

SOUTH SUDAN

Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers

Current to June 2014

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Overview

In South Sudan, despite unambiguous provisions in the Constitution and the law, the principle of an independent and impartial judiciary is not yet respected in practice. Among other things, the ICJ was informed of a number of incidents of interference and harassment involving representatives of the other State powers. Further, a lack of resources has translated into a shortage of judges and a lack of adequate infrastructure, including court buildings.

The lack of an operational legal framework for the legal profession has a negative impact on lawyers' independence. Among other things, there are no clear, coherent and uniform norms for accessing the profession, which risks to undermine the quality of the services delivered. Moreover, there is no operational Bar Association or other self-regulating body for the legal profession. The Constitution and law fall short of containing the safeguards necessary to guarantee that lawyers can play the role in providing legal advice and a defence as set out in international standards.

Further, the ICJ has heard recurring allegations of political interference with the function of the prosecutorial services in the handling of criminal cases. Legal education and continued education, mostly due to the scarcity of resources, are wanting.

A. Introduction

1. Legal tradition

The Republic of South Sudan has a pluralist legal regime that reflects the country's turbulent history. The Transitional Constitution recognizes five sources of law: the Transitional Constitution itself; written law; customs and traditions of the people; the will of the people; and "any other relevant source".¹

South Sudan attained independence from the Republic of Sudan on 9 July 2011, after almost fifty years of continuous civil war. Independence came pursuant to the Comprehensive Peace Agreement (CPA), signed six years earlier. The CPA, comprised of six Protocols agreed between 2002 and 2005, provided the basis for governance during the Interim Period (9 July 2005 – 9 July 2011).

Prior to independence, Sudanese law was in force on the territory of what is now the Republic of South Sudan. Sudanese criminal law includes elements from British colonial penal law, the Egyptian civil code and the 1983 'September Laws', under which penalties are prescribed by Islamic law. Religious laws govern personal matters, while civil matters are formally governed by statute, although in practice, resort is often made to unwritten rules and traditional community justice systems to resolve disputes. The 1998 Constitution

¹ Transitional Constitution, S. 5. Several different versions of the Transitional Constitution appear to have been published. This profile uses the version that was uploaded to the websites of UNESCO and WIPO.

of Sudan designated Sharia as the primary source of Sudanese law, leading judges to infuse their rulings with Islamic principles in order to interpret and apply religiously neutral laws in accord with Sharia principles.²

Since independence, the parliament of South Sudan has been facing the enormous task of amending, adapting and updating existing laws and enacting new ones, in order to create a legal system that embraces the cultural identities of the new country, while providing the stability necessary to reduce ethnic tension and foster investment. Despite the remarkable pace of legislation, it is clear that there is a mismatch between the financial and human resources allocated and the work to be done. The difficulty of setting an agenda and pursuing a clear legislative strategy presents an additional obstacle.³

The current framework within which the justice system is to operate in South Sudan differs from that previously applicable in three major ways. First, Sharia is no longer a source of law. Second, while during the Interim Period English and Arabic were the official working languages, since independence the official working language is English-only. Third, the justice system departs from inquisitorial procedures in favour of the new statutory court system, which includes more adversarial features. However, the changed framework has yet to be adopted throughout the system and implementation of these changes has not been unproblematic. In particular, as of December 2013 the reform towards the adversarial model has not yet penetrated into the daily functioning of the courts and it appeared that many trials continued to be conducted according to inquisitorial procedures. Further, the ICJ was informed that Arabic continued to be used in court; the switch to English-only has posed significant practical problems, for many judges, prosecutors and legal practitioners who were trained in Khartoum and were not yet familiar with English legal terminology.⁴

The legal landscape is complicated further by the fact that a customary system operates alongside the statutory justice system. Customary law is recognised as a source of law under the Transitional Constitution⁵ and remains a primary source of social order and stability throughout the country.⁶ It serves as the basis for adjudication in the vast majority of civil and criminal cases, which are handled by customary courts. Each tribal group has its own discrete customary law, resulting in over fifty separate bodies of customary law co-existing within South Sudan, although the laws of many groups tend to have commonalities. Customary courts regularly collaborate to adjudicate inter-tribal disputes.⁷

Different legal systems and concepts have merged in South Sudan to such an extent that it is sometimes impossible to distinguish which laws originate from pre-existing culture and which have emerged through interaction with national laws and other legal cultures. Local customary law and national laws and procedures percolate up and down the judicial hierarchy: some customary courts sentence according to statutory law, while some statutory judges apply principles and procedures derived from customary law. The end result is that, in practice, there is little certainty about what law will be applied in any given cases.⁸

² International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 15.

³ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 16-17.

⁴ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 15-16.

⁵ Transitional Constitution, S. 5.

⁶ Transitional Constitution, S. 167

⁷ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 14-15.

⁸ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 15.

2. Constitutional structure

During the Interim Period prior to independence from 9 July 2005 to 9 July 2011, the Comprehensive Peace Agreement provided the basis for governance. During that time, two constitutions applied in South Sudan:⁹

- the Interim National Constitution, which applied and was the supreme law in both Sudan and South Sudan; and
- the Interim Constitution of South Sudan, which applied to the extent that it was not inconsistent with the Interim National Constitution.¹⁰

In addition, the Comprehensive Peace Agreement mandated an inclusive Southern Sudan Constitutional Drafting Committee to draft an Interim Constitution of Southern Sudan for adoption by the Transitional Assembly of South Sudan.¹¹

The Interim Constitution of South Sudan provided for Southern Sudan to be founded on “justice, equality and human dignity” and to be “governed on the basis of a decentralized democratic system”,¹² with separation of powers.¹³ The Interim Constitution of Southern Sudan elaborated three levels of government: the Government of Southern Sudan, the State level and local government.¹⁴

On 9 July 2011, upon independence, the Transitional Constitution of South Sudan came into force. It had been drafted without public participation by a technical review committee, whose approach was limited to reviewing the Interim Constitution of South Sudan for the purpose of eliminating all references to a united Sudan and adapting existing governance structures into institutions of a sovereign State.¹⁵

Upon the new Constitution’s promulgation, international commentators and local opposition warned that it concentrated too much power in the hands of the central government and the President.¹⁶ Under the Transitional Constitution, the President is the Head of State, Head of Government, Commander-in-Chief of the Sudan People’s Liberation Army and Supreme Commander of all regular forces.¹⁷ Among the President’s many powers and prerogatives, the President plays an important role in the appointment of numerous officials throughout most of the important institutions, including the Chief Justice.¹⁸

The Transitional Constitution affirms that South Sudan has ten States, each administered by elected governors, State cabinets and elected State legislative assemblies.¹⁹ Each state has its own Constitution and may enact laws that conform to the Transitional Constitution.²⁰ However, under the Transitional Constitution the President is empowered to remove State governors and dissolve State legislative assemblies in the event of a crisis that threatens national security and territorial integrity.²¹

The Transitional Constitution is to remain in force until the adoption of a permanent Constitution. It establishes a process for the drafting and adoption of the permanent Constitution and it provides for a review process to this effect.²² However, this process is far behind schedule. Furthermore, civil society was under-represented in the composition of the Constitutional Review Commission, sparking considerable criticism. Even after the government opened up the process, accusations of a lack of transparency persisted. On 25

⁹ See CPA, Power Sharing Protocol, S. 1.5.1.2.

¹⁰ Interim Constitution of Southern Sudan, S. 3(1).

¹¹ See CPA, Power Sharing Protocol, S. 3.2.

¹² Interim Constitution of Southern Sudan, S. 1(3).

¹³ See Interim Constitution of Southern Sudan, S. 54.

¹⁴ See Interim Constitution of Southern Sudan, S. 50. Also see International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 11.

¹⁵ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 12.

¹⁶ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 12.

¹⁷ See Transitional Constitution, S. 97(3) and 101.

¹⁸ See Transitional Constitution, S. 133(1)-(2).

¹⁹ See Transitional Constitution, Part XI, Chapter I.

²⁰ See Transitional Constitution, S. 3(3).

²¹ Compare Interim Constitution of Southern Sudan, S. 103(2) and Transitional Constitution, S. 101(r)-(s).

²² See Transitional Constitution, S. 200-201.

February 2013, the Legislative Assembly enacted the Legal Affairs and Human Rights of the Council of States on Transitional Constitution (Amendment) Act, identifying the shortage of financial and human resources as the main reasons for the protracted delays and extending the mandate of the Constitutional Review Commission to 31 December 2014.²³

3. [International treaty status](#)

As of 12 June 2014, South Sudan was a party to the Geneva Conventions of 1949 and their two Additional Protocols, but had yet to become a party to any of the corpus of UN human rights treaties.

	Status (including ratification, accession and succession)
International Covenant on Civil and Political Rights	No signature or ratification
<i>ICCPR-OP1</i>	No signature or ratification
<i>ICCPR-OP2</i>	No signature or ratification
International Covenant on Economic, Social and Cultural Rights	No signature or ratification
<i>ICESCR-OP</i>	No signature or ratification

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	No signature or ratification
<i>CAT-OP</i>	No signature or ratification

International Convention on the Protection of All Persons from Enforced Disappearance	No signature or ratification
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International Convention on the Elimination of All Forms of Racial Discrimination	No signature or ratification
Convention on the Elimination of All Forms of Discrimination against Women	No signature or ratification
<i>CEDAW-OP</i>	No signature or ratification
Convention on the Rights of the Child	No signature or ratification
<i>CRC-OP1</i>	No signature or ratification
<i>CRC-OP2</i>	No signature or ratification
<i>CRC-OP3</i>	No signature or ratification
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	No signature or ratification
Convention on the Rights of Persons with Disabilities	No signature or ratification
<i>CRPD-OP</i>	No signature or ratification

	Ratification (including ratification, accession and succession)
Geneva Convention I	25 January 2013
Geneva Convention II	25 January 2013

²³ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 13-14.

Geneva Convention III	25 January 2013
Geneva Convention IV	25 January 2013
<i>Additional Protocol I</i>	25 January 2013
<i>Additional Protocol I</i>	25 January 2013
Rome Statute	No signature or ratification
Convention Against Corruption	No signature or ratification
African Charter on Human and People's Rights	No signature or ratification

At the time of Sudan's Universal Periodic Review (the periodic review of a country's human rights record by 47 members of the UN Human Rights Council) in May 2011, South Sudan was not yet an independent country. However, some members of the delegation of Sudan took part as representatives of South Sudan. Some of the recommendations put forward during the review were accordingly addressed to South Sudan, or to Sudan and South Sudan both.

The South Sudanese representatives accepted the French recommendation to adhere to the Convention on the Rights of the Child and its two Optional Protocols, and the Italian recommendation to establish a moratorium on executions with a view to abolishing the death penalty.²⁴ The representatives of South Sudan, however did not respond to any of the recommendations put to both Sudan and South Sudan.

On 21 October 2013, the National Legislative Assembly passed the bill to ratify the African Charter on Human and People's Rights, and on 20 November the bill to ratify the Convention on the Rights of the Child was passed.

In a letter of 31 October 2013 to the President of the UN General Assembly, South Sudan set out its voluntary pledge in support of its candidacy for election to the Human Rights Council for the term 2014-2016. The letter points out that the Council of Ministers of South Sudan has acceded to a package of treaties and submitted them to the legislative assembly for adoption, including: the ICCPR, ICESCR, CEDAW and its Optional Protocol, CERD, CRC, CAT, and the African Charter on Human and People's Rights. The letter stresses that the limited list of instruments to which South Sudan is a party indicates the young age of the country and its limited capacity, and is not indicative of "a lack of will to adhere to international standards".²⁵

4. [Court structure](#)

Following the entry into force of the Transitional Constitution, The Transitional Constitution of South Sudan states that "the judiciary shall be independent of the executive and the legislature" and sets out safeguards for judicial independence.²⁶ The judiciary is comprised of the Supreme Court, Courts of Appeal, High Courts, County Courts and "other courts or tribunals as deemed necessary to be established in accordance with the provisions of this Constitution and the law".²⁷

²⁴ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sudan, UN Doc. A/HRC/18/16 (11 July 2011); UPR Info, Database of UPR Recommendations. <http://www.upr-info.org/database/> (accessed 13 January 2014).

²⁵ Letter dated 31 October 2013 from the Permanent Representative of South Sudan to the United Nations addressed to the President of the General Assembly, UN Doc. A/68/565 (31 October 2013), p. 4.

²⁶ Transitional Constitution, S. 124-125.

²⁷ Transitional Constitution, S. 124.

The Supreme Court, located in Juba, is the apex court and the custodian of the Constitution and the State Constitutions.²⁸ The three branches of the Court of Appeal are located in Juba, Malakal and Rumbek. The ten branches of the High Court are located in the capitals of each of the country's ten states. As of 10 June 2014, few County Courts had been established.

In October 2012, the judiciary started experimenting with the use of mobile courts to reduce judicial backlog. In March 2013, the South Sudan Law Society reported that individuals were generally pleased by the services provided by the mobile courts and that the programme has so far proved effective as a way "to accelerate legal proceedings and to compensate for the shortage of judges".²⁹

The Judiciary Act, which regulates "the establishment and governance of the judiciary", predates the Transitional Constitution and differs from it on a number of points, including on the different levels of courts,³⁰ the number of justices serving on the Supreme Court,³¹ and the prerogatives of the Chief Justice.³² Given Section 3 of the Constitution, provisions that are not in conformity with the Constitution are null and void.³³

The Transitional Constitution recognizes the "institution, status and role of Traditional Authority, according to customary law" and, as noted above, provides that courts shall apply customary law subject to the Constitution and statutory and common law.³⁴ The Local Government Act provides for four levels of customary law courts: Town Bench Courts and A, B and C Courts.³⁵ Customary law courts have "judicial competence to adjudicate on customary disputes", but they cannot "adjudicate on criminal cases except those criminal cases with a customary interface referred to it by a competent Statutory Court".³⁶ In practice, however, customary courts have reportedly adjudicated criminal matters – including homicide – that fall outside of their jurisdiction.³⁷

Customary courts adjudicating according to customary law hear the vast majority of criminal and civil cases in South Sudan.³⁸

The relationship between statutory and customary courts is complicated by public perceptions of the two systems, with the former seen as being vulnerable to bribery and disadvantageous to the poor (although in states where the judiciary is better staffed, individuals indicate satisfaction with the judges' performance). Moreover, due to the shortage of judges and infrastructure in some areas of the country, access to a statutory court can sometimes prove illusory. Furthermore, among other things, the absence of a supervisory organ and the proliferation of customary courts are challenges to the coexistence of the two justice systems.³⁹

²⁸ See Transitional Constitution, S. 126 and S. 128.

²⁹ UN High Commissioner for Human Rights, Report to the Human Rights Council on progress of technical assistance and capacity-building for South Sudan in the field of human rights, UN Doc. A/HRC/23/31 (2013), p. 6. Also see International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 22.

³⁰ The Judiciary Act provides for Payam Courts below County Courts (see Judiciary Act, S. 7(e)). This hierarchy is also replicated in the Code of Criminal Procedure Act 2008 (S. 8(1)) and the Code of Civil Procedure Act 2007 (S. 18-22).

³¹ Compare Judiciary Act, S. 10(1) and Transitional Constitution, S. 126.

³² See Judiciary Act S. 19, which confers the power to grant temporary judicial power and is not replicated in the Transitional Constitution. Also compare Judiciary Act S. 6(2) and Transitional Constitution S. 123(8) and S.127, where the former prescribes that the Chief Justice is answerable to the President for the administration of the judiciary.

³³ Constitution, S. 3.

³⁴ See Transitional Constitution, S. 166.

³⁵ See Local Government Act, S. 97. A Courts are found at the Boma level (the lowest level of local government, corresponding to a chief's area), B Courts at Payam level (intermediate administrative level between boma and county), and C Courts at County level.

³⁶ Local Government Act, S. 98(1)-(2).

³⁷ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 23.

³⁸ See David K. Deng, *Challenges of Accountability. An Assessment of Dispute Resolution Processes in Rural South Sudan* (2013), p. 20.

³⁹ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 24-26.

The ICJ's research to date has focused on the statutory court system. This briefing therefore does not assess the customary court system in South Sudan in the light of international standards on the independence of the judiciary and the right to a fair trial.

B. Judges

It is fundamental to the rule of law, to the right to a fair trial, the right to liberty and security of person, and to the right to effective remedy for violations of human rights, that individual judges and the judiciary as a whole must be independent and impartial.⁴⁰ The requirement that courts and other tribunals be effective, independent and impartial "is an absolute right that is not subject to any exception."⁴¹

For the judiciary as an institution, the requirement of independence refers in particular to: the procedure and qualifications for the appointment of judges; guarantees relating to security of tenure until a mandatory age of retirement or expiry of term of office; the conditions governing promotion, transfer, suspension and cessation of their functions; and the degree to which the executive and legislative branches of power do or do not in practice interfere with judges and judicial decision-making.⁴²

1. Constitutional and legislative recognition of the principle of judicial independence

The independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or the law.⁴³

The principle of an independent and impartial judiciary, and safeguards to protect it, are enshrined in South Sudanese law. However, the State institutions do not yet fully respect this principle, in practice.

The Transitional Constitution states that judicial power "is derived from the people and is exercised by the courts in accordance with the customs, values, norms and aspirations of the people and in conformity with the Constitution and the law".⁴⁴ Further, the "judiciary shall be independent of the executive and the legislature"⁴⁵ and the latter two branches of power "shall uphold, promote and respect the independence of the judiciary".⁴⁶ All organs of the State are bound to execute judicial decisions.⁴⁷

The judiciary and its members are subject to the Constitution and the law, and judges must apply the law impartially and without political interference, fear or favour.⁴⁸ They are

⁴⁰ Among others, International Covenant on Civil and Political Rights (ICCPR), Article 14(1); Universal Declaration of Human Rights, Article 10; Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter: 'UN Basic Principles on the Independence of the Judiciary'), Principle 1 and 2; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1 and 2. Generally, see also International Commission of Jurists, *International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1* (2007).

⁴¹ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

⁴² See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19; UN Basic Principles on the Independence of the Judiciary.

⁴³ UN Basic Principles on the Independence of the Judiciary, Principle 1; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(a).

⁴⁴ Transitional Constitution, S. 123(1).

⁴⁵ Transitional Constitution, S. 123(2) and 125(1) and Judiciary Act, S. 6.

⁴⁶ Transitional Constitution, S. 125(5).

⁴⁷ See Transitional Constitution, S. 123(7).

⁴⁸ See Transitional Constitution, S. 125(4) and (6).

to be protected from reprisals consequent to their judicial decisions⁴⁹ and enjoy immunities for fulfilling their professional functions.⁵⁰

Despite these unambiguous provisions, the ICJ was informed of a number of incidents that took place between independence and the end of 2012, involving members of the other branches of government, in particular the Executive and the army, interfering with judicial processes; some examples are described in sub-section 4 below.⁵¹

2. Appointment and promotion of judges; Security of tenure

To safeguard the independence of the judiciary and the rights to equality before the law and equal access to the profession, international standards clarify that judges should be appointed through an open process on the basis of prescribed criteria that are based on merit and integrity, and without discrimination.⁵² To ensure that the composition of the judiciary is essentially reflective of the population and to combat discrimination and ensure equality before the law, steps should be taken to ensure the appointment of qualified women and members of minority communities.⁵³

As regards appointment criteria, the UN Basic Principles on the Independence of the Judiciary stipulate that persons selected must be "individuals of integrity and ability with appropriate training of qualifications in law".⁵⁴

An appropriate method of appointments of judges is a prerequisite for the independence of the judiciary⁵⁵ and is a means of ensuring equal access to the profession. On the procedure for judicial appointments, the UN Basic Principles on the Independence of the Judiciary provide that "[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives".⁵⁶ The Human Rights Committee and the Special Rapporteur on the independence of judges and lawyers, in relation to appointment and promotion of judges, have repeatedly recommended the use of bodies that are independent from the executive,⁵⁷ plural and composed mainly (if not solely) of judges and members of the legal profession,⁵⁸ and that apply transparent procedures.⁵⁹

⁴⁹ See Transitional Constitution, S. 125(8).

⁵⁰ See Transitional Constitution, S. 125(7).

⁵¹ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 28-29.

⁵² Principle 10 of the UN Basic Principles on the Independence of the Judiciary provides in part: "In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory." Also, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(h)-(j); Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

⁵³ Gabriela Knaut, Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/HRC/66/289 (2011), para. 22-33, 92; Human Rights Committee, Concluding Observations on the United Kingdom, UN Doc. CCPR/CO/73/UK (2001), para. 15; Human Rights Committee, Concluding Observations on France, UN Doc. CCPR/C/FRA/CO/4 (2008), para. 26; Human Rights Committee, Concluding Observations on Sudan, UN Doc. CCPR/C/79/Add.85 (1997), para. 21; Committee Against Torture, Conclusions and recommendations on Bahrain, UN Doc. CAT/C/CR/34/BHR (2005), para. 7(h); Committee on the Elimination of Racial Discrimination, General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Doc. A/60/18 (pp. 98-108) (2005), para. 5(d); Committee on the Elimination of Racial Discrimination, Concluding Observations on Guatemala, UN Doc. CERD/C/GTM/CO/12-13 (210), para. 8; Committee on the Elimination of Racial Discrimination, Concluding Observations on Colombia, UN Doc. CERD/C/304/Add.76 (1999), para. 13.

⁵⁴ UN Basic Principles on the Independence of the Judiciary, Principle 10; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(i) and (k).

⁵⁵ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

⁵⁶ UN Basic Principles on the Independence of the Judiciary, Principle 10; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(h).

⁵⁷ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(h) encourages "the establishment of an independent body". Also e.g., Concluding Observations on the Congo, CCPR/C/79/Add.118, para. 14; Concluding Observations on Liechtenstein, CCPR/CO/81/LIE, para. 12; Concluding Observations on Tajikistan, CCPR/CO/84/TJK, para. 17; Concluding Observations on Honduras, CCPR/C/HND/CO/1, para. 16; Concluding Observations on Azerbaijan, UN

*Promotions within the judiciary must be based on objective factors, particularly ability, integrity and experience.*⁶⁰

*It is widely accepted that when judges have security of tenure in office they are less vulnerable to pressure from those who can influence or make decisions about the renewal of their terms of office. Accordingly, international standards prescribe that judges tenure must be guaranteed until a mandatory retirement age or expiry of the term of office.*⁶¹

While as described below in section 4, judges nonetheless remain accountable throughout their terms of office, as a necessary corollary to the guarantee of security of tenure, international standards specify that during their term of office, judges may be removed only in exceptional, strictly limited and well-defined circumstances provided for by law, involving incapacity or behaviour that renders them unfit to carry out the duties of their office, and following a fair procedure.

The Judiciary Act provides a number of alternative requirements for appointment to the bench, either by way of promotion from inferior courts or from outside the judiciary, which appear to be consistent with international standards.⁶²

Pursuant to the Constitution, the President appoints the Chief Justice on the basis of his or her competence, integrity, credibility and impartiality. The appointment of the Chief Justice is subject to the approval by a two-thirds majority of all members of the National Legislative Assembly.⁶³

The President appoints the Deputy Chief Justice and all Justices of the Supreme Court, the Courts of Appeal and the Judges of the High Courts and County Courts, upon the recommendation of the Judicial Service Commission, on the basis of the same criteria. As with the Chief Justice, the appointments of the Deputy Chief Justice as well as the Justice of the Supreme Court are also subject to approval by a majority of two-thirds of all members of the National Legislative Assembly.⁶⁴

Furthermore, the Transitional Constitution calls for “substantial representation of women”⁶⁵ in the judiciary. In practice, however, few women serve as judges in South Sudan and there are no female justices of the Supreme Court.

Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 11; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 9.

⁵⁸ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29. See International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners’ guide, no. 1 (2007), pp. 45-48.

⁵⁹ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People’s Rights, Article A.4(h); Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 32; Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Preliminary Report to the Human Rights Commission on a mission to Ecuador, UN Doc. E/CN.4/2005/60/Add.4 (2005), para. 5(d).

⁶⁰ UN Basic Principles on the Independence of the Judiciary, Principle 13; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People’s Rights, Article A.4(o); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 14.

⁶¹ UN Basic Principles on the Independence of the Judiciary, Principle 12; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People’s Rights, Article A.4(l); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 16(b) and 18(c); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 8.

⁶² See Judiciary Act, S. 20, 22-26 and 40. Also see International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 29-31.

⁶³ Transitional Constitution, S. 134.

⁶⁴ Transitional Constitution, S. 134.

⁶⁵ Transitional Constitution, S. 123(6).

The Transitional Constitution establishes the National Judicial Service Commission.⁶⁶ Its structure, composition, the terms of service of its members and its functions are to be determined by law. It is anticipated that the National Judicial Service Commission, will actually be a renamed Judicial Service Council. The Judicial Service Council was established under the Judicial Service Council Act.⁶⁷ The Chief Justice, his or her deputy and two justices of the Supreme Court on the basis of seniority; the Ministers of Justice and of Finance and the chairperson of the Legislation and Legislative Affairs Committee of the Legislative Assembly; the Dean of the Law Faculty of the University of Juba; and the President of the Bar Association are members.⁶⁸

Whatever its name, however, the Commission does not appear in practice to be fulfilling its mandate under the Constitution, with regard to the appointment of judges. The only judicial recruitment between independence and December 2013 was carried out without the JSC's involvement.⁶⁹

In February 2013, the first round of recruitment of future judges since the start of the Interim Period in July 2005 led to the appointment of 78 judicial assistants, who may subsequently be appointed to the judiciary on a permanent basis after an 18-month probation period. The appointment process was criticized as opaque; and allegations of nepotism have been made.⁷⁰

The law contains guarantees of security of tenure for judges. A justice or judge's contract can be terminated under four circumstances only: removal or dismissal; resignation; retirement (at the age of seventy)⁷¹; or death.⁷²

3. Financial independence of the judiciary

At the institutional level, international standards make clear that it is the duty of the State to provide adequate resources to enable the judiciary to properly perform its functions.⁷³ As a safeguard of judicial independence, the courts' budget shall be prepared "in collaboration with the judiciary having regard to the needs and requirements of judicial administration".⁷⁴

Furthermore, the remuneration and pensions of judges must be secured by law at an adequate level⁷⁵ that is consistent with their status⁷⁶ and is sufficient to safeguard against conflict of interest and corruption.

In South Sudan, the judiciary is self-accounting, and its finances are subject to public audit.⁷⁷ The judiciary's budget is charged on the consolidated fund and is independently managed by the judiciary.⁷⁸

⁶⁶ See Transitional Constitution, S. 133.

⁶⁷ See Judicial Service Council Act, S. 3.

⁶⁸ See Judicial Service Council Act, S. 9.

⁶⁹ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 31-33.

⁷⁰ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 31.

⁷¹ See Judiciary Act, S. 63.

⁷² See Judiciary Act, S. 61.

⁷³ UN Basic Principles on the Independence of the Judiciary, Principle 7; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(v); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 33.

⁷⁴ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 34.

⁷⁵ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(m).

⁷⁶ UN Basic Principles on the Independence of the Judiciary, Principle 11; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 16(a); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 13.

⁷⁷ Transitional Constitution, S. 125(3).

⁷⁸ Transitional Constitution, S. 125(2).

The Judicial Service Council drafts the judiciary's yearly budget, which is sent to the President for approval.⁷⁹ Once the President approves the budget, money is allocated to the Chief Justice, who administers the funds.⁸⁰ To balance this "self-accounting", the judiciary is subject to periodic public audits.⁸¹

The ICJ was informed that lack of resources available to the judiciary has translated into a shortage of judges: As of February 2014, only 124 statutory judges serve a population of over 11 million people. Outside of Juba and some of the State capitals, very few judges are available. Furthermore, the lack of resources also has resulted in a lack of adequate infrastructure, including court buildings. Furthermore, members of the judiciary often do not have access to the laws they are required to interpret and apply; the fact that there is no system for printing and distributing court decisions, key to the operation of a common law-based system as adopted by South Sudan, is also problematic.⁸²

4. [Independence and impartiality; Judicial integrity and accountability](#)

Judicial independence is founded on public trust and, to maintain that trust, judges must uphold the highest standards of independence, impartiality and integrity, and must be accountable to those standards.

The guarantee of judicial decisions by independent tribunals means that judges must be free to "decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".⁸³ Thus, both state actors and non-state actors alike must respect the independence of the judiciary and refrain from action aimed at improperly influencing members of the judiciary, undermining their independence and impartiality. While respecting the hierarchy between the courts of first instance and higher courts international standards clarify that other judges, must also respect the independence of their colleagues within the scope of the exercise of judicial functions: "No one must give or attempt to give the judge orders or instructions of any kind, that may influence the judicial decisions of the judge, except, where applicable, the opinion in a particular case given on appeal by the higher courts."⁸⁴

In the course of the exercise of judicial functions, judges must be impartial, and be seen to be impartial. Judges "must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other." Further, even where an individual judge might arguably in fact be able to ignore a personal relationship to one of the parties to a case, he or she should step aside from the case to protect against an apprehension of bias: "the tribunal must also appear to a reasonable observer to be impartial."⁸⁵

⁷⁹ Transitional Constitution, S. 125(2) and Judiciary Act, S. 6(3).

⁸⁰ Judiciary Act, S. 75-79.

⁸¹ Transitional Constitution, S. 125(3) and Judiciary Act, S. 77-78.

⁸² See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 37-40.

⁸³ UN Basic Principles on the Independence of the Judiciary, Principle 2; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.5(a). See UN Basic Principles on the Independence of the Judiciary, Principles 1-7; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Articles 2-8; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Articles 1-4.

⁸⁴ Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 4; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(f), which provides in part "... nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentences by competent authorities, in accordance with the law"; Article A.5(e) states that "A judicial officer may not consult a higher judicial authority before rendering a decision in order to ensure that his or her decision will be upheld".

⁸⁵ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 21; UN Basic Principles on the Independence of the Judiciary, Principle 2; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 25; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial

*Judges must also ensure that their conduct is above reproach in the view of a reasonable observer. They must avoid impropriety and the appearance of impropriety in all their activities. Their behaviour must reinforce the people's confidence in the integrity of the judiciary.*⁸⁶

A judicial code of conduct, drafted primarily by judges and members of the legal profession and consistent with international standards,⁸⁷ can help to safeguard judicial integrity and protect against conflicts of interest.⁸⁸ Pursuant to international standards, such a judicial code of conduct, which should be enshrined in the law, should serve as the basis for the determination of cases of alleged judicial misconduct within a fair disciplinary system.⁸⁹

Complaints about judicial misconduct must be processed expeditiously and fairly under an appropriate procedure that is subject to independent review.⁹⁰ The judge in question has the right to a fair hearing⁹¹ before an independent and impartial body. The body responsible for discipline of judges should be independent of the executive,⁹² plural and composed mainly (if not solely) of judges and members of the legal profession.⁹³ The judge's rights to a fair proceeding, including to notice of the accusations against him or her, to adequate time and facilities to prepare and present a defence including through counsel,⁹⁴ to challenge the evidence against him or her and present witnesses must be respected. Decisions must be based on established standards of judicial conduct, and sanctions must be proportionate. Decisions to suspend or remove a judge must be limited to cases in which the incapacity or behaviour of a judge renders the individual unfit to discharge his or her judicial duties. Decisions and sanctions in disciplinary proceedings should be subject to independent judicial review (although this may not apply to decisions of the highest court or the legislature in impeachment proceedings).⁹⁵

*In order to safeguard the independence of the judiciary, individual judges should also enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.*⁹⁶

Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 2 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 5. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.5(d) presents four concrete situations in which the impartiality of a judicial body would be undermined.

⁸⁶ Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 3 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 5-7.

⁸⁷ Bangalore Principles of Judicial Conduct; International Bar Association Minimum Standards of Judicial Independence, para. 35-42.

⁸⁸ Bangalore Principles of Judicial Conduct, Preamble and 'Implementation'.

⁸⁹ UN Basic Principles on the Independence of the Judiciary, Principle 19.

⁹⁰ UN Basic Principles on the Independence of the Judiciary, Principle 17 and 20; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(r); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 28.

⁹¹ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(q).

⁹² Human Rights Committee, Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20.

⁹³ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29.

⁹⁴ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(q).

⁹⁵ UN Basic Principles on the Independence of the Judiciary, Principle 17-20; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(p)-(q); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 26-31; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 8 and 11.

⁹⁶ UN Basic Principles on the Independence of the Judiciary, Principle 16; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(n)(1); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

As set out above, the principle of independence and impartiality of the judiciary are affirmed in the Transitional Constitution,⁹⁷ but not yet respected in practice.

The ICJ was informed of a number of incidents of interference and harassment involving representatives of other State powers, in particular the Executive and the army.⁹⁸

For example, the ICJ was told of an incident in a case that involved a general. Reportedly, once the case had been heard and while the judgment was pending, he was seen parking his vehicle full of armed military personnel outside the courthouse and intermittently knocked on the window of the judge's office to ask when the judgment would be ready. The judgment was reportedly hurried and went in the general's favour. From the information available to the ICJ, it appears that such incidents are common.

Judges in South Sudan are prohibited from engaging in trade or associating their office with any other employment or business incompatible with their duties or that could compromise the independence of the judiciary. A judicial code of conduct is to specify such incompatibilities.⁹⁹ However, as of December 2013 no such code of judicial ethics existed in the country.

Primary responsibility for the discipline and removal of judges lies with the Chief Justice and the Judicial Service Council.¹⁰⁰ Disciplinary measures can be imposed when a judge "contravenes his or her duty, or the ethics of the profession, or conducts himself or herself in such a way as may degrade his or her judicial position or absents himself or herself from work without permission or acceptable reason, or is convicted in the court of law of any offence or commits an act of insubordination".¹⁰¹ The Judiciary Act sets out the procedure and recognizes the right of the judge to be heard and to present a defence, in person or through a lawyer of choice.¹⁰² The Act however does not detail the constitution of the disciplinary body.¹⁰³ Disciplinary proceedings can lead to the imposition of one of five penalties by the Board of Discipline, ranging from a warning to dismissal.¹⁰⁴ The decision of the Board of Discipline may be confirmed by the Judicial Service Council in respect of Justices of the Supreme Court and of the Court of Appeal, and by the President of the Supreme Court for other judges. The JSC may, upon the recommendation of the President of the Supreme Court, on its own motion or upon the request of the judge who has been disciplined, dismiss, amend or confirm the findings of the Board of Discipline. This decision is final.¹⁰⁵

A judge or justice can also be removed in case of gross misconduct, incompetence or incapacity, for which the President must approve a specific request from the Chief Justice.¹⁰⁶ The law is silent on the issues of complaints levied against the Chief Justice, creating the possibility of a constitutional crisis, should this situation arise.

On the basis of information available to the ICJ, it seems that as of September 2013 no South Sudanese judge had been disciplined or removed through these procedures. Under those circumstances, it is difficult to assess their compliance with international standards.

⁹⁷ Transitional Constitution, S. 128.

⁹⁸ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 28-29.

⁹⁹ See Judiciary Act, S. 28.

¹⁰⁰ Transitional Constitution, S. 136(1) and Judicial Service Council Act, S. 8(1)(c)-(d).

¹⁰¹ Judiciary Act, S. 50.

¹⁰² See Judiciary Act, S. 53(3)-(4).

¹⁰³ Judiciary Act, S. 49.

¹⁰⁴ Judiciary Act, S. 54.

¹⁰⁵ Judiciary Act, S. 55. See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 37.

¹⁰⁶ Transitional Constitution, S. 136(2).

C. Lawyers

Lawyers fulfill an essential function in protecting human rights and ensuring the fair and effective administration of justice. An independent legal profession is one of the pillars upon which respect for human rights and the rule of law rests.

UN Basic Principles on the Role of Lawyers enumerate duties that lawyers must be able to carry out at all times freely. They include, among others: "advising clients on their rights and obligations and the working of the legal system insofar as it is relevant to their rights and obligations; assisting clients in every appropriate way and taking legal action to protect their interests"; and "assisting clients before courts, tribunals and administrative authorities, where appropriate". In doing so, lawyers, as well as "seek to uphold human rights and fundamental freedoms, and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession. They must "always loyally respect the interests of their clients".

As essential agents of the administration of justice they must also maintain the honour and dignity of their profession.

Governments must, among other things, ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. They must recognize and respect that all communications between lawyers and their clients within their professional relationship are confidential. The competent authorities must ensure that lawyers have access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance.¹⁰⁷

1. The role of lawyers

An independent legal profession is one of the pillars upon which respect for human rights and the rule of law rests.¹⁰⁸ Lawyers have an essential function in protecting human rights and ensuring the fair and effective administration of justice. Among other things, lawyers can play a critical role in protecting the right to liberty and the prohibition against arbitrary detention when representing people deprived of their liberty, including in proceedings challenging the legal basis of arrests and filing habeas corpus petitions. They also are key to ensuring protection of fair trial rights when working to defend individuals charged with criminal offences. They play a crucial part in combating impunity, when advising and representing victims of human rights violations and their relatives, including in the context of criminal cases brought against the alleged perpetrators and in proceedings aimed at obtaining other forms of reparation.

The ICCPR, the African Charter on Human and People's Rights and other international standards guarantee the right of all persons charged with a criminal defence to access to counsel, and the right to defend themselves against the charges with the assistance of counsel. Those who do not have counsel of choice to represent them are entitled to have legal assistance assigned to assist in their defence in any case where the interests of justice so requires, free of charge, if the accused cannot afford to pay.¹⁰⁹ The UN Principles and Guideline on Access to Legal Aid in Criminal Justice and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provide, and the Human Rights Committee has clarified that the gravity of the offence, the complexity of the case and the severity of the potential penalties are important factors in deciding on whether the

¹⁰⁷ UN Basic Principles on the Role of Lawyers, Principles 12-22.

¹⁰⁸ Lawyers' essential role in defending human rights and the rule of law has been underscored repeatedly by United Nations authorities, see *inter alia* General Assembly, Strengthening the rule of law: Report of the Secretary-General, UN Doc. A/57/275 (2002), para. 41; Human Rights Council, Resolution on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/23/6 (2013), Pre-ambule.

¹⁰⁹ ICCPR, Article 14(3)(d); African Charter on Human and People's Rights, Article 7; UN Basic Principles on the Role of Lawyers, Principle 6; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article H. See UN Principles and Guidelines on the Access to Legal Aid in Criminal Justice Systems Proceedings.

"interests of justice" require appointment of a lawyer. Effective assistance by a lawyer, free of charge if necessary, is considered to be a fundamental requirement in death penalty cases.¹¹⁰ At the regional level, the right to a fair trial has been interpreted as requiring the State to ensure the assistance of a lawyer, again free of charge if necessary, also in at least some non-criminal (e.g., civil) proceedings.¹¹¹

The Transitional Constitution of South Sudan enshrines the guarantee of the independence of the legal profession and spells out the lawyers' duty to "promote, protect and advance the fundamental rights and freedoms of citizens". They "shall serve to prevent injustice, defend the legal rights and interests of their clients, seek conciliation between adversaries and render legal aid for the needy".¹¹² A new draft law regulating the legal profession, known as either the "Advocates Act" or "Lawyers Bill", had been under review for some time, as of 10 June 2014.¹¹³ Until this new legislation is enacted, the Advocacy Act of 2003 remains the law in force related to the regulation the profession in South Sudan. As most of the provisions of the Advocacy Act 2003 have either never been implemented or are no longer followed, the legal profession is acting in a legal vacuum.¹¹⁴

Under the Transitional Constitution, accused individuals are guaranteed the right to pro bono legal assistance where they cannot afford a lawyer and are charged with a "serious offence".¹¹⁵ In practice, however, it appears that legal aid is provided only in death penalty cases.¹¹⁶

Although the Transitional Constitution characterizes the provision of legal aid as both a guarantee of fair trial¹¹⁷ and as an obligation for all lawyers,¹¹⁸ there is no centralized programme of legal aid in South Sudan. According to the government, a pro bono legal aid programme administered by the Ministry of Justice was put in place and a "Legal Aid Strategy" was reportedly adopted, but at the time of the ICJ's last visit in October 2012 seemed not to have been implemented yet. According to information received by the ICJ, only one private law firm in Juba was providing pro bono legal aid. A lack of knowledge among the public regarding the functioning of the formal legal system in general, and their individual rights in particular, has meant that few individuals accused of crimes request legal assistance, even in those cases where they would qualify for the legal aid scheme.¹¹⁹

¹¹⁰ UN Principles and Guidelines on the Access to Legal Aid in Criminal Justice Systems Proceedings, Principle 3; *the Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Section H(b); Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 38

¹¹¹ The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article H explicitly provides for a right to legal assistance in civil cases where the interests of justice so require, to be determined in light of the complexity of the case, the rights that are affected and the likely impact of the outcome of the case on the wider community. Also see the jurisprudence of the European Court of Human Rights on the interpretation of Article 6: *Airey v. Ireland*, Application No. 6289/73 (1979), para. 26; also see *McVicar v. the United Kingdom*, Application No. 46311/99 (2002), *Essaadi v. France*, Application No. 49384/99 (2002), *P., C., and S. v. the United Kingdom*, Application No. 56547/00 (2002), *Steel and Morris v. the United Kingdom*, Application No. 68416/01 (2005). The Inter-American Court of Human Rights has addressed the need to remove obstacles in access to justice that might originate from a person's economic status, including by ensuring free legal assistance, in *Advisory Opinion OC-11/90*; also see *Advisory Opinion OC-18/03* on "juridical condition and rights of undocumented migrants" and Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*.

¹¹² Transitional Constitution, S. 137.

¹¹³ The ICJ heard conflicting accounts concerning the progress of parliamentary debates on the bill.

¹¹⁴ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 41-43.

¹¹⁵ Transitional Constitution, S. 19(6).

¹¹⁶ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 48.

¹¹⁷ Transitional Constitution, S. 19(6).

¹¹⁸ Transitional Constitution, S. 137(3).

¹¹⁹ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 49.

2. Access to the legal profession

*Every person who has the necessary qualifications and integrity should be allowed to practice as a lawyer. No discrimination is permitted on grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status with regard to entry into the profession or continued practice. The prohibition of discrimination does not however necessarily preclude a requirement that a candidate for judicial office must be a national of the country concerned.*¹²⁰

*States should take special measures to provide opportunities and ensure needs-appropriate training for candidates from groups whose needs for legal services are generally not met, particularly when those groups have distinct cultures, traditions or languages or have been the victims of discrimination.*¹²¹

The Special Rapporteur on the independence of judges and lawyers has recommended that "all aspects of the lawyers' career be regulated by the bar association",¹²² which in turn must be independent (see below).

Independence of the legal profession both implies and includes security for lawyers, their clients and justice. For lawyers, this regularly means being granted a license that establishes their credentials and gives them the privilege to practice law. Licensure is a means of ensuring the quality and integrity of lawyers. At the same time, being part of a licensed profession provides lawyers with special protection, applying particular safeguards to the exercise of their professional activities, thus contributing to their independent functioning. It thus also serves to protect and assure those who call upon lawyers for legal services and enhances the quality of the administration of justice.

One of the consequences of the lack of an operational legal framework for the legal profession is that there is currently no standardized procedure for admission to the bar presently in South Sudan. While for example the requirement for an individual to complete a period of pupillage with a senior lawyer, set out under Sudanese law, appears to sometimes have been maintained as a practice in South Sudan, there is no evidence that this – or any other – condition for access to the profession is uniformly applied.¹²³ The title of lawyer is used without that entailing the application of verifiable and predictable criteria as to the person's competence. The ICJ heard accounts of lawyers holding law degrees from foreign countries working in South Sudan without ever having had to prove their familiarity with or expertise in South Sudanese law.¹²⁴

The training received by members of the legal profession practicing in South Sudan furthermore appears to vary greatly: some lawyers have a civil law and Sharia background, and were trained mainly in Arabic in Sudan; others have a common law, English-language background, either because they are foreign (mostly eastern African) nationals or because they are South Sudanese who were trained in the diaspora and returned to the country after independence.¹²⁵

The ICJ received information that approximately four hundred lawyers were working at the Ministry of Justice, and more than one hundred in private practice. The ICJ was also

¹²⁰ UN Basic Principles on the Role of Lawyers, Principle 10; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 77 and 80; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 1.

¹²¹ UN Basic Principles on the Role of Lawyers, Principle 11.

¹²² Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, Report on mission to Turkey, UN Doc. A/HRC/20/19/Add.3 (2012), para. 66. See also Human Rights Committee, Concluding Observations on Belarus, UN Doc. CCPR/C/79/Add.86 (1997), para. 14.

¹²³ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 42.

¹²⁴ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 43.

¹²⁵ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 43.

informed that vast majority of lawyers work in Juba, and that in some States and many counties there are no lawyers practicing at all.

The ICJ is concerned that the lack of clear, coherent and uniform norms and procedures for accessing the legal profession risks undermining the quality of the services provided by individuals who are called (or are calling themselves) lawyers. Furthermore the lack of qualified lawyers throughout the country, including free of charge, means that many lack access to legal assistance for a large part of the population of ca. 11.5 million people, about 98% of whom live outside of Juba.¹²⁶

3. Independence of the legal profession

In order for legal assistance to be effective, it must be carried out independently.¹²⁷ To this end, international law establishes safeguards aimed at ensuring the independence of the individual lawyer, as well as the profession as a whole.

The UN Basic Principles recognise that lawyers are entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity. The executive body of the professional associations are to be elected by its members and are to exercise its functions without external interference.¹²⁸ The UN Special Rapporteur on the independence of judges and lawyers has also underscored the "importance of an organized legal profession, including an independent and self-regulated association, to safeguard the professional interests of lawyers".¹²⁹

Lawyers' professional organizations' functions in ensuring the profession's independence include, among other things, maintaining the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession, as well as protecting the intellectual and economic independence of the profession; defending the role of lawyers in society; promoting equal access of the public to the system of justice; promoting and supporting law reform; promoting a high standard of legal education as a prerequisite for entry into the profession, while ensuring equal access for all persons having the requisite professional competence; and promoting the welfare of the members of the profession.¹³⁰

International standards place a duty on the authorities of the State to abstain from interfering in the establishment and work of professional associations of lawyers. The Human Rights Committee has raised concern about requirements for the compulsory affiliation of lawyers to a State-controlled association and the need for authorization by the Executive as prerequisites for the exercise by lawyers of the legal profession.¹³¹

International standards also underscore that associations of lawyers must, however, cooperate with governments to ensure effective and equal access to legal services, and to ensure that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.¹³²

¹²⁶ CIA World Factbook. Estimates from 2014 (country's population) and 2009 (Juba population).

¹²⁷ UN Basic Principles on the Role of Lawyers, Preamble para. 9.

¹²⁸ UN Basic Principles on the Role of Lawyers, Principle 24; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(l); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 97; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 17.

¹²⁹ Gabriela Knaut, Special Rapporteur on the Independence of Judges and Lawyers, Report on missions to Mozambique, UN Doc. A/HRC/17/30/Add.2 (2011), para. 79.

¹³⁰ See International Bar Association (IBA) Standards for the Independence of the Legal Profession (1990), Article 18.

¹³¹ Human Rights Committee, Concluding Observations of the Human Rights Committee on Belarus, UN Doc. CCPR/C/79/Add.86 (1997), para. 14.

¹³² UN Basic Principles on the Role of Lawyers, Principle 25. For a more elaborate list on the functions of lawyers' associations, see International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 18; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 99. Also see General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc. A/RES/67/187 (2012), Principle 10-11.

*Lawyers' associations are created to safeguard the professional interests of lawyers and to protect and strengthen the independence of the legal profession. As associations of essential agents in the administration of justice, they also have a key role in supporting law and justice sector reform. They should be able to engage in activities, and to initiate and participate in public discussion on the substance, interpretation and application of existing and proposed legislation. They should do so in a manner that is consistent with the protection and promotion of human rights, upholding the dignity of the legal profession and the legal system.*¹³³

The lack of an operational law mandating a Bar Association, to self-regulate the legal profession, is another gap in the existing legal framework of South Sudan.

During visits to Juba in May and September 2012, the ICJ delegation was introduced to the President and the Secretary-General of the Bar Association; also some of the lawyers with whom the ICJ met declared that they were members. However, upon inquiry into the concrete functioning of the Bar Association, the recurrent answer was that the Bar Association is "not operational". Meetings with members of the legal community revealed the widespread sentiment that a unitary body mandated to represent the legal profession is needed.¹³⁴

The ICJ considers that the current lack an operational independent Bar Association, with powers to regulate the profession, contributes to the fragmentation of the South Sudanese legal community, and hinders the implementation of systematic quality control of lawyers' services.

It is also a contributing factor to the paucity of information on the number of practicing lawyers in South Sudan.

4. Non-interference with the work of individual lawyers

*Lawyers, as set out in the UN Basic Principles on the Role of Lawyers, shall at all times maintain the honour and dignity of their profession.¹³⁵ Their duties include advising clients on their rights and obligations and the working of the legal system insofar relevant to their rights and obligations; assisting clients in every appropriate way and taking legal action to protect their interests; and assisting clients before courts, tribunals and administrative authorities, where appropriate. In doing so, lawyers must seek to uphold human rights and fundamental freedoms, and at all times act freely and diligently in accordance with the law and recognized deontological standards.¹³⁶ They must always loyally respect the interests of their clients.*¹³⁷

The UN Basic Principles on the Role of the Lawyer recognize that in order for such legal assistance to be effective, it must be carried out independently.¹³⁸ To this end, international law establishes safeguards aimed at ensuring the independence of the individual lawyer, as well as the profession as a whole.

¹³³ UN Basic Principles on the Role of Lawyers, Principles 12 and 23; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 99(g); International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 18.

¹³⁴ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 46-47.

¹³⁵ Also, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(h).

¹³⁶ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(i).

¹³⁷ See UN Basic Principles on the Role of Lawyers, Principles 12-15; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(j).

¹³⁸ UN Basic Principles on the Role of Lawyers, Preamble para. 9.

Governments must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.¹³⁹

Among other things, the authorities must ensure that lawyers are granted prompt and regular access to individuals who have been deprived of their liberty, regardless of whether they have been charged with a crime.¹⁴⁰ Initial lawyer-client meetings should occur from the very outset of detention, and in a matter involving suspected criminal conduct, before and during questioning of a suspect by the competent authorities, such as police, and investigating judges.¹⁴¹ Any delay in access to counsel must be determined and justified on a case-by-case basis. In any case delay should not exceed "forty-eight hours from the time of arrest or detention".¹⁴² Delay in granting an individual access to counsel and/or other interference in the lawyer-client however, in particular in a criminal case, can affect the ability of the accused to protect and preserve his or her rights and may prejudice the overall fairness of the subsequent criminal proceedings.

International standards related to the rights of people charged with a criminal offence, including the ICCPR, provide that a client must be granted "adequate time and facilities for the preparation of his defence".¹⁴³ Respect for this right requires, among other things that lawyers be permitted adequate time and facilities to meet with their detained clients. The UN Basic Principles on the Role of Lawyers, among other standards, affirm that those detained "shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality".¹⁴⁴

Because confidentiality is paramount to an effective lawyer-client relationship, states have duty to respect and protect the confidentiality of lawyer-client communications, within the professional relationship. In the fulfilment of this duty international standards specify that lawyer-client consultations between a detained person and their lawyer "may be within sight, but not within the hearing, of law enforcement officials"¹⁴⁵, ensuring confidentiality but taking security needs into account.

¹³⁹ UN Basic Principles on the Role of Lawyers, Principle 16(a). Also see Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(b)(2).

¹⁴⁰ UN Basic Principles on the Role of Lawyers, Principle 7; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article M.2(b) and (f); General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principle 17; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 34; Human Rights Committee, Concluding Observations on Georgia, UN Doc. CCPR/C/79/Add.74 (1997), para. 28; International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 8.

¹⁴¹ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article M.2(f) and N.2(c); General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc. A/RES/67/187 (2012), Guideline 3, para 43(b); Human Rights Council, Resolution 13/19 on Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers, UN Doc. A/HRC/RES/13/19 (2010), para. 6.

¹⁴² UN Basic Principles on the Role of Lawyers, Principle 7.

¹⁴³ ICCPR, Article 14(3)(b); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article N.3; General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principle 18.

¹⁴⁴ UN Basic Principles on the Role of Lawyers, Principle 8; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article N.3(a) and (c). Also, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 34; General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principle 18; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 91; International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 8; International Bar Association (IBA) Standards for the Independence of the Legal Profession (1990), Article 12-13; International Law Association, Paris Minimum Standards of Human Rights Norms in a State of Emergency (1984), Article 5.2(b).

¹⁴⁵ UN Basic Principles on the Role of Lawyers, Principle 8. Outside criminal justice matters, Principle 22 establishes that "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential". Also, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article N.3(e)(1)-(2).

The state is obliged to ensure that lawyers have "access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients".¹⁴⁶

It is essential that lawyers do not face any adverse consequences for representing any client. The UN Basic Principles and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa require that lawyers "shall not be identified with their clients or their clients' causes as a result of discharging their functions".¹⁴⁷ Furthermore, lawyers "must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a consequence of their association with disfavoured or unpopular causes or clients".¹⁴⁸ Thus, lawyers "shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority".¹⁴⁹

Further, the authorities must safeguard lawyers' security where this is threatened as a result of discharging their functions.¹⁵⁰

South Sudanese lawyers' duties are specified in the Transitional Constitution as serving "to prevent injustice, defend the legal rights and interests of their clients, seek conciliation between adversaries"; they "may render legal aid for the needy according to the law".¹⁵¹

The Constitution guarantees the right for "any accused person to defend himself or herself in person or through a lawyer".¹⁵² The Code of Criminal Procedure stipulates, "an arrested person shall always be entitled to contact his or her advocate".¹⁵³

These provisions fall short of containing the safeguards necessary to guarantee that lawyers can play the role in providing legal advice and a defence in criminal cases as set out in the international and regional standards described above. The ICJ does not presently have sufficient information regarding the extent to which the authorities are taking measures to facilitate the work of lawyers and to prevent interference with their work by State agents and others.

5. Lawyers' freedom of expression and association

Like other citizens, lawyers are entitled to enjoyment of their rights to freedom of expression, belief, association and assembly. These fundamental freedoms acquire specific importance in the case of persons involved in the administration of justice.

The UN Basic Principles and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa accordingly underscore and clarify the particular rights of lawyers to take part in public discussions of matters concerning the law, the administration of

¹⁴⁶ UN Basic Principles on the Role of Lawyers, Principle 21; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 33; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article N.3(3)-(7); International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 8.

¹⁴⁷ UN Basic Principles on the Role of Lawyers, Principle 18; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(g).

¹⁴⁸ International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 7. See Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 84.

¹⁴⁹ UN Basic Principles on the Role of Lawyers, Principle 20; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(e); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 85.

¹⁵⁰ UN Basic Principles on the Role of Lawyers, Principle 17; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(f).

¹⁵¹ Transitional Constitution, S. 137(2).

¹⁵² Transitional Constitution, S. 19(6).

¹⁵³ Code of Criminal Procedure Act, S. 93(2).

*justice, and human rights; to join or form local, national or international organizations; and to attend the meetings of such groups or associations without suffering professional restrictions. They also emphasize that in exercising their rights to freedom of expression and association, lawyers must conduct themselves in line with the law and recognized standards and ethics of the legal profession in exercising these rights.*¹⁵⁴

Furthermore, as set out above in Section 3, lawyers are entitled to form and join self-governing professional associations that represent their interests, promote their continuing education and protect their professional integrity.

a) Freedom of association

Lawyers and legal professionals in South Sudan can freely associate with each other. As noted above, a Bar Association exists, at least in name.

Further, the South Sudan Law Society, despite the ambiguity created by its name, is not a professional self-regulating body of the legal profession, but rather a civil society organization. It has played and continues to play an important and very visible role in the public debate on the administration of justice.

6. Integrity and accountability of the legal profession

*As with judges, a code of professional conduct for lawyers is an essential tool for the maintenance of the integrity of the profession and, consequently, the quality of access to justice in a country. The UN Basic Principles on the Role of Lawyers state that "[c]odes of professional conduct shall be established by the legal profession through its appropriate organs, or by legislation".*¹⁵⁵

In order to uphold the integrity of the legal profession lawyers must be held accountable in fair proceedings before independent bodies, for breaches of established standards of professional conduct.

Complaints against lawyers for misconduct in their professional capacity should be "processed expeditiously and fairly under appropriate procedures."¹⁵⁶ They should be decided "in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession."¹⁵⁷

International professional standards prescribe that the body responsible for investigating and adjudicating on allegations of misconduct by lawyers should be independent and impartial, and ensure that proceedings are conducted fairly and following proper procedure.¹⁵⁸ A lawyer accused of professional misconduct must have "the right to be

¹⁵⁴ UN Basic Principles on the Role of Lawyers, Principle 23; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(k); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 92; International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 5; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 14.

¹⁵⁵ UN Basic Principles on the Role of Lawyers, Principle 26; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(m). The International Bar Association (IBA) Standards for the Independence of the Legal Profession (Standard 22) reserve this task for lawyers' associations. See Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 102.

¹⁵⁶ UN Basic Principles on the Role of Lawyers, Principle 27; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(n).

¹⁵⁷ UN Basic Principles on the Role of Lawyers, Principle 29; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(p).

¹⁵⁸ UN Basic Principles on the Role of Lawyers, Principle 27 and 29; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(n)-(o); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 106; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 22.

*assisted by a lawyer of their choice”.*¹⁵⁹ *He or she should be entitled to notice of the complaints against him or her and have adequate time and facilities to prepare and present a defence. Any sanction against a lawyer for misconduct should be proportionate. The lawyer should be entitled to independent judicial review of the disciplinary proceedings.*¹⁶⁰

The duty of lawyers to observe professional ethics is enshrined in the Transitional Constitution.¹⁶¹ However, according to the information available to the ICJ, there is currently no code of professional ethics or conduct for lawyers in South Sudan.¹⁶²

As regards professional discipline, the Advocates Act 2003 sets out a procedure for the discipline of lawyers. As noted above, provisions of the Act were either never implemented or fell into disuse. Moreover, the provisions of the Act regarding the procedure for disciplining lawyers were not in line with international standards, as they did not establish and ensure that the lawyer under investigation had an opportunity to put forward a defence and be heard. In addition, the body responsible for adjudicating complaints against lawyers, as foreseen under the Advocates Act, would be subject to the influence, if not outright control, of the Minister of Justice and the judiciary.¹⁶³

D. Prosecutors

*Prosecutors play a crucial role in the administration of justice, which they must fulfil fairly, consistently and expeditiously in accordance with the law. International standards underscore that they must respect and protect human dignity and uphold human rights.*¹⁶⁴

*Prosecutors perform an active role in criminal proceedings, including the institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of such investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest. These functions shall be carried out separately from judicial functions.*¹⁶⁵

Every prosecutor must fulfil his or her professional duties in an independent, impartial and objective manner, without discrimination of any kind, and as essential agents of the criminal justice system, maintain the honour and duty of their profession.

*Prosecutors may not initiate or continue prosecution if an impartial investigation shows the charge to be unfounded. Further, they must give due attention to the prosecution of crimes committed by public officials, in particular corruption, abuse of power, grave violations of human rights and other crimes recognized by international law. If prosecutors come into possession of evidence that they know or believe on reasonable grounds was obtained through recourse to unlawful methods that constitute a grave violation of the suspect’s human rights, they must refuse to use such evidence against anyone other than those who used such methods or inform the Court accordingly and take all necessary steps to ensure that those responsible are brought to justice.*¹⁶⁶

¹⁵⁹ UN Basic Principles on the Role of Lawyers, Principle 27; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People’s Rights, Article I(n).

¹⁶⁰ UN Basic Principles on the Role of Lawyers, Principle 28; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People’s Rights, Article N(o); Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 105; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 24.

¹⁶¹ See Transitional Constitution, S. 137(2).

¹⁶² See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 51.

¹⁶³ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 49-51.

¹⁶⁴ UN Guidelines on the Role of Prosecutors, Guidelines 12-13.

¹⁶⁵ UN Guidelines on the Role of Prosecutors, Guideline 11.

¹⁶⁶ UN Guidelines on the Role of Prosecutors, Guidelines 14-16.

The prosecutorial services of South Sudan are established within the Ministry of Justice, in the form of a Directorate of Public Prosecution (DPP).¹⁶⁷ The Minister of Justice is the highest prosecuting authority, and as such is responsible for supervising the conduct of criminal cases and investigations and undertakes personally or through delegates the prosecution of cases before the statutory criminal courts.¹⁶⁸ The Minister of Justice is answerable to the President, the Council of Ministers and the Legislative Assembly for the performance of the Ministry.¹⁶⁹

1. Functioning of the prosecutorial services

Prosecutors play a crucial role in the administration of justice, and respect for the rule of law requires a strong prosecutorial authority in charge of investigating and prosecuting criminal offences. Each prosecutor must be empowered to fulfil his or her professional duties in an impartial and objective manner.

Prosecutors must perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights.¹⁷⁰ They perform an active role in criminal proceedings,¹⁷¹ and must carry out these functions impartially and objectively, protecting the public interest.¹⁷²

This requires, among other things that Prosecutors:

- *Ensure that victims of crime are provided with information about the proceedings and their rights within them, and consider their views, as appropriate;¹⁷³*
- *Do not initiate or continue a prosecution when an independent investigation indicates that the charge is unfounded;¹⁷⁴*
- *Refuse to use evidence gained as a result of unlawful means, including torture or other ill-treatment, except in proceedings against those allegedly responsible for using such unlawful means;¹⁷⁵*
- *Give due attention to the prosecution of crimes committed by public officials, including in particular corruption, abuse of power, violations of human rights and crimes under international law.¹⁷⁶*

States must ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.¹⁷⁷ In particular, the authorities must physically protect

¹⁶⁷ Transitional Constitution, S. 136(1); Ministry of Legal Affairs and Constitutional Development Organization Act, S. 8(1).

¹⁶⁸ Transitional Constitution, S. 136(2); Ministry of Legal Affairs and Constitutional Development Organization Act, S. 25(1) and 25(2)(g).

¹⁶⁹ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 26(1).

¹⁷⁰ UN Guidelines on the Role of Prosecutors, Guideline 12; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(h); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1(h) and 4.1.

¹⁷¹ UN Guidelines on the Role of Prosecutors, Guideline 11; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(g); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 4.2.

¹⁷² UN Guidelines on the Role of the Prosecutor, Guideline 13; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(i); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1(g), 3(a) and 3(c).

¹⁷³ UN Guidelines on the Role of Prosecutors, Guideline 13 (d); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(i)(4).

¹⁷⁴ UN Guidelines on the Role of Prosecutors, Guideline 14; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(j).

¹⁷⁵ UN Guidelines on the Role of Prosecutors, Guideline 16; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(l).

¹⁷⁶ UN Guidelines on the Role of Prosecutors, Guideline 15; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(k).

¹⁷⁷ UN Guidelines on the Role of Prosecutors, Guideline 4; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(a)(2); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(a).

*prosecutors and their families when their personal safety is threatened as a result of discharging their prosecutorial functions.*¹⁷⁸

*The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.*¹⁷⁹ *Further, the law or published rules and regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecutorial process.*¹⁸⁰ *If non-prosecutorial authorities have the right to give general or specific instructions, those should be transparent, consistent with lawful authority, and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.*¹⁸¹

During its missions in the country in 2012, the ICJ delegation heard recurring allegations of political interference with the functions of the prosecutions in the handling of criminal individual cases.

This interference reportedly followed one of following scenarios: a case is frustrated, by making investigations very difficult; or, a powerful interest requires a case be dropped and pressures the DPP accordingly; or in the reverse, the DPP is pressured to undertake a criminal investigation or prosecution where none is warranted.

2. [The prosecutor's career](#)

*Persons selected as prosecutors must be individuals of integrity and ability, with appropriate training and qualifications.*¹⁸² *Accordingly, States must ensure that selection criteria embody safeguards against appointments based on partiality or prejudice, and that prosecutors have appropriate education and training.*¹⁸³

*Promotion of prosecutors must be based on objective factors and decided upon in accordance with fair and impartial procedures.*¹⁸⁴

*Prosecutors must enjoy "[r]easonable conditions of service ... adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations".*¹⁸⁵ *They must "at all times maintain the honour and dignity of the profession".*¹⁸⁶

In South Sudan, in order to be eligible for appointment as Public Attorney or Legal Counsel (the former represent the Ministry of Justice externally), an individual must have citizenship with full capacity, hold a law degree and be of good behaviour.¹⁸⁷ The law specifies the experience required for appointment to each grade in the Ministry's

¹⁷⁸ UN Guidelines on the Role of Prosecutors, Guideline 5; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(b).

¹⁷⁹ International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 2.1.

¹⁸⁰ UN Guidelines on the Role of Prosecutors, Guideline 17.

¹⁸¹ International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 2.2.

¹⁸² UN Guidelines on the Role of Prosecutors, Guideline 1. See Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(a)(1).

¹⁸³ UN Guidelines on the Role of Prosecutors, Guideline 2.

¹⁸⁴ UN Guidelines on the Role of Prosecutors, Guideline 7; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(c); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(e); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(c).

¹⁸⁵ UN Guidelines on the Role of Prosecutors, Guideline 6; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(b); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(c)-(d).

¹⁸⁶ UN Guidelines on the Role of Prosecutors, Guideline 3; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1(a).

¹⁸⁷ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 34(1)-(2) and 46(1).

hierarchy.¹⁸⁸ Positions are filled through selection or promotion from within the Ministry of Justice, or through appointment, secondment or transfer from outside, upon the order of the President, Minister or Under Secretary of the Ministry of Justice, depending on the grade of the position.¹⁸⁹ Promotion is based on efficiency, also taking into account academic qualification and seniority, and regularity of attendance.¹⁹⁰

The Counsel General who leads the Directorate of Public Prosecution is appointed to and may be removed from office by the President, in consultation with the Vice President, upon recommendation of the Minister.¹⁹¹

All Public Attorneys and Legal Counsel are entitled to the status, conditions of service and benefits of similar tenure judges.¹⁹²

On their face, these Constitutional and legal provisions comply with international and regional standards on to the appointment and promotion of prosecutors. The ICJ does not presently have information on the implementation of these provisions.

3. [Accountability of the prosecutorial services](#)

Like all members of the legal profession, prosecutors must carry out their roles with integrity and in accordance with the law and in a manner that is consistent with human rights and established standards of prosecutorial conduct. And like other legal professionals Prosecutors must be accountable for professional misconduct. These are imperatives for upholding the integrity of the office of the Prosecutor as well as the legal system and respect for the rule of law.

*Disciplinary offences must be defined in law or lawful regulations and complaints alleging misconduct must be processed expeditiously and fairly in the context of fair procedures before an independent and impartial body. The prosecutor whose professional conduct is in question must be afforded a fair hearing and the decision must be based on established standards of professional conduct, and subject to independent review.*¹⁹³

Under currently applicable law, Legal Counsel who violate professional ethics, rules and regulations or behave in a way that is incompatible with the duties of his or her office, or commit an act that degrades the Ministry or legal profession, are subject to investigation and possible discipline.¹⁹⁴ A Board of Discipline is responsible for conducting or overseeing the investigation and recommending appropriate disciplinary action.¹⁹⁵ The Board in each case is constituted of The Minister, Under Secretary of Counsel General who supervises the Legal Counsel under investigation, depending on the grade of the individual subject to the proceedings. Requests for constituting a Board of Discipline are made following an administrative investigation by the Counsel General who supervises the Legal Counsel involved, or in the case of a Counsel General, the Under Secretary. The Minister or Under Secretary, depending on the case, frames the disciplinary charges.¹⁹⁶ If after the preliminary investigation the Board decides to proceed, the individual accused of misconduct is summoned to appear and the Board must hear his or her defence; a lawyer or friend may represent Counsel under investigation. Proceedings are held *in camera*. Findings of the Board must be reasoned and include a recommendation of a penalty.¹⁹⁷

¹⁸⁸ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 35-41.

¹⁸⁹ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 34.

¹⁹⁰ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 47.

¹⁹¹ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 32(1).

¹⁹² Ministry of Legal Affairs and Constitutional Development Organization Act, S. 30(2).

¹⁹³ UN Guidelines on the Role of Prosecutors, Guideline 21-22; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(n)-(o); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(f)-(g).

¹⁹⁴ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 57(1).

¹⁹⁵ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 57(2).

¹⁹⁶ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 58.

¹⁹⁷ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 59.

Possible sanctions range from a reprimand to removal from office.¹⁹⁸ The law does not specify who decides what penalty is implemented.

On their face, these provisions do not comply with international and regional standards on the accountability of prosecutors. Considering its composition, which includes the direct superiors of the Legal Counsel under investigation, the Board of Discipline cannot be considered an "independent and impartial body". The law also does not provide for independent review. The ICJ does not presently have information on the implementation of these provisions.

E. Legal education

The availability and provision of quality legal education and continuing education is essential to ensuring that legal professionals are competent and able to play their essential role in contributing to ensuring respect for the rule of law, the protection and promotion of human rights and the fair administration of justice.

The Basic Principles on the Independence of the Judiciary provide that persons selected for judicial office must have "appropriate training or qualifications in law".¹⁹⁹ Furthermore, the Singhvi Declaration places a duty on judges to "keep themselves informed about international conventions and other instruments establishing human rights norms".²⁰⁰ The Bangalore Principles of Judicial Conduct add that "a judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control".²⁰¹

The Guidelines on the Role of Prosecutors likewise specify they shall be individuals "with appropriate training and qualifications".²⁰² States must ensure that they meet this criterion and that prosecutors be made aware of the ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.²⁰³ Prosecutors have a duty to "keep themselves well-informed and abreast of legal developments".²⁰⁴

The Basic Principles on the Role of Lawyers place a duty on governments, professional associations of lawyers and educational institutions to ensure that lawyers have appropriate education and training and are aware of lawyers' ethical duties and of human rights and fundamental freedoms recognized by national and international law.²⁰⁵ Further, they should take special measures to provide opportunities and ensure needs-appropriate training for law students from groups whose needs for legal services are not consistently met, particularly including those who have distinct cultures, traditions or languages or have been the victims of past discrimination.²⁰⁶ Legal education must be open to all persons with requisite qualifications and no one shall be denied such opportunity by reason

¹⁹⁸ Ministry of Legal Affairs and Constitutional Development Organization Act, S. 61.

¹⁹⁹ UN Basic Principles on the Independence of the Judiciary, Principle 10; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article B(a).

²⁰⁰ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 40; Bangalore Principles of Judicial Conduct, Value 6: Competence and diligence, 6.4.

²⁰¹ Bangalore Principles of Judicial Conduct, Value 6: Competence and diligence, 6.3.

²⁰² UN Guidelines on the Role of Prosecutors, Guideline 1.

²⁰³ UN Guidelines on the Role of Prosecutors, Guideline 2(b); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(a)(1).

²⁰⁴ International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1.

²⁰⁵ UN Basic Principles on the Role of Lawyers, Principle 9; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article I(a); International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standards 2-4.

²⁰⁶ UN Basic Principles on the Role of Lawyers, Principle 11.

of race, colour, sex, religion, political or other opinion, national, linguistic or social origin, property, income, birth or status.²⁰⁷

*The UN Special Rapporteur on the independence of judges and lawyers has recommended that magistrates, judges, prosecutors, public defenders and lawyers should be requested to take courses on international human rights law. She also recommended that on-going legal education should be mandatory at all levels.*²⁰⁸

The Singhvi Declaration states that "continuing legal education shall be available to judges"²⁰⁹ and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa add that "where appropriate" judges shall receive training and education in racial, culture and gender sensitisation.²¹⁰

Recently, the Law Faculty of the University of Juba moved back to Juba. In the course of the civil war, its operation had been suspended and the law courses moved to Khartoum. Mostly due to the scarcity of resources, the majority of faculty members do not have permanent contracts. Physical facilities and material equipment were described to the ICJ as seriously inadequate. The shortage of books at the University library – one of only three libraries in Juba – was noted as a serious impediment to the development of course materials.²¹¹

One of the main reforms currently being implemented in South Sudan's justice sector is the establishment of a Legal Training Institute (LTI). Once operational, it is intended that the LTI will perform the functions of a post-graduate institution responsible for quality control, streamlining and coordination of all legal training in South Sudan, including the bar course. Also the issuance of certificates for admission to pupillage is to fall under the LTI's mandate. LTI training programmes will target all categories of legal professionals, except for members of the judiciary.

The Constitution provides that the judiciary "shall be responsible for the maintenance of professional standards and training of judicial personnel".²¹² Over the course of the ICJ's missions to South Sudan in 2012, the inadequacy of judicial training and education emerged as an issue of great concern, matched by expressions of sincere interest and requests for international assistance to improve quality and quantity of training. Resulting from collaboration between the judiciary and various intergovernmental and international organizations, a number of individual training modules have been provided on topics such as English language and common law principles.²¹³

The ICJ was told that the judiciary is working on the establishment of a judicial training institute, but as of September 2013 this had yet to be established. In November 2013, the media reported that of the judicial assistants recruited in February 2013, seventeen had "officially graduated" "after eight months training [in Wau], while in Central Equatoria State and Western Equatoria State, 61 had completed their training".²¹⁴ No further information was made available on the contents of that training.²¹⁵

²⁰⁷ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 77.

²⁰⁸ Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, Advance report on the global thematic study on human rights education and training of legal professionals, UN Doc. A/HRC/20/20 (2012), para. 112.

²⁰⁹ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 12.

²¹⁰ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article B(c).

²¹¹ See International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 44.

²¹² Transitional Constitution, S. 123(3).

²¹³ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 34.

²¹⁴ Gurtong.net, *South Sudan Graduates 78 Judicial Assistants*, 16 November 2013.

<http://www.gurtong.net/ECM/Editorial/tabid/124/ID/13790/Default.aspx> (last accessed 23 January 2014).

²¹⁵ International Commission of Jurists, *South Sudan: An Independent Judiciary in an Independent State?* (December 2013), p. 34 and 44.