



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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The African Union and the Botched Responsibility to Act on Behalf of South Sudan's Victims of Conflict

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I Introduction

The recent leak of a draft report attributed to the African Union Commission of Inquiry for South Sudan (AUCISS) has coincided with the termination of the peace talks between the government and rebel forces under the auspices of the East African regional block, the Inter-Governmental Authority on Development (IGAD). Together, these two events have thrown a wrench into what has already been a desperate citizen plea for peace in the country. The official AUCISS report was to be launched on January 29th, 2015, but the AU decided to postpone it, arguing that it would hamper progress in the peace process, which had at the time become more promising than it had been since it began 15 months earlier.

But now, there is neither a peace agreement nor a credible report on human rights abuses and conflict-related atrocities that have been committed by both sides of the conflict in the course of the past 15 months of the war. The latter particularly, the leak of a rather shoddy and unprofessional report, has been shocking and disappointing. Shocking on account that the AU would allow its name to be put on such a poorly done document, to the detriment of its already tarnished name among many Africans who see the continental body as a good-for-nothing outfit; and disappointing on account of both the apparent overstepping of the AUCISS mandate and the impractical recommendations it has made. This Sudd Institute's weekly brief reviews the merits and the demerits of the leaked AUCISS document and situating it in the context of the termination of the IGAD-mediated negotiations for political settlement in South Sudan. The brief presents what we see as the value and weaknesses of the report and concludes that the AU has come as a disappointment for the people of South Sudan, even as the ultimate responsibility for their welfare had rested with the political leadership of the country in the first place.

II The Findings of the Report

The AU's commission of inquiry interviewed a large cross-section of South Sudanese from government officials, to military personnel, opposition leaders, civil society, academics and the internally displaced. What this report has shown from these interviews is a mere list of statements, heard and recorded, but lacks analysis and contextualization of the reported events in the wider political, ethnic, security and military climate in which the country exists. The result is a list of incidents from the moment the violence sparked on the evening of December 15th, through the next several days of fighting in Juba, to the extension of the fighting to Jonglei state, to Upper Nile and Unity states in the course of the next several months. From our own knowledge, the political perspectives of many of those interviewed, and the historical buildup to the moment that sparked the conflict, it is our impression that the respondents to the commission's questions reported both first-hand accounts as well as what seems to be their own perceptions and interpretation of events they did not necessarily witness themselves. For example, to assert that President Salva Kiir was himself culpable in the Juba massacres, many individuals referenced as evidence a speech he had purportedly made in Warrap, his home state, a year earlier to the effect that he had formed a private militia to defend himself and his seat. This is largely unsubstantiated.

Other incidents frequently referenced by the interviewees are mostly what Human Rights Watch had reported about: door-to-door hunting of people of Nuer descent, forced cannibalism, and execution of some 200 men at a detention center. But none of these "witnesses" actually said they had seen the massacres themselves, the exception being the internally displaced persons many of whom had fled from the sites of battles and had most likely witnessed the killings. The IDPs were interviewed inside the United Nations Protection of Civilians sites, where many men, women and children had taken refuge. These reported what was already presented in the media, but all presented in this report as eyewitness accounts. Real and credible first-hand account, inflated numbers of the dead, political/ethnic perspective, unconfirmed media reports and myths about a government that had run amok, all mixed during this period and has now come to form the basis for what is supposed to be a credible document from which abuses could be punished. Unfortunately, it is a perspective of the members of the commission that comes forth more strongly than the facts of the situation.

The report serves a valuable record for future search for justice, where families, with the help of legal experts, might be able to craft cases in a court of law, especially against the state, for its failure to live up to one of its basic responsibilities of protecting citizens. In this regard, the report is a valuable historical record. It also sets a precedent in the country's development of a culture of documentation of rights abuses, of intolerance for impunity and of citizens' willingness to speak up for one another where the state uses illegitimate violence or fails to provide protection. But beyond this, the AUCISS has failed the people of South Sudan on several accounts, as shown in the pages below.

III The Report's Recommendations

The report has made several recommendations but four certainly stand out, inspiring our commentary. The first recommendation is based on the recognition that punitive justice that is built into a negotiated political settlement is a near impossible justice to achieve, as no warring party will commit to an arrangement that will eventually chop their heads off, to work for justice that comes in the form of institutional reforms (political justice), programs of rehabilitation, compensation for life lost and property destroyed (social justice), and exclusion of individuals of high office who have committed gross abuses from holding such office and the referral of that process to the African court of human and peoples' rights (criminal justice). This recommendation is born of the realization that most people the commission interviewed prioritized peace and stability over pursuit of justice. It is not to dismiss the importance of justice, but a search for a middle ground between the pursuit of justice that could prolong the war and a peace process that does not provide recompense for the victims. Durable peace and justice go hand in hand, nevertheless.

The second recommendation is that, based on the conclusion that the principal leaders of the warring parties, president Salva Kiir Mayardit and former Vice President, Riek Machar Teny, bear the ultimate responsibility for plunging the country into a civil war, the two should be excluded from any future government arrangement that might result from the negotiated process underway in Addis Ababa, Ethiopia, under IGAD. This is the most absurd of all the recommendations. How does IGAD or the AU or the rest of the international community for that matter, bring peace by pleading to persuade these power-wielding men while at the same time telling them they must give up power and face the law? How do the mediators force them to do so? Was it not the fear of them walking away from the peace process that had caused the AU to postpone the official publication of the whole report in the first place? And isn't the whole conflict about keeping or taking power and all the resources that come with it?

The third recommendation is one that links the two above, that the on-going peace process must establish a five-year transitional government, to be made up of a “(a) a High Level Oversight panel to guide the period of transition; (b) a transitional government that excludes those politically accountable for the crisis; and (c) a transitional program that address the question of justice in different forms” (sic). Again, how such an arrangement is achieved through a negotiated process involving the leaders of the warring parties remains unclear.

The fourth recommendation is not really a stand-alone direction in the report, but one that is built into the overall analysis of the political context of the war. The AUCISS report seems to blame foreign countries, particularly the so-called Troika, United States, the United Kingdom and Norway for South Sudan's independence, a country that was supposedly not ready to be one. Was this conclusion really made from the analysis of what South Sudanese stated in the interviews, or did it come from the commissioners'

own prejudice towards the country's politicians? This disparaging view has been making the rounds in Western media over the last two years, even sometimes before the country descended in the civil war, that South Sudan would not have become an independent country had the Troika, their civil society and their entertainment celebrities not pushed the case. The tone of the report is almost like asking the people of South Sudan to apologize for their sovereignty. South Sudanese undoubtedly acknowledge the support that these countries and many others in the world had offered during the struggle, but to take the whole struggle and credit it to outsiders is an attempt to strip them of their agency and completely discrediting them for the many decades of liberation wars they endured, with millions paying with their lives and other prices, including fifty years of suspended development.

IV What is this Report Worth?

The horrific atrocities that have been committed by both sides in the conflict deserve a better investigation than this report has been able to achieve. For example, the report shows political culpability but has failed to pin the criminal aspects of these actions to a human person, and possibly making a case for political accountability. It makes general statements about the role of the nation's military, leaving the victims' families nothing to go by in their pursuit of justice. This attitude in the report is born of a prejudiced position on the side of the commission towards the nation's political class, possibly seeking their removal from office, even if none of them is held to criminally account for the deaths and abuses. To go from accusations of political failure to govern and protect the civilians all the way to holding the president responsible for the massacre, all on account of a rumor that he had been planning a massacre by virtue of his recruitment of a special force over the previous two years is rather an illogical leap.

This report has been analyzed by news media, debated on social media and public forums, with South Sudanese analysts chipping in, and it will be noted that various South Sudanese groups and individuals have reacted to this report in such disparate ways, almost as if they were not reading from the same pages. Supporters of the opposition and people of Nuer background, for example, applauded the report as having categorically demonstrated the president's role in the Juba massacres, but many others see that President Kiir is not any more liable for the events in Juba than Riek Machar is liable for Bor, Bentiu, Malakal, Akobo, Bailiet and other places where the opposition SPLA-IO has carried out attacks. Politically, there is no question the heads of the opposing groups have to take responsibility for the actions of their subordinates, but to pin criminal liability on them is going to be an uphill battle. What partly takes away from the value of this report is the culture of moral equivalence that prevails in South Sudan, where by the supporters of the government seem more willing to accept some responsibility to be placed on the president for some actions, so long as the leader of the opposition takes responsibility for the other atrocities. And the converse is true. The result is that the debate is no longer over the atrocities and who committed them, but one of measuring the political cost of

this war and who should be excluded from power in the future. This leaves the dead unaccounted for. If anything, they will be sacrificed for political expediency.

Above all, the leaked report is grossly unprofessional and outright dangerous. It lists all the people the commission interviewed by name and many other identifiers. What human rights report identifies the witnesses and puts them in such danger? If there was a need to keep the list of names somewhere for future reference, especially in case witnesses will be required in courts, the report should have been redacted or used aliases.

The analytical question the report has failed to find answers for is in regards to the link between the political disagreements within the ruling SPLM, or even between the minor scuffles that were reported within the presidential guard unit of the SPLA on the one hand and the targeting of Nuer citizens in Juba on the other. The government of President Kiir will need to explain how the political disagreements translated into a massacre of people who were nowhere near the political elite. The same question could be asked of the opposition and Riek Machar will have to explain how his alleged flight for his life from Juba became a nation-wide rebellion over the course of a few days.

What about revenge? How far back should the search for justice and accountability go in a political and security climate in which attacks and revenge attacks have occurred over a long period of time, some of which were most likely invoked when this current conflict broke out? Will the whole country be put on trial or will there be an agreement between communities to say that enough atrocity has taken place among them and that perhaps the best thing to do is to look forward and terminate the cycle of revenge, instead of dwelling on the past to no end to violence? This question is about reconciliation, peacebuilding, and a project of social cohesion, which the report has highlighted in passing but will need to come from within South Sudan as a political, social, economic, and security commitments that depart from the usual lip service to reconciliation.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

Author's Biography

***Jok Madut Jok** is a cofounder of the Sudd Institute. He is the author of three books and numerous articles covering gender, sexuality and reproductive health, humanitarian aid, ethnography of political violence, gender based violence, war and slavery, and the politics of identity in Sudan.*