

SOUTH SUDAN LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

The South Sudanese legal system is built upon both customary and statutory law and has a clear hierarchy of law as specified in the South Sudanese Transitional Constitution. The sources of legislation stem from the supreme law of the Constitution, written statutory law, the customs and traditions of the South Sudanese people as well as the will of the people.¹ Nevertheless, South Sudan is *de facto* ruled by President Kiir by decree and executive powers, which undermines the power of the legislative branch of government. The executive branch can block laws made in the National Assembly, whilst the threat to dismiss Parliament should they block proposed laws has been used in the past. The President also wields power over South Sudan's states, which nominally have wide ranging autonomy. State governors can also rule by decree, but can be dismissed at any time by the President and as such loyalty is expected to the party and office.²

Article 122(2) and Article 124 of the Transitional Constitution confirm the independence of the judiciary, which consists of the Supreme Court, the Court of Appeals, State high courts and a number of lower county and customary courts.³ Decisions by customary courts may be appealed to statutory courts, thus leading to the situation where different legal systems are applied to single cases. Despite equality before the law also enshrined in the constitution, the judiciary is highly influenced by government officials, in particular the executive. The President appoints all justices on the county courts and above, thus judges are reliant on maintaining the President's favour in order to stay in office.⁴ The military and security services are also known to influence court decisions; a number of officials and military officers have not been prosecuted for corruption and human right abuses. Impunity is widespread. The Southern Sudan Anti-Corruption Commission Act 2009 and South Sudan Penal Code 2008 contain wide-ranging legislation which criminalises a number of corruption offences, but the statutes are rarely enforced.⁵

There is neither a legal framework which allows the enforcement of judgements on commercial disputes in South Sudan, nor an arbitration act which allows disputes to be handled fairly. South Sudan is a signatory to the International Centre for the Settle of Investment Disputes but not to the 1958 New York Convention. As such, commercial disputes are often settled informally and out of court.⁶

South Sudanese contract law is defined in the 2008 Contract Act, which defines contracts, agreements, provisions and compensation, amongst others, whilst also recognising conditions which would void contracts, such as duress and mistake.⁷ The 2012 Companies Act regulates commercial entities and sets forth the law for the incorporation of firms, management of shares, and the administration of companies.⁸ Meanwhile, the 2009 Taxation Act sets forth general principles concerning the obligations of the tax payer as well as a number of articles which focus on business and 'entrepreneurial activities'. The Act also states that transactions recorded in foreign currency must be converted into Sudanese Pounds at the market rate.⁹ The 2012 Labour Bill regulates the

¹ https://www.constituteproject.org/constitution/South_Sudan_2013.pdf?lang=en.

² https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_South_Sudan.pdf.

³ https://www.constituteproject.org/constitution/South_Sudan_2013.pdf?lang=en;

http://www.nyulawglobal.org/globalex/South_Sudan.html.

⁴ https://www.constituteproject.org/constitution/South_Sudan_2013.pdf?lang=en.

⁵ <http://www.business-anti-corruption.com/country-profiles/south-sudan>.

⁶ <http://www.business-anti-corruption.com/country-profiles/south-sudan>.

⁷ <http://www.gurtong.net/LinkClick.aspx?fileticket=HRgROY4KD0%3D&tabid=470>.

⁸ <http://www.icnl.org/research/library/files/South%20Sudan/COMPANIESACT2012.pdf>.

⁹ <http://www.icnl.org/research/library/files/South%20Sudan/TaxationAct2009.pdf>.

relationship between workers and employers in the private sector whilst the penal code lays down the basis of criminal acts, committed inside and outside South Sudan, and their sentences.¹⁰ South Sudan is a signatory to a number of international treaties including the Geneva Conventions & Protocols I-III, United Nations Convention Against Corruption and the Ottawa Treaty. South Sudan is also a member of a number of international organisations including the African Union, International Fund for Agricultural Development, East African Community customs union and International Monetary Fund.

BUSINESS SECTOR

Since the onset of the civil war, the disruption of oil exports and the fall in global oil prices, South Sudan's economy has considerably suffered. Indeed, crude petroleum has consisted of in excess of 99.5% of South Sudan's exports and is the significant source of the government's foreign exchange. Real GDP growth has been negative since 2015 and is forecast to remain so until 2019. At the same time, hyperinflation has occurred through a current annual rate of 182.2%.¹¹ There is also significant disparity between the overvalued official exchange rates and black-market exchange rates as the South Sudanese Pound continues to depreciate.

South Sudan ranks 187 of 190 in the World Bank's 2017 Ease of Doing Business Index and 181 of 190 in their Ease of Starting a Business Index.¹² The Government of South Sudan welcomes foreign commercial activity and investment although political violence, corruption, poor financial management and extremely lacking infrastructure make South Sudan a difficult place to do business. International companies have frequently complained about the inability to convert local currency into US dollars. This led to SABMiller ending Sudanese production in 2016.¹³

Nevertheless, there are very few restrictions on foreign firms operating in or exporting to South Sudan. Given the predominance of the petroleum industry to South Sudan's economy, the vast majority of opportunity exists in this sector. South Sudan is seeking to more than double its oil production over the years 2017/2018 and the government is seeking significant investment in oil exploration and the construction of energy connections to neighbouring countries in order to diversify its export routes away from Sudan.¹⁴ The agricultural sector is also seen as a crucial industry for investment, both by the government and World Bank. In particular, South Sudan has the potential to become the fourth largest exporter of gum arabic in the world.¹⁵ Significant infrastructure renewal is also required, but the government lacks the finance to undertake large scale projects. Overall, the political situation and government's financial management are the determinants of the ease of doing business and the scale of commercial opportunity in South Sudan. Market entry is suggested through a partnership with either a government or military official, as these figures own most private enterprise and are more likely to win government contracts.¹⁶

SECURITY OVERVIEW

South Sudan remains in the midst of a civil war between the government's Sudan People's Liberation Movement and the Sudan People's Liberation Movement-in-Opposition: a war that has transcended

¹⁰ <http://www.icnl.org/research/library/files/South%20Sudan/LabourBill2012.pdf>;

<http://www.wipo.int/edocs/lexdocs/laws/en/ss/ss014en.pdf>.

¹¹ https://atlas.media.mit.edu/en/visualize/tree_map/hs92/export/ssd/all/show/2015/;

<http://www.imf.org/external/datamapper/PCPIPCH@WEO/SSD>.

¹² <http://www.doingbusiness.org/Rankings>.

¹³ <https://www.state.gov/e/eb/rls/othr/ics/2016investmentclimatestatements/index.htm?year=2016&dliid=254247#wrapper>.

¹⁴ <http://embassy-southsudan.de/geschäft-wirtschaft/wirtschaft-und-handel/?lang=en>.

¹⁵ <http://blogs.worldbank.org/psd/why-juba>.

¹⁶ <https://www.state.gov/e/eb/rls/othr/ics/2016investmentclimatestatements/index.htm?year=2016&dliid=254247#wrapper>.

politics and has a strong ethnic association owing to the government widely perceived as Dinka dominated. As such, both political and ethnic violence is regular across the country and including along the national borders, where foreign governments have also acted across the South Sudanese border. The situation is particularly unstable in the southern, eastern and northern states. Owing to violence in the latter, President Kiir declared a state of emergency in December 2017.

Weapons are easily obtained and as such criminals are often armed. The poor economy means that crimes are often financially motivated. For example, extortion at checkpoints by armed criminals is commonplace, particularly after dark. Although there is no direct threat of terrorism, attacks cannot be ruled out owing to the heightened global threat to Western interests and nationals, motivated by a number of conflicts or terrorist groups.

COUNTRY OVERVIEW

The Republic of South Sudan is located in Central-East Africa, bordering Sudan, Ethiopia, Kenya, Uganda, the Demo Democratic Republic of the Congo, the Central African Republic and Chad. South Sudan has a population of 13.03 million and the capital, Juba, forms the largest population centre with 321,000 inhabitants. The official language is English, although Arabic dialects are also widely spoken alongside the languages of the major ethnic groups, such as Dinka and Nuer. The state is officially secular, but the majority of the population follow traditional indigenous, or animist, beliefs or Christianity.¹⁷ South Sudan is a high-risk country in security terms owing to the ongoing civil war, between the government and opposition forces, backed by a number of armed militias. The conflict has ethnic undertones: the government and armed forces are seen as being dominated by the Dinka ethnic group.

Corruption is endemic across all sectors of the economy, judiciary and government. Indeed, South Sudan is ranked at 175 of 176 in Transparency International's 2016 Corruption Index. Anti-corruption legislation exists but owing to the state of the judiciary it is rarely enforced and impunity is common.¹⁸ South Sudan's GDP is currently measured at US\$2.92 billion, having crashed from US\$15.1 billion in 2014 owing to the civil war's onset in December 2013. GDP is forecast to expand to US\$3.9 billion by 2022, whilst real GDP growth, currently negative, is forecast to peak at 12.3% in 2021.¹⁹ The official currency is the South Sudanese Pound.

South Sudan is a presidential republic. Executive power is held by President Kiir and the vice presidents Taban Gai and James Wani. The president is both head of government and chief of state. The president is directly elected by majority vote for a five-year term, however the 2015 election was postponed to 2018 owing to political instability and violence. Legislative authority rests with the bicameral National Legislature, split between the Council of States and the Transitional National Legislative Assembly, the latter of which was created in accordance with the August 2015 Agreement on the Resolution of the Conflict in the Republic of South Sudan. Owing to the ongoing violence and political instability the current parliamentary term has been extended until July 2018, when the next elections are scheduled.²⁰

¹⁷ <https://www.cia.gov/library/publications/the-world-factbook/geos/od.html>.

¹⁸ https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table; <http://www.business-anti-corruption.com/country-profiles/south-sudan>.

¹⁹ <http://www.imf.org/external/datamapper/NGDPD@WEO/SSD>; http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/SSD.

²⁰ <https://www.cia.gov/library/publications/the-world-factbook/geos/od.html>.