

THE FUTURE AND IMPLEMENTATION OF THE R-ARCSS IN SOUTH SUDAN



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The Future and Implementation of the R-ARCSS in South Sudan

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After nearly seven years of civil war between President Salva Kiir Mayardit-led state forces, the Sudan People's Liberation Army/Movement (SPLA/M) and opposition leader Riek Machar-led Sudan People's Liberation Movement-In-Opposition (SPLM-IO), the two leaders agreed to form the long-awaited Revitalized Transitional Government of National Unity in South Sudan (R-TGONU) on February 22, 2020.

The power-sharing deal signed in 2018 was extended twice – first in May 2019, and again in November 2019¹ – delaying the formal end to a war that has killed nearly 400,000 people², displaced millions and pushed tens of thousands to the brink of starvation.³

The Zambakari Advisory is pleased to publish its Spring 2020 Special Issue on the subject “The Future and Implementation of the R-ARCSS in South Sudan.” This is an important and timely follow up to our Spring 2019 Special Issue, “Peace Making and Peace Agreements in South Sudan.”⁴ We invited scholars, activists, students, former government officials and leading intellectuals to consider the prospects and challenges related to the formation of the Revitalized Transitional Government of National Unity (R-TGONU) in South Sudan and the implementation of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). This Special Issue focuses on two key issues: the security provisions of the agreement,

and the number and boundaries of states, including the special administrative status of Abyei (north-south border between Sudan and South Sudan), Ruweng (in Unity State) and Pibor (in Jonglei State).

This collection features 10 articles contributed by such respected voices as Remember Miamingi, Peter Adwok Nyaba, Jok Madut Jok, Majak D'Agoôt, Brian Adeba, Beny Gideon Mabor, Santino Ayuel Longar, The International Crisis Group, Sam Angulo Onapa and Dirk Hansohm. These valued contributors focus on the prospects and challenges of implementing R-ARCSS, the pitfalls and ways forward as South Sudan embarks once again on a treacherous journey to build sustainable peace in the aftermath of a civil war.

In the first section, South Sudanese national and human rights lawyer Miamingi dismisses the notion that the problem of South Sudan can be reduced to individual leaders, armed actors, tribalism, contestation over the number of states or corrupt public life. He writes that the South Sudan problem is that of nations and peoples cohabiting without a state.

A winner of the Noma Award for Publishing in Africa, Nyaba writes that R-ARCSS, like ARCISS, did not address the fundamental contradictions in the conflict. He notes that in its current configuration, R-ARCSS may suffer the same fate as ARCISS, collapsing as have previous agreements. Nyaba includes in his contention the critical importance of

the parties to the agreement successfully charting a political program by translating the articles of R-ARCSS into plans to transform the conditions of poverty, ignorance, illiteracy and superstition that submerge the consciousness of the masses of the people of South Sudan. Without such a well-mapped program, Nyaba argues, R-ARCSS will be no more successful than ARCISS.

Jok, for the two years following South Sudan's independence in 2011 the fledgling country's undersecretary in the Ministry of Culture and Heritage, contends that the parties, the mediators and civic activists who have worked on the peace deal have flagrantly veered away from the core objective of the agreement, namely getting down to the root causes of the conflict, building a peaceful foundation that prevents a return to war in the future. Most core issues such as addressing injustice, atrocity crimes, reparations for areas most affected by the war and state collapse have been grossly neglected while resources are channeled to fight the war. He warns that allowing the implementation period to be used as another phase of continued negotiation will defeat the purpose of inking the peace agreement.

In the second section, focused on security arrangements, D'Agoût – former South Sudan deputy defense minister – draws from comparative cases studies in Africa to make sense of the political crisis in South Sudan. He notes that the security provisions of R-ARCSS were based on a faulty architecture by its designers. The outcome, he believes, is that the security provisions are unrealistic and unimplementable in the short term. He urges the Intergovernmental Authority on Development (IGAD, the eight-country trade bloc in Africa), African Union, the Troika (United States, United Kingdom and Norway), Egypt, South Africa, Rwanda and the United Nations to help South Sudan to consolidate the current ceasefire to pave the way for the emergence of an egalitarian consensus leading to a free and fair election.

Enough Project Deputy Director of Policy Adeba urges policymakers to rethink defense policymaking in a radical manner to take stock of the country's evolving security environment. He notes that the successes of the peace deal will depend on how the parties to the conflict handle troop cantonment. If the implementation is mismanaged, this risks plunging the country into another intractable conflict – worse than the current one in terms of refugee flows, war-induced famine and genocide-like war conditions, which could be very costly for donor countries.

Mabor's article identifies failures of security sector reform in South Sudan and justification for a review in the context of the R-ARCSS. Commissioner at the South Sudan Human Rights Commission, he outlines a roadmap to ensure a provision of effective human security, safety of properties and a guarantee for territorial integrity and sovereignty of the state within a framework of democratic security and defense policies that are subordinate to the civilian authority. These expert voices address the many outstanding

issues and tension points that make the formation of a coalition government difficult. The challenges inherent in the implementation of critical tasks during the upcoming transitional period are also at the forefront of their work as the transactional period of the agreement approaches.

In the third section of our issue, a research associate at the Sudd Institute in South Sudan, Longar takes up one of the thorniest issues that could derail the peace deal: the legality and constitutionality of determining the number of states in South Sudan. He argues that unless the issue is taken seriously, it has the potential to undermine or even derail the entire peace agreement.

In the fourth section, our authors turn to the subject of implementation of the agreement and the way forward. The International Crisis Group – an independent, nonprofit, nongovernmental organization committed to preventing and resolving deadly conflicts – notes that the negotiated 100-day extension for naming a unity government averted a crisis imperiling a ceasefire between the warring factions. The organization calls on regional leaders to use the time to pressure the belligerents to form the unity government and implement the peace deal.

Onapa, a Ph.D. candidate at the University of New England in New South Wales, Australia, whose studies focus on the conflict in South Sudan and the role of the political elite in the struggle, acknowledges that from conflict management to conflict resolution, the stakeholders in the challenges in South Sudan have done an acceptable job as a means of intervention. Now, the parties need to institute a trust-building process at impersonal and interpersonal levels, with the hope of addressing the root causes of the conflict among the parties to instill trust for a sustainable power-sharing government in South Sudan.

Lastly, author Hansohm – an economics and energy expert with special expertise on development and education policy challenges in South Sudan/Sudan – reminds us that peace-building efforts in South Sudan have not been able to bring lasting peace to the young country. He claims the civil strife will not end without the parties addressing underlying structural factors, notably economic factors, and without involving and empowering other actors. He sees a potential solution in South Sudan's ascension into the East African Community (EAC) and the World Trade Organization (WTO) as a way to bring higher commitment to the implementation of the peace agreement.

President Salva Kiir Mayardit took an important step on February 15, 2020, to return the country back to the 10-states arrangement⁵ from the current 32 states, which has been a contested issue since the establishment of the 28 states in October 2015⁶ through an executive order – later expanded again to 32 states in 2017.⁷

Although the belligerents agreed to form the unity

government, many contributors to this Special Issue believe that the disagreements between President Salva Kiir and his former vice-president Riek Machar are still unresolved. The coalition government must resolve those outstanding issues if peace is to return to the war-torn country.

Among the many outstanding issues are the key questions of integration of the various armed forces into a unified army, reform of public financing and management of state resources, stabilization of the economy, democratization of the political process, resolution over the number and state boundaries, bringing diverse peoples with a lingering history of hostility into a framework of one state, and whether or not the South Sudanese leaders can build and sustain a broad-based coalition that is democratic and inclusive of all key stakeholders in South Sudan (armed and unarmed)⁸. Lastly, the success of the implementation of R-ARCSS will also depend on the support that IGAD), the Troika consisting of the United States, United Kingdom and Norway, and the African Union (AU) provide during the difficult transition ahead.

We hope these analyses will revisit old problems in light of new context and recent developments in South Sudan, thereby providing new insights to both reflect on, and inform, the work of stakeholders engaged in brokering peace in South Sudan.

The contributors to this issue recognize that the road ahead is rich with opportunities to build sustainable peace in South Sudan, but also riddled with real obstacles that can derail the fragile peace deal. It is now incumbent upon the parties to the R-ARCSS to not only silence the gun-wielding class but collectively work toward resolving outstanding issues within the Government of National Unity and to give long-awaited peace a chance to succeed. The successful implementation of the peace deal requires the development of adequate resources that will cultivate and nurture the possibilities for a peaceful coexistence among the multitude of nationalities, the rich social and cultural tapestry that make South Sudan the promising and special country it can be.

As this Special Issue went to press, rival leaders Salva Kiir Mayardit and Riek Machar opened a new chapter in South Sudan's fragile emergence from civil war, forming a coalition government in late February. The two, President Salva Kiir and Deputy/First Vice President Machar, announced they have agreed to form a government meant to lead to elections in three years' time – the first vote since South Sudan's independence from Sudan in 2011. – CZ

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Root Causes of the Conflict in South Sudan

Remember Miamingi, Ph.D.

INTRODUCTION

President Salva Kiir is not the root cause of the South Sudan problem. Neither is Dr. Riek Machar, the Jieng Council of Elders or any other political or military actor the root cause of the South Sudan problem; nor is tribalism, number of states or corrupt public life, to mention just a few. These people and issues, serious as they are, are simply opportunistic diseases and symptoms of serious illnesses tormenting South Sudan. Certainly, opportunistic infections should be prevented, treated and symptoms managed. However, preventing and treating opportunistic diseases – those that take advantage of fundamental or structural weaknesses in our body system – can only offer temporary relief. The treatment of a secondary infection is not likely to slow down or reverse the worsening conditions of the body system compromised by the primary disease. Take for instance the question of power sharing, wealth distribution or number of states. If state power is unruly and corrupt at its core, sharing such power would simply result in a multiplication of corrupt and unruly power actors. The problems of state numbers and boundaries could be a euphemism for self-determination, self-governance, a yearning for the presence of governance or for visibility to the state. So, the number of states could be multiplied and yet not address the underlining needs of those clamoring for states. The South Sudan problem is that of nations and peoples cohabiting without a state.



"The South Sudan problem is that of nations and peoples cohabiting without a state."

ABSENCE OF A 'STATE' AS THE ROOT CAUSE OF THE CONFLICT IN SOUTH SUDAN

The root cause of South Sudan problem is that there are nations and peoples that lack a 'state.' The root cause of South Sudan problem is that there are nations and peoples that lack a 'state.' Even though South Sudan is in *statu legis* 'country' and 'state,' this state in law does not manifest and possess the legitimacy and sovereignty with the legal, political and institutional infrastructure and capacity to carry out core state functions. Included in these functions are preservation of its borders, protection against external threats, maintenance of internal order, enforcement of policy, the policing of criminality and the ability and willingness to build infrastructure, roads and water, and to offer services including sanitation, education and health.

Put differently, South Sudan is an 'improvised' state – in fact it is an artificial and an improvisational state, whose defining characteristic is the continuous need to improvise. It is artificial because it is not embedded in the history and culture of our people and does not epitomize our aspirations; hence the lack of legitimacy. It is an improvised state because it has a form without a function – it may look and talk like a modern state, but it does not (indeed, cannot) perform like one.

Once the root cause of the conflict in South Sudan is understood and accepted to be that of a failure to transit to statehood and not a failure of state, per se, then the approaches and solutions should be radically different. For example, it will not make sense to speak of strengthening state capacity or reforming state institutions, because these will amount to building something on nothing.

A pragmatic and sustainable solution to the South Sudan problem must proceed from the premises that it is a state vacuum that has left South Sudan politically fractured, economically collapsed, socially divided and at war with itself and its neighbors. In the absence of a state, the extractive, coercive and administrative functions that normally should be carried out by a state were exercised by men with guns, orchestrating the disgraceful fall from liberators to predators.

In a republic of predators such as South Sudan, power makes one an effective predator. As a result, power, in its crudest

form, became an object of competition rather than an agent in the service of society. Competing for power, which is in fact illusive, resulted in incipient anarchy, ebbed capacities of communities to tolerate – and thus provide – the essential condition for brutal violence to emerge and to sustain itself.

STATECRAFT AS A SOLUTION TO THE CONFLICT IN SOUTH SUDAN

Since there is no state in South Sudan to capacitate, nor a past desire to reform, the talks of strengthening state capacity or of reforming state institutions in South Sudan through elaborate peace agreements may be well-intended but misguided.

What South Sudan requires is a process of envisioning and crafting a state from a territory that consists mainly of a community of 'strangers.' Once crafted, it then becomes the duty and responsibility of the state to establish conditions for order, for institutionalization, for professional and autonomous bureaucracy, for cohesion and for more efficient or equitable use and management of our commonwealth.

Therefore, peacemaking and peacebuilding in South Sudan must start with crafting a state or statecraft. I have not used statecraft in the sense in which the late theorist and professor of politics Jim Bulpitt or international electoral process expert Toby James used the concept. It is used here in the sense of an art of putting together a state that is capable and caring.

The challenge, though, with statecraft as a solution to the state crisis facing South Sudan is, unlike Toyota, Boeing or Airbus – each with a country of manufacture or a model to assemble and replicate – there is no state manufacturing facility, nor is there a perfect model of state-building for all territories. A state is only a state when it is in synch with the history of a people; when its design is informed and influenced by the norms, values and traditions of a people; and when it is a bridge between where a people come from and where they have agreed to go.

This challenge is further complicated by the fact that South Sudan broke out from a failed state – the Sudan – and thus

took nothing resembling statehood with it. In addition, South Sudan has no shared view of its own history but histories. These histories vary and are highly contested, depending on what is being told, by whom it is being told, and why it is being told. For example, there is an agreement on a history of struggle for dignity, liberty and rights. But consensus starts to fade around the topics of when exactly and who should take credit for the struggle's authorship and ownership; around which methods worked – liberation wars or referendum or both, and why – and whether the liberation wars were for a united Sudan or for separation, and who should be praised for what, etc. Different ethnicities and historical figures contest for reverence in these spaces. Finally, there is insufficient evidence to suggest that we as a people know and agree on where we want to go and how we want to get there.

But there are some lessons we can learn from others who have gone before us on the journey to statehood; lessons as to what works and what does not work.

SOME LESSONS ON STATECRAFT

Humanity has a cumulative history of crafting states that could offer guidance to South Sudan. A number of statecrafting processes around the world have involved consultation, consensus, consent, configuration, constitutionalization and a continued process of refining these. Successful states were built on foundations of open, honest and frank conversation on the basis and values required to sustain peaceful co-existence. Emerging from the consultation was the consent of individuals, families and communities to co-exist, to govern and to be governed as agreed.

Nations and peoples wanting to co-exist in a state usually forged consensus on configuration of power, of the state and the mechanism for resource sharing. Once there was broad consensus, these were constitutionalized, making such a constitution a written form of consensus to co-exist. A constitution that is a translation of the will and wishes of the governed becomes an exercise in self-reflection, self-projection and self-realization. When a constitution reflects and responds to a people's distinct history, their present realities and their future aspirations, then the consent of the governed to establish law and order, to foster a framework for common and equal citizenship, and to lay a solid foundation for capable and caring statehood is not difficult to extract.

The attempt by South Sudan to skip most if not all of these steps of crafting statehood and the overindulgence by its partners have contributed to the current conflicts and, if not corrected now, to future conflicts also. Thus, any effort to reverse South Sudan's current craving for conflicts must start with the recognition of state absence and map out how this should be addressed. I will proceed to suggest what, in my opinion, needs to be done to address this root cause of conflict in South Sudan. These steps should include:

1. NATIONAL CONSULTATION

South Sudanese need to talk! They need to talk about who they are, how they would want to co-exist and where and how they want to go as nations and peoples. This has not happened yet in a more meaningful and holistic manner. So, very few people talk and do so mainly through the barrel of guns.

The referendum on self-determination that gave birth to the defunct Republic of South Sudan offered South Sudanese two main options: unity with the Sudan or separation. South Sudanese vote overwhelmingly for separation. However, a vote for divorce from Sudan is not, *prima facie*, a vote for marriage between South Sudanese or a vote on how South Sudanese want to live and to be governed in the new republic. So, the question as to whether the nations and peoples inhabiting the geographical entity south of the Sudan want to co-exist and in what form is yet to be asked of them.

It could be argued that the different constitutions of South Sudan, the peace agreements or the national dialogue should be seen as embedment of the will of the people to co-exist within the format outlined in these constitutions and, therefore, alleviate the need for another expensive exercise in national conversation.

Unfortunately, the different constitutions of South Sudan are mainly agreements between warring parties. These constitutions were crafted largely in an atmosphere of exclusivity, devoid of public participation and scrutiny and thus undertaken by the government and for the government in power. In fact, it could be even argued that the process of constitution-making started and ended with the president.

The same can be said about the different peace agreements. These agreements are, in the main, codification of the will of, largely, men with guns to ascend to and safeguard their stay in power.

The national dialogue, if not for the lack of legitimacy in the process and of some of the people leading it, as well as the hostile and fragmented environment in which some of the dialogues took place, it could have come close to a reflection of the will and desires of the people.

It is important, therefore, that the process of statecraft in South Sudan should commence with inclusive and broad-based intra and inter regional consultations. This process should be separate from a national constitution-making initiative. It should be a conversation about the basis and form of peaceful co-existence and of statehood in South Sudan.

2. NATIONAL CONSENSUS

A South Sudanese national consultation should seek to reach consensus on key questions, including self-determination within South Sudan; self-governance; principles and purposes of intra and inter regional peaceful co-existence;

within South Sudan; self-governance; principles and purposes of intra and inter-regional peaceful co-existence; interrelated and interdependent cooperation between and among nations and peoples of South Sudan; state structure; division of roles and responsibilities across levels of state structures; and shared values around governance, law and order, justice and accountability, and security.

Consensus is the basis of consent. Consent is the foundation of legitimacy, which in turn is the basis of constitution-making, constitutionality and constitutionalism in South Sudan.

The emerging consensus may be that South Sudan should be one strong united country, or a federal or a confederal country or even different republics. After all, South Sudan is a product of self-determination, and it should never be afraid to engage in that conversation within itself.

3. STATE CONFIGURATION

If the emerging consensus is that South Sudan be unitary, federal, confederal or fracture into independent republics, then the current geographical entity called South Sudan can be configured in accordance with such a consensus.

The colonial history, cultural cleavages of the different peoples and nations, and different and varying geographical typologies tend to make a strong case for a state configuration that is based on the three regions.

Using regions as a starting point for state configuration – with flexibilities for each region to subdivide depending on its historical and contextual peculiarities – should be possible. Further subdivision must be on the basis of no additional cost to the national purse. To ensure integrity of the nation, foster intra and inter regional interrelatedness and interdependences, I will propose a configuration that operates in line with the following principles:

- The Principle of Rotation –

The location of the office of the president/prime minister, etc., shall rotate geographically, 2 terms each, per region: Greater Equatoria, Greater Upper Nile and Greater Bahr El Ghazal. In addition, a presidential candidate must win majority votes in two and a half regions to be declared as validly elected.

- The Principle of Alternation –

When a president or a prime minister is from one region, the deputy must be from another region and the president of the senate or the speaker of the parliament from another region, at all times.

- The Principle of Proportional Representation –

Each ethnic group shall be represented in state institutions, bodies, programs and mechanisms, including the civil service, proportional to its national numerical strength.

- The Principle of Equal Regional Representation – Each region shall be represented equally in the executive, the parliament and the security sector.

- The Principle of Resource Control –

Each region shall retain agreed percentage of all income generated within the region. In addition to national subvention, retained income shall be distributed equitably within each region.

- The Principle of Reverse Intergovernmental Resource Allocation –

More resources shall be allocated to lower levels of government.

- Equitable Gender and Generational Representation –

Women and youth shall be equitably represented in all structures and levels of government.

4. CONSTITUTION-MAKING

The constitution-making experiences of South Sudan demonstrate some level of correlation between constitutional reform processes and conflicts; conflict leads to a constitutional reform process that in turn leads to another conflict because the process and outcome of the constitutional reform is perceived by many to be exclusive.

The correlation between a history of constitutional instability and national instability should provide lessons for anyone interested in peace- and nation-building in post-conflict states. Any process of constitutional change that excludes citizens merely because it is politically expedient to do so is in the long run a recipe for conflict, no matter how temporarily successful it might seem.

To break this cycle of constitutional-triggered violence in South Sudan, it is important that the next constitutional-making process is inclusive in terms of participation as well as in terms of consensus from the national consultation process. To ensure this, it is equally important that the final constitution should be subjected to a referendum with veto rights for nations and peoples in South Sudan.

MECHANISM FOR IMPLEMENTATION

To succeed, statecraft in South Sudan must be a cooperative undertaking between South Sudanese and the international community. Because statecraft is both a political and a technical process, hybridity as an approach should be seriously considered for both components of statecraft.

While South Sudanese should take leadership in the political process required for a successful statecraft, the composition of the South Sudanese component should consist of political and military actors and technocrats. It is recommended that the international community should oversee, on the basis of mentorship of South Sudanese, the technical component of

statecraft. In this regard, a trilateral (South Sudanese, African Union and the United Nations) international mechanism with a rule-of-law mandate should be established to oversee the crafting of institutions that manage finances, law and order, accountability, and management of infrastructure, among others.

Such a management could do the following:

- Facilitate, oversee and management a process of national consultation, conversation and constitution making.
- Crafting, developing, strengthening and professionalizing state institutions including the civil service, the police and the security sector to peacefully mediate conflicting interests and provide services to citizens.
- Natural resources management: Working together with the African Development Bank, IMF and World Bank to support the management of the process of income generation, management and distribution. This could be done through professionalizing financial regulatory institutions, mechanisms and systems, creating a natural resource-and- tax-based incomes- escrow account that is trilaterally managed.

Each of these tasks could be led by an African Union member state with historical and demonstrable track records in either successfully carrying out such task at home or of assisting other countries doing so. Such a member then is supported and held to account by the trilateral mechanism to deliver.

CONCLUSION

We have tried war as political tools to solve our political challenges and failed. We have also tried peace agreements as conflict prevention, management and resolution mechanisms and equally failed. While we are responsible for some of the reasons for these failures; there are some reasons beyond us. Irrespective of the reasons and who is responsible, we cannot as a people solve the South Sudan problem outside the framework of a capable, functional and caring state.

Statecraft is a long and complex process. But it starts with our willingness to talk to each other, willingness to have a state we can all be proud of and then work with others to build it.



About the Author


Remember Miamingi earned his master’s and doctorate degrees in law from the University of Pretoria. A South Sudanese international human rights lawyer and an adviser at the Peace and Security Council of the African Union, Miamingi is a recognized voice on the subject of how power can be best used to better serve the people of South Sudan. He is currently working with the Pan-African Centre for the Study and Support of Family, an African research and policy platform committed to putting family well-being at the heart of sustainability development policies in the country. Opinions expressed in this piece are solely those of Miamingi and should not in any way be ascribed to any organization he is affiliated to.

Repeated Dateline Extension Exposes R-ARCSS Flaws and Parties' Lack of Political Good Will

Peter Adwok Nyaba, Ph.D.

INTRODUCTION

Viewed critically from all perspectives, the revitalized agreement on the resolution of the conflict in South Sudan (R-ARCSS) shrouds not only in implementation intricacies but also in that it does not address the underlying fundamental contradictions in the conflict. Notwithstanding its colourful celebrations in Juba on 31 October 2018, and the Papal kissing of the leaders' feet after the Vatican retreat in April 2019, the principal parties to R-ARCSS failed to implement the critical provisions to pave the way to the formation of the revitalized transitional government of national unity (R-TGoNU) on 12 May 2019. The repeated dateline extension on account of incompleteness of the pre-transitional processes, particularly the training and deployment of the 83K-strong necessary unified forces (NUF), the number and borders of the states and other security arrangements, proves not only leaders' lack of political will but also smokescreens the preparations to outmanoeuvre the other come the dry season. The contest remains between Salva Kiir and Riek Machar, although unsheathed in ethnic paraphernalia.



"Therefore, the main difficulty with the R-ARCSS is the absence of a socioeconomic development agenda on the part of the government or the opposition."

BACKGROUND TO THE CONFLICT

By the time the comprehensive peace agreement (CPA) was signed in 2005, the SPLM/SPLA top brass had evolved into a class completely alienated from the people. This class in collaboration with elements of the ruling National Congress Party (NCP) took over the rein of political and economic power of the subnational entity – Government of Southern Sudan – during the interim period (2005–2011). This class had no scientific understanding of the post-conflict reconstruction of the war-torn South Sudan. It had no program for socioeconomic and cultural development of South Sudan in order to transform the centuries-old condition of poverty, ignorance and superstition of its people.

Between September 2005 and July 2011, the Government of Southern Sudan (GOSS) received per month approximately six-hundred million dollars in oil revenue. There is nothing substantive in terms of physical infrastructural, economic or social services development to show for this money. It was lost through corruption and outright theft as this parasitic class engaged in primitive accumulation of capital and the emergence of the parasitic capitalism – parasitic because it controls no means of production but, rather, by virtue of its relations to the state as ministers, legislators, judges, generals in the army and security forces.

The Republic of South Sudan was born in July 2011 against a backdrop in ubiquitous insecurity and ethnic conflicts, corruption in government and society, ethnic rivalry, negative social and economic indices, and a repressive political order in which human rights were trampled upon with impunity. The regime in South Sudan did not reflect the national liberation character of the SPLM/A but was a mirror image of the totalitarian and repressive regime the Ingaz had constructed in the Sudan.

The fighting, therefore, within the presidential guards on 15 December 2013, which heralded the civil war, was a culmination of intense and unprincipled power struggle within the SPLM top leadership. It was not ideological in nature, but reflected structural weaknesses in the SPLM occasioned by excessive militarism, subversion of political organization and education, and the failure or refusal

to construct democratic structures, institutions and instruments of public power and authority in the liberation. This gave the false notion that the civil war was between Salva Kiir and Riek Machar, and therefore reconciling them would end the conflict.

THE IGAD BROKERED AGREEMENT ON RESOLUTION OF CONFLICT IN SOUTH SUDAN (ARCISS) AUGUST 2015

The IGAD intervention to resolve a political conflict emanating from unresolved political contradiction within the SPLM leadership was likely to have marginal returns. Like other liberal peace-making initiatives and agreements, the IGAD-brokered ARCISS did not address the fundamental contradictions underlying the conflict. However, its main element – the cessation of hostilities agreement – was intended to permit the parties to discourse and put in place a programme for social and economic development of the young state.

The IGAD initiative was flawed from the word go; one member of the mediating team, Uganda, was a party to the conflict on the side of the government. Sudan, Ethiopia, Kenya and Uganda all had respective national security, economic and political interests in the conflict in South Sudan, suggesting that they were not honest brokers. Thus, they did not act strategically in the interest of regional peace and stability but tactically as they competed against each other.

Barely three months into the formation of the Transitional Government of National Unity (TGoNU) fighting erupted in J1 – the presidential palace of Salva Kiir – leading to the collapse of the agreement and a return to war. The resumption of fighting and its escalation to the hitherto peaceful areas in Equatoria and Bahr el Ghazal, and the proliferation of political and armed opposition groups, underscores the dangers inherent in power-sharing modality, and in ignoring the fundamental contradictions of social and economic development in South Sudan.

THE HIGH-LEVEL REVITALIZATION FORUM (HLRF) AND REVITALIZED ARCSS

The greatest political blunder the IGAD and the U.S. Administration committed in the rights of the people of South Sudan was to recognize and accept, as de facto situation, the coup Taban Deng Gai hatched against Riek Machar and the SPLM/A (IO) to become the first vice president while the fighting raged between the SPLA and the SPLM/A (IO) forces in the suburbs of Juba.

The Joint Monitoring and Evaluation Commission (JMEC), the body tasked with monitoring the implementation of the ARCISS, played a partisan role in favour of President Salva Kiir. Festus Mogae, its chairman, refused to declare that the ARCISS had collapsed, insisting that it was only wounded, preventing IGAD's effective intervention to stop the fighting. It stopped the deployment of the Regional Protection Force as a buffer between the SPLA and the SPLM/A (IO) forces. It smacked of a conspiracy against the SPLM/A (IO).

In June 2017, almost a year after the rekindling of fighting and its escalation, and in order to justify his continued employment by IGAD, Festus Mogae started to move to resuscitate ARCISS. The High-Level Revitalization Forum (HLRF) workshop in Bishoftu, Ethiopia, in August 2017 was a missed opportunity in terms of charting a correct modality to resolve the conflict in South Sudan. Instead, he premised the ARCISS resuscitation on the power-sharing and critical reforms modality that produced ARCISS, hoping to get a different result. It demonstrated a complete lack of knowledge of what were at stake in the conflict.

The revitalized agreement on the resolution of conflict in South Sudan (R-ARCSS), like ARCISS, did not address the fundamental contradictions in the conflict. However, the process enabled President Omer el Bashir (Sudan) and President Yoweri Museveni (Uganda), both driven by respective national security and economic interests in South Sudan conflict, to coerce the opposition parties into signing the R-ARCSS on 12 September 2018.

The parties to R-ARCSS have twice missed the dateline for the formation of R-TGoNU on account of non-implementation of the pre-transitional processes. These included, *inter alia*, the number and boundary of states, the constitutional amendment incorporating R-ARCSS into the Transitional Constitution of South Sudan (2011) amended 2015. It was a clear demonstration of lack of political will on the part of the government to overcome those issues. President Kiir and hawks in his government played tricks to buy time, while the armed SPLM/A IO, political opposition (SSOA) and other political parties are happily awaiting what comes out of the delay tactics.

A little over one year since the signing R-ARCSS, only the Cessation of Hostilities agreement (CoHs) – notwithstanding violation in Eastern Upper Nile and Central Equatoria – still holds. This raises questions: whether or not the parties will implement R-ARCSS to the letter and spirit of 12 September 2018 when they signed the agreement, and on 30 October 2018 when they celebrated the peace. Will the nagging issue

of the number and borders of states torpedo the R-ARCSS and return the country to war? Assuming that the parties will compromise and implement all the provisions of R-ARCSS, and that they constitute the R-TGoNU, what will be the conditions under which these parties avoid conflict come the elections at the end of the transitional period?

THE R-ARCSS IMPLEMENTATION DIFFICULTIES: A DISCUSSION

The fact that R-ARCSS does not address the fundamental contradictions means that South Sudan is pregnant with the same elements of the conflict. The principal one is the socioeconomic and cultural backwardness of its people; this submerges their consciousness and renders them vulnerable to manipulation and fragmentation along ethnic lines. Therefore, the main difficulty with the R-ARCSS is the absence of a socioeconomic development agenda on the part of the government or the opposition.

The bad chemistry between Salva Kiir and Riek Machar, which overlaps with historical Dinka-Nuer ethnic rivalry, is general knowledge. Their appeal to ethnic hubris makes it difficult for any of them to compromise in the highest interest of the people of South Sudan. Riek Machar, propped by his ethnic Nuer supporters inspired by a myth associated with Ngundeng's prophecy, believes that his presidency of South Sudan is a birth-right entitlement. This ambition, notwithstanding his repeated political and military failures to oust Kiir from power, has nothing to prop it in terms of clear political objective and organizational skill. He virtually was the leader of GOSS for most part of the interim period. President Salva Kiir has vowed never again to work with Riek Machar as his deputy. However, he is disposed to working with anybody in the SPLM/A (IO) leadership to implement the peace agreement. It is clear that the two cannot work together. Therefore, Riek's insistence to be first vice president during the transition inadvertently keeps the country and its people.

There is simmering discontent within the SPLM/A (IO) army linked to Riek Machar's promotion of his clan and family members. In fact, following the signing of R-ARCSS and Machar's location to Juba as one of the five vice presidents was inevitable SPLM/A (IO) Army Chief of Staff Gen. Simon Gatwech Dual and Commander of IO Sector One Gen. John Olony indicated publicly that their forces would not join Riek Machar in Juba. Therefore, Machar's repeated requests for dateline extension has nothing to do with non-implementation of pre-transitional processes; his fear of rebellion within the SPLM/A (IO) drives the repeated request to extend the dateline for the formation of R-TGoNU. This plays well into Kiir's scheme of things; he abhors Riek Machar as one of his five vice presidents.

The current context of South Sudan oozes exponentially high levels of complacency, indifference and apathy, mistrust and hatred, even among the ordinary people not linked to the state.

This hatred and indifference correspond to and are amplified by the differential access to financial and economic resources, as well as the distribution of power in the country now running along ethnic lines. Elites and intellectuals are suspicious of each other, and will never engage in constructive debate on the pressing issues facing the country, because they hail from different ethnicities or regions. It must be pointed out honestly and without fear that the apparent ethnic Dinka hegemony on the one hand, and the feeling of marginalization on the other hand among smaller ethnicities, drives this indifference and hatred. The loss of national fraternity in favour of ethnic and blood solidarity is precarious; it militates against viable state formation and nation building in South Sudan, and coupled with lack of a national agenda for socioeconomic development, would plunge South Sudan into perpetual instability and conflict. The transitional period, which begins following the formation of the R-TGoNU in February 2019, is extremely short. South Sudan has been in perpetual straits since 1955. In order to rein peace, stability and social harmony, particularly after this devastating civil war, it will require a long transition of ten to twenty years. A long transition allows passions to cool, reconcile people and kick off social and economic development. No sharp ideological differences exist between those in or out of government, therefore, apart from struggle for personal power, nothing really material that prevents them to agreeing to a political program for transforming the poverty, ignorance, illiteracy and superstition that submerge the consciousness of the people.

The transformation of this situation requires a paradigm shift in the political thinking of the South Sudanese intelligentsia and political leaders; a shift that anchors and puts people in the centre of state formation and nation building engineering processes. South Sudan requires a philosophy of state and nation building. The concept and vision of the 'New' Sudan ante did not have built into it the philosophical tools to transform the 'old' Sudan's reality. As a result, it produced a distorted toxic reality of the old Sudan. South Sudan is a caricature of itself in the seventies. No wonder that the 'New Sudan' as a concept, has now become anathema to so many people. In order to correct the distortions that have occurred in our reality, and which generated this toxic social and political environment that now condition the socioeconomic and political thought systems, we should answer the general questions about the statehood and nationhood we desire in South Sudan. Answering this general question is imperative for synthesizing a conceptual framework we can call a philosophy of state and nation building in South Sudan.

I can vouch that the answers to these general questions speak to concepts fundamentally at variance to the R-ARCSS, which purport to address the question of power and whoever wields it in the country. Thus, since the struggle is about power, and R-ARCSS terminates with the conduct of elections after 30 months, there is likelihood of a return to conflict on account of dispute over elections results.

CONCLUSION

The argument that ARCISS collapsed because it did not address the fundamental contradictions in the conflict holds water to perpetuity. It was a combination of intrigues and bested interests playing out to the advantage of the parasitic capitalist class and their regional and international comprador capitalist in the context of extraction and plunder of South Sudan natural resources. It was in the connection that Sudan and Uganda midwived the R-ARCSS preceded by the agreement to involve Sudan in the development and exploitation of South Sudan.

In its current configuration, and if the parties to it fail to chart a political program – that is to say, translating the articles of R-ARCSS into plans to transform the conditions of poverty, ignorance, illiteracy and superstition that submerge the consciousness of the masses of the people of South Sudan – R-ARCSS may suffer the same fate as ARCISS. The repeated extension of the dateline for the formation of the revitalized transitional government of national unity bears witness to this fact.



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About the Author


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South Sudan and the Peace Agreements no one Swears by

Jok Madut Jok, Ph.D.

INTRODUCTION

Part of the thinking in South Sudan regarding peace has been the idea that a potentially flawed peace agreement is better than no agreement at all. This has been born of the utter public frustration with what seems to be the inability or unwillingness of the warring parties and the country's entire political leadership to negotiate in good faith and to make compromises for the good of their country. As the people of South Sudan have been in agony watching endless negotiations while the country bled, whenever these competing leaders finally sign something, this is often greeted with a cautious acceptance of the deal by the public, no matter how shoddy such a deal may be. Any agreement is better than none, the reasoning seems to run. Or is it? My own observation is that most South Sudanese have been rendered so desperate for peace that they seem to be in constant search for the silver lining in any agreement and look away from all the glaring gaps that eventually end up killing the agreement. Instead, they focus more on whether a peace deal starts with a strong cessation of hostilities and a program of security reforms that can potentially silence the guns in the short term. This is only logical and practical, as silencing the guns is the priority of every citizen affected by violence, which is majority of the country's population. For a country that has sent 1.2 million of its citizens into refuge in the neighboring countries and has uprooted another 2.5 million from their homes, this desperation for the minimum level of safety is quite understandable. But delays and postponements of implementation timelines can be equally deadly. From the perspective of neo-liberal peace-making, that everyone must be represented at the negotiating table, which tends to prolong the process, a good cessation of hostilities agreement at the outset is the mediator's best dream. So long as people are no longer dying on mass during peace talks, there is more wiggle room for the talks to take a little longer in hope of hammering out all the potential disruptors of the eventual agreement, building into the agreement all mechanisms that can preempt and tackle any loopholes ahead; at least that is how the dream goes.



"What South Sudan needs is not peace agreements mediated by foreigners, but leadership that can reimagine the nation-state to be built on new foundations, new ideologies and new commitments that go beyond the 'liberators' entitlement."

THE PEACE PROCESSES AND THE DEAD DEADLINES

This has not worked in the case of South Sudan, however. The parties to these agreements seem to have learnt this pattern of public reaction to these processes over the years and have always chosen to relegate all matters of real substance to the stage of the implementation, essentially making the implementation phase part of the negotiation and renegotiation down the road. The result of this approach is the constant renegeing by parties from agreed points, often due to lack of clarity, nonchalant guarantors, logistical delays or having cold feet on a given issue. The haggling leading to the slide of deadlines and further frustration of those involved is such that the inevitable fate of most of these deals has been disastrous delays or total collapse and a return to the drawing board, sometimes with breakdown of ceasefires and a return to violence.

This is why it has been a saga of peace deal after peace deal since 2014, none of them producing anything remotely close to bringing peace to the war-battered country and its people. Each of these agreements has been only slightly more than a power- and resource-sharing pact between the competing elite, with very little conception or commitment as to how such a deal could be translated into peace in the lives of everyday people. It seems that the sustainability of such a peace accord is hardly ever a major concern, neither for the parties themselves nor for the mediators; for how otherwise can one or more parties so flagrantly and repeatedly violate what was agreed but face no consequences? Allowing the parties to dishonor the agreements, or use delaying tactics and miss the deadlines – to the point of diminishing the agreements in the end and later starting another round of negotiations in the same manner with the same results and the same fate – has been the, *modus operandi*, of the regional bloc, the Intergovernmental Agency on Development (IGAD), South Sudan's primary peace broker.

These agreements, the most prominent of which are Agreement on the Resolution of Conflict in South Sudan (ARCSS, 2015) and its reincarnation, the so-called Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCSS, 2018), invariably collapsed – and with deadly consequences, one must add – under the weight of the parties' bad faith and the flaws in the deals themselves.

There has been no stronger testament than this to the futility of all the approaches the mediators have used to push for peace. But on the ground in South Sudan, the delays in the implementation of these agreements have largely been caused by the fact that the focus is never on the big picture, on ending the war sustainably so that South Sudan can move on with the business of state establishment, government development and serving its people.

Over the seven years of the civil war, and throughout the peace process, for example, the parties, the mediators and civic activists have flagrantly veered away from the original popular demand: to use the peace processes to get to the real causes of the conflict, with an eye to forming a peaceful foundation that prevents a return to war in the future. They have also moved away from the strong calls to build into the peace agreement all the real consequences of the war such as injustice, atrocity crimes, reparations for areas most affected by the war and the collapse of national institutions, especially the security sector agencies and the justice system, under the weight of their use to singularly fight the war, rather than for the protection of the country and its citizens. What is left on the table for all the parties has often been the distribution of power and wealth between the main warring parties, not a single hint of irony in avoiding the reasons why the war broke out in the first place. The result is that these agreements have been just a little more than postponement of conflict, not solutions with sustainability in mind. This is not to say the letter and spirit of some of these agreements have been entirely without value, but allowing their implementation to be used as another phase of continued negotiation defeats the purpose of inking them to begin with.

COALITION GOVERNMENTS DO NOT PEACEMAKER

Instead of the peace processes addressing these issues in order to craft a meaningful and more sustainable agreement – whether at negotiation or implementation phases – the focus has largely been on minutia more related to additional conditions or reservations that the parties throw up after the deal has been long signed and was on its way to execution. The original August 2015 ARCSS took almost a year to finally culminate in the formation of a Transitional Government of

National Unity (TGoNU) in April 2016. The main causes of this delay were the fates of the fighting forces; the size and type of weapons for the protection force of the opposition leader and vice president-designate as per the agreement (Riek Machar); the size of the cabinet; and the allocation of the various ministries to all the parties to the agreement. Sadly, the delay was not caused by truly substantive and meaningful demands of the citizens, including accountability for atrocity crimes committed by all sides to the conflict and issues of grand theft of public resources and the shrinking political space that had been at the root of the conflict. It was not long into the 2016 TGoNU before it resulted in a shootout between President Kiir's and Riek Machar's forces in Juba. This resulted in the flight of Riek Machar from Juba for the second time and the distortion of that agreement soon after in order to maintain the status quo. There continued to be a government in Juba while the war raged ever more in many parts of the country, especially Central Equatoria.

Again, after long and daunting efforts by the IGAD countries to resume the peace talks after the collapse of the initial ARCSS, there were a few more obstacles to peace in South Sudan, namely, the fate of Riek Machar, the squabbles over the neutrality of the process because of the position some IGAD leaders were thought to have taken in favor of Juba government, and whether or not the process should move from its Addis Ababa venue to Nairobi, Entebbe or Khartoum. Luckily for the ordinary South Sudanese, this agreement was preceded by a rather precarious cessation of hostilities agreement, but one that surprisingly stuck and was seen as the most valuable element in that process. The government of Sudan got involved more strongly, and the new R-ARCSS was crafted in Khartoum and signed in Addis Ababa on September 12, 2018. But its implementation was also faced with so many obstacles, namely, the security arrangements, the cantonment of forces, the establishment and training of a unified national army, problems of administrative boundaries and the question of security in the national capital area. The timelines for these issues slipped, and the seminal event – the formation of a Revitalized Transitional Government of National Unity – was postponed so many times that it has exhausted the patience of South Sudanese who have pinned their aspirations for improvement in their lives on the formation of R-TGoNU.

The formation of R-TGoNU – supposedly the crowning of the long anticipated implementation of the September 2018 peace deal – began to be seen by all concerned as the panacea for all the intractable problems that got South Sudan into the abyss, as if to suggest that real peace can only begin to be built once the unity government is in place. But the true obstacles to peace in South Sudan in general are the parties to these peace agreements themselves and the fact that none of them seems capable of having principled positions in pursuit of their goals; rather, they view the unity government itself as their object of pursuit, regardless of whether or not this government would address their objectives for going to war and the issues that plunged the country into conflict.

The main opposition SPLM-IO under Riek Machar has been the most unprincipled, especially on their initial reasons why they went to war in the first place, the massacre of ethnic Nuers as the trigger for the war in December 2013, and which they tabled very strongly at the beginning of the peace process in early 2014. The eventual agreement has this issue qualified in legalese as to bury it and will most likely never feature in the implementation. The government is only too happy to maintain the status quo as the opposition shifted their objectives. It is the weakness of SPLM-IO's leadership, real or perceived, which has emboldened the government in Juba to keep moving the goalpost. After all, staying in power for as long as possible seems to be the objective of folks in Juba and the more postponements the opposition demands, the longer it serves the position of Juba.

As R-TGoNU became the principal goal, the parties began to piggyback all their aspirations on it, making impossible demands and gyrating in hope of winning the biggest share of it and compromising on their followers' objectives. R-TGoNU was initially slated for March 2019, but two sticky issues stood in its way: the question of security arrangements – especially the matter regarding cantonment, training and the unification of the army – and the number of states and the boundaries the president had divided the country into in 2015 after ARCSS had been signed, which the opposition considers unconstitutional as a violation of the agreement itself and demands to be retracted.

Having made no progress on this during the interim period, as the agreement stipulated, the main opposition leader, Riek Machar, and President Kiir Mayardit agreed to extend the interim period for another six months, scheduling the formation of R-TGoNU for November 2019. This outraged many citizens who had also begun to pin their hopes for peace on this unity government and who wondered how an additional period of six months is going to make a difference when a whole year since the signing of the agreement had done nothing. Lo and behold, the November deadline approached and not a needle had moved toward accomplishing the interim period program. The parties met in Entebbe on the invitation of Ugandan President Yoweri Kaguta Museveni, and – on the insistence of Riek Machar – resolved to extend the interim period yet again for another 100 days. This and countless other conditions and demands by the various parties created the mix of interruptions that Alex de Waal has described as “the Politics of Delay.”¹

Meanwhile, Western governments, especially that of the United States, frustrated by the situation in the country they believe was born of the U.S. support, started imposing sanctions on the individuals they deem as spoilers of this process, sanctions that risked unraveling even the little compromise that South Sudanese had reached. The government sees this as a US effort to change the regime, hardening their position, and the opposition sees this as vindication of their cause, giving them promise that the government would be weighed down by US sanctions and

would be more willing to compromise. Neither of them is correct in their reading of the US sanctions, which is that these sanctions were not actually carefully thought through and will most likely not be followed by any further actions should the parties continue to be intransigent with regards to peace.

CONCLUSION

South Sudan has demonstrated itself as a place where political and military competitors seem to go to war over real grievances and start peace talks on high notes and on concrete positions with regards to their objectives, but instead end up watering down their goals to the point of moving away entirely from the objectives that took them to war in the first place. But the substantive issues – human rights, democracy, liberation and nationalism – begin to give way to mundane demands of power and access to resources. The ordinary people of South Sudan become the biggest losers, firstly on account of destruction, death and displacement, and secondly on the failure of peace agreements to function as a form of recompense. If this brief history of South Sudan’s peace processes is anything to go by, there is no ground to expect that the unity government would be formed at the end of the new extended period. At the time of writing, there were only four weeks left till the end of the 100-day period, and there was no indication that anything had changed to make it look like the government of national unity was going to finally be formed by this latest deadline. And even if it was formed, it would still be encumbered by the minutia, the bickering that goes on around the power and wealth sharing that the leaders have been putting ahead of everything that could consolidate peace. These are peace agreements no one signs with the intent to implement. They are stopgap measures aimed at win-lose aspirations. What South Sudan needs is not peace agreements mediated by foreigners, but leadership that can reimagine the nation-state to be built on new foundations, new ideologies and new commitments that go beyond the “liberators” entitlement.

FOOTNOTES

1. Alex de Waal, “South Sudan: The Politics of Delay.” South Sudan Peace Portal, December 3, 2019.



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Jok Madut Jok is trained in the anthropology of health and holds a Ph.D. from the University of California, Los Angeles (UCLA). Professor of anthology at the Maxwell School of Citizenship and Public Affairs at Syracuse University, he is a fellow of Rift Valley Institute and has held fellowship positions at a number of other institutions, including the United States Institute of Peace and the Woodrow Wilson International Center for Scholars. Jok also has served in the government of South Sudan as undersecretary in the Ministry of Culture and Heritage for three years, from 2010 to 2013.

The founding director of the Sudd Institute in Juba, South Sudan, Jok’s areas of specialization include security, governance, democracy and development in South Sudan and Sudan. He has written extensively about gender, sexuality and reproductive health, humanitarian aid, ethnography of political violence, gender-based violence, war and slavery, and the politics of identity in South Sudan and Sudan. He is the author of “Breaking Sudan: The Search for Peace” (Oneworld Publications, 2017), “Sudan: Race, Religion and Violence” (Oneworld Publications, 2007), “War and Slavery in Sudan” (University of Pennsylvania Press, 2001), and “ Militarization, Gender and Reproductive Health in South Sudan” (Edwin Mellen Press, 1998). He has also co-authored “The Sudan Handbook” (J. Willis, J. Ryle and S. Baldo; Sudd Institute/ James Currey, 2011). Before joining the Maxwell School he was visiting professor of anthropology at the University of Oxford and a fellow of Linacre College in Oxford.

South Sudan: Searching for the Holy Grail; It's All About the Ceasefire

Majak D'Agoût, Ph.D.

INTRODUCTION

South Sudan gained independence from the Sudan in 2011 after many decades of brutal civil war. Given its vast natural wealth, its sympathizers had hoped for prosperity. Its detractors, however, maintained that the country was to be a backwater of unfinished contestations of its recent violent past amongst its disposed-to-risk elites. This pessimism emanated from the failure of these elites to build effective institutions and establish the rule of law. Instead, they chose to constitute a “Lame Leviathan,”¹ which has become a crucible of failure emblematic of a restive postcolonial African state. Currently, the country is more of a cesspool of crises. The calamity which was unleashed by risky behavior of its dominant Gun Class on 15 December 2013, has caused a civil war which has placed the country at the edge of chaos.


Whilst the civil war raged on unabatingly, the warring parties reached a peace settlement in 2015, hitherto known as the Agreement for Resolution of Conflict in South Sudan (ARCISS), under the auspices of Intergovernmental Authority for Development (IGAD). A buildup of tensions between the government troops and the Sudan People's Liberation Movement – in Opposition (SPLM-IO) led to flare-ups in the capital, Juba, in July 2016. In particular, the street battles and the palace dogfight of 7 July 2016 unraveled the fragile ceasefire and sent Riek Machar – the SPLM-IO leader – on a 40-day flight to the Congolese border.

In September 2018, a sustained regional and international effort pushed the warring parties to reach a fresh deal building on the provisions of the 2015 agreement. This new accord was dubbed as a Revitalized Agreement for the Resolution of Conflict in South Sudan (R-ARCISS). For over a year now, plethora of pre-transition tasks has been under consideration by the parties – more importantly, the permanent ceasefire modalities and security arrangements. Multiple extensions and the failure of the parties to accomplish these tasks and move on to form a unity government makes it appear as if the country is trapped in a cycle of endless “pre-transitions.”

Except for the cessation of aggressive military actions which automatically translates to silencing the guns, adhering to the catalogue of other provisions grouped under the permanent ceasefire and security arrangements has lagged or increasingly become a tall order. In theory, ceasefires are temporary halts to violence or stopgap measures that act as a step toward a wider peace. Drawing lessons from huge experience of conflict resolution from the 1972 Addis Ababa Agreement and the 2005 Comprehensive Peace Agreement (CPA) and similar settings in Africa – this essay highlights that it is the viability of the ceasefire which is more important for reaching the ultimate goals, which in this case are the final settlement and democratic transformation.

FOOTNOTES

1. Acemoglu, D and James Robinson (2019) “The Narrow Corridor: States, societies, and the Fate of Liberty,” p. 9.



"It is the viability of the ceasefire which is more important for reaching the ultimate goals, which in this case are the final settlement and democratic transformation."

APPRAISING AFRICA'S FAILED CEASEFIRES

The tragedy of postcolonial state in Africa is suggestive of many truces which were negotiated, and which came to effect but eventually slipped through the dip of unfinished national conversations to open warfare. This raises the question of whether in these restive settings "the ceasefires do ever work?" South Sudan and its failed ceasefires in 2010 and in 2015² fall in the category of African postcolonial restive states³ which have experienced civil wars and failed armistices.

Clearly, the aftershocks of independence in Sudan, Angola, Zimbabwe and Mozambique – or, for that matter, those of the late 1990s national liberation war in Zaire (Congo, DR) – were triggered by a collapse of a truce. Uganda, Rwanda, Eritrea and Ethiopia have muddled through this delicate transition and a kind of stability has been observed in the last few years due to the emergence of a hegemony in the form of stationery bandit or an overlord who has decided to establish a "despotic Leviathan." These African leaders who have come into power with a "savior complex" have failed to establish a "Shackled Leviathan" but, rather, personal power whose achievement is the length of their stay in power. In West and Central Africa, different forms of regional interventions have broken this vicious circle of violence. Before we delve into interrogating the case of South Sudan, let us have a purview of some relevant case studies:

- Sudan, as a crisis state, was engulfed in a civil war since independence in 1956. In 1972, a ceasefire was reached in Addis Ababa between the government of Sudan and the Anya-Nya rebels. This ceasefire, which lasted for over 10 years, was just to unravel in May 1983 when President Nimeiri abrogated the security arrangements and some key provisions which underpinned it – especially the southern autonomy. In 2005, another permanent ceasefire and political settlement were agreed to under the CPA between the government of Sudan and the Sudan People's Liberation Movement (SPLM). Despite violations and intermittent clashes among the Joint Integrated Units (JIUs), the parties succeeded in managing a fragile truce throughout the six-year interim period. Because of the robust regional and international presence and engagement, efforts of the parties were bolstered, and the ceasefire held. On 9 July 2011, a final milestone – which was

the conduct of referendum for the independence of South Sudan – was reached, and the territory officially broke free from Sudan on 9 July 2011. Yet, South Sudan's independence had caused a breakdown of armistice in the Nuba Mountains and the Blue Nile – two areas of conflict which have been traditionally allied to the SPLM struggle – and eventually a brief border conflict between the two Sudans ensued in 2012.

- Since independence in 1960, the Congo has been fraying at the edges and has now become Africa's composite social fracture which is difficult to repair. Its massive natural wealth has been a source of promise and curse. Foreign interest and greed have resulted in an unrelenting tragedy of plunder and carnage. A war that began in 1996, which led to the overthrow of the Mobutu Sese Seko, followed on the heels of the 1994 Rwandan genocide. As part of the regional effort to weed out genocidaires from Eastern Congo, a transfrontier coalition of the willing comprising Uganda, Rwanda, Burundi, Angola and Zimbabwe backed Laurent-Désiré Kabila to seize power in the country then called Zaire.

Unfortunately, this coalition had soon to fragment, turning the country into a theatre for regional war. When Kabila finally removed James Kabarebe, the Rwandan general who had led the first war, from his position as Congolese chief of staff, a new rebellion named the Rassemblement Congolais pour la Démocratie (RCD) quickly came to the fore in the east. Uganda and Burundi once again gave their support, but this time Zimbabwe, Namibia and Angola sided with Kabila. Just as Rwanda was backing the RCD, Uganda started supporting a second rebel group, the Mouvement pour la Libération du Congo (MLC), to represent its interests. Even after the withdrawal of foreign troops from the DRC and advent of Joseph Kabila to power after the assassination of President Laurent-Désiré Kabila, there was little chance that peace could be made to hold.⁴

- In Angola, the multi-generational war which seamlessly transformed itself from an independence struggle against the Portuguese occupation, rapidly transmigrated into a well-funded proxy war drawing in both superpowers of the Cold War, and finally, into a more devastating contest for personal power and resources.⁵ At the close of the Cold War at the end of the 1980s, the conflict between untrusting

combatants of the Movimento Popular de Libertação de Angola (MPLA), led by Eduardo dos Santos, and the União Nacional para a Independência Total de Angola (UNITA), led by Jonas Savimbi, ceased when the two parties signed a series of ceasefire agreements in Gbadolite, Bicesse and Lusaka. Within a year, the fatal flaws in the Bicesse and Gbadolite agreements led to the collapse of the ceasefire. However, the Lusaka Agreement of November 1994, mandated a flexible demobilization timeframe, provided for a power-sharing formula, and gave the UN adequate muscle and money to monitor the ceasefire. In December 1998, after a four-year tenuous ceasefire, the war resumed when UNITA rejected the election result. On aggregate, the country relapsed to civil war because the conflict was extremely lucrative, “personalized” and not ripe for resolution even at that critical juncture of history – the end of the Cold War. The apparent logjam in the Angolan conflict was eased with the death of Jonas Savimbi in 1998.

• Zimbabwe’s path to independence was a long haul through hard grass. Formerly known as Rhodesia, it was a British self-governing territory until the conservative white minority of Ian Smith issued a unilateral declaration of independence (UDI)⁶ in 1965. An insurrection by black nationalists spearheaded by Joshua Nkomo’s Zimbabwe African People’s Union (ZAPU) and Robert Mugabe’s Zimbabwe African National Union (ZANU) – coupled with a wave of sanctions and international isolation – culminated in a peace agreement in 1980 which established universal enfranchisement and, *de jure*, sovereignty for the territory. An internal settlement in 1978 with the United African National Council (UANC) brought Bishop Abel Muzorewa to the political forefront as a prime minister. In 1979, Muzorewa, Nkomo and Mugabe were invited for a constitutional conference at Lancaster House which culminated in the signing of the Lancaster House Agreement, effectively ending the Black insurgency. The odd spectacle of a superpower coddling various rivalrous groups, and a furious jockeying for positions in the new government based on ethnic solidarity, were to sire a civil war. However, the election victory of Robert Mugabe in 1980 was perceived in Matabeleland as Shona takeover. Like in the Gilgamesh Epic,⁷ the Matabeleland unrest was ended in 1987 when Mugabe and Nkomo merged their organizations, subsequently rebranded as the ZANU-PF, and agreed to share power.

Mozambique was one of the Portugal’s possessions in Africa. In 1964, the Front for the Liberation of Mozambique (Frelimo) launched a guerrilla campaign against the Portuguese occupation – adding to the menu of the Portuguese colonial wars. The 1975 leftist coup in Lisbon had catalyzed the collapse of Portugal’s overseas provinces. As a result, Mozambique gained independence and Frelimo leader Samora Machel became the president. However, a cruel civil war broke out when the Mozambican National Resistance (Renamo) was formed under the tutelage of Rhodesia and Apartheid South Africa to advance foreign interests. Until then, it was popularly seen as a band of “brutal roaming

bandits” in service of the white regimes in southern Africa. Its atrocious record helped create that image.⁸ Renamo’s titular head, Andre Matsangaisa, was killed in the battle in 1979 and was succeeded by Afonso Dhlakama. In 1986, Joachim Chissano became the president of Mozambique following the death of Samora Machel in a plane crash. In early 1990, the Prelimo government ended a one-party hegemony through a new constitution which allowed for multiparty democracy and reached out to Renamo rebels for talks. A permanent ceasefire was signed in Rome on 4 October 1992, and Renamo transformed itself into a political party. But the aftershocks of subsequent elections caused a series of relapses to violence – the latest was in August 2019.

Based on these examples, the decolonization of Africa has followed a trajectory of armed struggle, a civic action, or a combined method of both. In countries which attained independence as a result of violent war of liberation – conflicting visions, leadership ambition, ethnic politics and factionalism – have ignited civil wars upon a takeover from occupiers. The incidence of civil war resulting from these factors is more prevalent in settings where armed struggle was protracted and dreadful. Where civic action was a dominant approach and arms played a second fiddle – such as in Ghana, Zambia, Kenya, Tanzania, Botswana, etc. – a transition was achieved without a state taking a self-destructing path.

In these settings, what matters most is how a fragile ceasefire is negotiated and successfully implemented for a country to muddle through this underweight of legacies to achieve a transition to democracy. Evidence abounds that all these kinds of peace settlements, which are predisposed to end a civil war, are mere armistices. Thus, contextualizing the problem within an African framework of failed ceasefires is a useful analytical entry point to the current impasse in the South Sudan’s peace.

UNMASKING THE DECEIT

The security provisions of the Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCISS) were based on a faulty architecture to gloss over partisan or regional interests. Besides, the geometries that underpin this design are incompatible, which makes some of its provisions unrealistic and unimplementable, at least in the short run. This intentional misdesign as orchestrated by foreign interests⁹ and prayed to by the parties – has placed the country on a dangerous trajectory of perpetual anxiety.

Hence, we may easily miss the permanent course of the political curve if we engross our minds with R-ARCISS’s cusps and conjugate points¹⁰ and become wedded to this neophilia as an archetype. The true course of conflict resolution curve is treacherous, and it demands flexibility and expediency. It is sometimes stormy and unsteady, but being pragmatic while focusing on the goal is all which matters. This was the route taken for the implementation of the CPA – which

delivered South Sudan independence and to date still have plethora of substantive issues unresolved.

One of the key mandates of the R-TGONU (which is yet to be formed) is to design and implement security sector reforms which include the restructuring and reconstitution of security sector institutions.¹¹ However, and as the agreement strictly stipulates, this new security force shall be drawn from the assortment of armed groups, including the government military, the police and security organs – which will have to be reunified or merged, trained and deployed prior to the formation of the R-TGONU. Based on current parameters however, this objective is far-fetched, as the former belligerents and new armed entrants are doubling down on keeping to the strategy of a bloated force in order to reward their combatants.

At the core, the future military-security establishment of South Sudan will be a vast hydra-headed coalition of armed groups with opposing loyalties and vested interests. This runs counter to the overarching objective of establishing a professional military-security apparatus. Such a security sector ought to be representative of all segments of the society; be apolitical in its doctrines and orientation; and be subordinate to the will of the people and their elected civilian government.¹² As evidence suggests, new security sector institutions are likely to be dominated by ethnic communities which took active part in the civil war supporting either of the belligerent parties.

As a matter of fact, the CPA model of the Joint Integrated Units (JIUs), which was described as “neither joint nor integrated,”¹³ is a conceptual doppelgänger of this new architecture. The model is also a replica of the integration of forces consequent to the Juba Declaration of 2006. Pursuing this paradigm dogmatically, clearly translates into a sense of *déjà vu* – where hasty integration of various militia groups into the SPLA after the CPA almost undermined its foundations. These integration processes created a volatile mix of a vast, top-heavy, partisan security force with no clear DDR programmes. Eventually, it frayed along ethnic fault lines in December 2013 when the civil war broke out.

Succinctly, these groups may collocate physically in cantonment sites or barracks – and be nominally answerable to one commander-in-chief – so long the political nerve stays unperturbed and stable. However, these forces can easily fragment along faction and ethnicity in the event of a fallout and changing power calculi of elites in the political sphere. Logically, assembling armed groups in cantonment sites may provide a gauze bandage to cleavages (a pause in the fight) but may not necessarily dissolve the underlying inter-group antipathy and rivalry which is critical for a sustainable peace.

As observed, these pre-interim tasks are quintessentially overwhelming – and which cannot be effectively performed by an ad hoc mechanism such as the National Pre-Transitional Committee (NPTC). These Band-Aid measures,

albeit important stopgaps for confidence building, they have a short lifespan and short timelines for achieving long-term objectives. The associated timelines of these mechanisms are overly crowded with incoherent priorities and benchmarks – and these are often disrupted by a deadline diplomacy¹⁴ or entrenched by repetitive extensions as a lasting practice.

Notwithstanding, security arrangements and security sector transformation are the bedrock of any sustainable peace. Similarly, a new professional military-security establishment is needed to provide that missing cement for binding the nation together. Whilst the current arrangements can help the truce and provide a platform for rebooting the security sector institutions, it is safe to argue that these cannot induce professionalism. By and large, inculcating core democratic values which guide the governance and oversight of the security sector of an effective democratic state should be the overarching principle which underscores these designs.

Although important to sustainable peace, these goals are long-term commitments of any post-conflict government in transition to democracy. These cannot be approached conspiratorially and surreptitiously as the South Sudanese former belligerent parties have so far done since 2015. With cantonment of forces increasingly turning into a chimera and another connotation for recruitment and mobilization and expansion of a violent constituency by protagonists, it begs the legitimate question whether this approach will not take the country back to the same vicious circle of the python's coils. A viable state predisposed to keeping its people secure from multiple hazards cannot be built on a quicksand of myopic partisan outlook such as securing a pie in the government or jobs and grades of honour for the loyalists.

These processes can even move faster if there was to be a unity government of stakeholders in place as early as possible. With this paradigm shift, a new government can rally critical resources commensurate to the tasks at hand, particularly funding. In this vein, a TGONU security sector cluster can easily work out new flexible timelines, reevaluate deliverables, and set new reasonable targets and milestones as envisaged by the stakeholders and required by the agreement.

Generally, security as defined remains consistently and predictably understood as a general structure which connects the existence, integrity or well-being of an object to the horizon of its damage or destruction (limits of perturbation¹⁵) as the result of external threats.¹⁶ However, taking short term seriously is necessary because it is a key site where security policies and practices produce effects.¹⁷ This short-term goal is the maintenance of the ceasefire upon which everything else depends.

Assuch, focusing on the consolidation of permanent ceasefire and reaching out to the unwieldy alliance of the holdouts hitherto known as South Sudan Opposition Movements

(SSOMs), who are opposed to R-ARCISS, constitute a pillar for search for the holy grail. These measures, if adopted, can become part of a determined quest to move a country from where it is today to a place it ought to be tomorrow; which is truer, more authentic, more just and more real.¹⁸

CONCLUSION

In 2013, the disharmony among the ruling elites engulfed the country's ill-disciplined military, resulting in a civil war. So far, the meld of the country's convulsive history and protracted internal warfare among its disparate armed groups and communities have eclipsed its prospects for progress. These factors combined have continued to fray its fragile social fabric at the seams – increasingly bringing it close to a superstar going supernova.

Logically, a war ends because a party to the conflict is vanquished or a fair deal has been struck. However, reaching the desirable end-state is always difficult, given the power calculi and incentives structure of the deal. How these bargaining process influences the behavior of the protagonists to either maintain the status quo ante or alter it and the current balance of forces along the curve of implementation is delicate business for peace monitors. These uncertainties have in the past caused tensions in the security arena of the post-conflict environments in Africa, often leading to escalation and return to violence. There is no wisdom in retreading the same ground.

As this study validates, rescuing South Sudan's fragile peace is anchored in consolidating the current ceasefire. This is a kind of approach which was overlooked in similar African settings and which caused these countries to slide back to war multiple times. The IGAD, the AU, the Troika and the UN have the capacity to prevent South Sudan from losing this truce. Hence, they should refocus their engagement along this paradigm urging the parties to build on the ceasefire than chasing the fantasies of R-ARCISS misdesign.

Succinctly, the jig is up for the parties to the conflict and the international community to implement the key provisions of the permanent ceasefire and observe it meticulously. By the end of the transition, South Sudan shall have achieved a composite objective of fixing the state and building the egalitarian consensus leading to a free and fair election, which must be carefully organized and strictly monitored. The outcome of such elections must be credible. At present, some irreducible minimums and realistic bottom lines which are critical for the success of the ceasefire ought to be identified and reprioritized. Much else which is in the R-ARCISS in terms of reforms that may encumber the process can be reprioritized based on this objective reality.

FOOTNOTES

2. The first ceasefire was 2010 to end George Athor's rebellion. The second was in 2015 as part of the ARCISS.

3. These include Sudan, the DRC, Angola, Zimbabwe and Mozambique.
4. Grignon, F. (2003) "Stopping the Congo Third War," *The World Today*, Vol. 59/7, p. 20.
5. Resolution of Disputes.
6. "Zimbabwe: Prelude to Civil War," *Economic and Political Weekly*, Vol. 11, No. 43 (Oct. 23, 1976), pp. 1692-1693.
7. In Gilgamesh allegory – Gilgamesh, the despot, was brought a doppelgänger very equal in power to curb his tyranny. Alas, both men quickly realized that it was futile for them to expend their strengths in rivalry. They could collude in oppression, each walking his lane and without tempering with the other's interest.
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9. Sudan was negotiating on behalf of SPLM-IO and SSOA while Uganda was acting on behalf of Juba TGoNU; being why the Agreement was dubbed as a neo-Condominium of Sudan and Uganda.
10. Bagehot W (1930) *The English Constitution: And Other Political Essays*. P. 17, New York: D. Appleton.
11. R-ARCISS, Article 1. 2. 11.
12. The Transitional Constitution of South Sudan, 2011, p. 84, Article 151 (2 and 3).
13. LeRiche, M and Matthew Arnold (2012) "South Sudan: From revolution to Independence" p. 126.
14. De Waal, A, et al., (2019) "South Sudan: The Politics of Delay" *Conflict Research Programme*, LSE.
15. Author's emphasis.
16. Burgess, J. P. "The Moment of Vulnerability" as in "Horizon Scan: Critical Security Studies for the Next 50 Years" – *Security Dialogue* 2019, Vol. 50(4S) p. 12, as edited by Mark B. Salter.
17. Wibben, A. T.R, "What Remains Constant" as in "Horizon Scan: Critical Security Studies for the Next 50 Years" – *Security Dialogue* 2019, Vol. 50(4S) p. 11, as edited by Mark B. Salter.
18. Ibid.



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Future Defense Policymaking in South Sudan and its Implications for Domestic Stability and US Interests in Eastern Africa

Brian Adeba, Ph.D. candidate

INTRODUCTION


One of South Sudan's major challenges as it prepares for the formation of a government of national unity this year is the design of a new defense policy to address the security challenges facing the country. Designed in 2008, the country's current defense policy, the SPLA White Paper on Defence, is a relic from the past, overtaken by an evolved security environment that is significantly different from what it was envisaged to address 12 years ago.¹ Mediators in South Sudan's shaky peace process recognize that a new defense policy is required as part of a comprehensive security sector transformation that includes determining future command, size and composition of South Sudan's national army.²

The raison d'être of the SPLA White Paper is force transformation, which entailed modernizing the Sudan People's Liberation Army (the rebel army that fought the Sudanese state before independence in 2011) to improve its lethality and rapidity of response.³ The strategic environment that dictated the drafting of the defense policy was the acrimonious relationship between the South and the North in the lead-up to the referendum in January 2010. Disputes on border demarcation, oil revenue remittances and the impending referendum marked the strained ties between both entities. The defense policy thus identified Sudan as the most serious threat to the South, noting that this threat would originate from an attack by ground troops supported by mechanized units and militia proxies along the northern border. Force transformation was essentially informed by the need to counter this threat on the northern border. A key stipulation in the policy to trim the bloated size of the SPLA — at the time estimated to be 210,000 — was thus not implemented due to, among other issues, concern about this invasion.⁴

There is need for policymakers to rethink defense policymaking in a radical manner to take stock of the country's evolving security environment. Although force transformation was necessary and is likely to be a significant plank of any security sector reform process going forward, policymakers need to look beyond it. They must embrace a dynamic defense policy that steers away from an over-emphasized aspect — the use of force — to address security challenges and focus more on strategies to win hearts and minds. This is because even if and when the current peace deal ends the present conflict, the threat of insurgency and militarized cattle raiding among the country's pastoralist communities will still constitute major security threats in the next political dispensation. Confronting these challenges requires a governmental rethink that prioritizes the building of a social contract that will restore the legitimacy of the state in the eyes of aggrieved social groups and disincentivize insurgency.

FOOTNOTES

1. Brian Adeba, "Beyond Force Transformation: Rethinking South Sudan's Defence Policy," *The RUSI Journal*, Vol. 163, Issue 4, (January 2019): 56-65.
2. Reconstituted Joint Monitoring and Evaluation Commission, "Strategic Defence and Security Review (SDSR)," <https://jmecsouthsudan.org/index.php/institutions-and-boards/sdsr>
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4. Brian Adeba, "Beyond Force Transformation," 59.



"American support for future defense transformation in South Sudan is critical to warding off the influence of malign powers in the world's newest country and entrenching an open governance system."

WHY SOUTH SUDAN NEEDS A NEW DEFENSE POLICY

The end of the 22-year-old Sudanese civil war in 2005 ushered in liberal state-building interventions by the international community in South Sudan. Rebuilding South Sudan's military and helping it transition from a guerrilla force into a conventional army was a key component of the liberal post-conflict intervention. Starting from 2006 until 2012, the U.S. alone spent between \$150 million to \$300 million in non-lethal support aimed at professionalizing the Sudan People's Liberation Army.⁵

The largest contributors to the military transformation process — the United States, Britain and Switzerland — focused on technical aspects such as professional military education, training non-commissioned officers and drafting guidelines for the transformation process, including a defense policy.⁶ The U.S. helped realize South Sudan's creation. However, a simmering rivalry between two factions in the ruling party, after independence in 2011, failed to induce South Sudan's closest friend, the U.S., to intervene in a manner to influence outcomes and thwart the possibility of war.

As the tensions in the Sudan People's Liberation Movement (SPLM) worsened, the transformation process was undermined considerably. A key stipulation to build a non-partisan army that was accountable to civilian oversight was upended. In the lead-up to open war in December 2013, the government recruited several ethnic militias, well-known among them the Mathiang Anyoor (Brown Caterpillar), to give it an edge over a budding insurgency led by former vice president-turned-rebel leader Riek Machar.⁷ The onset of war marked the end of the liberal state-building intervention in the security sector as donors terminated support and focused on humanitarian assistance instead.

Yet regime security, visible in acts such as the recruitment of auxiliary militia forces, is not the only motivation for undermining the implementation of the defense policy. A major evolution in security threats ensued after independence in 2011. Notably, the main security threat — an invasion along the northern border — was blunted. South Sudan and Sudan stopped supporting each other's insurgents and forged closer ties for economic survival. A landlocked country,

South Sudan's oil reaches global markets via Sudan; pumped through a pipeline to a port on the Red Sea coast. Pipe rental fees are crucial for Sudan's ailing economy. Secondly, whereas in the past the Sudanese army may have posed a significant threat, the present security threats in South Sudan are homegrown insurgencies and militarized cattle rustling. At independence, South Sudan's new government faced a plethora of challenges; rampant corruption and nepotism alienated social groups and heightened competition for the spoils of state between rival elites in the ruling party. This high-stakes contest plunged the country into a civil war in December 2013. Subsequently, armed insurgencies have emerged to challenge the authority of the state. Even with the signature of the present shaky peace deal, some holdout groups have declined to sign the pact and continue to wage war against the government.

Cattle rustling has emerged as a significant threat that is increasingly militarized, transcending the use of traditional weapons such as bows and spears.⁸ The proliferation of small arms in the country and the region has ensured cattle herders' access to modern weaponry, thus increasing the scope and ferocity of cattle rustling. Furthermore, traditional conflict-solving methods that have worked for generations have been rendered obsolete as the power and authority of traditional leaders has been undermined. The situation is exacerbated by the politicization of cattle rustling by elites in the capital, meaning rustling is increasingly part of political cleavages at the center, often expressed in violent terms at the peripheries of the country.

IMPLICATIONS FOR US POLICY

A tenuous peace deal signed in September 2018 and marked by significant implementation delays is currently holding, pending the successful cantonment of troops, agreement on the number of new states for the country and the formation of a government of national unity. A peace agreement that resolves a conflict between armed protagonists is usually underpinned by elaborate security arrangements; in this case, troop cantonment is a critical aspect of the deal for its utility to integrate rebel and government troops into a single army. A new deadlock over the issue of new states has stalemated progress on the implementation of the peace

deal. Nevertheless, whether the agreement succeeds or not will largely depend on how the parties to the conflict handle troop cantonment, which at this moment is far from being completed. Among other issues, the agreement recognizes that the parochial nature of the military in South Sudan is a contributing factor to the perpetuation of war and calls for a radical defense review that will delineate force size, composition, doctrine and a new defense policy.

A new defense policy is important for managing the expectations of military transformation, including addressing the many security threats facing South Sudan. As a whole, the shape of the transformation process is perhaps one of the most important outcomes expected from the defense review, which if not managed well, risks plunging the country into another intractable conflict in the near future. Such a conflict will likely be worse than the current one in terms of ferocity and the humanitarian disaster in its wake. The international community can expect significant refugee flows, war-induced famine and genocide-like war conditions that will require various interventions, including millions of dollars to feed the war-weary populous. With the U.S. currently shouldering the burden of dispensing humanitarian assistance — contributing about \$4 billion in the last five years — it may be expected to fork out even more money for assistance.

From an overall strategic perspective, peace and stability in Eastern Africa and the Horn is vital for U.S. interests and those of its allies. The U.S. Africa Strategy and the Trump administration's National Security Strategy aim to strengthen economic cooperation with African countries and limit the malign influence of great powers on the continent.⁹ Fragile and failing states undermine these interests as they create spaces that may birth unforeseen security challenges. Ensuring stability in South Sudan will largely depend on the success of the military transformation process stipulated in the peace agreement and the accompanying defense policy to manage its expectations. In a region where terrorism is rife, an unstable South Sudan will compound the challenges to U.S. interests in Eastern Africa and the Horn. Worse, it will create opportunities for greater Chinese and Russian involvement and undermine American influence with political actors in South Sudan.

OUTLINES OF A NEW DEFENSE POLICY AND A POSSIBLE US ROLE

Many objectives of the SPLA White Paper on Defence are far from being achieved and the document itself ceased to be of relevance for policymakers. Force transformation remains a work in progress. Improving operational capabilities is incomplete on many fronts. For instance, the policy envisaged a nascent air capacity for transport and logistics purposes. To date, the army lacks strategic airlift capacity although the policy stipulated the purchase of fixed wing aircraft in 2017. The four Mi-24 helicopters in the possession of the military are inadequate to meet strategic airlift needs

in a country in which most of the road infrastructure is non-existent or submerged in water for half of the year during the rainy season. This debacle presents challenges for the rapid deployment of troops and armor to hotspots around the country and compromises the ability to respond effectively to security threats in a timely manner. A new defense policy must build capacity for long-term strategic advantage on the home front and in the sub-region. This can be accomplished by embracing technology, investing in research and development, and strengthening homegrown abilities for military industry aimed at self-sufficiency in the manufacture of a wide array of military assets, both for internal and external consumption.

The design of a new defense policy must have the buy-in and participation of various and relevant stakeholders as noted in the peace agreement. This process should be conducted in an open and transparent manner that establishes strong benchmarks for accountability to undercut corrupt practices. In this respect, a new defense policy must reform business practices related to defense. It should prioritize transparency, accountability, budgetary implementation, affordability, harness innovation and improve the rapid deployment of assets.

A new defense policy must prioritize civilian oversight to hold government officials accountable. The failure to realize the aspirations of the current defense policy also arises from the fact that the ruling party and the army are interlinked deeply from a structural and philosophical perspective. The ruling Sudan People's Liberation Movement treats the army as its armed wing, rather than as a national army. This means that it wields the army opportunistically to advance narrow objectives of elite politicians. As a result, democratic civilian oversight of the army is ineffective or non-existent. Cementing civilian oversight means the National Legislative Assembly must regularly review defense requirements, be active in policymaking and compel policymakers to produce timely defense strategy documents. Long delays in producing timely defense strategies compromise the country's ability to respond adequately to security threats. Relegating the task of policymaking to government officials creates room for the abuse of public resources and the formulation of parochial policies. Most of all, the assembly must regularly review how defense ministry officials plan to implement outcomes envisaged in a national security architecture to ensure that defense policy is plugged into this structure and not work in isolation.

Equally important is the role that the U.S. should play in realizing defense policy outcomes in the future that are of utility to South Sudanese and to American interests in the region. South Sudan is in the American sphere of influence. American support for future defense transformation in South Sudan is critical to warding off the influence of malign powers in the world's newest country and entrenching an open governance system. Such support, however, should be conditioned on accountable procedures that avoid the

mistakes of the past in the military transformation process and entrench democratic oversight on South Sudan's military when a peace agreement that is acceptable to all stakeholders takes hold.

FOOTNOTES

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Envisioning South Sudan Security Sector Reform

Adv. Beny Gideon Mabor

INTRODUCTION

The signing of the R-ARCSS¹ provides a wonderful opportunity for the government to revisit the thorny issue of security sector reform with fresh eyes. In March 2008, policymakers wrote the SPLA White Paper on Defence to address the security challenges facing the new nation-in-the-making. The objective of the White Paper was a transformation roadmap for the rebel-led Sudan People's Liberation Army (SPLA) to transition it from a revolutionary armed movement into a nonpartisan national force that is patriotic, regular, professional, disciplined, productive and subordinate to the civilian authority as established under the constitution and the law.²

Similarly, in 2011 after launching South Sudan Vision 2040 -- a guideline for policy and the strategic concept of the new nation -- the National Legislature passed a resolution authorizing the security sector institutions to develop a comprehensive national security strategy.³ This resolution recommended the creation of the National Security Service (NSS), which was established later under article 160, sub articles (1), (2) and (3), of the TCSS 2011. It was amended with two operational organs: the Internal Security Bureau (ISB) and General Intelligence Bureau (GIB). Both bureaus were placed under overall supervision of the minister responsible for national security in the Office of the President, who is also individually and collectively accountable to the president, the Council of Ministers and the national legislature.

In June 2012, the first-ever consultative efforts toward the development of a national security architecture began with deliberations that involved the lead security agencies of defence, national security service and police as primary stakeholders. Other stakeholders included the prisons, civil defence and wildlife service; and parliament, civil society organizations and law enforcement agencies, amongst others⁴. The joint committee, with help from foreign experts from the Troika countries of United States, United Kingdom and Norway, as well as the United Nations and the African Union, developed a zero draft of the national security strategy. A countrywide consultation on the form and content of what could become the national security and defence policy was held.⁵

FOOTNOTES

1. Agreement on the Resolution of Conflict in South Sudan
2. Article 151(2) of the Transitional Constitution of the Republic of South Sudan (TCSS 2011) as amended
3. Dr Luka Kuol (July 2018) National Security Strategy Development South Sudan Case Study
4. Ibid
5. Ibid

"Security sector reform must finally be founded on activities with multisectorial strategies based upon a broad assessment of the range of defence, security and justice needs of the people and the state, while adhering to basic good governance principles of transparency and accountability."

FAILURES OF SECURITY SECTOR REFORM

According to the available research, security sector reform in South Sudan has failed considerably for many reasons. Chief amongst them is an imminent external threat from neighboring Sudan. This failure of security sector reforms is traceable to the design of the comprehensive peace agreement CPA of 2005 between the government of Sudan and the Sudanese People Liberation Movement (SPLM). The peace deal was largely viewed as a temporary truce by the protagonists, who lived under perpetual uncertainty that hostilities might resume — particularly along the northern border — and take control of the oil fields. In fact, the SPLA White paper on defence in 2008 clearly identifies Sudan as a threat.

Under these circumstances, a key element of security sector reform, which is right-sizing through well-coordinated disarmament, demobilization and reintegration processes, was deliberately put on the backburner. In their concept paper, the South Sudanese Church Leaders Mediation Initiative (CLMI) stressed that the history of South Sudan has kept South Sudanese focused on defeating the common enemy — and in this case the government in Khartoum — “rather than generating dialogue and building consensus on who we are as a nation, why we belong together and how we can unite in our destiny.”⁶ Instead, the national army and other security organs were, and to date continue to be, a handful of militia groups integrated with conflict entrepreneurs in the name of buying peace. The military integration became highly characterized by the trade-off of loyalties in a typical political marketplace.

The second failure of the security sector reform is caused by crisis of state and nation building. It is evident that the political leadership failed to maintain the political and security stability of the state in a vision enshrined under article 1 (4) of the TCSS 2011.⁷ “To the contrary, the government is overcome by challenges affecting national security, including but not limited to: increasing proliferation of small arms and light weapons in the hands of the civil population; oversized and unprofessional security forces; inter- and intra-communal violence; unregulated cattle economy; lack of demarcation of internal borders; and terrorism crouching along porous borders-in-the-making. Worst of all, there is no peace in the

country, as there is still a growing armed rebellion in some parts of South Sudan, despite the R-ARCSS signed on 12 September 2018.

The third glaring failure of security sector reform was the internal power struggle within the SPLM ruling party.⁸ The unity of the internal front cracked from bad to worse when President Salva Kiir Mayardit sacked the entire cabinet in July 2013, including his first deputy in the party, Dr Riek Machar. This grand reshuffle affected the security sector reform; it happened before the completion of the national security strategic policy was presented to the cabinet and the national legislature for approval. The post-July cabinet did not care to advance the cause, notwithstanding the fact the incumbent executive was already embroiled in bad politics with disgruntled groups left out in the cabinet.

The last but not least issue affecting security sector reform is the double-edged problem of militarization of politics and politicization of military. Politics in South Sudan is not done in respect to ideology, but rather organized along communities and tribal constituencies. This is because political parties are allied with military wings as a means to an end of getting employment, and any political disagreement consequently spills over into the military sphere. In other words, without demilitarization of public life⁹, the cycle of recurrent political violence supported by foot soldiers along ethnic lines will remain a challenge for years.

VISION OF SECURITY SECTOR REFORM IN THE R-ARCSS

The security sector reform has a clear vision provided by the R-ARCSS to address the missed opportunities during the past attempts to develop national security and defence policies. Accordingly, chapter two on permanent ceasefire and transitional security arrangements under article 2.5 of the R-ARCSS established a multi-stakeholder Strategic Defence and Security Review Board (SDSRB). The mandate of the SDSRB is to formulate a blueprint that will guide the creation of the security sector institutions to enhance the safety and welfare of the populace, as well as the national core interests and values.¹⁰ These interests and values, according to the work done by the SDSRB, include: respect for the

rule of law and the constitution at all times in the discharge of its duties, — including human rights and fundamental freedoms; defend sovereignty and provide national and human security; establish good governance; sustain political stability and achieve gender equity; and promote regional and international peace.

To complete the security sector review process, it is divided into thematic stages: strategic assessments that examine the military and nonmilitary security challenges affecting the country; development of a security policy framework outlining the responsibilities of various agencies on how to respond to security challenges; development of a defence policy that will identify responsibilities for the armed forces and other security sector institutions; a vision for the unification and modernization of the army and other security organs; and, finally, a comprehensive security sector transformation roadmap.¹¹

Although this is an ambitious process in a limited timeframe, it is considered that to have an effective national security architecture, the security sector must be based on volunteerism, and must be professional, nonpartisan and national in character. With such standards in place, the security sector is positioned to embrace inclusivity and reflect the diversity and patriotic interests of the country to better serve South Sudan and its people, regardless of ethnicity, gender and religion, and without prejudice or favour.

In the course of national security roles and responsibilities, the security sector must be subject to democratic civil authority to ensure that it is accountable to the people through their elected representatives in the implementation of vital national interests. This means that parliament have the power to initiate policy, scrutinize its implementation and hold executive officeholders accountable. This is to take into consideration that the concept of national security is holistic in approach, meaning that the security sector shall be committed to uphold both state and human security aspects.

In particular, the security sector must commit to the principles of credibility, transparency and accountability. It must accept scrutiny and oversight of its activities, and it must coordinate and collaborate openly when confronting threats to national security. This requires effective communication across all agencies of government through the National Security Council, chaired by the president.¹²

In line with the doctrine of separation of powers under the constitution and relevant national legislations, each component of the security sector should respect and uphold the clear and distinct mandate accordingly. The laws for the national armed forces and other law enforcement agencies must be amended to align with constitutional mandates. The current practice by SSPDF and the NSS of usurping policing powers of arrest, detention and search mandates is unconstitutional. Their intervention, if any, cannot be

underestimated when requested by relevant authorities in exceptional situations. The South Sudan People's Defense Force (SSPDF) and National Security Services (NSS) recognize and carry out the roles and responsibilities enshrined under articles 151 and 159 of the TCSS 2011 as amended. In particular, they should emphasize nonpartisanship, representativeness, professionalism and, above all, they must focus on information gathering, analysis and providing advice to the relevant authorities, respectively.

RECOMMENDATIONS

For security sector reform to succeed, there are few actionable ways forward. Foremost is the will of the political stakeholders to set a vision for a democratic reconstruction of post-conflict South Sudan beyond and above ethnic and political divide. In this case, the government — through relevant mechanisms such as the strategic defence and security review process — as well as the Council of Ministers and the national legislature, must develop a fairly universal security interest¹³, including territorial integrity, and ensure all forms of sovereignty are intact. According to the R-ARCSS, the security reform is the result of a final-step security sector transformation roadmap. Such reform must be people-centered, locally owned and based on democratic norms, human rights principles and the rule of law. It must provide freedom from fear and measurable reductions in armed violence and crime.

Security sector reform in South Sudan must be a framework to structure thinking about how to address diverse security challenges facing the state and population. This must happen through the integrated development of security policies and through greater civilian involvement and oversight. This long-awaited reform must finally be founded on activities with multi-sectorial strategies based upon a broad assessment of the wide range of defence, security and justice needs of the people and the state, while adhering to basic good governance principles of transparency and accountability.

FOOTNOTES

6. CLMI Concept Note on National Dialogue (2015)
7. Article 1(4) of TCSS (2011) South Sudan is governed on the basis of a decentralized democratic system and is an all-embracing homeland for its people. It is a multiethnic, multicultural, multilingual, multireligious and multiracial entity where such diversities peacefully co-exist.
8. Sudan People's Liberation Movement.
9. Lt General (ret) Kuol Deim Kuol, (2018) Confronting the Challenges of South Sudan's Security Sector: A Practitioner's Perspective
10. For details of Vision of SDSR, see article 2.5 of the R-ARCSS 2018
11. Article 2.5 Chapter two of the R-ARCSS (2018)
12. Article 161 of the TCSS (2011) as amended
13. Bard B. Knudsen (2012) Developing National Security Strategy/Policy: A Roadmap



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The Legality and Constitutionality of Determining the Number of States in South Sudan: A Review and Analysis of a Sticky Pre-Transitional Issue & Related Matters in the 'Revitalized Agreement'

Santino Ayuel Longar, Ph.D.

INTRODUCTION


Determining the number and boundaries of states is one of the stickiest Pre-Transitional issues under the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCISS, hereafter “the Agreement”).¹ Unless this issue is given all the attention and seriousness it deserves, it has the potential to undermine or even derail the entire peace Agreement. The point of departure between the adverse parties revolves around both the nature and mechanism for resolving the number of states and their boundaries. While some, particularly among the rebels, characterize it as a political matter that ought to be settled by one of three ways: a presidential decree, political compromise or through a third party’s decision on behalf of the parties to the conflict. Others, especially the government, contend that since the existing system of 32 states is already operational, it can only be undone or altered by means of popular consultations.

None of these claims, however, deals with the legality and constitutionality of the matter, as well as with the fact that the demand for more states is highly popular across the country.

It is, thus, from the perspectives of the legality and constitutionality, as well as the popularity of the demand for more states, that this article is a part contribution to the ongoing public debate respecting the number of states that South Sudan should have, both during the Transitional Period and beyond. The article also looks at tangential or related matters such as whether the creation of 28 states in 2015 violated the 2015 agreement, as well as whether the concerns about lack of economic viability for more administrative units are founded or justified.

FOOTNOTES

1. See Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCISS) (2018) September 12, 2018.



"The issue of the number of states and their boundaries is not a political question. It is rather a legal and constitutional matter that must be resolved in a manner that is consistent with the scheme and spirit of the Agreement as well as constitutional

LEGALITY AND CONSTITUTIONALITY OF DETERMINING THE NUMBER OF STATES AND BOUNDARIES

This article begins with the fact that the issue of the number and boundaries of states is neither political nor merely an inconvenience to the existing administrative structures. Rather, the issue should, in pith and substance, be understood as a legal and constitutional matter. An action or inaction is "legal" if it is premised on legal principles, is intrinsically valid in law or is permitted by law.² Similarly, an action or inaction is "constitutional" if it is regulated by the constitution or it has, directly or indirectly, been incorporated into the constitution, either by way of reference or constitutional provisions.³

Against this backdrop, the issue of the number of states and their boundaries is and must be understood as a legal and constitutional matter in two main ways.

First, it is technically inaccurate to characterize the question of states as inherently political. Presenting it as a political issue, it seems, organically arises from (perhaps an honest but) mistaken belief that since the creation of more states in 2015 was a result of the presidential Executive Order #36 (hereafter "the Order"), the same much to the exclusion of the South Sudanese public.

This contention is, however, incorrect. While it is true that the Order precipitated the subsequent process, the ultimate establishment of 28 states in 2015 was a result of due legislative process, not by the operation of the legality intrinsically flowing from the Order. This was evidenced by the fact that what followed the Order was not the operationalization of 28 states but subsequent legislative debates that eventuated in the legislators having to vote on the issue. Both processes were consistent with the requirements of the relevant constitutional provisions as follows.

Under Articles 59 (g), 162 (3) and (4), and 199 of the Transitional Constitution of South Sudan (TCSS), the authority to alter the number and boundaries of states as well as names of state capitals is vested in the two houses of the legislature: the Council of States and the Parliament.

The major themes and schemes of these provisions are that, to be duly passed into law, two-thirds of all active members

must approve the alterations of the number, names and boundaries of states while a simple majority is required to change the names or locations of state capitals.

In order to further understand the legality underpinning the Order, recourse should be had to Article 101 (f) of TCSS. This provision, read together with Articles 86 and 90, ordains the president with the competence to initiate any constitutional amendments or pieces of legislation which, if normal legislative procedures are followed, can be duly passed into law by the legislature with the assent of the president.

For more certainty as to the legality of this process, all one needs to do is ask a series of questions, some of which include the following:

- Was the Order constitutional and, therefore, legal? Under Articles 86 (2), 90 (1), (92), 101 (f) of the TCSS, the president has the power to issue an executive order. However, under Articles 199, 59 (g) and 162 (3) and (4), the President does not have the authority to issue an order that has the effect of altering the boundaries and names of states without any further legal process. The TCSS vests the authority to alter the boundaries of states in the National Legislature. Thus, with respect to its ability to change the number and boundaries of states, the Order was clearly void and remained voidable if it was self-executing. An order is self-executing if its substance comes into effect without any further legislative or judicial approval.

- Did the creation of 28 states come into effect as a result of the Order? Since the Order was not self-executing, the answer is no. Following the issuance of the Order, the president was advised by his legal team that the Order per se did not have effect and force in law under the TCSS. Ultimately, the creation of 28 states was a result of the legislative and voting processes that took place in accordance with the requirements of Articles 59 (g), 162 (3) and (4), and 199 of the TCSS. Since the constitutional requirements were satisfied, it follows that the creation of the 28 states by the National Legislature was indisputably legal and constitutional.

It has been forcefully argued that the voting process in the two houses at the time was coerced. In some cases, it is argued

that some members of parliament voted out of fear for their lives. Such a contention may well be founded. However, I am prepared to say to such critics: “Welcome to democracy.”

Every adherent or disciple of democratic ideals must make do with the fact that democracy is not a perfect system of government: it is noisy, chaotic and just messy in many practical respects. It is inherently a disorganized form of government. That is why Winston Churchill once described it as the worst form of governing a society except that it is better than all those other forms which have been tried but spectacularly failed.⁴ A good democrat must, thus, strive to make a sense of orderliness out of this organic disorder. Construed as such, our 2015 democratic experiment with respect to 28 states was something not unique to us and will not be the end. That is the way democracy is worldwide, even among the so-called mature and developed democracies.

Yet, the circumstances in which everything that followed unfolded make it clear that although it was the precipitating action, the Order in and of itself did not eventuate in the establishment of 28 states in 2015. Instead, the effecting instrument was the legislative process that came on the heels of the Order.

Following those legal and constitutional procedures, the TCSS was subsequently amended to incorporate the new administrative units into our constitutional and governance structures. Moreover, considering that they are now in full-fledged operation, these administrative structures are solely within the domain of the public, not of political parties or presidential authority. Any system of laws which lies in the domain of the public cannot be unilaterally withdrawn, either by means of an executive order or an act of a legislature, without consultations with the citizens whose legal and constitutional rights and/or privileges are or may be subsequently affected.

The second way of understanding the issue of the number and boundaries of states as a legal and constitutional matter is evident in the 2018 Agreement itself. The Agreement recognizes the centrality of the divergence between the government and the rebels on the number of states and their boundaries as a pre-transitional matter.

For instance, Chapter 1⁵ and Annex E of the Agreement envisage three main institutions or processes to deal with the number and boundaries of states prior to the formation of the Revitalized Government. These institutions are the Technical Boundaries Committee (TBC), Independent Boundaries Commission (IBC) and the Referendum.

The TBC, which was staffed with experts drawn from IGAD and Troika countries, was expected to complete its work within 60 days from the day of signing of the Agreement. Its primary task was that of defining and demarcating South Sudan's tribal boundaries as they stood on January 1, 1956. This body attempted to carry out its mandate in 2018 and

2019. Its findings were, however, inconclusive as to the precise tribal boundaries as they stood on January 1, 1956. The TBC, thus, failed to effectively carry out its mandate.

The IBC was then left to shoulder TBC's incomplete work beside its own. The IBC comprised of ten (10) South Sudanese. Its main task was to determine the number and boundaries of states within 90 days from the date of signing. According to the Agreement, a vote by seven out of ten members on three choices covering 32, 10 or 21 states would be binding on all parties. The Agreement further provides that if the IBC fails to conclude its work with a definitive finality, its process would transform itself into a Referendum. Through the Referendum, thus, the people of South Sudan would be the final arbiter in determining the issue of the number of states.

Since the IBC concluded its work in 2019 by voting 6 to 4, it stands to reason that the Referendum is, by the operation of the Agreement, the default process for determining the number of states. However, an argument can be made that since determining the boundaries of states is a technical exercise requiring precise measurements on where exactly on the ground the lines stood on January 1, 1956, the issue of boundaries may reasonably be deferred until such time as the parties may find practical, most preferably after the formation of the Revitalized Unity Government. The Referendum for determining the number of the states must, however, be conducted as stipulated in the Agreement.

From the above discussion, it is self-evident that the issue of the number of states and their boundaries is both a legal and constitutional issue, having been incorporated into the TCSS as well as recognized by the Agreement.

A COMPROMISE ON NUMBER OF STATES WOULD BE A FUNDAMENTAL BREACH OF THE AGREEMENT

From the foregoing, it can be established that the contention that the issue of the number and boundaries of states is a political issue that can be resolved by means of a presidential decree or an agreement between the government and the rebels or by some external authority, is a misleading claim. That is because such a solution falls outside the scope of the Agreement. Furthermore, since the issue of the number and boundaries of states is an essential aspect of the Agreement, a political settlement would constitute a fundamental breach, having the capacity to deprive ordinary people of their right to participate in the political process. A fundamental breach, under the law of contract, refers to a violation that goes to the root of what the parties considered to constitute the substantive basis upon which they had a meeting of minds when they entered into a contract. A fundamental breach repudiates or deprives, almost irreparably, a party's right under an agreement or contract.⁶

In respect of the 2018 Agreement, a political compromise or a third party's determination (on behalf of the parties)

of the number of states would substantially impair not only the South Sudanese people's ability to choose for themselves the number of states or system of government. It would also violate their right to participate in a political process that the Agreement recognizes as falling within the domain of public determination. Furthermore, any deprivation of that nature is most likely going to breed popular resentment which could result in more rebellions that have the potential effect of further destabilizing not only South Sudan but the entire region.

In addition, peace partners and friends of South Sudan should also tread more carefully. The conversations that are going on behind the scenes are potentially ominous in effects. This also means that any discretion conferred upon the third party by reasons organically arising from the circumstances of the conflict should be exercised with extreme caution. Even ordinary people warn that any attempt by foreigners to interference in matters that are essentially within the domestic affairs of South Sudan, such as the issue of states, can, inadvertently or otherwise, lead to major adverse consequences about which a decision-maker will live to regret. They further argue that South Sudan was purchased by blood, not gratuitously granted. Any missteps can easily turn the country on its head, practically setting it alight.

DID THE CREATION OF 28 STATES VIOLATE THE 2015 AGREEMENT?

Since the 2015 constitutional amendment process led to the creation of 28 states, a debate has arisen not just with respect to the legality and constitutionality of that process but also with regard to whether such a process violated the 2015 Agreement. The rebels, government critics and some activists contend that the 2015 creation of 28 states violated the terms of the 2015 Agreement. That Agreement, they urge, was based on ten (10) states. In their view, the government had no authority to unilaterally change the number of states.

Yet, it must be pointed out that the 2015 Agreement, which was revitalized in 2018, is silent on the number of states. The only reference to the number of states is found in Article 1.6 of Chapter 1, which provides that "the power sharing ratio in the Executive of the TGoNU shall be applied as follows: executive body as 53 percent, GRSS; 33 percent, South Sudan Armed Opposition; 7 percent, former detainees; and 7 percent other political parties. Whereas the power-sharing ratios in the conflict affected the states of Jonglei, Unity and Upper Nile – as well as in the remaining seven (7) states – shall be as reflected in Chapter 1, Articles 15.2 and 15.3 of this Agreement.⁷

Since there is not any express provision that places a moratorium on the number of states, it naturally follows that there is nothing in the Agreement that suggests or implies that the number of states cannot be amended prior to, during or after the transitional period.

More importantly, for a claimant to make out the case for a legal violation, he or she must point to a specific law to support his or her claim. That is because legality is not predicated on fictions or assumptions. It is based on a concrete and positive identification of a relevant provision or provisions that permit or prohibit an impugned conduct. In other words, for any action or omission to be legal or illegal, the law must expressly say so. This naturally leads to the idea that what is not legally prohibited is not illegal. This basic principle of the rule of law expresses itself in the form of the doctrine of, *nulla poena sine lege*. The doctrine states that one cannot be penalized for doing something that is not legally impermissible. An action or inaction that is not prohibited is not illegal.⁸

Construed as such, it is plausible to conclude that since the 2015 Agreement does not prohibit the creation or reduction of the number of states, the constitutional amendment process that created 28 states is not an impermissible conduct under the Agreement.

THE FALLACY OF THE CLAIM THAT FORMER COLONIAL DISTRICTS HAD CLEAR BOUNDARIES

There is a common chorus, especially in the rebel circles, that the borders of 32 or more states are problematic. Undergirding this contention is a suggestion that a more appropriate solution would be found by way of adopting an administrative structure of former colonial districts by elevating them to states. The government, on the other hand, argues that creating more states is both a response to popular demand and a way of managing ethnic conflicts as well as enhancing unity in diversity. For this reason, the government argues for a system that maintains the current 32 states, with the possibility of adding more states in future.

Yet, an insistence on elevating only former colonial districts to states is inherently mistaken in at least two ways. First, it is grossly implausible to contend that South Sudan's contemporary administrative units should be based on the decisions made more than 60 years ago by colonial authorities who had nothing but vested colonial interests at heart. Indeed, if our national policies and programs should continue to be determined or dictated by the whims, conduct or decisions of deceased colonial masters, then it goes without saying that the lofty claim that we are an independent and sovereign state rings quite hollow. It is unreasonable to remain beholden to the dehumanizing colonial interests against which so many of our ancestors fought and died.

Second, the contention that only the borders of 23 colonial districts are known is fallacious. That is because the British Colonial Government did not actually determine the borders of 23 districts. Rather, all it did was only determined the boundaries of various ethnic and sub-ethnic communities. For example, in the former colonial Yirol District, one can

use the 1956 boundaries to determine with precision the boundaries of the Dinka communities of Ciec (Lou and Adoor), Aliab and Atuod (Apaak and Reel). Similarly, in former colonial Bor District, the Colonial Government mapped out the geographical boundaries among various Bor District communities (such as Bor, Twi, Nyarweng and Hol).⁹

Another defect inherent in the proposal for elevating only 23 former colonial districts to states is that, it is oblivious to the many defining events that have overtaken what might have been subjectively reasonable in the eyes of colonial authorities at the time. Since the end of the colonial era, however, relations among different communities have changed. One good example is the issue of ethnic conflicts that have generated deep-seated hostilities. These hostilities make any attempt to govern these communities under one administrative unit quite inefficient and untenable.¹⁰ Furthermore, after more than 60 years of Sudan's independence, one would expect a reasonable thinker to put into consideration many temporal factors. For instance, at the time of independence, South Sudan's population stood at about 2.7 million people.¹¹ Today, South Sudan is estimated to be over 12 million people.¹² Yet the 23-states proposal ignores the significance of population growth since 1956. It also ignores the necessity for adding more administrative structures to accommodate the needs of populous regions (such as Aweil, a region whose population is greater than that of Malakal, Fashoda, Nasir and Renk combined). It would, therefore, be unreasonable to think that a populous region such as Aweil should still be administered under a single administrative unit, notwithstanding these demographic shifts.

Yet, I think the most problematic issue with the proposal for 23 states is that of having failed to take into consideration the nature of contemporary relationships among various communities in South Sudan. One of the main arguments for using ethno-religious identity as a universal criterion for determining the number of administrative units is to ensure that communities that are largely compatible are administered together under one unit. Similarly, those that are more antagonistic deserve to be administered separately. It is, therefore, self-evident that a determination of administrative units must consider not just demographic shifts and population growth but also the nature of inter-communal relations.

CONCERNS ABOUT ECONOMIC VIABILITY OF MORE STATES

Legitimate questions have been raised about economic viability of more states. In this respect, arguments against more states in South Sudan tend to suggest that more administrative structures would siphon off public resources for staff salaries at the expense of, for instance, economic development and delivery of essential services to people at the lower tiers of government. Others contend that comparing South Sudan to countries such as Ethiopia,

Nigeria, Kenya or India is inappropriate. These countries, it is argued, have more robust and sustainable economies than South Sudan's. This argument, at first blush, sounds logical and persuasive, until one takes the time to look at it from a more practical standpoint and experience of other countries.

For instance, in 2011, South Sudan was far richer than Kenya or India was at independence. Yet, in 1947 when it became independent, India's priority was to get the issue of governance right from the outset. At that point, concern about economic viability of future administrative units of India was not the overriding consideration for determining the system of governance and number of states. India ultimately designed its administrative system on the basis of ethno-religious identities.¹³ Second, fewer administrative structures do not necessarily translate into rapid economic development. In fact, more administrative structures may lead to long-term political stability because they make the government and public services more accessible to the grassroots. Furthermore, as more autonomy is devolved to lower administrative units, each unit strives to increase its productivity, improve its tax collection system and develop skills and capacity-building for local workforce. This is why Americans refer to their states as laboratories of democratic perfection and economic experiments. Successful outcomes from experiments from one state are then replicated, resulting in snowballing effects countrywide.¹⁴

Furthermore, if fewer administrative structures were truly a panacea for economic development, former North Bhar el Ghazel State (NBGS) would have probably been the most developed state in South Sudan prior to 2013. That is because it had only 5 counties. Ironically, both former NBGS and Unity State had consistently ranked at the bottom among other 8 states in terms of human development index.¹⁵ This was so, despite the fact that former Unity State was receiving 2 percent of oil revenues in addition to what it received from Juba. Compare that to former Jongeli State which, according to the 2008 National Census, was the most populous state in the country. It was also the state with the largest number of counties (then 14). Despite this anomaly, however, former Jongeli State often did far much better than both former NBGS and Unity State. This shows that what matters is not more or fewer administrative structures but an efficient use of resources, stewardship, participatory governance and enlightened leadership.¹⁶

CREATION OF MORE STATES IS CONSISTENT WITH THE AGREEMENT AND POPULAR DEMAND

As alluded to in the foregoing, the creation of more administrative units is consistent with popular demand for more states across South Sudan. It is along this line that both the armed opposition and the government cited popular demand as a justification for increasing the number of states in 2014 and 2015, respectively. As well,

number of states in 2014 and 2015, respectively. As well, both maintained that the borders of these states would be consistent with ethnic boundaries as they stood on January 1, 1956.¹⁷ Seen as such, there is little room, if any, to deny that both sides were correct in citing popular demand as a basis for their decision.

To be sure, a study by the Sudd Institute in 2016 confirmed both claims.¹⁸ Furthermore, the objective of the 2012 former rebels of the South Sudan Democratic Movement and Army (SSDM/A, also known as the Cobra Faction) in Pibor was predicated on the demand for self-government by the Murle ethnic group. This SSDM/A's demand was satisfied in 2014 when the Pibor Administrative Area was established following a peace deal between the Government and SSDM/A.¹⁹ Demand for more states was also put forth by other communities in different parts of South Sudan, such as, among others, Tonj, Yirol, Ruweng and Amadi regions. Moreover, when the group led by the former Sudan Peoples' Liberation Army in-Opposition (SPLM-IO)'s spokesman, Lul Koang Ruai, signed a peace deal with the government, one of his demands was the creation of a state for Greater Akoba area, separate from what was then Jonglei State.²⁰ Finally, the resounding outcomes of the three recent regional consultations as part of the ongoing National Dialogue reaffirmed the case for popular demand. For instance, one of the resolutions of the Equatoria Regional Consultations was the creation of 39 states. As well, in that discussion, people of Equatoria resolved that a federal structure in which states have more autonomy was paramount.²¹

The demand for more states and federalism was made even clearer in both the preambles of the 2015 and 2018 Agreements, which preambles provide that a federal system of government is a popular demand of the people of South Sudan and that for such a system to exist, it must be predicated on the devolution of more political powers and economic resources to lower tiers of government. Both preambles also provide that such a system must reflect unity in diversity among the people South Sudan.²² This suggests that major parties to the Agreement converge on the idea of more states. As such any party that obstructs on carrying out of the Referendum as a mechanism for determining the number of states is acting neither in good faith nor in the best interests of South Sudan. Furthermore, if anyone is in doubt as to the claim that the demand for more states is popular or is of the view that a return to 10 states or adopting 23 states system is popular, Referendum is the opportunity to prove so or otherwise.

CONCLUSION

From the above discussion, it is plausible to conclude that the issue of the number of states and their boundaries is not a political question. It is rather a legal and constitutional matter that must be resolved in a manner that is consistent with the scheme and spirit of the Agreement as well as constitutional requirements.

Indeed, if we are serious about the search for a peaceful resolution to the conflict, we must implement the Agreement in the letter and spirit with which it was written. In this regard, a plausible argument can be made that since the IBC and TBC have failed to render their decisions with a definitive finality, the next phase for resolving the issue of the number and boundaries of states can only be found in the Referendum. Only the Referendum would be consistent with both the spirit of the Agreement and constitutional requirements. Any other solution, such as the clamor for a political compromise or decision by a third party on behalf of the parties, can only amount to a fundamental breach of the Agreement. Besides, having regard to the fact that both sides to the conflict had responded positively to popular demand for more administrative structures, it can only be an act of bad faith that any party would impede progress on the issue of the number of states.

The assertion that South Sudanese masses are uninformed and should, thus, be excluded from determining the system of governance is preposterous. Such an assertion ignores the fact that it is the same people who actually fought the war of liberation and elected the president of the Republic of South Sudan as well as their state governors and members of parliament in 2010. More important, it is the same people they are berating that voted in the Referendum that led to South Sudan's separation from the Sudan. If South Sudanese masses were ignorant, as is currently being proselytized, they would have not been able to successfully participate in these exercises. After all, there is nothing so major or significant about the determination of the number of states that would warrant the exclusion of the South Sudanese masses from carrying out an exercise which the Agreement duly bestows upon them.

FOOTNOTES

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3. John C-Harrison, "The Constitution and the Law of Nations" (2018) 106 *Georgetown Law Journal*, 1660-1705.
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22. See ARCISS, supra note 7 at 3 and R-ARCISS, supra note 1 at 1.



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A Short Window to Resuscitate South Sudan's Ailing Peace Deal¹

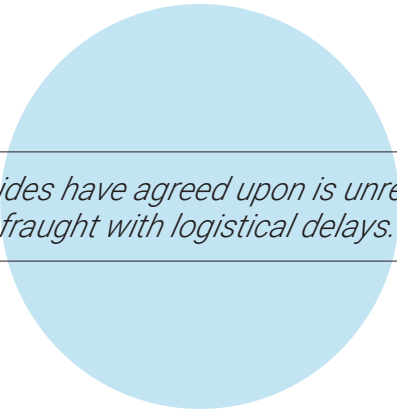
International Crisis Group; Brussels, Belgium

INTRODUCTION

On 7 November 2019, President Salva Kiir and armed opposition leader Riek Machar agreed to a second extension of the deadline for forming a unity government, a requirement of their September 2018 agreement aimed at ending South Sudan's six-year civil war. The 100-day deferral, brokered at an emergency summit in Uganda, comes after a six-month delay in May. Importantly, it keeps alive the war's longest ceasefire. But it does not bring the two sides closer to resolving their core differences. One issue that is critical to breaking the impasse is an agreement on the number and boundaries of states, which set the distribution of power across the country. Absent such an agreement, Kiir and Machar may have little incentive to form a unity government or to strike final bargains on unifying the army and security arrangements in the capital Juba. Mediators from Uganda, Sudan and Kenya should step up efforts to forge a deal on states. If they cannot do so before January 2020, the new extension's midpoint, other African leaders should step in. If the two sides cannot agree on states, they risk sliding back into war.

FOOTNOTES

1. This article is republished with permission from The International Crisis Group (Brussels, Belgium): International Crisis Group. 2019. "A Short Window to Resuscitate South Sudan's Ailing Peace Deal." International Crisis Group, accessed December 2. https://www.crisisgroup.org/africa/horn-africa/south-sudan/short-window-resuscitate-south-sudans-ailing-peace-deal?utm_source=Sign+Up+to+Crisis+Group%27s+Email+Updates&utm_campaign=b4f3356eb6-EMAIL_CAMPAIGN_2019_12_02_12_11&utm_medium=email&utm_term=0_1dab8c1ea-b4f3356eb6-359396393.



"The roadmap the two sides have agreed upon is unrealistic, underfunded and fraught with logistical delays."

THE EXTENSION OF THE DEADLINE FOR THE UNITY GOVERNMENT'S FORMATION WAS NECESSARY BUT DOES NOT IN ITSELF GUARANTEE PROGRESS

The extension of the deadline for the unity government's formation was necessary but does not in itself guarantee progress on the 2018 peace deal's implementation, as Crisis Group made plain recently.² Mediated by Uganda's President Yoweri Museveni, Sudan's Sovereign Council chair General Abdel Fattah al-Burhan and Kenya's envoy Kalonzo Musyoka at a Tripartite Summit attended by Kiir and Machar, the deferral preserves a ceasefire that has largely ended five years of war. Thanks to the truce, South Sudanese enjoy more freedom of movement and better access to their fields and humanitarian aid. Rushing the unity government while the parties remained so far apart on key issues – crucially, those of states and internal boundaries, army reform and security arrangements in Juba – could have risked the ceasefire's bloody collapse. Yet making progress now requires effective diplomacy from outside high-level mediators whose limited engagement over the past year gives little cause for optimism.

The question of states and boundaries is one immediate stumbling block. Outstanding issues on the army are important and will likely be difficult to resolve, but the parties have agreed to a roadmap, even if it needs amending. Joint security committees established by the 2018 peace deal are operating and surprisingly collegial and there does not appear to be an absolute impasse. In contrast, on states and boundaries, discussions are deadlocked; committees created to resolve the issue have failed and disbanded. Security arrangements in Juba are also critical, as Crisis Group has previously underscored,³ given that the capital has been a flashpoint in the past and because Machar will not go back without his security ensured. But negotiations on that issue are, in essence, on hold, largely because Machar almost certainly will not return to the capital absent a deal on states and boundaries. If the two men can strike such a deal, then the road to a unity government becomes clearer and pressure will mount to resolve outstanding issues related to the army and Juba security. A priority for international mediators should be to unlock the states and boundaries question.

BOTH KIIR AND MACHAR BEAR RESPONSIBILITY FOR CREATING THAT DISPUTE

Both Kiir and Machar bear responsibility for creating that dispute. In 2011, when South Sudan became an independent nation, it had 10 states. State governors wield substantial power, access to resources and influence over political appointments down to the local level. Powerful allies of both Kiir and Machar, who at the time was Kiir's vice president, wanted to increase the number of governors so as to widen the pool of spoils. In turn, state boundaries matter a great deal, as they can determine which ethnic group dominates each state and benefits from its resources, including oil. In 2014, after the civil war began, Machar called for redrawing the country into 21 states. Kiir subsequently redrew the map to divide it into 28, and later 32, states, carved up to favour his political base.

The 32-state configuration is a source of great aggravation to Machar and many of his fighters. Rebel hardliners view it as surrender for Machar to join a unity government so long as that configuration remains in place. Meanwhile, some armed groups in Machar's coalition vow to keep fighting if there is no change to specific boundaries, which they believe have been used to apportion their land to other groups. The most bitter of these disputes is over control of Malakal, a city in South Sudan's north east that was once one of its three administrative capitals. Since Machar is the weaker party, his commanders know that he will have little leverage once in government to win concessions on states or boundaries. For this reason, he is unlikely to join a unity government absent a new deal on those questions. Nor, indeed, should diplomats attempt to force him to do so: were that to happen, the new government would immediately deadlock over the issue and Machar's coalition might splinter, leading to renewed but more fragmented conflict.

IF PRESSED HARD ENOUGH, KIIR COULD BUDGE FROM THE 32-STATE CONFIGURATION

There could be a way to break the impasse. Many insiders to whom Crisis Group has spoken believe that, if pressed hard

enough, Kiir could budge from the 32-state configuration, especially if mediators made clear that intransigence would mean he would shoulder much of the blame should the peace deal collapse over this issue. Machar has also said in private that he is not wedded to a specific number of states so long as he is not forced to accept the status quo.

Nor do the stickiest boundary disputes, especially over Malakal and its surrounds, need to hold up the process. The two sides could settle on a compromise on the number of states, even as concerned with boundaries a genuine alternative to perceived surrender or a return to war.

THE ROADMAP THE TWO SIDES HAVE AGREED UPON IS UNREALISTIC, UNDERFUNDED AND FRAUGHT WITH LOGISTICAL DELAYS

With an agreement on states and boundaries, and a unity government in sight, mediators are more likely to make progress on the other major obstacles: a reasonable timetable for unifying a government and rebel armed forces into a single national army and security arrangements in Juba. On the former, Kiir and Machar have made some progress on a technical deal that would unify a first batch of 83,000 fighters and, as noted, commissions charged with advancing army reform are functioning. But the roadmap the two sides have agreed upon is unrealistic, underfunded and fraught with logistical delays. Kiir's government is justifiably concerned that Machar is using cantonment – a process the 2018 peace deal lays out for assembling and registering his forces – to amass fighters. Bolstering rebels' ranks jeopardises the peace process, because Machar could draw on more forces if the ceasefire collapses and because Kiir's camp may refuse to integrate such a large number of opposition loyalists into the military. For their part, Machar and his allies fear that Kiir will renege on pledges to bring in their forces.

Work toward an agreement on the army should not sit still even if international mediators are focusing primarily on states and borders. Machar will need to make compromises – involving a more realistic timeline, rigorous screening of his forces to reduce the number of new recruits and a reasonable ceiling for the number he can bring into the army – and he is unlikely to do so until the states and boundaries questions are resolved. At the same time, Kiir needs to show that he is committed to integrating opposition contingents. Important first steps would be releasing funds for army unification and making progress on creating new joint units.

Settling the issue of states could also facilitate resolving the question of Machar's personal safety in the capital. Negotiations over that issue will likely only commence in earnest once Machar believes he has the go-ahead to return to Juba from his coalition, which requires a deal on states. That said, some preparatory steps could help. The UN Security Council could, for example, consider mandating the UN Mission in South Sudan or request assistance from

regional states to offer Machar third-party protection. This would prevent him from using his safety as the rationale for returning with a large opposition contingent, as he did in 2016; fighting subsequently erupted in Juba between his and Kiir's fighters. Kiir has reportedly indicated that he would accept third-party protection, presumably since it would allow him to maintain military hegemony in the capital. African and Western diplomats will likely need to pressure Machar to do so, though he is unlikely to consider such an offer until he is ready to form a unity government and once his own negotiations with Kiir over the issue reach an impasse.

THE COSTS OF FAILING TO RESOLVE KEY DISAGREEMENTS ARE RISING

The costs of failing to resolve key disagreements are rising. The ceasefire is unlikely to indefinitely survive without forward momentum and if South Sudanese on all sides lose hope in the peace deal. Moreover, despite the benefits that the ceasefire has brought much of the country, conflict still rages in parts of the Central Equatoria and Western Equatoria regions between the government and rebel leader Thomas Cirillo, who is not a signatory to the peace agreement. Consolidating the 2018 peace deal's gains would allow international actors to focus on pressuring Kiir and Cirillo to negotiate an Equatorias ceasefire.

An accord between Kiir and Machar – first on states and then on security arrangements – will require concerted diplomacy. That Uganda's President Museveni and Sudan's Burhan brought Kiir and Machar together for the 7 November meeting is encouraging albeit overdue: it was the first such high-level mediation this year even as the peace deal stalled. This track must be sustained. These leaders should schedule another high-level meeting by early January, the midway point set for reviewing progress; that meeting should focus on brokering a way forward on the configuration of states so as to break the impasse. Mediators, working with South Sudanese civil society delegates to the peace process, should begin drafting compromise plans to put before the two leaders to get talks started.

REGIONAL STATES SHOULD SET ASIDE THEIR REMAINING DIVISIONS AND PRESSURE THE SOUTH SUDANESE PARTIES TO FIND COMMON GROUND

If this fails, others need to step up. The Intergovernmental Authority on Development (IGAD) should call a wider heads-of-state summit to resolve the issue. The sub-regional bloc itself has been divided over several issues, including its leadership succession, quarrels over which have repeatedly postponed a summit. Now that Sudan has assumed the chair from Ethiopia, these disagreements are over. Regional states should set aside their remaining divisions and pressure the South Sudanese parties to find common ground. For their part, the so-called C5 group of African nations, which is

chaired by South Africa, also comprises Algeria, Chad, Nigeria and Rwanda, and was mandated by the African Union to support IGAD's efforts, should press IGAD members to convene a summit and Kiir and Machar to reach an agreement on states and boundaries. Donors led by the U.S. and the EU should do the same.

Both Kiir and Machar face dangers in continuing to stall in forming a unity government, even after this second, 100-day reprieve. The pressure on Machar's cash-poor coalition will only mount if he remains outside Juba as Kiir's regime rakes in oil revenue. The longer the deadlock persists, the likelier more defections and a split in Machar's rebel forces. Kiir, meanwhile, will face renewed isolation if war breaks out. Indeed, officials from the U.S., South Sudan's largest donor and historical partner, are losing patience with him and Machar and say they are inclined to re-evaluate relations and impose sanctions on key individuals in both camps.

**BOTH MEN MAY BE NEARING THEIR
LAST CHANCE TO MAKE PEACE
TOGETHER IN THE COUNTRY THEY
HELPED BIRTH**

To bolster mediation efforts, Washington could respond to calls from Congress to nominate a special envoy to South Sudan senior enough to conduct high-level shuttle diplomacy in the region and augment the efforts of U.S. allies in the so-called Troika, the UK and Norway, which already have their own envoys. The African Union Peace and Security Council could also outline to Kiir and Machar that they would face punitive measures, including targeted sanctions, if they fail to reach an agreement. The Council threatened to move toward sanctions last year; the parties signed the peace deal soon thereafter.

Both men may be nearing their last chance to make peace together in the country they helped birth. Kiir, as the stronger party, is well able to absorb the costs of peace; his close advisers should encourage him to do so. Machar's allies should press him, too, to make this peace deal work, since he may not get another shot at helping lead the country. There is a path forward, should they choose to take it.

FOOTNOTES

- 2. International Crisis Group, "Déjà Vu: Preventing Another Collapse in South Sudan" in Crisis Group Africa Briefing N°147 (Juba/Nairobi/Brussels: International Crisis Group. Accessible from <https://www.crisisgroup.org/africa/horn-africa/south-sudan/b147-deja-vu-preventing-another-collapse-south-sudan>, 2019).
- 3. "Salvaging South Sudan's Fragile Peace Deal" in Africa Report N°270 (Brussels, Belgium: International Crisis Group. Accessible from <https://www.crisisgroup.org/africa/horn-africa/south-sudan/270-salvaging-south-sudans-fragile-peace-deal>, 2019).



About the Author

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organization, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers.

Crisis Group also publishes CrisisWatch, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 70 situations of conflict or potential conflict around the world. Crisis Group's reports are distributed widely by email and made available simultaneously on its website, www.crisisgroup.org.

Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

South Sudan's Revitalised Transitional Government of National Unity: Which Way Forward?

Sam Angulo Onapa, Ph.D. candidate

INTRODUCTION

For six years and still counting, the search for sustainable solutions to the conflict in South Sudan has been going on after power struggles in the Sudan People's Liberation Movement (SPLM) led to the outbreak of fighting on December 15, 2013, and ultimately the civil war.¹ In August 2015, the Agreement for the Resolution of the Conflict in South Sudan (ARCSS) was signed, bringing a glimmer of hope for peace in the world's youngest nation.² However, the conclusion of ARCSS was shrouded in controversies as the parties claimed that the agreement was imposed upon them by East African regional Intergovernmental Authority on Development (IGAD) and Troika consisting of the United States (US), United Kingdom (UK) and Norway.³ This claim cast scepticisms on the viability of the power-sharing agreement, and one year into its implementation the deal collapsed after fresh fighting broke out in July 2016.⁴ In December 2017, IGAD reinvigorated the peace process in an expanded High-Level Revitalization Forum (HLRF), with the hope of resuscitating ARCSS.⁵

After a series of negotiations marked by ceasefire violations and intransigent positions on issues of governance and security, as was the case with the ARCSS negotiations, the parties finally signed the Revitalised ARCSS (R-ARCSS) in September 2018.⁶ More than a year has elapsed since the signing of R-ARCSS, and the parties are yet to form the much anticipated Revitalised Transitional Government of National Unity (R-TGoNU) that was initially slated for May 2019 but was extended to November 2019.⁷ The November 19, 2019, extension date was again unmet, prompting the parties to agree on another 100-day extension.⁸ Several reasons have been advanced for the delays in the formation of the R-TGoNU, key among them being the formation of a unified force and the matter of internal boundaries.⁹ The conclusion of R-ARCSS notwithstanding, the above pattern raises questions as to whether the agreement will not be another process in futility.

FOOTNOTES

1. de Waal, "The Price of South Sudan's Independence," 195.
2. Temin, "From Independence to Civil War," 12.
3. Africa Research Bulletin: Political, Social and Cultural Series, "SOUTH SUDAN," 21120.
4. Vertin, "A Poisoned Well: Lessons in Mediation from South Sudan's Troubled Peace Process," 14.
5. Adeba and Prendergast, "The African Union's and IGAD's Contribution to South Sudan's War," 4.
6. International Crisis Group, "Salvaging South Sudan's Fragile Peace Deal - Africa Report No. 270," 3-4.
7. Awolich, "South Sudan Peace Process," 4.
8. Intergovernmental Authority on Development, "Parties to the South Sudan Peace Agreement Meet in Addis Ababa." Check the type size here! And, this doesn't look like a full footnote/attribution.
9. International Crisis Group, "Salvaging South Sudan's Fragile Peace Deal - Africa Report No. 270," 4.

"The way forward, therefore, is to institute a trust-building process at impersonal and interpersonal levels, with the hope of addressing the estrangement among the parties to instil trust for a sustainable power-sharing government and the implementation of R-ARCSS."

CONTEXTUAL BACKGROUND

It is quite evident that the outbreak of the armed violence in December 2013 was a culmination of power struggles among the SPLM leadership, which had been brewing for a while and began to manifest during the preparation phase of the upcoming elections.¹⁰ Throughout the process, the leadership displayed divisive positions, which became apparent when Riek Machar, Pagan Amum and Rebecca Nyandeng expressed interest to compete for the SPLM party chair that would hand the winner the presidential candidacy for the party.¹¹ A similar occurrence such divisiveness could have had was witnessed during the July 2008 National Convention where Riek Machar and Pagan Amum featured prominently and, according to Hon. Atem Garang de Kuek (personal communication, March 18, 2018), that was a postponement to 2013. As a result, the SPLM was divided into three factions: the SPLM In Government (IG), In Opposition (IO) and Former Detainees (FDs), all of whom are signatories to the defunct ARCSS and the current R-ARCSS. This trend of political disputes points to underlying issues in the fractured relationships among SPLM party members that exhibited deep distrust during political processes, including mediation and implementation of agreements. Various recent studies point to legacies of conflicts, particularly the 1983 and 1991 armed conflicts within the SPLM, as a major cause of the protraction of the conflict.¹²

In light of that background, this article discusses the eligibility of erstwhile SPLM leaders, especially the SPLM-IG lead by President Salva Kiir and Riek Machar's SPLM-IO, to successfully form a unity government in accordance to the R-ARCSS provisions.

CONFLICT CONCEPTUAL ISSUES

Conflicts are dynamic and evolve in different stages, calling for varying and sequential interventions for effective outcomes.¹³ In the case of armed conflict, the costs in terms of human casualties, social and economic resources can be astronomical, requiring immediate interventions to contain the escalation and the related costs.¹⁴ Conflict management, therefore, forms the first step in the de-escalation of violence in which ceasefire agreements are critical in paving the way for political processes.¹⁵ The pre-ARCSS and pre-R-ARCSS

Cessation of Hostilities Agreements (CoHA) of January 2014 and December 2017 were such conflict-management approaches that were necessary to stop the rampant armed violence against the civilian population in South Sudan. Although these ceasefire agreements set a path for the commencement of political mediation processes, several violations were encountered leading to further humanitarian catastrophes and raising questions on the commitment of the parties to a peaceful settlement of the conflict. Therefore, attempts to control the destructive aspects of the conflict, while ignoring the behavioural attitudes that drive the conflict, prove to be the major deficiency in conflict-management strategies, which may lead to a mutation of the conflict and circumvention of the imposed strategies, further escalating the conflict.¹⁶

Since conflict management is a contingency measure aimed at minimising the destructive aspects of conflict, Founder and one-time director of the Peace Research Institute Oslo, Johan Galtung suggests that conflict resolution is the follow-up phase which focuses on the removal of the conflict condition and is achievable through complete agreements or compromise of the pertaining issues, termination of one of the conflict parties, or suppression of one of the parties.¹⁷ Bercovitch introduces problem-solving as another aspect of conflict resolution in which third parties voluntarily mediate between the parties.¹⁸ Reframing the conflict for mutual understanding towards cooperative approaches underscores the success of conflict resolution techniques.¹⁹ The ultimate aim of conflict resolution is for the parties to reach an amicable agreement that addresses their incompatibilities, promotes coexistence and ends violent aggression against the other.²⁰ As earlier stated, the South Sudanese parties succeeded in signing the ARCSS, however, the intended end of violent attacks was not achieved. Two years later, R-ARCSS has followed with the same expectations, but the delays in forming the TGoNU leaves lingering questions whether violent armed aggression will end any time soon.

From conflict management to conflict resolution, it seems the stakeholders in the conflict in South Sudan have done everything theoretically acceptable as a means of conflict intervention, and yet sustainable peace appears to be elusive. According to Doucet, agreements are opportunities for the

conflict parties to address the structural consequences of the aftermath of the conflict on the parties in the process of conflict transformation.²¹ Conflict transformation transcends the values of reframing positions and cooperative approaches in conflict resolution to transforming negative relationships among the parties that underlie and promote violent conflict.²² Conflict transformation underscores positive and equitable relations and an increase in justice from a restorative standpoint.²³ A review of both ARCSS and R-ARCSS reveals that there is no post-conflict provision to deal with conflict legacies among the SPLM parties. Nevertheless, the same parties are expected to harmoniously form a unity government despite the estranged status from legacies of conflict. The inability of the two main protagonists to cooperatively work together in their current estranged status is a known fact. The U.S. in 2015 asked them to step aside and even isolated Riek Machar in South Africa after the collapse of ARCSS, with the hope of making peace progress without him.²⁴ These facts signify the deep distrust that exists between the parties.²⁵ Subsequently, a factor which has been equally acknowledged by various researchers as a missing component to the ARCSS and R-ARCSS is the lack of trust-building among the conflict parties.²⁶ Ironically, the international and regional partners are pushing the conflict parties to set up the unity government, despite the numerous current delays citing security concerns as an indicator of unresolved distrust among the parties.

ESTRANGED POLITICAL RELATIONSHIPS

As earlier stated, legacies of conflicts have been cited by previous studies as a cause to the continuous power struggles among the SPLM leadership, resulting in armed conflicts that affect the entire population. The origins of these conflicts are traceable to the 1983 disputes during the formation of the SPLM and to 1991 during the Riek Machar attempted coup, both of which bear similarities of political leadership and ideological disputes.²⁷ Consequently, the political relationships between the parties were fractured, causing negative emotions characterised by anger, bitterness and distrust with the potential igniting violent conflict in the course of political engagements.²⁸ Addressing these emotional attitudes to restore trust becomes a basis for the successful implementation of peace agreements and future political engagements.²⁹ Roy J. Lewicki, a leading scholar in the study of negotiation and conflict management processes, argues that destructive conflicts are stirred by negative emotions in estranged relationships that are devoid of trust, and metaphorically states that trust is “the glue that holds relationships together.”³⁰ These relationships fall in two categories, at an interpersonal level between individuals or an impersonal level where institutions are the basis of relations between the individuals.³¹

TRUST CONCEPTS AND CATEGORIES

Trust involves reliance on another with the confident

expectation that the other will deliver according to expectations.³² According to business management and behavior experts Debra L. Shapiro, Blaire H. Sheppard and Lisa Cheraskin, four categories of trust in relationships.³³ Firstly, Deterrence-Based Trust (DBT) evokes punitive measures as a deterrent for trust violations; and secondly, Knowledge-Based Trust (KBT) helps the parties predict the behaviour of others. Thirdly, Identification-Based Trust (IBT) leads the parties to internalise and empathise with the other interests. In addition to DBT, Calculus-Based Trust (CBT) provides not only calculated deterrent measures but also motivational rewards for the parties who keep trust.³⁴ Whereas DBT and CBT fall under the ambit of impersonal trust, KBT resonates more with interpersonal relationships. IBT, on the other hand, cuts across both impersonal and interpersonal relationships; the value of identifying and empathising with the interest of the other raises its trust bar beyond the different categories of trust.

The category of trust expected between the SPLM leadership is first and foremost an impersonal one, meaning achieving trust between members is a function of the values, rules and norms of political institutions necessary to regulate their relationships.³⁵ In the current situation, the R-ARCSS is the only institutional framework available for regulating relationships among the conflict parties. However, is R-ARCSS capable of offering either DBT or CBT as an institutional trust tool necessary for regulating positive relationships among the signatories to the agreement? Judging from the postponements, especially advocated by the SPLM-IO, it seems clear that R-ARCSS does not inspire the requisite trust in its current form to form a sustainable power-sharing unity government. KBT further reinforces this position at an interpersonal level; the parties have background knowledge of past trust violations, starting from the 1983 Anyanya II and Garang group SPLM formation conflict that has not yet been resolved.

TRUST-BUILDING IS NECESSARY

The collapse of ARCSS in July 2016 demonstrated its inadequacy to instil DTB and in general terms the lack of capacity to inspire trust among the parties. The failure was mainly attributed to the security arrangements, which, as previously mentioned, is one of the significant reasons the implementation of R-ARCSS has stagnated. This aspect is compounded by the KBT arising from the unresolved conflict legacies, which renders trust-building a necessity. This point is critical because one day before the outbreak of fighting on December 15, 2013, President Salva Kiir was categorical in his speech in the National Liberation Council (NLC) that he did want a repeat of the 1991 coup which escalated to violent attacks on civilian populations.³⁶ Acknowledgment of the past traumatic experiences in a reconciliation process is the basis of trust-building as a part of conflict transformation.³⁷

This aspect of trust-building solidifies KBT trust at an interpersonal level among the parties. Secondly, the enforcement mechanisms for R-ARCSS, being the only

basis of political relationships among the parties, require a review. For example, under the security arrangements, the Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM) should have the capacity to cause compliance to the security arrangements failure, which the violating party is sanctioned as a way of instilling DBT.³⁸ Where CTSAMVM cannot enforce violations in the security arrangements, DBT is lost. At the impersonal level, trust-building may commence by auditing the status of the CTSAMVM in implementing security arrangements and enforcing violations of the same, which is critical in instilling DBT. Identified failures of CTSAMVM need to be addressed in a manner that demonstrates amendments to deterrence shortfalls to ensure future enforcement are effective in deterring violations of the agreement.³⁹ It is essential to report the violations, but what recourse has CTSAMVM got to offer as deterrence measures for future violations? If the security arrangements fail to address these deterrence concerns, there is a likelihood that the parties may delay the formation of the unity government or, if forced into it, the agreement stands the risk of another collapse.

FOOTNOTES

10. Johnson, "The Political Crisis in South Sudan," 170.
11. Johnson, 169. Check typesize
12. Young, "A Fractious Rebellion inside the SPLM-IO," 57; Rolandsen, "Another Civil War in South Sudan," 171; Human Rights Watch, *Soldiers Assume We Are Rebels*, 18; Vertin, "A Poisoned Well: Lessons in Mediation from South Sudan's Troubled Peace Process," 2, 8.
13. Ramsbotham, Woodhouse, and Miall, *Contemporary Conflict Resolution*, 12–14.
14. Reyhler and Paffenholz, *Peacebuilding*, 3–4.
15. Galtung, "Institutionalised Conflict Resolution," 350.
16. Deutsch, "Subjective Features of Conflict Resolution: Psychological, Social and Cultural Influences," 47.
17. "Institutionalised Conflict Resolution," 351.
18. "Conflict and Conflict Management in Organizations," 109–10.
19. Deutsch, "Cooperation and Competition," 34–36.
20. Wallensteen, *Understanding Conflict Resolution*, 8.
21. "Conflict Transformation," 186.
22. Miall, "Conflict Transformation," 6.
23. Lederach, *The Little Book of Conflict Transformation*, 14; Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*, 1.
24. International Crisis Group, "Salvaging South Sudan's Fragile Peace Deal - Africa Report No. 270," 1–2.
25. Onapa, "South Sudan Power-Sharing Agreement R-ARCSS," 6–7.
26. Rolandsen, "Another Civil War in South Sudan," 164; Adeba and Prendergast, "The African Union's and IGAD's Contribution to South Sudan's War," 3; Blackings, "Why Peace Fails: The Case of South Sudan's Agreement on the Resolution of the Conflict in South Sudan," 23; Johnson, *South Sudan*, 153.
27. Arnold, "The South Sudan Defence Force," 490–91.
28. Kaufman, "Escaping the Symbolic Politics Trap," 201–2.
29. Onapa, "South Sudan Power-Sharing Agreement R-ARCSS," 7.

30. "Trust, Trust Development, and Trust Repair," 92.
31. Onapa, "South Sudan Power-Sharing Agreement R-ARCSS," 3.
32. Rousseau et al., "Not so Different After All," 394.
33. "Business on a Handshake," 366–72.
34. Rousseau et al., "Not so Different After All," 398–89.
35. Barkin, "Realist Constructivism," 333.
36. Onapa, "South Sudan Power-Sharing Agreement R-ARCSS," 8.
37. Berghof Foundation, *Berghof Glossary on Conflict Transformation*, 36–37.
38. Hauenstein, Joshi, and Quinn, "Report of the Peace Accords Matrix Project on the Implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) - Observation Period: September 2018 – March 2019," 13.
39. Awolich, "South Sudan Peace Process," 1.

WAY FORWARD

The revised deadline for the formation of the R-TGoNU which was slated for November 19, 2019, was once again extended by 100 days. The reasons for the extensions focussed mainly on the security arrangements where Riek Machar cited the failure to achieve a unified force as provided for in R-ARCSS, and the issue of the number of states. Regardless of the delays, what does seem clear is the lack of trust among the parties. It is a matter of concern in various quarters, including the mediation partners and researchers on the conflict in South Sudan. Ironically, trust-building that should be the answer to this problem is mentioned, but without any commitment to make it happen.

So far, conflict management and resolution processes have sequentially been applied to end the civil war that has been raging for the last six years. However, there is no movement towards conflict transformation that would be the next step in addressing the structural aspects of the conflict arising from conflict legacies that fractured the relationships in the SPLM. Nevertheless, efforts to implement the R-ARCSS power-sharing agreement have not relented despite reluctance from the SPLM-IO based on security concerns. The agreement is a reasonable basis for the parties to commence a trust-building process. However, left in its current form, the unresolved underlying tensions among the parties, a condition that led to the outbreak of war in the first place, may render progress on the outstanding provisions of R-ARCSS unattainable. Suffice to say, the underlying negative emotions among the erstwhile SPLM leaders persist, and therefore the parties are emotionally unprepared to form and run a power-sharing government successfully. The way forward, therefore, is to institute a trust-building process at impersonal and interpersonal levels, with the hope of addressing the estrangement among the parties to instil trust for a sustainable power-sharing government and the implementation of R-ARCSS.



About the Author

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Economic integration as lever for peace and R-ARCSS implementation: EAC membership and WTO accession¹

By Dirk Hansohm, Ph.D.


INTRODUCTION

Peace-building efforts, including the R-ARCSS, have not been able to bring lasting peace to South Sudan. The country remains stuck in a conflict trap. It is unlikely to change this situation without addressing underlying structural factors, notably economic factors, and without involving and empowering other actors. International engagement of South Sudan – that has been and still is happening through multiple channels through its EAC membership and WTO accession negotiations – is a promising way to contribute to peacemaking and as a basis for R-ARCSS implementation. Interaction with regional and international actors brings higher commitment.

The process involves and empowers gradually new actors (producers and civil servants) and results in changes of the institutional structure of South Sudan.

FOOTNOTES

1. The author has been in South Sudan in 2019 in order to draft a policy paper on “Trade for Peace and Resilience” for the Ministry of Trade, Industry and EAC Affairs, financed by UNDP. This article is based on this work. The Policy Paper is to be published by UNDP.



"International engagement of South Sudan – that has been and still is happening through multiple channels through its EAC membership and WTO accession negotiations – is a promising way to contribute to peace making and as a basis for R-ARCSS implementation."

CONTEXTUAL BACKGROUND

South Sudan has been plagued by civil conflict before a functioning state has been established. Efforts to bring peace, including the present R-ARCSS, have so far failed and the future perspectives do not look promising. The country is in a conflict trap and is not likely to escape from it without addressing the deeper structural roots. Prominent among these are economic factors such as oil dependence, agricultural underdevelopment, deep geographical inequalities, and geographical isolation. This article argues that addressing these will be a key to achieve a sustainable R-ARCSS, sustainable peace and welfare.

There are two specific areas where South Sudan is already engaged. Nevertheless, they are not widely known and discussed, and their importance for peace building is hardly appreciated. These two are the membership in the East African Community (EAC) and the ongoing negotiations about accession to the World Trade Organisation (WTO). In contrast to the peace negotiations, these two fields are not antagonistic, where one side's interest stands against the other's, but a win-win situation where all parties are more likely to win.

In addition, these negotiations are of a highly technical nature and are guided by existing rules and international partners. As importantly, in the process of national implementation, new actors – producers – will be strengthened and incomes will be more widely shared. In contrast to the peace negotiations that are widely about sharing power, the EAC and WTO processes are more about laying the foundations for producing more wealth.

Although R-ARCSS has also, like previous peace agreements (including the CPA), stipulations that would lead to structural changes – like strengthening the rule of law and other institutions – there have been and are now no credible ways to ensure their implementation.

The Republic of South Sudan is only one of the latest examples of fragile countries that fell back into conflict. In the past 30 years the world has become much less poor everywhere except in fragile countries. Fragile and conflict-affected countries are not only home to an increasing share of the

world's poor, these countries are also at a much greater risk of relapsing into conflict from peace than other countries.

Openness to trade is a vital condition for sustainable growth. It is all the more important for small and remote economies, such as South Sudan, that are necessarily highly import-dependent and need to export in order to earn resources to pay for imports. Shared growth is vital for conflict and post-conflict countries to sustainably overcome civil conflict and attain peace.

There are economic roots of conflicts that have to be addressed to build sustainable peace. Solutions also need economic elements for success. However, this is not well-appreciated. Where peace agreements do not include economic considerations, they are in danger to break down sooner or later. Sustainable peace can only be achieved once the basis for welfare creation is laid.

Although R-ARCSS has economic elements (as CPA did), it does not seem to be based on a thorough understanding on the economic situation of the country. Before discussing the EAC and WTO processes – their contents, status and implications – important economic characteristics of the country are presented. This article argues that these have to be addressed, and the EAC and WTO processes are ways to do so. As they are driven mainly by existing rules and external parties, the chances for success are much higher than those of the R-ARCSS efforts that are crippled by lack of trust.

SOUTH SUDAN'S ECONOMIC CHARACTERISTICS

South Sudan has a young, mainly rural population with a low population density, but a high population growth rate. Education and health levels are low, while rising. It is expected that the population will be double its present number in 30 years. Potentially, the youthfulness of the population will be an advantage – it could provide a demographic dividend. However, for this to materialise, the population would need to be healthy and educated – two conditions that will first need to be built.

South Sudan is endowed with rich natural and mineral

resources. In addition to the oil, these resources include agriculture, forestry and fishery. However, these are so far mainly used for subsistence and only marginally marketed and hardly exported. The 'oil curse' has prevented the development of agriculture. South Sudan is disadvantaged by its land-locked geographical position: The country does not have direct access to the sea, but is dependent on its neighbouring countries. In addition, it has policy-induced high tariffs and various non-tariff barriers. Furthermore, since independence, more borders within the country through the creation of new states have been added that also act as barriers to trade. The transport links to the world market and within the country are also rudimentary. Since independence, the situation has not improved. This is a major hindrance and cost for trade – both domestic and international.

The analysts of economic development agree that the institutional characteristics are the most important basis for sustainable development. Since peace was achieved with the Comprehensive Peace Agreement (CPA) of 2006, the key institutions of a modern state – parliament, judiciary, national auditor and others – have been established. However, they are still in an infancy stage and crippled by frequent leadership and institutional changes, in addition by often low qualifications and insufficient incentives. This state is indicated by the very low and in many cases further deteriorating indicators on the quality of governance and the business climate.

In the virtual absence of actual state building before 2016, this was not surprising. However, during 5 years of peace during the CPA period and 2 more years of peace, high funding was made available for state building and economic reconstruction, in addition to the substantial oil income. The fact that – even before the civil conflict broke out – the state of institutions remained so low is dramatic.

The outbreak of armed civil conflict in 2013 and again in 2016 has led to a deterioration of an already critical economic situation, and plunged the country in a deep economic crisis with a contraction of output, declining incomes, high inflation, loss of value of the national currency, depletion of currency reserves and increasing fiscal gaps.

However, to properly analyse the record of the country's economic development, it is important to take a longer time perspective and consider the entire perspective since independence in 2011. Asha Abdel-Rahim, a respected voice on the economics of conflicts and the economy of South Sudan in general, describes the record as a 'false start' and concludes her analysis as follows:

'In sum, despite some progress in few areas, the general orientation of economic progress during the first years of independence has been negative and problematic:

- Insufficient and declining growth (rising growth would be

necessary as a basis for peaceful development);

- No structural change to non-oil sectors as agriculture is where most work;
- Concentration of attention on Juba to the neglect of rural areas;
- Rising public sector, often in bloated bureaucracies, instead of a developing private sector with productive employment that adds welfare, rather than subtracting from it;
- Declining governance and public sector efficiency;
- Declining business conditions;
- No attention to social policies (except by donors);
- Rising public deficits and rising debt, instead of saving up oil resources for investing at a time of sound public management capabilities;
- Concentration of resources on the military, while insecurity increased;
- Multitude of institutions, sometimes with overlapping authority, who are, however, not functioning because of lack of resources and lack of authority.'

EAC MEMBERSHIP

Since 2016, South Sudan is a member of the EAC, together with Uganda, Kenya, Tanzania, Burundi and Rwanda. Uganda and Kenya are also its most important trade partners and sources of qualified labour. South Sudan is currently in a transition period to adopt the EAC regulation and policies. Once it has fully adopted these, it will be part of a growing and deepening common market. The obligations to EAC will assist to deepen the role of law, be a driver for reform, improve the business climate and enhance investment confidence.

The EAC is the most advanced and most promising regional integration body in Africa. It is implementing a customs union and a common market, including capital market, services and labour market integration. A monetary union is envisaged.

The EAC membership is the largest reform process government has so far committed to. By signing the Treaty of Accession to the EAC, government made a legally binding commitment to implement business-friendly policies, improve governance and external accountability, and undertake an extensive regional integration agenda. The group of the EAC member states, with its numerous committees and regular meetings of senior officials, ministers and heads of states, brings forward reform and integration.

South Sudan is a full member of the EAC and its various organs, such as the East African Court of Justice and the

East African Legislative Assembly. The country is also part of programmes, such as EAC competition or financial-inclusion laws; harmonization of higher education credit systems and curricula; and devising common negotiations strategies for key trade negotiations, including of goods and services, freedom of movement of labour, capital and services.

In order to fully benefit, South Sudan needs not only to fully and competently participate in the organs and programmes. The business community and the wider civil society need also to understand and appreciate the benefits, risks and implications of EAC membership. South Sudan has been given a three-year transition period in order to implement the required legal, regulatory and institutional changes. While the period ended in October 2019, some flexibility is provided as the available institutional and personnel capacity does not match the required pace and speed.

The region has ambitious plans to deepen integration and raise productivity and competitiveness. Depending on the continuous support by the EAC heads of state, this plan will reach its ambition sooner or later. The environment of a history of cooperation and integration of the three big core countries (Kenya, Tanzania, Uganda), the still-small number of participants (five) and the strong role of the business community with its regional links, in particular in Kenya, provide a strong impetus for bringing integration forward.

There are direct and indirect benefits of the EAC membership for South Sudan. It will get easier and cheaper access to its imports. This is vital, as the country produces only few of the goods and services it consumes. But over a longer term, once South Sudan develops its agricultural, animal resources, fishery and forestry products to an exportable quality, the neighbouring countries will be a huge market. This is in particular true for food products, as the region is regularly affected by drought and food shortages. Moreover, the EAC is important as a transit route for South Sudan, as nearly all imports and non-oil exports transit through that region.

Government and the business community will gain from the increasing interaction with the region. Integration and cooperation of economic, political and social policies and institutions will help South Sudan to considerably lift the quality of its policy making and implementation processes. It will also provide a basis for foreign investment. The integration process will help and push the domestic process of economic policy reform and notably contribute to wider strengthening of transparent democratic and economic governance – major policy objectives of government.

Regional integration has numerous direct and indirect economic potentials. Market size is decisive for economic success. A larger regional market provides lower prices and higher efficiencies through competition. Trade with neighbouring countries under trade agreements is associated with a lower risk of conflict.

Domestic policy reform as a result of regional integration gains credibility, as it is locked in (i.e., it cannot be easily changed by national government). This is important in a context of weak and fragile states such as South Sudan with low accountability and high risks of policy reversal. For the same reasons, regional integration will strengthen the rule of law and the quality of governance. For small countries regional integration also raises their voice on the international policy level. Regional integration also has a track record in the fields of security, stability and peace making. It also contributes to the building of trust. Trust is vital not only for building peace, but also for economic interactions and development. The level of trust is currently very low.

The EAC in particular has a strong record of effective regional integration with its customs union and common market – it is ahead of other bodies in the rest of Africa. It also has a strong reform momentum, is supported by broad technical assistance and provides learning effects. The region provides a growing market with high population growth and rising incomes. Recurring droughts in East Africa provide in particular a big potential market for South Sudan's food production.

South Sudan is a full member of the EAC, but still in a three-year period for implementation of the respective laws and regulations. The EAC membership entails the need for a comprehensive economic and regulatory reform. Apart from that, the EAC is also itself in a continuing process of deepening integration in its move towards a customs union and common market with integration of the goods, services, capital and labour markets. The earlier South Sudan enters actively into this process, the better for the interests of the country.

It is important that South Sudan's EAC integration policy makes sure that beyond the general advantages of membership, its productive economy gains as well. There are fears that EAC membership may not be advantageous and/or be premature for the country because it is far less developed than the other EAC members. However, South Sudan and the other EAC member states are complementary economies, rather than competing ones. South Sudan imports largely what it cannot produce or cannot produce at this price and quality. Once it produces food and other agricultural products in an increasingly competitive manner, they will increasingly successfully compete with or even replace imports.

To raise the price of imports further by charging tariffs or setting other obstacles would be costs to be borne by domestic consumers and producers (for production goods and inputs). This would be anti-developmental. Furthermore, the EAC agreement provides sufficient policy space for the member states by provisions for restrictions and delayed market opening. However, delayed entry or protection at this stage would be costly. Rather, it will be important to continue

negotiating the terms of common market implementation in a well-informed manner. In the longer term, the perspective of regional integration is in any case an income equalisation in the region.

ACCESSION TO THE WTO

South Sudan has also started the accession process to the World Trade Organisation (WTO) in 2018. This will be a further step to integration into the global trading system and it will further strengthen the rule of law and regulations. The latter is part and parcel of the R-ARCSS. However, no progress has been made and the revised agreement does not provide different, promising provisions.

The WTO is observing the state of governance and governance reform. The Technical Working Group (TWG), established to guide the accession process, had its first session in March 2019 and government already presented its Memorandum on the country's trade policy regime, indicating an astonishing pace and commitment. More than 100 questions have been raised by TWG members on the memo, and it will take considerable effort to respond satisfactorily and to implement necessary changes. Like the EAC membership, the accession negotiations and membership will bring major benefits though learning effects, a push to the domestic reform process and the improvement of overall governance.

Accession to the WTO is an ideal process (besides its result, WTO membership) to accompany the economic reform process that is needed to reach sustainable and broadly-based growth, peace and resilience. The process provides learning processes for the technical participants, political leaders, the business community and civil society. Like the EAC integration, WTO membership will provide lock-in processes for policy reforms. This will increase the opening to international investments that are indispensable for increasing the technological level of agricultural and other economic sectors. Investments need confidence in the future stability and political continuity.

In the centre of WTO accession are two issue areas. First, the laws and regulations of the acceding country need to meet the standards of the WTO. To fulfil this criterion is in the interest of South Sudan. Second, the WTO TWG members are interested to get access to the market of the acceding country. The products that South Sudan produces (i.e., mainly oil) do not compete with those that it imports, they are complementary. With its status as a least developing and post-conflict country, South Sudan can hope for advantageous conditions for safeguards. In the accession process, South Sudan is stepwise building its technical capacity in analysing, developing negotiation positions and negotiating.

CONCLUSION

International engagement of South Sudan that has been and still is happening through multiple channels through its EAC membership and WTO accession negotiations is a promising way to contribute to peace making and as a basis for R-ARCSS implementation. Interaction with regional and international actors brings higher commitment. The process involves and empowers gradually new actors and results in changes of the institutional structure of South Sudan.

FOOTNOTES

2. Abdel Rahim, Asha, 2019, South Sudan's peace agreements. An economic perspective on peacebuilding, in: Zambakari Advisory (Ed.), South Sudan peace agreement and peace making, Spring, Special issue, 75-82.
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