



# THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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## POLICY BRIEF

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### **A Search for Lasting Peace: Ending South Sudan's Devastating Conflict**

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#### **Introduction**

For over two months, the people of South Sudan have been experiencing a renewed and devastating conflict that has inflicted significant suffering upon them. Triggered by an alleged failed coup, the International Crisis Group (ICG) estimates that 10,000 people have been killed and hundreds of thousands made destitute and forced once again into refuge. A search for solutions to end this conflict has started in earnest with peace negotiations in Addis Ababa, Ethiopia, under the auspices of the Intergovernmental Authority on Development (IGAD). Peace negotiations in Addis Ababa are a step in the right direction.

The causes of this conflict are not complicated. At the core, this conflict is a fight over the leadership of the Sudanese People's Liberation Movement (SPLM) party. It has little to do with any grand transformative agenda. Rather it stems from overly ambitious power seeking among the SPLM leaders. Lives, property and social fabrics that have been destroyed will not come back easily. However, South Sudanese can compensate themselves for the loss incurred by taking the opportunity to end this violence immediately and embark on a grand transformation of this society in a way that will bring durable peace and sustainable development to the lives of ordinary South Sudanese.

In this article, the Sudd Institute reviews, analyzes and recommends solutions to end this conflict and to prevent future outbreaks. The brief starts with the review and analysis of common conflict resolution tools for informed application in the peace process. It ends with a summary of recommendations.

#### **What route should the present peace negotiations in Addis Ababa Take?**

For the talks in Addis Ababa to end the current violence and provide durable peace and national harmony, mediators and parties to the conflict should look at a number of peace settlement options and contextualize each to fit into the South Sudanese environment. Following are some possible solutions to the conflict various experts have proposed. Each of these concepts is analyzed and the merits or limitations of each are discussed in an attempt to make informed use in the peace process.

- Broad based inclusion of the South Sudanese populace in the peace process
- Power sharing arrangement
- Constitutional reform
- Accountability, justice, truth and reconciliation and
- Nation building and social transformation

## **Inclusive Peace Process**

Inclusion in a peace process for all the groups affected by a conflict and future governance of a country has become one of the important tools in ending conflicts (Adan E. Suazo, 2013). There are two types of inclusion in the peace process: short and long term (Suazo, 2013). A short-term inclusion in a peace process usually involves warring parties, especially those bearing arms, as it is the case in this violent conflict in South Sudan. Long-term inclusion in the peace process includes the involvement of warring parties and other important society stakeholders in the peace process as well as in the implementation and running of the post-conflict affairs.

The main argument for an inclusive peace process is to prevent potential spoilers from destroying the peace outcomes (Suazo, 2013, Stedman, 1997, Newman and Richmond, 2005). Exclusive peace processes result in “the emergence of leaders and factions who view a particular peace as opposed to their interests and who are willing to use violence to undermine the peace process” (Suazo, 2013). Stedman (1997) defines spoilers as “leaders and parties who believe that peace emerging from negotiations threatens their power, worldview, and interests, and use violence to undermine attempts to achieve it.” South Sudan is an example of how exclusion in the peace process can threaten an outcome of a peace agreement. After the Comprehensive Peace Agreement (CPA) was signed in 2005, several armed groups were excluded in the CPA negotiations, so they threatened to derail the peace agreement unless they were included. The CPA had included a clause, which stated that the other armed groups should either join Khartoum or the SPLA. However, most of the other armed groups did not believe in this clause because they were not part of the peace process. They instead threatened to spoil the CPA. The spoiler threats posed to the CPA by the excluded other armed groups was, in part, solved through the Juba Declaration of January 2006, which allowed many armed militia forces to be integrated into the SPLA. The haste with which these militia groups were integrated created a disjointed army, which directly contributed to the current crisis.

It is very crucial to identify at the onset potential spoilers so that they can be included in a peace process to make it more comprehensive and sustainable (Papagianni, 2008, 2007). A spoiler factor can be avoided in the current peace talks in Addis by including representatives of civil society, political parties, government, rebels, and traditional leaders, youth and women. An inclusive peace process in the South Sudanese sense should embody two important elements: the involvement of all the stakeholders in the current process in Addis Ababa and a sustained engagement with the same much later in the process through community-to-community peace and dialogues as well as through the implementation stage.

If the peace process is left to the SPLM leaders who are fighting over the party’s brand, important broader issues for nation building will most likely be left out. Civil Society, traditional leadership, youth and women bring important perspectives to the process, which can add a great value to the end results and help shape the future of this country. A community-to-community peace and dialogues similar to people-to-people peace conferences, which were held to reconcile the Nuer and Dinka communities in Wunlit and Liliir in 1999 and 2000, respectively, should be given due consideration. The involvement of community elders, women and youth is crucial in the community peace and dialogues. Convening community-to-community dialogues should be included as part of a final agreement in the ongoing peace efforts in Addis Ababa. In short, an inclusive peace processes can allow the stakeholders to contribute to the solution, own the process as well as commit to its implementation.

## **Could Power Sharing Bring an end to this Conflict?**

Power sharing has been proposed as a potential mechanism to resolve the South Sudanese conflict. Power sharing has in the last several decades emerged as one of the common tools for conflict resolution. For example, it has been used in conflict resolution in the Sudan (Comprehensive Peace Agreement, 2005), South Africa (during transition from apartheid era), Kenya (2008), Liberia (2003), Burundi (2001) Democratic Republic of Congo (2003) and Bosnia 1995, among others (Papagianni, 2007). Power sharing is a set of principles applied to represent rival groups in the parliament, executive, judiciary, civil service, financial institutions and armed forces (Papagianni, 2007, Timothy Sisk, 1996). Power sharing may also involve wealth sharing, protection of minority rights, giving autonomous powers to regions, making decisions by consensus and using vetoes on sensitive and controversial issues (Papagianni, 2007).

Proponents of power sharing as a tool for conflict resolution argue that it reduces the risks of one group emerging dominant (Papagianni, 2007). If a political, economic, military and territorial power is shared, “a system of accommodation develops that will reduce insecurities and thus reduce the likelihood of conflict” (Traniello, 2008). In other words, power sharing builds trusts as it provides a guarantee that the rights of rival groups will be protected. Power sharing convinces warring parties to sign an agreement and commit to institutions of state and political process (Papagianni, 2007). In fact, research studies suggest that not only does power sharing expedite the signing of a peace agreement; it also determines the durability of a peace deal (Papagianni, 2007). Empirical studies conducted on the effectiveness of power sharing as a tool for conflict resolution of 38 conflicts resolved peacefully from 1945 to 1998, 15 of which were from Africa, found that the more political, military and territorial power was shared among warring parties, the higher the likelihood of peace endurance (Papagianni, 2007). Pragmatists use power sharing as a tool to save lives as more fighting means more destruction of life and property (Papagianni, 2007).

However, the opponents of power sharing argue that it prevents the evolution of political processes and shuts doors to new entrants to the political arena (Papagianni, 2008). It encourages violence by rewarding those who use violence means to gain political advantage. In fact, research by Tull and Mahler (2005) suggests that power sharing has become an incentive to ambitious leaders who see using violent means as a short cut to gaining political power. They concluded that power sharing has added to the cycle of violence insurgencies especially on the African continent. In essence power sharing does not resolve the root causes of the conflict, especially if the formula focuses on mere giving of positions to an opposition group. This stands clearly as a threat in the context of South Sudan.

Could a power sharing arrangement end the current conflict in South Sudan? Before answering this crucial question, it is important to point out that until July 23, 2013, when Riek Machar was sacked as Vice President, there was informal power sharing arrangement in place. Perhaps it might be useful to underline the fact that the working relationship between President Salva Kiir and his former vice president, Riek Machar, had deteriorated before the latter was fired. Hence, it remains unclear whether a power sharing deal would resolve the current political crisis in the country. However, if it is considered as a possible option, the deal must create ways in which the two principals can work smoothly together. Otherwise, a power sharing deal would be limited in terms of providing a comprehensive resolution to the crisis.

In the event power sharing is considered, there are different models South Sudan may wish to draw upon. Perhaps, a better option for South Sudan based on the current context is a South African model of power sharing whereby the parties can be represented in the institutions of government based on their election strength. The South African model of power sharing was agreed in the 1993 Interim Constitution Pact (Marisa Traniello, 2008). The stipulations in the 1993 Constitution Agreement were made in a manner that could “ease fears and ensure securities that the parties felt necessary to protect their power and interests” (Traniello, 2008). The agreement created the establishment of a Government of National Unity, which would be composed of major political parties based on the elections of 1994, conducted using a proportional representation electoral system. In this case, parties which managed to win at least 5% of the votes cast were to be represented in the 27 member government of national unity. The Proportional representation system provided incentives to hardliners and potential spoilers like the Inkatha Freedom Party to participate in the elections, because they felt they would at least have a say in the government if they participated. The decisions of the government were agreed to be made by consensus without legal constraint. The white minority, represented by the Nationalist Party, were concerned about losing wealth after losing political power. So the agreement ensured private property rights and also addressed land issues in a manner that gave assurance to the white minority. For South Sudan, power sharing based on election results as it was done in South Africa is better because it does not encourage and reward reckless and violent means of seeking power. It will set a good precedence that the power can be gained only through a ballot box while guaranteeing that interests of both parties will be protected in the next government.

There are important factors that made the South African model of power sharing worked, and therefore need to be noted in the South Sudanese context. First, there was an existence of moderate leaders in Nelson Mandela and F.W. De Kerk, with strong following among constituents, who were willing to compromise to save lives and co-exist as one people in one nation. Second, electoral reforms that established proportional representation allayed fears that the black majority would take full control of power. Therefore, any final agreement in Addis, should consider a radical political transformation of the political space. It should give a serious thought to the South African power sharing model and similar models around the world in order to produce a meaningful and more sustainable peace in the country. The deal should incorporate political parties’ reform. The Political Parties Act, 2012 does not do enough in terms of addressing issues that have arisen due to the current crisis. There should be overall national democratic standards to be followed by all the political parties when it comes to internal party election procedures and democratic institutional functions. The Act should be amended to increase financial funding from the national government to support political parties during the campaign.

The agreement should also give a serious thought to proportional representation as the electoral system in the country to ensure that opposition political parties are at least represented. Research studies have shown that a proportional representation system is better than majoritarian voting system in a divided society (Papagianni, 2007). In short, power sharing can be an effective tool to end this conflict if it is designed with a grand transformative agenda to prepare the country for a broad based participation in governance.

### **Constitutional Reform**

Constitutional reform has also emerged in recent past as a tool for conflict resolution (Yash Ghai, 2004, Hallie Ludsin, 2011). Part of the rationale behind this is that “a constitution is an easily identifiable symbol of, and tangible step toward state-building

and, therefore, peace-building” (Ludsin, 2011). It is more of a conflict resolution tool especially when the drafting process is inclusive – involving all stakeholders in the society to put in their views on how the country should be governed. More importantly, the drafting process “offers conflicting parties the opportunity to sit together and hammer out a binding, mutually-acceptable document that responds to each party’s needs” (Ludsin, 2011). Yash Ghai, a constitutional expert known for his role in the Kenyan constitution making process, explains:

“Agreement on national values, even national identity, and new institutions and procedures may not only consolidate peace but also provide for future co-existence and co-operation. Through the entrenchment of the settlement in a fundamental document not susceptible to easy amendment, it can bring an effective closure to the “conflict situation”<sup>1</sup>”

Constitutional reform has been used as a conflict resolution tool in Kenya, the Iraq, and Nepal, among others. The timing and the nature of the constitutional reform process vary greatly. Some countries have used the constitutional making process as part of the negotiation to end the conflict where the agreed constitutional document becomes a peace agreement (Ludsin, 2011). Other countries embark on the constitutional reform after a peace agreement.

The ongoing peace talks in Addis Ababa should include a constitutional reform provision to ensure that the constitutional review process becomes the basis for social and political transformation. A constitution is the bedrock of a society, so it is important that any desired transformation be reflected in the constitution in a way that incorporates people’s thoughts on the transformation itself. The constitutional framework should include mechanisms for making the permanent constitution in a manner that will address all the current and future ills in the South Sudanese society. The constitutional review process, which is already underway, should be evaluated, overhauled or augmented and its composition be reconfigured for the purposes of inclusivity, transparency, acceptability and citizen ownership in order to produce a constitutional document that is subjected to a final approval by citizens through a referendum. This will actually put citizens back at the center of all the political processes and get them to buy into a national transformation agenda.

### **Accountability, Justice and Reconciliation**

After the war, holding perpetrators accountable in order to deliver justice to the victims is a critical next step. Experts call the idea of accountability and justice after war ‘transitional justice.’ The United Nations defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation<sup>2</sup>” (Joanna Crichton, Zoë Scott and Huma Haider, n.d.). Transitional justice is aimed at resolving “the divisions in society caused by the human rights violations; to contribute to the healing process for victims and witnesses; to determine legal accountability; and/or to establish a historical record of the war and to

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<sup>1</sup> See Yash Ghai, Toward Inclusive and Participatory Constitution Making, Presentation at The Constitution Reform Process: Comparative Perspectives Kathmandu (Nagarkot) 2–3 (Aug. 3–5, 2004) (transcript available at <http://www.idea.int/news/upload/Nepal%20-%20workshop%20paper%20-%20Yash%20Ghai.pdf>) (describing constitutions as tools of conflict resolution that can create peace through negotiations and dialogue).

<sup>2</sup> See <http://www.gsdrc.org/go/topic-guides/justice/transitional-justice>.

educate’’ (Crichton, Scott and Haider, n.d.). In South Sudan such critical process was ignored during the interim period.

There are different forms of transitional justice. At the center of debate is the effectiveness of trying to bring peace and justice at the same time. On the one hand, there is an argument that retributive justice negatively exacerbates the situation as perpetrators who are holding arms do not agree during the negotiation to be tried and punished (Crichton, Scott and Haider, n.d.). The International Criminal Court has been cited as a good example of retributive justice tool that seems to encourage perpetrators still at large to refuse peace for fear of being arrested. Joseph Kony, the Leader of the Lord Resistance Movement (LRA) of Uganda, is an obvious example; President Bashir of the Sudan is also one such example.

On the other hand, restorative justice exemplified by the South African Truth and Reconciliation Commission (TRC) gives reparation and rehabilitation to victims and offers amnesty to perpetrators who confess and take responsibility for their crimes. Established by the Promotion of National Unity and Reconciliation Act, number 34 of 1995, the TRC was mandated to (1) investigate the identity, fate and whereabouts of the victims of human rights violations, (2) compensate and rehabilitate the victims, and (3) give amnesty to perpetrators who confessed about offences committed and recommended prosecutions for those who were not granted amnesty (Maepa, 2005).

Despite being lauded as a success by many experts, the TRC had some weaknesses that should be understood and avoided. Notwithstanding acting as an incentive for rivals to accept peace, amnesty encourages impunity and violent insurgencies. Other challenges include difficulty in corroborating information given by victims to differentiate between true victims and non- victims, making financial payment to the victims as the exact amount recommended by the TRC was not received by the victims, and difficulty in getting businesses and organizations that participated in the apartheid to attend the hearings.

The South African situation is similar in context to the South Sudanese in a sense that both societies got divided during many years of violent conflicts that pitted communities against communities and political groups against one another, just to name a few. Both societies were made by the war to lose social capital that holds societies in harmony. It is vital for South Sudanese to forgive each other for the wrongs of the past and chart a way forward. It is in this context that South Sudanese should try the South African transitional justice model in an effort to right the many wrongs committed against one another in this crisis and the past.

The TRC in many ways resembles some elements of South Sudanese traditional justice system such as blood compensation. Blood compensation as a mechanism for resolving murder and or intra- and inter-communal violence is practiced among most Nilotic communities across South Sudan. It may be difficult to apply the concept in the context of a complex large-scale war, but it can be used for a selected number of cases where culprits are known to the victims’ families. Like the TRC model, blood compensation is centered on knowing the identities, fate and whereabouts of the victims and their compensation and forgiveness of the culprits so that communities can live in peace. Accountability and justice in this form usually go a long way in achieving peace and reconciliation unlike the conventional justice system that punishes the culprits. The disadvantage of blood compensation is that it can only be effective if the murderer is known and it applies to a small-scale communal violence or murder and homicide cases.

A better way to borrow from this form of traditional justice system is to address questions of reparation and rehabilitation of victims, and rebuilding of towns and villages destroyed in the final peace agreement. This could be achieved by creating a public rebuilding fund that will go towards helping businesses or individuals whose properties have been destroyed and by rebuilding public infrastructure and facilities in destroyed villages and towns such as Bentiu, Bor and Malakal. While it is important to focus more on reaching a political settlement immediately, the parties must include issues of accountability and transitional justice in the final agreement. Any form of transitional justice should begin with the investigation to establish identities of the victims and culprits and the extent and the nature of crimes committed.

When a political settlement is reached and an interim arrangement is put in place, South Sudanese should embark on national dialogue and reconciliation process. The dialogue and reconciliation should use a two-pronged approach: people-to-people dialogue and inter-political parties dialogue and reconciliation. The current national dialogue and reconciliation process should be renewed and reconstituted to reflect a new spirit. The processes should be deliberative and involves mapping out all the issues and developing a comprehensive framework for addressing the issues identified. The framework should go through a legislative approval process leading to an act of parliament to back the process. South Sudanese should also decide what kind of transitional justice they want through the parliament. This is where the country can choose either the South African TRC model that incorporates some elements of South Sudanese traditional justice system or to go straight for retributive justice. For retributive justice, one option is to institute a hybrid court composed of South Sudanese and international judges as suggested early by some experts, to bring to justice those who have committed atrocities. Alternatively, a multi-ethnic South Sudanese special court that is acceptable to all parties can be instituted to try the war crimes. Just as the TRC model would require prosecution against those who do not confess crimes, the same must apply in the South Sudanese context, which is why the choice of court is important. Many South Sudanese believe that doing justice to those aggrieved and holding culprits accountable can act as deterrence against violence in the future. Notably, any transitional justice process has greater chances of being effective if it has a strong legitimacy, people's ownership, civil society involvement, and if it is informed by empirical analyses, among others (Haider, 2011).

### **Nation Building and Social transformation: Joining the National Identity Circles**

To chart a new direction for the country, any final solution to the current conflict must articulate a vision for building a South Sudanese nation on new basis. Any political solution that does not carry a meaningful social transformation agenda will fail. The structure of South Sudanese society is one inherently set up in a multi-layered circle of identities and loyalties.

These circles of identities have both socioeconomic and political consequences. One of the consequences is the perpetual corruption in public service where people employ relatives or people who speak their language or people belonging to their circles. Another consequence is the ease with which political leaders are able to mobilize people from their circles to blindly support their political ambitions, thus creating an artificial animosity between people belonging to different circles of identities. All this impedes the process of state formation and nation building and threatens to erode an essential social capital vital for peaceful coexistence and economic prosperity.

As part of a nation building process, it will be crucial to establish mechanisms for social interactions such as building of national schools through which young people across all ethnic communities can be educated with the purpose of teaching the values of one nation,

one people. It is also important to make it compulsory for students to learn from primary one to primary 6 six at least three national ethnic languages. Knowing as several of other languages apart from the language of your original identity circle can strengthen the national identity and unity. Most importantly, programs that make South Sudan a safety net for all should be instituted so that our larger circle, the South Sudanese circle, should be attractive more than our ethnic or clan circles.

## **Recommendations**

In summary, this article has explored various ideas on how to resolve the current crisis and recommends the following:

1. **Power Sharing Arrangement:** Should the mediators opt for power sharing arrangement to resolve the current crisis, it is important to ensure that working relationship between the two principals is stipulated to ensure acceptability and sustainability of any peace deal. Particularly, the mediators should seriously consider the South African model of power sharing as an option whereby the parties can be represented in the institutions of government based on the number of seats to be won in future elections to be organized based on the agreement. Notably, power sharing can be an effective tool to end this conflict if it is designed with a grand transformative agenda to prepare the country for a broad based participation in governance.
2. **Constitutional reform:** Since power sharing has a number of limitations as discussed in this paper, the parties should consider a constitutional review process as the basis of the agreement. Constitutional reform has been proven to be an important tool for conflict resolution especially when the process is broad based in terms of participation.
3. **Inclusive peace process:** To ensure that the outcome of the peace process is long lasting, it must be inclusive both in the short-term (during the negotiations) and in the long-term (during the implementation).
4. **National dialogue and reconciliation:** Once a political settlement is reached, South Sudanese must embark on national dialogue and reconciliation process. The processes must be deliberative and should involve mapping out of all the issues, developing a framework for addressing the issues identified and this exercise must go through a legislative approval process leading to an act of parliament to back the process.
5. **Justice and Accountability for war atrocities:** The parties should include independent investigations and transitional justice of war atrocities as part of the peace agreement. Two options of investigations should be considered: one composed of national multi-ethnic members or one composed of national multi-ethnic members and international experts. The country can choose to adopt South African TRC model with incorporation of some elements of South Sudanese traditional justice system. Any of these options should be ratified by the National Legislative Assembly where it can get a broad based legitimacy through an act of parliament.
6. **Nation Building and Social Transformation:** Any agreement must include a provision for nation building through social transformation programs. This

process must seek to transform an individual citizen through education, employment, and provision of opportunities for each citizen to realize his/her potential.

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### About Sudd Institute

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

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