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RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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POLICY BRIEF

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Taking Stock of Judicial Independence Challenges in South Sudan

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Summary

This Brief assesses the challenges facing South Sudan's Judiciary and the recent mass promotion of judges. The main challenges facing the Judiciary include capacity deficits, limited resources, and political interference. Political interference has manifested in various forms. For example, Judges have been removed from office without following the constitutional and legal procedures, as can be seen in the recent cases of Chief Justice Chan Reec Madut and Deputy Chief Justice John Gatwech Lul. Judges also face threats to their lives from the members of the executive branch and the military for not deciding cases in their favour. The mass promotion equally raises serious concerns. One is the uncertainty around the criteria used for promotion. Another is that the promotion did not take account of the gender balance as those promoted are predominantly males. Thus, these promotions disregarded the constitutionally mandated affirmative action. Broadly, political interference undermines judicial independence and the rule of law, making it impossible for judges to administer justice properly in South Sudan.

I. Introduction

The Transitional Constitution, adopted after South Sudan's 2011 independence referendum, serves as the country's basic law. It delineates powers for the Legislature, Executive, and Judiciary, ensuring the Judiciary is independent of the political branches.

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However, the separation of powers has not effectively constrained the Executive Government, particularly in relation to respecting judicial independence. This has resulted in the removal of judges from office, contrary to the constitutional and legal procedures. On 28 May 2025, for example, the President removed Chief Justice Chan Reec Madut and Deputy Chief Justice John Gatwech Lul of the Supreme Court of South Sudan.² Madut had been Chief Justice since the founding of this new nation in 2011.³

¹ Transitional Constitution art 124 (1).

² Mading Gum Mading, "Judicial Autocracy and Public Trust Deficit: What the New Judicial Leadership Must Do Differently to Save the Judiciary of South Sudan", *Sudd Institute* (10 July 2025)

<www.suddinstitute.org/assets/Publications/68871120a6b7d_JudicialAutocracyAndPublicTrustDeficitWhatThe_Full.pdf> (last accessed 11 September 2025).

³ Mark Deng, "South Sudan's New Chief Justice has a Chance to Reform the Judiciary if he's Allowed to his Job", *The Conversation- Africa* (10 August 2025)

The President appointed Dr Benjamin Baak Deng as the new Chief Justice and Lako Tranquilo Nyombe as the Deputy Chief Justice.⁴ Deng's appointment has been widely welcome in the country as an opportunity to reform the Judiciary and to repair its tainted image.⁵ But his success will depend, in large part, on the absence of political interference in his functions, as well as adequate budget allocation to the Judiciary. A month later, the President surprised the nation with another unprecedented development: he promoted 39 judges to different courts at once, including the Supreme Court of South Sudan to which 6 judges were promoted from the Courts of Appeal – the second-highest courts in the nation.⁶ But only one female judge was promoted of all the 39 judges. This exacerbates the existing gender imbalance in the Judiciary in which the females are overwhelmingly under-represented⁷.

The ultimate result of these developments, most particularly the removal of judges summarily, is the subversion of judicial independence and the rule of law. This Brief examines challenges facing South Sudan's Judiciary, outlines judges' appointment and promotion procedures, and considers the effects of the recent mass promotions.

II. Current State of the Judiciary

Structured into five courts, the Judiciary exercises judicial power and enforces the rule of law in accordance with the Transitional Constitution.⁸ At the apex of the Judiciary is the Supreme Court of South Sudan, which also sits in a panel of 9 judges as a constitutional court.⁹ The court currently has 10 judges in total, one judge short of the 11 judges constitutionally prescribed.¹⁰

The Judiciary has been facing many challenges since its establishment in 2011. These range from lack of work facilities, modern work equipment (such as computers), limited budget, limited capacity to manage its affairs effectively and resolve cases efficiently to

<<https://theconversation.com/south-sudans-new-chief-justice-has-a-chance-to-reform-the-judiciary-if-hes-allowed-to-do-his-job-262351>> (last accessed 11 September 2025).

⁴ *ibid.*

⁵ Obaj Okuj, "Know your New Chief Justice: Dr Baak Deng", *Eye Radio* (30 May 2024) <www.eyeradio.org/know-your-new-chief-justice-dr-benjamin-baak-deng/> (last accessed 11 September 2025).

⁶ Mading Gum (n 2) 5; Michael Daniel, "Kiir Promotes Dozens of Judges in a Major Judicial Overhaul", *Eye Radio* (11 July 2025) <www.eyeradio.org/president-kiir-promotes-dozens-of-judges-in-major-judicial-overhaul/> (last accessed 15 September 2025).

⁷ Mark Deng (n 3).

⁸ Transitional Constitution art 122.

⁹ Transitional Constitution art 126 (3).

For what it is worth, the recent judicial reform committee, in line with Chapter I, article 1.17.7 of the 2018 Revitalised Agreement on the Resolution of Conflict in the Republic of South Sudan, has recommended that a constitutional court be established in South Sudan as a specialist court dealing exclusively with matters arising under the constitution. See Chapter V of the judicial reform committee's report (2024).

¹⁰ Transitional Constitution art 125.

political interference in judicial functions.¹¹ Nearly all of these are largely a result of South Sudan being a new country starting from scratch to build its governance capacity and infrastructure.

Political interference is having the most severe consequences for the system. A recent report by the Judicial Reform Committee found many instances of threat to judges emanating from the members of the Executive branch and the military.¹² One involved a (military) state governor shooting at a High Court judge in his chambers (the High Court is the court of first instance for serious offences).¹³ And another in which a state governor called a judge a *persona non-grata* for not ruling in the governor's favour¹⁴ (*Persona non-grata* is Latin, meaning an unacceptable or unwelcome foreigner, and it generally applies in the context of international diplomacy. It does not apply to a citizen residing in his or her country of birth and nationality). Overall, the high level of militarization in South Sudan poses challenges to developing and maintaining judicial independence and the rule of law.

III. Procedures for Judges' Appointment, Promotion and Removal

The Transitional Constitution and the Judiciary Act, 2008 vest in the President of the Republic powers to a) appoint judges to office; b) promote judges; and c) remove judges from office.¹⁵ The President appoints judges on the recommendation of the Judicial Service Commission.¹⁶ The appointment of all the Supreme Court judges in South Sudan, including both the Chief Justice and Deputy Chief Justice, requires approval by a two-thirds majority of the members of Parliament.¹⁷

The Judiciary Act particularizes the conditions for appointments. These include an appointee having to be a South Sudanese citizen, holding at least an LLB degree, and having attained at least 40 years for appointment to the Supreme Court, 35 years for appointment to the Courts of Appeal and High Court and 20 to 25 years for appointment to county and payam courts.¹⁸ The rationale for the different ages is not clear from the law but 18 is the age of majority under the Transitional Constitution.¹⁹ Perhaps most important, an appointee must not have been convicted of "an offence involving dishonesty or moral turpitude".²⁰

¹¹ Judicial Reform Committee, "Access to Justice in the Republic of South Sudan" (unofficial version of the report) (30 March 2024) 14–15.

¹² *ibid.*

¹³ *ibid.*, 17.

¹⁴ *ibid.*

¹⁵ Transitional Constitution arts 133 and 134; Judiciary Act, 2008 ch III and s 40.

¹⁶ Transitional Constitution art 133 (2).

¹⁷ Transitional Constitution art 133 (3).

¹⁸ Judiciary Act s 20 (a–d).

¹⁹ Transitional Constitution art 17 (4).

²⁰ Judiciary Act s 20 (e).

There is, however, some conflict between the Transitional Constitution and the Judiciary Act, 2008 (and, of course, the Transitional Constitution is the paramount law). For example, under section 21 (3) of the Judiciary Act, it is the President of the Supreme Court of South Sudan that recommends the appointments of all lower court judges, whereas under article 133 (2) of the Transitional Constitution it is the Judicial Service Commission that recommends such appointments. This conflict may be a result of an oversight in the drafting of the two laws, which were drafted at separate times.

The Transitional Constitution is silent on the promotion of judges. That is presumably because it is left to Parliament to legislate on, and also because the pre-existing laws – Judiciary Act, 2008 and Judicial Service Council Act, 2008 – already provide the promotion process for judges.²¹ The promotion is based on 2 criteria: judicial performance of a judge and a report of superior authority on the conduct of a judge, which is the Judicial Service Commission, which has now replaced the Judicial Service Council.²² But a judge must have served for at least 5 years before being eligible for promotion.²³

In relation to the removal of judges from office, there are constitutional grounds relating to gross misconduct, incompetence and incapacity to do the job.²⁴ However, the same conflict mentioned above arises in relation to removal. Under Chapter VIII of the Judiciary Act, it is the board of discipline presided over by the President of the Supreme Court that takes disciplinary measures against a judge for an alleged misconduct.²⁵ Under article 134 (1) and (3) of the Transitional Constitution, it is the Judicial Service Commission that exercises this function exclusively, although it is silent on how exactly it is to be exercised. However, it is understood, as is the practice in other common law jurisdictions, that the Commission, as a first step, must conduct a full and proper investigation of an alleged misconduct against a judge.

Relatedly, so much power is concentrated in the Chief Justice of the Supreme Court of South Sudan, who, as mentioned, acts as the President of the court at the same time. First, the Chief Justice has power to issue warrants to establish courts of appeal, high courts, county courts and payam courts.²⁶ Under the Transitional Constitution, on the other hand, these courts are to be established by an Act of parliament.²⁷ Second, the Chief Justice has power to grant temporary powers to any judge for a specific purpose under the Judiciary Act.²⁸ Third, given that the Chief Justice is the head of the Judicial Service Commission, he most likely has a say in the promotion of judges.

²¹ See Transitional Constitution article 200 which allows for the continuity of laws enacted before the Transitional Constitution came into force – ie laws enacted during the interim period (2005–2011).

²² Judiciary Act, 2008 s 40 (2) (a) and (b); Judicial Service Council, 2008 s 7.

²³ Judiciary Act, 2008 s 40 (3) (a–f).

²⁴ Transitional Constitution art 134 (1) and (2).

²⁵ Judiciary Act, 2008 ss 48–60.

²⁶ Judiciary Act, 2008 ss 12–16.

²⁷ Transitional Constitution arts 129–131.

²⁸ Judiciary Act, 2008 s 19.

It is advisable that in a permanent constitution of South Sudan, the drafting process of which is pending, the Chief Justice should not be vested with any power to recommend appointments and promotions of judges, nor the power to take disciplinary measures against a judge. There are compelling reasons for this suggestion. One is that the Chief Justice as a judge, may have a conflict of interest in this process – appointment, promotion and dismissal of judges. This view is in line with the recent recommendation of the Judicial Reform Committee: “the power of recruitment, appointment, promotion, discipline and dismissal of all judicial officers [shall be vested] in an independent Judicial Service Commission”.²⁹

Vesting such power in an independent body beyond and outside Parliament, the Executive Government and the Judiciary has the potential to effectively constrain the President of the Republic from interfering in judicial functions, and consequently secure judicial independence and the rule of law. In short, it would leave no room for the President to circumvent the constitutionally prescribed procedures and dismiss judges unilaterally.

IV. Recent Mass Promotion of Judges

The recent mass promotion of judges is said to have been prompted by the case backlog in the Judiciary, which may be true, recalling the Judiciary’s capacity deficits noted earlier.³⁰ However, the way it was done raises serious concerns. First, it did not appear to be based on merit. Indeed, there are reports from judges within the Judiciary that there were inconsistencies in the promotions.³¹ In particular, those who deserved to be promoted were not promoted and vice-versa.

Second, nearly all the judges promoted are males. This compounds the existing gender imbalance such that females are considerably under-represented in the Judiciary. Of South Sudan's 114 judges, only 13 are women, most serving in lower courts.³² There is not a single female judge on the Supreme Court of South Sudan. Only the Courts of Appeal and the High Court have one female judge each – Justice Sumeya Saleh Abdalla and Justice Dudu Jackson Jejen, respectively (the county courts had more female judges but most of them resigned and left the Judiciary due to poor working conditions, including low pay). As such, the promotions might be seen as having discriminated against females.

²⁹ Judicial Reform Committee (n 10) 15.

³⁰ Obaj Okuj, “Lawyers Hails New Chief Justice Appointment as Long Overdue”, *Eye Radio* (30 May 2025) <www.eyeradio.org/lawyer-hails-new-chief-justice-appointment-as-long-overdue-reform/> (last accessed 15 September 2025).

³¹ Mading Gum Mading, “Judicial Autocracy and Public Trust Deficit: What the New Judicial Leadership Must Do Differently to Save the Judiciary of South Sudan”, *Sudd Institute* (10 July 2025) 5–6.

³² Mark Deng, “South Sudan’s New Chief Justice has a Chance to Reform the Judiciary if he’s Allowed to his Job”, *The Conversation- Africa* (10 August 2025) <<https://theconversation.com/south-sudans-new-chief-justice-has-a-chance-to-reform-the-judiciary-if-hes-allowed-to-do-his-job-262351>> (last accessed 11 September 2025).

The Transitional Constitution and the 2018 Revitalized Agreement on the Resolution of Conflict in the Republic of South Sudan (the latter was incorporated into the former) require the government to take affirmative action to address gender imbalances as products of history and patriarchy. It stipulates 35% quota for female representation in government.³³ The 13 female judges equate to 11%, which falls far below the quota. Precisely 14 out of the 39 judges promoted (or appointed) would be females if this quota was applied accordingly. It behooves the government and the new Chief Justice to improve the female representation in the Judiciary.

Third and finally, the mass promotion might be indicative of the alleged malpractices in the Judiciary where nepotism and cronyism are rife.³⁴ Judges had resigned from various courts on these grounds.³⁵ The former Chief Justice Madut bears the responsibility, at least in large part, because he did little to address these challenges (and many others) during his 14-year tenure.

V. Conclusion

South Sudan's Judiciary has been facing enormous challenges since independence. These challenges range from capacity deficit of courts to manage their affairs effectively and resolve cases efficiently, budgetary constraints to political interference in judicial functions. The latter issue has posed significant challenges for the members of the Judiciary in that judges have faced direct threats involving firearms and have been removed from office without adherence to the established constitutional and legal procedures.

The removal of Chief Justice Chan Reec Madut and Deputy Chief Gatwech Lul are the latest and speak volumes of political interference. Regardless, the appointment of the new Chief Justice Dr Benjamin Baak Deng has been welcomed in the country. It is an opportunity to reform the Judiciary into an institution that commands public trust and confidence through impartial and efficient administration of justice, and effective enforcement of the rule of law. The disregard for constitutional and legal procedures can also be seen in the recent promotion of 39 judges. It did not, for example, seem to be based on merit, leaving some to label it as an act of cronyism. As well, it did not take account of the gender balance as those promoted are predominantly males. This fell short of the female's quota of 35% stipulated in the Transitional Constitution as an affirmative measure.

³³ The Revitalised Agreement on the Resolution of Conflict in the Republic of South Sudan 2018, ch I, art 1.12.2.

³⁴ "The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporations Complicit in Hijacking the World's Newest Nation" (The Sentry, September 2019) <<https://thesentry.org/wpcontent/uploads/2019/09/TakingOfSouthSudan-Sept2019-TheSentry.pdf>> (last accessed 15 September 2025).

³⁵ Mark Deng, "South Sudan's Chief Justice is Overstepping his Bounds: Why it Matters for the Rule of Law", *The Conversation-Africa* (11 May 2021) <<https://theconversation.com/south-sudans-chief-justice-is-overstepping-his-bounds-why-it-matters-for-the-rule-of-law-160406>> (last accessed 15 September 2025).

The various challenges facing the Judiciary, including political involvement in judicial activities and departures from constitutional and legal procedures for judges' appointments and promotions, have undermined judicial independence and the rule of law. Judicial independence and the rule of law are indispensable to the proper administration of justice in South Sudan.

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The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

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