and support re-integration of ex-offenders on release, reduce recidivism, de-congest prisons and improve community safety.⁴¹⁹ Cumulatively, 949 adult inmates, 137 juveniles and 197 prison officers have graduated from this programme since 2016. The graduates completed nine months of training in different fields such as food processing, plumbing, electrical and auto-mechanic skills, tailoring, hairdressing, carpentry, masonry, metal work, fashion design and agriculture. Currently, a total of 349 inmates and 38 prison officers are undergoing training in Juba, Wau and Malakal Vocational Training Centres.⁴²⁰

6.4.16 Development of Prison and Police Station Infrastructure

In 2020, UNDP supported the vocational training centre in the Malakal Central Prison's infrastructure development through the construction of four classrooms, an administration block, and five toilets as part of the initiative. The programme also helped to fund the construction of an administration building, a 2-room female ward, and a 5-stance lined ventilated improved pit latrine in Terekeka County Prison, as well as the motorization of an existing borehole, the supply and installation of a 50kVA generator, and the construction of a chain link fence. The programme funded minor renovations and the installation of a link fence at the Gudele Block 9 police station, while also supporting the construction of an administration block, the installation of a chain link fence, and the installation of a 50kVA generator at the Lologo police station.⁴²¹

In October 2022, UNMISS supported a prison refurbishment project in Tonj North at Warrap prison.⁴²² Challenges remain however, with extensive overcrowding in South Sudan's prisons, lack of safe sanitation, food and medicine.

In June 2023, the recent renovation of the correctional facility of Terekeka County Prison, funded by UNMISS was officially handed over to the local authorities. The project aimed to enhance the safety and opportunities for personal growth of the inmates.⁴²³

Further capacity building to improve prison capacity and conditions as well as police station infrastructure remains essential, as most payams do not have police custody suites.

6.4.17 Training Prison Officers on Human Rights

⁴¹⁹ UNDP South Sudan Newsletter, 2022.

⁴²⁰ The programme is funded by The Netherlands and is a collaboration with UNDP, the National Prisons Service of South Sudan (NPSSS) under the Ministry of Interior, the Ministry of General Education and Instruction, and the Ministry of Labour.

⁴²¹ UNDP, Support to Access to Justice Security and Human Rights Strengthening Programme, 2020 [<https://www.undp.org/south-sudan/publications/2020-annual-report-support-access-justice-security-and-human-rights-strengthening-programme-south-sudan>].

⁴²² United Nations Mission in South Sudan (UNMISS) Supports Prison Refurbishments in Tonj North, Boosting Law and Order, 23 October 2022 [<https://www.zawya.com/en/press-release/africa-press-releases/united-nations-mission-in-south-sudan-unmiss-supports-prison-refurbishments-in-tonj-north-boosting-law-and-s8rtq8um>].

⁴²³ UNMISS, Transforming Lives Behind Bars: UNMISS Quick Impact Project Brings Dignity To Terekeka Prisoners, 19 June 2023 [<https://unmiss.unmissions.org/transforming-lives-behind-bars-unmiss-quick-impact-project-brings-dignity-terekeka-prisoners>].

In December 2021, UNMISS held a two-day workshop training prison officers in the Upper Nile region on how to respect the rights of offenders transitioning through the justice system. In March 2022, UNMISS and UNPOL in partnership with officers from Western Equatoria's prison systems held a two-day workshop for prison officials on upholding the human rights of inmates and promoting gender sensitivity. In June 2022, UNMISS organised a two-day forum to sensitise 30 prison service officers in Renk county on human rights standards; conflict-related sexual violence, protection of child rights and understanding the existing legal frameworks that guide their day-to-day work. It emphasised the need for greater cooperation between prison and police officers to reduce criminality and human rights violations.⁴²⁴ Ongoing capacity building in this area is essential.

6.5 Special and Mobile Courts

6.5.1 Development of Special Courts

The Code of Criminal Procedure 2008, which is still in force in South Sudan provides for the establishment of Special Courts. These are legal bodies constituted by the Chief Justice of South Sudan to deal with cases of conflict as a means of reducing the backlog in the justice system. Their main aim is to oversee fair and speedy trials particularly in cases connected to sectional violence.⁴²⁵ UNMISS has provided logistical support for the establishment of at least three special courts.⁴²⁶ In December 2019, a mobile Special Court opened in Yambio, in South Sudan's Western Equatoria region, supported by UNMISS and UNDP. Between August and October 2021, the Yirol West Special Court had successfully tried 16 cases. Special Courts are established by warrant of the Chief Justice after each investigation and are wound up after the trials finish.

6.5.2 Development of Mobile Criminal/Civil Courts

The mobile court system in South Sudan entails the dispatch of a panel of two or three High Court judges, prosecutors and victims' and defence lawyers from Juba to the area concerned for a defined period. The deployment of mobile courts with the assistance of UNDP and UNMISS has met with considerable success. For example, UNDP reported in 2021 that the deployment for a month of eight mobile courts in Bor, Pibor, Ruweng, Terekeka, Kapoeta and Malakal "increased the case disposal rate from 56.6% to 86% in 2020 ensuring that 402 claimants and over 400 accused, including those who had been in pretrial detention for up to three years, received justice".⁴²⁷ In addition to criminal cases, judges in the mobile courts can also try civil and commercial matters when required.⁴²⁸

⁴²⁴ UNMISS, Human rights workshop in Renk leads to spirited discussions, 27 June 2022 [<https://unmiss.unmissions.org/human-rights-workshop-renk-leads-spirited-discussions>].

⁴²⁵ A Special Court can also be convened to try offences relating to the defence forces and other organised forces, such as breaches of the prohibition against wearing the uniform or other accoutrements of the Defence Forces or manufacturing or trading in such items without authority. Instances of unlawful drill are also triable in such a court.

⁴²⁶ "One of the ways to sustain the peace and tranquillity that is currently prevalent in Lakes states is to fortify the foundations of rule of law and uphold human rights of every individual. These Special Courts enable the state government to achieve both these ends," explains John Oziegbe, a Human Rights Officer from the UNMISS Field Office in Rumbek" see UNMISS, UNMISS visits Special Court in Yirol West; hands over much-needed supplies, 5 October 2021 [<https://unmiss.unmissions.org/unmiss-visits-special-court-yirol-west-hands-over-much-needed-supplies>].

⁴²⁷ UNDP, Annual Rule of Law report 2021, 15 August 2022 [<https://www.undp.org/rolhr/publications/2021-annual-report>].

⁴²⁸ Interview with Kulang Jarbong (KJ) Justice of the COA in charge of Mobile Courts, 30 May 2022.

In 2020, UNDP reported that; “[o]ut of the 395 backlogged cases, 212 were brought to a close; of that number, there were 133 convictions and 79 acquittals. Among the convictions, there were 18 SGBV cases. In total, there were 183 cases that were still being investigated”. UNDP observed that “the mobile courts have proven effective in bringing justice closer to people in remote areas where there is a shortage of justice sector personnel and large case backlogs. Moreover, the mobile courts have helped reduce prison congestion and the time it takes for suspects to be released from pretrial detention before their cases are heard”.⁴²⁹ Mobile courts have proved particularly useful in the IDP areas where there was a high number of crimes (Bentu, Malakal and Wau).⁴³⁰

Both UNDP and UNMISS have provided finance, transport, security, and logistical support for this initiative. Mobile courts have served a “critical function in enhancing public legitimacy, confidence and trust in the integrity and delivery of justice”.⁴³¹ Individuals have been able to achieve access to justice and secure their legal rights.⁴³² Other measures have been adopted to ensure people receive justice such as police special protection units, with greater use of pre-trial bail and bond, and alternative dispute resolution systems.⁴³³

In terms of access to justice, in 2021, UNDP reported that “6,481 disadvantaged people gained access to justice. Various measures were taken to enable people to receive justice namely, through the mobile court system, the police special protection unit, early release from pretrial detention by an increased use of police bond and bail, and the use of alternative dispute resolution methods such as the traditional courts and mediation. Disadvantaged groups now have an opportunity to secure their rights under the law”.⁴³⁴

Among the challenges faced by mobile courts however are the insufficient number of trained judges, the lack of prospects of promotion, low pay, and security. Often cases are not identified in advance of the arrival of the mobile courts which leads to an inefficient use of resources and delays. More professionally staffed mobile courts are needed to address the country’s issues concerning access to justice, crime prevention and security. It has been reported that Central Equatoria is in particular need of assistance in this regard.⁴³⁵

Over the past few years, community and radio outreach has helped to ensure that millions of people are advised of their rights and how to pursue them, creating a growing demand for justice and accountability. These initiatives must continue to be supported by the international community to assist South Sudan in its efforts to rebuild its justice sector to ensure peace and security in the years ahead.

⁴²⁹ UNDP Support to Access to Justice Security and Human Rights Strengthening Programme Report, 2020.

⁴³⁰ Interview with Kulang Jarbong (KJ) Justice of the COA in charge of Mobile Courts, 30 May 2022.

⁴³¹ UNDP, Annual Rule of Law report 2021, 15 August 2022 [<https://www.undp.org/rolhr/publications/2021-annual-report>].

⁴³² UNDP, Annual Rule of Law report 2021, 15 August 2022 [<https://www.undp.org/rolhr/publications/2021-annual-report>].

⁴³³ UNDP, Annual Rule of Law report 2021, 15 August 2022 [<https://www.undp.org/rolhr/publications/2021-annual-report>].

⁴³⁴ UNDP, Annual Rule of Law report 2021, 15 August 2022 [<https://www.undp.org/rolhr/publications/2021-annual-report>].

⁴³⁵ It has been reported that there are at least 30 individuals detained awaiting trial for serious crimes including murder in Terekeka County, Central Equatoria.

6.6 Developments in Military Justice

Despite ongoing conflict with militia in parts of the country, there have been significant developments in the field of military justice. The military justice system in South Sudan ensures accountability for both criminal and disciplinary offences and applies to SSPDF officers and other ranks on active service as well as members of the reserve forces when mobilised. The legal basis for the system of military justice in South Sudan is provided by the Sudan People's Liberation Army Act 2009 and the SPLA Rules and Regulations 2009.

On 27 January 2021, the Joint Defence Board signed the Action Plan for the Armed Forces on Addressing CRSV in South Sudan, which was officially launched on 19 June 2021. This was followed by the establishment of the Joint Implementation Committee which is mandated to oversee implementation, track and report progress and identify gaps in the process. The JIC is also mandated to ensure accountability on CRSV in line with applicable domestic laws including the R-ARCSS Article 2.1.10.2 and the Transitional Constitution of the Republic of South Sudan 2011 as well as regional and international laws. The Action Plan to address CRSV provides guidance to military personnel on prevention and response to sexual violence to ensure zero tolerance of CRSV and to hold accountable perpetrators who commit, command or condone any act of CRSV.⁴³⁶

The JIC met with the Minister of Defence on 9 June 2022 to provide a briefing on progress on the Benchmark 5 ('Implementation of the Joint Action Plan for the Armed Forces on Addressing CRSV in South Sudan'), the outcome of this meeting was incorporated into the Government's report to the UNSC in April 2022.

Sensitization sessions were also undertaken with different military training centres to conduct training on CRSV. As of September 2022, the Office of the Senior Women's Protection Advisor had visited five training centres with the support of UNMISS.⁴³⁷

Further, examples of the significant developments in the field of military justice are set out below.

6.6.1 The Development of the Military Justice Directorate

The Military Justice Directorate of the SSPDF is responsible for ensuring that all members of the SSPDF respect and abide by the rule of law. The Directorate's objective is to ensure a fully functioning military justice system by enforcing criminal and disciplinary law throughout all ranks of the SSPDF. The Directorate is led by Brig. Gen. J A Aguer Chol Aguer and comprises 94 Judge-Advocates, all of whom are admitted to practice by the South Sudan Bar Association.⁴³⁸

⁴³⁶ The JIC was formally launched on 30 November 2021, but deliberations started earlier. It comprises 11 members from three parties of Chapter Two to the R-ARCSS: SSPDF, SPLA-IO, SSOA. '2nd Progress Report of the JIC of the Action Plan for CRSV', presented to the JDB and SRSG on Sexual Violence in Conflict to the UNSC, 16 September 2022; and 'Progress Report of the JIC of the Action Plan for the Armed Forces on Addressing CRSV', presented to SRSG on Sexual Violence in Conflict to the UNSC, 13 April 2022.

⁴³⁷ John Garang Memorial College 21/04/2022; Rajaf Training Centre 25/04/2022; Gorom Training Centre 20/05/2022; Muni Training Centre 23/05/2022; Panyier Training Centre 16/06/2022 – 16 September 2022 Progress Report.

⁴³⁸ The Military Justice Directorate includes the following departments: Office of the Director and Deputy; Office of the Registrar; Prosecution Department; Department of Defence Counsel; District Court Martial Department;

The Judge-Advocates are deployed as legal advisors in several SSPDF units across the country.⁴³⁹ Notably, the Military Justice Directorate is committed to meeting the requirements of the SSPDF Action Plan on Addressing Conflict-Related Sexual Violence and is actively involved in developing and strengthening measures to promote accountability for CRSV. As part of this programme, in recent years, the Directorate has enhanced coordination between military and civilian justice personnel to protect victims and witnesses; established disciplinary measures to address incidents of sexual violence and reviewed legal and policy frameworks to identify ways to combat and ensure accountability for sexual violence; participated in a committee to implement the SSPDF Plan; provided legal advice on command orders issued by SSPDF leadership to prohibit the commission of sexual violence crimes and the applicable disciplinary actions; attended a 12-session training programme led by UNMISS Rule of Law to assist Judge-Advocates to improve practice-based skills to promote accountability for serious crimes, including CRSV and developed five key messages to assist SSPDF military personnel to eliminate sexual violence and protect the people of South Sudan. The Military Justice Directorate in South Sudan is also committed to integrating gender perspectives into its work, training and recruitment.⁴⁴⁰

6.6.2 Military Courts – Recent Cases

The SPLA established its General Court Martial (GCM) Unit in 2008. Currently, the GCM Unit courthouse forms part of the barracks in Giada, Juba, and is staffed by full-time SPLA advocates, most of whom received their training in Khartoum. This unit is mandated to run two types of court martials. The first is a general court martial that tries soldiers accused of criminal conduct under the SPLA Act (Southern Sudan, 2009).⁴⁴¹ The second type is a special court martial (or special tribunal) which, following an expansion of executive powers through constitutional amendments since 2013, can be initiated either by the President or the head of the defence forces in response to extraordinary events. At the present time, verdicts of the military courts are subject to confirmation by the President and the Chief of Defence Forces, which has given rise to concerns about its impact on judicial independence. There is currently a permanent General Courts Martial in Giada Jamus, with a DCM in Bilpam, the Headquarters of Military Justice. There are also temporary GCMs in Bentiu and Yei. This section addresses recent cases which have been adjudicated by military courts in South Sudan. Information has been collected from open sources and interviews conducted in the country.

In August 2016, 60 South Sudanese soldiers were tried before a court martial for alleged crimes committed during fighting in Juba.⁴⁴²

General Court Martial Department; Office of the Head for Administration; Office of Information Technology; and Department of Training and Research.

⁴³⁹ These units include Government HQs in Bilpam and Giada-Jamus; Division One in Renk; Division Two in Malakal; Division Three in Aweil; Division Four in Bentiu; Division Five in Wau; Division Six in Maridi; Division Seven in Torit; and as part of the Joint Border Verification Mechanism.

⁴⁴⁰ In 2018, the Directorate recruited five additional female Judge-Advocates and is dedicated to increasing the number of female recruits in the coming years.

⁴⁴¹ Chapter VI establishes the military justice system, Chapter VII governs the proceedings of military courts, Chapter VII defines offences of a military nature, and Chapter IX addresses punishment.

⁴⁴² The Independent, South Sudan court martials 60 soldiers, 30 August 2016 [<https://www.independent.co.ug/south-sudan-court-martials-60-soldiers/>]. Note that Brigadier-General Lul Ruai Koang stated at the time that he was “awaiting Presidential approval before revealing the exact number of those convicted and their sentences”. The article also stated that “[h]owever, none of the 60 were charged with rape despite many reported incidents of sex attacks by government soldiers on civilians and aid workers”.

In May 2017, the first hearing before the first special tribunal the GCM Unit had ever established was held for crimes committed at The Terrain Hotel in July 2016. It was convened by Presidential order following the recommendations of an Investigation Committee (IC) which tried members of the SPLA. Despite the fact that civilian victims were involved, the Investigation Committee recommended the court martial system because of the better resources available at that time, the requirement of an expeditious trial, the stronger deterrent effect of judgments and easier enforcement. Protective measures were put in place for the victims. Over the course of 31 sittings, the Tribunal heard testimony from 24 prosecution witnesses (including 7 victims), 11 accused and 4 defence witnesses.⁴⁴³ Ten soldiers were convicted of sexual assault and rape of at least five aid workers and the murder of a journalist during the attacks and given custodial sentences.

In September 2020, at least 26 SSPDF soldiers were convicted by a district court-martial in Yei river, County of Central Equatoria. Seven others were acquitted. The soldiers were accused of committing crimes against civilians including murder, rape and looting and loss of firearms and ammunition. Most of the soldiers had been dismissed from the military under Article 85 of the SPLA Act (Southern Sudan, 2009). Those dismissed from the army and stripped of their ranks had their cases handled by a civilian court. The prison and security authorities were urged to ensure that those convicted serve their full term without favour or compromise.⁴⁴⁴ Other courts martial have heard cases involving soldiers of the 8th and 10th Infantry (Bor), where 2 were convicted of murder, 4 of attempted murder and 1 of culpable homicide on 2nd June 2021. As of September 2021, in the General Court Martial in Juba, twelve cases were being heard, thirteen were scheduled for trial and there were eight appeals from District Court Martial. These concerned cases of murder, culpable homicide, army offences such as loss of a weapon and offences related to property and reputation.

The 2nd Infantry General Court Martial, in September 2021 heard fourteen cases involving 16 accused charged inter alia with murder, culpable homicide and other lesser offences. The 6th Infantry (Maridi) General Court Martial heard 7 cases involving individuals accused of homicide and other offences. In 2021, the 1st Infantry General Court Martial heard nine cases involving 9 accused charged with murder and other lesser offences.⁴⁴⁵

In June 2022, a General Court Martial in Yei River County of Central Equatoria State resulted in convictions of 21 SSPDF soldiers for serious crimes including murder and rape. Five members of the SSPDF accused of rape were convicted, dismissed and stripped of their rank, sentenced to up to ten-years imprisonment and ordered to pay fines. UNMISS commended the SSPDF for their commitment to accountability and the work of the Court.⁴⁴⁶ This military court

⁴⁴³ Small Arms Survey, War Crimes and Punishment: The Terrain Compound Attack and Military Accountability in South Sudan, 2016 – 2018, August 2019 [<https://www.smallarmssurvey.org/resource/war-crimes-and-punishment-terrain-compound-attack-and-military-accountability-south-sudan>].

⁴⁴⁴ Radio Tamazuj, Over 25 government soldiers convicted for crimes against civilians in Yei, 9 September 2020 [<https://radiotamazuj.org/en/news/article/over-25-government-soldiers-convicted-for-crimes-against-civilians-in-yei>].

⁴⁴⁵ Interview with Brigadier General Riek Bim Top, Deputy Director – Military Justice Nairobi, January 2022.

⁴⁴⁶ UNMISS, UNMISS statement welcoming justice delivered through a General Court Martial in Yei, 18 July 2022 [<https://unmiss.unmissions.org/unmiss-statement-welcoming-justice-delivered-through-general-court-martial-yei>].

was established by the SSPDF general headquarters in 2020 to try soldiers accused of committing crimes against civilians, in the County.⁴⁴⁷

In June 2023, a General Court Martial, with technical and financial assistance by the United Nations, concluded its work in Yei River County and delivered verdicts in fourteen cases. Eleven members of the SSPDF accused of serious crimes, including murder as well as sexual and gender-based violence, were convicted, stripped of their ranks, dismissed from the SSPDF, sentenced to up to 10 years' imprisonment, and required to pay compensation to survivors. The GCM included three female judge-advocates to ensure that both female and male victims and witnesses felt comfortable to participate in the justice process.⁴⁴⁸

During the closing of the GCM, the Military Justice Directorate distributed to all military personnel at the Yei Garrison, the Directorate's 'Six Key Messages to End Sexual Violence.' Brigadier General Riek Bim Top Long, Deputy Director of the Directorate, underscored that the SSPDF had enacted these messages as standing orders that are legally binding on all military personnel. Furthermore, Brigadier Long called for the SSPDF to end sexual violence and protect the people of South Sudan. Nicholas Haysom, the Special Representative of the Secretary General and Head of UNMISS commended "the SSPDF's efforts to improve and identify ways to strengthen accountability among the armed forces, implement best practices, and build trust with affected communities". He stated that "The work of the GCM has created a demand for justice and is a concrete step forward to combatting impunity".⁴⁴⁹

South Sudan's capacity within the General Court Martial Unit continues to require ongoing capacity building support.

6.6.3 Mobile Military Courts

Mobile military courts were first deployed in South Sudan in 2020 and are funded by UNMISS. By July 2020, there were three active mobile military courts: (1) a court deployed to Unity State, in respect of the 4th Infantry Division, which tried 8 accused resulting in 5 convictions for murder and other crimes, which is still in existence; (2) a court deployed to Yei River County in June 2020 which tried 21 accused, all of whom were convicted, including 5 cases of rape and (3) a court deployed to Wau in respect of the 5th Infantry Division which tried 8 cases in May 2020.

From 10-24 December 2022, UNMISS supported the SSPDF in deploying a general court martial of eight military justice officials to Maridi, Western Equatoria. The court martial heard five murder cases involving six defendants resulting in three convictions, two acquittals and one out-of-court settlement. Victim and witness support were provided through a local CSO and all accused were represented by defence counsel.⁴⁵⁰

⁴⁴⁷ The Yei General Court Martial is part of UNMISS's collaboration with the Military Justice Directorate to strengthen accountability within the SSPDF.

⁴⁴⁸ UNMISS, Press Release, 19 June 2023 [https://unmiss.unmissions.org/sites/default/files/20230619_-_with_unmiss_support_sspdf_takes_steps_toward_increased_accountability_through_gcm_process.pdf].

⁴⁴⁹ UNMISS, Press Release, 19 June 2023 [https://unmiss.unmissions.org/sites/default/files/20230619_-_with_unmiss_support_sspdf_takes_steps_toward_increased_accountability_through_gcm_process.pdf].

⁴⁵⁰ S/2023/135, UNSC: Situation in South Sudan, Report of the Secretary General, 22 February 2023, para. 52 [<https://undocs.org/Home/Mobile?FinalSymbol=S%2F2023%2F135&Language=E&DeviceType=Desktop&LangRequested=False>].

At the time of writing, Prosecution teams have been delegated to the following areas which still require UNMISS budget approval: (1) Yambio (W. Equatoria) where 10 cases are under investigation and the mobile court is being prepared; (2) E. Equatoria in respect of the 7th Infantry Division where 18 cases are being tried; and (3) Upper Nile, where 10 cases require investigation and adjudication.

6.6.4 Training

To enhance SSPDF's capacity for accountability, UNMISS facilitated a workshop for 50 judge advocates, including five women from 16-20 January 2023. The workshop focused on strengthening capacity to investigate, prosecute and adjudicate serious crimes, including CRSV and facilitated best practices with civilian justice actors. On 2 to 7 December 2022, UNMISS also facilitated the deployment of justice actors to Raja, Western Bahr el Ghazal to conduct investigations into serious crimes.⁴⁵¹

6.7 South Sudan Human Rights Commission and the Human Rights Council

6.7.1 South Sudan Human Rights Commission

The SSHRC is an independent national human rights institution in the Republic of South Sudan established by Articles 145 and 146 of the Transitional Constitution of the Republic of South Sudan, 2011 as amended. The Commission derives its powers from the Constitution and the South Sudan Human Rights Act, 2009. The Commission has powers to monitor and investigate human rights violations in and around the country.

In recent years, this Commission has produced a number of reports on a range of issues including the human rights situation in Warrap State and the condition of prisons in Malakal, Upper Nile. The Commission's fact-finding reports are sent to the President and have not been made public to date. The Commission currently lacks funding to carry out its work.

6.7.2 National Human Rights Council

In addition to the Commission, in June 2020, President Kiir announced by way of presidential order, the setting up of a National Human Rights Council for advocacy and promotion of human rights in the country. The NHRC is composed of the Ministries of Foreign Affairs and International Cooperation, Interior, Gender, Child and Welfare as well as the Defence and Child Protection Unit. Chaired by the Minister of Justice and Constitutional Affairs, the team will be responsible for strengthening public outreach advocacy and promoting human rights within the country. The order stated that the Council through the chairperson shall be answerable to the President.

The establishment of the NHRC will assist in identifying and responding to human rights abuses in the country. It is envisaged that the HRAC will have a broad mandate including strengthening public outreach, advocacy, promotion and protection of human rights in the country and engagement with the UN, the UPR process and other international mechanisms. It

⁴⁵¹ S/2023/135, UNSC: Situation in South Sudan, Report of the Secretary General, 22 February 2023, paras. 53 and 54

[<https://undocs.org/Home/Mobile?FinalSymbol=S%2F2023%2F135&Language=E&DeviceType=Desktop&LangRequested=False>].

is understood that the Council's budget has been approved and a first inter-ministerial meeting has been held.

6.7.3 Ratification of International Treaties

When South Sudan seceded from Sudan in 2011, it did not automatically succeed to the treaty obligations of the later.⁴⁵² To date, South Sudan has ratified the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the Convention on the Rights of the Child.⁴⁵³ South Sudan is a party to the Geneva Conventions of 1949 and their two Additional Protocols.

At the regional level, in 2017 South Sudan ratified the main African Charter's Protocol on Human Rights and the Rights of Women, also known as Maputo Protocol.⁴⁵⁴ South Sudan has also ratified the African Charter on Human and People's Rights.

In February 2023, President Kiir ratified the following conventions: Convention on the Rights of Person with Disabilities and Optional Protocol; International Covenant on Civil and Political Rights; Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) and the International Covenant on Economic, Social and Cultural Rights.⁴⁵⁵

6.8 Ongoing Challenges in the Justice Sector

6.8.1 The Judiciary, Prosecutors and Court Staff

There is an insufficient number of judges in South Sudan, with less than 100 currently appointed. Many judges and prosecutors fled the country following the coup attempt in 2013 and did not return. Salaries of judges are low and the provisions relating to judicial promotions set out in the Judiciary Act have not been applied. There have been no appointments since 2013 and no promotions since 2016.⁴⁵⁶ For those who hold judicial office, comprehensive training is required. Providing security for judges is also problematical.⁴⁵⁷ Funding has been provided by UNDP, Norway and the Troika, although such funding is restricted where there are problems with access, for example because of security issues or during the rainy season.⁴⁵⁸

Training in legal practice for both prosecutors and judges is urgently required. There is currently no Legal Training Institute, even though such a body has been provided for on paper. The establishment of the National Customary Law Centre in Rumbek in the Lakes State in

⁴⁵² Article 16 of the Vienna Convention provides that newly independent state is not bound to maintain the treaty in force, or to become a party to any treaty by the reason only of the fact that at the date of succession of states the treaty was in force in respect of the territory to which the succession of the states relates.

⁴⁵³ OHCHR, Country Profile for South Sudan' status of ratifications: Human Rights Instruments [<http://indicators.ohchr.org/>].

⁴⁵⁴ Pachodo, South Sudan ratifies Maputo Protocol, 18 October 2017 [<https://pachodo.org/latest-news-articles/news-from-various-sources/15063-south-sudan-ratifies-maputo-protocol/>].

⁴⁵⁵ ACHPR, Press Statement: The African Commission welcomes the accession of South Sudan to various regional and international human rights treaties, 26 February 2023 [<https://achpr.au.int/en/news/press-releases/2023-02-26/african-commission-welcomes-accession-south-sudan-various-regional/>].

⁴⁵⁶ Interview with Justice of the COA in charge of Mobile Courts, KULANG JARBONG (KJ), 30 May 2022.

⁴⁵⁷ Interview with Justice of the COA in charge of Mobile Courts, KULANG JARBONG (KJ), 30 May 2022.

⁴⁵⁸ Interview with Justice Ayak Der Kom Awan (Acting Chief Justice), 30 May 2022.

September 2012 lacks funding and adequate training facilities. On 23 February 2023, with the support of the Max Planck Foundation, the Supreme Court of South Sudan opened the first law library of the Judiciary of South Sudan.⁴⁵⁹

6.8.2 Infrastructure and Access to Justice

In terms of court buildings, the Judiciary Act 2008 legislates for a High Court in every State capital and a county court in each county.⁴⁶⁰ However, many counties are left with no county court and not a single Payam court has been established in the twelve years following the adoption of the Judiciary Act.⁴⁶¹ Neither do some counties receive regular visits from mobile courts. In short, there is a lack of permanent court infrastructure outside Juba. Continued material support and/or funding is required to assist with staffing, infrastructure, training and logistics within the justice sector. This support includes essential needs such as computers, stationery, access to legal databases, training and office equipment.

6.8.3 Overcrowded Prisons

South Sudan continues to experience severely overcrowded prisons. More support is needed to increase capacity within the existing prisons, build new prisons and raise living standards within all detention facilities. On 5 February 2023, the Government pardoned and released 36 prisoners on death row and 35 prisoners who defaulted or were unable to pay fines.⁴⁶²

6.8.4 Need for a Crime Laboratory

Currently, South Sudan does not have a crime laboratory. Requests for forensic analysis of evidence must be sent to neighbouring states, raising issues concerning the chain of custody and potential interference with evidence. Assistance must be provided to South Sudan to establish a national crime laboratory and train individuals in the forensic analysis of evidence.

6.8.5 Extradition, Mutual Legal Assistance, Asset Recovery

There are no Mutual Legal Assistance laws or extradition laws in operation in South Sudan. Neither are there laws addressing asset recovery. Assistance to develop these essential legal frameworks is essential, particularly given the increase in both human and drug trafficking in recent years in South Sudan.

6.9 Conclusion

The challenge of establishing a justice system with a strong rule of law in a nascent state where both the legal system and governing language has recently changed is immense. This rebuilding

⁴⁵⁹ The law library is installed in the premises of the GBV court, next to the Supreme Court in Juba see Max Planck Foundation for International Peace and Rule of Law, Official Opening of the first Law Library of the Judiciary of South Sudan, 23 February 2023 [<https://www.mpfpr.de/2023/02/27/opening-of-the-first-law-library-of-the-judiciary-of-south-sudan/>].

⁴⁶⁰ Sections 14 and 16, Judiciary Act 2008.

⁴⁶¹ Transitional Justice Working Group South Sudan, South Sudan: Justice Landscape Assessment, January 2021 [<https://files.constantcontact.com/d028c3f4801/033b76c6-27ee-4583-8741-60dc9392e3cf.pdf>].

⁴⁶² Vatican News, South Sudan's President pardons 71 prison inmates, 4 February 2023 [<https://www.vaticannews.va/en/world/news/2023-02/south-sudan-president-clemency-prison-inmates-pope.html>].

of the justice sector since independence has been severely impacted by the two coup attempts in December 2013 and July 2016 and ongoing violence in different parts of the country.⁴⁶³

As this chapter has shown however, working alongside the international community, the GoSS has been able to make significant positive developments which are often overlooked in the country's plight to rebuild peace and justice. Targeted international support which meets the particular needs of the country will be required in the years ahead in order to cement the progress that has been made to date.

⁴⁶³ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022 [<https://southsudanreports.com/report/>].

ANNEX I ACRONYMS AND ABBREVIATIONS

AOREM	Agreement on Oil and Related Economic Matters
ARCSS	Agreement on the Resolution of Conflict in South Sudan
AUCISS	African Union Commission of Inquiry on South Sudan
CCPA	Code of Criminal Procedure Act
CLC	Customary Law Council
CoHA	Cessation of Hostilities Agreement
CPA	Comprehensive Peace Agreement
CRSV	Conflict-Related Sexual Violence
CSOs	Civil Society Organisations
CTSAMVM	Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism
DPOC	Dar Petroleum Operating Company
DRM	Democratic Resistance Movement
ENAF	Equatoria Non-Allied Forces
EPSAs	Exploration and Production Sharing Agreements
GBV	Gender Based Violence
GCM	General Court Martial
GNPOC	Greater Nile Petroleum Operating Company
GoS	Government of Sudan
GoSS	Government of South Sudan
GPOC	Greater Pioneer Operating Company
HLRF	High-Level Revitalisation Forum
HRAC	National Human Rights Advisory Council
IDLO	International Development Law Organization
IDP	Internally Displaced Persons
IGAD	Intergovernmental Authority on Development
IMF	International Monetary Fund
IOM	International Organisation for Migration
JDB	Joint Defence Board
JIC	Joint Committee to implement the Joint Action Plan
JMEC	Joint Monitoring and Evaluation Commission
JRC	Judicial Reform Committee
KPA	Khartoum Peace Agreement
MinPet	Ministry of Petroleum
MSF	Médecins Sans Frontières
NAS	National Salvation Front
NCAC	National Constitutional Amendment Committee
NGO	Non-governmental organisation
NILEPET	Nile Petroleum Corporation
NPGC	National Petroleum and Gas Corporation
NPGCA	National Petroleum and Gas Corporation Act
NPS	National Police Service
NUF	Necessary Unified Force
PCRCs	Police-Community Relations Committees
PoC	Protection of Civilian
PRMA	Petroleum Revenue Management Act

OCHA	Office for the Commission of Humanitarian Affairs
OFAC	Office of Foreign Assets Control
OLS	Operation Lifeline Support
OSWPA	Office of the Senior Women’s Protection Advisor
R-ARCSS	Revitalised Agreement on the Resolution of Conflict in South Sudan
R-JMEC	Revitalised Joint Monitoring and Evaluation Commission
RTGoNU	Revitalised Transitional Government of National Unity
SANU	Sudan African Nationalist Union
SGBV	Sexual and gender-based violence
SPDF	Sudan People’s Democratic Front
SPLM/A	Sudan People’s Liberation Movement/Army
SPLM/A-IG	South Sudan Liberation Army – In Government
SPLM/A-IO	South Sudan Liberation Movement/Army – In Opposition
SPOC	Sudd Petroleum Operating Company
SSDF	South Sudan Defence Forces
SSHRC	South Sudan Human Rights Commission
SSIM/A	South Sudan Independence Movement/Army
SSLM	Southern Sudan Liberation Movement
SSNDA	South Sudan National Democratic Alliance
SSPDF	South Sudan People’s Defence Forces
SSOA	South Sudan Opposition Alliance
SSOMA	South Sudanese Opposition Movement Alliance
SSUF/A	South Sudan United Front
TFA	Transitional Financial Arrangement
TGoNU	Transitional Government of National Unity
UNDP	UN Development Program
UNHCR	UN Commission for Human Rights
UNICEF	United Nations International Children's Emergency Fund
UNIFSA	United Nations Interim Security Force for Abyei
UNMISS	United Nations Mission in South Sudan
UNPOL	UN Police
USAID	United States Agency for International Development

ANNEX II

INSTITUTIONAL AND LEGAL FRAMEWORK REGULATING THE OIL SECTOR

I. The Ministry of Petroleum and Mining

The Ministry of Petroleum and Mining is responsible for managing and regulating the petroleum sector which includes facilitating government relations with foreign companies, engaging with relevant Ministries,⁴⁶⁴ legislative and regulatory compliance,⁴⁶⁵ recovery and production enhancement from existing oil fields and future oil reserves.⁴⁶⁶

MinPet provides for midstream and downstream activities including the development, construction and financing of midstream transportation, refining and processing infrastructure, and the sale of crude oil, as well as the monitoring of production and crude oil entitlement. Currently MinPet is overseeing the audit of contracts⁴⁶⁷ and the financial audits of all operating companies since 2011.⁴⁶⁸ This is a critical exercise in order for the GoSS to ascertain and manage its resources effectively. Upon completion, it will provide the GoSS with the impetus to either re-negotiate or terminate the contracts subject to the companies' compliance with the terms of the agreements. A further challenge for MinPet is the transfer of the oil field data from Khartoum. On independence, this data became the property of South Sudan, but insecurity prevented the building of safe storage facilities to hold the information.⁴⁶⁹

In addition, the provisions of the R-ARCSS, specifically Chapter IV provides for key institutional reforms to take place during the transitional period to ensure the good management and sustainable development of the resource sector. The aforementioned actions of MinPet are therefore timely and follow the intentions of the R-ARCSS.

II. Regulatory Framework

South Sudan's Transitional Constitution, the Petroleum Act 2012, and the Petroleum Revenue Management Act 2013 define the regulatory framework governing the hydrocarbon sector.

⁴⁶⁴ Initiates and coordinates with other relevant ministries and bodies including Environmental and Social Impacts Assessments (ESIAs) with the Ministry of Environment; Allocation and manages and invest petroleum revenues with the Ministry of Finance; Develop rules and regulations to be approved by the Council of Ministers; Review of occupational health and safety standards for the sector with the Ministry of Labour.

⁴⁶⁵ Proposes legislation and develops regulations including negotiating petroleum agreements and issuing petroleum licenses and developing the necessary technical capacity and competence.

⁴⁶⁶ See Projects listed Ministry of Petroleum, Projects [<https://mop.gov.ss/projects>]. See further Ministry of Petroleum Annual Report May 2021, p. 16. Held on File.

⁴⁶⁷ Six external firms appointed in September 2022 to undertake the audits. Energy Quest, Ministry of Petroleum Awards Environmental Audit Contracts to Three Firms, 17 September 2022 [<https://www.energyquestmagazine.com/2022/09/17/ministry-of-petroleum-awards-environmental-audit-contracts-to-three-firms/>].

⁴⁶⁸ Petro Online, South Sudan Ministry of Petroleum Launches Open Tender for Petroleum Audit, 29 June 2017 [<https://www.petro-online.com/news/fuel-for-thought/13/south-sudan-ministry-of-petroleum/south-sudan-ministry-of-petroleum-launches-open-tender-for-petroleum-audit/43235>].

⁴⁶⁹ This data is essential for the support, design and implementation of effective Improved Oil Recovery and Enhanced Oil Recovery programmes, to assist with the development of a new reserve assessment and to support new exploration promotion programmes.

Other pieces of supporting legislation include the Health, Safety and Environment Systems Regulations 2015,⁴⁷⁰ Anti-Corruption Act 2009, Investment Promotion Act 2009, Local Government Act 2009, Land Act 2009⁴⁷¹ and the Human Rights Act 2009.

Although, the legal and regulatory framework provides for the effective management of its resource, the GoSS lacks capacity and resources to ensure its effective implementation and enforcement. Technical assistance and capacity building in these areas remains a priority for South Sudan.

(a) The Transitional Constitution 2011 and Permanent Constitution

The Transitional Constitution was adopted in 2011. Following a process of constitutional review, a Permanent Constitution will be designed and implemented before the elections scheduled for December 2024.⁴⁷² The Transitional Constitution provides that the Permanent Constitution must provide for “the basic needs of the people through the establishment of a framework for fair and equitable economic growth and access to national resources and services”.⁴⁷³

The new constitution will need to provide for the ownership of the natural resources to be held in trust by the GoSS, for the people of South Sudan, and to ensure transparency and accountability of the country’s resources, with revenue sharing as between the various levels of Government, States and Communities, and environmental protection to mitigate the negative impact of the exploitation of oil on the environment, thus providing for the sustainable development of the country’s resources.

(b) The Petroleum Act 2012

The Petroleum Act 2012 sets out the law relating to the oil sector post-independence. Chapter I, Article 3 provides that the Petroleum Act 2012 will provide a regulatory framework for the development and management of petroleum and other ancillary matters related to petroleum activities in conformity with the Transitional Constitution. It also provides for the establishment of a National Petroleum and Gas Commission and grants authority to the GoSS over matters of petroleum development and management of natural resources. The Act provides for the process and terms of the EPSA agreements in Chapter VIII as well as Exploration and Relinquishment of contract areas, development and production, transportation, treatment and storage, the cessation of petroleum activities, health safety and protection of the environment as well as procurement of goods and services and local content. Local content deals with the knowledge transfer, employment, and training of local South Sudanese, as well as fiscal provisions relating to the fees, royalties, taxes and the creation of a petroleum registry.

⁴⁷⁰ This act provides for the regulation and management of the compliance systems including the Environmental and Social Impact Assessments and for the life cycle of the exploration and production facilities. These were important terms of the EPSAs. However, issues remain with respect to the implementation, compliance, and enforcement of these regulations in practice.

⁴⁷¹ The R-ARCSS provides for the review of this Act specifically at Article 4.8.2 in order to achieve consensus over Land tenure, use, management and address issues of land grabbing, other malpractices involving Land, carry out necessary reforms, undertake mapping, and to maximize economic utilisation of Land in South Sudan as well as empowering Land Commissions on Land issues.

⁴⁷² Article 6.4 R-ARCSS The Permanent constitution shall be completed not later than twenty-four (24) months following the establishment of the Transitional Period and shall be in place to guide the elections toward the end of the Transition.

⁴⁷³ Article 6.2.6 R-ARCSS.

The final chapter deals with prior contracts. It clearly provides that South Sudan is not a successor to prior contracts that Sudan had with foreign companies, and that petroleum agreements entered into, before or after 9 July 2011 in the territory of South Sudan require the approval of the legislative assembly of South Sudan, unless MinPet enters into new contracts.

(c) Agreement on Oil and Related Economic Matters 2012

The Cooperation Agreements ratified by Sudan and South Sudan in October 2012 included the AOREM. The territorial principle was contained within the AOREM with respect to South Sudan's resources. This ensured that South Sudan as a sovereign state had ownership of oil in its territory. The GoSS and GoS entered into the AOREM after the Petroleum Act 2012 had been enacted. There are two notable heads of agreement that provided for fixed fees to be paid by the GoSS to the GoS. These fixed fees are unrelated to the actual market value of the oil at the time of sale and therefore did not consider the volatility of the markets.

First, the AOREM prescribed for fees to be paid by the GoSS to the GoS for the transport, processing, storage, and onward transport of oil at a rate fixed per barrel of oil (transport fees).

- Processing of GoSS oil entitlement volumes⁴⁷⁴ in the GNPOC and Petrodar facilities fixed at a rate of USD \$1.60 per barrel;
- Transportation of GoSS oil entitlement volumes in the GNPOC pipeline at a rate of USD \$8.40 per barrel; and
- Transportation of GoSS oil entitlement volumes in the Petrodar pipeline at a rate of USD \$6.50 per barrel.

Second, the AOREM sets out the Transitional Fee Arrangement. The TFA provides for the outstanding oil debt owed by GoSS to the GoS by virtue of any of the previous agreements. These previous agreements encompass the loss of the oilfields in Southern Sudan and substitutes that debt for the sum of USD \$3.028 billion.⁴⁷⁵ Under the TFA, GoSS were to clear that debt at a fixed rate of USD \$15 pb.

Thus, until the USD \$3.028 billion was paid off in full in March 2022, South Sudan was paying USD \$25 or USD \$23.10 pb in transport fees and under the TFA regardless of the market value of an individual barrel of oil.⁴⁷⁶

(d) Petroleum Exploration and Production Act 2012 / Petroleum Licensing Regulations 2013

The Act and the Regulations set out the legal requirements to exploit the oil sector including the process for the application and grant of the exploration and production licenses and the procedures for the licensing application processes.

⁴⁷⁴ Entitlement Volumes were defined in the AOREM as oil volumes that a party to the Exploration and Production Sharing Agreement is entitled to receive.

⁴⁷⁵ Paid in March 2022 see Energy Capital & Power, Oil Cooperation with South Sudan Could Alleviate Neighboring Sudanese Crisis, 24 February 2022 [<https://energycapitalpower.com/oil-cooperation-with-south-sudan-could-alleviate-neighboring-sudanese-crisis/>].

⁴⁷⁶ It is to be noted that the revenue reported by the GoSS is Net Petroleum Revenue, that is net of Administrative and Transportation Costs and transfers to the Reserve Fund.

(e) The Petroleum Revenue Management Act 2013

The PRMA provides for the establishment and management of a Petroleum Revenue Account, reserve funds, transfers and withdrawals to or from these accounts. The PRMA directs that a petroleum revenue account is to be established by MinPet at the Bank of South Sudan and that any, and all, petroleum revenue due to the GoSS is to be paid into the Petroleum Revenue Account and that no other revenues shall be paid into that account. The Bank of South Sudan is to only make transfers out of the Petroleum Revenue Account to a consolidated fund to finance the National Budget, to the Oil Revenue Stabilisation account, and to Future Generation Fund. The Oil Revenue Stabilisation account is intended to act as a financial buffer to cushion the South Sudanese economy against volatility arising from fluctuating petroleum revenue and to finance any unexpected shortfall. The Future Generation Fund is intended to provide savings for the support and welfare of future generations of South Sudanese citizens.

(f) The National Petroleum and Gas Corporation

The NPGC is a supervisory body that oversees the oil sector and is also responsible for policies, granting licenses, monitoring operations, compliance, negotiating contracts on behalf of the GoSS⁴⁷⁷ and overseeing negotiations with the oil companies as well as the award of concessions and licenses⁴⁷⁸ and thus ensuring the sustainable development of the country's natural resources. The NPGC reports directly to the President, the National Legislative Assembly and the Council of States. It participates in all segments of the hydrocarbon sector and approves petroleum agreements on the government's behalf. The R-ARCSS at Chapter IV provides for the review of the Petroleum Act 2012 to broaden the mandate and composition of the NPGC. For it to be an effective watchdog, it is key that resources are provided for the NPGC to be empowered to exercise its responsibilities as well as broaden the mandate and the composition of the NPGC.⁴⁷⁹

(g) The National Petroleum and Gas Corporation Act 2019 and NILEPET

The National Petroleum and Gas Corporation Act 2019 provided a new statutory footing for Nile Petroleum Corporation by setting the framework for its structure, management, and functions and the framework to govern NILEPET's activities. NILEPET is South Sudan's national oil company and partners operations in the petroleum sector. The NPGCA prescribes that NILEPET shall be involved in all elements of the exploration, prospecting, working, winning, acquiring, possessing, and dispersal of oil. NILEPET is also to represent the GoSS in all consortiums conducting oil activities in South Sudan and any other activities deemed necessary for NILEPET to fulfil its functions under the terms of the NPGCA.

⁴⁷⁷ Article 4.8.1.8 R-ARCSS.

⁴⁷⁸ Article 4.8.1.14.5 R-ARCSS.

⁴⁷⁹ Article 4.8.1.14.14 and 4.8.1.14.6 R-ARCSS.

ANNEX III SOUTH SUDAN'S LEGAL SYSTEM AND COURT STRUCTURES

I. Criminal Law System

Following independence in 2011, South Sudan moved from an Arabic language -sharia-based law system to a more pluralist system, drawing inspiration from common law and operating in English. Accordingly, South Sudan's criminal law system is a common law-based hybrid, featuring adversarial procedures.

The criminal law system was established through the Transitional Constitution of the Republic of South Sudan (2011), the Code of Criminal Procedure Act (2008), the Judiciary Act (2009) and the Local Government Act (2009). Together these instruments envisaged a hierarchy of statutory courts, setting out their different competencies. This new statutory criminal law system co-exists with a system of justice based on customary law, where laws based on local cultural norms are applied by tribal chiefs acting as judges. Customary law is recognised as a source of law under the Transitional Constitution⁴⁸⁰ and remains a primary source of social order and stability throughout the country.⁴⁸¹ As each tribal group has its discrete customary law, there are more than 50 different versions of such laws in the country. Both customary laws and national laws are applied in South Sudan, a duality which can give rise to problems.⁴⁸²

(a) Transitional Constitution

The Transitional Constitution embraces a Bill of Rights, which sets out the rights and freedoms of individuals and groups, including the right to a fair trial.⁴⁸³ The Transitional Constitution has supremacy over pre-existing statutory law and where there are differences, the Constitution prevails.⁴⁸⁴ The Constitution includes the customs and traditions of the people as one of the five sources of legislation in South Sudan.⁴⁸⁵ It also includes express provisions on 'judicial

⁴⁸⁰ The Transitional Constitution recognises the "institution, status and role of Traditional Authority, according to customary law (Section 167(1)).

⁴⁸¹ ICJ, Country Profile South Sudan [<http://www.icj.org/cijlcountryprofiles/south-sudan/>].

⁴⁸² The traditional courts are not empowered to try serious criminal cases but often exceed their jurisdiction in doing so by for example trying cases of homicide. A further problem is that the decisions of the customary courts are not appealed/appealable to the statutory County Courts. Furthermore, the application of customary law in the exercise of judicial discretion can and does lead to decisions that are in breach of statutory law and more generally accepted international norms, in particular with regards to the rights of women and children and which operate against widely accepted principles such as the presumption of innocence. Variations in the availability of statutory courts and judges across the country means that access to statutory justice can be seen as illusory and has led to proliferation in recourse to the customary courts which can be seen as problematic to a structured co-existence between the two systems see ICJ, Country Profile South Sudan [<http://www.icj.org/cijlcountryprofiles/south-sudan/>].

⁴⁸³ Article 19 Transitional Constitution.

⁴⁸⁴ Article 3 Transitional Constitution.

⁴⁸⁵ Article 5(c) Transitional Constitution provides that "[t]he sources of legislation in South Sudan shall be: this Constitution; written law; customs and traditions of the people, the will of the people and any other relevant source".

power’,⁴⁸⁶ the structure of the judiciary,⁴⁸⁷ independence of the judiciary,⁴⁸⁸ the composition, hierarchy and competencies of the various courts, the appointment and discipline of the justice and judges.

(b) Criminal Courts, Special Courts and the Code of Criminal Procedure 2008

The Code of Criminal Procedure Act 2008 is a comprehensive piece of legislation establishing the structure of the criminal court system and criminal procedure in South Sudan. It sets out which offences can be tried in the various courts and governs the conduct of criminal investigations and prosecutions of the offences by the court. The Act also establishes rules and procedures governing other aspects of the criminal justice system, with minimum standards and uniform norms to foster a just and secure society.

It also sets out the civil power of the court to conduct trials and award compensation.⁴⁸⁹ The CCPA is a detailed instrument which provides a clear mechanism for the establishment and maintenance of the rule of law. Section 6 sets out the principles for fair trials to be observed by the courts.⁴⁹⁰ Section 9 of the CCPA provides for six levels of criminal courts⁴⁹¹ which are also mirrored in section 7 of the Judiciary Act 2008, governing establishment of various levels and hierarchy of courts, appointment, promotion, secondment and conditions of service of the judges, at all levels of the Judiciary. The CCPA further sets out powers and competencies of the criminal courts.

⁴⁸⁶ Article 122(1) Transitional Constitution - Judicial Power is derived from the people and shall be exercised by the courts in accordance with the customs, values, norms and aspirations of the people and in conformity with this constitution and the law. Art. 122(5) In adjudicating cases of both civil and criminal nature, the courts shall, subject to the law, apply, inter alia, the following principles:-

- (a) Justice shall be done to all irrespective of their social, political or economic status, gender, religion or beliefs,
- (b) Justice shall not be delayed,
- (c) Adequate compensation shall be awarded to victims of wrongs,
- (d) Voluntary reconciliation agreements between parties shall be recognised and enforced, and
- (e) Substantive justice shall be administered without undue regard to technicalities.

⁴⁸⁷ Article 123 Transitional Constitution – The Judiciary shall be structured as follows: the Supreme Court, Courts of Appeal, High Courts, County Courts and other courts and tribunals as deemed necessary to be established in accordance with the provisions of this Constitution and the law.

⁴⁸⁸ Article 124 Transitional Constitution establishes the independence of the judiciary from the executive and the legislature and imposes a duty to act impartially and without political interference, fear or favour.

⁴⁸⁹ Section 290 CCPA.

⁴⁹⁰ Section 6 CCPA - Principles to be Observed: In the application of this Act the following principles shall be observed—

- (a) every accused person shall have the right of a fair and speedy trial, and justice shall not be delayed,
- (b) every accused person is presumed innocent until his or her guilt is proved beyond reasonable doubt,
- (c) that no accused person shall be forced to incriminate himself or herself,
- (d) no punishment shall be inflicted upon any person exceeding that prescribed by the law in force at the time such an offence was committed,
- (e) no person shall be subject to cruel or inhuman treatment or punishment,
- (f) justice shall be done to all, irrespective of such person’s social or economic status, gender, religion or belief,
- (g) adequate compensation shall be awarded to victims of offences,
- (h) due regard shall, as far as possible, be had to lenity in the procedure of inquiry and summons, and the exercise of the powers of arrest shall not be resorted to except when necessary,
- (i) voluntary reconciliatory agreements between parties shall be recognized and enforced, and
- (j) substantive justice shall be administered without undue regard to technicalities.

⁴⁹¹ By section 9 CCPA, 6 levels of criminal courts are established:- (a) The Supreme Court; (b) The Courts of Appeal; (c) The High Courts; (d) County Courts of Magistrates of the First Class; (e) County Courts of Magistrates of the Second Class; and (f) Payam Courts.

The Judiciary Act legislates for a High Court in every State Capital and a county court in each county⁴⁹². However, many counties are left with no county court and not a single Payam court has been established in the 12 years following the adoption of the Judiciary Act.⁴⁹³

The judiciary is centralised with the Chief Justice as its Head. The structures are as follows:

- (a) The Supreme Court; headed by the Chief Justice and other nine (9) Justices;
- (b) Three Court of Appeal Circuits for three regions of (Greater Equatoria; Behr El Ghazal and Upper Nile);
- (c) High Courts;
- (d) The County Courts;
- (e) The Payam Courts and
- (f) Such other courts or tribunals as shall be deemed appropriate.

In addition to the six levels of courts, the Code also provides for the establishment of Special Courts. Special courts are legal bodies constituted by the Chief Justice of South Sudan to deal with cases of conflict as a means of reducing the backlog in the justice system. The main aim is to oversee fair and speedy trials, particularly cases connected to sectional violence.

Section 16 deals with the establishment of Special Courts by the President of the Supreme Court (Chief Justice) through a warrant to be issued by him or her for a specified period” by a grant of special judicial powers to “any judge or person for a specified period” for:-

- i) the trial of juvenile offenders (16(1))
- ii) the trial of “tribal or sectional conflicts and disputes involving capital offences” (16(2)),
- iii) trial of similar conflicts and disputes not involving capital offences (16(3)), and
- iv) the trial of any person accused under chapters V and VI of the Penal Code, that is to say:-
 - treason, concealing treason and subverting constitutional government,
 - other offences against Southern Sudan, such as insurgency, terrorism, sabotage and banditry
 - offences linked to such activities such as the possession and supply of weapons by or to persons engaged in such offences,
 - recruitment and training for the commission of those offences, and
 - harbouring, concealing or failing to report and insurgent, bandit etc.
 - other crimes triable in a Special Court are causing disaffection among Police or Defence Forces, publishing or communicating false statements prejudicial to Southern Sudan and
 - undermining the authority of or insulting the President (Chapter V).

A Special Court can also be convened to try offences relating to the defence forces and other organised forces, such as breaches of the prohibition against wearing the uniform or other accoutrements of the Defence Forces (when not entitled to do so) or manufacturing or trading in such items without authority. Instances of unlawful drill are also triable in such a court.

⁴⁹² Sections 14 and 16 Judiciary Act 2009.

⁴⁹³ CSRF, South Sudan: Justice Landscape Assessment, 11 January 2021

[<https://www.csrf-southsudan.org/repository/south-sudan-justice-landscape-assessment/>].

(c) Customary Law Courts, Customary Law Council and the Local Government Act of 2009

(i) Customary Law Courts

The Constitution recognises customary law as one of the sources of law. The jurisdiction of customary courts, established under the Local Government Act of 2009, are limited in law to “customary disputes”. In practice however, they hear and determine a wide range of cases that include theft, assault, rape and homicide primarily because the customary courts are the only courts in operation in some areas, or because litigants prefer them to formal statutory courts. Records from 2016 suggest that an overwhelming number of cases that reach the courts – between 55 and 90 percent – are decided by the customary courts staffed by chiefs. These courts are critical to security in rural areas and towns in South Sudan.⁴⁹⁴

The authority of chiefs has been recognised as a tier of local government and statutory and customary courts were given equal validity alongside each other, subject to divergent competences in the types of case each could handle. One of the stated objectives of the Local Government Act 2009 is to “acknowledge and incorporate the role of traditional authorities and customary law in the local government system”.⁴⁹⁵ The authority of the chiefs is substantially exercised through the customary courts, particularly in remote rural areas, which are unreached by the statutory court system.

The link and referral of cases between customary courts and the limited number of magistrates courts in each county that should exercise a supervisory role over the former is problematic. Circuit courts (High Court) introduced on a trial basis by the Chief Justice in two regions improved the delivery of judicial services but received insufficient funding.

More than 80% of legal disputes in South Sudan are resolved in traditional or customary courts rather than in the statutory courts⁴⁹⁶, using the traditions, norms and ethics of the relevant community. Section 97(1) of the Local Government Act establishes four different types of customary law courts: C courts;⁴⁹⁷ B courts or regional courts,⁴⁹⁸ A courts or Executive Chief courts⁴⁹⁹ and Town Bench courts. The Act sets out the principles upon which the customary courts operate, including independence, fairness to all, the avoidance of delay, adequacy of compensation, recognition of mediated agreements and avoidance of legal technicalities, principles also set out in the Transitional Constitution. The customary courts remain an acknowledged critical component of justice in South Sudan.

⁴⁹⁴ Africa Center for Strategic Studies, *The Rule of Law and the Role of Customary Courts in Stabilizing South Sudan*, 29 May 2018 [<https://africacenter.org/spotlight/the-rule-of-law-and-the-role-of-customary-courts-in-stabilizing-south-sudan/>].

⁴⁹⁵ Chapter II, Section 12(9) Local Government Act.

⁴⁹⁶ UNDP, *2021 Annual Report Rule of Law*, 15 August 2022 [<https://www.undp.org/rolhr/publications/2021-annual-report-rule-law-and-human-rights>].

⁴⁹⁷ “C” courts are the highest customary court in each county, deciding appeals from B courts, cross-cultural civil suits, criminal cases referred by competent statutory courts.

⁴⁹⁸ “B” courts or regional courts – court of first instance, appeals from “A” courts, major customary disputes and minor public order cases and an array of family disputes, women and child rights, inheritance and customary land disputes.

⁴⁹⁹ “A” courts or Executive Chief’s courts – family disputes, traditional feuds, marriage suits and local administrative cases.

(ii) Customary Law Council

Chapter 10 of the Local Government Act sets out the provisions concerning the “Customary Law Council and Courts”.⁵⁰⁰ The CLC’s purpose is to protect, promote and preserve the traditions, customs, cultures and norms of the communities⁵⁰¹ and to regulate, maintain, monitor and ensure proper administration of the customary law.⁵⁰² Impartiality in the performance of their functions is demanded of members of the CLC.

(d) Mobile Courts

Mobile courts were first deployed in 2012 to mitigate the neglect of South Sudan’s legal system brought about by decades of conflict, lack of judicial resources and infrastructure generally and in particular in remote areas, which had led to an increasing number of unaddressed cases and accused persons spending lengthy periods in detention awaiting trial, mostly for non-conflict related cases.⁵⁰³

In March 2013, the South Sudan Law Society reported that individuals were generally pleased by the services provided by the mobile courts and that the programme had so far proved effective as a way of accelerating “legal proceedings and to compensate for the shortage of judges”.⁵⁰⁴ However, these positive measures were undermined and delayed by the economic crisis which was brought about by the shut down in oil production that same year and the conflicts that erupted in the country following Riek Machar’s attempted coups of December 2013 and July 2016.⁵⁰⁵ Following this period, mobile courts began to operate in the UN’s Protection of Civilian sites to judge serious cases committed within those sites as UNMISS had no mandate to adjudicate upon such matters.

With improvements in the political and security context of the country, mobile courts are now expanding to reach remote and conflict affected areas where there is no, or no feasible access to statutory courts.⁵⁰⁶ Thus backlogs of cases in these areas are being tackled and serious crimes involving, for example, juveniles and SGBV are being tried.

⁵⁰⁰ Each County shall have a Customary Law Council (CLC) which is the highest Customary Law Authority in the County (section 93). The Council comprises:-

- (a) The County Paramount Chief as the head,
- (b) All head chiefs of the B Courts or Regional Courts of the county as members,
- (c) The secretary of the Council, appointed by the Customary Law Council, as an ex- officio member,
- (d) Three community elders, three women and one youth representative, appointed by the County Commissioner after consultation with the community, and
- (e) Any other ex-officio members as may be invited by the Council.

Members of the CLC shall not be members of the Legislative Council or the State Judiciary, unless they are ex-officio members.

⁵⁰¹ Section 95(1) Local Government Act.

⁵⁰² Section 95(2) Local Government Act.

⁵⁰³ UNDP, Mobile Courts in South Sudan, 25 March 2019

[<https://www.undp.org/south-sudan/publications/mobile-courts-south-sudan-0>].

⁵⁰⁴ ICJ, Country Profile South Sudan [<http://www.icj.org/cijlcountryprofiles/south-sudan/>].

⁵⁰⁵ 9BR Chambers, Pushing the Reset Button for South Sudan, March 2022

[<https://southsudanreports.com/report/>].

⁵⁰⁶ CSRF, South Sudan: Justice Landscape Assessment, 11 January 2021

[<https://www.csrf-southsudan.org/repository/south-sudan-justice-landscape-assessment/>].

(e) Military Courts

The Sudan People's Liberation Army Act 2009 legislates the military justice system in South Sudan. Chapter VI establishes the military justice system, Chapter VII governs the proceedings of military courts, Chapter VIII defines offences of a military nature, and Chapter IX their punishment.

The proceedings of the court martial are governed by the SPLA Rules of Procedure and the Criminal Procedure Act 2009. Pursuant to section 35, there are two levels of court martial, a District Court Martial and a General Court Martial and the composition of each type of panel is established. Section 37 sets out the jurisdiction of the two levels of court martial.⁵⁰⁷

The SPLA established its General Court Martial Unit in 2008 with a courthouse in Juba and is mandated to run general courts martial and special courts martial, the latter authorised by the President of CDF to respond to extraordinary events.

Section 37(4) provides a jurisdictional limitation which is not often adhered to, the rationale being that military courts function more swiftly than civil ones and have a greater degree of "enforcement capacity" over military personnel⁵⁰⁸ and, in any event, the provision was not applied in times of conflict, where the president ordered that the military should prosecute.

Sections 53 - 83 set out what offences are said to be of a military nature. By Section 86, the President has a power of pardon or remission of sentence.

⁵⁰⁷ Section 37 SPLA Rules of Procedure and the Criminal Procedure Act -

(1) A General Court Martial shall have the power to try any SPLA personnel subject to the provisions of this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.

(2) A District Court Martial shall have power to try any SPLA personnel for any offence made punishable by this Act except murder, mutiny, desertion, cowardice during combat and any other offence punishable with death.

(3) Any offence against it may be tried and punished for such offence in the place prescribed by the convening order of the court.

(4) Whenever a military personnel (sic) commits an offence against a civilian or civilian property, the civil court shall assume jurisdiction over such an offence.

⁵⁰⁸ CSRF, South Sudan: Justice Landscape Assessment, 11 January 2021

[<https://www.csrf-southsudan.org/repository/south-sudan-justice-landscape-assessment/>].