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Policy brief

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Judicial Autocracy and Public Trust Deficit: What the New Judicial Leadership Must Do Differently to Save the Judiciary of South Sudan

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Summary

On 28 May 2025, President Salva Kiir removed Justice Chan Reec Madut and Justice John Gatwich Lul, Chief Justice and Deputy Chief Justice respectively, in a presidential decree, read on the South Sudan Broadcasting Corporation (SSBC). The President replaced Justice Chan Reec Madut with Justice Dr. Benjamin Baak Deng as Chief Justice and Justice Lado Tanquilo as Deputy Chief Justice. The changes in the leadership of the judiciary, which are widely celebrated, present an opportunity to free a judiciary that has been under siege from both internal and external forces since the country's independence in 2011. This Brief examines the opportunities that changes in judicial leadership provide and how the new leadership can seize the moment to save the judiciary from judicial autocracy, internal contradictions, and public trust deficit. It critiques the previous judicial leadership and highlights opportunities for restoring accountability, credibility, integrity, and professionalism in the judiciary. The Brief concludes by recommending that the new judicial leadership should prioritize restoring public trust in the judiciary as a service-delivery institution.

I. Introduction

The judiciary is the branch of government that interprets laws and administers justice.¹ The primary functions of a judiciary are to uphold the rule of law and provide access to justice. In societies emerging from conflict, the judiciary is essential for reestablishing the rule of law, ensuring accountability, and supporting reconciliation efforts.² By providing fair and impartial legal proceedings, the judicial system contributes to restoring public confidence in institutions, addressing historical wrongs, and reducing the likelihood of renewed violence.³

¹ Judiciary, Black's Law Dictionary (10th ed. 2014) 977.

² Kirsti Samuels, "Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt (Social Development Papers, 2006) <<https://documents1.worldbank.org/curated/en/537621468137719257/pdf/379140Rule0of0law0WP3701PUBLIC1.pdf>> Accessed July 11, 2025.

³ Zühtü Arslan, "The Role of Constitutional Courts in Maintaining Social Peace: A Comparative Review of the 'Application'" (2022) <<https://www.anayasa.gov.tr/en/president/former-presidents-speeches/zuhtu-arslan/speeches/the-role-of-constitutional-courts-in-maintaining-social-peace-a-comparative-review-of-the-application/#:~:text=Secondly%2C%20the%20decisions%20and%20judgments,maintaining%20and%20sustaining%20social%20peace>> Accessed June 8, 2025.

Yet, since the country's independence from Sudan in 2011, the judiciary of South Sudan has contributed very little to the respect for the rule of law and constitutionalism. The failure to deliver on its mandate has led to perceptions of the judiciary as an irrelevant player in the nation's affairs.⁴ Available literature on the judiciary indicates that political interference poses the greatest threat to the independence of the South Sudanese judiciary.⁵ The 2017 mass dismissal of senior judges by the President, when they protested autocratic judicial leadership and poor working conditions in the judiciary, highlights the role of executive overreach, which undermines judicial independence.⁶ The judicial leadership itself did not help either. Accusations of nepotism, judicial autocracy, centralization of power and authority in the chief justice have had adverse impacts on the proper administration of justice in the judiciary.⁷

The recent changes in the leadership of the judiciary present an opportunity to restore credibility, accountability, and public trust in the judiciary. The legacy of constitutional betrayal through internal abuse should give way to a progressive leadership that respects constitutional limits, freshens the judicial climate, and uplifts respect for the office of the Chief Justice.

II. The Constitutional Foundation of the Judiciary of South Sudan

Part Seven of the Transitional Constitution of the Republic of South Sudan (TCRSS), as amended in 2011, focuses on the Judiciary of South Sudan. Article 122 vests judicial power in the people of South Sudan, exercisable only by courts on their behalf and according to their customs, values, norms, and aspirations.⁸ This power is vested in an independent institution known as the Judiciary of South Sudan, which is only answerable to the law and the constitution, and headed by the Chief Justice who independently administers the institution.⁹

⁴ Mark Atem Wek Deng, "The Importance of Judicial Independence to the Administration of Justice: The Case of South Sudan" (Sudd Institute, 2016) <
https://suddinstitute.org/assets/Publications/577cab35eff46_TheImportanceOfJudicialIndependenceToTheAdministration_Full.pdf> Accessed June 8, 2025.

⁵ Ibid.

⁶ Carmel Rickard, "Sacking of 14 Judges by South Sudan President Unconstitutional: East African Court of Justice" (African Legal Information, 2020), <https://africanlii.org/articles/2020-07-30/carmel-rickard/sacking-of-14-judges-by-south-sudan-president-unconstitutional-east-african-court-of-justice> Accessed June 6, 2025.

⁷ "Lawyer hails new Chief Justice Appointment as 'long overdue' reform" (Eye Radio, 2025), <https://www.eyeradio.org/lawyer-hails-new-chief-justice-appointment-as-long-overdue-reform/> Accessed June 6, 2025.

⁸ The Transitional Constitution of the Republic of South Sudan, as amended, 2011 Art 122(1).

⁹ Art 122(2) & (8).

To uphold the rule of law and ensure access to justice, the judiciary is structured in a way that allows appropriate levels of courts to attend to disputes throughout the country.¹⁰ For example, the Supreme Court receives appeals and adjudicates fundamental constitutional and political cases. At the same time, the lowest court, such as County Courts (and special tribunals), deals with small claims and relatively minor criminal matters.

The governance of this extensive institution is regulated by the Constitution, as well as two legislative acts enacted before independence: the Judiciary Act of 2008 and the Judicial Service Council Act of 2008. It is to be noted that shortly after the independence of South Sudan in 2011, political instability and political interference adversely affected the Judiciary, undermining its mandate to uphold the rule of law and ensuring access to justice.¹¹ As a result, in 2018, the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) provides for reforms of the judiciary so that it is independent, subscribing only to the principles of separation of powers and the supremacy of the rule of law.¹² In June 2022, the R-ARCSS established the Judicial Reform Committee (JRC) with the mandate to study and make recommendations on judiciary reforms to the Revitalized Transitional Government of National Unity (R-TGoNU) for consideration. JRC concluded its work in March 2024 and subsequently handed over the Report containing the recommendations to RTGoNU for implementation.

III. A Legacy of Constitutional Betrayal Through Internal Abuse of Judicial Powers: Justice Chan’s Tenure

The primary functions of the Chief Justice, as outlined in the Constitution and the law, encompass both judicial and administrative responsibilities. While the former chief justice did not fare better on the scale of judicial functions, it was the administrative front where he betrayed his legacy. Section 5 of the Judiciary Act, 2008 defines administration as “the management and supervision of courts.”¹³ Section 29 on the administrative supervision states that “...the President of the Supreme Court [Chief Justice] shall have the power of administrative supervision with respect to all courts, justices, judges, organs and administrations within the judiciary.”¹⁴ Much of this responsibility is to be performed through structures such as the courts’ administration, headquarters, and circuit committees.

For over fourteen years, the former Chief Justice did not do much in terms of improving the capacity of the courts, notably in performing his administrative responsibilities. First, judicial officers accused Justice Chan Reec of judicial autocracy. Unlike jurisdictions where a principal judge is conferred with administrative duties, Justice Chan had monopoly over all administrative decisions. One of the judicial officers lamented how judicial leadership

¹⁰ Art.123.

¹¹ Ibid (n 8).

¹² R-ARCSS 2018 Art 1.17.

¹³ Section 5, The Judiciary Act, 2008.

¹⁴ Section 29, The Judiciary Act, 2008.

under Justice Chan Reec affected the oversight role of the Judicial Service Commission (JSC):¹⁵

The chair [Chief Justice] only invites JSC members to discuss controlled matters. The JSC has been reduced to only addressing trivial issues. When they discuss the budget, they fail to review the previous budget. They only talk about the current budget without going into detail. They are simply called to approve it and send it to the president. They do not inquire about what is included in the budget. And what happened to the last budget?

This suggests that previous judicial leadership misused the powers vested in the Chief Justice as the administrative head of the Judiciary and the head of the Judicial Service Commission (JSC). This abuse eviscerated the judiciary of elements of accountability and integrity.

Second, Justice Chan treated judicial officers with disdain, litigants with contempt, and the constitution with utter disregard. In this charged judicial climate, judicial officers struggled to perform their constitutional functions. In 2013, Justice Clement Kuc resigned from the judiciary following judicial appointments laced with nepotism and influence peddling.¹⁶ The charged judicial climate led to calls by judges and court users for the removal of Justice Chan Reec Madut, an indication of a judicial leadership that brought the administration of justice into judicial disrepute in the eyes of the public.

Third, Judicial officers who privately advised or publicly confronted Justice Chan Reec Madut either faced outright dismissal from the judiciary or faced reprisals in the form of a lack of promotion.¹⁷ Justice Chan's autocracy had the effects of undermining the constitution, poisoning the judicial climate, and eviscerating the judiciary of the elements of transparency, integrity, and accountability. In short, Chan's tenure is remembered for judicial autocracy, constitutional betrayal, internal abuse, and wanton disregard for the rule of law.

IV. New leadership, high expectations: The Judiciary the South Sudanese Want

In November 2022, the United Nations Development Program (UNDP) engaged my services as a legal consultant to assist the Secretariat of the South Sudan Judicial Reform Committee (JRC). I served as the Head of Legal Research for the JRC Secretariat. The JRC, a mechanism established under the Revitalized Agreement on the Resolution of Conflict in the Republic of South Sudan (R_ARCSS), 2018, was mandated to investigate the kinds of reforms needed in the judiciary of South Sudan. It was here that I met and

¹⁵ JRC Minutes of the Public Consultations in Wau, 26th-27th June 2023, p.8.

¹⁶ Mark Deng, "South Sudan's Chief Justice is Overstepping his bounds: Why it Matters for the Rule of Law" (The Conversation, 2021), <https://theconversation.com/south-sudans-chief-justice-is-overstepping-his-bounds-why-it-matters-for-the-rule-of-law-160406> Accessed June 7, 2025.

¹⁷ Ibid.

worked with Justice Dr. Benjamin Baak Deng, the current Chief Justice, who was also a JRC member.

What is remarkable about this background is that Justice Benjamin Baak Deng understands fully the kind of Judiciary that South Sudanese deserve. South Sudanese, for example, expressed their views clearly during the JRC public consultations, hearings, and comments. They shared their views and recommendations for the kinds of reforms they urgently want to see in the judiciary. In this context, the appointment of Justice Dr. Benjamin Baak Deng presents the judiciary with the opportunity to transition, at a minimum, from Justice Chan's Judiciary, characterized by judicial autocracy, centralized power, and weak accountability and reporting mechanisms, to a new judiciary that contributes to peace and stability by providing fora for access to justice.

V. Exclusive Promotion of Sitting Judges: The Implications for the Judicial Reforms in South Sudan

On July 10th, 2025, President Salva Kiir Mayardit, in a presidential decree read on the state-run South Sudan Broadcasting Cooperation (SSBC), promoted several judges to different positions within the Judiciary.¹⁸ For example, the decree promoted six justices from the Courts of Appeal to the Supreme Court, 18 judges from the High Courts to the Courts of Appeal, and other judges from County Courts to High Courts. These internal promotions are based on sections 22, 23, and 24 of the Judiciary Act, 2008.¹⁹ These provisions address the appointment of Supreme Court Justices, Court of Appeal Justices, and High Court Judges, stipulating that such positions are filled through internal processes of "selection" and "promotion" from within the judiciary.²⁰ Before these promotions, the Judiciary, through the Office of the Chief Justice, publicly advertised only limited positions on July 4th, 2025.²¹ These included vacancies for judges in the High Courts and County Courts, as well as numerous positions for Judicial Assistants. Although the advertisement itself presents certain legal and policy challenges, there are three specific issues related to the recent and exclusive internal promotions of judicial officers that need to be addressed. First, the recent promotion of judicial officers to the higher courts is arbitrary, discriminatory, and violates the constitution and the law. Although sections 22, 23, and 24 of the Judiciary Act, 2008, legalize internal promotions, these sections do not exclude appointment from outside the Judiciary. Section 22(2) (b), for example, on the appointment of justices of the Supreme Court provides appointment from among the former Justices of the Supreme Court, Legal Counsels at the Ministry of Justice and Constitutional Affairs, practising advocates, and members of the law teaching staff at recognized universities.²²

¹⁸ Michael Daniel, "President Kiir promotes dozens of judges in a major judicial overhaul" (Eye Radio, 2025) <<https://www.eyeradio.org/president-kiir-promotes-dozens-of-judges-in-major-judicial-overhaul/>> Accessed 18 July 2025.

¹⁹ The Judiciary Act, 2008.

²⁰ Ibid.

²¹ Office of the Chief Justice, 'Recruitment of Judges of High Courts, County Courts and Judicial Assistants' [July 4th, 2025] Notice Board of the Judiciary.

²² Section 22(2)(b) (i)(ii)(iii) & (iv) Judiciary Act, 2008.

Excluding those outside the judiciary from the appointments of six justices to the Supreme Court and eighteen to the Courts of Appeal is unconstitutional, arbitrary, unjustifiable, and discriminatory. Moreover, these internal promotions discriminate against women. For example, Article 122(6) requires “substantial representation of women,” and the six male Justices promoted to the Supreme Court do not pass the gender threshold.²³

Second, the promotions undermine the reform packages in the JRC Report. The R-ARCSS provides that the JSC be reconstituted and that the Reconstituted JSC “...undertake appropriate judicial reforms and restructuring of the Judiciary during the Transitional Period.”²⁴ While the JSC has not been reconstituted, the JRC recommended for the reconstitution of the JRC leadership to “include an independent chairperson and deputy chairperson other than the Chief Justice and Deputy Chief Justice, respectively.”²⁵ This recommendation is intended to address the dominant role of the Chief Justice in the recruitment and appointment processes. The JRC also recommended a change in “the restricted system of appointing Justices and Judges by internal promotion only to a uniform, open merit-based system of recruitment for all applicants by the JSC.”²⁶ Essentially, the JRC recommended a hybrid recruitment model, recommending that substantial appointments be drawn from academia and legal practice, in addition to internal candidates.²⁷ These examples of reform packages illustrate the kinds of judicial reforms recent internal promotions undermined.

Three, the promotions failed to address accusations of corruption and nepotism in the Judiciary. Internal promotions that are not merit-based undermine public trust and fuel accusations of corruption.²⁸ For example, immediately after the Presidential Decree that promoted dozens of judicial officers, one High Court Judge took to social media and wrote, “the injustice was made in the process of promotion of judges in the Republic of South Sudan.”²⁹ Comments from various advocates and judges under the post suggest that some judicial officers who deserved promotion were passed over, while others who were promoted did not deserve it. This shows that the exclusive internal promotions of sitting judges contribute to ongoing concerns about corruption and nepotism affecting the judiciary in South Sudan.

Thus, this practice of exclusively promoting sitting judges within South Sudan's judiciary, in the absence of candidate vetting by a reconstituted Judicial Service Commission, violates

²³ Art.122(6), TCRSS, 2011.

²⁴ Art. 1.17.6, R-ARCSS, 2018.

²⁵ Recommendation 4.3 (i), JRC Report.

²⁶ Recommendation 4.3(v), JRC Report.

²⁷ Ibid.

²⁸ Mark Atem, ‘South Sudan’s Chief Justice and his Stand off with the Rule of Law’ (African Liberty, 2021) <<https://www.africanliberty.org/2021/05/15/south-sudans-chief-justice-and-his-stand-off-with-the-rule-of-law/>> Accessed 17 July 2025.

²⁹ Francis Amum Awin Ayoker, “The injustice was made in the process of promotion of judges in the Republic of South Sudan” (Facebook, 10 July 2025).

the constitution, perpetuates corruption, fosters incompetence, and enables discrimination throughout the judicial recruitment and appointment processes.

VI. Opportunities for Reforms

The new judicial leadership should prioritize three key things. First, restore public trust in the judiciary. The American constitutional notion that the judicial branch's power lies not in the purse nor the sword but only in public trust and confidence still holds. Justice Thurgood Marshall, a former US Supreme Court Justice, echoes this critical aspect of public trust: "We must never forget that the only real source of power that we as judges can tap is the respect of the people."³⁰ The responsibility to promote trust and confidence in the judiciary lies with the judicial leadership.

Under the previous leadership, the Judiciary considerably lost legitimacy and trust in the eyes of the people. Institutionally, it lost its status as a service delivery institution. While executive interference, too, erodes confidence in the administration of justice, case backlogs, financial malpractices, judicial understaffing, and limited capacity of judicial officers affect access to judicial services.³¹ Despite the low public trust and confidence in the judiciary, the previous judicial leadership missed ample opportunities to build or restore public trust in the judiciary. The new leadership under Justice Dr. Benjamin Baak should build trust between the citizens and the judiciary.

Second, the new judicial leadership should make concerted efforts to cure internal contradictions. While external challenges to the independence of the judiciary require serious efforts, the judiciary also needs to be saved from internal contradictions. The previous administration undermined constitutional limits, neglected judicial reforms, and eroded confidence in the administration of justice.³² Coercion and favouritism were commonplace and consequently undermined the rule of law. They paralyzed the judiciary from within and contributed to the lack of accountability in the judiciary.

The final opportunity for reform under the current judicial administration is in relation to the push for the implementation of the JRC Report. As a former JRC member, Justice Benjamin Baak Deng understands the public demands for judicial reforms, captured in the JRC Report, particularly the implementation matrix.³³ The JRC recommended the establishment of a Judicial Taskforce to oversee the implementation of the

³⁰ Frederic B. Rodgers, 'Promoting Public Trust and Confidence in the Judiciary' (1998) 37 Judges J 1.

³¹ "Judicial committee finds strong public support for reforms" (Radio Tamazuj, 2024) <<https://www.radiotamazuj.org/en/news/article/judicial-committee-finds-strong-public-support-for-reforms>> Accessed June 6, 2025.

³² Tong Kot Kuocnin, "South Sudan Judiciary: An Obsolete arm of the Government that needs serious reform" (Paanluel Wel, 2017) < <https://paanluelwel.com/2017/01/05/the-judiciary-of-south-sudan-an-obsolete-arm-of-the-government-that-needs-serious-reform/>> Accessed June 8, 2025.

³³ Lasuba Memo, 'Judicial Reforms Report Step Towards Effective Governance_ Yakani' (Eye Radio, 2024) <https://www.eyeradio.org/judicial-reforms-report-step-towards-effective-governance-yakani/> Accessed June 8, 2025.

recommendations. Currently, the report still lies in the Office of the President.³⁴ The new judicial leadership should push for the approval of the Report by the Council of Ministers, along with the establishment of the Judicial Taskforce for the implementation of the recommendations.

VII. Conclusion

Many in the judiciary and the public view recent judicial leadership changes as both necessary and overdue. These changes offer an opportunity to transform the judiciary from a leadership marked by judicial autocracy, internal abuses stemming from the exclusive promotion of sitting judges to higher positions, and a resulting erosion of public confidence, into one that is firmly committed to the rule of law and the supremacy of the Constitution. To achieve this, the new leadership should restore public trust, remedy internal contradictions such as favouritism and coercion, and promote the implementation of the JRC's recommendations that call upon the judiciary to undertake serious judicial reforms.

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³⁴ Michael Daniel, "President Kiir Receives Report on Judicial Reforms (Eye Radio, 2024) <https://www.eyeradio.org/president-kiir-receives-report-on-judicial-reforms/> Accessed June 8, 2025.

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