

**HUMAN RIGHTS IN A CONFLICT SETTING: A CASE STUDY ON
THE CAUSE AND IMPACT OF THE RECURRING CIVIL WAR IN
SOUTH SUDAN**

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DEDICATION

I dedicate this piece of work to all the victims of the civil war in South Sudan who have been subjected to human rights abuses especially the children who have lost their childhood as a result of the recurring civil war.

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First and foremost, I would love to thank God Almighty for giving me the strength, knowledge, ability and opportunity to undertake this research study and to persevere and complete it satisfactorily. Without his blessings, this achievement would not have been possible

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I would like to express my special thanks of gratitude to Bishop Dr Isaiah Majok Dau for his advice and contribution which greatly benefited this research.

Lastly to all those who contributed in any way for this achievement, I want to say to all of thank you.

DECLARATION

I declare that no portion of the work referred to in this dissertation has been submitted in support of an application for another degree or publication to any other institution of higher learning.

APPROVAL

I certify that this work has been fully researched and it conforms to the required standards of scholar representation and is fully adequate in scope and quality for the award of a degree.

Supervisor

MARISA MERTTA

Signature

[Signature]

Date: 4th July 2019.

ACRONYMS

ACDEG	African Charter on Democracy Elections and Governance
ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of a Child
AU	African Union
COR	Commission for Refugees
CRC	Convention on the Rights of a Child
EAC	East African Community
GOSS	Government of South Sudan
HAC	Humanitarian Action for Children
HRC	Human Rights Commission
ICCPR	International Convention on Civil and Political Rights
IDP	Internally Displaced Persons
IGAD	Inter-Governmental Authority on Development
IOM	International Organisation for Migration
OPAC	Optional Protocol on the involvement of a child in Armed Conflict
R-ARCSS	Revitalized Agreement on the Resolution of the Conflict South Sudan
SPLA	Sudan People's Liberation Army
SPLM-IG	Sudan People's Liberation Movement in Government
SPLM-IO	Sudan People's Liberation Movement in Opposition

ABSTRACT

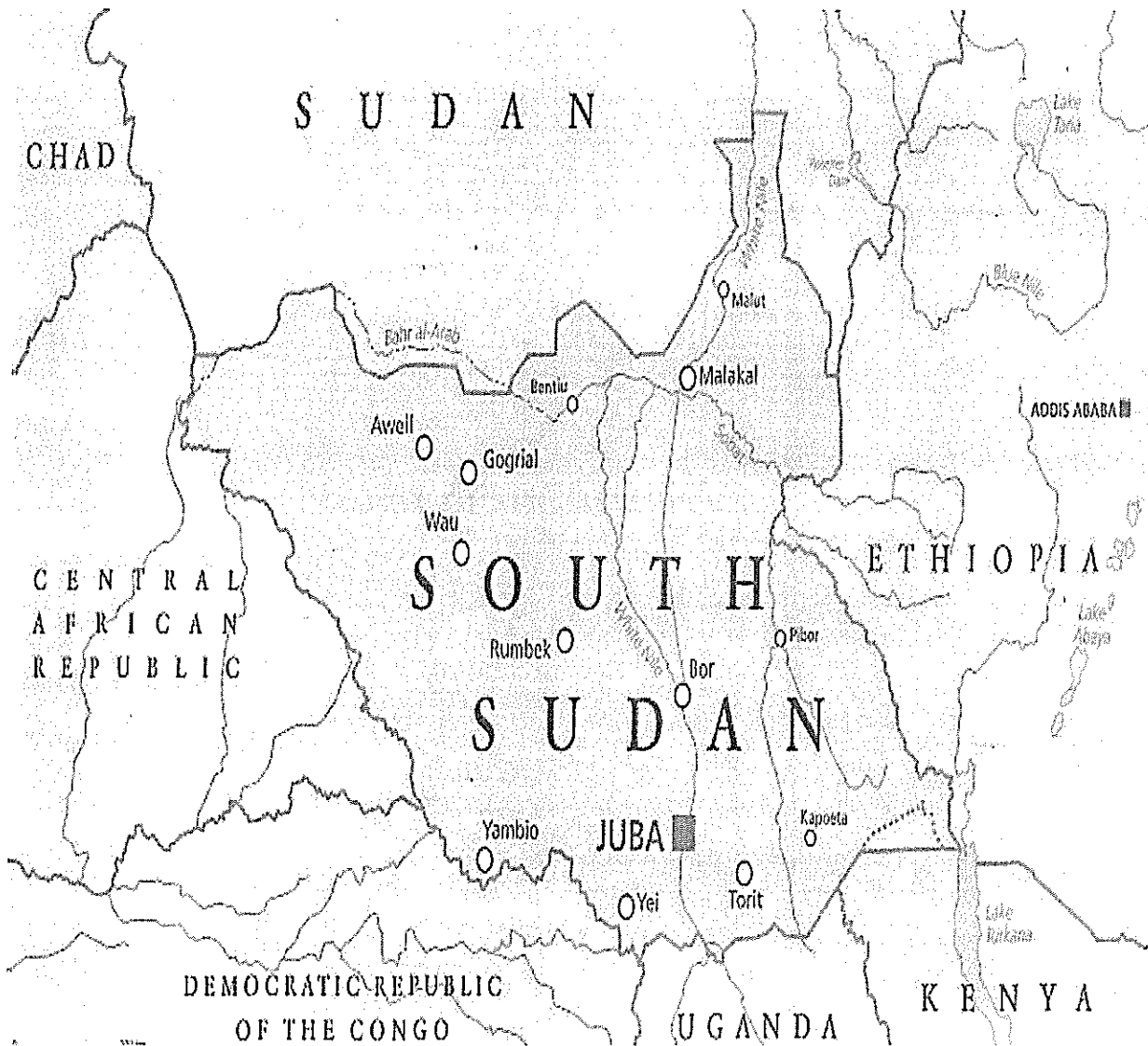
This Research paper analyses violations of human rights in a conflict setting. The focus of this study is in South Sudan the world's youngest nation which has been affected by recurring civil war since it gained independence.

This study analyses the causes and impact of the recurring civil war in South Sudan and provides suggestions to peace and stability in South Sudan. In order to achieve the objectives, the study examines the various reasons why there is recurring civil war and the key actors to the war and why despite various peace initiatives the war has persisted to exist.

The Research paper further investigates with regard to human rights the existence of laws at the national/domestic, regional, and international level highlighting the particular provisions of law that uphold human rights and deal with human rights violations.

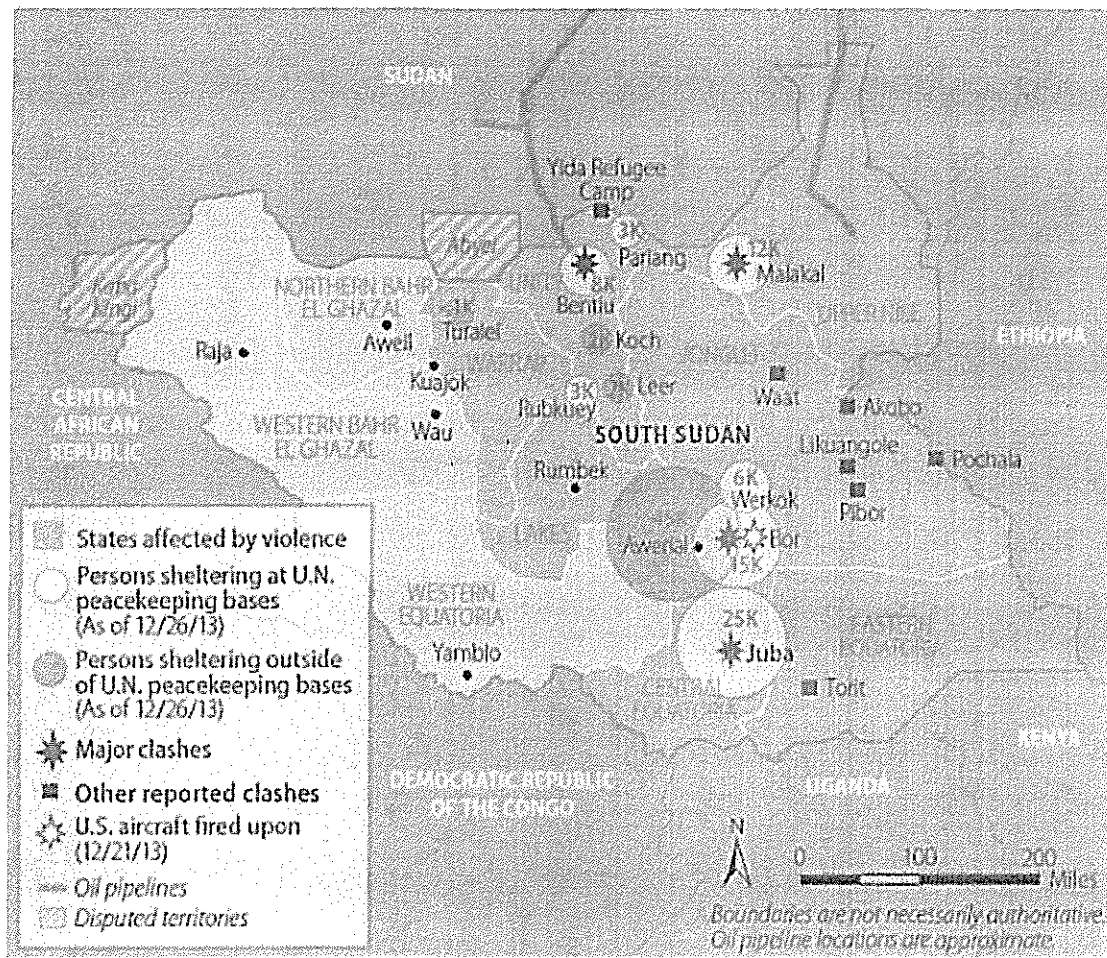
In conclusion, this paper further sees the role of the international community in supporting the peace initiatives in South Sudan as essential not only to put an end to the civil war but to free children, women and the citizens at large from the ravages of the civil war.

A MAP OF SOUTH SUDAN



Source: Joyce Chepkemai: 'which countries border South Sudan?' published on 26th of November 2018, www.worldatlas.com accessed on the 28th of June 2019,

Map 2: A map of South Sudan showing states affected by violence and major clashes.



Source: Lauren Ploch Blanchard ‘The Crisis in South Sudan’ published on the 27th of December 2013, www.refworld.org accessed on the 28th of June 2019

CHAPTER ONE

INTRODUCING THE RESEARCH

Introduction

This chapter introduces the research background, statement of the problem, the purpose of the study, research objectives, research questions, scope, significance, methodology and literature review.

1.1 Background of the Study

The principle of universality of human rights is the foundation of international Human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has dwelled in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems¹.

Most States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting the consent of States which creates legal obligations for them and giving concrete expression to universality². Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations. Human rights are inalienable³. They should not be taken away, except in specific situations and according to due process⁴. Right to life, right to equality and freedom from torture are fundamental human rights that are recognized by international human rights instruments like the Universal Declaration of Human

¹ . <https://www.humanrights.gov.au/about/what-are-human-rights> last visited 30th October, 2013.

² United Nations Human Rights Office of the High Commissioner, 'What are Human Rights?' <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>, accessed on the 24th of May 2019,

³ ibid

⁴ ibid

Rights⁵, convention against torture and other cruel inhuman or degrading treatment or punishment, 1984, African Charter on human and people's rights, international covenant on civil and political rights and CEDAW.

The most basic human rights obligations, those originating from authoritative international law (*jus cogens*) bind both the State and armed opposition groups in times of peace and during armed conflict⁶. In particular, international human rights law requires States, armed groups and others to deference the bans of extrajudicial killing, maiming, torture, cruel inhuman or degrading treatment or punishment, enforced disappearance, rape, other conflict-related sexual violence, sexual and other forms of slavery, the recruitment and use of children in hostilities, arbitrary detention as well as of any violations that amount to war crimes, crimes against humanity, or genocide⁷.

Violations of human rights in South Sudan is a continuous issue as a result of the country's violent history. The world's youngest country still struggles with instability as a result of political differences along ethnic lines between the government and opposition forces which has led to a huge negative impact on the people living in South Sudan which has resulted in massive loss of life, torture, arbitrary arrests, poverty, hunger, displacement of people etc.⁸.

Following South Sudan's history, the ethnic conflict goes way back when it was a part of Sudan. The country was basically split into Arabs to the north and black Africans to the south. The first civil war was from 1955 to 1972 and the second civil war was a conflict from 1983 to 2005 between the central Sudanese government and the SPLA though it was largely a continuation of the first civil

⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR) Article 1,2,and 3

⁶ United Nations Mission in the Republic of South Sudan (UNMISS), 'Conflict in South Sudan: A Human Rights Report 8 May 2014,' https://unmiss.unmissions.org/sites/default/files/unmiss_conflict_in_south_sudan_-_a_human_rights_report.pdf, accessed on the 24th of May of 2019,

⁷ *ibid*

⁸ Lauren Ploch Blanchard, 'The crisis in South Sudan' www.refworld.org published 27 December 2013,

war⁹. It lasted over 22 years and is one of the longest civil wars on record. However, the war resulted in the independence of South Sudan six years after it ended.

The Republic of South Sudan became a sovereign nation on July 9, 2011, and since then South Sudan has ratified several international instruments which include the UNCAT, CEDAW and CRC. These international instruments provide for state parties to include their principles in their domestic laws and requires them to take effective measures to prevent human rights, for example, article 4 of the UNCAT provides that each state party shall ensure that all acts of torture are offences under its criminal law. Hence South Sudan has absorbed the principles of the conventions through its constitution i.e. The Transitional Constitution of the Republic of South Sudan, 2011¹⁰.

Part two of the 2011 Transitional constitution of the Republic of South Sudan provides for the Bill of rights which provides for a comprehensive description of rights that are to be upheld and protected under the constitution. For example, Article 11 provides for the right to life and human dignity that every person has the inherent right to life, dignity and the integrity of his or her person, article 18 which provides for freedom from torture and Article 14 provides for equality of all persons before the law. As the country has ratified these international instruments and gone further to absorb the principles in their domestic law, the question of fact is as to whether the application of these rights is actively in effect. The essence of the bill of rights in the constitution of South Sudan is that it acts as a covenant between the people and their government at every level, it

⁹ Sean Gabb, 'The Civil War and Peace Process in Sudan: A Brief Account', Published on 07 Aug 1997, <https://reliefweb.int/report/sudan/civil-war-and-peace-process-sudan-brief-account>, accessed on the 24th of May 2019,

¹⁰ The Transitional Constitution of the Republic of South Sudan, 2011, <https://www.ilo.org/dyn/natlex/docs/monograph/90704/116697/f>, accessed on the 24th of May 2019,

is to respect and promote human rights and fundamental freedoms enriched in the constitution hence a cornerstone of social justice, equality and democracy.

Despite the fact that South Sudan has taken the initiative to ratify these international instruments and prohibited violations of human rights in its domestic laws, human rights violations are still high mainly as a result of political differences along ethnic lines. This has led to recurring civil conflicts in the world's youngest nation since 2013 when the president Salva Kiir accused opposition leader of SPLM-IO Riak Machar of attempting to start a coup d'état which led to an outbreak of war between the government and opposition. Following the conflict, a series of peace talks and eventually agreements were signed as a means to resolve their differences.

After one and half years of negotiations and pressure applied by the international community, government and opposition signed the agreement on the resolution of the conflict in the Republic of South Sudan (ARCSS) in August 2015 which stipulated that the two warring parties would share power in government, despite the agreement violence still continues and it was reignited in July 2016 between rival factions of the Sudan People's Liberation Army (SPLA) loyal to president Salva Kiir and soldiers loyal to Riek Machar (SPLM-IO) leading to mass devastation¹¹.

1.2 Statement of the Problem

The 2011 Transitional constitution of the Republic of South Sudan and other legislation both local and international on human rights provide for minimum standards on the rights to life, equality and freedom from torture and other degrading inhumane treatment upon all persons. They uphold these human rights and provide a penalty for derivation from it. However, many of these laws have either remained on paper or have been overlooked by the responsible

¹¹ Jacob Zocherman/IRIN 'is South Sudan's latest peace accord the real deal?' www.thenewhumanitarian.org published 25th August 2015,

persons supposed to affect it and some have deliberately failed to ensure these rights and liberties.

1.3 Purpose of the Study

The purpose of this study is to assess the impact of the civil war on human rights in South Sudan and recommend possible solutions.

1.4 Research Objectives

- I. To examine the causes of recurring civil war in South Sudan.
- II. To identify the effects of the conflict and its impact on the right to life, right to equality, and freedom from torture.
- III. To establish the challenges and recommend workable solutions to end the re-curring conflict in South Sudan.

1.4.1 Research Questions

- II. What are the causes of the 2016 civil war in South Sudan?
- III. How has the 2016 civil war in South Sudan affected the people's right to life, the right to equality and freedom from torture and degrading inhumane treatment?
- IV. What are the workable solutions to prevent recurring civil wars in the Republic of South Sudan?

1.5 Justification of the problem

The study on the recurring civil war in South Sudan is justified based on the fact that this particular study has not been adequately written about and the few writings available have not been given much attention in the country. There hasn't been a comprehensive research paper that has extremely covered the causes and impact of the recurring civil war in South Sudan hence making this paper important. This study is as well justified since this information can guide the various leaders, legislators, judiciary, police and the society must agree on the strategies put forth to create a peaceful environment.

1.6 Scope of the study

This study is intended to explore the cause and impact the recurring civil war in South Sudan has had on the right to life, equality and freedom from torture and degrading inhumane treatment in South Sudan. It will focus on public, government organs, private organizations, civil societies, and international organizations who have had the initiative to fight for this right.

1.7 Research Methodology

The researcher intends to employ qualitative/key informant interviews. In this regard the research will conduct a desk review by analysing journal articles, the legislation works by renowned intellectuals and publicists.

1.8 Literature review

Human rights are an area of concern globally and violations of human rights still persist in various countries. The rate of human rights violations is higher in developing countries and countries facing recurring civil wars¹²

According to an article by Gabriel and Garang, an overview of the legal system of South Sudan¹³, South Sudan is a party to several binding and non-binding International and Regional Treaties and Declarations that advance the Right to life, equality and freedom from torture. These include among others the UDHR¹⁴, ICCPR¹⁵, ACHPR¹⁶, CEDAW, UNCAT among others. The UDHR¹⁷, one of the first international acclaims of freedom of all men, prominently enunciates the right to life, equality and freedom from torture. Article 3 of the UDHR provides thus; everyone has the right to life, liberty, and security of person and article 5 Provides that no one shall be subjected to torture or cruel,

¹² Human Rights Violation and Structural Violence <https://www.ukessays.com> last visited 8 April 2019,

¹³ Gabriel Mading Apach and Garang Geng 'An overview of the legal system in South Sudan' published on 3rd September 2018, <https://www.nyulawglobal.org> accessed on June 3rd 2019,

¹⁴ Universal Declaration of Human Rights(adopted 10 December1948 UNGA Res 217 A(III)(UDHR) art 3&6

¹⁵ International Covenant on Civil and Political Rights (adopted 16 December, entered into force 23 March1976) 999 NNTS171 (ICCPR),art 6,7 &10

¹⁶ African Charter on Human and Peoples Rights(adopted27 June 1981, entered into force 21 october1986) (1982) 21 ILM58 (African Charter)

¹⁷ Universal Declaration of Human Rights(adopted 10 December1948 UNGA Res 217 A(III)(UDHR) art 3&4

inhuman or degrading treatment or punishment. Whereas the UDHR is not legally binding on nations, it has become part of recognized international customary law from which all other rights spring¹⁸. Thus, the ICCPR and ACHPR, to which South Sudan is a party, also guarantee the right to life equality and freedom from torture in almost similar terms as the UDHR.

As ratification of international instruments is an important step to that brings with it a commitment towards implementation, South Sudan on top of ratifying these instruments has a bill of rights contained in its Constitution that provides for the rights to life, equality and freedom from torture. Part two of the constitution of the Republic of South Sudan provides for the bill of rights; Article 11 of the Constitution provides thus; *every person has the right to life, dignity, and the integrity of his or her person which shall be protected by law; no one shall be arbitrarily deprived of his or her life*. Article 18 provides for freedom from torture; *no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment* and article 14 provides thus; *all persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status*.

The Act sets out to promote and value human dignity and equal rights and lay a foundation for a united, peaceful, and prosperous society based on justice, equality, respect for human rights and rule of law.

According to Tethloach Ruey¹⁹, the cause of the South Sudan war is the SPLMs lack of knowledge of state governance, which resulted into poor leadership, recklessness, ethnocentrism and tribalism, loss of vision and lack of adherence

¹⁸ Hurst Hannum, "The UDHR in National and International law" Harvard University <https://cdn2.sph.harvard.edu> last visited 30 April 2019

¹⁹ Tethloach Ruey, 'The south Sudanese conflict analysis; conflict profile, causes, actors and dynamics', Doctoral Thesis, 2017, <https://www.grin.com/document/411993>, accessed on the 24th of May 2019,

to public causes. Hence, he concluded in his research that peace will never prevail in South Sudan under the SPLM because the SPLM is part of the problem. He recommends that alternatively, the people of South Sudan should consider establishing a popular revolutionary movement that would dislodge the SPLM with all its factions and form a just system.

The Author presents a good proposition that the people of South Sudan should engage in a revolutionary movement in order to dislodge SPLM. This is because peace in South Sudan can only prevail under a new leadership that can reform the entire structure of the country, one that reflects the will of the people however this report fails to consider the fact that South Sudan should internally make peace before a new leadership takes over, based on the fact that their problems are of an internal nature.

Several national and international studies have been undertaken on the civil war in South Sudan and this has created awareness for the need to focus on the need to create an alternative future for South Sudan. *According to Victor Udemba,*²⁰ South Sudan conflict has caused the nation to become a failed state after getting her independence. Since the start of the conflict in December 2013, the majority of the South Sudan citizens have been killed while others have left the country. The crisis has left a big mark in the heart of the South Sudanese people that will forever be remembered and take time to heal. Victor Udemba further stresses that at the moment, South Sudan cannot afford the cost of a war economically during the period of fighting for her independence from its northern neighbour, South Sudan is not yet ready for violence in the country. The more the violence the more difficult it is for South Sudan to be transformed socially, economically and psychologically.

²⁰ Victor Udemba, 'South Sudan; a failed state? A Case in International Relations', European University, Business School, Published on 30th May 2015, https://www.academia.edu/12522321/South_Sudan_A_Failed_State, accessed on the 24th of May, 2019,

This report represents a good position that peace should prevail for South Sudan to prosper however it neglects or doesn't clearly explain a solution or a way forward to peace in South Sudan hence leaves someone questioning what the country needs to do or change to move past this violence.

*Lotje de Vries and Mareike Schomerus*²¹, emphasize that South Sudan's civil war will not end with a peace deal because it has been labelled as one of an ethnic or tribal nature. They point out that one consequence of labelling this war as a conflict between two groups with the suggestion that everyone in South Sudan falls into one of the two camps is that the different forms of violence that the country is experiencing are part of this bifurcated civil war. This would suggest that the best way to stop the violence in South Sudan is to get the government and the SPLM-IO to strike a deal. The path that the international community has taken is to; first, engage with the government; second, treat opposition grievances as representative of all South Sudanese; third, interpret any violence in South Sudan as being connected to the conflict between government and opposition; fourth, focus on implementing a peace deal that focuses on government and opposition.

Hence, they suggest that it is unlikely that this approach will bring peace to South Sudan. Interpreting South Sudan's violence as a conflict between two warring parties fails to acknowledge the less visible forms of violence and oppression that south Sudanese experience every day. These less visible form of violence existed well before this war started and need to be addressed. The spotlight on the two warring parties and how to bring them together also subdues those voices and forces in society that try to stay away from the violence, while other types of violence and oppression makes South Sudan a

²¹ Lotje de Vries & Mareike Schomerus, 'South Sudan's Civil War Will Not End with a Peace Deal,' (2017), 29 (1) *A Journal of Social Justice*, pg. 333-340, <https://www.tandfonline.com/doi/full/10.1080/10402659.2017.1344533>, accessed on the 24th of May, 2019

brutal country for those living in it, and the disregard for the attempts to improve their situations contributes to making the situation worse.

I appreciate the above research regarding the war in South Sudan as one that is labelled to be of ethnicity. Despite this fact, it is not possible to fail to marry the war with the leaders and tribes as this is the largest cause of the war even though other factors exist, in the long run, its narrowed down to ethnic conflict.

*The report by the UNGA Human Rights Commission on South Sudan*²² noted that a lack of accountability for decades of violence during the struggle for independence helped to fuel the current conflict in South Sudan. The report stresses that sustainable peace requires a tangible and credible pursuit of accountability and justice that meets the needs of the many thousands of victims.

This report is rich in relating violations of human rights and the rule of law in South Sudan since the rule of law is fundamental to all societies in development. The previous occurrence of wars in South Sudan have gone unjustified, the people involved for these crimes against humanity have walked away unpunished hence causing the people of South Sudan to mistrust the system, laws and leaders in charge of ensuring justice prevails.

*Christa Charbonneau Kuntzelman*²³ points out that although ethnicity is a contributing factor to the ongoing crisis in South Sudan, particularly after the re-escalation of violence in December of 2013, characterization of the conflict as an ethnic crisis is insufficient and short-sighted and overlooks many of the underlying complexities of state and nation building, or involved in the lack

²² UNGA, Report of the Commission on Human Rights in South Sudan, A/HRC/37/71, 23 February 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_37_71_0.pdf, accessed on the 24th of May 2019,

²³ Christa Charbonneau Kuntzelman, 'South Sudan; Solutions for Moving Beyond an Ethnic Conflict,' (2013) 3(1), International Research and Review: Journal of Phi Beta Delta Honour Society for International Scholars, <https://files.eric.ed.gov/fulltext/EJ1149924.pdf> accessed on the 24th of May 2019,

thereof, in the new nation. To create the infrastructure needed for durable peace, actors across the governmental, private, and business sectors must produce pragmatic and implementable mechanisms that address both the proximate and root causes of the ongoing conflict. Furthermore, as there is a complex interaction between root causes, approaches should be rooted in a multi-faceted, multi-dimensional framework that employs consistent monitoring and evaluation to allow for appropriate and timely modification should recommendation inadvertently produce harm. He further stressed that proposals need to focus on both immediate aid and on long term development and should focus implicitly on building capacity at the individual, communal, societal, institutional, and national levels.

This Publication presents a good position that it is insufficient to characterize the conflict as one of an ethnic nature as there exist other underlying factors that cause the conflict however it neglects the fact that as inequality among people is a root cause of conflicts as peace cannot exist where people have been stereotyped to perceive different tribes other than there's as inferior hence in order to build a nation peace and harmony must prevail.

In an article by Michael Defeo²⁴, points out that South Sudan is a uniquely difficult conflict to resolve from an international standpoint because it was supported by the United States and much of the international community during the war for independence and the Kiir government was a product of western influence. For this reason, western nations and donors have found it difficult to take a robust stance against the government they helped bring into power.

Michael points out that South Sudan has such deeply entrenched corruption and ethnic divisions that violent conflict was only a matter of time. The fighting has

²⁴ Michael Defeo, 'the effects of institutional and political instability on civil war in South Sudan' 2017 9(11) *Inquiries Journal on Social Sciences, Arts and Humanities*, <http://www.inquiriesjournal.com/articles/1692/the-effects-of-institutional-and-political-instability-on-civil-war-in-south-sudan> accessed on the 24th of May 2019,

led to organized killings that have claimed thousands of lives. He stresses out that South Sudan's troubles come from within and must be solved from within before any type of stabilized government can take hold.

This Author raises a valid point that South Sudan's problems are from within and must be solved from within however influence of international Aid cannot entirely be neglected because South Sudan is a party to most of the international instruments hence legally binding them to the provisions of the statutes as well as penalties upon derogation. He as well neglects the fact that as a low developing country, foreign aid helps to expand economic growth, improvement in infrastructure, poverty relief and saving lives of millions upon an outbreak of war hence international aid is almost impossible to disregard.

*A report from Amnesty International on South Sudan*²⁵ draws attention to the shortcoming in the human rights framework in South Sudan including as regards ratification and domestication of international and regional human rights treaties, the expansion of the national security service (NSS) powers to arrest people and seize property without adequate judicial oversight and the failure to criminalize torture enforced disappearance genocide and crimes against humanity in domestic law.

Amnesty International raises a concern about recent executions harassments and arbitrary detention of journalists and other government critics, poor prison conditions and incarceration of persons with serious mental health disabilities, as well as widespread impunity for violations of international human rights and humanitarian law in the context of the armed conflict.

²⁵ Amnesty International, 'South Sudan: Conflict and Immunity', Amnesty International Submission to the UN Universal Periodic Review November 2016, <https://www.amnesty.org/download/Documents/AFR6546322016ENGLISH.pdf>, accessed on the 24th of May 2019,

This report furnishes us with data regarding harassments and arbitrary detention however it fails to put into consideration unlawful detention of innocent people and failure to apply for bail due to the inadequacy of the law.

A study by *Peter Gachunga*²⁶ relates the war in South Sudan with the discovery of large oil deposits in its territory that have long been the source of border incursions by Sudan. Despite numerous oil reserves, the country remains relatively poor due to decades of war. However, this study as well as analysed the South Sudan conflict over a two-year period of 2013 and 2014. The study framed the wars in three types that is ethnic war frame, oil frame and violence and unrest. The study looks at South Sudan as a tinderbox of “*ethnic rivalries*.” In which killings are conducted along ethnic lines while avoiding the term *genocide* and possibly *ethnic cleansing*.

I appreciate the above research by the above author as it has informed my discussion regarding the various causes of the recurring conflict in South Sudan however it does not put emphasis on power struggles. This is because the rivalry is as a result of mainly power struggles along ethnic lines.

1.9 Conclusion

This chapter traced the historical background of South Sudan and its relation to the recurring civil war where thousands of people have lost their lives, secondly, this chapter has explored the research methodology and the analysis of the literature review on the subject which to given an understanding of what this research paper is about.

²⁶ Peter Gachunga, 'The Wall Street Journal's Coverage of the South Sudan Conflict,' 2018, https://opus.ipfw.edu/grad_research/37 accessed on the 24th of May 2019,

CHAPTER TWO

2.0 CAUSES AND EFFECTS OF HUMAN RIGHTS VIOLATIONS AMIDST RECURRING CIVIL WAR IN SOUTH SUDAN

This chapter examines the causes and effects of recurring civil war in South Sudan, the key actors in the civil war and the peace initiatives undertaken in the restoration of peace in South Sudan. I will apply a desk review to examine the above-mentioned topic.

2.1 The Causes of recurring civil war in South Sudan

Presence of natural resources especially oil has fueled the war in South Sudan²⁷. This is because of the need by parties to have control over the oil and other natural resources. Most researchers relate and conclude the presence of oil resources and civil wars. Furthermore, oil is the most important source of government revenue in South Sudan and oil-producing states such as Jonglei, and the upper Nile has seen the worst of the civil war²⁸. Many people relate the presence of oil as a primary cause of the war and this is also because it is believed that “South Sudan is floating on oil and only 12 per cent of the whole country has been explored” as mentioned by Ezekiel Lol Gatkuoth, South Sudan’s minister of petroleum.²⁹ It is also believed that the lack of transparency in the ministry of petroleum has people believe that oil revenues have continued

²⁷ Aljazeera ‘Is oil money fueling the war in South Sudan?’ published 6 April 2019 <https://www.aljazeera.com>, accessed on 27th May 2019,

²⁸ Israel Nyaburi Nyadera, ‘South Sudan conflict from 2013 to 2018: Rethinking the causes, situation and solutions, published on 19th December 2018, African Centre for the Constructive Resolution of Disputes (ACCORD), <https://www.accord.org.za/ajcr-issues/south-sudan-conflict-from-2013-to-2018/>, accessed on the 7th June, 2019,

²⁹ Aljazeera ‘Is oil money fueling the war in South Sudan?’ published 6 April 2019 <https://www.aljazeera.com>, accessed on 27th May 2019,

to fund the war, enabling its continuation and the resulting of human rights violations³⁰

Ease of access to arms by civilians. This has played a crucial role in the escalation of the war in South Sudan as it is not only the security agencies that have access to arms but civilians as well³¹. This destabilizes people amidst war and because of panic, it is used as a defence mechanism even where the need is not called for leading to a rise in human rights violations. It is believed that the new nation, being overwhelmed by celebrations of their achievement from separation from the North failed to recognize the importance of complete disarmament of the civilians at the very stages of independence³². However, these guns are being pointed to specific members of tribes and these south Sudanese are motivated by the territorial defense, for example, the resource-rich area of Matok which became off limits for the Longar clan flared tensions over restrictions on access to these resources which is vital for both groups³³

Power struggles is an immediate trigger and another cause of recurring civil war in South Sudan, the greed to be in power has caused continuous instability in the country due to lack of unity and different ideologies among the leaders. For example, in 2014 when the president of South Sudan Salva Kiir dissolved the government because of the intention of the vice president Dr Riek Machar and Madam Rebecca Garang (widow to the late president of South Sudan Dr. John Garang) to run for president of the country³⁴. Furthermore, the power struggles

³⁰ United Nations Human Rights Office of the High Commissioner, 'Outraged by renewed fighting and continuing human rights violations in South Sudan, UN Human Rights Experts urge all parties to stop conflict, end impunity and respect provisions of the revitalized peace agreement', <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24183&LangID=E>, accessed on the 7th of June 2019,

³¹ Israel Nyaburi Nyadera, South Sudan conflict from 2013 to 2018 'Rethinking causes, situation and solutions' published 19 December 2019, last visited 27 June 2019,

³² Ibid,

³³ Human Rights Watch, 'South Sudan: Ethnic targeting, wide spread killings' <https://www.hrw.org> published 16 January 2014, last visited 27 June 2019,

³⁴ Aziza Geleta Dessalegn, 'The Cause and Consequence of conflict in South Sudan' January 2017 <http://www.academicresearchjournals.org/IJPSD/Index.html> Accepted on 2 January 2017,

are along ethnic lines specifically the dominant tribes of the Dinka and Nuer tribes because the main parties the president Salva Kiir belongs to the Dinka tribe and Dr Riek Machar is Nuer hence any clash between the two goes further to one between the tribes they belong. Reports of targeted killings and perpetrators selecting victims with specific ethnic groups suggest that distinctions between friends, enemies, and respective combat strategies are now widely informed by the framework of ethnic belonging³⁵

The crisis in South Sudan is as well associated with weak institutional capacity because of the inability of relevant institution to manage and mediate the conflict. For example, the current crisis started from within the SPLM and because of lack of tradition of democratic practice in the party even a small crisis cannot be contained hence when the internal crisis erupts with the SPLM it becomes a national problem hence making South Sudan fragile³⁶

Absence of justice for the Human rights violations with the army perpetrating Human rights abuses and suppressing anti-government movements. For example, the 2013 Nuer-Juba massacre³⁷.

Furthermore, the lack of professionalism in the army. The officers use the conflict as a mean to further violate human rights for example by raping women and defiling young girls, abducting children, looting places among others hence making the troops difficult to control. The limited range of the security sector service delivery mainly in the capital city Juba hence 90% of the disputes are

³⁵ Andreas Hirblinger and Sara de Simone, 'What is tribalism and why does it matter in South Sudan?' 2013, published on 24th December 2013, African Arguments <https://africanarguments.org/2013/12/24/what-is-tribalism-and-why-does-it-matter-in-south-sudan-by-andreas-hirblinger-and-sara-de-simone/>, accessed on 27th May 2019,

³⁶ Global South Development Magazine, 'Causes of conflict in South Sudan; oil & Weak Institutions' published in 2018, <https://www.gsmagazine.org> accessed on 27th May 2019,

³⁷ Bol Khan, 'The 2013 Juba Nuer massacre: The Root causes & end of South Sudan's current conflict' 2016 <https://paanlwel.com> last visited on 2016,

resolved through traditional justice systems³⁸ these some are most times less effective leading people to take justice into their own hands hence escalating war due to lack of a formal institutional oversight which causes gross human rights violations.

The past rift between the Dinka and Nuer is as well a root cause of recurring conflict even though it happened a quarter of a century ago, the event remains a memory for the two tribes. This occurred where despite the fact that the two tribes fought side by side against the central government in Khartoum for decades, the Nuer broke away in a critical phase of the war and switched sides to ally with the central government and killed over 2000 Dinka civilians in the town of Bor in what was known as the Bor massacre³⁹. This factor still puts the two tribes at loggerheads.

Impunity is as well a cause of the recurring conflict in South Sudan. The exemption of the parties responsible against crimes against humanity or human rights violations from facing the consequences of their actions has caused the people to lack trust in the rule of law hence deliberately disobeying the law. Rapes, gang rapes, sexual mutilation, killing, sexual slavery have a commonplace in South Sudan and there is no doubt that these crimes are persistent because impunity is so entrenched that every kind of norm is broken⁴⁰. These rights are violated by both civilians and the “supposed to be” law enforcers hence recurring conflict and violation of human rights because the people in charge of enforcing the law are above the law.

³⁸ Institute For Peace and Security studies, Addis Abba University; South Sudan Conflict Insight August 2018, vol2 https://www.africaportal.org/documents/18337/south_sudan_conflict_insight_final.pdf, accessed on 7th June 2019,

³⁹ Aziza Geleta Dessalegn, 'The Cause and Consequence of conflict in South Sudan' January 2017 <http://www.academicresearchjournals.org/IJPSD/Index.html> Accepted on 2 January 2017,

⁴⁰ UN Human Rights Council, 'Outraged by renewed fighting and continuing human rights violations in South Sudan' <https://reliefweb.int> last visited 20th February 2019,

2.2 Impact of the Recurring Civil War in South Sudan

2.2.1 Human Rights violations as an impact on the recurring civil war

The greatest impact of any war is the massive loss of lives of people living within hence South Sudan is no exception. The recurring civil war has lost very many lives of both civilians and soldiers. Civilians have been systematically targeted in their homes, towns, villages, churches, hospitals, mosques and UN compounds where they sought refuge⁴¹. Threatening remarks by the president accompanied with a number of slayings of journalists for example late Peter Julius Moi killed on 19 August 2015 a reporter for South Sudan corporate weekly⁴² has been condemned and caused fear upon the media to stop reporting on government actions and caused others to stop reporting entirely, for example, the Nhial Bol Aken, editor and chief of "The Citizen newspaper" who quit journalism because of threats from the government⁴³.

This has caused restriction of the right to freedom of expression and association due to fear of their lives thus providing grounds for further violations because of impunity. Furthermore, the massacres are by the mainly targeted along ethnic lines to the Dinka Nuer and Shilluk tribes. A survivor of the massacre described how soldiers held 300 men in crowded rooms in the army barracks and fired guns through the windows killing most the people in the room and leaving the survivors pretending to be dead⁴⁴.

Women and children are victims of war as they are subjected to traumatic experiences during the war for example rape. Rape has been recognized as a crime against humanity by the International Criminal Tribunal of Rwanda and has been given a wider definition to mean "A physical invasion of a sexual

⁴¹ South Sudan: Civilians killed, and gang raped as ethnically motivated violence spirals and famine looms www.amnesty.org last visited 30 May 2019,

⁴² Daily Nation: 'South Sudan journalist slain after Salva Kiir's threat against reporters' published on 21st of August 2015, <https://www.nation.co.ke> accessed on the 21st of May 2019,

⁴³ Ibid

⁴⁴ Ibid

nature committed on a person under circumstances which are coercive”⁴⁵ For example one woman describes how her 10-year-old sister in law was raped by 10 men in Gondor, LEER County, and another woman recounted how she was among 18 women gang-raped by nine government soldiers in plop amidst three months of pregnancy causing her a miscarriage, and large wooden sticks were forced inside the vaginas of those who refused to be raped⁴⁶. Furthermore, Foreign Aid workers have as well been victims of rape by government and little is done to hold the men in uniform accountable for this sexual violence. Despite the September 12th peace agreement, gender-based violence is still on the rise as rape cases and gang rapes are still the order of the day by both civilians and soldiers. There have been attacks of rape against women and children of about 150 including both children and elderly travelling to and from to get food from a distribution site in the north of the country⁴⁷.

The recurring civil war in South Sudan has created fertile ground for the recruitment of children in the armed forces. There has been an estimate of 19000 children associated with armed forces according to UNICEF who have further facilitated the release of 900 children from the armed groups and forces⁴⁸. The recruitment of child soldiers in contrast with the laws of South Sudan i.e. the child act 2008 of South Sudan which states that children under the age of 18 cannot be used as parties to a conflict⁴⁹. However, this is usually through the military invasion of schools which put the education of the children at a standstill and none of the responsible parties is held accountable for these human rights violations. Other violations against Children amidst the war

⁴⁵ The Prosecutor v Jean-Paul Akayesu (judgment), ICTR-96-4-A, international tribunal for Rwanda (ICTR), 1 June 2001 <https://www.refworld.org/cases/ICTR4084f42f4.html> accessed 28 June 2019,

⁴⁶ Daily Nation: ‘South Sudan journalist slain after Salva Kiir’s threat against reporters’ <https://www.nation.co.ke> last visited 21 August 2015,

⁴⁷ South Sudan: Recent sexual violence Fits a Dismal Pattern Even after the latest peace deal, continuing crimes underscore the need for accountability <https://www.usip.org> last visited 21 February 2019,

⁴⁸ Child soldiers international <https://www.childsoldiers.org> last visited May 2019,

⁴⁹ The Child Act 2008 s.2,

include killings, sexual violence, and attacks on schools, abductions and denial of humanitarian access⁵⁰. At least 20 children were abducted during tribal clashes between the Toposa and Didinga and thirteen victims are still missing⁵¹.

Arbitrary detentions and torture are as well a result of the recurring civil war in South Sudan. The Government security forces especially the National security service (NSS) have detained critics, government opponents, human rights activists and academics without charge⁵². For example, lawyer Dong Samuel and opposition leader Aggrey Idris who was abducted in Nairobi, Kenya and resurfaced in national security headquarters later that month⁵³, however, no investigations upon their disappearance or detention were conducted. Foreign Aid workers are as well victims of abductions and detainments, for example, two UN staff Anthony Nyero and James Lual, who were held in NSS riverside detention facility in Juba 2016 remained unknown⁵⁴. This violation is contrary to the Transitional Constitution of the Republic of South Sudan 2011 which provides for any person arrested to be informed of the reasons for his or her arrest and is entitled to a fair hearing⁵⁵. Other detentions were carried out in Nimule and the surrounding villages as the civilians were accused of supporting Martin Kenyi a senior South Sudanese officer who defected to join Riak Machar in 2014⁵⁶. Furthermore, a report to the human rights office and UN mission in South Sudan has documented over 900 civilians abducted in over 28 villages⁵⁷.

⁵⁰ Akim Mugisa, 'The Niles, South Sudanese Soldiers: "We are not soldiers"' www.theniles.org published 24 June 2016

⁵¹ *ibid*

⁵² Human Rights Watch, World Report 2019: South Sudan events of 2018 www.hrw.org last visited 27 June 2019

⁵³ *ibid*

⁵⁴ *ibid*

⁵⁵ The Transitional Constitution of the Republic of South Sudan, 2011, Art. 19

<https://www.ilo.org/dyn/natlex/docs/monograph/90704/116697/f>, accessed on the 24th of May 2019,

⁵⁶ Human Rights Watch, World Report 2019: South Sudan events of 2018 www.hrw.org, accessed on 28 June 2019,

⁵⁷ Africanews.com 'South Sudan: new report of human rights abuses' www.google.com, accessed on 28 June 2019,

However, not only do the soldiers subject these victims to arbitrary arrests but it is accompanied by torture both physical and emotional. The authorities have tortured and ill-treated people to the point of death. This is contrary to the provision of the laws of South Sudan as the transitional constitution of the Republic of South Sudan provides that no person shall be subjected to any form of torture or degrading inhuman treatment⁵⁸. People in South Sudan have been subjected to arrest and imaginable suffering sometimes leading to death at the hands of these government security forces because of their different political and ethnic affiliations⁵⁹. Some of the forms of torture these detainees are subjected to include lack of clean and healthy water, food, severe beatings to the point of death among others. Former detainees mentioned that they were made to drink water out of the toilet and defecate and urinate in front of each other⁶⁰, while in detainment, upon suspicions of misbehaviour, the drunk soldiers would beat the victims and some were tortured with electricity to a point of people collapsing⁶¹.

Another enormous impact of the recurring South Sudan civil war is the displacement of the people of South Sudan and the displacement has occurred both internally and externally. South Sudan is facing one of the largest displacement crises in the world and the ongoing instability and lack of enough planning remain a dangerous prospect⁶². Nearly 4.5 million South Sudanese have been displaced since civil war broke out in 2013 and this has occurred both internally within the country and as refugees in the surrounding countries⁶³.

⁵⁸ The Transitional Constitution of the Republic of South Sudan 2011, art 18

⁵⁹ Seif Magango, Amnesty international Deputy Director for East Africa, the horn and the great lakes: Arbitrary Arrests, torture of detainees despite repeated promises <https://www.amnesty.org> last visited 4th September 2018,

⁶⁰ *ibid*

⁶¹ *ibid*

⁶² John Campbell, 'Despite peace deal, Too dangerous for South Sudan IDPs to return home' <https://www.cfr.org> last visited 21 December 2018,

⁶³ *ibid*

Furthermore, the internally displaced people are at risk of disease outbreaks because of poor hygiene and sanitation. The latest developments on displacements include 10518 people who were displaced between 16th February and 22 March from villages of Lasu and Mugwo to Yei in central equatorial as a result of the conflict⁶⁴, 21000 people who were displaced from 01 May 13 May from Nachumajori area (Jonglei) to Mogos and Karkomuge areas (eastern equatorial) as a result of inter-communal clashes⁶⁵ among others. On the other hand, South Sudanese seeking refuge outside the borders of the country as of 15th May 2019 is an estimate of 2,303,295 in the neighbouring countries⁶⁶. The countries include Uganda, Ethiopia, Sudan, DRC, and Kenya among others.

In Uganda, the population of refugees as of 30th April 2019 is a total of 815,831 people⁶⁷ and the camps are in the areas of Adjumani, Kiryandongo, Arua and Kampala. Most of these camps are designed to hold over 3000 people only but the number of refugees is so overwhelming that some camps like the Dzaipi settlement camp have over 25,000 people⁶⁸. However, despite being displaced, these refugees have tried to make ends meet through engaging in agriculture⁶⁹.

On the other hand, Ethiopia has about 272,000 refugees from South Sudan living in the Gambela region of Ethiopia, as of April 2016⁷⁰ and most of them live in the camps of Pugnido, Tierkidi, Kule, Jewi, and Leitchour camp with Pugnido camp having the highest number of 62,000 people⁷¹.

⁶⁴ Office of the Coordination of Humanitarian Affairs (OCHA), '2019 South Sudan Humanitarian Needs Overview', <https://reliefweb.int> last visited 17th May 2019,

⁶⁵ Internal displacement monitoring center, South Sudan, www.internal-displacement.org last visited 06 May 2019,

⁶⁶ Operation Portal, Refugee Situations, Refugees and asylum-seekers from South Sudan <https://data2.unhcr.org>, last updated 31 May 2019,

⁶⁷ *ibid*

⁶⁸ 'Caring for South Sudan in Kenya, Uganda, Ethiopia' Doctors without borders USA. Last visited in January 2014,

⁶⁹ "Uganda South Sudanese refugees turn to agriculture for survival" Sudantribune.com last visited 7th March 2016,

⁷⁰ Ethiopia accuses South Sudan of killing 140 <https://www.voanews.com> last visited 17th April 2016,

⁷¹ UNHCR Situation South Sudan <https://data2.unhcr.org> last updated 31 May 2019,

In Kenya, there are 44,000 South Sudanese refugees in Kenya's Kakuma refugee camp expanded by almost half⁷². This is because of the overwhelming numbers however thanks to aid and support from people, the UNHCR is on the ground coordinating a response to provide care and shelter for those displaced by the recurring conflict.

Table 1.

The table below summarizes the population of refugees in neighboring countries of South Sudan because of the recurring civil war.

LOCATION NAME	SOURCE	DATE	POPULATION
SUDAN	UNHCR, IOM, SRCS, COR, HAC	15 MAY 2019	849,008
UGANDA	OFFICE OF THE PRIME MINISTER	30 APRIL 2019	815,831
ETHIOPIA	UNHCR	31 AUGUST 2018	422,240
KENYA	UNHCR	15 FEBRUARY 2019	116,211
DEMOCRATIC REPUBLIC OF CONGO	UNHCR	30 APRIL 2019	100,005

Source: UNHCR: Situation South Sudan, published on 31st of May 2019

<https://data2.unhcr.org>, accessed 28 June 2019

⁷²Edith Honan, UN expands refugee camps in Kenya as South Sudan conflict rages <https://www.reuters.com> last visited 21st June 2015,

2.3 key Actors in the recurring South Sudan civil war

There are several actors involved in the recurring civil war in South Sudan and these range from national and local authorities, parties active combat, ex-combatants and their dependents, and those positively or negatively affected by the war. However, this research shall discuss mainly four key actors.

2.3.1 The Sudan People's Liberation Army (SPLA)

SPLA is the Army of the Republic of South Sudan. It was founded during the guerrilla movement against the government of Sudan in 1983, it was led by the late Dr. John Garang and following his death, Salva Kiir was named new commander in chief of SPLA⁷³. However, South Sudan president Salva Kiir changed the name of the army to South Sudan Defense Force (SSDF)⁷⁴. The interest of the SPLM-IG is to crush SPLM-IO lead by Riek Machar mainly because of political struggles between the two leaders. However, upon realization of the difficulty to destroy Machar, the new initiative is to stay in power at all costs⁷⁵. The army is a key actor as it has the capacity to bring peace through reconciliation or to prolong the war.

2.3.2 The Sudan People's Liberation Movement in Opposition (SPLM-IO)

This movement is led by Riek Machar and it is an opposition to the government, its goal is to fight the government to be president of South Sudan. The political struggles for power have continued to exist between the SPLM-IG and SPLM-IO thus making the leader of the opposition movement Riek Machar a key factor with the capacity to bring further instability or stability in South Sudan⁷⁶.

⁷³ Richard Rands 'In Need of Review: SPLA Transformation in 2006-10 and Beyond'

www.smallarmssurveysudan.org published in November 2010, accessed 27 June 2019,

⁷⁴ Africa News "South Sudan president restructures Army, changes its name to SSDF" africanews.com retrieved 1st April 2018,

⁷⁵ Tethloach Ruey, 'The south Sudanese conflict analysis; conflict profile, causes, actors and dynamics', Doctoral Thesis, 2017, <https://www.grin.com/document/411993>, accessed on the 24th of May 2019,

⁷⁶ *ibid*

Hence peace shall prevail through coming into terms by the two leaders for a common goal to build the nation.

2.3.2 UN Agencies, Regional and International Organizations

These include African Union (AU), Intergovernmental Authority on Development (IGAD) and the United Nations. These actors engage in mediation however they are not neutral. For example, IGAD and AU were not neutral as they were involved in the detention of Riek Machar thus their mediation is biased⁷⁷. However these actors' main goal is to bring peace and stabilize the country however they are being frustrated by the surrounding circumstances. They have the capacity to bring peace in the country if powers are exercised effectively however have been prevented by international politics like China and Russia who voted the UN security council resolutions against the government⁷⁸.

2.3.3 Relationship Between the key Actors

For South Sudan to achieve a peaceful atmosphere, there must exist collaboration between the key actors towards a common goal. The combined effort of these actors, however, either of the two leaders must submit fully to the other to reach an understanding that will benefit the country and its people at large. Furthermore the National army has to be submerged into one strong army, this is because of the belief that even though the two parties come to an agreement but retain their individual army, it's only a matter of time before another conflict breaks out since the different supporters (army) are both armed and programmed for war.

2.4 Peace Initiatives to the recurring civil war in South Sudan

There have been successful attempts at peace negotiations, the most serious being the current in Addis Abba, Ethiopia the Revitalized Agreement on the

⁷⁷ ibid

⁷⁸ ibid

Resolution of the conflict in South Sudan (R-ARCSS) where president Salva Kiir, rebel leader Riek Machar inked the peace deal in September 2018⁷⁹ under the supervision of IGAD. The peace agreement is to initiate a permanent constitution-making process that shall be based on the supremacy of the people, peace and stability among others. As a result of this peace deal, Riek Machar who fled the country in 2016 comes back as the first vice president, alongside four other vice presidents and a reconstituted government to be established in May 2019⁸⁰.

However, the formation of the united government has been subjected to delays by the opposition forces. Riek Machar who was expected to return to Juba by 12th May 2019 and join a power-sharing government as vice president with President Salva Kiir after the signing of the agreement last year in September 2018 is not ready to return to Juba and intends on postponing the formation of a unity government⁸¹.

The latest peace deal was as well overseen by former President of the Republic of Sudan who ceased to have power on 11th April 2019. Omar al Bashir was a major broker to the political process of this peace deal⁸² hence his removal has left questions on what is next for South Sudan however the president of South Sudan seems to offer to back to whoever is in charge⁸³. Therefore, the new peace agreement is an ounce of hope for the people of South Sudan to a secure future of peace and stability.

Despite much optimism in this deal to offer a promising end to the young nation's conflict, a lot still remains to be done which includes stakeholders, for

⁷⁹ Aljazeera, 'South Sudan rivals to hold peace talks to salvage peace deals' aljazeera.com last visited 2nd May 2019,

⁸⁰ Andrew Edward Tchier, University of Essex 'Why the latest peace deal won't hold' the conversation.com last visited 13th March 2019,

⁸¹ ibid

⁸² Mathew Lerichie, 'What al Bashir's removal means for South Sudan's fragile peace' <https://africanarguments.org> accessed 30 April 2019,

⁸³ ibid

example, IGAD, AU, UN and other state and non-state actors to actively support the peace process and the government and opposition must present a united front⁸⁴.

2.5 Conclusion

This chapter has first, examined the causes of recurring civil war in South Sudan. The chapter has also shown the war in South Sudan has a historic root cause corroborated with political struggles amidst ethnic differences. Secondly, this chapter has as well examined how the impact the recurring civil war has affected the people of South Sudan especially human rights violations and crimes against humanity. Thirdly, the key actors and their role and capacity to either fuel or stabilize the conflict were as well looked in to and lastly this chapter considered the peace initiatives attempted to bring peace and stability in South Sudan.

⁸⁴ Yohannes Gedamu, South Sudan peace deal offers promising end to conflict. But challenges still remain' <https://www.google.com> last visited 24th February 2019,

CHAPTER THREE

LEGAL REGIME GOVERNING HUMAN RIGHTS

3.0 INTRODUCTION

This chapter analyses the domestic, regional, as well as international perspectives and legal provisions governing human rights. The rule of law upholds the enjoyment of all human rights hence the importance to be examined.

At the national level, the laws that govern human rights in South Sudan include the Transitional Constitution of South Sudan⁸⁵, the Interim constitution 2005⁸⁶, the Penal Code act⁸⁷, Human rights commission act⁸⁸, the child act⁸⁹, the Police service Act⁹⁰, SPLA army Act⁹¹.

South Sudan has equally ratified a number of African regional instruments including the African Charter on Human and Peoples Rights (ACHPR)⁹², the African Charter on the rights and welfare of a child (ACRWC)⁹³, the African Charter on Democracy Elections and Governance (ACDEG)⁹⁴ and the Protocol to the African Charter on People's Rights on the Rights of women in Africa⁹⁵ among others.

⁸⁵ The Transitional Constitution of the Republic of South Sudan, 2011 <https://www.ilo.org/dyn/natlex/docs/monograph/90704/116697/f>, accessed on 24 May 2019,

⁸⁶ The Interim Constitution of Southern Sudan, 2005(south Sudan), 5 December 2005, <https://www.refworld.org/docid/4ba74c4a2.html> (accessed 2 June 2019, entered into force 5 December 2005)

⁸⁷ The Penal Code Act, 2008, entered into force on the 22nd of August 2008, <https://www.wipo.int/laws> accessed 28 June 2019,

⁸⁸ The South Sudan Human Rights Commission Act, 2009 www.ssbala.org accessed on 30 May 2019

⁸⁹ The Child Act, No. 10 of 2008 adopted on 13th October 2008, <https://www.ilo.org> accessed 4 June 2019,

⁹⁰ The Southern Sudan Police service Act, 2009 <https://www.ilo.org>, accessed on 3 June 2019,

⁹¹ The Sudan's Peoples' Liberation Act, 2009 <https://www.ilo.org>, accessed 28 June 2019,

⁹² African Charter on Human and Peoples Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

⁹³ African Charter on the Rights and Welfare of a Child (adopted 1990, entered into force 1999)

⁹⁴ African Charter on Democracy Elections and Governance(adopted 30 January 2007 entered into force 15 February 2012)

⁹⁵ The Protocol to the African Charter on People's Rights on the Rights of Women in Africa(Maputo Protocol)(adopted 11 July 2003, entered into force 25 November 2005)

At the international level, South Sudan is also subject to the Human Rights standards contained in instruments such as the Geneva Convention 1949, Geneva Convention 1977 and its optional protocols⁹⁶, convention on the Rights of a Child (CRC)⁹⁷, optional protocol on the involvement of children in armed conflict⁹⁸, United Nations Convention against Torture and other cruel, inhuman or Degrading treatment or punishment (UNCAT)⁹⁹, UDHR¹⁰⁰, ICCPR¹⁰¹ among others. These provide guidelines and impose obligations on the member states in relation to human rights.

3.1 NATIONAL LEGAL FRAMEWORK

3.1.1. The Transitional Constitution of South Sudan 2011

The Transitional Constitution of South Sudan 2011 is the supreme law where all laws in South Sudan derive their authority¹⁰². It replaced the Interim Constitution of Southern Sudan, 2005 which was signed between the government of Sudan and the SPLM¹⁰³. Part two of the Transitional Constitution provides for the Bill of Rights, this lays down the rights of all citizens in South Sudan from which no derogation shall be made.

The constitution provides for the right to life and human dignity¹⁰⁴, and the integrity of the people, this as well applies to children. This means that despite the circumstances all persons including the authorities should ensure that

⁹⁶ Geneva Convention 1949 (adopted 1864)

⁹⁷ United Nations Convention on the Rights of a Child (adopted 20 November 1989, entered into force 2 September 1990)

⁹⁸ Optional Protocol on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002)

⁹⁹ United Nations Convention Against Torture (adopted 4 February 1987, entered into force 26 June 1987)

¹⁰⁰ Universal Declaration of Human Rights (adopted 10 December 1948) A/RES/217(III)A

¹⁰¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976)

¹⁰² The Transitional constitution of the Republic of South Sudan, 2011 <https://www.ilo.org/dyn/natlex/docs/monograph/90704/116697/f>, accessed on 24 May 2019, art 3

¹⁰³ The Interim Constitution of the Republic of South Sudan, 2005 <https://www.refworld.org/docid/4ba74c4a2.html> (accessed 2 June 2019, entered into force 5 December 2005)

¹⁰⁴ The Transitional constitution of the Republic of South Sudan, 2011

<https://www.ilo.org/dyn/natlex/docs/monograph/90704/116697/f>, accessed on 24 May 2019, art 3

ibid art 11

people's right to life is upheld and the proper channels are administered in serving justice. Furthermore, the constitution demands persons not to be subjected to any form of torture, cruel or inhuman degrading treatment or punishment¹⁰⁵ and most of the equality before law¹⁰⁶ despite one's status.

Also, the constitution guarantees the rights of children. Regarding this constitution, children shall be persons below the age of 18 years¹⁰⁷. Children have a right to life and survival, and to be protected from abduction and trafficking¹⁰⁸. However, amidst conflict, the rights of children are violated as the rate of child abduction is high because these children are used in armed conflict to serve as active soldiers regardless of their gender¹⁰⁹.

Furthermore, according to the constitution, any person arrested has a right to be informed at the time of the arrest, of the reasons for his or her arrest and every accused is entitled to a fair trial¹¹⁰. However, despite this provision, during the conflict, people's rights such as the right to a fair hearing are violated as many people are detained without any justification especially journalists who try to report the injustices taking place hence violating their rights to freedom of expression and media¹¹¹.

During the war, human rights violations are at the peak and the rule of law is disregarded. Rule of law connotes a state in which all without exception, are subject to the law¹¹² and no one is above the law hence government must follow the law. Therefore, it is clear according to that these human rights violations are unconstitutional as they are non-derogable.

¹⁰⁵ Ibid art 18

¹⁰⁶ Ibid art 14

¹⁰⁷ Ibid art 17

¹⁰⁸ Ibid art 17

¹⁰⁹ Children and Armed Conflict in South Sudan-Report of the Secretary-General (S/2018/865) <https://reliefweb.int> last visited 16 October 2018,

¹¹⁰ The Transitional Constitution of South Sudan, 2011, art 19

¹¹¹ Freedom of expression essential for peace keeping in South Sudan-UN Report <https://unmiss.unmissions.org>, last visited 22 February 2018,

¹¹² Godfrey Musila 'Absence of Rule of Law and the Role of Customary Courts in Stabilizing South Sudan' <https://reliefweb.int>, accessed 30 May 2018,

3.1.2 The Penal Code Act 2008

The penal code act 2008 is the law that provides for offences and their appropriate punishments in South Sudan¹¹³. It prohibits violations of human rights in all circles. Chapter XVI of the act provides for offences related to death and their penalties. The offence of murder¹¹⁴ is prohibited by the act hence any person whoever causes the death of another person with the intention of causing death or knowing that death would be a likely outcome is liable to imprisonment for life or death¹¹⁵. This is further extended to attempted murder thus intention to kill although the death does not occur is an offence with a punishment of imprisonment not exceeding ten years¹¹⁶.

During war or conflict, loss of life is almost inevitable hence South Sudan as a new country is facing recurring wars, the recurring civil war has led to over 400,000 excess deaths since it began in 2013¹¹⁷. This has caused the need for an urgent response to the war.

The penal code act as well forbids voluntarily causing or attempting to cause a pregnant woman to lose a child hence such a person is subjected to imprisonment not exceeding three years¹¹⁸ although there have been a number of cases of pregnant women in the war being subjected to rape or gang rapes causing them to miscarry¹¹⁹

With regard to the Rome Statute, rape is a weapon of war and hence violates the right to life and dignity of a human being. Rape is a crime under the penal code

¹¹³ The penal code act 2008 <https://www.wipo.int/laws> (accessed 28 June 2019, entered into force 22 August 2008), s.3

¹¹⁴ Ibid s.206

¹¹⁵ Ibid s.207

¹¹⁶ Ibid s.208

¹¹⁷ London School of Hygiene and Tropical Medicine, 'War in South Sudan estimated to almost 400,000 excess deaths' <https://www.lshtm.ac.uk> last visited 26 September 2018

¹¹⁸ The Penal code Act, 2008 s.216

¹¹⁹ The Associated Press, '125 Women and Girls Seeking Food Were Raped and Whipped in South Sudan' [nytimes.com](https://www.nytimes.com) last visited 2 December 2018,

of South Sudan as well as under the Rome Statute¹²⁰. Equally, the penal code Act prohibits all forms of violence that are sexual, physical, and emotional (rape, defilement, unnatural offences, assault etc.) However, we have seen many cases of rape and violence (physical, sexual, and emotional) suffered by women and girls as well as violence in all its form violates the right to life, dignity, freedom from torture, cruel, inhuman degrading treatment and punishment, right to equality and non-discrimination.

Chapter XVII of the South Sudan penal code act prohibits offences relating to bodily injury and intimidation. Despite people losing their lives amidst the recurring civil war in South Sudan, a large number of people are left with grievous bodily injuries. The act outlaws' assault and the use of criminal force to wrongfully confine persons¹²¹ and provides a penalty for imprisonment not exceeding one year. It as well prohibits voluntarily causing hurt upon persons using deadly weapons¹²². The most form of assault has been of a sexual nature accompanied by beatings and torture. Despite the signing of the peace deal in September 2018, at least 175 women and girls have been raped or suffered other sexual and physical violence between September and December 2018¹²³. Rape is under offences against morality in the penal code¹²⁴ and detaining a person for the purposes of sexual conduct¹²⁵ is prohibited by the law and awarded a penalty of imprisonment not exceeding one year. Many women are detained for the purpose of engaging in unlawful sexual conduct and upon refusal are subjected to torture and forceful insertion of sticks into their private parts and some are shot dead as a result of refusing to abide.

¹²⁰ Rome Statute of the International Criminal Court (last amended 2010) (adopted on 17 July, 1998 entered into force 1 July, 2002) 2187 UNTS 90 art 7(g)

¹²¹ The Penal Code Act 2008 <https://www.wipo.int/laws/>, (accessed 28 June 2019, entered into force 22 August 2008), s.229

¹²² Ibid s.234

¹²³ UN News, 'Endemic sexual violence surging in South Sudan: UN Human Rights office' <https://news.un.org> last visited 15 February 2019,

¹²⁴ The Penal Code Act, 2008 <https://www.wipo.int/laws/>, (accessed 28 June 2019, entered into force 22 August 2008), s.247

¹²⁵ Ibid s.256

Furthermore, the Penal Code Act condemns cruelty to children, and this is always to apply especially during wars children should be given priority to safety but on the contrary, they are subjected to all forms of human rights violations. South Sudan being subjected to recurring civil war definitely puts the lives of children at risk there for the rule of law has to be strongly enforced to condemn this evil. Cruelty to children is an offence in the Penal Code Act and hence whoever is in charge or care of a child under the age of eighteen years subjects the child to unnecessary suffering is liable to imprisonment not exceeding one year.

Children during the war are subjected to abduction in order to use them as child soldiers although abduction is an offence in the penal code, the act further prohibits abduction with intent to murder¹²⁶ or cause grievous hurt¹²⁷ and awards a punishment not exceeding fourteen years. With regard to this, the state is a secondary parent to a child hence it should take all responsibility to ensure their safety is paramount by enforcing the provisions of the law and effecting punishment to those who violate such laws.

The penal code act, as well as condemns damage or destruction of property and any person convicted for such, is liable to imprisonment not exceeding one year¹²⁸. Human rights watch report has as well greatly condemned the vandalism and destruction of property of civilians mostly done by the government forces which has affected mostly the disabled and elderly as the most vulnerable during these attacks¹²⁹.

¹²⁶ Ibid s.271

¹²⁷ Ibid s.274

¹²⁸ Ibid s.315

¹²⁹ Human Rights Watch, 'World Report 2019:South Sudan Events of 2018' <https://www.hrw.org> last visited 8 December 2018,

3.1.3 The Child Act 2008

The Child Act majorly provides for the care, protection and maintenance of children and looks out for the best interests of a child¹³⁰. In relation to human rights, the act provides and enhances the rights of children, for example, children have a right to life, survival and development and it is the responsibility of the family and the government to promote and care for the survival of a child¹³¹, right to protection from torture, cruel or inhuman degrading treatment¹³², rights of a female child to be protected from sexual abuse and exploitation and gender-based violence including rape etc.¹³³

The act as well provides for minimum age of voluntary recruitment into the armed forces to be eighteen years of age and requires the government to provide protection, rehabilitation, care, recovery and reintegration into normal social life for children formerly associated with armed conflict including children from regular and other armed groups and children victims of armed conflict, having due regard to the special needs of girls and their dependents.

Furthermore, where armed conflict occurs, the Government shall ensure that children's rights are protected in accordance with the provisions of this Act and international humanitarian law¹³⁴ and the penalty for persons who recruit children to an armed force shall be imprisonment for years not exceeding 10 years.

Chapter VIII of the Penal Code Act provides for trafficking and abduction of a child and its consequences. It provides that Any person who takes part in any transaction, the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control

¹³⁰ The Child Act (act no.10 of 2008) <https://www.ilo.org> (accessed 4 June 2019, adopted on 13 October 2008)

s.6

¹³¹ Ibid s.12

¹³² Ibid s.21

¹³³ Ibid s.26

¹³⁴ Ibid s.31(1),(2),(3),(4)

of a child for any valuable consideration, commits the offence of trafficking and shall on conviction, be sentenced to imprisonment for a term not exceeding ten years¹³⁵.

However, amidst war or conflict many of these children's rights are not upheld hence they are violated. The recurring civil war in South Sudan has caused severe violations of children rights to include loss of lives, torture, recruiting children as well as subjected children to violence (physical, emotional, and sexual violence), especially towards the female children given their gender. According to the UN report on 30 October 2018, South Sudan has one of the largest number of child soldiers in the world as there are still 19,000 child children in the armed forces in South Sudan despite the official release of 128 children (90 boys and 38 girls) bringing the total of released children to 900¹³⁶.

A report by Aljazeera on a story of a child who was recruited in the army explained that the war broke out on his way to school hence he joined the armed forces with no option however he mentioned that "the soldiers on both sides it's not them they could shake hands. But the big people make them fight"¹³⁷ this clearly examines that for peace to prevail in South Sudan it needs to begin with the leaders and law enforcers.

Therefore, these scenarios reflect a society in which human rights abuses are ramped perpetuated by both the government and rebels. As such, there is a need for upholding the rule of law and implementation of the commitments made by the South Sudan government during the ratification of the international human rights instruments. Respect for the rule of law can be used as a weapon of peacebuilding in South Sudan.

¹³⁵ Ibid s.119

¹³⁶ Andrea Campeanu & Patricia Huon, 'Child soldiers of South Sudan' <https://www.aljazeera.com> published 30 October 2018,

¹³⁷ Ibid

3.1.4 Sudan People's Liberation Movement Act, 2009

The SPLM Act regulates the armed forces of South Sudan. The purpose of this Act is to provide for the establishment, governance and discipline of the SPLA and for purposes connected therewith and incidental thereto¹³⁸. This act provides for the president as the commander in chief¹³⁹ and the mission of the army to protect the Comprehensive Peace Agreement, defend the Constitution of Southern Sudan, protect the people of Southern Sudan, secure the territorial integrity of Southern Sudan, undertake responsibility for the defence of Southern Sudan against internal and external threats and aggression, and be involved in addressing specified emergencies, participate in reconstruction activities, assist in disaster relief whenever directed by the Government of Southern Sudan, this Act and any other law in force in Southern Sudan¹⁴⁰. With regard to this, it is believed the army is to protect the people at all times however this has not been the case in South Sudan as they do the contrary to the protection and engage in violating the rights of the people which amount to war crimes.

The UN Commission on Human Rights in South Sudan's report on 20 February 2019 determined that there were reasonable grounds to believe that the Sudan People's Liberation Army has committed serious violations of Human Rights and international humanitarian law including rape, abductions, sexual violence, looting and pillaging villages and conscripting children into the armed force¹⁴¹. Therefore, in order for peace to prevail in South Sudan, people must be held accountable for past crimes committed.

¹³⁸ The Sudan People's Liberation Army, 2009 <https://www.ilo.org> (accessed 28 June 2019)

s.3

¹³⁹ Ibid s.14

¹⁴⁰ Ibid s.8 (1),(2),(3),(4),(5),(6)

¹⁴¹ Caitlin Behles, 'UN says Human Rights Violations in South Sudan may Amount to War Crimes' <https://www.asil.org> published 20 February 2019;

Some attempts to hold soldiers accountable have been undertaken for example when the military court sentenced 10 soldiers to jail terms ranging from seven years to life for a rampage in which a journalist was killed and foreign aid workers raped and the government ordered to pay each rape survivor \$4000 in compensation¹⁴². This was the first time soldiers have been sentenced for committing atrocities in South Sudan.

The rule of law applies to all persons irrespective of their position hence it includes the commander in chief and the army as well. Therefore, in order for peace to prevail the highest level of discipline is required of the army in the code of conduct and above the rule law should be enforced as no one is above the law.

3.1.5 The Southern Sudan Police Service Act, 2009

The Police Act, 2009 provides for the duties and obligation of the police to respect the dignity of all citizens¹⁴³. The functions of police are as well to include prevention and detection of crime¹⁴⁴, ensure security of Southern Sudan and protecting people's lives and properties¹⁴⁵, carry out crime prevention awareness campaign among the public to enhance their contribution to the maintenance of security¹⁴⁶, carry out investigations or any other criminal procedures pursuant to the provisions of the Code of Criminal Procedure Act, 2008 or any other law¹⁴⁷, ensure safety of citizens, property and public establishments¹⁴⁸ among others.

The police, therefore, is supposed to be for the people and not against the people, the people of South Sudan are expected to trust the police officers in carrying out their duties however to the contrary, the police is instead feared by

¹⁴² BBC, 'South Sudan Soldiers jailed for rape and murder' www.bbc.com last visited 6 September 2018,

¹⁴³ The Southern Sudan Police Service Act, 2009 <https://www.ilo.org> (accessed on 3 June 2019), s.9(3)

¹⁴⁴ Ibid s.7(a)

¹⁴⁵ Ibid s.7(b)

¹⁴⁶ Ibid s.7(e)

¹⁴⁷ Ibid s.7(f)

¹⁴⁸ Ibid s.7(h)

the people and as a result this causes higher crime rates and human rights violation because some of these violations are not reported and some are committed by the people the citizens entrust their safety upon.

The police are one of the major actors for peacebuilding in South Sudan as their role is to protect the rights of the citizens and prevent human rights violations during and in the absence of war.

3.1.6 South Sudan Human Rights Commission Act, 2009

The Human Rights Commission in South Sudan was established by the Human Rights Council on 23 March 2016¹⁴⁹ and it is governed by the South Sudan Human Rights Commission Act whose major role is to monitor the application and enforcement of the rights and freedoms enshrined in the ICSS and ratified international and regional human rights instruments, to investigate complaints against violations of human rights, to offer advice to government organs on any issues relating to human rights¹⁵⁰. The Commission is bequeathed with power to investigate any allegations, facts, conditions, practices or matters, which it considers necessary or proper to determine whether any person is engaged in or has violated human rights¹⁵¹ and persons have the duty to report any human rights violations hence any person with knowledge of any violations doesn't report to the commission commits an offence¹⁵². However, persons who take the initiative to report human rights violations are provided immunity¹⁵³.

¹⁴⁹ UN Human Rights Council; Commission on Human Rights in South Sudan <https://www.ohchr.org> last visited on June 2019,

¹⁵⁰ South Sudan Human Rights Commission Act, 2009 s.3 www.ssbala.org (accessed on 30 May 2019),

¹⁵¹ Ibid s.28

¹⁵² Ibid s.41(1)

¹⁵³ Ibid s.41(2)

The commission's mandate is to determine and report abuse and violations of human rights with a view of ending impunity hence to ensure that people who commit gross violations are accountable for their actions¹⁵⁴.

The Report of the Commission on Human Rights in South Sudan to the Human Rights Council during the fourth session (25 February -22march 2019 agenda item 4) concluded that despite the signing of the peace agreement, violations including rape and sexual violence continue to occur which may amount to international crimes, including war crimes and crimes against humanity and Hence the commission points out that the government has a duty to investigate and prosecute those crimes committed by the SPLA, National Security service and wholly government forces and provide reparation to the victims¹⁵⁵.

The commission has looked into various allegations and provided recommendations to the government upon them. These include; the ongoing war in Yei river area in central equatorial between forces of the government and National Salvation Front(NSA) which has led to the displacement of thousands of civilians, attacks on villages, killings of civilians, and raping of women and girls. The commission has recommended that the GOSS and the international community implement the resolutions of the Revitalized peace agreement without delay and to silence the guns because the people of South Sudan deserve a chance to build their lives in peace and security¹⁵⁶. The commission as well has received reports of male victims of sexual violence which is usually under-reported than against women. Reports include incidents of castration and sexual mutilation, allegations of sexual exploitation among UN peacekeepers that involve 18 alleged UNMISS perpetrators which were registered¹⁵⁷. There is

¹⁵⁴ UN Human Rights Council; Commission on Human Rights in South Sudan <https://www.ohchr.org> accessed on 2 June 2019,

¹⁵⁵ Report of the Commission on Human Rights in South Sudan, <https://www.ohchr.org> A_HRC_40_69 accessed on 2 June 2019,

¹⁵⁶ Yasmin Sooka & Andrew Clapham Commission on Human Rights in South Sudan: Statement to the Media, Nairobi/Geneva, published 20 February 2019 <https://www.ohchr.org>, accessed on the 20th of June 2019,

¹⁵⁷ *ibid*

no doubt that these crimes are persistent as due to the recurring civil war in South Sudan because the perpetrators are not held accountable for these injustices.

3.2 REGIONAL LEVEL

3.2.1 The African Charter on Human and People's Rights, 1986

The ACHPR (Banjul Charter) is an international human rights instrument that intends to promote and protect Human Rights. The oversight and interpretation of the charter is a task of the African Commission on Human and Peoples rights which was set up in 1987 and has its headquarters in Banjul, Gambia. South Sudan is a signatory to the ACHPR hence subjected to it.

This charter provides for the right to equality and equal protection before the law¹⁵⁸, right to life¹⁵⁹, freedom from torture, cruel or degrading punishment¹⁶⁰, right to personal liberty and freedom from arbitrary arrests¹⁶¹. Furthermore, the charter provides for the duty of state parties to promote and ensure that these rights and freedoms are understood¹⁶².

These provisions make these human rights fundamental hence should not be violated by the member states. It seeks to protect the livelihood of all persons thus since South Sudan is a signatory, follow-ups are made by the African Commission on the recurring civil conflict in South Sudan and it strongly condemns these acts of violence constituting gross violations and abuses on the rights of people under the ACHPR and the rules of International Humanitarian Law¹⁶³.

¹⁵⁸ African Charter on Human and Peoples Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

¹⁵⁹ Ibid art 4

¹⁶⁰ Ibid art 5

¹⁶¹ Ibid art 6

¹⁶² Ibid art 25

¹⁶³ African Commission on Human and Peoples Rights; 'Press release on human rights violations in the South Sudan conflict' www.achpr.org last visited 12 July 2018,

3.2.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

The Maputo Protocol seeks to promote the rights of women in the African region. It guarantees comprehensive rights to women to take part in the political process, equality with men among others.

The protocol provides for the right to dignity¹⁶⁴, right to life, integrity, and security of the person¹⁶⁵, right to justice and equal protection¹⁶⁶, right to peace¹⁶⁷ and right to protection of women in armed conflict¹⁶⁸.

South Sudan ratified the Maputo protocol in 2017 hence becoming the 40th country to ratify the protocol out of the 54 African states as of 2017¹⁶⁹. Ratification of the Maputo protocol by South Sudan amidst the recurring conflict is of great essence as the women of South Sudan need have a say in the peace building of South Sudan and women are the most vulnerable persons to violence during war as they are harassed in different ways to include touching, being beaten, sexual abuse among others. Hence this protocol applies pressure on the government of South Sudan to ensure that women's rights, especially during armed conflict, being upheld.

3.2.3 African Charter on the Rights and Welfare of a Child (ACRWC)

The ACRWC seeks to promote the rights and welfare of the child in the African Region. The charter provides for the definition of child to mean any human being below the age of eighteen (18) years¹⁷⁰ and stresses the best interests of a

¹⁶⁴ The Protocol to the African Charter on People's Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005), art 3

¹⁶⁵ Ibid art 4

¹⁶⁶ Ibid art 8

¹⁶⁷ Ibid art 10

¹⁶⁸ Ibid art 11

¹⁶⁹ Joseph Oduha, 'South Sudan ratifies the Maputo protocol' (The East African) <https://www.theeastafrican.com.ke> accessed 13 July 2019,

¹⁷⁰ African Charter on the Rights and Welfare of a Child (adopted 1990, entered into force 1999) art 2

child to be of primary concern in any action concerning a child¹⁷¹. The ACRWC provided for child's right to life to be protected by the law¹⁷², right to protection against child abuse and torture¹⁷³, protection of a child from hostilities and recruitment in armed conflict¹⁷⁴, protection of a child from all forms of sexual exploitation and sexual abuse¹⁷⁵, and protection of a child from trafficking and abduction¹⁷⁶. However, these rights are often violated especially amidst war and South Sudan as a country facing recurring civil wars since its independence has been subjected children to several human rights violations without holding the parties responsible for these injustices accountable.

Children and women are the most vulnerable persons during war hence their interests should be prioritized amidst conflict however, on the contrary, they are subjected to violations and abuse.

The ratification of this charter by South Sudan is of great essence as it protects the rights of children with regard to human rights violations especially in a war tone country like South Sudan where the rate of abuses is required special attention and it is an important step of a commitment towards implementation.

3.3 INTERNATIONAL LEVEL

3.3.1 Universal Declaration of Human Rights (UDHR), 1948

The UDHR is a document that was created after World War II and has established enduring human rights principles upon all people and states hence becoming a central guiding force for the UN. The UDHR was designed to cover the entire spectrum of human rights, civil, and political, but also economic

¹⁷¹ Ibid art 4

¹⁷² Ibid art 5

¹⁷³ Ibid art 16

¹⁷⁴ Ibid art 22

¹⁷⁵ Ibid art 27

¹⁷⁶ Ibid art 29

social and cultural¹⁷⁷, the UDHR is not a treaty hence not legally binding on countries however it is an expression of the fundamental values shared the international community and has had a profound influence on the development of human rights law¹⁷⁸. Furthermore, the UDHR has given rise to a range of other international agreements which are legally binding on countries that ratify them¹⁷⁹. As a customary international law, all countries including South Sudan have an obligation to uphold the provisions of the UDHR. This document provides for the right to life¹⁸⁰, freedom from torture¹⁸¹, and a right to a remedy by a competent national tribunal for violation of the fundamental rights granted to him or her by the constitution or by the law¹⁸².

From the above, this international customary law puts restrictions on human rights abuses and violations hence binding states to provide victims of human rights abuses remedies for violation of their fundamental rights.

3.3.2 International Convention on Civil and Political Rights (ICCPR), 1976

The ICCPR provides for civil and political rights of member states thus South Sudan ratified to this convention hence subjected to it.

The convention provides for the inherent right to life to be protected by the law¹⁸³, the convention further provides that No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment¹⁸⁴ and for anyone

¹⁷⁷ Chandler Green '70 Years of Impact: Insight on the Universal Declaration of Human' <https://unfoundation.org> published 5 December 2018,

¹⁷⁸ Australian Human Rights Commission, 'What is the universal Declaration of Human Rights?' <https://www.humanrights.gov.au> last visited 6 June 2019,

¹⁷⁹ *ibid*

¹⁸⁰ Universal Declaration of Human Rights adopted 10 December 1948 art 3 Paris <http://www.un.org/en/universal-declaration-human-rights/> last visited 6 June 2019,

¹⁸¹ *Ibid* art 5

¹⁸² *Ibid* art 8

¹⁸³ International Covenant on Civil and Political Rights(adopted 16 December 1966, entered into force 23 March 1976) art 6

¹⁸⁴ *Ibid* art 7

subjected to torture to be awarded a remedy and that remedy should be enforced by competent authorities¹⁸⁵.

Therefore, the convention prohibits violations of human rights and member states are expected to strictly implement these provisions in their domestic laws and practices.

South Sudan ratifying this convention is a crucial step towards peacebuilding as it proves its determination for a peaceful nation. However besides ratification, the world's youngest nation has to take a step further to enforce these provisions because lack of enforcement yields zero results and the people of South Sudan shall continue to be subjected to human rights abuses if the persons responsible for past violations are not held accountable as well.

3.3.3 United Nations Convention against Torture (CAT)

The purpose of this convention is to promote universal respect for, and observance of, human rights and fundamental freedoms. The convention defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person¹⁸⁶. Furthermore, each state party shall take effective measures to prevent acts of torture and ensure that they are punishable¹⁸⁷. South Sudan ratified this convention on 30 April 2015 and therefore subjected to it.

The convention provides for state parties to ensure victims of torture obtain redress and adequate compensation¹⁸⁸ and undertake measures to prevent any forms of torture, or cruel degrading and inhuman treatment¹⁸⁹.

¹⁸⁵ Ibid art 6

¹⁸⁶ United Nations Convention Against Torture (adopted 4 February 1987, entered into force 26 June 1987) art

1

¹⁸⁷ Ibid art 4

¹⁸⁸ Ibid art 14

¹⁸⁹ Ibid art 16

South Sudan as a war-torn country amidst recurring civil war has many of its people as victims of torture in forms that include rape, beatings and victims watching other victims being tortured among others. Rape is a crime against humanity hence a form of torture and hence as one would perceive it to occur to only women, men are as well victims of torture. The recurring civil war in South Sudan has many men raped and tortured in detention. Many male victims have particularly disadvantaged as some men have subjected to sexual violence¹⁹⁰ hence a need to put an end to these human rights violations and a need for the victims to receive full reparation.

3.3.4 Convention on the Rights of a Child, 1984 (CRC)

The charter on the Rights of a child provides for the protection of children and it promotes the rights of children internationally. South Sudan is a signatory to this convention hence subjected to its provisions and what it stands for. This convention was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and it entered into force on 2 September 1990. The CRC provides for a child to be below the age of 18 years¹⁹¹, provides for the rights to life of children to be upheld¹⁹², protection of children from sexual exploitation and abuse¹⁹³, freedom from torture or any degrading and inhuman treatment or punishment¹⁹⁴.

These provisions in this treaty have been expressed in the domestic laws of South Sudan however amidst recurring civil war in South Sudan children have suffered grave violations. The level of violence and brutality endured by children in South Sudan has been dismaying as over 9200 children have been

¹⁹⁰ Joan Nyanyuki, 'The East African: Spare a thought for the men raped and tortured in detention in South Sudan' published on the 14th of June, <https://www.eastafrican.co.ke> accessed on the 14th of June 2019,

¹⁹¹ United Nations Convention on the Rights of a Child(adopted 20 November 1989, entered in to force 2 September 1990) Art. 1

¹⁹² Ibid art 6

¹⁹³ Ibid art 34

¹⁹⁴ Ibid art 37

verified to be victims of grave violations in four years¹⁹⁵. These children are killed maimed or sexually abused and used as well to commit atrocities against civilians and other children¹⁹⁶.

Therefore this convention strives to protect the rights of children to life, freedom from torture, protection from sexual abuse among others hence it imposes an obligation on the state parties to ensure the protection of children and the ratification of this treaty by South Sudan applies pressure on it to implement these laws and uphold the rights of children thus a positive step towards peacebuilding.

3.3.5 The Optional Protocol on the Involvement of a Child in Armed Conflict (OPAC)

The Optional Protocol of the Involvement of a Child in Armed Conflict as well seeks to promote the rights of children about armed conflicts, for example, recruiting children in the army. This optional protocol was adopted on 25 May, 2000 and entered into force as of 12 February 2002. South Sudan signed to this treaty hence becoming the 168th country to agree to this UN treaty committing to end the recruitment and use of children in armed conflict¹⁹⁷.

OPAC is designed to ensure states ban the recruitment and use of children under the age of 18 in armed conflict hence South Sudan has agreed to work to demobilize all children currently within its armed forces and multiple armed groups and offer physical and psychological recovery to help their integration¹⁹⁸.

¹⁹⁵ Office of the Special Representative of the Secretary General for Children and Armed Conflict: 'Impunity must end in South Sudan as report shows children suffering persistent grave violations' published on the 15th of October 2018, <https://childrenandarmedconflict.un.org> accessed on the 15th of June 2019

¹⁹⁶ *ibid*

¹⁹⁷ Child Soldiers International, 'South Sudan signs UN treaty to ban child recruitment' published on 27th September 2018, <https://www.child-soldiers.org> accessed on the 27th of June 2019,

¹⁹⁸ *ibid*

This protocol provides for state parties to ensure that members who have not attained the age of 18 not to take part in any hostilities¹⁹⁹, to desist from compulsory recruitment of persons who have not attained the age of 18 in armed forces²⁰⁰ and all state parties must ensure effective implementation of these provisions in their domestic laws²⁰¹.

In a country where over 19000 children have been recruited in armed groups over the past five years, the process might be slow and hard fought²⁰².

Therefore, ratification of these treaties by the government of South Sudan is an important step towards healing for the world's youngest nation facing recurring civil wars. It is a promise to the children that their rights shall be protected regarding forceful recruitment in armed forces and armed groups in the country. This ratification has as well strengthened the step by government authorities and organizations like UNICEF who have released over 900 children from armed groups²⁰³.

3.3.6 Conclusion

From the above analysis, there exists a wide legal framework at the national, regional and international level that seek to fight against human rights violations and abuses. This framework applies to South Sudan and it is the obligation of South Sudan to ensure that these laws are adhered to, effective and implemented the country and above all the state should ensure the rule of law prevails.

¹⁹⁹ Optional Protocol on the Involvement of Children in Armed Conflict(adopted 25 May 2000, entered into force 12 February 2002, Art. 1

²⁰⁰ Ibid art 2

²⁰¹ Ibid art 6

²⁰² Child Soldiers International, 'South Sudan signs UN treaty to ban child recruitment' published on 27th of September 2018, <https://www.child-soldiers.org> accessed on the 27th of June 2019,

²⁰³ Ibid

CHAPTER FOUR

4.0 RECOMMENDATIONS AND CONCLUSION

This chapter deals with recommendations based on the data collected and the conclusion of my research work.

4.1 Recommendations

South Sudan needs a clean break from its active leaders as they are the key actors in the recurring civil war. Therefore the UN and AU should lead a transitional administration for about 10 years to maintain the country's territorial integrity and establish the political and constitutional framework to full sovereignty²⁰⁴. The key figures involved should be provided with a negotiated exit from the political sphere of South Sudan because they are at the top of the command chain and have failed to ensure their troops adhere to the international laws of armed conflict²⁰⁵. However, their exit will have to be negotiated with due consideration to overcome fears of further crisis²⁰⁶. This can be through mediators like IGAD, EAC, AU and the UN. Furthermore, peace is unlikely to prevail under the SPLM due to tribalism, lack of knowledge of state governance, loss of vision and poor leadership hence it is recommended that the country is put under UN trusteeship to work with the people to elect a new leader²⁰⁷.

The culture of impunity needs to be ended. The persons responsible for human rights abuses must be held accountable and punished according to the law for justice to prevail. In the course of recurring wars south Sudanese people have suffered atrocities with little or no opportunities for accountability and hence

²⁰⁴ Katherine Almquist Knopf, Director, Africa Centre for Strategic studies, (Council on Foreign Relations) 'Ending South Sudan's civil war' <https://www.cfr.org> last visited 8 June 2019,

²⁰⁵ Israel Nyaburi Nyadera, 'South Sudan conflict from 2013 to 2018; Rethinking the causes, situation and solutions' <https://www.acord.org.za> published 19 December 2018,

²⁰⁶ *ibid*

²⁰⁷ Tethloach Ruey, 'The south Sudanese conflict analysis; conflict profile, causes, actors and dynamics', Doctoral Thesis, 2017, <https://www.grin.com/document/411993>, accessed on the 24th of May 2019,

the perpetrators of war crimes and crimes against humanity must be brought to account if the terrible litany of violence against civilians is to end²⁰⁸. People affected by the conflict want justice and this should be accompanied with remedies for the victims.

Initiating a disarmament process to bring an end to the spread of supply of arms to civilians. The possession of arms by civilians is one of the causes of the recurring civil war in South Sudan as it has led to unruliness especially during times of conflict where civilians engage in armed conflict as a means of survival “kill or be killed”. Hence a law concerning the disarmament of arms from civilians should be effectively implemented.

Separation of powers. This is a fundamental principle of constitutional law that requires the executive, legislature and judiciary to work separately in order to avoid abuse of power. Therefore the arms of government in South Sudan must work together although independently of each other without interference. Currently a number of South Sudan cabinet ministers (executive members) serve as members of the legislature as they attend parliamentary sessions make influence and decisions at the legislature and there is no legal provision barring them from doing so hence this affects the doctrine of separation of powers as the ministers cannot do checks and balances on themselves²⁰⁹.

Therefore, the independence of the judiciary should be upheld coupled with the supremacy of the rule of law. This will curb down the impunity enjoyed by the military officers and government officials at large. Once persons responsible for the atrocities are held accountable, human rights violations will decrease as people will be able to trust the process of the law and therefore abide by it.

²⁰⁸ Rachel Ibrek and Alex de Waal, 'Ending Impunity In South Sudan' <https://blogs.ise.ac.uk> published 23 February 2017,

²⁰⁹ Roger Alfred Yoron Modi, 'South Sudan peace process should focus on separation of powers' www.sudantribune.com published 24 June 2018,

Introducing a power-sharing government comprised of the different ethnic groups. Although a power-sharing strategy has been formed as a result of the 2018 peace agreement in Addis Abba, Ethiopia, the formation of the power-sharing government has been delayed due to a lack of political will between both sides²¹⁰ hence this makes the signing of the peace deal to have a unity government questionable as one would wonder if the parties were forced into it. Therefore this research recommends that the leaders should strive to prioritize the wellbeing of the citizens and put aside their selfish desires.

Decentralizing the government and building a federal system of legislatures across the country. Many south Sudanese advocates for a federal system of governance in South Sudan as an answer to the recurring civil war in South Sudan. The refugees in Uganda's Adjumani district want to see a federal system of governance introduced in South Sudan to put an end to conflicts resulting from the unequal distribution of power and resources²¹¹.

Transparency and accountability, the presence of oil are considered a cause to the recurring civil war in South Sudan as it accounts for 98.82% of the exports from South Sudan and the oil revenues have continued to fund the war leading to human rights violations²¹². The presence of transparency in the government coupled up with holding persons responsible for embezzlement accountable would enhance peacebuilding in South Sudan.

In conclusion, there is need to design programs that instil a culture of peace into the young generation of South Sudan who had never known peace in their lives so as to build an inclusive society that denounces a culture of violence for the regeneration and reconstruction of the war-torn country.

²¹⁰ DW, 'South Sudan rivals forming unity government' dw.com <https://www.google.com> last visited 4th June 2019,

²¹¹ Simon Peter Apiku, 'South Sudan in focus: Refugees say South Sudan should have a federalist government' published 6 December 2017,

²¹² Aljazeera, 'Is oil money fueling war in South Sudan?' <https://www.aljazeera.com> published 6 April, 2019

4.2 Conclusion

It is clear from the study that human rights violations are still persistent in South Sudan as a result of recurring civil war in South Sudan has a huge negative impact on the people of South Sudan.

From the research, several factors realized as to the cause of recurring civil wars in South Sudan to include the presence of natural resources like oil that have fuelled the war, easy access of arms by civilians, power struggles, weak institutional capacity, impunity and ethnic wars among others.

The recurring civil war has had an impact on the justice system of South Sudan such as killings, rape, recruitment of children into armed forces, displacement of people both internally and externally. This has led to mistrust of the law by the people as the law has failed to protect their rights.

The laws analysed in chapter three have been able to lay down a range of legal framework that provides guidelines on promoting human rights. The analysis is to give a deeper understanding of the inherent human rights to be enjoyed by all persons and all states are under an obligation to enforce and uphold the laws on the rights of the people. The analysis further gives a deeper understanding of human rights in South Sudan and a comparison of what the legal framework provides and what is done on the ground in the justice system in South Sudan.

It is important to note that the due process of the rule of law and respect for human rights is vital in any free and democratic society hence should be advocated for by finding practical solutions to end human rights abuses and justice for the victims should be sought.

South Sudan has great potential to thrive and develop given its nature of abundance of oil which accounts for over 98.82% of its export revenue. Furthermore, South Sudan is the only place in the world where wild coffee, Arabica coffee and Robusta grows hence it can diversify its exports to raise

non-oil revenue and coffee can become the second biggest export from South Sudan²¹³. However, this can only come about with the presence of peace, stability and security in South Sudan.

²¹³Sibusiso Tshabalala, 'How can South Sudan diversify its economy?' <https://www.weforum.org> published 9 October, 2015

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