

# Women's participation and influence in transitions from conflict: The case of South Sudan

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Women, Peace and Security: Breaking down silos

## Abstract

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Focusing on the peace talks process as a driver of change, this case study explores how women participated in and influenced processes of constitutional reform and transitional justice in the post-civil war political settlement, as well as the challenges and limitations of their activities.

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Following its independence in 2011 from Sudan, the 2013–2018 civil war in South Sudan devastated much of the country. The conflict was also characterised by both widespread targeting of civilians and sexual and gender-based violence (SGBV). A peace agreement signed in 2018 has largely held, although much of the country is still embroiled in armed conflict and communal violence. The 2018 agreement establishes a framework for the development of a Permanent Constitution to replace the 2011 Transitional Constitution, as well as a three-part transitional justice mechanism. Although implementation of the peace agreement has been slow, women

mobilised extensively during peace negotiations to ensure that the agreement included gender language and addressed women's concern.

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## About this publication

This publication was produced as part of a study on **Women's influence and leadership: Integrating Women, Peace and Security into wider peacebuilding engagement**, which was undertaken by ODI. The research team included Clare Castillejo, Pilar Domingo, Alina Rocha-Menocal and Theo Tindall. The study examined how to integrate Women, Peace and Security (WPS) work more strategically with wider peacebuilding and conflict-related interventions to enhance women's influence and leadership across different peacebuilding processes. It developed analysis regarding how women seek to influence a range of change and reform processes related to peacebuilding that are often overlooked in the WPS agenda; how the nature of these processes and the actors involved in them hinder or enable women's access and influence; and how international actors can best support women's access and influence within these processes.

## About the author

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# Acronyms

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ARCSS	Agreement on the Resolution of the Conflict in South Sudan
CPA	Comprehensive Peace Agreement
CRA	Compensation and Reparation Authority
CSO	Civil society organisation
CTRH	Commission for Truth, Reconciliation and Healing
GEWE	Gender and women's equality
HCSS	Hybrid Court of South Sudan
IGAD	Intergovernmental Authority on Development
JMEC	Joint Monitoring and Evaluation Commission
NAP	Gender National Action Plan
R-ARCSS	Revitalised Agreement on the Resolution of Conflict in South Sudan
RTGoNU	Revitalised Transitional Government of National Unity
SGBV	Sexual and gender-based violence
SPLM	Sudan People's Liberation Movement
UNDP	United Nations Development Programme
SPLM-IO	Sudan People's Liberation Movement in Opposition
UNMISS	United Nations Mission in South Sudan
WPS	Women, Peace and Security

# 1 Background

Before its independence in 2011, the history of what is now South Sudan was characterised by waves of colonisation and conflict. Following Sudan's independence in 1956, two civil wars in 1955–1972 and 1983–2005 culminated in the signing of the Comprehensive Peace Agreement (CPA) by the Government of Sudan and the Sudan People's Liberation Movement (SPLM) in Naivasha, Kenya on 9 January 2005. The CPA established the Southern Sudan Autonomous Region in preparation for a referendum on independence scheduled for 2011, in which 98.83% of South Sudanese vote for independence, which duly followed on 9 July 2011 (Martell, 2019; Kuol, 2020).

Independence, however, did not bring an end to conflict in South Sudan. Low-level conflict persisted before and after independence, and in 2013 a power struggle between President Salva Kiir Mayardit and Prime Minister Riek Machar led to the outbreak of a civil war, fought principally between the SPLM, led by Kiir, and Machar's Sudan People's Liberation Movement in Opposition (SPLM-IO) (ICGa, 2021). During the five years of civil war it is estimated that, of a total population of around 12 million, up to 400,000 South Sudanese died, while 4 million more were either internally displaced or fled the country (*New York Times*, 2018; UNOCHA, 2018). The war was characterised by widespread atrocities, including sexual and gender-based violence (SGBV), committed by both government and rebel forces (AU, 2014; Ellsberg, 2020). Ethnic rivalry – including but not limited to conflict between the two largest groups, the Dinka and Nuer – as well as competition for oil revenues, were significant underlying factors in the conflict. Military groups targeted individuals based on their ethnic and political identities as part of systematic efforts to 'terrorise, degrade [...] and humiliate' individuals and the ethnic or political groups to which they belonged (Amnesty, 2017). The systematic targeting of civilians by military groups has been identified as evidence of 'ethnic cleansing' (HRC, 2017).

A peace agreement (the Agreement on the Resolution of the Conflict in South Sudan, ARCSS) negotiated with the support of the Intergovernmental Authority on Development (IGAD)<sup>1</sup> was signed in 2015. The agreement held until July 2016, when fighting between government and rebel forces resurfaced. A new peace agreement – the Revitalised Agreement on the Resolution of the Conflict in South

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<sup>1</sup> IGAD is an East African inter-governmental body and trade bloc. Its eight members are Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda.

Sudan (R-ARCSS) – was signed on 12 September 2018. This agreement succeeded in reducing conflict between the main warring parties, but did not include several major armed groups, which have continued to fight (ICG, 2021b). Conflict has continued in much of the country, including Eastern Equatoria, Warrap and Jonglei states, while SGBV remains widespread (Ellsberg, 2020; Tai Gituai, 2021b).

South Sudan is currently governed by the 2011 Transitional Constitution, which is substantially based on the 2005 Interim Constitution of Southern Sudan. Alongside the constitution, the 2015 and 2018 peace agreements are key legal documents governing contemporary South Sudan. Chapter VIII of both agreements states their incorporation into the Transitional Constitution, specifying that ‘in the event that the provisions of a national legislation or previous agreement conflict with the terms of this Agreement, the provisions of this Agreement shall prevail’ (IGAD, 2015; IGAD, 2018).

The peace agreements build on the commitments to women’s representation in government made in the Transitional Constitution, which also set out various conditions and a timetable for the development of a Permanent Constitution, and a framework for post-war transitional justice mechanisms. Of particular importance is the increased concern with women’s rights and representation in the R-ARCSS, which expands and increases the specific commitments to gender quotas made in the Transitional Constitution.

Notwithstanding the major formal advances regarding women’s participation in politics, the specific ways in which the Women, Peace and Security (WPS) agenda has informed the R-ARCSS remain understudied. Transitional justice measures should also be seen as advancing both the protection and relief and recovery WPS pillars by establishing mechanisms for prosecuting the perpetrators of SGBV and for the provision of compensation to victims of the conflict.

Despite the formal achievements of the R-ARCSS in advancing women’s voice and representation, there has been only modest progress in translating constitutional commitments into realities on the ground. Widespread patriarchal attitudes and norms, political insecurity, underdeveloped infrastructure and continuing violence have all contributed to the slow pace of the implementation of the WPS agenda in South Sudan. The political settlement following the end of the civil war has also further entrenched the majority-male South Sudanese political elite, bringing in warring factions through a ‘big-tent’ approach which has given South Sudan one of the world’s highest ratios of MPs to the population (Boswell and de Waal, 2019).

Transitional justice efforts have also been significantly obstructed by some parts of the government. Furthermore, women’s increased participation in government does not necessarily translate into increased support for progressive or feminist causes, as the women from political elites may have no connection with South Sudanese women’s movements or be more closely aligned with more



traditional, male-dominated political and ethnic groupings (Soma, 2020).

## 2 Story of women's activism

The history of activism to advance gender equality in South Sudan has been profoundly linked with the cycle of conflicts and peace processes that have shaped the country's recent political history. Despite the challenges they have faced, gender and women's equality (GEWE) organisations in South Sudan have achieved notable successes at both the grassroots and national levels, helping women to access essential services and promoting local peacebuilding and reconciliation efforts (Kezie-Nwoha and Were, 2018), while also increasing women's representation within peace processes and at national, state and local levels of government. Despite these significant achievements, constitutional commitments to women's representation are often not met, and women's increased representation among political elites has not always translated into the advancement of women's causes.

Women's representation in national peace processes has grown steadily over the last 20 years, as demonstrated by the rise in the number of women signatories to the agreements – from none in the CPA, to two in the ARCSS and seven of a total 17 in the R-ARCSS (Soma, 2020). As research indicates that peace agreements with a greater number of female signatories correlate with higher chances that agreements will hold, this represents a significant advance (Kumalo and Roddy-Mullineaux, 2019).

The Wunlit peace process in 1999 provides an early example of South Sudanese women's grassroots mobilisation. This peace process, supported by the New Sudan Council of Churches, was initiated in response to conflict between Dinka and Nuer groups in the Upper Nile region (Akech, 2020). Women played a key role in this process, participating in each county's delegation and establishing links between communities through regular visits and a process of dialogue (Simmons and Dixon, 2006). Women's representation in the peace process ensured that issues affecting women and children, such as forced marriages and abduction, were addressed, and women delegates were among the signatories to the final agreement (Lopidia, 2019).

It should be also noted, however, that women have been active participants in conflicts in South Sudan (Adeogun and Muthuki, 2018; Stringham and Forney, 2017). This is important in order to avoid

essentialist interpretations of women's conduct, as well as to underline the value of understanding the nature of intersecting identities, and how these affect peacebuilding dynamics in any context. In the 1983–2005 civil war, women contributed food and often encouraged their sons to join the war effort (Simmons and Dixon, 2006), while women's participation on the frontlines and exposure to the same risks as men may have contributed to their development of a political agenda demanding greater involvement in and representation in peace negotiations (Soma, 2020).

Although women's representation at the CPA talks was limited (initially there was only one woman on the ten-person SPLM delegation), women representatives consulted with women's organisations and networks to co-ordinate their actions, while a number of women activists see their role in organising targeted protests and campaigns as key to bringing international attention to the conflict. Women's role in the CPA negotiations and participation in the commissions set up under the agreements established a key precedent on which future generations of women activists could build, for example in the agreement's inclusion of the 25% affirmative action quota for women's representation in government (Soma, 2020).

Women's civil society organisations (CSOs) at the time of the CPA negotiations also played a significant though limited role. Organisations such as the South Sudanese Women's Empowerment Network (SSWEN), the South Sudan Women General Association (SSWGA) and the Sudanese Women Association in Nairobi (SWAN) all played a key part in peacebuilding efforts. The SSWGA, for example, translated the CPA into several local languages, while SWAN acted as a bridge for negotiations between rival factions at the negotiations (Hoth Mai, 2015).

While women remain underrepresented at all levels of public life in South Sudan, they have become increasingly active in peacebuilding activities, particularly at the grassroots level. A 2021 report by the United Nations Development Programme (UNDP), which used focus group discussions and in-depth interviews, found that many interviewees believed that women contributed more than men to peacebuilding processes in proportional terms, and that women's participation in dialogue processes has increased significantly at both the leadership and grassroots levels. However, women's grassroots organisations are often chronically under-resourced and face opposition from a number of sources, including some chiefs and religious leaders who oppose women taking on public roles (UNDP, 2021).

Women's efforts in support of peacebuilding include a far greater contribution than men's through everyday activities concerned with working to provide food, shelter, education and health services, engaging in economic activities, and supporting victims of SGBV.

Grassroots women's organising also sought to influence formal peace negotiations. Women organised a silent protest march in 2017 in Juba, aiming to draw attention to the endemic sexual violence in the country and increase pressure to include provisions to address SGBV in the peace agreement. Women's groups such as the South Sudan Women Coalition have also organised community dialogues, sought to bridge divides between ethnic groups, and used mass media such as radio as part of their peacebuilding activities (Kezie-Nwoha and Were, 2018). Given the connection between SGBV and ethnic divisions in South Sudan, building connections across ethnic groups can play a critical role in reconciliation and recovery efforts.

Education has helped to foster a generational change in attitudes towards gender-based roles, although girls' and women's access to education remains particularly low, meaning that they are less likely to be literate or to understand English or Arabic. Younger men are, however, more likely to recognise women's right to participate in public life, while women report mutually reinforcing increases in levels of education, earning power, and community engagement (UNDP, 2021).

In terms of policy and global commitments, South Sudan is a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The convention was signed in 2014, in part due to pressure from young South Sudanese women, who marched through Juba demanding that President Kiir do so (UNMISS, 2014).

South Sudan also developed a Gender National Action Plan (NAP) for 2015–2020, thus signing up to the WPS agenda. The plan's development was supported by UN Women and UNMISS and funded by the governments of Australia, Denmark and Sweden. The NAP, which builds on the 2013 National Gender Policy, focused on government structures and was led by an Inter-Ministerial Committee, which was in turn led by the Ministry of Gender, Child and Social Welfare. Although CSOs, including women's groups, were involved in developing the NAP, it is unclear to what extent the NAP has since acted as a framework for their activities and demands. One study notes that women's organisations appealed to UNSCR1325 and the WPS agenda, underlining the commitment to ensuring women's participation in peacebuilding, state-building, and reconstruction efforts, and UN Women has supported this framing. But the effects of this advocacy remain undocumented (Kezie-Nwoha and Were, 2021). The NAP's objectives included increasing women's representation and participation in South Sudanese public life, as well as a number of protection-related objectives such as preventing violence against women and girls (VAWG) and providing support to victims of SGBV (Republic of South Sudan, 2015). These goals have yet to be fully implemented, however, and reports suggest a disconnect between national and local or community levels of implementation (UNDP, 2021).

While there are significant evidence gaps regarding the extent to which South Sudanese women's groups have deliberately used the WPS agenda and specifically the NAP, as well as the extent to which international funding and support has focused on WPS activities, the WPS agenda has provided a valuable normative framing for South Sudanese women's activism both nationally and internationally. For example, Sweden's current strategy for development co-operation with South Sudan emphasises the disproportionate effects of the conflict on women and girls, as well as their under-representation in peace negotiations (Ministry for Foreign Affairs, 2018). Although there is a need for further research into how far the WPS agenda has been integrated into national women's activism, it can provide a powerful framework for local mobilisation and activism, as well as for international support for women's activism across different political and institutional reform processes in conflict-affected settings.

This working paper focuses on the areas of transitional justice and elements of constitutional reform that make up South Sudan's peacebuilding efforts.

## 3 Constitutional reform

### 3.1 Reform process and formal gains

#### 3.1.1 Nature of South Sudan's constitution reform process and its implications for women's rights

South Sudan's current constitution, the Transitional Constitution of South Sudan, came into force following the country's independence in 2011 and is substantially based on the 2005 Interim Constitution of Southern Sudan (Henneberg, 2016). The R-ARCSS, signed in 2018, established a roadmap for the development of the Permanent Constitution, planned to be completed within 24 months of the beginning of the Transitional Period, which began with the establishment of a Revitalised Transitional Government of National Unity (RTGoNU) on 22 February 2020. Since then, however, progress has been slow, and the deadlines determined for the constitution-making process have often been missed.

The Transitional Constitution has been widely criticised for its rushed development and the SPLM's domination of the constitution-making process (the SPLM made up two thirds of the technical committee responsible for the development of the constitution, which required a two-thirds quorum for the draft constitution to be adopted) (Seidel and Sureau, 2015). It has been further criticised for weakening South Sudan's federal structures and concentrating power in the presidency (Kuol, 2020). It does, nevertheless, preserve the language of gender equality and retains the 25% affirmative action quota from the 2005 Interim Constitution. The constitution guarantees women's equality with men, the right to equal pay, and the right to own property and inherit the estate of their deceased husband. It also obliges all levels of government to ensure 25% women's representation, women's protection from harmful practices and traditions, and the provision of maternity and child care (Government of South Sudan, 2011).

There is a significantly greater focus on gender language and women's rights and representation in the R-ARCSS than in the 2011 Transitional Constitution and 2015 ARCSS, possibly due to its more inclusive negotiation process and greater women's mobilisation around it. As such, the R-ARCSS represents a significant step forward for women's rights in South Sudan and sets an important precedent on which to build in the Permanent Constitution.

Arguably, the key achievement of the R-ARCSS is in increasing the affirmative action quota from 25% to 35%. The agreement also

makes more specific mention of women's representation in key executive structures, for example requiring that one of the country's four vice presidents, at least 12 members of the Council of Ministers, and at least three members of the nine-member board of the Bank of South Sudan must be women (IGAD, 2018). The R-ARCSS thus places responsibility for meeting quotas on specific institutions, making it harder to avoid affirmative action obligations.

The R-ARCSS also requires that women's groups should be included in consultations for the development of the Permanent Constitution and be present on the National Constitution Review Committee. Chapter V of the R-ARCSS, which deals with transitional justice (discussed in more detail below), specifies gender-based crimes and sexual violence as one of the four crimes (alongside genocide, war crimes, and crimes against humanity) which the Hybrid Court of South Sudan is authorised to pursue.

Progress towards the development of the Permanent Constitution remains slow, mirroring wider challenges of ending conflict and the development of transitional justice mechanisms. The most recent report by the Reconstituted Joint Monitoring and Evaluation Commission (RJMEC), which monitors the implementation of the peace agreement, indicated that the Constitutional Making Process Bill has been adopted, establishing the institutions and mechanisms responsible for making the new constitution (Tai Gituai, 2021b). However, the constitution-making process remains far behind the schedule indicated in the R-ARCSS, according to which it should have been completed by February 2022.

### 3.1.2 How South Sudanese women influenced constitutional reform

South Sudanese women's involvement in constitutional reform and the development of peace agreements has been characterised by incremental progress. The landmark achievement of the GEWE agenda in the 2005 CPA was the inclusion of the 25% affirmative action quota for women's representation. Women's individual and collective activism were central to this.

At an individual level, activists and female political leaders have been very influential. For instance, individuals such as Suzanne Jambo, a UN lawyer who was initially the only female member of the SPLM's permanent delegation at the peace talks, and Nyandeng Malek, a CSO activist and SPLM member, lobbied effectively during CPA peace negotiations for the inclusion of the 25% quota in the constitution. The support of the SPLM leader, John Garang, and his wife, Rebecca (a vice president in the RTGoNU and later signatory to the R-ARCSS as an 'eminent personality'), was also critical (Soma, 2020). In 2007 Malek was made Deputy Governor of Warrap State, one of a first generation of women to be represented in government in post-CPA Southern Sudan. Thus, women leaders in influential

roles or those able to broker key alliances were important in securing gender equality gains.

Civil society activism was also critical. Women's gradually increasing representation at peace talks took place against a backdrop of growing civil society activism and protest. For example, prior to the signing of the R-ARCSS, South Sudanese women's CSOs organised protest marches across East Africa. Similarly, the Women's Council of the South Sudan Council of Churches worked with the Women's Coalition to organise silent marches in Juba and elsewhere in East Africa, to protest against the conflict and continuing sexual violence against women (Soma, 2020).

Effective lobbying also played a key role in advancing the WPS agenda. Rita Lopidia, co-founder of the Eve Organisation and of the Women's Coalition for Peace, recounts how the 35% quota for women's representation was reached during peace negotiations in 2017. 'I stood up and asked for a 50% affirmative action principle for women's representation at all levels of government. Amer [Manyok] Deng-Yak also asked for 50%. Edmund Yakani, a fellow civil society colleague then stood up and asked for 50%... For the first time, it seemed like all the men in the warring parties present in the room were united' (Soma, 2020, p. 38).

Following extensive pushback and subsequent debate, 35% was agreed as an acceptable compromise. Then Minister of Gender Awut Deng Acuil noted that the Women's Coalition had earlier decided on 35% as its goal for the negotiations – 'our stance on the affirmative action quota from our strategy meeting in Entebbe was 35%, but we said we would not use it as a negotiating point. If we [had started at] 35%, we would have ended up with 25%' (Soma, 2020, p. 38). Women delegates' effective negotiation and tactical skills were therefore crucial to ensuring a major success for affirmative action within the peace agreement, which significantly advanced legal guarantees for women's participation in South Sudanese government structures.

Co-ordination was key to women's groups' successes at peace negotiations. Women's groups co-ordinated their demands through strategy meetings and formed a Technical Support Team to provide technical and organisational support to civil society delegates (Soma, 2020). The South Sudan Women Coalition also acted as a link between grassroots activists and high-level women representatives. In 2017 it produced a document to guide women negotiators' engagement and emphasise their accountability to a broader group of women (Kumalo and Roddy-Mullineaux, 2019). The Women's Bloc worked with UN Women, the JMEC and UNMISS to organise a three-day conference with South Sudanese women's organisations in Juba in support of the peace agreement (UN Women, 2018; Soma, 2020).

The importance of effective coalition-building was also evident in the success of the civil society networks such as Citizens for Peace and



Justice, a coalition of more than 60 civil society representatives (a third of whom were women) and the Civil Society Alliance, which emerged during 2014–15 peace negotiations. During the R-ARCSS process, the South Sudan Civil Society Forum, a coalition of over 200 CSOs, worked with the Women’s Coalition to co-ordinate civil society groups’ actions and positions (Soma, 2020).

### 3.1.3 Challenges to women’s influence in constitutional reform

Despite the clear progress made, women’s activists in South Sudan still face widespread resistance – both at the level of national politics and in the wider structural conditions of economic, social, and political life. Poverty, gender-based violence, poor organisational capacity, and the limitations of women’s initiatives all contribute to the challenge’s facing women activists (UNDP, 2021).

At the peace talks, women participants faced widespread hostility from male delegates in the form of sexual harassment and deeply ingrained resistance to the right and ability of South Sudanese to participate in the negotiations. At the ARCSS negotiations, sexual harassment was so widespread that women drafted a letter demanding that the mediators take action. However, fearing possible backlash, some women refused to sign and the letter was ultimately never delivered (Soma, 2020).

A lack of support from some international partners has also at times hindered women’s participation. At the ARCSS negotiations, the IGAD mediation team was entirely male and dominated by individuals with a military background. Women’s representatives consequently received little high-level support, while the negotiations focused on the warring parties and excluded civil society and faith-based groups that were more likely to include women. This contrasts with the role of male elites at CPA and R-ARCSS negotiations, where SPLM leader John Garang and IGAD Special Envoy Ambassador Ismail Wais, encouraged women’s participation (Soma, 2020).

Peace talks to end the civil war were also characterised by division among women from rival political groups. Political solidarities often trumped gender considerations, reducing women’s ability to present a unified front in their demands for increased gender equality. Wider societal cleavages – for example between urban and rural women – have also been identified as having a negative impact on women’s activism (UNDP, 2021).

### 3.1.4 Institutional support for women’s engagement with constitutional reform

International support to women’s engagement with constitutional reform efforts in South Sudan has primarily taken three forms – financial support, supporting women’s representation, and supporting the implementation of constitutional GEWE provisions.

IGAD, given its key role as a mediator in peace negotiations, has been crucial to women's representation. Ambassador Ismail Wais, IGAD Special Envoy to South Sudan, urged parties to include women in their delegations to the R-ARCSS negotiations (Pelham, 2020), and later encouraged political parties to ensure that there was at least one woman on their three-member negotiating team. While such requests were not always heeded, they represented a significant advance on IGAD's engagement with gender issues during the ARCSS peace talks, and offer a valuable example of the norm-setting role which international actors can play (Soma, 2020).

International agencies have also worked to amplify women's voices – in 2017 UN Women facilitated a meeting between special envoys of the 'Troika' of Norway, the UK and USA, and South Sudanese women activists, while the NGO Working Group on Women, Peace and Security supported 11 women activists in presenting briefings to the UN Security Council (UN Women, 2017; Nasiwa, 2021). While such actions are limited in the scope of what they can achieve, they nevertheless offer examples of ways in which the WPS agenda was used strategically to raise visibility of the gendered nature of the conflict and to give South Sudanese women a voice at a high level.

Women activists have repeatedly underlined the importance of international partners' support for their participation at peace talks. While international partners have provided financial support, competition between women's groups has impeded their co-operation, while the ad hoc nature of applications has had a negative impact on women's ability to participate in negotiations at short notice. One study has identified a need for direct funding to women's organisations to support capacity development and adaptive programming (Pelham, 2020).

Since 2018, international agencies have worked with local organisations to support the constitution-making process. In 2020, International IDEA ran projects to support capacity development and women's participation in this process, the latter with funding from the UK Foreign, Commonwealth and Development Office (FCDO) (International IDEA, 2020). The Max Planck Institute has run a number of projects on the rule of law in South Sudan, including an ongoing project 'Support to the Constitutional Process in South Sudan' (Max Planck Foundation, 2021). The International Development Law Organisation (IDLO) has also been involved in a number of projects in South Sudan providing training and supporting the development of the constitution and an effective justice system (IDLO, n.d.).

### **3.2 Implementation challenges**

While both the Transitional Constitution and the R-ARCSS have made a number of key formal advances, particularly in terms of

women's representation, these have seldom been matched by developments on the ground. Elite intransigence, patriarchal norms, low levels of education, and political insecurity have all hindered the advance of the WPS agenda in South Sudan. Although local women's groups and international partners have responded to these constraints, a lack of funding and the reluctance of the South Sudanese elite to enact meaningful political change in a context of ongoing violence and fragility have limited progress.

Although women's representation in South Sudanese government has increased, it generally falls short of the 35% quota (UNDP, 2020). Furthermore, women's representation is often concentrated in traditionally 'feminine' areas (such as the Ministry of Gender Affairs) (Lopidia, 2019). One prominent exception is Angelina Teny, wife of First Vice President and SPLM/A-IO leader Riek Machar, who is currently Minister of Defence and Veterans' Affairs.

However, as Teny herself observes, South Sudanese women are divided by the same competing loyalties and power structures as men and may take political positions which go against women's causes. Increasing women's participation, therefore, does not necessarily guarantee gains for all women, particularly given the significant disconnect between grassroots movements and women in politically prominent positions (Mutasa and Virk, 2017). One publication has even described the 35% gender quota as 'a blunt tool to address a complex problem' (Vincent and Comerford, 2021).

Furthermore, as in the 2011 constitution-making process, the continued political dominance of the SPLM undermines the possibility of a legitimate and inclusive process for the development of the Permanent Constitution. The role of SPLM and other political elites in war crimes committed during the civil war is a further obstacle to the development of an inclusive and gender-equal constitution.

Social cleavages have also posed a significant challenge to the implementation of the WPS agenda in South Sudan. Young women have reported that the predominance of older women leaves them little space to voice their concerns and to participate in public life (SFCG, 2021). Rural–urban cleavages have also emerged as a key obstacle, and are linked with a perceived class divide between educated urban women and less-educated rural women (UNDP, 2021). Indeed, widespread illiteracy prevents women's access to information and participation in public life, while one survey reported that only 44% of rural women felt that they were listened to as valued contributors on issues of peace and security, as opposed to 60% of urban women (SFCG, 2021).

# 4 Transitional Justice

## 4.1 Formal Gains

Sudan's transitional justice process is underpinned by Chapter V of the R-ARCSS, which sets out the institutional framework within which the process will take place. The peace agreement outlines a framework for the establishment of three transitional justice institutions – the Hybrid Court of South Sudan (HCSS), the Commission for Truth, Reconciliation and Healing (CTRH), and the Compensation and Reparation Authority (CRA). It also sets out a timetable for the establishment of each institution (IGAD, 2018). However, delays in forming the Revitalised Transitional Government of National Unity (RTGoNU) and ongoing political contestation have ensured that progress in establishing these mechanisms has been minimal (HRC, 2020).

The three institutions are envisaged as complementary mechanisms aimed at addressing the legacy of violations of human rights and of international humanitarian law (IHL), as well as the culture of impunity in South Sudan. The CTRH is intended to establish a record of human rights violations and breaches of the rule of law during the period 2005–2018, ultimately identifying perpetrators and proposing remedies, including reparations, with the goal of achieving lasting reconciliation (HRC, 2020). The HCSS is authorised to prosecute individuals responsible for genocide, crimes against humanity, war crimes and '[o]ther serious crimes under international law and relevant laws of the Republic of South Sudan *including gender based crimes and sexual violence*' [italics added] committed between 15 December 2013 and the end of the transitional period (i.e. 36 months after the formation of the RTGoNU on 22 February 2020) (IGAD, 2018). The CRA will provide compensation to citizens whose property was destroyed during the conflict and to victims identified by the CTRH (HRC, 2020).

While none of the transitional justice mechanisms has yet been established, the inclusion of a gender dimension in the framework of each institution is significant, and represents important recognition of the gendered experience of conflict in South Sudan, in keeping with WPS normative developments. This includes both the intention to identify gender-based harms resulting from the experience of conflict, as well as ensuring women's participation in shaping the transitional justice mechanisms. For example, the CTRH is required to document the 'experiences of women, men, girls and boys' and to 'record the experiences of victims, including but not limited to women and girls',

the Executive Body of the CRA must include representatives of women's groups, while the HCSS is mandated to prosecute 'gender-based crimes and sexual violence' (IGAD, 2018). In order to support the inclusion of a gender dimension in the transitional justice mechanisms, at the ARCSS negotiations, women's CSO delegates co-ordinated their activities and raised awareness of their demands by distributing position papers to the warring parties, as experienced delegates pushed for the inclusion of gender-sensitive language in the peace agreement. The inclusion of SGBV as a crime to be prosecuted by the HCSS was therefore a direct result of women's pressure to have gender language included in the final text of the agreement (Soma, 2020).

The use of gender language has also 'trickled down' to local-level peace agreements concluded after the R-ARCSS. This is a key development given the importance of addressing conflict at the sub-national level and the weight of local power dynamics and patriarchal structures. Thus, a peace agreement signed between Lou Nuer, Dinka Bor, and Murle groups in Jonglei state and negotiated with the support of UK Aid, USAID and UNMISS, contains extensive gender language relating to both protection and participation, and creates an inter-communal structure for women's dialogue (Peace Agreements Database, n.d.; Vincent and Comerford, 2021). However, there is no gender language at all in a number of other regional peace and reconciliation agreements signed since 2018.

Although limited, a number of transitional justice measures have been taken. In 2020, 26 uniformed personnel were convicted for conflict-related sexual violence by UN-supported courts, although all those tried were low-level personnel and no compensation has yet been paid to the victims (UNSG, 2021).

## 4.2 Implementation challenges

Elite resistance to the establishment of the transitional justice mechanisms in the R-ARCSS means that, over three years after the agreement was signed, progress has been negligible. This is associated with the wider political economy of ongoing conflict and perpetrators' resistance to being held accountable for violence. The CTRH, while still far behind schedule, has progressed further than the other two institutions, arguably because its focus on reconciliation is more amenable to political elites, who have historically opted for the 'big tent' approach to conflict resolution (i.e. peace settlements which include warring parties in government) (Akech, 2020). By late 2021, the Technical Committee on the CTRH had begun meeting regularly and, with the support of UNDP, received sensitisation training from the International Centre for Transitional Justice (ICTJ) (Tai Gituai, 2021a). It is currently seeking funding in order to implement its mandate (Tai Gituai, 2021b).

In the fourth quarter of 2021, the Ministry of Justice and Constitutional indicated to the RJMEC that it will require technical and institutional support in order to establish the CRA (Tai Gituai, 2021b). However, despite strong support for reparations among the South Sudanese population (Deng and Willems, 2016), the government has previously been reluctant to pay reparations, suggesting that funds should instead be directed to rebuilding infrastructure and recovering livelihoods. Efforts to pay reparations are also hindered by a lack of political consensus on the scope and scale of such payments and the financial demands entailed by a comprehensive reparations mechanism. A lack of consensus on who should be considered the perpetrators and victims of the conflict is a further obstacle, and risks exacerbating tensions between political and ethnic groups (Oola and Moffett, 2019).

The UN and bilateral donors have also supported a number of justice projects – for example, UNDP supported the establishment of the South Sudan Transitional Justice Working Group, a platform for South Sudanese CSOs to co-ordinate their work on transitional justice issues. Bilateral development agencies have directed funds towards NGOs and international organisations. However, against a background of ongoing violence, widespread corruption, and government impunity, projects that lack government support have been largely ineffective (Oola and Moffett, 2019).

The establishment of the HCSS, potentially the most threatening of the three institutions to the South Sudanese political elite, has been repeatedly delayed. In April 2019, it emerged that the Government of South Sudan had engaged a US lobbying firm with the explicit goal of delaying and blocking the establishment of the HCSS (although the contract was later amended) (HRC, 2020). In mid-2021 the USA reallocated \$5 million that had been previously earmarked for the HCSS, an indicator of the extent of international agencies' frustration with the South Sudanese government's lack of progress on transitional justice issues (Gramer, 2021).

Alongside the national-level transitional justice mechanisms established in the R-ARCSS, customary law has also been seen as a potentially productive justice mechanism. Widespread informal justice measures such as 'blood compensation', whereby the perpetrator compensates the family of the victim of a homicide with the payment of cattle, could complement the activities of the CRA (Akech, 2020; TJWGSS, 2016). Customary justice institutions often have greater legitimacy among communities and would allow justice efforts to achieve greater geographical reach (TJWGSS, 2016). However, differences between communities' justice practices complicate inter-community justice efforts, while the formalisation of customary mechanisms may reduce their ability to work flexibly (TJWGSS, 2016). Furthermore, in existing customary structures chiefs often rely on the SPLA to implement their decisions, reducing their effectiveness and legitimacy (Musila, 2018).

Male dominance of customary justice structures, along with laws and practices discriminating against women, also impede the capacity of customary courts to address CRSV or SGBV-related crimes (AUCISS, 2014). For example, customary institutions may require rape victims to marry the man who raped them, and perpetuate discriminatory inheritance and land-ownership practices (Bubenezer and Lacey, 2013). There is also significant regional variation in customary justice institutions, an issue that remains understudied. Thus, while customary courts play a crucial role in resolving local-level disputes, and have the potential to make a significant contribution to reconciliation processes, their integration into national justice mechanisms is far from straightforward.

Transitional justice measures are the outcome of political negotiation. Their effectiveness usually requires buy-in from players which have the power of veto in transition processes (Logo, 2021). In South Sudan, the political elite has remained largely intact since the signing of the CPA in 2005. As such, much of the South Sudanese political elite, including but by no means limited to President Kiir and First Vice President Machar, is potentially implicated in war crimes committed during the civil war (UNMISS/OHCHR, 2018). It is therefore likely that political change is a necessary condition for meaningful advances in the transitional justice system (Crisis Group, 2021a).

## 5 Conclusions

During the last 20 years, there have been a number of key advances regarding the progress of women's rights and gender equality in South Sudan. These have included enabling women's participation in peacebuilding processes, including constitutional reform, and the framing of the transitional justice architecture. Although progress has been slow, and in almost all cases contested, women have played an increasingly active role in peace-making and shaping reform processes and content, and have been able to ensure that their voices are heard and their concerns reflected in a number of key formal gains within the constitutional reform and transitional justice processes. Although these formal gains have rarely been matched by their implementation on the ground, achievements – such as the inclusion of SGBV as a crime to be prosecuted by the Hybrid Court of South Sudan and the increase of affirmative action quotas from 25% to 35% in the 2018 R-ARCSS – establish a valuable legal framework that women activists can leverage to demand increased rights and representation. This is in keeping with the normative framing of the WPS agenda.

However, an important gap in the literature is the extent to which the WPS agenda itself has made a difference in advancing the gender-responsive elements to peacebuilding reviewed in this working paper, in relation to constitutional reform and transitional justice.

To the extent that gains align with the WPS agenda in South Sudan, a number of key factors may be identified:

- **Women activists** have played a growing role both in peace negotiations and in South Sudanese public life. Although contested at every stage, advances in the WPS agenda have been driven by women politicians and civil society activists, who have learnt and built on their experiences of participation at talks to organise and lobby increasingly effectively.
- **Co-ordination between women's groups** played a key role in pushing for change both at peace talks and in grassroots activities through effective lobbying and collaboration.
- **Support from international and national elites** was essential to ensuring women's inclusion in peace processes and allowing women's concerns and priorities to be heard.
  - Individuals, such as leader of the SPLM John Garang and IGAD Special Envoy Ismail Wais, supported women's



participation at the CPA and R-ARCSS talks. Other bilateral and multilateral international actors have also played a major role in providing South Sudanese activists with an international platform.

- **Financial support** was key to enabling women's participation in peace talks. International partners have also extensively supported capacity-building and training projects following the 2018 peace agreement.

This case study has also identified a number of issues that have hindered the progress of the WPS agenda:

- **Divisions within South Sudanese women's movements and social cleavages** have at times hindered co-operation, as competing loyalties and social divisions have taken precedence over support for the WPS agenda.
- **Intransigent national elites** have resisted women's inclusion in political processes. Vested interests have also hampered progress in the establishment of transitional justice mechanisms, infrastructure development and social and economic reform.
- **Wider social and economic issues** such as poverty and low levels of education have prevented women, particularly those from rural backgrounds, from actively participating in public life.
- **Competition for funding** and its ad-hoc provision have at times impeded co-operation between women's groups and reduced the possibilities for participation in peacebuilding activities for groups and activists without the skills and resources to manage funding applications.

## 5.1 Lessons and gaps in the evidence

There have been significant formal gains in gender equality in South Sudan in ways that are in keeping with WPS norms and objectives. At the same time, regarding both constitutional reform content, and the gender-responsive components of the transitional justice system intended to support a transition from conflict that addresses the legacies of violence, implementation remains extremely challenging.

Efforts to transform gender norms and address the gendered experience of conflict, as reflected in these two components of peacebuilding in South Sudan, need to be fully understood against both the backdrop of the wider political economy of the conflict and ongoing tensions at the national and sub-national levels. Despite the formidable challenges, the gains made represent normative changes that women activists and women leaders have advanced at national and sub-national levels, through politically informed engagement with warring parties, strategic coalition building and use of donor support to work across different reform agendas and processes.

Technical support and logistical support for peer exchange and peer learning is valuable for women activists, both in political positions and in civil society, across different reform processes – in this case transitional justice and constitutional reform.

Sustained financial support to women's organisations that secures ongoing work and engagement with peacebuilding processes can contribute to sustained mobilising capacity and support for gender-aware change processes. Working closely with women's organisations is important to ensure awareness of national and sub-national barriers, and to identify strategic opportunities.

The formal gains made in the 2018 peace agreement should be built on, for example by increasing the scope and specificity of quotas for women's representation in political institutions. International agencies' long-term financial and technical support should also aim to support the ongoing development of links and coalitions across diverse women's organisations, supporting their ability to develop a common agenda and to press for the implementation of existing and future legal GEWE commitments.

Partners should support the strengthening and reform of both formal and customary justice institutions in order for them to be more effective for women, and work with women lawyers and CSOs to engage with justice institutions and support women's claims for justice. Such initiatives can learn from regional precedents such as the work of CSOs and women lawyers to advance women's rights in customary and formal justice institutions in Kenya.

Further empirical research on the evidence gaps on the impact of WPS on the South Sudanese government's integration of gender dimensions into its work could inform future approaches for international partners and enable them to focus support to specific ministries. International actors should also support research to examine specific ways of working by international partners that have contributed to formal GEWE gains made in South Sudan, focusing on successful efforts to support mobilisational capacity within the specific political economy conditions of the conflict, and locally grounded interventions. Research could also explore the extent to which normative advances have been reflected in empirical changes and examine how to further and accelerate these processes of change.

Finally, partners should aim to find ways of working that incorporate intersectional approaches to gender and strategies that connect the protection and participation pillars of the WPS agenda. In a situation of ongoing violence and conflict, effective protection-focused interventions remain key, while supporting women's participation at all levels of social, economic, and political life will be crucial to the long-term progress of the WPS agenda in South Sudan.

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