

## **SOUTH SUDAN**

*by Public International Law & Policy Group (updated as of April 2018)*

### **Summary of Reparations Efforts and Programs**

South Sudan has a transitional justice framework to address the historical conflict with Sudan that preceded South Sudan's independence and the post-independence internal armed conflict that has been ongoing since December 2013. The Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS) contains a comprehensive transitional justice framework and requires the creation of a hybrid court, truth commission, and reparations authority. However, ongoing conflict in the country has prevented the implementation of the agreement.

### **Context**

For decades, South Sudan and Sudan have had a fractious relationship, marred by violence. 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 (SPLM/A) of 2005 ended the conflict between the northern and southern parts of the country.<sup>1</sup> The CPA both stopped hostilities with Sudan and led to South Sudan's independence in 2011, but instability has continued to plague the new country. In December 2013, tensions between the president, Salva Kiir, and his vice president, Riek Machar, erupted into violence, further fragmenting the government and heightening insecurity. Shortly thereafter, Kiir accused Machar and his opposition group, the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) of attempting a coup d'état.

Both political alliances and ethnicity have driven the conflict: supporters of Kiir (who is Dinka) have aligned with the SPLM/A and supporters of Machar (who is Nuer) have aligned with the SPLM-IO. The fighting between the SPLM/A and the SPLM-IO quickly spread throughout the country, killing thousands and displacing over 150,000 more.<sup>2</sup> The warring parties—the government and the armed opposition—signed the ARCISS on August 17, 2015.<sup>3</sup> As of writing, however, tensions have remained high.<sup>4</sup> There has been limited implementation of the provisions of the ARCISS to date, and recent efforts to revitalize the agreement have stalled amid the continued violence.

### **Sources of Reparations**

South Sudan's reparations framework mainly stems from national legislation and international mechanisms and instruments, such as the ARCISS.

*ARCISS*: The ARCISS envisions the establishment of a new Transitional Government of National Unity (TGoNU) and three transitional justice mechanisms: the Hybrid Court for South Sudan (HCSS), the Commission on Truth, Reconciliation and Healing (CTRH), and the Compensation and Reparations Authority (CRA).<sup>5</sup> The TGoNU, which was formed in April 2016,<sup>6</sup> is responsible for initiating legislation to establish the three mechanisms.<sup>7</sup> The Joint Monitoring and Evaluation Commission (JMEC), an oversight body composed of national and international actors, was created to facilitate the implementation of the ARCISS. Unfortunately, South Sudan has made only limited progress in implementing this instrument, much of which was halted by the outbreak of violence in July 2016.<sup>8</sup> While the ongoing High Level Revitalization Forum aim to revive the ARCISS, little progress has been made to date.

*HCSS*: The HCSS is an independent judicial mechanism to be established by the African Union (AU). The ARCISS mandates the HCSS's jurisdiction over war crimes, crimes against humanity, genocide, and other serious crimes under domestic and international law.<sup>9</sup> In addition to issuing judgments, the HCSS would award remedies to victims, including compensation and other reparations.<sup>10</sup> The legislature is set to deliberate the statute for the HCSS and a memorandum of understanding between the AU and the government, which was approved by South Sudan's Council of Ministers on December 13, 2017,<sup>11</sup> but it is unclear when this voting will occur.<sup>12</sup> Furthermore, as of April 2018, there is no publicized timeline for the creation of the HCSS.<sup>13</sup>

*CTRH*: The CTRH aims to promote truth, reconciliation, and healing. The ARCISS authorizes the CTRH to inquire into human rights violations by state and non-state actors, after which it would produce an impartial and accurate record of the conflict.<sup>14</sup> It will also propose processes and mechanisms for remedies as well as guidelines on the type and size of compensation and reparations for victims, to be endorsed by the Transitional National Assembly.<sup>15</sup> Traditional practices, process, and mechanisms will inform the CTRH's recommendations on reparations.<sup>16</sup> Thus far, the government has established a Technical Committee to support the CTRH's creation.<sup>17</sup> In August 2017, United Nations Development Programme (UNDP) and United Nations Mission in South Sudan (UNMISS), in collaboration with South Sudan's Ministry of Justice and Constitutional Affairs, held a training for the Technical Committee in charge of the national consultation process that will inform the CTRH.<sup>18</sup>

*CRA*: The ARCISS empowers the CRA to compensate property loss and provide material and financial support to the owners of property destroyed during the conflict.<sup>19</sup> The CRA will receive applications from individuals and organizations referred by the CTRH and deliver necessary compensation and reparations to victims per the CTRH recommendations. An executive body will run the CRA and manage the Compensation and Reparations Fund (CRF), which would give material support to eligible victims.

While a law will set the precise criteria for selecting the members of the executive body, the ARCISS states that there should be representatives from political parties in the government, civil society organizations, the women's bloc, faith-based leaders, the business community, and traditional leaders.<sup>20</sup> Due to lack of funds, the TGoNU has yet to establish the CRA or an interim reparations program.<sup>21</sup>

*Domestic legislation:* Many domestic laws, including a transitional constitution, have contributed to reparations by designing the framework for functioning institutions to provide basic services. In other contexts, these laws may not be considered reparations per se, but in South Sudan, where the nascent state is fragile, they arguably aim to better equip the state to deliver remedies to victims.

*Code of Criminal Procedure Act of 2008:*<sup>22</sup> This law created rules and procedures to build and govern the justice system in order to “foster a just, peaceful and secure society.”<sup>23</sup>

*Land Act of 2009:*<sup>24</sup> The Southern Sudan Legislative Assembly passed the Land Act to “regulate land tenure and protect rights in land in Southern Sudan while creating an enabling environment for economic development in the land and natural resources sectors.”<sup>25</sup> It has a section specifically focused on the restitution of property, but the government has largely failed to enforce this law. This legislation was enacted to be a temporary measure and this fact, coupled with its inconsistencies with other laws, its inclusion of obsolete provisions, and the state's institutional shortcomings, has further contributed to the absence of implementation.<sup>26</sup>

*Transitional Constitution of the Republic of South Sudan of 2011:* The Transitional Constitution was passed in July 2011 to set the legal foundations of a new state in South Sudan.<sup>27</sup> Although it does not specifically mention reparations for victims, it aims to foster an environment that would enable the state to deliver such remedies. The Transitional Constitution further recognizes the longstanding history of conflict and the need for trust-building and healing.<sup>28</sup>

*Relief and Rehabilitation Commission Act of 2016:* This law established the Relief and Rehabilitation Commission to perform a variety of tasks, such as promoting awareness for humanitarian work; coordinating the relief, rehabilitation, and resettlement of internally displaced persons (IDPs) and returnees; and mobilizing resources and formulating measures to address disasters.<sup>29</sup>

*African Union Commission of Inquiry on South Sudan (AUCISS) and UN Commission on Human Rights in South Sudan:* In December 2013, shortly after the outbreak of the civil war, the AU created the AUCISS. The Peace and Security Council of the AU mandated the AUCISS to

investigate the human rights violations committed during the internal armed conflict and to make recommendations on ensuring accountability and reconciliation.<sup>30</sup> As required, the AUCISS submitted a final report, which was publicly released on October 14, 2014. The UN Commission on Human Rights in South Sudan has also produced reports detailing the human rights violations occurring in the country.

### **Reparations Efforts and Programs**

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005, directs states to provide victims with five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>31</sup>

#### **1. Restitution**

Restitution aims to restore the victim to their situation before they had been violated. For example, enabling a victim's return to their place of residence, returning property, and restoring citizenship are acts of restitution.

##### *Restoration of liberty*

The Transitional Constitution guarantees citizens the right to liberty and security of person.<sup>32</sup> While these provisions are not meant to be reparations per se, their inclusion in the Transitional Constitution may aid victims in restoring such rights. However, the government has failed to respect or protect these liberty rights in practice, and security forces have continued to violate the rights of civilians through arbitrary arrests and detentions.<sup>33</sup>

##### *Enjoyment of human rights, identity, family life, and citizenship*

The Transitional Constitution grants citizens the enjoyment of human rights and the rights to identity and citizenship.<sup>34</sup> The ARCISS sets out similar tools for restoring citizenship rights to victims. Specifically, the ARCISS states that refugees and IDPs shall have the right to citizenship, calling for the creation of mechanisms to identify, register, and document refugees and IDPs as well as any property and/or land they lost.<sup>35</sup>

The Office of the UN High Commissioner for Refugees (UNHCR) has assisted the government in registering and securing citizenship for displaced persons and stateless persons.

*Return to one's place of residence*

The ARCISS includes measures to grant refugees and IDPs the right to return to their homes, safely and with dignity, or to voluntarily relocate.<sup>36</sup> The warring parties have not implemented the right of return in accordance with the ARCISS, and the number of displaced persons has increased after the outbreak of violence in July 2016.<sup>37</sup>

*Restoration of employment*

The conflict has devastated the economy of South Sudan, leading many to lose employment and reducing opportunities for work. Although the ARCISS does not directly call for the restoration of employment, it discusses the promotion of economic development, which could lead to the creation of jobs. For example, there is a provision on restructuring employment processes as part of reforming the oil and petroleum industry.<sup>38</sup> This process could result in the restoration of employment for some individuals; however, the World Bank estimates that oil production is expected to reduce steadily and become negligible by 2035.<sup>39</sup>

*Return of property*

Both conflicts have caused widespread displacement and loss of property. In response, the Southern Sudan Legislative Assembly enacted the Land Act. The Land Act provides for the restitution of land to individuals who lost their land rights after displacement because of the conflict in Southern Sudan (now South Sudan), which lasted from May 16, 1983 until the signing of the CPA.<sup>40</sup> It allows for restitution of land regardless of whether the government or individuals took the land rights.<sup>41</sup> Under the Land Act, victims may submit a claim to a commission that investigates and then mediates between the victim and the perpetrator.<sup>42</sup> If they cannot reach an agreement, the commission submits the case to a court for resolution.<sup>43</sup> Given the lack of progress in implementing this law, the ARCISS calls on the TGoNU to expedite a national debate and review the national land policy and the Land Act.<sup>44</sup> Such reforms could increase the Land Act's ability to reconstitute property.

Additionally, the government has made targeted efforts to return property to victims. For example, in January 2017, President Kiir issued a directive to vacate the homes of displaced persons that were occupied after the December 2013 violence in Juba. By the following month, an SPLA campaign had vacated 216 of 3,972 illegally occupied houses, mostly inhabited by government soldiers.<sup>45</sup>

## 2. Compensation

When damage is economically assessable, states should provide compensation.

### *General compensation*

Taken together, the three transitional justice mechanisms promised in the ARCISS would construct a compensation framework. The HCSS would investigate and prosecute allegations of atrocity crimes and award reparations to victims;<sup>46</sup> the CTRH would propose measures and guidelines for reparations and compensation;<sup>47</sup> and the CRA would create the CRF from which to award victims.<sup>48</sup> However, as none of these institutions are operational, it remains to be seen if victims will receive compensation through this framework.

### *Lost opportunities, including employment, education, and social benefits*

The ARCISS's CRA allows for "material and financial support to [be paid to] citizens whose property was destroyed by the conflict and [to] help them rebuild their livelihoods."<sup>49</sup> The ARCISS further mandates that guidelines on providing this support are to be created by the transitional government.<sup>50</sup> As the CRA is not yet established and these guidelines have yet to be released, it is unclear how far this compensation guarantee will extend.

### *Material damages and loss of earnings, including loss of earning potential*

The Land Act allows the party seeking restitution for lost land to request compensation from the Southern Sudan Land Commission or from a court if they cannot be restituted.<sup>51</sup> Under the Act, the party that deprived the victim of their land should compensate them with cash or another form of payment.<sup>52</sup> Due to a lack of implementation, the Land Act has not delivered adequate compensation for individuals who lost land.<sup>53</sup>

The CRA would give material and financial support to victims of property destruction and assist them with rebuilding their livelihoods.<sup>54</sup> The ARCISS further directs the transitional government to create guidelines regarding the provision of this support, which it has not done yet.

## 3. Rehabilitation

Rehabilitation involves redressing victims through, for instance, the provision of medical, psychosocial, and legal services.

### *General rehabilitation*

There are a few mechanisms for general rehabilitation, including the Relief and Rehabilitation Commission. While the Relief and Rehabilitation Commission, works to boost humanitarian coordination,<sup>55</sup> it is unclear how effective the Commission has been.

In addition, the ARCISS mandates the TGoNU to expedite the rehabilitation of IDPs and returnees as well as to reform the civil services.<sup>56</sup> As of September 2017, there has been partial rehabilitation of IDPs and returnees, but no movement on the rehabilitation and reform of the civil services.<sup>57</sup>

### *Medical and psychological care*

The Transitional Constitution requires the government to promote public health, establish and develop basic medical institutions, and grant free primary healthcare and emergency services for all citizens.<sup>58</sup> However, South Sudan has failed to devise any psychosocial support programs, which are crucial since mental healthcare has suffered, partly due to limited staffing. As of 2016, the country has only 2 psychiatrists (typically attached to prisons),<sup>59</sup> 20 community workers, 1 psychiatric nurse, and 30 psychologists. To address this, the World Health Organization has increased its mental health and psychosocial support efforts and is still committed to supporting the Ministry of Health in this realm.<sup>60</sup>

## **4. Satisfaction**

Satisfaction includes a wide range of measures, such as ceasefires, truth-seeking and documentation,<sup>61</sup> the search for missing or disappeared persons, and memorialization.

### *Effective measures aimed at the cessation of continuing violations*

After the eruption of violence in December 2013, the government and different armed groups have attempted to execute at least six different ceasefires and peace treaties.<sup>62</sup> The ARCISS provides an in-depth outline for the cessation of hostilities, particularly in the first two chapters that provide the framework for the TGoNU and a permanent ceasefire. Supplemental chapters were added to support and sustain peace in South Sudan, including chapters on humanitarian assistance; resource, economic, and financial arrangements; transitional justice mechanisms; a new constitution; and the JMEC to facilitate the implementation of the ARCISS.<sup>63</sup> Unfortunately, the conflict has persisted and a subsequent ceasefire signed in December 2017 has also failed to stem the violence.

Because the warring parties have not ceased fighting, state governments have attempted to fill gaps and halt hostilities through more local-level peace and reconciliation efforts. These efforts also aim to address the more localized conflicts occurring around the country. For example, one peace and reconciliation initiative took the form of a forum between the feuding communities in Tonj North County, Tonj State. Among outcomes were the decisions to station police on the borders to secure them and to increase penalties for stealing cattle.<sup>64</sup> It remains to be seen if the state-level peace and reconciliation efforts can act as local-level ceasefires.

*Verification of the facts and full and public disclosure of the truth*

Multiple domestic, regional, and international instruments have verified facts and disclosed them to the public. The AU mandated the AUCISS to investigate human rights violations committed during the internal armed conflict and to make recommendations on accountability and reconciliation processes,<sup>65</sup> which could be led by a Truth and Reconciliation Commission.<sup>66</sup> To date, no such commission has been created. Meanwhile, in 2016, the UN Human Rights Council (UNHRC) constituted the UN Commission on Human Rights in South Sudan to monitor and report on human rights violations.<sup>67</sup> The Commission was originally mandated for one year (until March 2017), but the UNHRC granted two one-year extensions, the most recent of which will expire in March 2019.<sup>68</sup> The Commission has vocally condemned ongoing violations, as seen in its first report that was released in February 2018.<sup>69</sup>

Once established, the CTRH would examine the root causes of conflict, human rights violations, and breaches of the rule of law. It is also empowered to keep the public informed of its activities and solicit their continuous feedback.<sup>70</sup>

*Search for the missing, disappeared, and killed*

Although there is no government program charged with searching for missing persons, international organizations, such as the International Committee of the Red Cross (ICRC), have worked to locate and reunite families.<sup>71</sup>

*Public apology*

Both President Kiir and then-Vice President Machar offered public apologies on separate occasions.

On January 7, 2016, President Kiir expressed his sympathies to the victims of human rights violations at a publicly televised event. He said, “I apologize on behalf of the SPLM to the people of South Sudan for the suffering they are going through as a result of war” and that “people will have to account for the crimes they have committed.”<sup>72</sup>



Then-Vice President Machar conveyed his regrets about human rights violations committed in 1991. Machar apologized on two occasions—on August 10, 2011 and April 3, 2012—for his part in the Bor Massacre of November 15, 1991. The massacre followed Machar’s split from the SPLM/A, after which his forces attacked the Bor area, killing at least 2,000.<sup>73</sup>

*Judicial and administrative sanctions against persons liable for the violations*

The civilian legal system is hampered with problems and has not delivered criminal accountability for victims.<sup>74</sup> However, an SPLA Court Martial convicted and sentenced 77 soldiers for crimes committed against civilians in the summer of 2016, including crimes of murder, rape, and theft.<sup>75</sup> More recently, in its February 2018 report, the UN Commission on Human Rights in South Sudan identified over 40 senior military officials who may be criminally responsible for war crimes and crimes against humanity.<sup>76</sup> This information, which has been collected and preserved for the HCSS, could lead to additional prosecutions and verdicts.

*Commemorations and tributes to the victims*

South Sudan has not established tributes or commemorations for victims. Instead, civil society organizations have undertaken memorialization activities to commemorate victims. For example, civilian volunteers partnered with civil society organizations and created the “Remembering the Ones We Lost” initiative to publicize a list of all victims of conflicts in South Sudan. The initiative compiles the names of those killed or missing in southern Sudan (now South Sudan) since 1955 in order to memorialize victims, acknowledges South Sudan’s “violent and painful past,” and foster understanding of historical and current injustices. As of April 2018, the initiative has collected the names, sexes, nationalities, and dates of deaths or last sightings of 5,717 individuals.<sup>77</sup> Such civil society efforts have been integral to commemorating and recognizing victims, especially in light of the UN’s difficulties in accurately tracking the rising casualties.<sup>78</sup>

## **5. Guarantees of non-repetition**

Guarantees of non-repetition center on institutional reform, such as vetting and lustration processes.

*Effective civilian control of military and security forces*

The Transitional Constitution and the ARCISS speak to this topic. The Transitional Constitution reiterates the necessity of civilian control and authority over the military in various provisions on the structure of the military.<sup>79</sup> It gives the President, with the approval of the Council of

Ministers, the power to select the individuals to run law enforcement agencies.<sup>80</sup> The ARCISS directs the warring parties to unify their forces, creates a Strategic Defense and Security Review Board to devise a roadmap for this unification, and makes the President the Commander-in-Chief of the military.<sup>81</sup> The Transitional Constitution further requires the transformation of the SPLA into the South Sudan Armed Forces, to be overseen by civilian authority.<sup>82</sup> In accordance with that requirement, on May 16, 2017, President Kiir changed the name of the SPLA to the South Sudan Defence Forces and overhauled certain military structures.<sup>83</sup>

Alongside these reforms, the ARCISS formed a Joint Integrated Police (JIP) to protect civilians in areas of intense fighting.<sup>84</sup> Importantly, the JIP vets its members; according to a police official involved in the implementation of transitional justice measures, the JIP only accepts individuals with clean human rights records.<sup>85</sup> The first batch of JIP was deployed in Juba in June 2017.<sup>86</sup>

#### *Due process, fairness, and impartiality in civilian and military proceedings*

The Code of Criminal Procedure Act guarantees due process, fairness, and impartiality in court, including the right to a public trial and an attorney.<sup>87</sup> Despite a framework that conforms to international standards for fair trial rights, local activists have criticized the judicial system as being flawed and unfair.<sup>88</sup>

#### *Independence of the judiciary*

The Transitional Constitution states that “justice and judges shall be independent in their judicial work, and shall perform their functions without interference.”<sup>89</sup> The ARCISS reaffirms judicial independence and the need to build the capacities of judicial personnel and infrastructure.<sup>90</sup> Unfortunately, the justice system remains extremely fractured and subject to political pressures and also continues to lack funding, infrastructure, and proper communications mechanisms.<sup>91</sup>

#### *Vetting and lustration*

The ARCISS calls for a vetting and lustration scheme through which persons indicted by the HCSS would become ineligible to participate in government for a certain amount of time. If they are proven innocent after removal from their position or exclusion from holding a new position, they would be entitled to compensation for their loss of employment.<sup>92</sup> As of writing, the military still employs individuals credibly implicated in human rights violations. Notably, in May 2017, President Kiir fired Army Chief of Staff Paul Malong, who has been accused of playing a central role in the war and in alleged atrocity crimes. Although Kiir claimed this was a “routine decision,” this move may signal a shift toward removing human rights violators from the security forces.<sup>93</sup>

*Human rights education and training for law enforcement officials and security forces*

South Sudan has not educated security forces on human rights, but UNMISS held a human rights education workshop for thirty SPLA officers in February 2017. The workshop focused on teaching members of the military to better observe and respect human rights. UNMISS stated its intention to holding such workshops in the future. Since this initiative is relatively new, its impact is unclear.<sup>94</sup>

*Review and reform of laws contributing to human rights violations*

Once functional, the CTRH would recommend legal and institutional reforms in order to ensure non-repetition of human rights abuses and violations.<sup>95</sup>

<sup>1</sup> African Union (AU), *Final Report of the African Union Commission of Inquiry on South Sudan* (Addis Ababa: African Union, 2014), ¶ 41, available at <http://www.peaceau.org/uploads/auciss.final.report.pdf>.

<sup>2</sup> Robert Gerenge, “South Sudan’s December 2013 Conflict,” African Centre for the Constructive Resolution of Disputes (ACCORD), January 7, 2016, <http://www.accord.org.za/ajcr-issues/%EF%BF%BCsouth-sudans-december-2013-conflict/>.

<sup>3</sup> Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS), August 17, 2015, available at [https://unmiss.unmissions.org/sites/default/files/final\\_proposed\\_compromise\\_agreement\\_for\\_south\\_sudan\\_conflict.pdf](https://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf).

<sup>4</sup> Yasmin Sooka, “Statement by Yasmin Sooka, Chair of the Commission on Human Rights in South Sudan at the 26th Special Session of the UN Human Rights Council,” December 14, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21028&LangID=E>; “UN: South Sudan on Brink of Ethnic Civil War,” *Al Jazeera*, December 14, 2016, <http://www.aljazeera.com/news/2016/12/south-sudan-brink-ethnic-civil-war-161214104548897.html>; Human Rights Watch (HRW), “South Sudan” in *World Report 2018* (New York: HRW, 2018), <https://www.hrw.org/world-report/2018/country-chapters/south-sudan>.

<sup>5</sup> ARCISS, ch. 5.

<sup>6</sup> “South Sudan Forms Transitional Government of National Unity,” *Sudan Tribune*, April 28, 2016, <http://www.sudantribune.com/spip.php?article58800>.

<sup>7</sup> ARCISS, chap. 5, art. 1.1.

<sup>8</sup> Rens Willems and David K. Deng, *Perceptions of Transitional Justice in South Sudan* (Hague: University for Peace, 2016), 7, 16–17, [http://www.upeace.nl/cp/uploads/hipe\\_content/Perceptions-of-Transitional-Justice-in-South-Sudan---Final-Report.pdf](http://www.upeace.nl/cp/uploads/hipe_content/Perceptions-of-Transitional-Justice-in-South-Sudan---Final-Report.pdf).

<sup>9</sup> ARCISS, ch. 5, arts. 3.1–3.2.

<sup>10</sup> ARCISS, ch. 5, art. 3.5.3.

<sup>11</sup> HRW, “South Sudan: Stop Delays on Hybrid Court,” December 14, 2017, <https://www.hrw.org/news/2017/12/14/south-sudan-stop-delays-hybrid-court>; UN Commission on Human Rights in South Sudan, *Report of the Commission on Human Rights in South Sudan*, ¶ 118, U.N. Doc. A/HRC/37/71, Human Rights Council, 37<sup>th</sup> Sess. (March 13, 2018), [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A\\_HRC\\_37\\_71\\_EN.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_71_EN.docx).

<sup>12</sup> Ayen Bior, John Tanza, and Dimo Silva, “South Sudan Inches Closer to Hybrid Court on Conflict’s Four-year Anniversary,” *Voice of America*, December 17, 2017, <https://www.voanews.com/a/south-sudan-inches-closer-to-hybrid-court/4167383.html>.

<sup>13</sup> UN News Centre, “Killings, Rapes in South Sudan Continued ‘Unabated’ After July 2016 Violence, UN Reports,” January 16, 2017, <http://www.un.org/apps/news/story.asp?NewsID=55975#.WIYynWQrJ0t>.

<sup>14</sup> ARCISS, ch. 5, art. 2.2.1.

<sup>15</sup> ARCISS, ch. 5, art. 2.2.2.5.

<sup>16</sup> ARCISS, ch. 5, art. 2.1.5.

- 
- <sup>17</sup> UN Commission on Human Rights in South Sudan, ¶ 118.
- <sup>18</sup> UNDP in South Sudan, “Technical Committee for the Commission for Truth, Reconciliation and Healing Completes Training in Conducting Inclusive Consultations,” August 25, 2017, [http://www.ss.undp.org/content/south\\_sudan/en/home/presscenter/pressreleases/2017/08/25/technical-committee-for-the-commission-for-truth-reconciliation-and-healing-completes-training-in-conducting-inclusive-consultations.html](http://www.ss.undp.org/content/south_sudan/en/home/presscenter/pressreleases/2017/08/25/technical-committee-for-the-commission-for-truth-reconciliation-and-healing-completes-training-in-conducting-inclusive-consultations.html).
- <sup>19</sup> ARCISS, ch. 5, art. 2.2.2.2.
- <sup>20</sup> ARCISS, ch. 5, art. 4.2.
- <sup>21</sup> UN Commission on Human Rights in South Sudan, ¶¶ 122–23.
- <sup>22</sup> TRANSITIONAL CONSTITUTION, art. 200: “all current Laws of Southern Sudan shall remain in force and all current institutions shall continue to perform their functions and duties, unless new actions are taken in accordance with the provisions of this Constitution.”
- <sup>23</sup> The Code of Criminal Procedure Act, (2008) art. 3 (Southern Sudan), available at <http://www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3D&tabid=342>.
- <sup>24</sup> TRANSITIONAL CONSTITUTION, art. 200: “all current Laws of Southern Sudan shall remain in force and all current institutions shall continue to perform their functions and duties, unless new actions are taken in accordance with the provisions of this Constitution.”
- <sup>25</sup> The Land Act (2009), art. 3 (Southern Sudan), available at [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/South\\_Sudan/files/HLP%20AoR/South\\_Sudan\\_Land\\_Act\\_2009\\_EN.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/South_Sudan/files/HLP%20AoR/South_Sudan_Land_Act_2009_EN.pdf).
- <sup>26</sup> David K. Deng, *‘Between a Rock and a Hard Place’: Land Rights and Displacement in Juba, South Sudan*, (Juba: South Sudan Law Society, 2016), 4, [http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Land-Rights-and-Displacement-in-Juba\\_Feb2016.pdf](http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Land-Rights-and-Displacement-in-Juba_Feb2016.pdf).
- <sup>27</sup> “Constitutional History of South Sudan,” Constitution Net, <http://www.constitutionnet.org/country/constitutional-history-south-sudan>.
- <sup>28</sup> TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN (2011), pmb., available at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf>.
- <sup>29</sup> Relief and Rehabilitation Commission Act, (2016) art. 7 (South Sudan), available at <http://www.icnl.org/research/library/files/South%20Sudan/RCCBILL.pdf>.
- <sup>30</sup> AU, *Final Report*, ¶ 2.
- <sup>31</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. A/RES/60/147 (December 16, 2005), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.
- <sup>32</sup> TRANSITIONAL CONSTITUTION, art. 12.
- <sup>33</sup> Dimo Silva, “South Sudan National Security Agents Accused of Rape, Arbitrary Arrests,” *Voice of America*, February 7, 2018, <https://www.voanews.com/a/south-sudan-human-rights-commission-national-security-agents-rape-arbitrary-arrests/4243428.html>.
- <sup>34</sup> TRANSITIONAL CONSTITUTION, arts. 9, 45–46.
- <sup>35</sup> ARCISS, ch.3, art. 1.1.4.
- <sup>36</sup> ARCISS, ch. 3, arts. 1.1.2, 1.1.5.
- <sup>37</sup> Amanda Sperber, “From War to Want: South Sudanese Find Less Violence but Grim Conditions in Uganda,” *IRIN News*, December 20, 2016, <http://www.irinnews.org/news/2016/12/20/war-want-south-sudanese-find-less-violence-grim-conditions-uganda>; UN Office for the Coordination of Humanitarian Affairs (OCHA), *Humanitarian Bulletin: South Sudan* (Juba: OCHA, 2016), <https://reliefweb.int/sites/reliefweb.int/files/resources/ss.pdf>.
- <sup>38</sup> ARCISS, ch. 4, art. 4.1.
- <sup>39</sup> The World Bank, “The World Bank in South Sudan”, (accessed May 21, 2018), available at: <http://www.worldbank.org/en/country/southsudan/overview>.
- <sup>40</sup> The Land Act, art. 78(1).
- <sup>41</sup> The Land Act, art. 78(2).
- <sup>42</sup> The Land Act, art. 79(3), 79(7).
- <sup>43</sup> The Land Act, art. 79(9).
- <sup>44</sup> ARCISS, ch. 4, art. 4.2.1.1.

<sup>45</sup> “SPLA Says Campaign to Recover Homes Occupied by Squatters in Juba Ongoing,” *Radio Tamazuj*, February 2, 2017, <https://radiotamazuj.org/en/news/article/spla-says-campaign-to-recover-homes-occupied-by-squatters-in-juba-ongoing>.

<sup>46</sup> ARCISS, ch. 5, art. 3.2.1, 3.5.1.

<sup>47</sup> ARCISS, ch. 5, art. 2.2.1.

<sup>48</sup> ARCISS, ch. 5, art. 2.2.2.5.

<sup>49</sup> ARCISS, ch. 5, art. 4.2(d).

<sup>50</sup> ARCISS, ch. 5, art. 4.2(d).

<sup>51</sup> The Land Act, art. 80(1).

<sup>52</sup> The Land Act, art. 80(2).

<sup>53</sup> Deng, 4.

<sup>54</sup> ARCISS, ch. 5, art. 4.2(d).

<sup>55</sup> “About OCHA South Sudan,” UN Office for the Coordination of Humanitarian Affairs (OCHA), accessed April 23, 2018, <http://www.unocha.org/legacy/south-sudan/about-ocha-south-sudan/about-ocha-south-sudan>.

<sup>56</sup> ARCISS, ch. 1, art. 2.1.2, 2.1.9.

<sup>57</sup> Joint Monitoring and Evaluation Commission (JMEC), *Implementation Status Report of Chapter I of the Agreement on the Resolution of the Conflict in the Republic of South Sudan* (Juba: JMEC, 2017), 3, <http://jmecsouthsudan.org/index.php/reports/arcss-evaluation-reports/52-chapter-i-governance/file>.

<sup>58</sup> TRANSITIONAL CONSTITUTION, art. 31.

<sup>59</sup> Amnesty International, “South Sudan: Devastating Impact of War on Mental Health Must Be Addressed,” July 6, 2016, <https://www.amnesty.org/en/latest/news/2016/07/south-sudan-devastating-impact-of-war-on-mental-health-must-be-addressed/>.

<sup>60</sup> World Health Organization, “WHO Scales up Mental Health and Psychosocial Support in South Sudan,” November 2016, <http://www.afro.who.int/news/who-scales-mental-health-and-psychosocial-support-south-sudan>.

<sup>61</sup> Documentation involves the verification of the facts, which contributes to an accurate account of violations and the disclosure of the truth.

<sup>62</sup> ARCISS; Agreement between the Government of the Republic of South Sudan (GRSS) and the South Sudan Democratic Movement/Army (SSDM/A), February 27, 2012, available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/SD-SS\\_120227\\_AgreementGRSS-SSDMA.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SD-SS_120227_AgreementGRSS-SSDMA.pdf); Agreement on the Resolution of the Conflict in Jonglei State between the Government of the Republic of South Sudan and the South Sudan Democratic Movement/South Sudan Defence Army (SSDM/SSDA–Cobra Faction), May 9, 2014, available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/SS\\_140509\\_AgreementJongleiState.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SS_140509_AgreementJongleiState.pdf); Agreement on the Reunification of the Sudan People’s Liberation Movement (Arusha Agreement), January 21, 2015, available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/SS\\_150121\\_ArushaAgreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SS_150121_ArushaAgreement.pdf); Areas of Agreement on the Establishment of the Transitional Government of National Unity (TGoNU) in the Republic of South Sudan, February 1, 2015, available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/SS\\_150201\\_AreasTransitionalGov.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SS_150201_AreasTransitionalGov.pdf).

<sup>63</sup> ARCISS, table of contents.

<sup>64</sup> “Peace Conference in Tonj to Reconcile Feuding Communities,” *Radio Tamazuj*, June 21, 2016, <https://radiotamazuj.org/en/news/article/peace-conference-in-tonj-to-reconcile-feuding-communities>.

<sup>65</sup> AU, *Final Report*, ¶ 2.

<sup>66</sup> AU, *Final Report*, ¶ 979.

<sup>67</sup> H.R.C. Res. 31/20, Situation of Human Rights in South Sudan, U.N. Doc. A/HRC/RES/31/20 (March 23, 2016), available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/RES/31/20](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/RES/31/20).

<sup>68</sup> “Commission on Human Rights in South Sudan,” UN Human Rights Council, accessed April 26, 2018, <http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx>; H.R.C. Res. 37/31, Situation of Human Rights in South Sudan, U.N. Doc. A/HRC/37/L.40 (March 20, 2018), available at <http://undocs.org/A/HRC/37/L.40>.

<sup>69</sup> Sooka; UN Human Rights Council, “UN Human Rights Commission Collects Evidence to Hold More Than 40 South Sudanese Officials Accountable for War Crimes and Crimes Against Humanity,” February 23, 2018, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22691&LangID=E>.

<sup>70</sup> ARCISS, ch. 5, art. 2.2.1.

<sup>71</sup> “South Sudan: Abducted Children Reunited with Parents After More Than a Year Apart,” International Committee of the Red Cross, January 8, 2018, <https://www.icrc.org/en/document/south-sudan-abducted-children-kids-reunited-parents-year-apart>.

- <sup>72</sup> “President Kiir Apologises for the December 2013 War,” *Sudan Tribune*, January 7, 2016, <http://www.sudantribune.com/spip.php?article57630>.
- <sup>73</sup> “Machar Has Apologised to Dinka Bor Community – Army Official,” *Sudan Tribune*, August 10, 2011, <http://www.sudantribune.com/Machar-has-apologised-to-Dinka-Bor,39795>.
- “South Sudan VP Confirms Apology for Bor Massacre,” *Sudan Tribune*, April 4, 2012, <http://www.sudantribune.com/spip.php?article42124>; James Copnall, “Tangled Web of South Sudan Politics Spells Bleak Future,” December 19, 2013, *BBC News*, <http://www.bbc.com/news/world-africa-25454168>.
- <sup>74</sup> Amnesty International and International Federation for Human Rights (FIDH), *Looking for Justice: Recommendations for the Establishment of the Hybrid Court for South Sudan* (Paris: FIDH, 2016), 8–9, <https://www.amnesty.org/en/documents/afr65/4742/2016/en/>.
- <sup>75</sup> Hellen Achayo, “Military Court Condemns Soldier to Death,” *Eye Radio*, September 23, 2016, <http://www.eyeradio.org/military-court-condemns-soldier-death/>.
- <sup>76</sup> UN Human Rights Council, “UN Human Rights Commission Collects Evidence to Hold More Than 40 South Sudanese Officials Accountable for War Crimes and Crimes Against Humanity.”
- <sup>77</sup> “About Remembering the Ones We Lost,” Remembering the Ones We Lost, accessed April 23, 2018, <http://rememberingoneswelost.com/page/index/2>; “List,” Remembering the Ones We Lost, accessed April 23, 2018, <http://rememberingoneswelost.com/reports>.
- <sup>78</sup> Agence France Press, “South Sudan Is Dying, and Nobody Is Counting,” *Daily Mail*, March 11, 2016, <http://www.dailymail.co.uk/wires/afp/article-3487033/South-Sudan-dying-counting.html>; Agence France Press, “50,000 and Not Counting: South Sudan’s War Dead,” *Daily Mail*, November 15, 2014, <http://www.dailymail.co.uk/wires/afp/article-2836137/50-000-not-counting-South-Sudans-war-dead.html>.
- <sup>79</sup> TRANSITIONAL CONSTITUTION, arts. 151(7), 153.
- <sup>80</sup> TRANSITIONAL CONSTITUTION, arts. 155(4), 156(4), 157(4), 158(4).
- <sup>81</sup> ARCISS, ch. 1, art. 2.2.2.2; ARCISS, chap. 2, arts. 6.5, 7.1.
- <sup>82</sup> TRANSITIONAL CONSTITUTION, art. 151(2).
- <sup>83</sup> Daniel Danis, “SPLA Renamed South Sudan Defense Force in a Major Army Shake up,” *Eye Radio*, May 16, 2017, <http://www.eyeradio.org/spla-renamed-south-sudan-defense-force-major-army-shake/>.
- <sup>84</sup> ARCISS, ch. 2, arts. 5.1.3, 5.2.
- <sup>85</sup> Safer World, *Transitional Policing in South Sudan’s Peace Agreement: Joint Integrated Police* (Juba: Safer World, 2016), <https://www.saferworld.org.uk/downloads/pubdocs/transitional-policing-in-south-sudan-jip.pdf>.
- <sup>86</sup> Obaj Shago, “Joint Integrated Police Force Ready for Deployment – Min. Interior,” *Eye Radio*, June 18, 2017, <http://www.eyeradio.org/tgonu-passes-batch-joint-integrated-police-force/>.
- <sup>87</sup> The Code of Criminal Procedure Act, arts. 6, 181, 184.
- <sup>88</sup> “S. Sudan Activist Criticize Court’s Conviction of 12 Over Graft,” *Sudan Tribune*, June 25, 2016, <http://sudantribune.com/spip.php?article59418>; “South Sudan 2016 Crime & Safety Report,” United States Department of State Bureau of Diplomatic Security, May 24, 2016, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=19745>; Rens Willems and Victor Lowilla, *A Case for Support of Prisoners in South Sudan* (Hague: University for Peace, 2016), 4, <http://www.upeace.nl/cp/uploads/downloadsprojecten/Legal-Support-for-Prisoners-in-South-Sudan---Briefing-Note.pdf>.
- <sup>89</sup> TRANSITIONAL CONSTITUTION, art. 124(6).
- <sup>90</sup> ARCISS, ch. 1, art. 12.
- <sup>91</sup> Magali Mores, Overview of Corruption and Anti-Corruption in South Sudan (Bergen: U4, 2013), 6, <https://www.u4.no/publications/south-sudan-overview-of-corruption-and-anti-corruption/pdf>; Freedom House, “South Sudan” in *Freedom in the World 2017* (New York: Freedom House, 2018), <https://freedomhouse.org/report/freedom-world/2017/south-sudan>.
- <sup>92</sup> ARCISS, ch. 5, art. 5.
- <sup>93</sup> John Hursh, “Army Chief is Fired in South Sudan: A Turning Point for Peace?,” *Just Security*, <https://www.justsecurity.org/41517/army-chief-fired-south-sudan-turning-point-peace/>.
- <sup>94</sup> “Over 30 SPLA Officers Undergo Workshop on Human Rights,” *Radio Tamazuj*, Feb. 8, 2017, available at <https://radiotamazuj.org/en/news/article/over-30-spla-officers-undergo-workshop-on-human-rights>.
- <sup>95</sup> ARCISS ch. V, arts. 2.2.2.7, 2.2.2.8.