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Transitional Justice in South Sudan:

Context and Prospects

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ABOUT AFRICA TRANSITIONAL JUSTICE LEGACY FUND

Established in 2019, the Africa Transitional Justice Legacy Fund is a response to the growing desire for African solutions to African problems rooted in shared experiences. The Fund is part of a larger continental support strategy by the MacArthur Foundation and the Wellspring Philanthropic Fund to promote African-led transitional justice efforts in the region.

Following the adoption of the AU Transitional Justice Policy (AUTJP) in 2019, the Fund was established to ensure that the Policy achieves its objectives of putting African communities and countries on the path to sustainable peace, justice, reconciliation, social cohesion, and healing after experiencing mass atrocities.

The ATJLF was established to support transformative and pioneering interventions in transitional justice processes in Africa. We support community-based, survivor-led transitional justice projects and processes in Cote D'Ivoire, The Gambia, Guinea, Liberia, Mali, North-eastern Nigeria, and Sierra Leone. Through the EU-AU supported Initiative for Transitional Justice in Africa, we will also be providing financial and technical support to organizations outside West Africa.

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Background and Context Necessitating Transitional Justice

Decades of civil war and ethnic tensions have deeply divided South Sudan and led to widespread human rights abuses and atrocities. The conflict between the Sudanese government and various rebel groups, along with inter-ethnic conflicts, has resulted in a complex web of violence and displacement. In the pre-independence era, South Sudan experienced decades of conflict with the North, primarily over issues such as religion, ethnicity, and resources. The Comprehensive Peace Agreement (CPA) signed in 2005 between the Sudanese government and the Sudan People's Liberation Movement/Army (SPLM/A) paved the way for a referendum on self-determination, leading to South Sudan's independence in 2011.¹

South Sudan has also faced significant challenges since gaining independence in 2011, including internal conflicts, human rights abuses, and a need for transitional justice. Tensions between political leaders, ethnic groups, and other factors led to violence, displacement, and human rights abuses. South Sudan plunged into a civil war in 2013, primarily between President Salva Kiir's government forces and those loyal to Vice President Riek Machar. The conflict resulted in widespread human rights abuses, including massacres, sexual violence, and displacement. In 2015, a peace agreement was signed between the government and opposition forces, with provisions for transitional justice. The Agreement on the Resolution of the Conflict in South Sudan (ARCSS) signed in 2015 included provisions for establishing a Hybrid Court for South Sudan (HCSS) to prosecute individuals responsible for war crimes, crimes against humanity, and other serious offences committed since independence; the creation of the compensation and reparations authority responsible for providing a material and financial support; and the commission for Truth, Reconciliation and healing whose mandate is to address the legacies of South Sudan's turbulent history.²

There was another escalation of violence in 2016 which led various parties involved to reengage in negotiations. Subsequently, in 2018, parties to the conflict signed the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS). R-ARCSS established the Revitalized Transitional Government of National Unity (RTGoNU). The RTGoNU was entrusted with a mandate to govern during a 36-month transitional period. The RTGoNU initially targeted a democratic general election in 2022. However, owing to unforeseen challenges, this timeline for the elections has been extended a couple of times with the most recent date being December 2024³.

¹Lotje de Vries & Mareike Schomerus (2017) Fettered Self-determination: South Sudan's Narrowed Path to Secession, Civil Wars.

² International Centre for Transitional Justice. South Sudan

³ Africa News, (2024, February 10), South Sudan's election officials undergo training ahead of December's polls <https://www.africanews.com/2024/02/10/south-sudans-election-officials-undergo-training-ahead-of-next-decembers-polls/>



As the December 2024 deadline approaches, there are concerns of an imminent postponement⁴. The historical backdrop is one of multiple conflicts, resulting in a staggering loss of lives and the displacement of over two million people, many of whom are still refugees. According a recent UN report, there has been a 35 percent quarter-on-quarter increase in the number of civilians affected by the crisis in South Sudan between the last quarter of 2023 and now⁵. The consequences extend beyond physical displacement, encompassing repression, deprivation, and an enduring humanitarian crisis that has plagued the country since its pre-independence struggles.⁶

Transitional Justice Mechanisms and Processes: Successes and Challenges

South Sudan's complex history of civil conflict, struggle for independence, and violent post-independence challenges marked by gross human rights violations means that transitional justice is not only crucial but imperative. Its transitional justice process has faced significant challenges and is mostly stalled. The implementation of both the ARCSS and subsequently the R-ARCSS has encountered enormous challenges. Notable among these challenges is a lack of good faith or commitment by parties to the conflict, evident in ongoing conflicts despite existing ceasefire agreements, such as those signed in Addis Ababa (December 2017) and Rome (January 2020). Additionally, some armed groups have refused to join the peace agreement, contributing to tensions between those in power and opposition factions. Delays in the disarmament, demobilization, and reintegration plans have hindered the unification of armed groups into one force.⁷As mentioned earlier, the three distinct but interdependent institutions of transitional justice: The Commission for Truth, Reconciliation, and Healing, The Hybrid Court for South Sudan, and The Compensation and Reparation Authority was embedded in the peace agreements and not so much has been done to implement these three crucial TJ processes.

Additionally, there are limited resources and capacity and the lack of political will to implement the transitional justice measures, with the government often failing to prioritize justice and accountability. Importantly, parties to the conflict have failed to meet the requirements of the key clauses in the peace deal. The elections failed to hold in 2023 and there are concerns that the December 2024 elections cannot be held as the government of national unity of Salva Kiir and Riek Machar is yet to meet many pre-requisite clauses of the deal⁸. According to the UN Mission in South Sudan (UNMISS) stakeholders, leaders, and parties in South Sudan must reach a consensus on crucial decisions by the first quarter of 2024 if they intend to conduct elections as scheduled and ensure they are free, fair, and credible.⁹ It seems improbable that such a consensus has been reached.

⁴ Daphne Psaledakis, (2024, March 8), South Sudan elections not on path for credible process, US official warns, Reuters

⁵ Aljazeera, (2024, March 19) UN reports 35 percent increase in people affected by South Sudan violence

⁶ International Centre for Transitional Justice. South Sudan

⁷ Ibid.

⁸ Africanews (2023). S.Sudan: Elections in December 2024 conceivable only if critical decisions taken - UNMISS

⁹ International Centre for Transitional Justice. South Sudan



Despite these challenges, there have been some commendable achievements in the implementation of the peace agreement. The formation of the Reconstituted Transitional National Legislative Assembly is a significant milestone, poised to advance legislative processes, expedite judicial reforms, and potentially resolve the electoral stalemate. Furthermore, the launch of the drafting process for the permanent constitution and the reconstitution of the Technical Committee by the Ministry of Justice and Constitutional Affairs indicate progress in establishing the Commission for Truth, Reconciliation, and Healing.¹⁰ There have also been national consultations dedicated to informing the establishment of the Truth Commission.¹¹

Civil society organizations in the country have their work cut out for them but are mostly confronted by a shrinking civic and political space and a widespread culture of impunity. There is currently an accountability process spearheaded by Civil Society Organizations and supported by the UN mission in South Sudan. A lot more work needs to be done in urging the government to implement the provisions of the peace agreements more specifically in the creation of the Truth Commissions mechanism, the hybrid court and a full reparations program for victims of violations. CSOs also need to engage in advocacy and calls for elections to be held in 2024.

Key Civil Society Organizations Working in The Space.

- The Transitional Working Group (TJWG): The TJWG is a coalition of several CSOs operating across the country. The group was set up in 2015 to support the establishment of sustainable peace and reconciliation in South Sudan. It also aims to support the implementation of Chapter V of the ARCSS and to provide an interface between national and international transitional justice stakeholders and the official transitional justice processes. The TJWG aims to act as a platform to advocate for transitional justice and provide an interface between civil society and national and international transitional justice stakeholders; to promote understanding about the transitional justice process; to coordinate civil society support to the transitional justice mechanisms in the peace agreement; and to support victims and other persons affected by the conflict to have their voices heard. The CSOs in the TJWG include Assistance Mission for Africa (AMA), Dialogue and Research Initiative (DRI), Foundation for Democracy and Accountable Governance (FODAG), Human Rights Development Organization (HURIDO), Solidarity Ministries Africa for Reconciliation and Development (SMARD) South Sudan Law Society (SSLS), South Sudan Women Empowerment Network (SSWEN)

Conclusion

¹⁰ Ibid.

¹¹ Office of the High commission for human rights (2023). High Commissioner addresses Conference for Transitional Justice in South Sudan. OHCHR.



Transitional justice in South Sudan is a complex and multifaceted process that will play a pivotal role in addressing the historical grievances and human rights abuses. As South Sudan strives to consolidate peace and build a foundation for sustainable development, it is imperative to recognize the significance of comprehensive transitional justice mechanisms.

By fostering truth, accountability, and reconciliation, South Sudan can aspire to heal the wounds of its past, promote social cohesion, and establish a framework for a more just and inclusive future. However, the road ahead is challenging, requiring a commitment from all stakeholders, both domestic and international, to ensure that transitional justice efforts are robust, transparent, and responsive to the needs of the affected communities.



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