



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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Lawlessness and Its Rule of Law Implications in South Sudan

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The purpose of the law from antiquity has been to preserve and promote people's freedom; for where absents the law, absents the freedom'; for the law ought to be the vivifier and guardian of freedom; for freedom is to be free from unnecessary restraint and violence, which no man can ensure but the law alone; and for the law is to curb violence and governs men.

When effectively enforced, the law ensures peace and order in the society. It does so by curbing violence and shielding individuals from harm and associated wrongful acts. Therefore, without the law, human societies will descend into lawlessness and perish. Though having recently attained sovereignty, the Republic of South Sudan continues to be plagued by, among others, the problem of lawlessness that is deeply embedded in the country's history of violence. This lawlessness is a major insecurity issue that results in loss of lives of innocent people in almost every single day in the country. It is a very serious issue that requires proactive and drastic measures from the Government of South Sudan (GoSS), to bring it under control and ensure safety for the people. This lawlessness does not only impact on the lives of innocent people, but also has serious implications on the development and maintenance of the rule of law in the country. The rule of law does not and cannot develop in an environment where the law is less effective and less respected by the people it purports to govern. Effective development of the rule of law requires moral and legal environment where both the citizens and their political leaders strongly uphold the law as public good and take their legal rights seriously.

This review briefly highlights the issue of lawlessness in South Sudan and its implications for the rule of law, particularly as it relates to recent lawless events in the country. In doing so, the review highlights factors that may be responsible for this lawlessness and proposes how they can be addressed in order to harmonise the situation, therefore allowing a healthy legal and political environment in which the rule of law can effectively materialise. The review also touches on what appears to be a political injustice in the country. This specifically refers to the alleged suppression of media and constitutional freedom of expression in the country. Be it true, this does not reflect well on the government of the country that just broke away because of injustices and oppression.

Lawlessness in South Sudan: A Matter of Real Leadership

According to conventional wisdom, peace and order cannot exist in a society without a legal mechanism that regulates the behaviours of individuals and their activities. With the violence history

¹ F. A. Hayek, *The Constitution of Liberty* (1st ed, 1960), 165.

of mankind being our evidence, this theory of conventional wisdom has been proven. The law therefore developed as a means of peacefully ordering the society by protecting individuals against violence, properties against damage and bringing those who commit wrongful acts to justice. When this system is effective, the society is said to be lawful and safe. Lawlessness, on the other hand, is the antithesis of lawfulness. It is a recipe for anarchy and disorder. This is so because in the absence of effective law, individuals, (except in some communities where particular individuals tend to form a watch dog type of committee called vigilante committee) tend to take matters into their own hands, leading to hostilities and breakdown in the society. However, lawlessness, as it sounds, does not in effect mean the absence of established laws. Laws exist in some forms in every society, including South Sudan. They exist either in a written or customary form. A society is only said to be lawless when there is no government with competent capacity to effectively enforce the law and regulate interactions among members of the society. Therefore, in the absence of competent law enforcement agencies, people tend to feel less morally compelled to obey the established law of a country and instead, resort to coercive means in seeking solutions to their social conflicts and associated problems, rendering the law redundant. This is one of the major causes of lawlessness in all human societies, and especially in South Sudan.

Lawlessness is one of the major issues facing the nascent state of South Sudan and urgently requires draconian measures from the GoSS to curb it, hence ensuring safety in the country. The nature of this lawlessness is quite complex, ranging from the deeply embedded violence within and between the South Sudan ethnic communities to the absence of effective law enforcement agencies. For example, recently, an armed group of cattle rustlers from Cueibet County launched a vicious attack on Tonj South County, killing more than 80 innocent civilians and plundering between 300-500 heads of cattle.² This is a barbaric act that deserves nothing but condemnation and prosecution. However, the other unhelpful side of the coin is that there seems to be a culture of impunity in the country and most people who commit wrongful acts like these go unpunished. Nonetheless, this is not the first time that such a barbaric act has convulsed the country. Apart from the North-South civil war that ended in 2005, ethnic violence and conflicts of various sorts have ravaged South Sudan for decades. The long-standing conflict between Dinka and Nuer is one of such ethnic conflicts, and perhaps the most deadly ethnic conflict in South Sudan. Both groups have long engaged in killing and cattle raiding from each other despite numerous attempts made to make peace and reconciliation between them. Recently, deadly ethnic violence has surfaced between the Murle and Lou Nuer of Jonglei, claiming thousands lives. Although there exists violence of other forms in the country, these three examples signify the nature and magnitude of lawlessness in South Sudan.

The causes of lawlessness in South Sudan are of a varying degree. Previously, the causes of ethnic violence were attributed to ethnic antipathies and propensity to violence, but more recently, the causes have come to be associated with criminal and commercial cattle raiding³ and ethnic chauvinistic belief. Because the role of the government might not be well understood within most of the ethnic groups, individuals from each ethnic group owe their loyalty to the members of their ethnic group, not the law, nor the government. They do so because they get their personal security

² Facts as discussed in Sudan Tribune available at:
<<http://www.sudantribune.com/spip.php?article44752>>

³ Wathig Kameir, 'The Political Economy of South Sudan- A scoping Analytical Study' (2012) *African Development Bank*,13.

and protection from the members of their ethnic group, hopelessly rendering the situation a matter of ethnic primal loyalty.⁴

In Lockean theory of government, when people do not adhere to the law as promulgated by the government, they become their own lawmakers, judges and enforcers.⁵ This does not only undermine the established law of a country, but also the authority of the government as the ultimate lawmaker and enforcer. This is precisely the situation in South Sudan. Presently, there appears to be a complete civil ignorance of the law and this leads to the raging violence in the country. The recent vicious attack on Tonj community by Gok community discussed earlier is a typical example. This is further compounded by the lack of effective law enforcement agencies in the country. There is lack of a well-trained and adequately resourced police force to counter and curb this relentless lawlessness in South Sudan. Another apparent contributing factor is the low-level of education among most of the citizens of South Sudan as less educated citizens tend to be less informed about their rights and responsibilities. According to the recent South Sudan Development Plan,⁶ only 27% of the country's total population is educated and literate. There are reasons owing to this poor level of education in the country, but it is not the intention of this paper to detail them all. The long absence of a formal government in South Sudan in the decades preceding the independence and the neglect of Southern infrastructures under the successive regimes in Khartoum, for example, are notable contributing factors.

This endemic lawlessness in South Sudan does not only impact on the lives of innocent people, but also has serious implications for the development of the rule of law itself. One of the implications is that the law is not being upheld and respected by its subjects and, when the law is not being upheld and respected it is worth nothing than the paper on which it is written and of no use. The rule of law requires a legal and political culture where both the citizens and their political leaders submit to the supremacy of the law and take their legal rights more seriously. However, given the current insurgency to the law in the country and weaknesses in the country's legal institutions, the development of a proper legal and political culture under which the rule of law can be secured in South Sudan is a serious challenge. However, in order to understand the impact of this lawlessness on the development of the rule of law in the country, it is important to consider the significant role that the rule of law plays in safeguarding individual rights and liberties.

The Rule of Law

The rule of law is an important legal device that secures and ensures individual freedom. It does so by requiring that all laws be directed toward achieving common good and maintaining peace and order in society. In doing so, the rule of law requires that no man should govern, but the law alone; that men are merely the mouth through which the law speaks and therefore servants of the law.⁷ The success of the rule of law in protecting individual liberty requires a 'socio-political-institutional

⁴ Ibid at 21.

⁵ As cited in Gabriel A Moens and Suri Ratnapala , *Jurisprudence of Liberty* (2nd ed, 2011) 55.

⁶ Government of the Republic of South Sudan, South Sudan Development Plan 2011-2013 (2011) <<http://www.jdt-juba.org/wp-content/uploads/2012/02/South-Sudan-Development-Plan-2011-13.pdf>> at 22 December 2012.

⁷ I am much indebted here to the inspirational work of liberty of Philosopher Aristotle.

milieu⁸ in which its paramountcy is recognised, accepted and regularly observed. This requires both the citizens and public officials to commit to the principles that give the rule of law its life.⁹ These principles are the general laws of the land, which must always be adhered to by all, administered and enforced by an independent and impartial judiciary accessible to all. That is, it requires a culture of legality, which manifests a serious belief that the law ought to be above all of us and that we are all safe and free only when we all obey the law. That is what gives the rule of law its true meaning and authority to safeguard our individual freedom.

To secure the rule of law in South Sudan requires voluntary acts of supererogatory from us the citizens and our political leaders to co-operate in the pursuit of this ideal instrument of liberty. Article 14 of the Transitional Constitution of South Sudan already provides for the rule of law as a guiding principle for our liberty. Hence, it becomes a matter of making commitment and honouring this law of liberty in order that our liberty may not be jeopardised. However, the major headache here is that South Sudan appears both culturally and politically unprepared to establish a constitutional state that can secure the rule of law. It is contended so because the endemic lawlessness in the country seems to be ruling it, but not the established laws. Because the purpose of the law and the role of government seem to be least understood within the country, communities and individuals are likely to owe their loyalty neither to the law nor to the government, but to their ascriptive settings. This lack of faith in the law as the only omnipotent ruler is one of the major structural impediments on the development of the rule of law in South Sudan. As consistently argued, the rule of law can only materialise in an environment where citizens owe their loyalty to no one else but to the law alone. It requires the ‘socio-political’¹⁰ milieu that is the substratum of a state legal and political system to support it.

Another factor that impacts on the development of the rule of law in South Sudan is the apparent lack of accountability in the government. Accountability is an important principle of good governance that requires public officials to be answerable for their actions to those they serve. When public officials are subject to a system of scrutiny, officials are expected to behave responsibly and execute their duties accordingly, hence ensuring confidence and integrity in the government for the people. For instance, recently, an auditing conducted in the government’s financial system found that around about 4 billion dollars has been misappropriated by GoSS Senior Officials and up to now, it is still uncertain whether or not this money has been fully recovered and culprits punished.¹¹ The response from the President was rather unorthodox. As was reported, the President only sent letters to the named Officials, asking them to return the money when the appropriate course of action would have been to sack them and make them face justice. However, what is more unlawful is that the President was reported as having pledged his presidential clemency to these voracious corrupt officials upon the return of the money. Such heretic response by the President to

⁸ Jason Mazzone, *The Creation of a Constitutional Culture* (2005), 686.

⁹ Augusto Zimmermann, ‘The Rule of Law as a Culture of Legality: Legal and Extra-Legal Elements for the Realisation of the Rule of Law in Society’ Murdoch University, 24.

¹⁰ Ibid, above n 7.

¹¹ Allan Boswell, *US not probing allegations of massive South Sudanese corruption* (2012) McClatchy News paper

<<http://www.mcclatchydc.com/2012/07/26/157914/us-not-probing-allegations-of.html>> at 21 December 2012.

unacceptable evil acts of corruption like these does nothing but subjects public systems to manipulations by officials, undermining credibility and integrity of the government.

The consequences of lack of accountability are quite obvious. The first is the erosion of the rule of law because without accountability, government ministers and people in the like positions can do as they wish and so place themselves above the law. The second is this debacle of corruption. As witnessed already, public officials, in the absence of accountability can easily drain public resources for their personal benefits and this affects government expenditure to build necessary infrastructures in the country. This is a major problem in South Sudan. Corruption is rife and the laws are deliberately and willfully disregarded. This problem is compounded by the fact that the GoSS seems to consistently exhibit typical attitudes of a guerrilla movement, which makes it difficult for citizens to hold the government to account and for the rule of law to be respected. The future of the rule of law in South Sudan is therefore contingent upon GoSS' effective transformation from being a liberation movement to a democratic government, capable of protecting the rule of law and individual liberty.

The idea that faith in democracy enhances the attainment and maintenance of the rule of law is alive and well. As such, the development of the rule of law in South Sudan requires the GoSS and the greater South Sudanese society to strongly uphold true democratic principles and values such as freedom of media. Media shapes opinions and brings truth about the government to the people, by scrutinising government's practices, policies and actions, hence ensuring discipline and integrity in the government. However, the story appears different in respect to how the media is being treated in South Sudan. Media appears to be suppressed by the government. There are numerous incidents, which clearly indicate that journalists are being targeted by the government. The recent callous political assassination of Isaiah Abraham, a columnist, though unproven as the work of government, is one of such shocking and abysmal events. Still, reports suggest that Isaiah was killed because of his opinions that he disagreed with and criticised the government for maladministration. Be it true, this is not only politically unjust, but also constitutionally unlawful and utterly unacceptable. It contradicts and undermines the spirit of South Sudan's Constitution, which guarantees the freedom of expression and media¹², thus denying the blessing of our Constitution and making the law redundant. There are also numerous instances, which only point to the political injustices. These include unfair treatment of foreigners, regular unlawful arrests of individual members of the community by the government's security forces, and more recently, the shooting of peaceful demonstrators in the city of Wau in the State of Western Bahr el Ghazal. All these cases indicate nothing but that South Sudan is brazenly degenerating itself into what can only be best described as a cruel and ruthless authoritarian environment, reflecting the dictatorial forms of systems from which it seceded. The consequences of this absolutism are the subversion of the rule of law, erosion of our individual liberty and a politically tarnished international reputation. In short, a repetition of the injustices and oppression that caused South Sudan to break away from Sudan is totally unacceptable.

There is no magic solution to lawlessness in South Sudan. It is only a matter of the incumbent GoSS to emerge as an unchallenged authority in the country. To establish unchallenged authority first requires the GoSS to fight the endemic lawlessness in the country and make South Sudan a safe and liveable place for all its citizens. This will not be an easy task, but it is possible. It is a matter of

¹² *The Transitional Constitution of the Republic of South Sudan*, see Article 24 (1) and (2).

effective law enforcement and ensuring compliance with the law. The law secures peace and safety in the society when effectively enforced and, is the only possible means here to save South Sudan from this traumatic situation of lawlessness. In the meantime, the following measures are offered to help the GoSS counter the lawlessness in the country:

- That the GoSS first establishes a system of legality that ensures compliance with the law. This will require effective law enforcement and doing whatever necessary to ensure compliance. If effectively enforced, law has the paramount effect of regulating people's attitudes, bringing them to justice for their mischiefs, deterring them from such mischiefs, and thus ensuring compliance, peace and order in the country. Effective law enforcement here means taking the law out of the civilians' hands, which practically requires total disarmament of civilians and prohibiting them from accessing arms.
- Provide a well-trained and adequately resourced police force that will keep the law and order by ensuring constant patrol within the communities and alongside the communal boundaries, thereby keeping violence at bay. For example, curbing the current street crimes in Juba and ensuring constant patrol of the streets will be a starting point.
- Educate the civilians on their duties to obey the law and to co-operate with their government in the doing of justice. In doing this, the GoSS must preach the obvious to the citizens that they have two inevitable civil duties: the duty to obey the law and accept the authority of the elected representatives and the duty not to kill.¹³ These duties are already provided in Article 46 of the Constitution and it is only a matter of putting them into practice.

These recommendations may sound impractical, but they provide potential ways of curing the fatal defect of lawlessness in the country, hence ensuring a legally well ordered and disciplined society. In this way, the rule of law can effectively develop and be maintained in the country. South Sudan must adhere to democratic values and commit to protecting and promoting the rule of law and individual liberty. Such a realization will not come easily- it will come at a cost. It requires concerted efforts from the country's civil society groups, the parliament, and the greater citizenry.

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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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¹³ John Rawls, *A Theory of Justice* (1971), 98.