

STARDOM UNIVERSITY

Stardom Scientific Journals
of Legal and Political Studies



— Stardom Scientific Journal of Legal and Political Studies —

Published quarterly by Stardom University

Volume 2 - 4th issue 2024

International deposit number : ISSN 2980-3764

هيئة تحرير مجلة ستاردوم العلمية للدراسات " القانونية والسياسية "

رئيس التحرير

أ.د محسن الندوي - المغرب

مدير التحرير

د. داليا عباس أحمد - الامارات

المدقق اللغوي

أ.ليلي حسين العيان - اليمن

عضو هيئة تحرير

د. سمر خمليشي - المغرب

د. إبراهيم السيد - قطر

أ.د أكنوش زكري - المغرب

د. محمد بوبوش - المغرب

جميع حقوق الملكية الأدبية والفنية محفوظة
لمجلة ستاردوم العلمية للدراسات القانونية والسياسية

LEGAL MECHANISMS FOR MINORITY RIGHTS PROTECTION IN SOUTH SUDAN: THEORETICAL PERSPECTIVES AND CHALLENGES OF ENFORCEMENT

Prepared by:

Tabu Lochupar Baroch Kumoi

**University of Bahr El-Ghazal- College of Economic and Social Studies –
Department of Rural Development – Wau – South Sudan**

Email: tabukumoi310@gmail.com

Yasein Hassan M. Osman

**School of Law – Public & Comparative Law Department (Criminal law) – Kampala
International University – Kampala – Uganda**

Email: yasein@kiu.ac.ug

Dalia Abass Ahmed

**Stardom University & Majmmah University – Faculty of LAW – Civil &
Comprative Department**

Email: dalyaabass4@gmail.com

ABSTRACT

This study investigated the legal mechanisms and institutional frameworks for protecting minority rights in South Sudan and identifying gaps in their enforcement. The problem of the study is: Minority groups in South Sudan face various human rights violations, including ethnic cleansing, forced displacement. The objectives of the study are to evaluate the existing legal mechanisms in South Sudan designed to protect minority rights, and identify shortcomings in the current legal framework and the practical challenges in implementing and enforcing minority rights protections. The researchers used the descriptive and analytical approach to find out the legal and theoretical concepts of the minority rights and how to protect those rights, analyze the ethnic diversity, and examine the issues affecting minority rights and legal frameworks for minority rights in South Sudan. Key findings revealed that: minority communities in South Sudan continue to experience exclusion from political representation, access to resources, the presence of corruption, and political interference, the most important recommendations are implementing legal reforms to address discrimination, strengthening institutions to ensure accountability, and promoting inclusive governance.

Keywords: minority, violations, ethnic, challenges, protection, mechanisms.

1. Introduction

The protection and promotion of minority rights stands as a cornerstone in the pursuit of a just and inclusive society. South Sudan, the world's youngest nation, gained independence from Sudan in 2011 after a decade of civil war, among these challenges is the protection of minority rights, a critical issue in a nation characterized by ethnic diversity and ongoing conflict. Legal mechanisms for safeguarding minority rights are essential in ensuring that minority groups receive equal treatment, protection from discrimination, and the ability to preserve their cultural, linguistic, and religious identities. These mechanisms operate at various levels, including international, regional, and national frameworks. In South Sudan,

there are National legal mechanisms for protecting minority rights, typically include Constitution of South Sudan (CSS) 2011 amended, this constitution includes specific provisions for the protection of minority rights. Other anti-discrimination laws prohibit discrimination based on race, ethnicity, religion, language, and other minority statuses. The implementation and enforcement mechanisms for all these covenants, conventions, policies, and programs, require a tribunal system to play a crucial role in enforcing minority rights. NGOs are required to advocate for minority rights and provide support to minority communities.

1.1 Problem Statement

The inadequacy of international mechanisms and efforts, weak legal frameworks and national legislation, hinder the enforcement of laws that provide legal protection for minorities. The prevalence of political institutional corruption and limited judicial impartiality undermines the legal protection of minority rights.

1.2 Importance of Study

Study the legal frameworks that aim to protect minority rights and know the enforcement of rights and the role of legal mechanisms in ensuring accountability. Discussion of the obstacles to enforcing legal protections.

1.3 Objectives of the Study

To evaluate the existing legal mechanisms in South Sudan designed to protect minority rights, identifying challenges, promotion of minority rights within diverse societies in South Sudan.

1.4 Significance of the Study

To find out some settlements to address the challenges to protect minority rights in South Sudan.

1.5 Scopes of the Study

To analyze the existing national legal frameworks to come up with mechanisms most suitable for the protection of minority rights, as well as the role of the institutions such as the Judiciary, legislature, and executive in protecting minority rights. The geographical scope of the study is South Sudan over its ten States, it also addresses the issues of minority rights from the independency of South since 2011 to date.

1.6 Research Methodology

The study used a mixed research methodology comprising of historical approach, descriptive and analytical methods. The historical approach narrated the historical developments relating to protection of minority rights in South Sudan using data collection methods, data analysis techniques, along with descriptive and analytical methods to describe and analyze the role of the legal mechanisms for protecting the minority rights.

1.7 Data Collection Methods and Analysis Techniques

The Constitution of Republic of South Sudan (2011. Amended), relevant legislation, court cases, and International human rights. Interviews with legal practitioners such as Judges, lawyers, and policymakers. Surveys with minority groups' members. Analysis of government and NGOs' reports.

1.8 Structure of the Study

The study consists of six parts as follows: section one is general introduction with brief background on minority rights issues in South Sudan. Part two examines the legal and theoretical frameworks for the interpretations of minority rights. Section three discusses the ethnic diversity in South Sudan in ten States, ethnic relations and conflict. The fourth section includes the legal mechanisms for protecting minority rights and the challenges of enforcement. Section five makes appraisal for the role of institutions, governance issues, and political context in protecting minority rights. The last section is reserved for recommendations and conclusions.

2. Literature Review

The literature review showed that none of the previous studies specifically addressed the legal mechanisms for protecting minority rights in South Sudan, and non-comprehensively analyzed the legal frameworks, institutional structures, and enforcement related to minority protection. Studies on minority protection in other post-conflict and multi-ethnic societies provided valuable comparative insights, yet the specific legal, political, and social context of South Sudan remained largely unexplored. International human rights organizations and legal scholars highlighted concerns regarding discrimination, marginalization, and human rights violations against minority groups in South Sudan. The research sees that, these discussions were often general in nature, lacking an in-depth legal analysis that focused on the effectiveness, gaps, and challenges within South Sudan's legal framework and it's too necessary to cover that gap and improve the legal mechanisms for safeguarding minority rights in South Sudan.

The study further explored how existing governance structures and judicial institutions addressed minority rights, offering policy recommendations for legal reforms and institutional strengthening. Given the absence of prior research in this specific area, this study made a significant contribution to the body of the knowledge on human rights law in South Sudan.

2.1. The Legal and Theoretical Frameworks of the Definition of Interpretations of Minority Rights

In this study, we will explore the theoretical framework that underpins the definition of "minorities," focusing on its relevance at the international level and its specific application within the context of South Sudan.

2.1.1. Human Rights' Theory

The earliest direct precursor to human rights can be found in the notion of 'natural right' developed by classical Greek philosopher like Aristotle, but this concept was fuller

developed by Thomas Aquinas in his “Summa Theological.” For several centuries, Aquinas’ conception dominated: certain goods or behaviors were naturally right (or wrong) because God ordained them so. Humans could discern what was naturally right through ‘right reason’ proper thinking. Hugo Grotius expanded on this notion in “De jure belli et paci,” asserting the immutability of what is naturally right and wrong¹. Immanuel Kant in 17th century, reacting to Hobbes’ work, argued that humans formed state-structured societies out of a rational need for protection from each other’s violence in a state of nature. Kant’s political doctrine, derived from his moral philosophy, asserted that a state must be organized through universally applicable laws that respect the equality, freedom, and autonomy of citizens. The UDHR sets out fundamental human rights that are universally protected, emphasizing equality, non-discrimination, and the inherent dignity of every individual. This study examined how South Sudan’s legal frameworks align with international human rights standards and the extent to which these rights are upheld from minority rights².

2.1.2. Social Justice Theory

The principle of social justice pertains to political institutions: “each person has the same and infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all”, that mean everyone possesses the same basic liberties that can never be revoked.

2.2. Multiculturalism and Minority Rights

Will Kymlicka’s theory advocates for the recognition and accommodation of cultural diversity within liberal democracies. It emphasizes the importance of minority rights,

¹ **Benjamin A. Keil**, Philosophical Methodology and its Implications for Experimental Philosophy, PhD research Faculty of the University of Kansas, 2015, pp 25-73. **Hugo Grotius**, The law of War and Peace, P.22.

² **Mahfuzur Rahman**, A Theoretical Framework on Minority Rights under International Law: Regional Protection & Modern Initiatives, Journal of Studies in Social Sciences, Volume 20, 2021, pp 5-13.

including cultural, linguistic, and political rights. Kymlicka's theory for minority rights begins with the assumption of two types of cultural diversity. The first type includes groups, defined as national minorities formed due to the incorporation of autonomous cultures within a large state. The second type consists of ethnic groups formed by individuals or families after migration, who aim to integrate into the larger society and be recognized as full members³.

2.3 Types of Minority Rights

Minority rights refer to the legal protections and entitlements specifically designed to ensure that ethnic, religious, linguistic, and other distinct minority groups within a society can maintain their unique identity and participate fully and equally in political, social, economic, and cultural life. These rights are intended to protect minorities from discrimination, preserve their cultural heritage, and promote their inclusion and representation in broader societal structures.

2.3.1 Protection from Discrimination

Minority rights ensure that individuals belonging to minority groups are not discriminated against based on their ethnicity, religion, language, or other distinguishing characteristics. And guarantees that minorities enjoy the same rights and protections as the majority population. This includes equal treatment under the law and equal access to services and opportunities, and involves equal treatment in judicial proceedings, law enforcement, and access to legal remedies⁴.

³ Clark, E, (2008), Philosophical Methodology in Will Kymlicka's 'Multicultural Citizenship'. Federal Governance, 5 (1).

⁴ John J. Donohue, Anti-Discrimination Law, Stanford University, School of Law, Yale University, and National Bureau of Economic Research, 2008, 1400-1450.

2.3.2 Cultural Rights

Those are culture, language, traditions and rights that include the right to education in their native language, the establishment of cultural institutions, and the celebration of cultural festivals⁵.

2.3.3 Freedom of Religion and Belief

To protect the rights of religious minorities to practice their religion freely without interference or discrimination includes the right to establish places of worship, religious education, and religious practices.

2.3.4 Political Participation

Minority rights include the right to participate in political processes and decision-making. This can involve measures such as proportional representation, reserved seats in legislative bodies, and mechanisms for minority input in policymaking.

2.3.5 Economic and Social Rights

Minority groups are entitled to fair access to economic resources, employment opportunities, healthcare, education, and social services. Policies aimed at reducing economic disparities and promoting social inclusion are critical components of minority rights.

2.3.6 Autonomy and Self-Governance

Minority rights may include forms of territorial or administrative autonomy, allowing minority groups to exercise self-governance over certain matters that are important to their identity and way of life.

2.3.7 Protection from Violence and Insecurity

Minorities are protection from violence, persecution, and threats to their security includes protection from hate crimes, ethnic cleansing, and forced displacement.

⁵ Ibid, (Art.27), ICCPR (Art.27), & DRPBNM (Art.1).

2.4 Legal Frameworks for Minority Rights

South Sudan's legal framework for minority rights is anchored in its constitution, which acknowledges the nation's diverse ethnic, cultural, and religious landscape. It incorporates international human rights treaties and includes provisions that promote equality, prohibit discrimination, and safeguard cultural and religious rights.

2.4.1 International Legal Frameworks (Treaties and Conventions)

International treaties and conventions play a crucial role in establishing and protecting minority rights. These instruments set out legal standards and obligations for states to protect and promote the rights of minority groups. This overview covers key international treaties and conventions that address minority rights, their main provisions, and their significance in the global human rights framework.

UDHR 1948 is a foundational document that sets out basic human rights and freedoms applicable to all individuals, including minorities. UDHR stated that 'Entitlement to all rights and freedoms without distinction of any kind. ICCPR 1966 is a binding treaty that outlines civil and political rights. It includes explicit protection for minority groups. Article 27: stated that; 'Rights of ethnic, religious, or linguistic minorities to enjoy their own culture, practice their religion, and use their language. The ICESCR 1966 complements the ICCPR by focusing on economic, social, and cultural rights, which are essential for the full enjoyment of minority rights⁶. CERD 1965 defined racial discrimination for state obligations to eliminate racial discrimination and equal enjoyment of civil, political, economic, social, and cultural rights, specifically addresses racial discrimination, which is a significant issue for many minority groups⁷.

DRPB-NERLM 1992. The declaration focuses specifically on minority rights, providing detailed guidelines for their protection and promotion. Article 1 provides on obligation to

⁶ International Covenant on economic, social and cultural rights,1966 (Art 2).

⁷ Convention on the Elimination of All Forms of Racial Discrimination, 1965.

protect minority identity, Article 2 provides on Rights to culture, religion, language, and participation in public life. And Article 4 provides on measures to ensure the development of minority cultures and languages⁸.

2.4.2 Framework Convention for the Protection of National Minorities, 1995.

European Convention on Human Rights is a comprehensive treaty specifically addressing the protection of national minority in Europe, through three main Articles. Article 5 provides on the protection of cultural identity, Article 9 provides on freedom of expression and media access in minority languages, and Article 15 provides on participation in public affairs⁹.

2.4.2 Regional Legal Frameworks

In East Africa, regional instruments and bodies play a crucial role in the protection and promotion of minority rights. The basic legal agreement that governs the relationship between and behavior of African States including respect for human rights, the African Charter and the regional human rights treaties.¹⁰ This Charter was adopted in 2000, emphasizing the promotion of human rights, democratic governance, and the elimination of colonialism. It prioritizes principles such as the sanctity of human life, democratic governance, gender equality, and the rejection of impunity. The ACHPR, adopted in 2000, is the main regional legal framework for protecting human rights, including minority rights its guarantees equal protection under the law, freedom of movement, the right to seek asylum, and prohibits mass expulsion based on nationality, race, ethnicity, or religion. The Charter ensures no suspension of protected rights, even in exceptional circumstances. The African Commission on Human and Peoples' Rights (ACHPR) monitors compliance with

⁸ **B.R. Ambedkar University, Lucknow**, Protection of rights of Religious and Linguistic Minorities, International Journal of Scientific & Engineering Research Volume 9, Issue 3, March, 2018, pp 19-53, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minority, 1992.

⁹ Framework Convention for the Protection of National Minorities, 1995.

¹⁰ **Ibrahima Kane**, (2008) 'Protecting the Rights of Minorities in Africa: A guide for human rights activists and civil society organizations' published by: Minority Rights Group International, 2008.

the Charter, which encompasses individual and collective rights, including the rights to equality, development, and a satisfactory environment. Overall, the Charter provides a comprehensive framework for the protection and promotion of minority rights and integrates both individual and collective rights, without distinguishing between minorities and indigenous populations¹¹.

2.4.3 National Legal Frameworks

In some cases, customary law is used to resolve disputes at the community level, but this can conflict with national legal frameworks. For example, land disputes that are resolved under customary law may not recognize the rights of minorities to communal lands. Many groups may have little knowledge of national laws or distrust the formal legal system.

2.4.4 Institutional Frameworks

The South Sudan Human Rights Commission, is mandated to monitor and report on human rights violations, including those affecting minority groups. It faces challenges such as limited resources and political interference. The Ministry of Justice and Constitutional Affairs is responsible for drafting and enforcing laws, including those related to minority rights. It plays a crucial role in legal reforms and ensuring justice for all citizens. The National Assembly enacts laws and policies that affect minority groups. Political dynamics and ethnic allegiances often influence legislative decisions. The Judiciary is tasked with interpreting and enforcing laws to protect minority rights. Issues such as corruption, lack of independence, and inadequate resources undermine their effectiveness. They often operate in challenging conditions due to political and security pressures.

3. The Ethnic Diversity in South Sudan and Ethnic Relations and Conflict

South Sudan has various ethnic groups inhabited the region, each with distinct cultures, languages, and social structures. In the 19th century, the region saw increasing influence

¹¹ The African Charter on Human and Peoples' Rights (ACHPR) 1981.

from Egyptian and Ottoman forces, primarily due to the strategic and economic importance of the Nile. The region was later colonized by the British, who administered it jointly with Egypt as the Anglo-Egyptian Sudan from 1899 until Sudan's independence in 1956. The British colonial administration often neglected the southern region, fostering resentment and a sense of marginalization among the Southern ethnic groups¹².

Post-Independence Period: Sudan gained independence from British Egyptian rule in 1956. However, the new Sudanese government failed to address the grievances and aspirations of the southern region, leading to the First Sudanese Civil War in 1955 until the Addis Ababa Agreement in 1972. This agreement ended the first civil war and granted autonomy to the Southern Region, until they agreed with Sudanese's government by signing a CPA in 2005. The CPA ended the second Sudan civil war and established a framework for a six-year transitional period, culminating in a referendum on Southern independence. In January 2011, a referendum was held, and an overwhelming majority (98.83%) voted for independence. South Sudan officially became an independent nation on July 9th, 2011. After Independence, South Sudan faced some challenges, such as struggling with political instability, marked by power struggles among its leaders¹³.

3.1 Ethnic Diversity in South Sudan.

South Sudan is one of the most ethnically diverse countries in Africa, with over 60 distinct ethnic groups which includes:

3.1.1. Dinka: The Dinka are the largest ethnic group in South Sudan, constituting about 35-40% of the population, predominantly found in the Bahr El-Ghazal region and parts of the Upper Nile, known for their pastoral lifestyle, cattle are central to their culture and economy.

¹² <https://scholarworks.seattleu.edu/intl-std-these>, accessed on 25, Sep 2024.

¹³ **Lukong Stelle Shulika, Nwabuo Okeke – Uzodike**, Inter-ethnic conflict in South Sudan: a challenge to peace, [file:///C:/Users/ADMIN%20S/Downloads/4%20\(1\).pdf](file:///C:/Users/ADMIN%20S/Downloads/4%20(1).pdf), 08,08,2025.

3.1.2. Nuer: Nuer are the second-largest ethnic group in South Sudan, making up about 15-20% of the population. Mainly reside in the greater Upper Nile region. Like the Dinka, the Nuer are predominantly pastoralists, with cattle playing a vital role in their society.

3.1.3. Shilluk (Chollo): Shilluk are one of the prominent Nilotic ethnic groups. primarily found along the banks of the White Nile in the Upper Nile region. The Shilluk have a rich history and a centralized kingdom led by a traditional king known as the Reth.

3.1.4. Azande: The Azande are a significant ethnic group in the southwest part of South Sudan. Primarily in Western Equatoria. They have a rich cultural heritage with distinct practices in agriculture and crafts.

3.1.5. Bari: The Bari are a major ethnic group in the Equatoria region, predominantly in central Equatoria. Known for their agricultural practices and vibrant cultural festivals¹⁴. The researchers see that despite the advantages of ethnic diversity and the possibility of benefiting from it socially and culturally, this ethnic diversity has negatively affected the cultural inclusion of southern Sudan, with the Dinka majority dominating the state's governing institutions and controlling the country's economy in a manner that violates the rules of social justice and the rights of minorities.

3.2 Other Ethnic Minorities in the 10 States of South Sudan:

Nyepo and Lugbara are the smallest ethnic groups in central Equatoria State, primarily residing in rural areas around Juba. They have a distinct language and cultural traditions. Jur Beli are a minority ethnic group in Lake State, with distinct cultural practices and language. Yulu and Mangayat are ethnic groups in Western Bahr El Ghazal, with unique language and cultural heritage. Burun are a small ethnic group in Upper Nile state, mainly living in the areas along the Sobat River. They have their own language and cultural practices. Jie and Kachipo are the smallest ethnic group residing in eastern Jonglei State,

¹⁴ www.gurtong.net, accessed on 27 July 2024.

limited representation in local and national government structures, resulting in inadequate political influence and access to resources. Bongo is a minority ethnic group in Warrap State, with distinct cultural practices and a language that differs from the dominant Dinka language in the State. Boya (Laarim) and Pari are a pastoralist community residing in Eastern Equatoria State, with a distinct language and cultural practices. Balanada are a minority ethnic group in Western Equatoria State, with a distinct language and cultural heritage. Jur Chatt are a minority ethnic group in Northern Bahr El Ghazal, with a distinct language and cultural traditions.

3.3 Ethnic Relations and Conflict

Ethnic identity plays a significant role in South Sudanese politics and conflicts. The rivalry between Dinka and Nuer, exacerbated by political power struggles, has been a major source of violence. Smaller ethnic groups often feel marginalized and excluded from political power and economic resources¹⁵. This is clear through the practical exercises of authority and management of state institutions.

3.4 Issues affecting Minority Rights

Minority rights face various issues such as: political representation, economic, social and the erosion of cultural identities, and human rights violations issues, discrimination, limited access to resources and opportunities.

3.4.1 Political Representation

Political power has been concentrated in the hands of larger ethnic groups, especially the Dinka tribe, and to a lesser extent, the Nuer smaller groups struggle for representation and influence in government. The peace agreement has included provisions for power-sharing, these often fail to adequately represent the diversity of South Sudan's population.

¹⁵ United Nations High Commissioner for Refugees (NNHCR). (2021). "South Sudan: Protection of Civilians and Minority Rights".

3.4.2 Economic and Social Inequality

Economic resources, including oil revenue, are often controlled by Dinka's dominant groups, leading to disparities in development and access to services among minority groups. Many minority communities lack access to basic services such as education, healthcare, and infrastructure.

3.4.3 Cultural Suppression.

Policies and practices sometimes favor dominant languages and cultures, marginalizing the languages and cultural practices of minority groups.

3.4.4 Human Rights Violations.

Minority groups have been disproportionately affected by violence, including ethnic cleansing, arbitrary detention, and forced displacement.

3.4.5 Local Government Act (2009)

The aims of this Act are to promote effective and accountable local governance, ensure community participation, and protect the rights of marginalized and minority communities.

3.4.6 Land Act (2009)

Addresses issues related to land ownership, use, and management, recognizing the customary land rights of communities, including minority groups.

3.4.7 Customary Laws

Customary laws play a significant role in South Sudan, especially in rural areas where formal legal institutions are often absent. These laws govern various aspects of life, sometimes leading to conflicts or inconsistencies.¹⁶

¹⁶Mennen T, (2012) "Customary Law and Land Rights in South Sudan", Norwegian Refugee Council.

3.5 Legal Frameworks for Minority Rights in (ARCSS, 2015) and (R. ARCSS, 2018) South Sudan

The Agreement on the Resolution of the Conflict in South Sudan (ARCSS, 2015), and the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS, 2018), forms a significant part of the country's attempt to address its ethnic and political and minority rights challenges.

3.6 The 2015 Agreement

The ARCSS, signed on August 17, 2015, aimed to end the civil war that began in 2013 between government forces led by current President Salva Kiir and opposition forces led by former Vice President Riek Machar. The agreement created a power-sharing framework and focused on reforming South Sudan's political, security, and legal institutions to create a more inclusive government that would address the concerns of all South Sudanese, including minority groups.

3.7 The 2018 Agreement

Key provisions related to minority rights in this agreement include Firstly Revitalized Transitional Government of National Unity. It allocated specific percentages of government positions to different factions, ensuring representation for various ethnic groups and political entities, including minorities. As with the 2015 agreement, the implementation of R-ARCSS has been slow, particularly regarding the formation of a unified army, the constitution-making process, and the establishment of transitional justice mechanisms. Despite the agreement's provisions, ethnic tensions remain high in many parts of the country, and some minority groups continue to face marginalization and violence.

3.8 Practical Implications

In South Sudan, the practical implications of minority group status as a challenge can manifest as marginalization, discrimination, and limited access to resources and opportunities, impacting education, healthcare. We can discuss it as follows:

3.8.1 Social and Political Exclusion

Minority groups are often marginalized in political institutions and governance structures undermining their ability to participate fully in society and disproportionately affect minority tensions.

3.8.2 Cultural Erosion

Cultural erosion refers to the gradual decline or loss of community's cultural heritage, including its traditions, languages, customs, and practices. In South Sudan, cultural erosion is a significant issue, particularly affecting minority groups. Insufficient protections and support for cultural rights lead to the erosion of minority cultures and languages. Threatening their survival.

3.8.3 Economic Disparities

Weak enforcement of land rights and economic protections exacerbates economic disparities, leaving minority communities more vulnerable to poverty and marginalization.

3.8.4 Escalating Conflict

Long-standing ethnic rivalries and historical grievances between major ethnic groups as well as unresolved land disputes and resource conflicts, fueled by inadequate legal protections and enforcement, increase tensions and violence among communities. Ethnic identities and rivalries are often exploited by political leaders to gain or maintain power.

4. The Legal Mechanisms for Protecting Minority Rights and the Challenges of Enforcement

South Sudan's legal framework for minority rights is shaped by its constitution, various peace agreements, and international human rights obligations. Ongoing conflict and violence exacerbate ethnic tensions and result in widespread human rights violations, including those against minority groups. The enforcement of laws protecting minority rights is hampered by weak institutions, lack of capacity, and political interference.

4.1 Legal Protections and Mechanisms

The South Sudan Constitution recognizes the rights of indigenous peoples and provides for their protection against discrimination however, implementation is often weak. The National Commission for Human Rights in South Sudan works to protect and promote the rights of all citizens and international organizations, such as the UN and NGOs.

4.1.1 Lack of Explicit Minority Rights Provisions

While the constitution broadly prohibits discrimination on the grounds of the race, ethnicity, religion, and language (Article 14), it does not contain specific provisions addressing the unique needs and vulnerabilities of minority groups. The constitution does not define “minorities,” nor does it provide a comprehensive framework for identifying and addressing their specific rights, such as cultural preservation, land rights, or political participation¹⁷.

4.1.2 Weak Protection of Cultural Rights

Although Article 33 guarantees the right to culture, it does not go far enough in protecting the cultures, languages, and traditions of minority groups¹⁸. There are no clear obligations for the state to promote or preserve the languages and cultural practices of smaller ethnic communities¹⁹.

4.1.3 Ambiguities in Decentralization

The constitution supports a decentralized system of government that could, in theory, benefit minority groups by granting them more autonomy at the local level. However, the exact implementation of this decentralization remains unclear and inconsistent. In practice, the federal system has not been effectively implemented, leaving many minority groups with limited control over their regional affairs and resources²⁰.

¹⁷ Interview with civil society representative in Juba, May 2024.

¹⁸ Transitional Constitution of South Sudan 2011, as amended.

¹⁹ United Nations Human Rights Council. (2019). Report of the Commission on Human Rights in South Sudan. UNHRC.

²⁰ Seminar presentation in University of Juba, 2024.

4.2 Inadequate Legal Protections in National Laws

South Sudan lacks comprehensive anti-discrimination laws that specifically protect minority groups from discrimination in employment, education, healthcare, or other public services. There are no clear legal remedies or enforcement mechanisms for individuals who face discrimination based on their ethnic, religious, or linguistic identity²¹.

4.2.1 Land Rights and Indigenous Communities

The existing legal framework does not provide for communal landownership, which is central to the identity and survival of many ethnic minorities. While the land Act (2009) recognizes community landownership, its implementation has been inconsistent, and minority communities often face displacement due to land grabs or government development projects without proper compensation or legal recourse. The ongoing conflict and displacement exacerbate these issues²².

4.2.2 Weak Gender Protection for Women in Minority Groups

Gender-based discrimination is pervasive in South Sudan, particularly in minority communities where traditional customs often conflict with constitutional gender equality provisions. There is little to no focus in the legal framework on protecting the rights of women from minority groups, who often face compounded discrimination based on both their gender and ethnic identity²³.

4.2.3 Political Representation

South Sudan's political system remains dominated by the largest ethnic groups, particularly the Dinka and Nuer, leaving smaller minority groups with minimal representation at the national and state levels. There are no mechanisms ensuring proportional representation of minorities in government institutions. The absence of quotas or reserved seats for minority

²¹ Safer World, (2011), Report on institutions, laws and services: exploring justice sector reform in South Sudan.

²² Almeida, B. & Ubink, J, (2024). "Land and Justice pathways in South Sudan" Van Vollenhoven Institute of Law, Governance and Society.

²³ Ibid.

groups in key political institutions exacerbates their marginalization in decision-making processes.

4.3 Gaps in the Implementation of International and Regional Treaties

South Sudan has ratified and acceded to various international and regional human rights treaties that contain protections for minority rights, but there are significant gaps in the domestic implementation of these obligation, these includes²⁴; there is a lack of domestication of international treaties, insufficient institutional capacity and political will to monitor and report on compliance with international and regional human rights obligations, inadequate regional legal coordination, and challenges in implementing peace agreement provisions for minorities²⁵. Besides power-sharing and political inclusion. Lack of local level implementation as transitional justice mechanisms, such as (CTRH) and (CRA) these mechanisms have yet to be fully operationalized particularly in Equatoria region, and some parts of Upper Nile.

4.4 Inconsistent Application of Customary law and State Law

In numerous rural areas, customary law supersedes statutory law. While it is essential for managing community relations, it often does not adequately address minority rights in South Sudan²⁶.

4.5 Practical Challenges in Enforcing Minority Rights Protections in South Sudan

A range of practical challenges continue to hinder their enforcement. These challenges are largely rooted in the country's ongoing political instability, weak governance structures, socio-economic inequalities, and deeply ingrained ethnic division²⁷. political instability and conflict minority groups often become the victims of violence during conflicts, for example, during the civil war, ethnic minorities in regions such as the Equatorian Upper Nilan, and

²⁴ Directorate-General for External Policies. (2013), Report on Enhancing Capacities for Human Rights in South Sudan.

²⁵ Chapman, C. (2008). "Briefing: why a minority rights approach to conflict? The case of Southern Sudan".

²⁶ United Nations Development Programs. (2010). Manual for traditional authorities on customary law in South Sudan.

²⁷ United Nations High Commissioner for Refugees (UNHCR). (2021). "South Sudan: Protection of Civilians and Minority Rights".

Bahr-Elghazalian were targeted for their perceived opposition to the central government. Weak institutional capacity: the capacity of South Sudanese institutions to enforce laws and protect minority rights is extremely limited due to the weak state infrastructure, limited human resources, and corruption. Significant socio-economic is also one of challenges faced South Sudan to protect minority rights²⁸. Land ownership is a critical issue in South Sudan, and many minority groups rely on communal lands for their livelihoods. However, land grabbing by more powerful ethnic groups, government officials, or private interests often displaces minorities²⁹.

4.6 Customary Law and Traditional Practices

In many parts of South Sudan, customary law is more influential than formal statutory law, especially in rural areas where minority groups often reside. However, customary law can sometimes contradict national and international standards for minority rights protection. Many traditional systems of governance and customary laws enforce patriarchal norms and restrict the rights of women, particularly in minority communities. This creates some practical barriers to the enforcement of minority rights because communities may prefer to adhere to traditional systems.

4.7. Lack of Awareness and Education on Minority Rights

The absence of legal literacy makes it challenging for them to advocate for themselves or seek legal recourse when their rights are infringed. Furthermore, the delayed implementation of peace agreements has impeded progress in protecting minority rights³⁰.

4.8 Weak of International Support and Monitoring.

Support and pressure to uphold minority rights protections have been inconsistent. While international organizations monitor the human rights situation in South Sudan, the

²⁸ Rogier, E. (2005). "Socio-economic Issues".

²⁹ Ibid, (7).

³⁰ First Anniversary of independence. (2012). Report on South Sudan: Time to act for peace and human rights protection.

transitional justice mechanisms outlined in the peace agreements, including the Hybrid Court for South Sudan, have not been fully implemented. This delay prevents minorities from pursuing accountability for past human rights abuses, thus maintaining a culture of impunity³¹.

5. Role of Institutions, Governance Issues, and Political Context in Protecting Minority Rights

The protection of minority rights in South Sudan is heavily influenced by the role of various institutions, governance structures, and the broader political context. The following factors interplay to either enable or hinder the implementation of legal frameworks designed to safeguard minority groups.

5.1 Role of Institutions in Protecting Minority Rights

Institutions, both national and international, are critical in ensuring the enforcement of minority rights in South Sudan. However, the effectiveness of these institutions is limited due to various factors.

5.2 The Judiciary

The judiciary is a crucial institution for protecting the rights of minorities. However, in South Sudan, it often faces challenges such as insufficient resources, a lack of independence, and vulnerability to corruption. Additionally, the ethnic composition of judicial officers can influence the impartiality of judicial decisions, particularly in cases involving ethnic minority groups.

5.3 National Human Rights Commission (NHRC)

The South Sudan National Human Rights Commission (NHRC) is tasked with promoting and protecting human rights, including minority rights. However, its effectiveness is undermined by insufficient financial resources, limited enforcement authority, and political

³¹ United Nations, Department of State. "Country Report on Human Rights Practices for 2022." Bureau of Democracy.

interference³². Additionally, pressure from the government restricts the NHRC's ability to operate independently and hold state actors accountable for human rights violations.

5.4 Parliamentary Oversight Committee

South Sudan's parliamentary bodies, particularly those focused on human rights and constitutional affairs, they must play important role in enacting and monitoring laws related to minority protection. However, these committees are often ineffective due to political alliances and ethnic allegiances within the legislative process. Parliamentary oversight is also weak, and there is little accountability for government officials who fail to implement policies that protect minorities.

5.5 Ethnic Politics

Ethnic identity plays a central role in South Sudan's political landscape. Political power is often concentrated in the hands of dominant groups is elaborated before, who have historically held significant influence within the government and military. Ethnic favoritism in governance is therefore resulting in the exclusion of minority groups from key political and economic positions. This exclusion extends to policymaking processes, leaving minorities without a voice in decisions that affect their communities.

5.6 Weak Rule of Law

The rule of law in South Sudan is fragile, with limited state capacity to enforce laws, including those protecting minorities. This is especially apparent in land disputes, where influential individuals or groups often unlawfully appropriate land from minority communities without facing legal repercussions³³.

5.7 Insecurity and Armed Conflict

The breakdown of law and order in conflict zones means that minority groups have little recourse to justice when their rights are violated. Armed groups and militias often operate

³² The Southern Sudan Human Rights Commission Act 2009.

³³ United Nations. (2023), Report on "Common County Analysis".

with impunity, committing atrocities against minority populations without fear of prosecution³⁴.

5.8 Implementation of Peace Agreements

These agreements emphasize the need for inclusive governance and the protection of human rights, including those of minority groups. However, the implementation of these agreements has been slow and incomplete, undermining their potential impact on minority rights³⁵.

5.9 Cultural Norms and Traditional Practices

South Sudan's diverse ethnic groups uphold strong cultural traditions, many of which are governed by customary law. While customary law plays a significant role in community governance, conflicts with national and international human rights standards, particularly regarding minority rights.

6. Conclusion

This study has explored the legal mechanisms, institutional frameworks, and challenges surrounding the protection of minority rights in South Sudan.

6.1 The Findings:

1. South Sudan has created several legal instruments to safeguard minority rights, including the 2011 Transitional Constitution and various peace agreements. These documents theoretically offer a robust framework for protecting ethnic, linguistic, and religious minorities.
2. The judiciary in South Sudan encounters significant challenges such as political interference, corruption, and insufficient independence. These issues critically impair its capacity to protect minority rights and deliver justice for violations.

³⁴ Afriyie, F. A., Jisong, J., & Yaw Appiah K, (2020). Comprehensive Analysis of South Sudan conflict: determinants and repercussions.

³⁵ Blackings, M. J, (2018) "Why Peace Fails: The case of South Sudan's Agreement on the Resolution of the Conflict in South Sudan".

3. Societal attitudes towards ethnic diversity and the entrenched power of dominant ethnic groups present further obstacles to the enforcement of minority rights.
4. A widespread culture of impunity exists for crimes committed against minorities, especially in regions impacted by ethnic violence. This absence of accountability weakens the rule of law and diminishes the protection of minority rights.
5. Economic inequalities among minority communities lead to their marginalization, with restricted access to resources and socio-economic opportunities worsening their disadvantaged position.

6.2 Recommendations:

1. Improve current laws and introduce new anti-discrimination legislation to clearly define and safeguard the rights of minority groups.
2. Reform the judiciary and law enforcement institutions to reduce political interference and corruption and to ensure that these institutions operate independently will enhance their ability to protect minority rights and hold violators accountable.
3. Adopt policies to ensure equal representation of all ethnic groups in political decision-making and establish accountability mechanisms to promote a culture of accountability and prevent future violations.
4. Establish clear procedures for investigating and prosecuting crimes against minorities, especially those involving ethnic violence, to promote accountability and deter future violations.
5. Address the socio-economic inequalities by implementing development programs specifically aimed at minority communities, ensuring they have access to resources and opportunities for advancement.

References:

1. **Afriyie, F. A., Jisong, J., & Yaw Appiah, K.** (2020). Comprehensive Analysis of South Sudan conflict: determinants and repercussions.
2. **Almeida. B. & Ubink, J.** (2024). “Land and Justice pathways in South Sudan” Van Vollenhoven Institute of Law, Governance and Society.
3. **B.R. Ambedkar**, University, Lucknow, Protection of rights of Religious and Linguistic Minorities, International Journal of Scientific & Engineering Research Volume 9, Issue 3, March, 2018.
4. **Benjamin A. Keil**, Philosophical Methodology and its Implications for Experimental Philosophy, PhD research Faculty of the University of Kansas, 2015.
5. **Blackings, M. J.** (2018) “Why Peace Fails: The case of South Sudan’s Agreement on the Resolution of the Conflict in South Sudan”.
6. **Chapman, C.** (2008). “Briefing: why a minority rights approach to conflict? The case of Southern Sudan”.
7. **Clark, E.** (2008), Philosophical Methodology in Will Kymlicka’s ‘Multicultural Citizenship’. Federal Governance.
8. Convention on the Elimination of All Forms of Racial Discrimination, 1965.
9. Directorate-General for External Policies, (2013), Report on Enhancing Capacities for Human Rights in South Sudan.
10. **Edmon J. Pamba**, (2019) “South Sudan Power-Sharing Agreement and Intricate Realities: Conceptual and Critical Reflections”.
11. **First Anniversary of Independence**, (2012), Report on South Sudan: Time to act for peace and human rights protection.-Framework Convention for the Protection of National Minorities, 1995.
12. <https://scholarworks.seattleu.edu/intl-std-these>, accessed on 25, Sep 2024.
13. **Hugo Grotius**, The law of War and Peace. P.

14. **Ibrahima Kane**, (2008) ‘Protecting the Rights of Minorities in Africa: A guide for human rights activists and civil society organizations’ published by: Minority Rights Group International, 2008.
15. International Covenant on Civil and Political Rights,1966.
16. International Covenant on economic, Social and Cultural Rights,1966.
17. Interview with civil society representative in Juba, May 2024.
18. **John J. Donohue**, Anti-Discrimination Law, Stanford University, School of Law, Yale University, and National Bureau of Economic Research, 2008.
19. **Lukong Stelle Shulika**, Nwabufo **Okeke – Uzodike**, Inter-ethnic conflict in South Sudan: a challenge to peace,
[file:///C:/Users/ADMIN%20S/Downloads/4%20\(1\).pdf](file:///C:/Users/ADMIN%20S/Downloads/4%20(1).pdf), 08,08,2025.
- 20.**Mahfuzur Rahman**, A Theoretical Framework on Minority Rights under International Law: Regional Protection & Modern Initiatives, Journal of Studies in Social Sciences, Volume 20, 2021.
- 21.**Mennen, T**, (2012) “Customary Law and Land Rights in South Sudan”. Norwegian Refugee Council.
- 22.**Rogier, E**, (2005). “Socio-economic Issues”.
- 23.**Safer World**, (2011). Report on institutions, laws and services: exploring justice sector reform in South Sudan.
- 24.Seminar presentation in University of Juba, 2024.
- 25.South Sudan: Protection of Civilians and Minority Rights, 2021.
- 26.The African Charter on Human and Peoples’ Rights (ACHPR) 1981.
- 27.The Revitalized Agreement for Resolution of Conflict in South Sudan (R-ARCSS) 2018.
- 28.The Southern Sudan Human Rights Commission Act 2009.
- 29.Transitional Constitution of South Sudan 2011, as amended.

- 30.UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minority, 1992.
- 31.United Nations Development Programs. (2010). Manual for traditional authorities -on customary law in South Sudan.
- 32.United Nations High Commissioner for Refugees (NNHCR), (2021).
- 33.United Nations Human Rights Council, (2012). Report of the Commissioner on Human Rights in South Sudan. UNHRC.
- 34.United Nations Human Rights Council, (2019). Report of the Commission on Human Rights in South Sudan. UNHRC.
- 35.United Nations, (2023). Report on “Common County Analysis”.
- 36.United Nations, Department of State, “Country Report on Human Rights Practices for 2022.” Bureau of Democracy.



جامعة ستاردوم

مجلة ستاردوم العلمية
للدراستات القانونية والسياسية



— مجلة ستاردوم العلمية للدراسات القانونية والسياسية —

تصدر بشكل ربع سنوي عن جامعة ستاردوم

المجلد الثاني | العدد الثالث - لعام 2024م

رقم الايداع الدولي : ISSN 2980-3764