The 2018 South Sudanese Peace Agreement

A Litmus Test of Coercive Mediation

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1. Introduction

The signing of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (RARCSS) in September 2018 raised debate not only about its added value to the 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS) but also the effectiveness of style of mediation pursued by mediators. Although there are divergent views on whether the RARCSS will deliver sustainable peace or reach the same fate of ARCSS, these views can be grouped into realists and idealists. While realists see RARCSS as practical way to end the enormous suffering faced by the people of South Sudan, the idealists see RARCSS as a "bad peace," as it fails to address the root causes of conflict that may be a recipe for another cycle of violence. Between these two extreme views of realists and idealists are the middle ground group "idealism with realism" that sees opportunity in transforming this "bad peace" into "good peace" by working from within and creating space for civicness in governance rather than continuing with armed opposition or non-violent diplomatic opposition.

In assessing these expectations and views, the article attempts to review the RARCSS with provocative question of whether ARCSS has been revitalized or deadened and whether RARCSS will be sustainable as it was concluded through coercive mediation. These two questions can be adequately answered by comparing the process, the content and the outcomes of RARCSS in relation to ARCSS and the 2005 Sudan Comprehensive Peace Agreement (CPA). The article is organized into five sections, including this introduction section. The analysis of the process of RARCSS is presented in Section 2, while its content is discussed in Section 3. The outcomes of RARCSS are presented in Section 4, while main conclusions for finding a common ground between idealists and realists are discussed in Section 5.

2. The Process: Coercive Mediation

The success of any peace agreement is measured by the quality of process rather than its outcome in terms of the final document. The process of any peace negotiation is not only important in discussing how to address the root causes of conflict but it also provides a trusted platform for building trust between the rival factions. The last phase of mediation led by Sudan and that resulted in the eventual signing of the RARCSS is considered by many observers as flawed, exclusive and coercive.

My personal discussion with some of the key participants in the peace negotiations in Khartoum narrated how the government of Sudan coercively forced some members of South Sudanese opposition groups to sign against their will some protocols of the RARCSS. Some very senior negotiators from the opposition groups described the level of coercion and intimidation they experienced in Khartoum as not comparable to the level of intimidation of Southern Sudanese chiefs in the infamous 1947 Juba Conference that condoned the handing over of Southern Sudan to the new colonial masters from Northern Sudan.

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The mediation style adopted by Sudan for the negotiations of RARCSS was an aberration to other mediation styles such as facilitative, transformative, evaluative, and narrative. Vertin (2018) argues that the mediation of RARCSS demonstrates an unusually fraught mediation context, including deficits in five fundamental areas: preparedness, consent, impartiality, inclusivity, and strategy.[1] The mediation style of RARCSS was just a coercive one that reflects the characters of the Sudanese ruling elites who relegated Sudan that was once a leading democracy in Africa to be one of the most fragile and autocratic countries on the continent. These Sudanese ruling elites have glaring national political and economic interests in South Sudan and they see the birth of South Sudan as a political project of the Western countries and should not be allowed to succeed and to make the reunification of the two Sudans as a new reality.

Besides the leading role of Sudan in the mediation of RARCSS, Uganda played a critical role in shaping the style of mediation adopted by Sudan. Unlike Sudan, Uganda has played a prominent role in the emergence of South Sudan. However, Uganda that was once a prosperous democracy has recently been seen to regress from multiparty democracy to what some Ugandan scholars termed as "multiparty autocracy"[2] and with partial strategic and biased interest in maintaining the status quo in South Sudan. Given their vested interests in maintaining President Salva Kiir and Dr Riek Machar in power, Sudan and Uganda focused during the negotiations of RARCSS on the government of South Sudan and the SPLM in Opposition (SPLM-IO) and with systematic exclusion or minimal engagement of other stakeholders.

Unlike the CPA negotiations process, President Salva Kiir and Dr Riek Machar did not use the negotiations of RARCSS for confidence and trust building. Dr John Garang and Ali Osman, the principal negotiators of SPLM and government of Sudan respectively, used the process of CPA negotiations to build trust and nurture cordial relations not only between them but also between the negotiators of the two parties and importantly between their families. Dr Garang in particular would prefer to spend hours and even days with Ali Osman to talk on general strategic issues not related directly to the negotiations and that helped to create mutual respect, confidence-building and conducive environment that resulted in the conclusion of CPA with minimal engagement of mediators. Dr Garang believed that the process of negotiating the CPA was more important than the peace agreement itself. Unlike Dr Garang and Ali Osman, the difference between and among the negotiators of the RARCSS was less about strategic political issues but more about their personal grudges, rivalry and lust for power and ethnic patronage.

3. The Content: The Win-Lose Powersharing and Weaker Opposition

Assessing the content of any peace agreement is extremely difficult. The powersharing arrangement is one of the important content of any peace agreement. It has been shown that the negotiated powersharing arrangement is one of mechanisms for escaping fragility.[3] Like the ARCSS, the powersharing arrangements in the RARCSS[4] have maintained the sta-

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1 Vertin, Z., (2018). "A Poisoned Will: Lessons in Mediation from South Sudan's Troubled Peace Process". New York: International Peace Institute.

2 Behnam, V., (2018). "Is Rapid Ugandan Urbanization Threatening Museveni's 31-year Rule? Brown Political Review. February 13.

3 LSE-Oxford Commission, (2018). "Escaping the Fragility Trap." London School of Economics-Oxford University Commission on State Fragility, Growth and Development.

4 IGAD, (2018). "Signed Revitalized Agreement On the Resolution of the Conflict in South Sudan." Addis Ababa: Intergovernmental Authority on Development. https://igad.int/programs/115-south-sudan-office/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan.

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tus quo of rewarding the "Gun Class"[5] but with weaker opposition (see Box 1). The majority of small ethnic communities that did not participate in the violent conflict or failed to join the warring parties that are signatories to the RARCSS will not have opportunity to be represented in the transitional government. Generally, the people of South Sudan do support powersharing but majority (59 percent) do not support expanding the size of government in the RARCSS.[6] While the share of the government has declined in the presidency, legislature, and local government level, it maintains overwhelming majority in the Council of Ministers and other institutions with minimum share of 55 percent.

Box 1: Powersharing (Arrangements in %)					
Agreements	The Parties	Presidency	Council of Ministers	Legislature	States and Local Governement
ARCSS	Government (Three States of Upper Nile Region)	67	53	83	46
	Opposition (Three States of Upper Nile Region)	33	47	17	54
RARCSS	Government (All States and Local Government)	60	57	60	55
	Opposition (All States and Local Government)	40	43	40	45

Source: IGAD (2018)

Undoubtedly, the RARCSS is a win-lose in favor of the government; particularly in the Council of Ministers where its share increased from 53 percent in ARCSS to 57 percent in RARCSS and with fragmented and weak opposition. Interestingly, although the leadership of the government in the presidency has been slightly reduced, the RARCSS has given more powers to the president and his two vice presidents to oversee two important clusters; economic and infrastructure clusters (see Box 2). The powers of the first vice president have been considerably reduced in RARCSS to only chairing governance cluster rather than all cabinet clusters as in ARCSS (see Box 2).

Box 2: Powers of the First Vice President	
ARCSS	RARCSS
• Coordinates the implementation of this Agreement and initiates institutional reforms as prescribed in this Agreement.	• This power is given to the president and in consultation with the first vice president and other vice presidents.
• Chairs the cabinet clusters	• Chairs only governance cluster
• Oversees the preparation and consideration of TGoNU business and programmes.	• This power is given to the president and in consultation with the first vice president and other vice presidents.

Source: IGAD (2018)

Besides accentuating the powers of the current government, the RARCSS favours the position of the government of maintaining 32 states by providing rather unrealistic process for determining the number of states and boundaries instead of adopting the ten states with clear constitutional, political and economic powers as provided for in the ARCSS. The recent citizen perceptions survey shows overwhelming respondents (75 percent) do not support the decision to create 32 states and with

5 This term was introduced by Dr Majak D'Agoot (2018). "Taming the Dominant Gun Class in South Sudan." Washington: Africa Center for Strategic Studies. https://africacenter.org/spotlight/taming-the-dominant-gun-class-in-south-sudan/

6 SSCSF, (2018). "Revitalizing Peace in South Sudan: The Citizen Perceptions of the Peace Process". Juba: South Sudan Civil Society Forum (SSCSF).

majority of respondents (57 percent) support 10 states.[7] It is inconceivable for the referendum on determining the number of states to be conducted within the eight months of the pre-transitional period with more than half of the population outside the country or internally displaced.

These findings from the citizen perceptions survey of the peace process may provide basis for building consensus within the Independent Boundaries Commission in determining the number of states and to avoid the conduct of this unrealistic and unnecessary referendum. Also the proposal by the South Sudan National Dialogue to revert to the colonial three regions and 22 former colonial districts may also provide a middle ground for the Independent Boundaries Commission to reach consensus on reorganizing South Sudanese state[8].

Also in an unrealistic way, the RARCSS provides for the Intergovernmental Authority on Development (IGAD) Mediation to appoint a Technical Boundary Committee (TBC) to define and demarcate within 60 days the tribal areas of South Sudan as they stood on 1 January 1956. The African tribal boundaries are always flexible and accommodative and any attempt to delineate them will be a recipe for more tribal conflicts over boundaries. The challenge is not about the delineation and demarcation of boundaries but rather the decision on the number of sub-national governments and their constitutional, economic and political powers after which the territorial boundaries will be defined.[9]

Unlike ARCSS, the RARCSS did not affirm the demilitarization of Juba as the seat of Revitalized Transitional Government of National Unity (RTGoNU) and entrusts such task to the workshop of Permanent Ceasefire and Transitional Security Arrangements (PCTSA) to determine the type and size of security forces needed for the protection of all cities. When the workshop was held in Khartoum, the parties resolved to determine arbitrary the type and size of security forces needed for the whole country.

There is also another confusion in RARCSS on the roles of the Joint Transitional Security Committee (JTSC) and Strategic Defense and Security Review Board (SDSRB). While SDSRB is tasked to determine the type and size of security forces through a process of national security policy and strategy formulation and implementation, the JTSC is charged during the same period of pre-transition to set eligibility criteria and plan and execute the unification of all forces. Also, there is misunderstanding between the parties of the process of unification of all forces, while the government sees the process as absorbing the other forces, the opposition groups see the process as overhauling and transforming the entire security sector and to establish a new and more inclusive and representative security sector.

There is no doubt that there are positive improvements in RARCSS, particularly in detailing the necessary reforms in the judiciary such as establishment of inclusive Judicial Service Commission and Constitutional Court. Also, the RARCSS and unlike ARCSS that restricted powersharing to the three states of Upper Nile has extended the powersharing arrangements not only to the level of all states but also to the local government level. Importantly, the RARCSS maintains the provisions related to the transitional justice, particularly the ineligibility of those indicted or convicted by the Hybrid Court of South Sudan (HCSS) to participate in RTGoNU or successor governments. In carrying out its investigation the HCSS may use the report of the African Union Commission of Inquiry (COI) on South Sudan. One of the recommendations of COI in the African Union Commission of Inquiry on South Sudan: Final Report notes that:

> "A majority or respondents on both sides of the conflict were of the view that both principals in the crisis, President Salva Kiir and Riek Machar, were to be held responsible for the crisis, its escalation and the violations perpetrated. While there is lack of clarity from views expressed on the form that responsibility should take, the Commission's conception includes criminal, civil or political (administrative) elements."[10]

It remains to be seen whether the revitalized TGoNU and African Union will be able to expedite the process of establishing HCSS as provided for in the RARCSS. The establish-

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7 Ibid

8 Sudan Tribune, (2018). "South Sudan dialogue body proposes to re-establish colonial three provinces". The Sudan Tribune, November 14, 2018.

9 Johnson, D., Verjee, A. and Pritchard, M., (2018). "After the Khartoum Agreement: Boundary Making and the 32 States in South Sudan". Nairobi: The Rift Valley Institute.

10 AU, (2014). "African Union Commission of Inquiry on South Sudan: Final Report". Addis Ababa: African Union. http://www.au.int/en/auciss: pg. 299.

ment of the HCSS to bring to book those who alleged to have committed atrocities will be a litmus test of the commitment of the parties to RARCSS and its regional and international guarantors and witnesses to the justice and political accountability. The failure of previous peace agreements to address transitional justice and wounds and atrocities of the past contributed not only to the eruption of civil war in 2013 but also to the intensity and cruelty with which the civil war has been fought by the warring parties.

4. The Outcome: Fractured Opposition and New Condominium

Unlike ARCSS, the unblemished outcome of the RARCSS is the serious division among all opposition groups including their umbrella organization, South Sudan Opposition Alliance (SSOA). While RARCSS contributed to the fracturing of the opposition, it retains the unity within the government but with unresolved modalities for powersharing among the political parties in the Transitional Government of National Unity (TGoNU).[11] As RARCSS has entrusted the government to exclusively manage the affairs of the country during the eight months pre-transitional period and coupled with increase in oil prices and relative peace around the oilfields, the government will certainly use the oil proceeds to pursue the co-option strategies for opposition parties and that may contribute to further division within the opposition.

The real question is whether a peace agreement concluded through coercive mediation such as RARCSS will result in lasting peace.

The other serious outcome of the RARCSS is that the sovereignty of South Sudan will be at stake (see article in this issue by Mahmood Mamdani). In particular, the Khartoum Declaration Agreement[12] signed by all leaders of South Sudan opposition political parties and government in July 2018 has implicitly surrendered the sovereignty of South Sudan to the Sudan. In this Agreement, Sudan has been entrusted by the leaders of South Sudan not only to discuss measures

to rehabilitate the economy of South Sudan through bilateral cooperation but also to rehabilitate petroleum sector and provide security to oil fields in South Sudan. Also the revitalized Agreement on Security Arrangements in South Sudan[13] has entrusted Sudan and Uganda to lead the monitoring and verification mechanism of the security arrangements agreement as well as training of uniformed personnel for security sector of South Sudan.

In fact, the RARCSS has indirectly put South Sudan under the condominium of Sudan and Uganda. Unlike the Anglo-Egyptian Condominium of Sudan, South Sudan is put under the condominium of two countries that are among the most fragile but also autocratic in the world; particularly Sudan. While the South Sudanese leaders who signed the Khartoum Declaration vehemently rejected the call for regional or international administration of South Sudan,[14] they have paradoxically put indirectly South Sudan under the administration of countries that are struggling like South Sudan to put their houses in order. The challenge for the South Sudanese leaders who signed the RARCSS is whether they will be able to protect the sovereignty of South Sudan that came as a result of enormous selfless sacrifices of the people of South Sudan.

5. Conclusion: Idealism with Realism

Although there is a consensus in mediation literature that coercion is a very poor way for resolving conflict,[15] some argued that when a highly biased power intervenes in a crisis, a peaceful settlement is likely because warring parties are

11 Peter, M., (2018). "A Second Chance to Deliver Peace through Power-Sharing: Comparative Analysis of South Sudan Peace Agreements". Special Report. Juba: Institute of Social Policy and Research.

12 IGAD, 2018. Khartoum Declaration Agreement between parties of the Conflict in South Sudan". Khartoum. https://igad.int/attachments/article/1874/Khartoum%20Declaration.pdf

13 IGAD, 2018. "Agreement on Security Arrangements in South Sudan". Khartoum. www.sudantribune.com/spip.php?article65805

14 Mamdani, M., (2016). "Who's to Blame in South Sudan?" Boston Review, June 28; Knopf, K., (2016). "Ending South Sudan's Civil War," Council Special Report No. 77. Washington DC: Council on Foreign Relations.

15 Noll, D., (2003). "Coercion-More Costly Than You Think". Mediation.com. https://www.mediate.com/articles/noll8.cfm; Schuberth, D, Sellers, R. and Stewart, S. (2018). " Coercive and disruptive behaviors mediate group cognitive-behavioral therapy response in pediatric obsessive-compulsive disorder". Comprehensive Psychiatry. Vol 86, pp 74-81; Hofmann, E., Hartl, B., Gangle, K., Hartner-Tiefenthaler, M. and Kirchler, E., (2017). "Authorities' Coercive and Legitimate Power: The Impact on Cognitions Underlying Cooperation". Frontiers in Pyschology. Vol 8(5), pp. 1-15.

certain the third party will enforce an agreement by military means as shown in the case of U.S. and British interventions in the Balkans.[16] The real question is whether a peace agreement concluded through coercive mediation such as RARCSS will result in a lasting peace. Despite the apparent flaw in the mediation process, the failure or success of RARCSS rests on the political will and leadership of the elites of South Sudan.[17] The political elites of South Sudan are morally bound to transform the blemished RARCSS to serve as a framework for the opening up political process to address the root causes of conflict as well as encouraging the African Union rather than Sudan and Uganda alone to help them implement RARCSS and to resolve any remaining issues and to make transitional government workable and inclusive so as to deliver the much-needed sustainable peace to the people of South Sudan.

... the challenge is how to address the concerns of idealists while leveraging the optimism of realists to make RARCSS implementable.

There is no doubt that people of South Sudan want peace at any cost. The findings from the recent citizen perceptions survey show that there is a growing confidence in RARCSS with 43 percent of respondents thought that RARCSS will bring lasting peace, while 17 percent of the respondents see the contrary and the rest of respondents (37 percent) thought RARCSS might bring lasting peace or do not know (3 percent).[18] Although the preliminary results of the national dialogue initiated by the government suggest that Salva Kiir and Riek Machar to step aside voluntarily,[19] and allow new leaders to manage the public affairs of South Sudan, the findings of citizen perception indicate that 57 percent of respondents think that government and opposition leaders can work together during the implementation of RARCSS and 30

percent of respondents do not see them working together.[20] In this spectrum of optimists (realists) and skeptics (idealists) of the RARCSS, the challenge is how to address the concerns of idealists while leveraging the optimism of realists to making RARCSS implementable. This brings me to consider the wisdom of Dr Francis Deng (2010) of "idealism with realism".[21] Despite the genuine concerns by the idealists of seeing the joint leadership of President Salva Kiir and Dr Riek Machar during the transitional period of RARCSS as synonymous with more suffering and violence, the option of continuing with violent conflict is not a viable option as recognized by the realists. The bridging and reaching across the two sides of aisle of realists and idealists will require political will and leadership that may currently be in short supply in South Sudan.

The building of a bridge across the aisle will require the emergence of new breed of political leadership from the government, opposition, civil society and media to create and expand space for civicness to supplant and erode space for the culture of violence by making the cost of non-implementation of the RARCSS more than the cost of its implementation. The church leaders, imminent personalities, civil society organizations particularly women could play such a role of transforming RARCSS into an opportunity for bringing a lasting peace in South Sudan.

With government feeling triumphant and weaker opposition with strong sense of political, economic, social and physical insecurity, the transition to democracy through elections by the end of interim period will be extremely difficult. Instead investment in building and strengthening checks and balances institutions provided for in powersharing arrangements may be more effective in facilitating a transition to democracy than through elections.[22] This calls for prioritization of establishment of effective and professional security sector in-

16 Favertto, K., (2009). "Should Peacemakers Take Sides? Major Power Mediation, Coercion, and Bias". American Political Science Review. Vol 103(2), pp. 248-263.

17 Vertin, Z., (2018). "A Poisoned Will: Lessons in Mediation from South Sudan's Troubled Peace Process". New York: International Peace Institute.

18 SSCSF, (2018). "Revitalizing Peace in South Sudan: The Citizen Perceptions of the Peace Process". Juba: South Sudan Civil Society Forum (SSCSF).

19 RSS, (2018). "The Governance Cluster of Emerging Issues from the Grassroots Consultations: A Technical Note". Juba: Secretariat of National Dialogue Steering Committee, Republic of South Sudan (RSS).

20 SSCSF, (2018). "Revitalizing Peace in South Sudan: The Citizen Perceptions of the Peace Process". Juba: South Sudan Civil Society Forum (SSCSF).

21 Deng, F., (2010). "Idealism and Realism: Negotiating sovereignty in divided nations". The Hag Hammarskjold Lecture.

22 Hartzell, C., and Hoddie, M., (2015). "The Art of the Possible: Power-Sharing and Post-Civil War Democracy". World Politics. Vol 67(1), pp 37-71.

stitutions that will contribute not only to easing the feeling of insecurity but also solidify the foundation for civicness in governance.

The implementation of the 2015 Arusha Agreement on the Reunification of the Sudan People's Liberation Movement will be critical for the implementation of the RARCSS. The crisis of the 2016 could have been avoided if the Arusha Agreement was implemented. All SPLM factions have vested interest in the implementation of the Arusha Agreement and any faction that may opt to form its own political party may commit political suicide. Despite the fact that SPLM or at least its leaders have disappointed the people of South Sudan and almost depleted its political capital, SPLM still remains in the hearts of the people of South Sudan as a movement that crowned the long struggle of the people of South Sudan into the independence. The Arusha Agreement provides opportunity for the SPLM to articulate a new vision for South Sudan with which it can remarket itself and win the minds and hearts of the people of South Sudan. I believe South Sudan cannot be put on the track of stability and peace without credible and democratic political parties that would articulate the political agenda and future direction. The democratization and reunification of the SPLM are critical steps for creating, expanding and nurturing democratic and civicness space in South Sudan as well as providing the much-needed unified political leadership for the implementation of the RARCSS.

About the Author

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