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NOTES

LOST IN TRANSITION: HOW TRANSITIONAL PEACEBUILDING UNDERMINES DEMOCRATIZATION AND HUMAN RIGHTS IN THE SUDANS

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International organizations frequently use democratic transitional agreements as the primary framework for restoring peace after intrastate conflict. These postconflict peacebuilding efforts often result in transitional peace agreements that include a version of interim governance, typically with some power-sharing component, that aims to end armed conflict and usher in democratic elections after a set period. By examining Sudan's 2022 Political Framework Agreement (PFA) and South Sudan's 2018 Revitalized Peace Agreement (R-ARCSS), this Note critiques the linear transition logic at the core of transitional peacebuilding. It argues that these transitional agreements tend to entrench conflict, exacerbate human rights violations, and marginalize grassroots demands for democracy. This Note proposes a reorientation of transitional peacebuilding by straying away from the standardized transitional sequence, reframing conceptions of national ownership, and leveraging the UN Peacebuilding Commission to better recognize transitions as ends in themselves, maintaining democratic participation and respect for human rights at every stage of the transition process.

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”حرية سلام و عدالة و الثورة خيار الشعب“

“Freedom, peace, justice . . . the revolution is the choice of the people.”¹

INTRODUCTION

International organizations often rely on democratic transitional agreements as a framework for facilitating peace in the aftermath of intrastate conflict.² The United Nations Security Council (UNSC) man-

1. This was a common slogan during the 2019 Sudanese mass protests. See Barbara Casciarri & Stefano Manfredi, (Freedom, Peace and Justice): A Glossary of the Third Sudanese Revolution 22 (Agence Universitaire de la Francophonie Project, Working Paper No. 2, 2020) https://hal.science/hal-02511485v1/file/FREEDOM_PEACE_AND_JUSTI%20%281%29.pdf [<https://perma.cc/Y64N-BRGG>].

2. See Gregory H. Fox, Old and New Peace Agreements, 52 Seton Hall L. Rev. 797, 835 (2022) (“Many [non-international armed conflict agreements] contain commitments to a menu of liberal democratic reforms. New electoral norms and institutions, for example, featured prominently in agreements for Angola, Bangladesh, Sudan, and Cambodia.” (footnote omitted)).

dates Special Political Missions (SPMs) to guide nations through periods of political transition and prevent conflict relapse, for which promoting democracy and establishing democratic institutions is in many cases an explicit goal.³ The African Union Peace and Security Council (AUPSC) also explicitly prioritizes establishing democratic governance in its Peace Support Operations (PSOs).⁴ Under their mandate powers, the UNSC and AUPSC react to breaches of international peace and security by trying to bring forward remedies, often by facilitating peace negotiations, but not in ways that are typically understood to be accountable and responsive to local communities. These postconflict peacebuilding efforts often result in transitional peace agreements that offer a stylized model of transition that includes a version of interim governance, typically with some power-sharing component,⁵ that aims to end hostilities and usher in democratic elections after a set period.⁶ Transitional agreements are often imple-

3. Special Political Missions, UN, <https://main.un.org/securitycouncil/en/content/repertoire/political-missions-and-offices> [<https://perma.cc/FQD3-QX22>] [hereinafter List of Special Political Missions] (last visited Dec. 23, 2025) (listing current and closed SPMs, several of which explicitly mention democracy while others describe reforming state and national institutions).

4. African Union, Decade of Accelerated Implementation: Second Ten Year Implementation Plan 10 (2024), https://au.int/sites/default/files/news_events/workingdocuments/43517-wd-Agenda_2063_STYIP_Feb_2024_Launch_Version.pdf [<https://perma.cc/57WM-KVJH>] (stating that Goal 11 of the second ten-year implementation plan is to ensure democratic values and practices are the norm). Article 3 of the Constitutive Act, which sets out the AU mandate, specifically states the promotion of “democratic principles and institutions, popular participation and good governance” as an objective. Constitutive Act of the African Union, art. 3(g), July 11, 2000, 2158 U.N.T.S. 3, 36 [hereinafter Constitutive Act of the African Union]. The AUPSC, which authorizes PSOs, has a mandate in democracy promotion. Protocol Relating to the Establishment of the Peace and Security Council of the African Union, art. 3(f), July 9, 2002, <https://www.peaceau.org/uploads/psc-protocol-en.pdf> [<https://perma.cc/KZB5-ASTR>] (establishing the objective of the council to “promote and encourage democratic practices, good governance and the rule of law, protect human rights”); *id.* at art. 7(m) (authorizing the Peace and Security Commission to “follow[] up . . . the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms”); see also Robert Gerenge, *The Role of the African Union in Tackling Democratic Recession in Africa*, 30 *S. Afr. J. Int’l Affs.* 569, 576 (2023) (describing how the AU has expanded its efforts to prevent democratic recession by including preventative diplomacy in its electoral observation missions).

5. See Andreas Mehler, *Not Always in the People’s Interest: Power-Sharing Arrangements in African Peace Agreements 16–22* (German Inst. Glob. & Area Stud., Working Paper No. 83, 2008), <https://www.econstor.eu/bitstream/10419/47779/1/608728098.pdf> [<https://perma.cc/U2V8-K8EC>] (finding that most African peace agreements since 1999 contain power-sharing devices).

6. Transitional governments are particularly common in sub-Saharan Africa, where they have been installed after over sixty percent of armed conflicts. Julia Strasheim, *Interim Governments: Short-Lived Institutions for Long-Lasting Peace*, German Inst. Glob. & Area Stud. Focus Int’l Edition, no. 9, 2014, at 1, 2, https://www.files.ethz.ch/isn/186033/gf_international_1409.pdf [<https://perma.cc/Q328-NA9R>].

mented in regions facing widespread human rights violations and violations of the laws of war, operating irrespective of whether there is any indication of popular support for the interim arrangement or timeframe.⁷

This Note argues that, by supporting transitional agreement frameworks in postconflict nations that do not elicit popular support, the African Union (AU) and United Nations (UN) not only fail to live up to their mandates but also entrench conflict, exacerbate human rights violations, and marginalize grassroots demands for democracy. The concessions made in transitional agreements set the stage for future illegality, demonstrating how these agreements lay the groundwork for their own undermining. Transitional peacebuilding obscures realities on the ground by employing a vocabulary and framework of “transition” that shifts the mandate’s goalposts over time, cementing the conditions it claims to address. Within the standardized sequence of “transition”—typically involving a fragile peace agreement, an interim power-sharing government, constitutional drafting, and elections⁸—the issue is not simply the failure to oversee, implement, or finance transitional agreements; this Note argues that the logic of a linear transition itself is the fallacy. This Note operates within the understanding that international legal principles underpin all transitional peace agreements, regardless of whether those principles are articulated explicitly.⁹

Examining Sudan’s 2022 Political Framework Agreement (PFA) and South Sudan’s 2018 Revitalized Peace Agreement (R-ARCSS) reveals how transitional peace agreements can freeze conflicts in place and become tools for delaying local calls for democratic reforms. As two nations under

7. See *infra* section II.C for a discussion of the unpopularity of transitional arrangements among Sudanese civilians.

8. Rep. of the Advisory Group of Experts on the Review of the Peacebuilding Architecture, Challenge of Sustaining Peace, transmitted by Letter dated 29 June 2015 from the Chair of the Advisory Group of Experts on the Review of the Peacebuilding Architecture addressed to the President of the General Assembly and the President of the Security Council ¶¶ 31–34, U.N. Doc A/69/968-S/2015/490 (June 30, 2015) (introducing the rough template currently observed throughout nations in responding to postconflict challenges, composed of achieving a fragile peace agreement and a limited transition period that often accompanies temporary power-sharing arrangements and/or some form of national dialogue process). The report critiques the sequence but suggests the main issue is haste and that more attention should be put to development. *Id.*

9. See Emmanuel H.D. De Groof, *State Renaissance for Peace: Transitional Governance Under International Law* 371 (2020) (“[I]nternational law prescribes some rules (especially of behaviour and procedure) restricting the freedom of domestic and external actors purporting to influence [transitional governance].”); Chiara Giorgetti, *Using International Law in Somalia’s Post-Conflict Reconstruction*, 53 *Colum. J. Transnat’l L.* 48, 76 (2014) (“[A]lthough no overarching international legal framework is specifically applicable to post-conflict reconstruction, international law permeates all actions by states and private parties, from trade to immigration and from food safety to travel. Post-conflict reconstruction requires a sophisticated approach by sophisticated users.” (footnote omitted)).

the authority of transitional agreements that epitomize sustained UN and AU involvement,¹⁰ South Sudan and Sudan are valuable case studies for understanding broader flaws within international organizations' transitional peacebuilding approaches. Examining the durability of UNSC and AUPSC joint peacebuilding efforts,¹¹ particularly as Africa becomes the global center of peacebuilding,¹² can inform efforts to reduce countries' risk of relapsing into conflict and better empower local actors.¹³ While acknowledging the influence of other third-party actors, this Note focuses on the UN and AU because of their continued legal authority to mediate and implement transitional agreements under their mandates.¹⁴

Part I discusses a shift from traditional UN and AU peacekeeping efforts toward transitional peacebuilding. Then it provides an overview of the interaction between transitional peace agreements and international law to frame the imposition of such agreements as inherently intertwined with legal questions. Part II uses South Sudan's R-ARCSS and Sudan's PFA as case studies to demonstrate how stylized transitions promoted by the UN and AU have frozen conflicts in place, failed human rights victims, and stifled grassroots movements for democracy. Finally, Part III proposes a reassessment of transitional peacebuilding to better recognize that the compromises embedded within transitional agreements shape the eventual political reality. This reassessment emphasizes the need to enhance

10. For a description of how peace agreements build on each other in Sudan, see Hannah Birkenkötter, Review of Vijayashri Sripati, *Constitution-Making Under UN Auspices: Fostering Dependency in Sovereign Lands*, 19 *Int'l J. Const. L.* 358, 358 (2021) ("The Constitutional Charter replaced the 2005 Transitional Constitution of Sudan, which had largely been determined by the 2005 Comprehensive Peace Agreement Sudan's 2019 Constitutional Charter is again of a transitional nature, and its drafting was heavily influenced by international actors once more, in particular the African Union."). As South Sudan was established through the Comprehensive Peace Agreement (CPA), its founding took place "in the context of an internationally structured, resourced and legitimated elite peace agreement and reconstruction project." Sharath Srinivasan, *When Peace Kills Politics: International Intervention and Unending Wars in the Sudans* 223 (2021).

11. See Luiza Barbosa & Roberto Kuster, *The Coordination Between International and Regional Organizations (Third Party Actors) as an Effective Recourse for the International Conflict Resolution Through Mediation: The African Union's Example*, 26 *Willamette J. Int'l L. & Disp. Resol.* 138, 171–72 (2019) (describing the benefits of regional partnerships in international mediation).

12. Africa is home to more UN SPMs than any other continent. See *List of Special Political Missions*, *supra* note 3.

13. See *Peace and Security*, UN, <https://www.un.org/en/global-issues/peace-and-security> [<https://perma.cc/8TWB-B57C>] (last visited Dec. 23, 2025) (describing peacebuilding as encompassing efforts to "reduce a country's risk of lapsing or relapsing into conflict by strengthening national capacities for conflict management, and laying the foundations for sustainable peace and development").

14. See Derrick V. Frazier & William J. Dixon, *Third-Party Intermediaries and Negotiated Settlements, 1946–2000*, 32 *Int'l Interactions* 385, 401–02 (2006) (finding that international organizations are more effective mediators than individual states or coalitions of states).

the legitimacy of interim arrangements and enable civilian-led groups to define their postconflict paths.

I. THE LAW OF POSTCONFLICT PEACEBUILDING

This Part will first describe a shift in UN and AU peacekeeping efforts away from ceasefire maintenance to state-building and transitional peacebuilding. Then, it will discuss the adaptation of international legal principles to this new realm of peacebuilding. Finally, it will introduce transitional peacebuilding's role in "freezing" conflicts, which is further expanded on in section II.A.

A. *The Rise of Postconflict Peacebuilding*

The scope of early UN peacekeeping missions involved maintaining ceasefires in international conflicts involving two or more states.¹⁵ Over time, the role of the UN evolved to include peacebuilding, which involves more complex, multidimensional efforts that aim to prevent the recurrence of conflict.¹⁶ Although each mission has a different mandate, SPMs¹⁷ generally aim to prevent conflict and reach sustainable political settlements by "promoting reconciliation, . . . conducting mediation, . . . providing electoral assistance and preventing election-related vio-

15. See Jacques Fomerand, Cecelia M. Lynch & Karen Mingst, United Nations, Encyclopedia Britannica, <https://www.britannica.com/topic/United-Nations> (on file with the *Columbia Law Review*) (describing "classic" peacekeeping during the Cold War, when peacekeepers maintained ceasefires) (last visited Mar. 13, 2026).

16. See Corrine Parver & Rebecca Wolf, Civil Society's Involvement in Post-Conflict Peacebuilding, 36 *Int'l J. Legal Info.* 51, 54–55 (2008) (explaining that peacebuilding "aims . . . to change the social structures underlying the conflict" through methods including "disarming former combatants; establishing a sense of order in society; . . . training and supporting security forces; initiating and monitoring elections; protecting human rights; . . . and encouraging political participation"); see also Sonia K. Han, Building a Peace that Lasts: The United Nations and Post-Civil War Peace-Building, 26 *N.Y.U. J. Int'l L. & Pol.* 837, 837–38 (1994) (describing the shift from peacekeeping to peacebuilding and how the "surge of civil wars" contributed to this expansion).

17. The UN's peacekeeping operations, which are managed by the Department of Peace Operations, are mandated under Chapter VII of the UN Charter, which authorizes the UNSC to take actions "necessary to maintain or restore international peace and security." U.N. Charter art. 42; see also Department of Peace Operations, UN Peacekeeping, <https://peacekeeping.un.org/en/department-of-peace-operations> [<https://perma.cc/2UYZ-SGAE>] (last visited Jan. 23, 2026). By contrast, SPMs, which are managed by the Department of Political and Peacebuilding Affairs (DPPA), are mandated under Chapter VI of the UN Charter, which empowers the UNSC to take action to encourage a peaceful resolution to disputes that may pose a threat to international peace and security "by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means." U.N. Charter art. 33, ¶ 1; see also DPPA Around the World, Political and Peacebuilding Affairs, UN, <https://dppa.un.org/en/dppa-around-world> [<https://perma.cc/4XJA-3AN3>] (last visited Jan. 23, 2026).

lence, . . . strengthening national capacities for peacebuilding process,” and engaging in “preventive diplomacy.”¹⁸ A subset of these missions are specifically designed to support nations transitioning from armed conflict into stable governance, missions that this Note defines as engaging in transitional peacebuilding.

This expansion in mandate¹⁹ has not been without criticism. Some critique peacebuilding and SPMs for operating under colonial frameworks.²⁰ Decolonial scholars criticize the international legal order, including the negotiation of peace agreements, as Eurocentric. They note that its early development lacked significant input from African legal scholars despite the principles being increasingly applied to African nations.²¹ Others have critiqued the exclusion of women in the mediation

18. Malgorzata Myl, Special Political Missions and Their Role in a Preventive Diplomacy: Opportunities and Challenges, 4 E. Eur. J. Transnat'l Rels. 9, 13–14 (2020). A SPM's mandate is the stated goal and tasks of the peacebuilding operation. See Mandates and the Legal Basis for Peacekeeping, UN Peacekeeping, <https://peacekeeping.un.org/en/mandates-and-legal-basis-peacekeeping> [<https://perma.cc/K7U8-GBY4>] [hereinafter Legal Basis for Peacekeeping] (last visited Dec. 23, 2025).

19. See Kseniya Oksamytna, Who Is Behind the Expansion of UN Peacekeeping Mandates?, Colum. Sch. Int'l Pol'y & Affs.: Int'l Org. & UN Stud. (Apr. 3, 2024), <https://multilateralism.sipa.columbia.edu/news/who-behind-expansion-un-peacekeeping-mandates> (on file with the *Columbia Law Review*) (arguing that “UN officials, member state representatives, and experts all contributed to the expansion of peacekeeping mandates”).

20. See Margot Tudor, Blue Helmet Bureaucrats: United Nations Peacekeeping and the Reinvention of Colonialism, 1945–1971, at 10 (2023) (“Colonial (pre)conceptions and methods of law and order inspired UN stabilising operations and were reinforced by a belief that technocratic judgement over the political direction of the post-colonial nation was superior to the opinions and desires of the local population.”); Margot Tudor, Rethinking the History of UN Peacekeeping, Brit. Int'l Stud. Ass'n (July 30, 2021), <https://www.bisa.ac.uk/articles/rethinking-history-un-peacekeeping> [<https://perma.cc/X6UN-YC4U>] (“[M]id-level peacekeeping personnel took inspiration, often instinctively, from previous imperial administrations or career experiences to establish ‘stability’ in the host countries and assert political authority over the population. . . . [They] became knowledge gatekeepers to the global community and held substantial power over how local populations’ rights were conceived by international forums”); see also Siphamandla Zondi, African Union Approaches to Peacebuilding: Efforts at Shifting the Continent Towards Decolonial Peace, Accord (Sep. 12, 2017), <https://www.accord.org.za/ajcr-issues/african-union-approaches-peacebuilding> [<https://perma.cc/RKB9-HM6B>] (“[P]eace efforts undertaken both by the AU and regional economic communities have a fundamental weakness arising from the fact that they take as given the colonial/neo-colonial state and economy established through violent processes of conquest [T]hey envisage peace without the decommissioning of the underlying logics of coloniality”).

21. See Darren C. Zook, Decolonizing Law: Identity Politics, Human Rights, and the United Nations, 19 Harv. Hum. Rts. J. 95, 99 (2006) (“[T]he identity issues that engage human rights law are still derived from, or related to, the experience of European imperialism and colonialism.”); see also Jonathan Compton, The Peril of Imposing the Rule of Law: Lessons From Liberia, 23 Minn. J. Int'l L. 47, 48 (2014) (critiquing U.S. and UN involvement in postconflict reconstruction as assuming the superiority of Western or international systems). But see Tiyanjana Maluwa, Reassessing Aspects of the Contribution of African States to the Development of International Law Through African Regional Multilateral Treaties,

of peace agreements²² and the exclusion of civil society more broadly.²³ Further, some transitional justice scholars argue that transitional peace agreements have overly prioritized peace over justice for victims of human rights violations.²⁴ Despite these critiques, there are no signs that the UN's and AU's involvement in democratic transitions will slow down, since there are no other international organizations with the requisite legitimacy and mandate to protect human rights through democratization efforts.²⁵ Given the strategic potential of international law and its demonstrated ability to adapt over time,²⁶ it is worthwhile to examine how the norms embedded in peacebuilding can be better deployed to empower the civilians made most vulnerable by transitional agreements.

41 Mich. J. Int'l L. 327, 330 (2020) (arguing that "African states have had more than ample opportunity and space to assess the Eurocentric body of international law supposedly bequeathed to them at independence" and "to initiate the revision of the accepted praxis, orthodoxies, and hierarchies of the received international legal order").

22. See Dina Francesca Haynes, Fionnuala Ní Aoláin & Naomi Cahn, Gendering Constitutional Design in Post-Conflict Societies, 17 Wm. & Mary J. Women & L., 509, 524 (2011) ("Women are generally not privileged as central to 'making or breaking' elements of a peace agreement, and as a group their interests are not viewed in any peace process as necessary to framing the compromises and inducements necessary to kick-start, continue, or conclude negotiations."); Deborah Rubin, Re-Feminizing Mediation Globally, 12 N.Y.C. L. Rev. 355, 387 (2009) ("[W]omen's participation and involvement in international conflict mediations is still lacking.").

23. See Michal Saliternik, Perpetuating Democratic Peace: Procedural Justice in Peace Negotiations, 27 Eur. J. Int'l L. 617, 642 (2016) [hereinafter Saliternik, Perpetuating Democratic Peace] ("[T]he transformative nature of peace agreements entails that all groups in society, and, in particular, disempowered groups who often bear the main burden of compromise, should be able to participate in shaping their contents.").

24. See Jake Goodman, The Grease in the Gears: Impunity in the Democratic Republic of Congo and the Opportunity for Peace, 32 Loy. L.A. Int'l & Compar. L. Rev. 209, 210 (2010) (arguing that the focus on peace over justice in the Democratic Republic of the Congo's peace process led to short-term results but hindered efforts toward long-term peace).

25. See Karen Ann Widess, Implementing Democratization: What Role for International Organizations?, 91 Am. Soc'y Int'l L. Proc. 356, 357 (1997) ("[S]upport for democratic transitions within international organizations has become almost as commonplace as was its absence . . .").

26. For a discussion of the strategic deployment of international law, see Philipp Kastner, Interactions Between Peace Agreements and International Law, *in* International Law and Peace Settlements 165, 181 (Marc Weller, Mark Retter & Andrea Varga, eds., 2021) ("Law itself should be seen as dynamic and rooted in human interaction, which implies that law and legal meaning are constantly negotiated and created—at the same time as substantive issues—during peace negotiations and by peace agreements."); see also Noura Erakat, Justice for Some: Law and the Question of Palestine 11 (2019) ("[T]he law[] guarantees motion but not direction. Legal work together with political mobilization . . . is the wind that determines direction. The law is not loyal to any outcome or player. . . . The only promise it makes is to change and serve the interests of the most effective actors.").

B. *Peacebuilding and International Law*

With the emergence of peacebuilding, the traditional normative values of peacekeeping—consent, impartiality, and nonuse of force—have been “stretched and constantly reinterpreted, to the point that they appeared of questionable relevance to some missions.”²⁷ There is no clear legal framework for peacebuilding, as UNSC-authorized missions are not anticipated in its constitutive charter²⁸ and are instead institutional creations tied to their broader mission of promoting international peace.²⁹ Although some have critiqued this ad hoc nature of peacebuilding and called for a more robust legal framework,³⁰ this Note does not seek to build on this critique but acknowledges at the outset that there is no established legal standard for its inquiry. As international organizations that must uphold international law, any UN or AU support of a local peace agreement should aim to bring it in line with international legal standards. Thus, this Note turns to general principles within public international law, including sovereignty, self-determination, political participation,³¹ atrocity prevention,³² and the explicit goals set out by the UN’s and AU’s peacebuilding guidance³³ to frame the critique that transitional agreements

27. UN Peacekeeping Law Reform Project, Univ. of Essex, Contemporary Issues in UN Peacekeeping and International Law 3 (Sep. 2010) (unpublished manuscript), <https://repository.essex.ac.uk/4486/1/Briefing%20Paper%20No.%201%20-%20Contemporary%20Legal%20Issues%20in%20UN%20Peacekeeping%20%28September%202010%29.pdf> [https://perma.cc/9NST-UKQU].

28. Neither the UN nor the AU specifies peacebuilding or political missions in their charters. See U.N. Charter; Constitutive Act of the African Union, *supra* note 4.

29. See Cedric de Coning, Peace Enforcement in Africa: Doctrinal Distinctions Between the African Union and United Nations, 38 *Contemp. Sec. Pol’y* 145, 147 (2017) (“[P]eacekeeping and peace enforcement were not envisioned as UN tools when the Charter was drafted, so these are inferred associations.”).

30. See Brett H. McGurk, Revisiting the Law of Nation-Building: Iraq in Transition, 45 *Va. J. Int’l L.* 451, 453 (2005) (“[T]he international law of state-building in failed and post-conflict states does not exist. Instead, most state-building efforts . . . have relied entirely on ad hoc U.N. Security Council Resolutions . . . with no overarching theme or consistency. This should be unacceptable to anyone who cares about the continuing relevance of international law.”); see also Liliana Lyra Jubilut, Towards a New Jus Post Bellum: The United Nations Peacebuilding Commission and the Improvement of Post-Conflict Efforts and Accountability, 20 *Minn. J. Int’l L.* 26, 27 (2011) (“[I]t is both necessary and timely to establish a clear normative framework [for postconflict peacebuilding].”).

31. See *infra* notes 49–52 and accompanying text (discussing the emergence of a preference for democratic government within the international legal order).

32. G.A. Res. 60/L.1, 2005 World Summit Outcome, ¶¶ 138–139 (Sep. 20, 2005) (affirming each state’s responsibility to protect its own populations from genocide, war crimes, ethnic cleansing, and crimes against humanity and declaring a responsibility to take timely and decisive action when national authorities manifestly fail to protect their populations against such crimes).

33. In 2012, the UN Secretary-General issued a “Guidance for Effective Mediation” that addressed a number of fundamentals for successful mediation, including impartiality, national ownership, the importance of quality peace agreements that should “respect inter-

within the Sudans are inherently flawed and helped set the stage for illegality.

Furthermore, scholars increasingly assert that peace agreements are inseparable from international law's influence.³⁴ While intrastate peace agreements do not necessarily possess international legal status,³⁵ they are heavily influenced by and reference international legal norms.³⁶ Although peace agreements are shaped by diplomacy and politics, international law continues to guide all peacemaking projects, as after all, "political power operates at the origins of law."³⁷ By asserting this space for legal analysis, this Note seeks to fill the dearth of critique of international organizations' role in promoting transitional agreements even when they conflict with

national humanitarian, human rights and refugee laws," and the need for mediators to conduct their work within the frameworks of international law and norms. U.N. Secretary-General, *Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution*, U.N. Doc. A/66/811, annex, United Nations Guidance for Effective Mediation 30 (June 25, 2012).

34. See Kastner, *supra* note 26, at 170 (arguing that international law provides default governance mechanisms for peace agreement provisions and increases the credibility of commitments made in negotiations if parties feel bound by it); Fox, *supra* note 2, at 848 (arguing that informal interactions with peace agreements and international law have manifested in a "multilateral presence" of international organizations that target and influence parties at all phases of the peace process).

35. See Asli Ozcelik, *Entrenching Peace in Law: Do Peace Agreements Possess International Legal Status?*, *Melb. J. Int'l L.*, Nov. 2020, at 1, 3 ("Despite the attempts of peacemaking parties and the assertions of some scholars that peace agreements possess international legal status, domestic and international courts have not followed suit to date."); Gregory H. Fox & Timothy Jones, *Peace Agreements and the Persuasive Authority of International Law*, *Minn. J. Int'l L.*, Jan. 2025, at 1, 6–7 (explaining the ambiguity surrounding the legal status of peace agreements in non-international armed conflicts, as one party to the agreement is typically a non-state actor, preventing its classification as a binding treaty enforceable in international courts).

36. See Fox, *supra* note 2, at 866 ("The agreements thus assume an inward, constitution-like focus, following on international norms of human rights, democratic elections, and the rule of law among others."); see also *supra* note 34 and accompanying text.

37. Paul W. Kahn, *Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order*, 1 *Chi. J. Int'l L.* 1, 1 (2000). Incorporating a legal analysis into this discussion can also have the effect of setting the standard for the transitional process, rather than reducing the outcome to political compromises that are perceived to be beyond UN and AU control. See Kastner, *supra* note 26, at 179 ("[R]elying on international law can . . . help address the danger that a peace agreement only entrenches the very power relations created—or amplified—by the armed conflict it seeks to settle. . . . [I]nternational law has the potential to rein in power rooted in military strength and corrupt political elites."); Giorgetti, *supra* note 9, at 76 (arguing that international law can play at least three fundamental roles in postconflict situations: it can mandate a framework for action, offer guidance by indicating core issues, and provide examples of best practices).

their own charters and international law, which is becoming all the more prevalent in Africa.³⁸

Given that international organizations “stake[] much of the legitimacy” of the democratic reforms embedded in intrastate agreements in international law, evaluating them based on international legal standards is also central to both the UN and AU maintaining their credibility.³⁹ The freeze effects⁴⁰ of transitional agreements delay the realization of rights outlined in the International Bill of Human Rights and various international human rights instruments,⁴¹ while rubber-stamping impunity for perpetrators of human rights violations.⁴²

When international organizations endorse transitional governance frameworks and timelines, they implicate self-determination: the right of peoples to “freely determine their political status and freely pursue their economic, social and cultural development.”⁴³ Prioritizing the establishment of an interim government to end armed conflict can obscure the voices of local populations and revolutionary movements who may oppose

38. See Strasheim, *supra* note 6, at 2 fig. 1 (indicating that thirty interim governments have been installed in African nations between 1989 and 2012, more than double any other continent).

39. Fox, *supra* note 2, at 866.

40. See *infra* section II.A.

41. The International Covenant on Civil and Political Rights was ratified in Sudan and is in the process of ratification in South Sudan, a process which the UN Mission in South Sudan (UNMISS) has supported. See UNMISS Welcomes Ratification of International Human Rights Covenants in South Sudan, UN Peacekeeping (June 7, 2019), <https://peacekeeping.un.org/en/unmiss-welcomes-ratification-of-international-human-rights-covenants-south-sudan> [<https://perma.cc/3QKA-Q5RQ>].

42. Transitional justice scholars have long debated whether peace and impunity should prevail over justice in the transitional process. See Fen Osler Hampson, *Can Peacebuilding Work?*, 30 *Corn. Int'l L.J.* 701, 712 (1997) (“There is an obvious tension between conflict resolution on the one hand, and, on the other, the promotion of human rights, judicial reform, and the development of legal systems governed by due process.”). But see Johannes Langer, *Peace vs. Justice: The Perceived and Real Contradictions of Conflict Resolution and Human Rights*, *Criteria*, Jan.–June 2015, at 165, 183 (“There is a growing understanding that peace and justice can be mutually reinforcing instead of being exclusive. Enduring and long-term peace is much more than the immediate goal of ending a conflict and relies on justice and accountability to ensure sustainability.”). A key principle of transitional justice, however, is that formal and informal amnesty should be decided in consultation with affected communities. See Yassir Abdullah & Eyad Kourdi, *Sudan’s Military Chief Reinstates Prime Minister Ousted After Last Month’s Coup*, *CNN* (Nov. 22, 2021), <https://www.cnn.com/2021/11/21/africa/sudan-military-chief-hamdok-deal-intl/index.html> [<https://perma.cc/J583-6ZB7>] (“Darfur Lawyer’s Association said in a statement: ‘There is no bargaining again’ and ‘the solution starts with holding Al-Burhan accountable for the crimes committed since October 25, 2021.’”).

43. International Covenant on Economic, Social, and Cultural Rights art. 1, ¶ 1, Jan. 3, 1976, 993 U.N.T.S. 3, 5.

such arrangements.⁴⁴ Transitional peace agreements also invoke sovereignty,⁴⁵ now understood to include internal sovereignty of a state's citizenry⁴⁶ rather than just the sovereignty of the state itself⁴⁷—lending itself to the understanding that including the local citizenry in the transition process is integral to its success.⁴⁸

44. A report of the South Sudan National Dialogue, formed to provide a forum for South Sudanese civilians to express views on the future of the nation, noted complaints of impunity for warring leaders who had been placed in positions of governmental power by peace agreements, as well as calls for President Kiir and First Vice-President Machar's resignation. See South Sudan National Dialogue Steering Committee, Final Report 7–8, 18–20 (2020), <https://dr.211check.org/wp-content/uploads/2021/07/NDSC-Final-Report-2nd-Draft-12-Dec-2020-.pdf> [<https://perma.cc/R6TW-4QZ3>] [hereinafter South Sudan National Dialogue]. The 2024 Public Perceptions of Peace Survey found that seventy-one percent of South Sudanese people believe that South Sudan is ready for elections. David Deng, Jan Pospisil, Sophia Dawkins & Christopher Oringa, Elections and Civic Space in South Sudan: Findings From the 2024 Public Perceptions of Peace Survey 6 (2024), <https://library.fes.de/pdf-files/bueros/suedsudan/21307-20240627.pdf> [<https://perma.cc/R8DC-EDQ3>].

45. Douglass Cassel, A Framework of Norms: International Human-Rights Law and Sovereignty, *Harv. Int'l Rev.*, Winter 2001, at 60, 60 (“For the purposes of international human-rights law, the most critical element of sovereignty is the right of a state to treat its citizens within its borders as it sees fit, free of outside intervention.”).

46. This expansive definition of sovereignty that includes popular sovereignty rather than absolute state sovereignty necessarily intertwines with self-determination. See Robert Araujo, Sovereignty, Human Rights, and Self-Determination: The Meaning of International Law, 24 *Fordham Int'l L.J.* 1477, 1480 (2001) (“[S]overeignty, which is exercised by people in their exercise of self-determination, is also a matter that needs to be protected as an important human right. It is this kind of sovereignty—popular sovereignty—which is essential in the protection of other human rights.”).

47. See Kahn, *supra* note 37, at 10–12 (explaining the post-World War II tension between the view that “the source of international law was the consent of state governments” and the growing advocacy for an individual-rights based view in which “the fundamental constituents of the international community are individuals, not states”). This view has raised questions of when a state's sovereignty can be violated due to its violation of individual rights. See Jean L. Cohen, The Role of International Law in Post-Conflict Constitution-Making: Toward a Jus Post Bellum for “Interim Occupations”, 51 *N.Y.L. Sch. L. Rev.* 497, 522 (2006) (“If it is no longer assumed that the ousted government is necessarily the holder of sovereignty, and if the occupying power does not claim permanent sovereignty (annexation), then it is up to the citizenry of an intact territorial state to authorize the new representative of popular sovereignty.”).

48. See Alonso Gurmendi Dunkelberg, Your Country, My Rules: Can Military Occupations Create Successful Transitions?, 46 *Geo. J. Int'l L.* 979, 1004–05 (2015) (“Understanding sovereignty in these terms makes clear the fundamental point of any successful transition: that the future path a country will follow necessarily requires the input of the people who live in it.”); see also Michal Saliternik, Reducing the Price of Peace: The Human Rights Responsibilities of Third-Party Facilitators, 48 *Vand. J. Transnat'l L.* 179, 183 (2021) (arguing for a conception of “human sovereignty” that imposes a responsibility on third-party facilitators, including the UN, to “ensure that the negotiating government lives up to its duties toward its citizens”).

Intertwined with the more foundational principles of sovereignty and self-determination is “democratic entitlement,” coined by Professor Thomas Franck.⁴⁹ Franck argued that evolutions in international law, particularly after the Cold War, have led to the recognition of a right to democracy.⁵⁰ Thus, because supporting democratic governance is an explicit rationale for peacebuilding missions,⁵¹ the analysis of democratic transitional agreements is not solely a political question but is intertwined with international legal norms.⁵² Although Franck’s analysis is contested,⁵³ the emergence of democratic protection regimes globally suggests that democratic governance has, at minimum, emerged as a preference in the international legal order.⁵⁴

49. See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 *Am. J. Int’l L.* 46, 46 (1992) (arguing that representative democracy is evolving into an international legal obligation); see also Same Varayudej, *A Right to Democracy in International Law: Its Implications for Asia*, 12 *Ann. Surv. Int’l & Compar. L.*, 1, 6 (2006) (arguing that the rise of democracy in the ’90s over communism “led some international scholars to believe that there is a right to democracy in international human rights law, and the existence of democracy as an influential principle in many areas of public international law”).

50. See Thomas Franck, *The Empowered Self: Law and Society in the Age of Individualism* 263 (2001) (“The evolution of a principled legal basis for the democratic entitlement, although accelerating after 1986, received its first impetus in the United Nations Charter.”); see also Janina Isabel Steinert & Sonja Grimm, *Too Good to Be True? United Nations Peacebuilding and the Democratization of War-Torn States*, 32 *Conflict Mgmt. & Peace Sci.* 513, 514 (2015) (“With the publication of its ‘Agenda for Democratization’, the UN further consolidated its role in advocating a global culture of democracy . . .”). But see Holly Cullen, *The Role of History in Thomas Franck’s Fairness in International Law and Institutions*, 13 *Eur. J. Int’l L.* 927, 935 (2002) (contending that Franck’s focus on international institutions rather than sources of international law is a partial account of the context).

51. See List of Special Political Missions, *supra* note 3; Protocol Relating to the Establishment of the Peace and Security Council of the African Union, *supra* note 4.

52. See Jeremy Levitt, *Pro-Democratic Intervention in Africa*, 24 *Wis. Int’l L.J.* 785, 832 (2006) (“The [pro-democratic intervention] norm has been spurred not only by state practice and treaty-law developments in Africa but by universal international law and practice . . .”).

53. While some scholars have defended Franck’s claims of an emerging democratic entitlement by arguing that its critics project political conservatism, others argue that the right to democratic governance, particularly as measured by elections, has neocolonialist tendencies. For an overview of papers discussing these critiques, see Jan Klabbers, Doreen Lustig, André Nollkaemper, Sarah Nouwen, Michal Saliternik & Joseph H.H. Weiler, *International Law and Democracy Revisited: Introduction to the Symposium*, 32 *Eur. J. Int’l L.* 9, 12–14 (2021). This contestation of Franck’s claims was also influenced by concerns over justifications of the invasion of Haiti authorized by the UNSC. See Varayudej, *supra* note 49, at 11.

54. See Gregory H. Fox & Brad R. Roth, *The Dual Lives of the Emerging Right to Democratic Governance*, 112 *Am. J. Int’l L. Unbound* 67, 71 (2018) (“The 1999 Economic Community of West African States Lomé Protocol, the 2001 Organization of American States Inter-American Democratic Charter, and the 2007 African Union African Charter on Democracy, Elections and Governance all preauthorize a range of remedial actions against member states whose democratic institutions are disrupted.”); Susan Marks, *What Has*

C. *The Continual Transition*

The UNSC and AUPSC establish the scope of their postconflict transitional support through their mandates.⁵⁵ For example, the UNSC has authorized SPMs to facilitate national dialogues,⁵⁶ support transitional governments,⁵⁷ and assist in organizing elections.⁵⁸ Yet when these peacebuilding operations are based on a standardized sequence of transition—typically involving a fragile peace agreement, an interim power-sharing government, constitutional drafting, and elections⁵⁹—it raises the question: What is lost in this transition?

The assumption that transitional agreements are inherently stabilizing should be abandoned, as it risks freezing conflicts in place. Transitional timelines prioritize linear conceptions of progress towards democratic rule while legitimizing unelected leaders who are incentivized to maintain the status quo.⁶⁰ Instead of laying the groundwork for long-term stability, these agreements risk stalling the momentum of existing democratic political movements, allowing authoritarian actors to regroup and manipulate the transitional process to justify their continued leadership, leaving civilians disillusioned and human rights violations unaddressed. Although it is undeniably difficult to hold elections and fully incorporate democratic elements amidst fragile political circumstances, it

Become of the Emerging Right to Democratic Governance?, 22 *Eur. J. Int'l L.* 507, 511 (2011) (evidencing that international and regional organizations such as the United Nations, the European Union, and the Organization of American States see democracy promotion as a critical factor undergirding their organizational aims). But see Hampson, *supra* note 42, at 702 (cautioning against “equating ‘success’ in peacebuilding with the establishment of a stable, democratic political order”).

55. See *Legal Basis for Peacekeeping*, *supra* note 18. The AUPSC similarly defines its Peace Support Operations (PSOs) by their mandates. Many PSOs have received support from the UN through S.C. Res. 2719 (Dec. 21, 2023), which allows AU-led PSOs to access UN funding under Chapters VII and VIII of the UN Charter.

56. The United Nations Office in Burundi (BNUB) was mandated to “promot[e] dialogue between national actors.” List of Special Political Missions, *supra* note 3.

57. The United Nations Transition Assistance Mission in Sudan (UNITAMS), the United Nations Observer Mission in Bougainville (UNOMB), and the United Nations Mission in East Timor (UNAMET) were each mandated to support transitional arrangements leading to scheduled elections. *Id.*

58. The United Nations Peacebuilding Support Office in Liberia (UNOL) and the United Nations Peacebuilding Support Office in the Central African Republic (BONUCA) each included election assistance in their missions. *Id.*

59. See *supra* note 8 and accompanying text.

60. See Luka Biang Deng, *What Could End the Long Postponement of South Sudan’s First Elections?*, *Int’l Peace Inst. Glob. Observatory* (Oct. 15, 2024), <https://theglobalobservatory.org/2024/10/what-could-end-the-long-postponement-of-south-sudans-first-elections/> [<https://perma.cc/49CZ-Y6SU>] (stating that South Sudan has the “highest per capita number of unelected constitutional post-holders in Africa These post holders have a vested interest in maintaining the status quo and postponing elections, as elections could endanger their return to their current positions”); see also *infra* notes 64–66 and accompanying text.

is equally important to acknowledge the consequences of elaborate, undemocratic schemes commonly embedded in transitional agreements and the unproven assumptions that they will eventually dissolve themselves. While some legal scholars debate the timing of transitional processes⁶¹ or critique failures in implementation,⁶² few have critically questioned the assumptions behind these interim agreements and what is lost in their pursuit.

Both South Sudan and Sudan, the case studies in this Note, demonstrate how transitional periods tend to entrench conflict. Since South Sudan's founding as a sovereign nation in 2011, interim rule has remained the status quo. South Sudan's 2018 Revitalized Peace Agreement (R-ARCSS), a revamp of the 2015 Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS), sought to end civil war⁶³ by establishing a transitional power-sharing government⁶⁴ that would lead to elections in 2024.⁶⁵ Under the leadership of President Salva Kiir Mayardit and First Vice President Riek Machar, democratic progress has

61. See Hampson, *supra* note 42, at 710 (“[M]ore attention has to be paid to the timing of elections and to pairing elections with power-sharing . . .”).

62. See Stephen John Stedman, Policy Implications, *in* Ending Civil Wars: The Implementation of Peace Agreements 663, 663 (Stephen John Stedman, Donald Rothchild & Elizabeth M. Cousens eds., 2002) (observing that “[p]olicy direction . . . is usually couched in rhetorical flourish or diplomatic code. Rarely, if ever, are there specific legal remedies when signatories to such agreements fail to comply. Implementing officials vary markedly in their skill and commitment”); see also Ibrahim Sakawa Magara & Miranda Rivers, (Re)appraising the Role of Civil Society in the IGAD-Led Peace Process for South Sudan, Accord (July 31, 2024), <https://www.accord.org.za/ajcr-issues/reappraising-the-role-of-civil-society-in-the-igad-led-peace-process-for-south-sudan/> [https://perma.cc/3QW8-2LU4] (asserting that the failure to achieve transitional justice milestones in South Sudan “accentuates the need to continue pushing for the implementation of the R-ARCSS, particularly those clauses that serve public interests”).

63. South Sudan's civil war broke out in 2013 and continued until IGAD (a regional organization of East African nations) brokered the ARCSS. Civil war resumed in June 2016 and ended when the R-ARCSS was signed in September 2018. See Ashley Quarcoo, A Brief Guide to South Sudan's Fragile Peace, Carnegie Endowment Int'l Peace (Dec. 12, 2019), <https://carnegieendowment.org/posts/2019/12/a-brief-guide-to-south-sudans-fragile-peace?lang=en> [https://perma.cc/DG9T-TZYF].

64. See Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), ch. 1.3.1, Sep. 12, 2018, <https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf> [https://perma.cc/SP5Q-HFX3] [hereinafter 2018 R-ARCSS] (establishing the Revitalized Transitional Government of National Unity (RTGoNU) which is to govern until democratic elections are held, comprising several groups listed in chs. 1.3.1–1.3.1.5). The agreement preserved the arrangement of the ARCSS, with Salva Kiir Mayardit as the President and Riek Machar Teny as the First Vice President. *Id.* at ch. 1.5.1.

65. *Id.* at ch. 1.1.5 (establishing that the transitional government will hold democratic elections sixty days before the end of the transitional period).

stalled,⁶⁶ leading to further extensions of the transitional period into early 2027 amid dire humanitarian conditions.⁶⁷

In a failure to meet the core demands of the protestors who ousted former Sudanese President Omar Al-Bashir in 2019,⁶⁸ the 2020 Juba Peace Agreement (JPA) implemented an interim power-sharing arrangement.⁶⁹ After the 2021 military coup dissolved the transition, the Political Framework Agreement (PFA) introduced yet another interim government

66. See Press Release, Matthew Miller, U.S. Dep't of State, UN Secretary-General Guterres' April 8 Negative Assessment of Preconditions for Elections in South Sudan (Apr. 16, 2024), <https://2021-2025.state.gov/un-secretary-general-guterres-april-8-negative-assessment-of-preconditions-for-elections-in-south-sudan/> [<https://perma.cc/GA-F8-L2RQ>] ("First Vice President Riek Machar, and other South Sudanese political leaders have thus far collectively failed to meet the standards necessary for genuine and peaceful elections to take place in December.").

67. See Press Release, UN Off. High Comm'r. for Human Rts., South Sudan: Extension of Transitional Government Will Compound Dire Human Rights Crisis If Leaders Do Not Change Course—UN Experts (Sep. 25, 2024), <https://www.ohchr.org/en/press-releases/2024/09/south-sudan-extension-transitional-government-will-compound-dire-human> (on file with the *Columbia Law Review*) [hereinafter UN Off. High Comm'r for Human Rts., Extension of Transitional Government] (describing the significant delays the extension imposes on human rights progress within South Sudan). South Sudan is experiencing one of Africa's largest refugee crises. See South Sudan, UN Off. for Coordination Humanitarian Affs., <https://www.unocha.org/south-sudan> [<https://perma.cc/W3RM-8849>] (last visited Dec. 23, 2025).

68. Many Sudanese pro-democracy protestors explicitly opposed civilian–military power sharing, particularly after violent military attacks. On June 3, 2019, protestors engaged in a sit-in to oppose the transitional military rule after Bashir's ouster. Declan Walsh, Sudan's Military Abandons Talks and Opens Fire on Democracy Protesters, N.Y. Times (June 3, 2019), <https://www.nytimes.com/2019/06/03/world/africa/sudan-security-forces-protesters-violence.html> (on file with the *Columbia Law Review*). Hundreds of civilians were subsequently killed by RSF forces. Munzoul Assal, How the International Community Failed Sudan, Christian Michelsen Inst. (2023), <https://www.cmi.no/publications/8874-how-the-international-community-failed-sudan> [<https://perma.cc/6TY-V-KA5F>]. Outrage from this attack stalled negotiations before they resumed and culminated in the August 17 signing of the Juba Peace Agreement (JPA), which provided for civilian–military power sharing. See *id.* ("Negotiations stalled as a result [of the attack] for a month.").

69. The JPA built on the 2019 Constitutional Declaration, which provided for a Sovereignty Council that would consist of eleven total members. Five council members would represent the military, five would represent the Freedom Forces for Change (FFC), and the eleventh member would be a civilian agreed on by the military and the FFC. Draft Constitutional Charter for the 2019 Transitional Period, Aug. 4, 2019, ch. 4 (Sudan), <https://constitutionnet.org/sites/default/files/2019-08/Sudan%20Constitutional%20Declaration%20%28English%29.pdf> [<https://perma.cc/M7D5-BRGG>] [hereinafter Constitutional Declaration]. The JPA was eventually incorporated into the Constitutional Declaration through amendments in October 2020. See Sudan Peace Accord Formalised in Constitutional Document, Dabanga (Oct. 19, 2020), <https://www.dabangasudan.org/en/all-news/article/sudan-peace-accord-formalised-in-constitutional-declaration> [<https://perma.cc/3V26-DNTS>].

with the support of the trilateral mechanism,⁷⁰ which was met with widespread disapproval.⁷¹ Since civil war erupted again in April 2023,⁷² the prospects of a democratic transition remain elusive.

II. THE FALLACY OF LINEAR TRANSITIONS

By discussing South Sudan's 2018 Revitalized Peace Agreement (R-ARCSS) and Sudan's 2022 Political Framework Agreement (PFA), this Part will address some of the pitfalls of the transitional frameworks utilized by the UN and AU. First, it will discuss how protracted transitional arrangements freeze and entrench conflict. Next, it will address how transitional frameworks undermine human rights⁷³ by accepting compromises that are

70. See Rosalind Marsden, A Critical Juncture for Sudan's Democratic Transition, Chatham House (Mar. 28, 2023), <https://www.chathamhouse.org/2023/03/critical-juncture-sudans-democratic-transition> (on file with the *Columbia Law Review*) [hereinafter Marsden, Critical Juncture] (describing how the PFA's terms formally excluded the military from politics and implemented a two-year transitional period). Despite the terms of the PFA potentially paving the way for civilian rule, military leaders made clear that they had no intention of reducing their influence during the renewed transition. See U.N. Secretary-General, Situation in the Sudan and the Activities of the United Nations Integrated Transition Assistance Mission in the Sudan, UN Doc. S/2023/154 (Feb. 28, 2023), <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2305185.pdf> [<https://perma.cc/D2Y2-RMNS>] [hereinafter Situation in the Sudan] ("The trilateral mechanism worked closely with the parties throughout the negotiations leading up to the signing of the framework agreement on 5 December and played an instrumental facilitation and coordination role in consultations following its signature."); Sudan's Framework Agreement Deals With Political Not Military Issues: Al-Burhan, Sudan Trib. (Dec. 15, 2022), <https://sudantribune.com/article/268212> (on file with the *Columbia Law Review*) (reporting that in a speech to his troops shortly after the signing of the PFA, General Burhan stated that nothing is to interfere with the affairs of the army).

71. Khalid Abdelaziz & Nafisa Eltahir, Sudan Generals and Parties Sign Outline Deal, Protestors Cry Foul, Reuters (Dec. 5, 2022), <https://www.reuters.com/world/africa/sudanese-civilian-parties-sign-framework-deal-new-political-transition-2022-12-05/> (on file with the *Columbia Law Review*) ("Several thousand people protested against the deal in the capital Khartoum, with some facing off against security forces who fired tear gas and stun grenades about a mile away from the signing ceremony.").

72. Sudan's current civil war broke out on April 15, 2023, between the Sudanese Armed Forces (SAF) and Rapid Support Forces (RSF), completely halting the transition. See Ali Mahmoud Ali & Nohad Eltayeb, One Year of War in Sudan, Armed Conflict Location & Event Data (Apr. 15, 2024), <https://acleddata.com/2024/04/14/sudan-situation-update-april-2024-one-year-of-war-in-sudan/> [<https://perma.cc/8RZJ-N8UW>].

73. Protecting human rights is central to the UN's and AU's justifications for engaging in peacebuilding. See Erica Gaston, Fiona Mangan, Cristal Downing, Raphael Bodewig, Lauren McGowan, Emma Bapt & Adam Day, 2024 PBF Thematic Review: Synergies Between Human Rights and Peacebuilding in PBF-Supported Programming 3 (2024), https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/2024_pbf_thematic_review_executive_summary_hires.pdf [<https://perma.cc/Q3PQ-TX7V>] (conducting a review of the "human rights and peacebuilding nexus" (internal quotation marks omitted)); see also Constitutive Act of the African Union, supra

justified through the assumed impermanency of transition. Lastly, it will discuss how these agreements marginalize and disempower civilian actors.

A. *The Permanence of Transition*

Sudan's 2019 Constitutional Declaration,⁷⁴ brokered with the help of the AU,⁷⁵ was intended as a bridge to a civilian-led democratic government in thirty-nine months and was met with global praise.⁷⁶ A year later, experts described the signing of the 2020 Juba Peace Agreement (JPA) as a turning point⁷⁷ for the Sudanese youth and civilians who took to the streets in support of "freedom, peace, justice."⁷⁸ But it extended the transitional period by resetting the thirty-nine month clock to its signing.⁷⁹ On October 25, 2021, a military coup led by General Abdel Fattah al-Burhan detained Prime Minister Abdalla Hamdok⁸⁰ and dissolved the power-

note 4, at art. 3(h) (listing "promot[ing] and protect[ing] human and peoples' rights" as an objective of the AUPSC).

74. Constitutional Declaration, *supra* note 69.

75. Associated Press, Sudan Power-Sharing Deal Finalized, African Union Envoy Says, *N.Y. Times* (Aug. 3, 2019), <https://www.nytimes.com/2019/08/03/world/africa/sudan-power-sharing-deal.html> (on file with the *Columbia Law Review*) ("The document, which outlines the powers and the relationships between the branches of the transitional government, comes after weeks of protracted negotiations brokered by the African Union and neighboring Ethiopia . . .").

76. See, e.g., Press Release, U.S. Dep't of State, The United States Welcomes Sudan's Adoption of the Constitutional Declaration (Aug. 17, 2019), <https://2017-2021.state.gov/the-united-states-welcomes-sudans-adoption-of-the-constitutional-declaration/> [<https://perma.cc/D7P2-AMQ5>].

77. Rosalind Marsden, Is the Juba Peace Agreement a Turning Point for Sudan?, *Chatham House* (Sep. 14, 2020), <https://www.chathamhouse.org/2020/09/juba-peace-agreement-turning-point-sudan> (on file with the *Columbia Law Review*) (last updated Aug. 9, 2021); see also Sudan: Darfur Deal Welcomed by UN Chief as 'Historic Achievement', *UN News* (Aug. 31, 2020), <https://news.un.org/en/story/2020/08/1071392> [<https://perma.cc/6GLP-Y22R>] (reporting that the UN Secretary-General hailed the agreement as "the start of a new era for the people of the Sudan" (internal quotation marks omitted)).

78. The chant "freedom, peace, justice" was a popular symbolic chant of the youth- and women-led movement protests that began in Sudan in late 2018. See Francesca Paris, Protesters Across Sudan Continue to Call for President's Ouster, *NPR* (Jan. 4, 2019), <https://www.npr.org/2019/01/04/682420838/protesters-across-sudan-continue-to-call-for-presidents-ouster> [<https://perma.cc/GX82-R5JX>] ("Protesters demanded the upheaval of the country's military regime, chanting 'freedom, peace, justice' and carrying banners with the Arabic command for 'leave.'").

79. Juba Agreement for Peace in Sudan Between the Transitional Government of Sudan and the Parties to Peace Process, tit. 1 art. 2.1, Oct. 3, 2020, <https://peacemaker.un.org/sites/default/files/document/files/2024/05/juba20agreement20for20peace20in20sudan.pdf> [<https://perma.cc/5465-ZGXR>] (stating that a thirty-nine-month transitional period is effective upon the agreement's signing).

80. Prime Minister Hamdok was appointed by the transitional sovereignty council in accordance with the 2019 Constitutional Declaration. See Constitutional Declaration, *supra* note 69, at ch. 4.11.1.

sharing Sovereign Council.⁸¹ Following the coup, the United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS) supported the signing of another deal in November 2021 to reinstate Hamdok despite civilian opposition.⁸² The trilateral mechanism then supported the signing of the 2022 PFA,⁸³ attempting to salvage the same failed transitional template. It provided no plan or mechanism, however, for Mohamed Hamdan “Hemedti” Dagalo, the head of the deadly⁸⁴ paramilitary Rapid Support Forces (RSF), to integrate into the Sudanese Armed

81. See Ivana Kottasová & Eliza Mackintosh, *The Military Has Taken Over in Sudan. Here’s What Happened*, CNN (Oct. 26, 2021), <https://www.cnn.com/2021/10/25/africa/sudan-coup-explained-intl-cmd/index.html> (on file with the *Columbia Law Review*). Prior to the successful coup, protestors began to sound the alarm at the lack of progress in implementing the agreement as signs pointed to the shakiness of the agreement, including a failed coup attempt in September 2021. See Yasir Abdullah & Mostafa Salem, *Huge Crowds March in Sudan in Support of Civilian Rule*, CNN (Oct. 21, 2021), <https://www.cnn.com/2021/10/21/africa/sudan-pro-civilian-protests-intl/index.html> (on file with the *Columbia Law Review*) (“A military coup d’état attempt failed in Sudan in late September[,] . . . further straining the shaky transition coalition.”). The UN and the AU played a key role in overseeing the 2020 Juba Peace Agreement, as the UNSC established the UN Integrated Transition Assistance Mission of Sudan (UNITAMS) in June 2020 and drew back the African Union–United Nations Hybrid Operation in Darfur (UNAMID). See Daniel Forti, *Int’l Peace Inst., Walking a Tightrope: The Transition From UNAMID to UNITAMS in Sudan 15–16* (2021), https://www.ipinst.org/wp-content/uploads/2021/02/Walking_a_Tightrope_Sudan.pdf [<https://perma.cc/PU6U-UUMZ>].

82. On November 21, 2021, Hamdok and Burhan signed a deal that reinstated Hamdok as prime minister and included about fourteen other terms. The deal positioned Hamdok as the leader of a cabinet of technocrats until elections were to be held in 2023, but the military kept oversight of the government. See Associated Press, *Sudan’s Military Has Agreed to Reinstate the Nation’s Ousted Prime Minister*, NPR (Nov. 21, 2021), <https://www.npr.org/2021/11/21/1057769446/sudan-coup-prime-minister-abdalla-hamdok> [<https://perma.cc/NM9H-GR5U>] [hereinafter Associated Press, *Sudan’s Military Has Agreed to Reinstate Ousted Prime Minister*]. This deal sparked mass polarization among civil society, including the FFC and the Umma Party, who rejected the deal for reinstating military power after the coup. See Declan Walsh, *Ousted in Coup, Sudan’s Prime Minister Returns via Military Deal*, N.Y. Times (Nov. 21, 2021), <https://www.nytimes.com/2021/11/21/world/africa/sudan-coup-abdalla-hamdok.html> (on file with the *Columbia Law Review*) [hereinafter Walsh, *Ousted in Coup*].

83. See *Situation in the Sudan*, supra note 70.

84. See Greg Myre, *Sudan’s Rival Generals Share a Troubled Past: Genocide in Darfur*, NPR (Apr. 27, 2023), <https://www.npr.org/2023/04/27/1172152816/sudans-rival-generals-share-a-troubled-past-genocide-in-darfur> [<https://perma.cc/L8CJ-ZL9T>] (describing the RSF’s growth out of the Janjaweed, which has committed genocide in Darfur since 2002).

Forces (SAF),⁸⁵ teeing up the current civil war between the two forces.⁸⁶ The 2022 PFA met significant resistance,⁸⁷ with civilians expressing frustration over cyclical bargains with military leaders and a disregard for their calls for a full civilian transition and justice for victims.⁸⁸ As stated by human rights lawyer and deputy head of the Sudanese Darfur Bar Association Nafisa Hajar, “This deal has now become the status quo.”⁸⁹

Peacebuilding efforts in South Sudan reflect a similar reliance on transitional governance that entrenched power, resulting in multiple extensions of the transitional period. After years of civil war, the Intergovernmental Authority on Development (IGAD)⁹⁰ brokered the 2015 ARCSS, which called for assistance from the AU, UN, and United Nations Mission in South Sudan (UNMISS).⁹¹ After civil war reignited a few months after the 2015 ARCSS’s signing, the IGAD and AU then bro-

85. See Amad Mohamed, *The Sudanese Conflict: The Mistake the West Can’t Afford to Make Again*, Austl. Inst. of Int’l Affs. (May 31, 2023), <https://www.internationalaffairs.org.au/australianoutlook/the-sudanese-conflict-the-mistake-the-west-cant-afford-to-make-again/> [https://perma.cc/34PS-5N5C] (“While [the PFA] mentioned the need for security sector reform, including integrating paramilitary groups such as the RSF into the SAF and placing the SAF under civilian control, it provided no details, plans or mechanisms for this to take place.”).

86. See Ali & Eltayeb, *supra* note 72.

87. See Abdelaziz & Eltahir, *supra* note 71.

88. See *id.* (“We will defeat this agreement because it is an extension of the coup,” one protester, 36-year-old state employee Ahmed Fateh al-Rahman, said. “We want justice for our martyrs, trial for the military, and civilian rule.”).

89. Joseph Krauss, *What Reinstating Sudan’s Prime Minister Means for the Country*, PBS News (Nov. 22, 2021), <https://www.pbs.org/newshour/world/what-reinstating-sudans-prime-minister-means-for-the-country> (on file with the *Columbia Law Review*) (internal quotation marks omitted) (quoting Nafisa Hajar, Deputy Head, Sudanese Darfur Bar Ass’n).

90. IGAD is an international organization representing the horn of Africa with eight member states: Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Uganda. About IGAD, IGAD, <https://igad.int/about/> [https://perma.cc/2DPW-A5VW] (last visited Dec. 23, 2025).

91. Agreement on the Resolution of the Conflict in the Republic of South Sudan, ch. 1 art. 16.5, Aug. 17, 2015 https://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf [https://perma.cc/RG2H-HJXJ] (“The National Election Commission (NEC) shall organize Elections for President, the National Assembly, State Governors and State Assemblies sixty (60) days prior to the end of the Transition Period . . .”). The agreement also calls for the transitional government to seek the assistance of the AU, UN, and African Commission on Human and People’s Rights to assist with implementation of the agreement, particularly its transitional justice mechanisms and election management. *Id.* at ch. 1 art. 16.7, 1.5. After the agreement’s signing, the UN included implementation of the peace agreement in the mandate of the United Nations Mission in South Sudan (UNMISS), extending its mandate to “support the Agreement’s incorporation into the Transitional Constitution” and “assist in the permanent constitution-making process.” Press Release, Security Council, Security Council Extends Mandate of United Nations Mission in South Sudan Until July 2016, Deciding Also to Boost Force, Police Levels, U.N. Press Release SC/12161 (Dec. 15, 2015), <https://press.un.org/en/2015/sc12161.doc.htm> [https://perma.cc/3FHC-KQWH].

kered the 2018 Revitalized ARCSS (R-ARCSS), reestablishing several elements of the 2015 ARCSS and further extending the transitional timeline.⁹² South Sudan, mired in a worsening humanitarian crisis,⁹³ has extended the ARCSS and R-ARCSS transitional period four times⁹⁴ and has not yet held its first election as a nation.⁹⁵

92. See Counting Down to South Sudan's Elections, Inst. for Sec. Stud. (Jan. 15, 2024), <https://issafrica.org/pscreport/psc-insights/counting-down-to-south-sudans-elections> [<https://perma.cc/6ZST-VMGN>] ("Since the 2018 [R-ARCSS] signing, the implementation of each milestone has been delayed."). Like the 2015 ARCSS, the 2018 R-ARCSS also implicated the UN and AU in its implementation. 2018 R-ARCSS, *supra* note 64, at ch. 5.1.5, 1.20.7.

93. See UN Off. High Comm'r for Human Rts., Extension of Transitional Government, *supra* note 67 ("[T]he delay by South Sudanese leadership to pursue peace has resulted in a dire humanitarian crisis, characterized by extreme hunger and food insecurity . . ."). While UNMISS praised the initial extensions of the R-ARCSS, the UN Special Representative for South Sudan has recently called the most recent extension "regrettable" and described frustration with "inaction of their leaders to implement the peace agreement and deliver the long awaited democratic transition." South Sudan: Postponing Long-Awaited Elections 'A Regrettable Development', UN News (Nov. 7, 2024), <https://news.un.org/en/story/2024/11/1156661> [<https://perma.cc/NYP5-2MLF>] [hereinafter UN News, Postponing Elections] (emphasis omitted) (internal quotation marks omitted) (quoting Nicholas Haysom, Special Representative of the Sec'y-Gen. for S. Sudan, UN); see also Joint Press Release, AUMISS, IGAD and UNMISS Note Decision to Extend the Transitional Period of the Revitalized Peace Agreement, Urge Fresh Momentum to Meet Commitments to the People of South Sudan, UN Mission in South Sudan (Sep. 19, 2024), <https://unmiss.unmissions.org/joint-press-release-aumiss-igad-and-unmiss-note-decision-extend-transitional-period-revitalized> [<https://perma.cc/S6TY-W73C>] (noting with "concern" that the transitional period was extended into 2027); UNMISS Statement on the Announcement of Agreement on the Roadmap to a Peaceful and Democratic End of the Transitional Period, UN Peacekeeping (Aug. 10, 2022), <https://peacekeeping.un.org/en/unmiss-statement-announcement-of-agreement-roadmap-to-peaceful-and-democratic-end-of-transitional> [<https://perma.cc/BQE8-64GF>].

94. Elections were postponed three times up until 2024, and the transitional period was extended for the fourth time until February 2027.

See Bintu Bali, South Sudan's Electoral Dilemma: What Lies Ahead?, *Int'l Idea* (Nov. 11, 2024), <https://www.idea.int/blog/south-sudans-electoral-dilemma-what-lies-ahead> [<https://perma.cc/DE6S-LT5K>] ("Originally set for December 2024, the latest delay marks the fourth such postponement since 2011."); Charles Tai Gituai, Five Years of the R-ARCSS: Need to Redouble Efforts as the End of the Transitional Period Edges Closer, Reconstituted Joint Monitoring & Evaluation Comm'n (Sep. 12, 2023), <https://www.jmecsouthsudan.com/index.php/media-center/news/item/704-five-years-of-the-r-arcss-need-to-redouble-efforts-as-the-end-of-the-transitional-period-edges-closer> [<https://perma.cc/N7CP-9N2N>] ("[T]he implementation of the R-ARCSS has been slow with many of its provisions yet to be implemented. These factors necessitated the Parties to extend the Agreement three different times, including the most recent one being for 24 months, effective February 2022 to February 2025.").

95. Ninety-nine percent of South Sudanese voted to secede from Sudan in an early 2011 referendum, and the nation officially declared its independence on July 9, 2011. South Sudan Referendum: 99% Vote for Independence, BBC (Jan. 30, 2011), <https://www.bbc.com/news/world-africa-12317927> [<https://perma.cc/DS9P-KCQ8>]. The

The transitional peacebuilding outcomes in the Sudans highlight the role of transitions in creating a freeze effect, where a purportedly interim arrangement becomes entrenched. At each inflection point—the 2020 JPA, the 2021 post-coup deal, and the 2022 PFA in Sudan and the 2015 ARCSS and 2018 R-ARCSS and its many extensions in South Sudan—international organizations defaulted to preserving transitional governance arrangements.⁹⁶ With each transitional agreement and extension, the negotiations strayed further and further from the original local demands for full civilian governance and accountability for human rights violations.⁹⁷ The premises of transition, including the very labeling of governance arrangements as “interim,” which in turn justifies preserving these arrangements despite their failures, are the core issue of this Note. It is not simply the failure to oversee or adequately implement transitional agreements; the standardized sequence of transitional agreements⁹⁸ is the fallacy, one that is not inherent in peacebuilding but an active framework choice.⁹⁹

The freeze effects of the transitional frameworks employed in the Sudans, justified by the assumption that transition best ensures stability, are perpetuated by the empowerment and legitimization of unelected leaders. These same leaders are then entrusted with facilitating the civilian turnover, election processes, and implementing transitional justice institutions.¹⁰⁰ While the UNSC viewed the transitional arrangements as stabiliz-

country has postponed its first-ever general elections until at least December 2026. UN News, *Postponing Elections*, supra note 93.

96. See supra notes 75–89 and accompanying text.

97. See supra notes 74–77 and accompanying text.

98. See supra note 59 and accompanying text.

99. An example illustrating that transitional framework decisions are not inevitable but are instead normative choices on what to prioritize is how the negotiations of the JPA delayed the formation of the Transitional Legislative Council (TLC). See Payton Knopf, *The Year(s) of Magical Thinking on Sudan*, Just Sec. (Aug. 12, 2024), <https://www.justsecurity.org/98554/sudan-diplomacy-fallacies/> [<https://perma.cc/H273-YW33>] (arguing that the international community’s support of the JPA “tacitly accept[ed] the military’s antipathy toward the TLC and the stumbling of civilian actors over how it should be constituted”). This acceptance of the delay in developing the TLC is an active choice to side with the claims of warring military leaders, as the military leaders of the 2021 coup used the same reasoning of stability to justify their actions. See Kottasová & Mackintosh, supra note 81 (“Abdel Fattah al-Burhan[] said that the agreement with civilian members of the country’s transitional sovereign council ‘became a conflict’ over the past two years, ‘threatening peace and unity’ in Sudan.”).

100. See 2018 R-ARCSS, supra note 64, at ch. 8.4 (outlining that the agreement can be amended with two-thirds of the council of ministers and ratification by the national legislature); id. at ch. 1.9.5 (stating that the President, in consultation with the First Vice President and the four Vice Presidents, has the power to oversee the implementation of the agreement and the implementation of laws passed by the Transitional National Legislature); Sudan’s FFC Forces Sharply Criticize Hamdok, Sudan Trib. (Nov. 30, 2021), <https://sudantribune.com/article/226464> (on file with the *Columbia Law Review*) (explaining that Hamdok’s 2021 deal with the coup leaders “authorize[d] amending the constitutional

ing South Sudan,¹⁰¹ its power-sharing arrangement between warring parties Kiir and Machar cemented the civil war conditions by legitimizing actors responsible for mass violence. Similarly, Burhan and Hemedti manipulated the interim arrangements in Sudan's 2019 Constitutional Declaration and the 2020 JPA to continue power-grabbing and justify their continued control over Sudanese politics.¹⁰² This resulted in another interim agreement in the 2022 PFA that gave military leaders, who clearly signaled resistance to democratization efforts,¹⁰³ prominent roles in the extended interim government.¹⁰⁴

Each of these transitional periods deferred contentious negotiations over the handover of power and issues central to the conflict itself, as justified by the agreement's characterization as temporary.¹⁰⁵ Authoritarian

declaration governing the transitional [agreement] so that the coup leaders can do all that the FFC had refused to them during the past two years").

101. See Charles T. Hunt, *Waiting for Peace: A Review of UNMISS' Political Strategy in South Sudan* 76 (2020), <https://www.stimson.org/wp-content/uploads/2020/09/4-PeaceOps-2020-1245-SouthSudan.pdf> [<https://perma.cc/X2YR-CD94>] (explaining that the UNMISS 2016 mandate extension aimed to "stabilize Juba" by "creating the space for an inclusive (meaning including Machar and those in opposition) political process to unfold"). This assertion that transition was needed to stabilize the situation in South Sudan also recurred at a UN Security Council meeting. See Meetings Coverage, Security Council, South Sudan Recommits to Revitalized Peace Agreement With 24-Month Extension, Security Council Emphasizes, Urging Country to Avoid Further Delays, UN Meetings Coverage and Press Releases SC/15219 (Mar. 6, 2023), <https://press.un.org/en/2023/sc15219.doc.htm> (on file with the *Columbia Law Review*) (describing a representative from France urging that the security situation must be stabilized as well as the South Sudanese representative stating that the transition period marked "[t]he 24-month extension of South Sudan's transition period[,] . . . marking a new chapter in its journey towards lasting peace and stability").

102. Burhan justified the 2021 military coup and dissolution of the transitional government by claiming it was the only way to avoid political deadlock. See Kottasová & Mackintosh, *supra* note 81.

103. Both military leaders' resistance to democratization showed in previous violence against protestors and their involvement in the 2002–2005 Darfur genocide. See Nada Rashwan, *Killing of Student Protesters in Sudan Sets Off New Unrest, and Worry*, N.Y. Times (July 30, 2019), <https://www.nytimes.com/2019/07/30/world/africa/sudan-protest-killing.html> (on file with the *Columbia Law Review*) (detailing attacks against pro-democracy protestors by the Burhan-led military council, including one in which four teenage demonstrators and an adult were killed); see also Myre, *supra* note 84 ("Both generals [Burhan and Hemedti] held key military positions during the darkest days in Darfur . . .").

104. See *supra* note 85 and accompanying text.

105. An example of this ambiguity is in the drafting surrounding the date of civilian handover of power in the JPA and the Constitutional Charter. See Nasredeem Abdulbari, *A Transitional Period Constitutional Question in Sudan*, Just Sec. (Feb. 16, 2022), <https://www.justsecurity.org/80164/a-transitional-period-constitutional-question-in-sudan/> [<https://perma.cc/N46A-TXPV>] ("[T]he handover became unclear in this interim charter after it was amended to incorporate the Juba Peace Agreement of October 2020 (JPA), leading among other reasons to a dispute between the two leadership factions and, ultimately, the takeover by the military."). Another example of an ambiguity is that the 2022 PFA "set no date for a final agreement or the appointment of the prime minister, and left sensitive issues including transitional justice and security sector reform for further talks."

actors then exploited such ambiguities and delays in transition frameworks to consolidate power and weaken the status of pro-democracy groups.¹⁰⁶ In the Sudans, these tactics have effectively transformed the transition period from a temporary bridge toward democracy into a mechanism for preserving authoritarian control, with each extension solidifying the initial “interim” arrangement.

When transitional agreements fail to meet their benchmarks, leaders of international organizations blame implementation failures¹⁰⁷ of these agreements, acknowledging the “sabotage of the democratic transformation [civilians] are entitled to.”¹⁰⁸ Yet there is limited critique of the agreement that itself works to produce these outcomes. The misattribution of such failures to a lack of implementation or technical support¹⁰⁹

Abdelaziz & Eltahir, *supra* note 71. Similarly, the R-ARCSS was drafted with the incorporation of past peace deals and left contentious topics to be negotiated later, including unifying the military. See *Salvaging South Sudan’s Fragile Peace Deal*, Int’l Crisis Grp. (Mar. 13, 2019), <https://www.crisisgroup.org/africa/horn-africa/south-sudan/270-salvaging-south-sudans-fragile-peace-deal> (on file with the *Columbia Law Review*) (“[The R-ARCSS] establishes a wobbly Kiir-Machar truce and grafts it onto the previous failed peace terms The new deal has lessened fighting, a welcome outcome, but it could break down over any number of outstanding disputes.”).

106. South Sudanese President Kiir blatantly circumvented key provisions in R-ARCSS, demonstrating the use of the transition period to consolidate power. See David J. Scheffer & Madeline Babin, *Understanding South Sudan’s Postwar Struggle for Democracy and Accountability*, Council on Foreign Rels. (Jan. 28, 2022), <https://www.cfr.org/in-brief/understanding-south-sudans-postwar-struggle-democracy-and-accountability> [<https://perma.cc/MU2H-5XNC>] (“Kiir failed to ensure, as the deal stipulates, that women comprise at least 35 percent of appointed government officials. Kiir also has circumvented a central provision of the deal that requires the president to consult the other parties in the transitional government before appointing senior officials.”); *infra* notes 148–149 and accompanying text.

107. See *Statement on the Recent Extension of RARCSS, Delegation of EU to S. Sudan* (Sep. 18, 2024), https://www.eas.europa.eu/delegations/south-sudan/statement-recent-extension-rarcss_en?s=121 [<https://perma.cc/6BR6-VQLY>] (“This decision reflects the failure of the transitional government to implement the 2018 peace agreement despite the promises made with the release of the ‘roadmap’ in 2022.”).

108. Press Release, UN Off. High Comm’r for Hum. Rts., *South Sudan’s Fragile Peace Prospects Rest on Addressing the Impunity and Corruption that Drive Human Rights Violations, Experts Tell UN General Assembly* (Oct. 30, 2024), <https://www.ohchr.org/en/press-releases/2024/10/south-sudans-fragile-peace-prospects-rest-addressing-impunity-and-corruption> (on file with the *Columbia Law Review*) [hereinafter UN Off. High Comm’r for Hum. Rts., *South Sudan’s Fragile Peace Prospects*] (internal quotation marks omitted) (quoting Yasmin Sooka, Chair, UN Comm’n on Hum. Rts. in S. Sudan). The UN Commission on Human Rights in South Sudan further noted that several provisions of R-ARCSS have not been implemented, concluding that “[f]ailures to implement these commitments contribute to the ongoing armed violence, conflict, displacement and human misery present across the country.” *Id.*

109. See, e.g., Andrew E. Yaw Tchie & Mariana Llorens Zabala, *Consolidating Peace? The Inner Struggles of Sudan’s Transition Agreement, Accord* (July 31, 2024), <https://www.accord.org.za/ajcr-issues/consolidating-peace-the-inner-struggles-of-sudans-transition-agreement/> [<https://perma.cc/93Q3-65KL>] (attributing the failure of Sudan’s

obscures the need to rethink the underlying frameworks, limiting the potential to build anew.

As Professor Zinaida Miller explains, framing transitional regimes as temporary exacerbates their permanence.¹¹⁰ This illusion of temporariness expands the range of political and legal compromises that international organizations are willing to accept, as interim rule is believed to be “self-constrained.”¹¹¹ With transitions framed as a linear path from instability to stability, criticisms of transitional arrangements are dismissed as an obstacle to peace.¹¹² The “transition” label leaves little space for civil society to participate meaningfully in defining what progress and political identity in the Sudans should even look like, as these are to be decided once the transition is “complete.” The permanence of transitional government in the Sudans challenges these justifications behind compromises made in the name of “transition,” particularly those compromises that weaken human rights protections for the most vulnerable.

B. *Transitional Agreements’ Undermining of Human Rights Protections*

Human rights protections are central to the mandates of UN and AU political missions, as “[a]bout 70% of all peace agreements signed after 1990 refer to human rights or human rights-related issues.”¹¹³ This emphasis on human rights protections shows that peacebuilding’s purpose is not only to end current conflicts but to build conditions that respect and fulfill human rights obligations to prevent conflict relapse.¹¹⁴

Prioritizing the establishment of a transitional governance arrangement in the Sudans makes human rights a secondary concern, and gives

transitional agreement to “weak institutional and law enforcement arrangements and poorly implemented policies”).

110. Zinaida Miller, *Perils of Parity: Palestine’s Permanent Transition*, 47 *Corn. Int’l L.J.* 331, 412 (2014) [hereinafter Miller, *Perils of Parity*] (“[T]he label of transition helps limit resistance to the dominant understandings of how governance should proceed.”).

111. See, e.g., De Groof, *supra* note 9, at 9–10 (“Interim rule is generally self-constrained in two regards The transition itself is subject to rules and procedures to avoid a legal hiatus between the demise of the old regime and the establishment of a new order. States in transition thus have, to some degree, their ‘hands tied.’”).

112. See Miller, *Perils of Parity*, *supra* note 110, at 412 (“[T]hat [a transitional regime] is both ostensibly temporary and has a purportedly defined objective means that it appears to seek its own termination; its imminent end suggests that critique is misplaced and should be postponed until it achieves its objective and the new, permanent regime is . . . in place.”).

113. Jan Pospisil, *Peace Accords and Human Rights*, in *Contemporary Peacemaking: Peace Processes, Peacebuilding and Conflict* 427, 427 (Roger Mac Ginty & Anthony Wanis-St. John eds., 3d ed. 2022).

114. See UN Off. High Comm’r for Hum. Rts., *The Contribution of Human Rights to Peacebuilding and Sustaining Peace* 1 (2020), https://www.un.org/peacebuilding/sites/www.un.org/peacebuilding/files/1_ohchr_thematic_paper_on_the_contribution_of_hr_to_sp_and_recommendations.pdf [https://perma.cc/Z7XF-CSKH] (“[H]uman rights bodies . . . have a specific role to play in . . . sustainable solutions to prevent the lapse or relapse to conflict.”).

elite leaders no incentive to pursue reforms or relinquish power. Both the R-ARCSS and PFA vested power in the same warring parties that had demonstrably committed mass violence prior to the agreements (Kiir and Machar in South Sudan and Hemedti and Burhan in Sudan),¹¹⁵ without any indication that there was civilian support for such an arrangement.¹¹⁶ The cycles of violent outbreaks throughout the transition process subjected civilians to sexual violence,¹¹⁷ ethnic cleansing,¹¹⁸ the use of starvation as a weapon of war,¹¹⁹ and one of the largest displacement crises in the world.¹²⁰

115. See *supra* note 103; *infra* note 128 and accompanying text.

116. As recognized in transitional justice policies, there may be instances in which the affected community supports amnesty in the reconciliation process. See AU, Transitional Justice Policy 18 (2019), https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf [<https://perma.cc/XKD7-YNYG>] (“Where amnesties are used in transitional processes, they should be formulated with the participation and consent of affected communities . . .”); see also Anna Triponel & Stephen Pearson, What Do You Think Should Happen? Public Participation in Transitional Justice, 22 *Pace Int’l L. Rev.* 103, 107 (2010) (“The international community now generally refers to the benefits of public participation during the planning phase [within transitional justice] as a ‘given.’”).

117. See Rep. of the Hum. Rts. Council, Findings of the Investigations Conducted by the Independent International Fact-Finding Mission for the Sudan Into Violations of International Human Rights Law and International Humanitarian Law, and Related Crimes, Committed in the Sudan in the Context of the Conflict that Erupted in Mid-April 2023, at 40–53, U.N. Doc. A/HRC/57/CRP.6 (Oct. 23, 2024); Nick Cumming-Bruce, Sexual Violence on the Rise in South Sudan, U.N. Says, *N.Y. Times* (Feb. 15, 2019), <https://www.nytimes.com/2019/02/15/world/africa/south-sudan-rape-sexual-violence.html> (on file with the *Columbia Law Review*).

118. See “The Masalit Will Not Come Home”: Ethnic Cleansing and Crimes Against Humanity in El Geneina, West Darfur, Sudan, *Hum. Rts. Watch* (May 9, 2024), <https://www.hrw.org/report/2024/05/09/masalit-will-not-come-home/ethnic-cleansing-and-crimes-against-humanity-el> (on file with the *Columbia Law Review*) [hereinafter *Hum. Rts. Watch*, *The Masalit Will Not Come Home*].

119. See Press Release, Security Council, Warning 26 Million People Facing Acute Hunger in Sudan, Senior World Food Programme Official Tells Security Council Political Will, Leadership Key to Stopping Famine, U.N. Press Release SC/15784 (Aug. 6, 2024); No Choice But to Flee—Starvation and Displacement in Central Equatoria, South Sudan, *Ctr. for Info. Resilience* (Nov. 25, 2022), <https://www.info-res.org/cir/reports/no-choice-but-to-flee-starvation-and-displacement-in-central-equatoria-south-sudan/> [<https://perma.cc/WA99-QE2G>] (finding starvation was used as weapon of war by the South Sudanese government).

120. See South Sudan Emergency, UN Refugee Agency, <https://reporting.unhcr.org/operational/situations/south-sudan-situation> (on file with the *Columbia Law Review*) (last updated June 2025) (“Inside South Sudan, 1.9 million people are displaced while outside the country there are now over 2.3 million South Sudanese refugees—mainly hosted in the Democratic Republic of Congo, Ethiopia, Sudan, and Uganda.”); see also Mohamed El Tayeb, *The Largest Displacement Crisis in the World: The Deteriorating Humanitarian Situation in Sudan*, Carnegie Endowment for Int’l Peace (June 12, 2024), <https://carnegieendowment.org/sada/2024/06/the-largest-displacement-crisis-in-the-world-the-humanitarian-situation-in-sudan> [<https://perma.cc/5TYV-7FUE>]; Sudan—New Data Shows World’s Largest Displacement Crisis Has Also Become World’s

Victims of human rights violations bear the brunt of the compromises embedded in transition. Residents of Darfur, the westernmost region of Sudan, faced genocide during Bashir's brutal regime¹²¹ and continued to face ethnic cleansing during the 2023 civil war.¹²² Bashir, the first sitting president charged with genocide by the ICC,¹²³ depended on the Janjaweed paramilitary force to carry out his 2002–2005 genocidal campaign.¹²⁴ The RSF grew out of the Janjaweed militias and contains similar military leadership, including Hemedti.¹²⁵ The fixation on a stylized transitional sequence ultimately came at the expense of holding military officials accountable for their violence against protestors during the transitional period itself and previous involvement in genocide, despite civilian calls for accountability.¹²⁶ Human rights experts and the larger international community warn of another genocide in Darfur,¹²⁷ further demon-

Largest Hunger Crisis, UN World Food Programme (June 27, 2024), <https://www.wfp.org/videos/sudan-new-data-shows-worlds-largest-displacement-crisis-has-also-become-worlds-largest> [<https://perma.cc/FL7Z-K7WV>].

121. See Myre, *supra* note 84.

122. See Hum. Rts. Watch, *The Masalit Will Not Come Home*, *supra* note 118; El-Fasher Falls to RSF: Evidence of Mass Killing, Humanitarian Rsch. Lab, Yale Sch. of Pub. Health (Oct. 27, 2025), <https://files-profile.medicine.yale.edu/documents/876b4afc-e1da-495b-ac32-b5098699a371> [<https://perma.cc/8CY7-4CU5>] (documenting evidence of mass killings in El-Fasher, the capital of the North Darfur state).

123. *Prosecutor v. Bashir*, ICC-02/05-01/09-1, Warrant of Arrest for Omar Hassan Ahmad Al Bashir (Mar. 4, 2009), <https://www.icc-cpi.int/court-record/icc-02/05-01/09-1> (on file with the *Columbia Law Review*).

124. See *Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan*, Hum. Rts. Watch (May 6, 2004), <https://www.hrw.org/report/2004/05/06/darfur-destroyed/ethnic-cleansing-government-and-militia-forces-western-sudan> [<https://perma.cc/GM8Q-RUZ5>] (“[The Sudanese government] brazenly engaged in ethnic manipulation by organizing a military and political partnership with some Arab nomads comprising the Janjaweed; armed, trained, and organized them; and provided effective impunity for all crimes committed.”).

125. Dan Rosenzweig-Ziff, *Who Are the Rapid Support Forces Clashing With Sudan's Military?*, Wash. Post (Apr. 15, 2023), <https://www.washingtonpost.com/world/2023/04/15/sudan-fighting-paramilitary-hemedti-khartoum/> (on file with the *Columbia Law Review*) (explaining that the RSF evolved from the Janjaweed).

126. See “They Were Shouting ‘Kill Them’”: Sudan's Violent Crackdown on Protesters in Khartoum, Hum. Rts. Watch (Nov. 17, 2019), <https://www.hrw.org/report/2019/11/18/they-were-shouting-kill-them/sudans-violent-crackdown-protesters-khartoum> [<https://perma.cc/V2N9-LDMV>] (“The abuses, and lack of transparency and accountability from authorities, have clearly fueled ongoing calls for justice by the protesters. The families of ‘martyrs’ killed since December, and families of the missing continue to demand justice for the crimes against their loved ones.”).

127. See Human Rights Council, Rep. of the Indep. Int'l Fact-Finding Mission for the Sudan, Sudan: Hallmarks of Genocide in El-Fasher, at 18–19, U.N. Doc. A/HRC/61/77 (Feb. 17, 2026) (concluding that RSF attacks in El-Fasher in October 2025 constitute genocidal violence); Press Release, Antony J. Blinken, U.S. Sec'y of State, *Genocide Determination in Sudan and Imposing Accountability Measures* (Jan. 7, 2025), <https://2021-2025.state.gov/genocide-determination-in-sudan-and->

strating the catastrophic failure of peacebuilding logics in upholding and protecting human rights obligations.

UN investigators confirmed that “the people of South Sudan have been ‘deliberately starved’ in different parts of the country for ethnic and political reasons, and sexual violence against women and men as a weapon of war is ongoing.”¹²⁸ Just two days after the release of this report, Kiir and Machar officially formed the Revitalized Transitional Government of National Unity (RTGoNU).¹²⁹ The RTGoNU preserved an arrangement responsible for forced starvation and the failure to protect civilians.¹³⁰ Yet the RTGoNU’s formation is a success when evaluated through the transitional framework and its benchmarks,¹³¹ underscoring a fundamental flaw in the logic of transition itself. The scale of harm overlooked through transitional benchmarks is immense, as the UN Commission on Human Rights in South Sudan’s investigations “have documented the persistence of horrific conflict-related sexual violence, the use of children in armed forces, abductions, extrajudicial killings, cattle raiding and revenge killings, and other cruel and inhumane treatment during attacks and counterattacks by belligerent groups.”¹³² Moreover, the South Sudanese government continued to consolidate its coercive power by detaining and torturing dissenters.¹³³

imposing-accountability-measures/ [https://perma.cc/5GAE-WQ6D] (“The RSF and allied militias have systematically murdered men and boys . . . and deliberately targeted women and girls from certain ethnic groups for rape and other forms of brutal sexual violence. . . . I have now concluded that members of the RSF . . . have committed genocide in Sudan.”); Press Release, U.S. Holocaust Mem’l Museum, Museum Warns Risk of Genocide in Darfur (June 29, 2023), <https://www.ushmm.org/information/press/press-releases/museum-warns-risk-of-genocide-in-darfur> [https://perma.cc/EBF4-KN2T] (expressing deep concern for the dire risk of genocide in Darfur).

128. ‘Deliberate Starvation’ Tactics Used in South Sudan Could Be a War Crime, UN News (Feb. 20, 2020), <https://news.un.org/en/story/2020/02/1057751> [https://perma.cc/5KWY-PDJ2] [hereinafter UN News, Deliberate Starvation].

129. The Formation of the Revitalized Transitional Government of National Unity in South Sudan, Accord (Aug. 20, 2020), <https://www.accord.org.za/conflict-trends/the-formation-of-the-revitalized-transitional-government-of-national-unity-in-south-sudan/> [https://perma.cc/C2PZ-XZH3] (stating that South Sudan formed the RTGoNU on February 22, 2020). A UN Report on the use of starvation as a weapon of war in South Sudan was released on February 20, 2020. UN News, Deliberate Starvation, *supra* note 128.

130. UN News, Deliberate Starvation, *supra* note 128 (explaining that the three-member Commission on Human Rights in South Sudan stated that political elites were “‘oblivious’ to the suffering of civilians”).

131. See 2018 R-ARCSS, *supra* note 64, at ch. 1 (providing for the establishment of the RTGoNU).

132. UN Off. High Comm’r for Hum. Rts., South Sudan’s Fragile Peace Prospects, *supra* note 108.

133. UN Off. High Comm’r for Hum. Rts., Extension of Transitional Government, *supra* note 67 (“[I]n July 2024 the Government adopted legislation preserving powers of detention routinely abused by the National Security Service, which maintains clandestine ‘ghost houses’ of torture and enforced disappearances.”).

Transitional peacebuilding's incompatibility with human rights protections extends beyond the well-discussed tension in transitional justice between granting amnesty for human rights violations and achieving stability.¹³⁴ Both the PFA and R-ARCSS contain transitional justice mechanisms,¹³⁵ yet informal amnesty—through the governance arrangements within interim agreements—persists in tandem with the formalistic inclusion of transitional justice mechanisms in the agreements. This coexistence demonstrates that the protection of human rights in peacebuilding cannot be relegated solely to the incorporation of transitional justice provisions in peace agreements. Moreover, the freeze effects of transition in the Sudans have halted the establishment of such transitional justice institutions,¹³⁶ demonstrating how justice for human rights victims is ultimately a governance issue. International organizations have yet to

134. Transitional justice is “a response to systematic or widespread violations of human rights,” and some of its mechanisms include “criminal prosecutions,” “truth commissions,” “reparation programs,” “gender justice,” “security system reform,” and “memorialization efforts.” Int’l Ctr. for Transitional Just., *What Is Transitional Justice?* 1 (2009), <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> [<https://perma.cc/4ZS5-H5VP>]. Transitional justice “has become an essential component of any liberal peacebuilding operation.” Kora Andrieu, *Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm*, 41 *Sec. Dialogue* 537, 538 (2010); see also Hampson, *supra* note 42.

135. Both the ARCSS and R-ARCSS commit the signatories to the establishment of the Commission for Truth, Reconciliation and Healing (CTRH), the Hybrid Court of South Sudan (HCSS), and the Compensation and Reparation Authority (CRA). 2018 R-ARCSS, *supra* note 64, ch. 5. For an argument in favor of the Hybrid Court’s establishment and against Kiir and Machar’s support for solely the Commission for Truth, Reconciliation and Healing, see Elizabeth Watchowski, *The Hybrid Court of South Sudan: Progress Towards Establishment and Sustainable Peace*, 15 *Loy. U. Chi. Int’l L. Rev.* 117, 118 (2017) (“The continuation of [the conflict in South Sudan] underscores the need for the HCSS’s establishment to ensure accountability, promote deterrence, and encourage sustainable peace.”). The 2022 PFA listed as tasks for the transition: “Launching a comprehensive process that achieves justice and transitional justice, detects crimes, holds their perpetrators accountable, does justice to the victims, heals wounds, ensures that there is no impunity and that crimes are not repeated.” *Draft Political Framework Agreement* art. 2, at 2 (2022) <https://redress.org/storage/2022/12/Framework-Agreement-Final-ENG-05122022.pdf> [<https://perma.cc/JUF9-8RUW>].

136. See UN Off. High Comm’r for Human Rts., *Extension of Transitional Government*, *supra* note 67 (“Since the original commitment to establish a Hybrid Court in 2015, the Government has failed to engage seriously with the African Union to establish it.”). While the South Sudanese parliament has begun the process of passing a bill establishing a truth commission and a reparations authority bill, they fail to meet the standards of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims. See *South Sudan: Parliament Approves Transitional Justice Laws*, Hum. Rts. Watch (Sep. 9, 2024), <https://www.hrw.org/news/2024/09/09/south-sudan-parliament-approves-transitional-justice-laws> [<https://perma.cc/M4SL-GWUU>] (arguing that the reparations authority bill fails to meet the UN’s standard by treating personal reparations as a last resort).

effectively leverage their influence to increase the incorporation of international law principles on governance within peace agreements.¹³⁷

Ultimately, transitional frameworks that rely on vesting power, even if temporarily, in groups and individuals that have committed violence against civilians without the support of the local population are incompatible with the UN and AU's proclaimed visions for peacebuilding that center human rights and the rule of law.¹³⁸ As argued by Professor Jeremy Levitt, this form of "illegal peace," which might be justified through political means, fails to satisfy the rule of law.¹³⁹ These deals with warlords have consequences, and it is the civilians in the Sudans who continue to bear them.

C. *The Democratic Momentum Lost in Transition*

The 2018 to 2019 Sudanese uprisings exemplified the spirit behind an inclusive and locally owned transition¹⁴⁰ and the potential for civil society involvement that scholars claim is missing from peacebuilding processes.¹⁴¹ By marginalizing such movements, the UN and AU risk positioning themselves in opposition to local politics as they frame the agreements as necessary for stability.¹⁴² Following the signing of the November

137. See Fox, *supra* note 2, at 833–35 (discussing the centrality of international law principles on governance within agreements to end non-international armed conflicts).

138. See Gaston et al., *supra* note 73.

139. See Jeremy I. Levitt, *Illegal Peace?: An Inquiry Into the Legality of Power-Sharing With Warlords and Rebels in Africa*, 27 *Mich. J. Int'l L.* 495, 500 (2006) (internal quotation marks omitted) (“[T]he law . . . must constrain the political aspirations of decisionmakers and ensure the lawfulness of peace deals. . . . [T]he rules governing the legality of peace agreements must be adhered to, particularly when the beneficiaries of power-sharing acquired power undemocratically and unlawfully . . .”).

140. See Sydney Young, *The Women's Revolution: Female Activism in Sudan*, *Harv. Int'l Rev.* (May 25, 2020), <https://hir.harvard.edu/the-womens-revolution-female-activism-in-sudan/> [<https://perma.cc/P3MK-KU5E>] (stating that women made up seventy percent of the protestors from 2018 to 2019).

141. See Steven C. Roach, *South Sudan's Fateful Struggle: Building Peace in a State of War* 147 (2023) (arguing that the lack of civil society inclusion in the South Sudanese peace process has led to its uncertainty); Parver & Wolf, *supra* note 16, at 78 (“Studies have found that civil society involvement is one of the most important factors in determining whether post-conflict initiatives will be successful and sustainable.”); Saliternik, *Perpetuating Democratic Peace*, *supra* note 23, at 618–21 (“Peace negotiations are . . . influenced by, and have an influence on, a range of domestic and foreign actors, without there being necessarily a match between those who take the decisions and those who are affected by them. Hence, peace negotiations are susceptible to a double—internal and external—representation deficit.”).

142. See Noha Elhennawy, *UN Envoy: Sudan's New Deal Saved the Country From Civil War*, *AP News* (Nov. 26, 2021), <https://apnews.com/article/middle-east-africa-sudan-omar-al-bashir-united-nations-405851ce4030e7669f4973b46e88ff41> (on file with the *Columbia Law Review*) (“Both signatories felt compelled to make ‘bitter concessions’ in order to spare the country the risk of more violence, chaos and international isolation . . .”).

2021 deal reinstating Hamdok after the coup,¹⁴³ the head of UNITAMS, Volker Perthes, remarked that despite the deal's imperfections, "we at least have an important step towards the restoration of the constitutional order."¹⁴⁴

But what exactly *is* the constitutional order? Rather than solely focusing on where the transition is supposed to lead, it is worth asking: What is the transition preserving? As UNITAMS continued to define progress by the transitional timeline and its benchmarks, the constraints of the transitional framework left no room to criticize how the 2020 JPA enabled the 2021 military coup, instead framing the coup as a deviation from the transition rather than a direct symptom of the compromises embedded within it. Perthes further justified the transitional compromise by claiming that "it is better than not having an agreement and continuing on a path where the military in the end will be the sole ruler."¹⁴⁵ Nonetheless, the November 2021 post-coup deal and the 2022 PFA did turn out to be a path along which the military became the sole leader,¹⁴⁶ and it was civilians who warned that this would be the case.¹⁴⁷ Prodemocracy groups in Sudan remain demoralized from the failures of means-end transitional peacemaking,¹⁴⁸ because "[e]levating the SAF and the RSF as the central players in Sudan's future rather than marginalizing them has distorted the calculations of civilian leaders[,] . . . consistently relegat[ing] Sudan's civilian leadership to seeking leverage by the only means left available to them: through alliances with either the SAF or the RSF."¹⁴⁹

In December 2020, the South Sudan National Dialogue Steering Committee published its concluding report, recommending that Kiir and Machar both either resign or declare that they will not run in the next elections.¹⁵⁰ The President of the People's Coalition for Civil Action (PCCA) echoed these desires for reform, stating that "[t]he PCCA is for

143. See Associated Press, Sudan's Military Has Agreed to Reinstall Ousted Prime Minister, *supra* note 82.

144. Elhennawy, *supra* note 142 (internal quotation marks omitted) (quoting Volker Perthes, Special Envoy, UN Integrated Transition Assistance Mission in Sudan).

145. *Id.*

146. See Marsden, *Critical Juncture*, *supra* note 70.

147. See Walsh, *Ousted in Coup*, *supra* note 82 ("But the deal met with a wave of anger on the streets, where vocal critics slammed it as an unacceptable concession to a military that has controlled Sudan for 52 years of its 60-year history and that is likely to severely hamper efforts to move the country toward democracy.").

148. See Max Bearak, Three Years Into Sudan's 'Endless Revolution,' Hope Slides Toward Despair, *Wash. Post* (Dec. 20, 2021), <https://www.washingtonpost.com/world/2021/12/20/sudan-revolution-protests/> (on file with the *Columbia Law Review*) ("Despite persistently huge turnouts at protests and rumors that the country's military leaders are on the verge of resignation, even the revolution's true believers cannot conceal their despair.").

149. Knopf, *supra* note 99.

150. See South Sudan National Dialogue, *supra* note 44.

real reforms, not cosmetic theaters that we have seen over the last decade. If the government is unwilling to take these proposals seriously, we are not in a hurry to sign another fake agreement.”¹⁵¹ The South Sudanese government systematically suppressed and marginalized pro-democracy actors, including the PCCA, through intimidation and detentions.¹⁵² As elections face continuous delays, South Sudanese prodemocracy activists express growing frustration over leaders’ stalling of the transitional process.¹⁵³

Civilian disillusionment in the Sudans threatens the legitimacy of UN and AU peacebuilding efforts in postconflict societies as they risk being perceived as obstacles to progress.¹⁵⁴ This is particularly damaging for the AU, which seeks to build its reputation on the continent as an effective

151. The People’s Coalition for Civil Action-South Sudan, Facebook (June 4, 2024), https://www.facebook.com/story.php?story_fbid=459203020093603&id=100080117276298&_rdr (on file with the *Columbia Law Review*).

152. See Deng Machol, South Sudan Orders Bank Accounts of Activists Frozen, AP News (Oct. 7, 2021), <https://apnews.com/article/business-riek-machar-africa-south-sudan-e5cd55da29db3ef3740aacde133682df> (on file with the *Columbia Law Review*) (reporting that South Sudanese authorities ordered the freezing of bank accounts of prominent activists, a move critics characterized as part of a broader crackdown on dissent); Nyagoah Tut Pur, South Sudan Government Begins Trial of Activists, Critics, Hum. Rts. Watch (Oct. 6, 2022), <https://www.hrw.org/news/2022/10/06/south-sudan-government-begins-trial-activists-critics> [<https://perma.cc/G3LV-WBQZ>] (describing the South Sudan government’s “blatant rights violations” against activists). South Sudanese representatives have also echoed the claims that transitional extensions are necessary to secure peace. See Meetings Coverage, Security Council, South Sudan Transitional Government’s Perpetual Extension of Its Mandate ‘Ultimate Obstacle to Democracy’, Civil Society Leader Tells Security Council, U.N. Press Release SC/15890 (Nov. 7, 2024) [hereinafter UNSC Press Release on Extension] (“South Sudan’s representative pointed out that the decision to extend the transitional period was necessary due to financial constraints and logistical challenges and was ‘made in the interest of maintaining peace that would ensure a stable foundation for free, fair and credible elections.’”).

153. See Activist Asks Govt to Be Honest About Elections as NEC Insists on December, Radio Tamazuj (July 26, 2024), <https://www.radiotamazuj.org/en/news/article/activist-asks-govt-to-be-honest-about-elections-as-nec-insists-on-december> [<https://perma.cc/YBM2-GBUS>] (“It is good for the [National Election Commission] to come out to tell us as South Sudanese what is really delaying so that we know if there will be elections . . . [P]eople will lose trust and not believe it next time they say they will do something.” (internal quotation marks omitted) (quoting John Baptist Olara, Political Activist, S. Sudanese Network for Democracy & Elections)).

154. For an example of the sentiment that international mediators are an obstacle to achieving Sudanese aspirations, see Walsh, Ousted in Coup, *supra* note 82 (quoting Magdi el-Gizouli of the Rift Valley Institute, who expressed after the signing of the November 21, 2021, post-coup deal: “Whoever marketed this as realpolitik underestimated the depth of the desire for change, and a new future, among the new generation in Sudan”); see also Sudan’s FFC Distances Itself F[ro]m Burhan-Hamdok Deal [sic], Sudan Trib. (Nov. 21, 2021), <https://sudantribune.com/article/226327> (on file with the *Columbia Law Review*) (stating that the Sudanese Professionals Association (SPA) called the 2021 Burhan-Hamdok deal a “treason agreement” (internal quotation marks omitted)).

regional partner in support of African-led peace efforts.¹⁵⁵ This could further erode civilians' cooperation and trust in international organizations, ultimately diminishing their influence as proponents of peace, stability, and human rights on the global stage.¹⁵⁶

This loss of grassroots momentum in the transitional peacebuilding process goes well beyond scholars' critiques that civil society is often excluded from negotiations.¹⁵⁷ Even when members of civil society are included in negotiating transitional agreements, their participation is constrained by the parameters of the transitional sequence that prioritizes restoration of the original constitutional order.¹⁵⁸ Thus, while increasing civil society's role in negotiations is necessary, it is insufficient unless accompanied by a fundamental reorientation of transitional frameworks that moves beyond such stylized benchmarks and incorporates democratic elements from the outset.

The transitional outcomes in the Sudans are often depicted as an inevitable result¹⁵⁹ of complex and fragile political circumstances, including ethnic divisions.¹⁶⁰ While this Note acknowledges the role of complex ethnic divisions and political fragmentation on postconflict

155. See Antonia Witt, Omar M. Bah, Sophia Birchinger, Sait Matty Jaw & Simone Schnabel, *How African Regional Interventions Are Perceived on the Ground: Contestation and Multiplexity*, 31 *Int'l Peacekeeping* 58, 59 (2024) (“[S]ince 2015, the . . . majority of international peace interventions has been conducted by regional organizations or alliances and not by the UN. One important factor behind this . . . is the growing role of African regional organizations like the African Union (AU) . . . in undertaking interventions in their member states.” (footnote omitted)).

156. The failures in Sudan have also emboldened warring leaders to disregard future negotiation attempts spearheaded by other actors. See Wedaeli Chibelushi, Imogen Foulkes & Kalkidan Yibetal, *Sudan Peace Talks Start—But Neither Side Shows Up*, BBC (Aug. 14, 2024), <https://www.bbc.com/news/articles/c985493m719o> [<https://perma.cc/DW3S-PJZ8>] (stating that neither the RSF nor SAF attended United States-led peace talks in August 2024).

157. See Roach, *supra* note 141.

158. The limited arena in which civil society inclusion may influence the substance of agreements is in transitional justice provisions. See Magara & Rivers, *supra* note 62.

159. See Elhennawy, *supra* note 142 (describing claims that Sudan's 2021 deal was necessary to prevent civil war); UN News, *Postponing Elections*, *supra* note 93 (quoting Nicholas Haysom, Special Representative of the UN Secretary-General for South Sudan, calling the pushing back of South Sudanese elections “inevitable but a regrettable development”).

160. There are over sixty ethnic groups in South Sudan and over five hundred in Sudan. *South Sudan Country Profile*, BBC (Apr. 18, 2023), <https://www.bbc.co.uk/news/world-africa-14069082> [<https://perma.cc/9FZH-LAGZ>]; Sudan, *Minority Rts. Grp.*, <https://minorityrights.org/country/sudan/> (on file with the *Columbia Law Review*) (last visited Jan. 6, 2026); see also Assefa Fiseha, *Devolution and Transition in Sudan, in Federalism, Devolution and Cleavages in Africa* 294 (2024) (“[T]he main source of instability and conflict [in Sudan] are related to concentration of power and resources by the old establishment based in the capital that also imposed narrow based nation building strateg[ies] based on Islam and Arabic . . .”).

peacebuilding, it operates on the premise that no transitional design is inevitable. Transitional agreements embody choices made about whom to empower and what to prioritize. These choices are not neutral or inevitable; they are strategic choices that determine the trajectory of the defined transition period and beyond.¹⁶¹ Reasserting the agency of international organizations is essential for identifying approaches that better prioritize human rights and democratic governance.

Furthermore, the idea that conditions for democratic political founding cannot exist with inequality and division, and thus that a transitional framework is necessary for stability, is ahistorical and cannot be exclusively reserved for postcolonial nations. As pointed out by Professor Sharath Srinivasan, the American Founding Fathers imagined their democratic political founding while perpetuating the original sin of slavery and the systematic exclusion of nonlandowning white Americans, yet few question whether the political endeavor of imagining American democracy was worthwhile.¹⁶² The refusal to allow local citizens in postconflict nations to shape their own political founding unless the conditions are “right” is not only ahistorical but can cement instability. As Srinivasan warns, “[p]olitical founding that lacks in prior political action may be dangerously un-founding, for government is liable to rely on coercion where it lacks legitimacy and consent.”¹⁶³

While acknowledging that the UN and AU are not exclusive actors in the Sudans,¹⁶⁴ this Note further asserts the agency of international organizations by rejecting the notion that their influence is entirely constrained by other third-party facilitators. The UN and AU maintain an influence that is inseparable from the legacy of peacebuilding in the Sudans. Their numerous peace agreements all build on each other, each with its foundations rooted in involvement from international organizations.¹⁶⁵ Because the transitional outcomes described in this Note are connected to actions squarely within the UN’s and AU’s peacebuilding roles, it remains critical

161. See Knopf, *supra* note 99.

162. See Srinivasan, *supra* note 10, at 220–21.

163. *Id.* at 219.

164. South Sudan’s negotiation of the R-ARCSS was influenced by Presidents Omar Al-Bashir and Yoweri Museveni, both of whom had stakes in the future South Sudan. See Magara & Rivers, *supra* note 62 (describing the Khartoum process leading up to the signing of the R-ARCSS). Several countries have been accused of being involved in Sudan’s civil war, including Egypt, Turkey, Saudi Arabia, the United Arab Emirates, and France. See Lee Keath & Michelle Price, *The Role Outside Powers Are Playing in Sudan’s Continued, Brutal War*, PBS NewsHour (Nov. 7, 2025), <https://www.pbs.org/newshour/world/the-role-outside-powers-are-playing-in-sudans-continued-brutal-war> [<https://perma.cc/X6GJ-HNVP>]; see also Sarah Carter, *Amnesty International Says Weapons From U.S. Allies Are Fueling Sudan’s Raging Civil War*, CBS News (Nov. 15, 2024), <https://www.cbsnews.com/news/sudan-civil-war-amnesty-international-says-uae-france-weapons-used-by-rsf/> [<https://perma.cc/6B32-RMFQ>].

165. See *supra* note 10 and accompanying text.

to examine how they enabled the injustices in transitional frameworks rather than countered them.

III. BEYOND THE LINEAR TRANSITION FRAMEWORK

This Part proposes a reframing of how the UN and AU approach transitions in democratization processes. First, section III.A advocates for the abandonment of the standard transitional sequence, rejecting justifications rooted in the assumed temporariness of transition and challenging the vesting of power in unelected actors. Section III.B calls for redefining national ownership in peacebuilding by shifting from participation metrics to influence metrics, emphasizing the importance of addressing parity in negotiations and incorporating referendums. Section III.C proposes reforming and leveraging the UN Peacebuilding Commission to increase avenues for accountability, standardize review of peacebuilding missions, and provide formal recommendations.

A. *Ending the Transitional Sequence*

The template sequence for postconflict peacebuilding¹⁶⁶ assumes that when a transition deviates from the established sequence, the solution is to restore the original order in an effort to stabilize the unstable.¹⁶⁷ Instead, transitional arrangements should be understood as part of the outcomes themselves—outcomes that directly integrate into the realization of human rights, justice, and democratic legitimacy. Recognizing that the stylized transition conception is unhelpful requires fundamentally rethinking the compromises made in postconflict peacebuilding, leaving little room for political convenience or haste. When transitional agreements fail, the initial arrangement itself should be questioned—the default should not be to restore the original “constitutional order”¹⁶⁸ but to enable postconflict nations to renew and redirect.

1. *Centering the Political Enablement of Civil Society.* — Interpeace, an international peacebuilding NGO, proposed that the UN “do less and enable more,” a proposal that has since been endorsed by the UN.¹⁶⁹ While the proposal originally focused on strengthening the development and

166. See *supra* note 59 and accompanying text.

167. See *supra* notes 142–144 and accompanying text.

168. See Elhennawy, *supra* note 142 (discussing the 2021 deal struck in Sudan to reinstate the prime minister following a military coup, taking a step toward restoring the constitutional order).

169. See Interpeace and United Nations Peacebuilding Office Renew Partnership to Sustain Peace, Interpeace (July 30, 2020), <https://www.interpeace.org/2020/07/interpeace-peacebuilding-partnership/> [https://perma.cc/Z6UF-GTB9] (internal quotation marks omitted) (“Interpeace also contributed critical inputs to the review of that architecture in 2015 and is doing so again in the 2020 review process. In 2015, Interpeace’s proposal, which is now established, was for the ‘UN to do less and enable more.’”).

human rights nexus,¹⁷⁰ it should also prioritize political enablement, or enabling civil society to have a leading role in its own political and legal founding.

Political enablement goes beyond incorporating national dialogue processes.¹⁷¹ It requires actively empowering political organizations to shape the transitional framework. Sudan's political resistance committees demonstrated remarkable organizational capacity in sustaining grassroots mobilization, yet they were excluded from political processes leading up to the civil war.¹⁷² These groups, organized by neighborhood, regularly organized committee meetings and large-scale political discussions, drafted political charters, and shifted to providing lifesaving support to their communities in the midst of civil war when the transitional government failed them.¹⁷³ A renewed approach to postconflict peacebuilding should prioritize building on the existing organizational structures of the Sudanese resistance committees, enabling the committees to expand their role in serving as a space for political imagination and community engagement. This includes providing financial resources to support their operational needs and using their charters and proposals as a foundation for transitional frameworks, ensuring their voices directly influence negotiation agendas.

As South Sudan's sovereignty in the 2005 Comprehensive Peace Agreement (CPA) was defined almost entirely by its secession from Sudan, South Sudan epitomizes the consequences of failing to enable a nation to deliberate on its political founding.¹⁷⁴ These issues within South Sudan's

170. See *id.* (“The [UN] PBSO and Interpeace share the objective of enabling and supporting the ‘whole-of-system’ approach to peace that the Agenda calls for by promoting the application of peacebuilding . . . as an approach to social, economic and other interventions in conflict affected contexts.”).

171. National dialogues have been employed in several postconflict transitions including the Central African Republic, Kenya, Lebanon, Senegal, Tunisia, Yemen, and South Sudan. These processes aim to foster inclusion of civil society in the negotiation process. See U.S. Inst. of Peace, *National Dialogues in Peacebuilding and Transitions* 3 (Elizabeth Murray & Susan Stigant eds., 2021), https://www.usip.org/sites/default/files/pw_173-national_dialogues_in_peacebuilding_and_transitions_creativity_and_adaptive_thinking.pdf [<https://perma.cc/5ART-BCPM>].

172. See Aida Abbashar, *Resistance Committees and Sudan's Political Future* 15 (2023), <https://peacerep.org/wp-content/uploads/2023/07/Abbashar-2023-Sudan-Resistance-Committees.pdf> [<https://perma.cc/YAR9-UBTM>] (“Before the conflict, resistance committees across the country cited a need for monetary and capacity building support to ensure that they can effectively engage in their activities. In addition, many committees also underlined their frustration with being sidelined from Sudan's political processes in the run up to April 2023.”).

173. *Id.* at 5, 14 (“Not only have these humanitarian . . . efforts helped address the . . . lack of social and public service provision available to the Sudanese people, but they emphasize the legitimacy of the committees as a network capable of providing the social, health, security, and monetary relief when the government fails to do so.”).

174. See Srinivasan, *supra* note 10, at 224 (describing how peacemakers' primary focus on addressing the north-south Sudanese divide empowered the rebel movement and how

founding have trickled into the pitfalls of the 2015 ARCSS and 2018 R-ARCSS, perpetuating extended transitions and delayed democratization. Organized coalitions such as the South Sudanese Network for Democracy and Elections and the People's Coalition for Civic Action (PCCA) highlight the potential for peacebuilding strategies to allow organized civilian groups¹⁷⁵ to establish the foundations of democracy on their own terms, building on their own organizational structures. Postconflict societies must be afforded the opportunity to actively imagine and define their national identities and legal systems, ensuring that peacebuilding efforts are led by the agency of the people most affected by the transition.

2. *Minimizing the Authority of Unelected Interim Leaders.* — The temporary governance structures in the Sudans were strikingly elaborate,¹⁷⁶ creating an entire bureaucracy of unelected leaders incentivized to prioritize maintaining their positions of power over facilitating the democratic transition they were originally tasked with overseeing. Transitional frameworks should aim to establish institutions that are designed to function independently of the individuals occupying transitional roles. To this end, transitional agreements should reduce interim leaders' influence, particularly in transitional legislative bodies and election commissions. For example, agreements could mandate that a majority of representatives in transitional governance bodies be appointed by civil society organizations.¹⁷⁷ Additionally, the oversight power of top leadership should be reduced by limiting or excluding their authority to make appointments.¹⁷⁸ Transitional agreements should further avoid providing amendment power¹⁷⁹ to interim governments, preventing unelected leaders from altering the framework or timeline without accountability. These measures would help provide more legitimacy to interim arrangements by limiting the power of unelected leaders.

“less attention and institutional space was given to addressing power struggles within southern Sudan itself”).

175. It is important to note that organized civilian groups also face inclusivity challenges, as groups organized in capitals are more likely to have greater organizational capacity due to increased resources as compared to groups on the peripheries. See Abbashar, *supra* note 172, at 11.

176. In South Sudan, the transitional government (RTGoNU) within the R-ARCSS called for 5 vice presidents, 45 ministers, and 650 members of the national legislature. See 2018 R-ARCSS, *supra* note 64, at ch. 1.

177. This could help avoid situations like in the founding of the Southern Sudan Legislative Assembly, which was seventy percent composed of the SPLM/A as stipulated in the 2005 Comprehensive Peace Agreement (CPA). See Srinivasan, *supra* note 10, at 224.

178. See 2018 R-ARCSS, *supra* note 64, at ch. 1.6 (providing appointment power to the interim president).

179. *Id.* at ch. 8.4.

B. *Reframing National Ownership in Peacebuilding*

Applications of national ownership¹⁸⁰ in peacebuilding have focused on ensuring civil society organizations participate in negotiations.¹⁸¹ But granting civil society organizations a seat at the table to negotiate within the confines of the transitional sequence does little to address the inherent flaws of the framework itself.¹⁸² The UN and AU should instead account for the power dynamics embedded in transitional negotiations and actively tilt the scales in favor of civilian groups in negotiations to fulfill their peacebuilding mandates.¹⁸³ National ownership as a standard in peacebuilding should shift away from representation metrics to ensuring meaningful influence over the substance of the agreements. Such a shift is consistent with previous shifts in understanding of legal norms, including evolving understandings of self-determination¹⁸⁴ and sovereignty.¹⁸⁵

In the Sudans, grassroots organizers had tangible, specific demands for how to begin the process of transforming their countries. A significant majority (seventy percent) of South Sudanese supported holding elections as scheduled despite concerns about whether the environment was conducive.¹⁸⁶ The organizers in Sudan who helped oust Bashir had clear calls for peace, justice, and the elimination of military rule, and yet their calls were sidelined by transitional frameworks that prioritized elite-driven compro-

180. Although there is some tension between the meaning of national ownership and how to operationalize it, national ownership broadly recognizes that successful peacebuilding cannot be solely conducted by outside actors, but “requires the active involvement and engagement of local actors at all levels of society.” Rhys Machold & Timothy Donais, *From Rhetoric to Practice: Operationalizing National Ownership in Post-Conflict Peacebuilding* 1 (2011), https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/national_ownership_report.pdf [https://perma.cc/P2DV-G8EC].

181. See Saliternik, *Perpetuating Democratic Peace*, supra note 23, at 637 (“The European Union’s (EU) Consensus on Development similarly emphasizes the importance of local civil society participation in decision making relating to development projects.”).

182. For example, even though civil society was at the negotiating table in the culmination of the R-ARCSS, “shreds of contributions attributable to civil society action are to be found in [transitional justice] mechanisms, such as demands for accountability, and securing women and youth quotas in the governance architecture of South Sudan. Nevertheless, most of these milestones are yet to be implemented or achieved.” Magara & Rivers, supra note 62.

183. See supra notes 3–4 and accompanying text for a discussion of their respective mandates.

184. See Natalie Jones, *Self-Determination and the Right of Peoples to Participate in International Law-Making*, *Brit. Y.B. Int’l L.*, Nov. 2021, at 7, 8 (detailing how the law of self-determination is dynamic, shifting from solely a political right to a legal right in the decolonization era, and then to a human right after its adoption in article 1 of the ICCPR).

185. See supra note 10 and accompanying text.

186. See Deng et al., supra note 44, at 6; UNSC Press Release on Extension, supra note 152 (“Council members were near-unanimous in their support for the decision to relaunch the Tumaini Initiative, while voicing regret over authorities’ decision to extend, yet again, the transitional period by two years.”).

mises.¹⁸⁷ Yet rethinking national ownership to support civilian-led movements does not mean that the UN and AU should support what the citizenry “wants” arbitrarily, ignoring the disagreements and factions that may exist among the citizenry.¹⁸⁸ Instead, it means empowering local actors with more influence and authority to define their own transition by ensuring they are not confined by the predetermined frameworks imposed by the UN and AU’s peacebuilding efforts.¹⁸⁹

1. *Addressing the Parity Problem.* — Rethinking national ownership requires addressing the “parity problem”:¹⁹⁰ that is, aggregating pro-democracy groups and placing them on equal footing with political leaders during negotiations. This false sense of parity forces grassroots movements to compromise with leaders who resist meaningful reforms.¹⁹¹ To mitigate this imbalance, the UN and AU must avoid aggregating civil groups into one or two large groups set to compromise with military leaders. Further, they should leverage their influence by exerting pressure on parties to uphold the demands of civilian leaders, rejecting support for proposals that overly compromise on issues of demilitarization, interim leadership roles, and accountability for human rights violations.

187. See Paris, *supra* note 78 (describing civilian support for the end of military rule).

188. For example, in South Sudan, civil society is fragmented on its views of the interim government. See Magara & Rivers, *supra* note 62 (explaining that South Sudanese civil society disagrees on whether to support the government or opposition) (citing Rajab Mohandis, *Civil Society: Who Are the Voices that Are Rebuilding South Sudan?*, Univ. Manch. Glob. Dev. Inst. (Oct. 26, 2018), <https://blog.gdi.manchester.ac.uk/civil-society-rebuilding-south-sudan/> [<https://perma.cc/76A9-Q5WK>])). Similarly, in Sudan, resistance committees disagreed with the FFC on making deals with the military after the June Massacre. See Abbashar, *supra* note 172, at 7.

189. Recasting national ownership to ensure civil society has influence over the terms of transitions rather than solely participating in the process aligns with the concept of political enablement discussed in section III.A.1. Political enablement focuses on leveraging the organizational infrastructure and practices of existing civil society groups to empower them as key actors in shaping transitional arrangements, whereas section III.B focuses on moving away from inclusion at the negotiating table as a primary indicator of civilian influence over peace agreements. Together, these approaches emphasize the necessity of centering local agency.

190. For a discussion of how peacemaking can contribute to an equivalence between the negotiating parties, see Erakat, *supra* note 26, at 218 (arguing that “the framework of peacemaking sustains the fiction of parity”); see also Miller, *supra* note 110, at 383 (“The Oslo Accords, like the institutions they spawned, portrayed the relationship between Israel and Palestine as that of two relatively equivalent parties struggling to make their narratives heard and to satisfy their historical, material, and political needs.”).

191. See *supra* note 149 and accompanying text; see also Magara & Rivers, *supra* note 62 (explaining that political and military elites dominated the R-ARCSS negotiations and that civil society’s contributions were limited to transitional justice and affirmative action agendas, which “may not be hugely attributable to civil society agency”).

While such mediation approaches may implicate neutrality concerns,¹⁹² previous decisions to trust commitments from leaders like Burhan, Hemedti, Kiir, and Machar demonstrate that international organizations have already made nonneutral choices—often choices that prioritize the short-term cessation of hostilities. In contrast, an approach to national ownership that addresses parity concerns better ensures outcomes consistent with the priorities of democratic governance and human rights obligations.

2. *Increasing Strategic Use of Referendums.* — To grant civil society greater influence in defining postconflict governance, transitional peacebuilding should incorporate referendums. These referendums could require public support for critical decisions throughout the peacebuilding process, such as establishing the initial parameters of the mandate, implementing transitional justice institutions, amending the transitional framework, delegating important decisions to transitional legislative councils, and extending transitional timelines.¹⁹³

Referendums offer a mechanism for consulting the citizenry and work to counteract the illegitimacies inherent in interim unelected governance schemes.¹⁹⁴ Implementing referendums once a transitional arrangement is already in place could serve as a safeguard against prolonged transitions by creating a formalized mechanism for reviewing extensions to the transitional timeline. Before transitional arrangements are established, referendums could help give civil society greater influence over the substance of transitional negotiations, establishing at the outset that negotiations must adjust to their demands. While incorporating referendums poses significant challenges¹⁹⁵ and has the potential to inflame existing

192. See Emmaculate Liaga, Dawit Yohannes, Tsion Belay & Meressa K. Dessu, Inst. for Sec. Stud., *Adapting UN Mediation for Emerging Challenges and Security Threats* 6–7 (2024), <https://cic.nyu.edu/wp-content/uploads/2024/04/Adapting-UN-Mediation-for-Emerging-Challenges-and-Security-Threats-April-2024.pdf> [<https://perma.cc/233S-XENS>] (“[E]nsuring impartiality and neutrality of major mediation actors such as the UN is key, a distinctive advantage of the UN that fortifies its position and reinforces its strength at this moment of polarization.”).

193. For discussion of the benefits and important considerations when utilizing referendums in peace processes, see Katherine Collin, *Peacemaking Referendums: The Use of Direct Democracy in Peace Processes*, 27 *Democratization* 717, 731 (2020) (“In every case, referendums that advance to polling and pass bring democratic legitimacy to a peace process that aims to transform the sovereign status quo.”).

194. See *supra* section III.A.2.

195. Implementing referendums often runs counter to the goal of reaching an agreement swiftly. See Joana Amaral, *When the People Have the Final Say: Lessons From Referendums in Peace Processes* 4 (2019), <https://www.swisspeace.ch/assets/publications/downloads/Policy-Briefs/1fb3625400/20191111-When-the-people-have-the-final-say.pdf> [<https://perma.cc/4V28-J4Q5>] (“[M]ediation strategies that are considered effective in reaching an agreement within a short timeframe can be counterproductive when the final agreement has to be ratified by a referendum.”).

fragmentations,¹⁹⁶ examining how they can best be leveraged in the transitional process is still worthwhile to foster better accountability and legitimacy.

C. *Leveraging the UN Peacebuilding Commission*

One way to reflect the proposed changes in peacebuilding strategies is by reforming the UN Peacebuilding Commission. The Commission, established in 2005, was mandated to promote coherence between the human rights, development and peace, and security pillars and to provide coherent peacebuilding strategies and guidance.¹⁹⁷ As an advisory body, however, it does not have any enforcement or accountability powers.¹⁹⁸ Reforming the UN Peacebuilding Commission to grant it authority to make formal recommendations to the UNSC could strengthen its ability to implement reforms and play a more proactive role in aligning peacebuilding efforts with human rights standards.¹⁹⁹ Some have also proposed expanding the UN Peacebuilding Commission's mandate to grant it power to audit ongoing peacebuilding missions, similar to the audit role of the Human Rights Council (HRC).²⁰⁰ Further, transforming the UN Peacebuilding Commission into a council whose recommendations carry formal weight might also reduce the politicization of the UNSC's current oversight of its peacebuilding mandates and turn recommendations into actual reform.²⁰¹ This could improve coordination with the AUPSC, which, in contrast, is a council with decisionmaking powers. While the AUPSC and UN Peacebuilding Commission have often collabo-

196. See Neophytos Loizides, *Negotiated Settlements and Peace Referendums*, 53 Eur. J. Pol. Rsch. 234, 235 (2014) (discussing criticism the UN received for premature referendum processes in East Timor and Kyrgyzstan).

197. S.C. Res. 1645, ¶ 1, (Dec. 20, 2005) (formally establishing the UN Peacebuilding Commission); G.A. Res. 60/L.1, 2005 World Summit Outcome, ¶¶ 97-105, 157-160 (Sep. 16, 2005) (describing the need and purpose for the UN Peacebuilding Commission).

198. G.A. Res. 60/180, ¶¶ 1-2(a) (Dec. 20, 2005).

199. See Jubilut, *supra* note 30, at 62 (advocating for the Peacebuilding Commission to establish a normative framework to “establish a principled way of assessing the standards of post-conflict efforts” while retaining its status as a purely advisory organ); see also Lina Hillert, *Human Rights and Peacebuilding: Bridging the Gap*, 16 J. Hum. Rts. Prac. 302, 303 (2024) (highlighting a problematic gap in engagement between the HRC and the UN's peace and security institutions).

200. See Richard Ponzio, *Upgrading the United Nations Peacebuilding Commission Into an Empowered Council*, Stimson (Nov. 29, 2019), <https://www.stimson.org/2019/upgrading-the-united-nations-peacebuilding-commission-into-an-empowered-council/> [<https://perma.cc/AJY4-REDZ>] (“As with the [Universal Periodic Review], all countries would participate periodically in such audits of early warning indicators. This would be consistent with current efforts to track the ten targets and associated indicators of all countries' progress toward meeting their commitments . . .”).

201. See *id.* (recommending that a stronger, more empowered UN Peacebuilding Council replace the current UN Peacebuilding Commission, mirroring the transformation of the Human Rights Commission into a Council in 2006).

rated on peacebuilding strategies through joint meetings,²⁰² the UN Peacebuilding Commission's purely advisory role significantly limits the partnership's ability to mandate changes or implement peacebuilding reform.

This Note's suggestions and critiques of transitional peacebuilding do not mean it ignores the complexities of negotiating governance or the challenges posed by the numerous actors that can undermine international organizations' peace efforts.²⁰³ The failures of transitional governance in Sudan and South Sudan are certainly deeply tied to the actions of local political leadership and the lack of global political will to address atrocities around the world.²⁰⁴ The problem is not that international organizations' peacebuilding efforts alone have directly caused these transitional failures and human rights violations, but that they have, at the very least, enabled and lent legitimacy to them. For many Sudanese civilians, international organizations' efforts to bring peace are perceived not as addressing the problem but rather as part of it.²⁰⁵

As this Note critiques the prevailing logics of UN and AU peacebuilding, it underscores that nontechnical problems cannot be solved with technical solutions. There is no quick fix to the crisis of interim governance in postconflict African nations, but reimagining transitional peacebuilding frameworks must begin in earnest. The path forward requires courage to question entrenched assumptions, creativity to develop new approaches, and commitment to centering the aspirations and teachings of ordinary people²⁰⁶ who imagine a future for themselves separate from their nation's colonial past and authoritarian present.

202. Joint Statement, 7th Annual Consultative Meeting of the African Union Peace and Security Council (PSC) and the United Nations Peacebuilding Commission (PBC) (Oct. 18, 2024), https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/joint_statement_au_psc_and_un_pbc.pdf [<https://perma.cc/6SM6-CQ3L>].

203. See *supra* note 164 (listing various forces undermining a resolution to Sudan's civil war).

204. This view highlights that problems within the UN and similar international legal organizations are simply reflections of problems in the world, as famously stated by the former U.S. Ambassador to the UN, Richard Holbrooke: "[B]laming the UN is rather like blaming Madison Square Garden when the New York Knicks lose." Nick Bryant, UN: Seventy Years of Changing the World, BBC (Sep. 28, 2015), <https://www.bbc.com/news/world-us-canada-34310354> (on file with the *Columbia Law Review*).

205. See David H. Bearce & Brandy J. Jolliff Scott, Popular Non-Support for International Organizations: How Extensive and What Does This Represent?, 14 *Rev. Int'l Orgs.* 187, 188 (2019) (explaining that attitudes regarding international organizations have worsened in recent years); *supra* note 154 (describing the sentiment that international mediators are an obstacle to achieving Sudanese aspirations).

206. See Nisrin Elamin & Tahani Ismail, The Many Mothers of Sudan's Revolution, Al Jazeera (May 4, 2019), <https://www.aljazeera.com/opinions/2019/5/4/the-many-mothers-of-sudans-revolution> [<https://perma.cc/3B62-EUWV>] (describing the "generations of ordinary women from across Sudan who have been at the forefront of anti-regime resistance,"

CONCLUSION

For too long, elite-centered deals with belligerent leaders have been accepted as an unfortunate necessity in the Sudans,²⁰⁷ justified by the misguided belief that stylized transitional periods will inevitably lead to democracy or a more stabilizing outcome than the current reality. By examining the defenses and outcomes of Sudan's 2022 PFA and South Sudan's 2018 R-ARCSS, this Note argues that UN and AU transitional peacebuilding logics freeze conditions of conflict, fail to uphold the rule of law and human rights, and stifle transformative goals of pro-democracy groups, further exacerbating a legitimacy crisis in international organizations.²⁰⁸ Because of the permanence of transition, compromises that would not otherwise be justified become entrenched. Improving transitional outcomes thus demands a reimagining of transitional peacebuilding that views transitions as an end in themselves, maintaining democratic participation and respect for human rights at every stage.

including engineering student Alaa Salah, who famously led a protest chant on April 10, 2019).

207. See Elhennawy, *supra* note 142; UN News, *Postponing Elections*, *supra* note 93.

208. See Bearce & Scott, *supra* note 205, at 189 (utilizing data from the International Social Survey Programme's National Identity module, fielded in 1995, 2003, and 2013, to demonstrate that attitudes about international organizations have worsened over time).

