POST-REFERENDUM SUDAN: THE NATION-BUILDING PROJECT AND ITS CHALLENGES[1]

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INTRODUCTION

The Comprehensive Peace Agreement ("CPA"),[3] signed on January 9, 2005, brought an end to the brutal civil war (1955-

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[3] Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Sudan-SPLM/A, at xi, Jan. 9, 2005, *available at* http://www.sudanarchive.net/cgi-

1972; 1983-2005)[4] that engulfed Sudan since its independence in 1956.[5]   The CPA was the immediate culmination of the negotiations that ended the hostility between the National Congress Party ("NCP") and the Sudan People's Liberation Movement/Army ("SPLM/A").[6]   It ultimately created a new political dispensation and landscape in South Sudan. Over 2 million people have died and 4 million have been uprooted due to the civil war.[7]   In fulfilling the mandate of the CPA, a referendum on self-determination[8] was conducted in January 2011, and 98.83 percent of South Sudanese effectively voted to secede from North Sudan.[9] The General Assembly of the United Nations admitted the Republic of South Sudan into the community of nations as the 193rd member of the United Nations on July 14, 2011.[10]

   The root causes of the war included disputes over resources, the role of religion in the state, self-determination,

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bin/pagessoa?a=pdf&d=Dl1d36.1.1&dl=1&sim=Screen2Image   [hereinafter Comprehensive Peace Agreement].

[4] *Background Note: Sudan*, U.S. DEP'T OF STATE (Apr. 8, 2011), http://www.state.gov/r/pa/ei/bgn/5424.htm.

[5] *The World Fact Book: Sudan*, U.S. CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/su.html (last updated Nov. 10, 2011).

[6] *Background Note: Sudan, supra* note 4.

[7] *Estimates for the Total Number of IDPs for all of Sudan (as of January 2011)*, INTERNAL DISPLACEMENT MONITORING CENTRE, http://www.internal-displacement.org/8025708F004CE90B/%28httpCountries%29/F3D3CAA7 CBEBE276802570A7004B87E4?opendocument (last visited Feb. 6, 2012); *The Background to Sudan's Comprehensive Peace Agreement,* U.N. MISSION IN SUDAN, http://unmis.unmissions.org/Default.aspx?tabid=515 (last visited Feb. 6, 2012).

[8] Comprehensive Peace Agreement, *supra* note 3, at 1. This specific agreement was named the Machakos Protocol and was dated July 20, 2002.

[9] *SSRC Announces Final Referendum Results,* S. SUDAN REFERENDUM COMM'N, http://www.ssrc.sd/SSRC2/ (last updated Feb. 8, 2011).

[10] *UN Welcomes South Sudan as 193rd Member State*, U.N. NEWS CTR. (July 14, 2011), http://www.un.org/apps/news/story.asp?NewsID=39034.

the distribution of power,[11] and the institutional legacy of colonialism.[12] The ensuing conflict devastated a significant part of Africa's largest country and deprived southern, western, and eastern Sudan of stability, growth, and development.[13] Consistent with the mandate of the CPA,[14] in January 2011 South Sudan effectively voted to secede from north Sudan.[15] The new nation in the south was inaugurated on July 9, 2011.[16] The signing of the Comprehensive Peace Agreement in 2005 was the beginning of a long march to peace. Since the referendum on self-determination is in the past, it is necessary to think about the project of nation-building that lies ahead. This essay is divided into three sections: Sudanese colonial state, political

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[11] United Nations Information and Communications Technology Division/DFS, *The background to Sudan's Comprehensive Peace Agreement*, UNMIS (2009),
 http://unmis.unmissions.org/Default.aspx?tabid=515; FRANCIS MADING DENG, SELF-DETERMINATION AND NATIONAL UNITY: A CHALLENGE FOR AFRICA (Africa World Press 2010).

[12] MAHMOOD MAMDANI, SAVIORS AND SURVIVORS: DARFUR, POLITICS, AND THE WAR ON TERROR 75-108, 109-45 (2009); AMIR H. IDRIS, CONFLICT AND POLITICS OF IDENTITY IN SUDAN 23-41 (2005); Christopher Zambakari, *South Sudan in the Post-CPA Era: Prospects and Challenges*, PAMBAZUKA NEWS, Jun. 28, 2011, http://www.pambazuka.org/en/category/features/75248 [hereinafter Zambakari, *Post-CPA Era*]; DOUGLAS H. JOHNSON, THE ROOT CAUSES OF SUDAN'S CIVIL WARS 9-19 (2003).

[13] Alex Cobham, *Causes of Conflict in Sudan: Testing The Black Book*, 17 EUR. J. DEV. RES., 464-65 (2005).

[14] Part A, Section 1.3 reads: "That the people of South Sudan have the right to self-determination, *inter alia*, through a referendum to determine their future status." Comprehensive Peace Agreement, *supra* note 3, at 2. Part B, Section 2.5 states: "At the end of the six (6) year Interim Period there shall be an internationally monitored referendum, organized jointly by the GOS and the SPLM/A, for the people of South Sudan to: confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession." Comprehensive Peace Agreement, *supra* note 3, at 4.

[15] *South Sudan Profile: Overview*, BBC NEWS AFR., http://www.bbc.co.uk/news/world-africa-14069082 (last updated Feb. 11, 2012).

[16] *Id.*

violence, and political reform. In the first section, the paper focuses on the institutional legacy of "Indirect Rule" in South Sudan. In the second section, attention turns to issues driving political violence and grievances of the marginalized areas. These issues will be illustrated by looking at the surge in political violence in the disputed regions[17] as reflective of the dilemma that faces both north and South Sudan in a post referendum era. In the last section of the paper, I argue that the way out of the current predicament in the disputed regions — building a more inclusive political community in the north and south that respects unity in diversity — is contained in the conceptual framework known as the New Sudan, as articulated by the SPLM/A. I will further argue that a successful nation-building project will depend on how the Government of South Sudan ("GOSS") and the GOS manage to build a more inclusive state, which addresses the citizenship question.

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[17] The Conflict Areas mentioned in the Comprehensive Peace Agreement for special status include Abyei Area, Southern Kordofan, and Blue Nile States. Comprehensive Peace Agreement, *supra* note 3, at xi. The Government of the Sudan ("GOS") and the SPLM/A signed a separate protocol in Naivasha, Kenya on May 26, 2004 that was integrated into the CPA, called The Resolution of the Abyei Conflict. Comprehensive Peace Agreement, *supra* note 3, at 63. This resolution dealt specifically with the conflict over Abyei. *Id.* It was determined that unlike the other two regions, which were part of the north, Abyei's future was to be determined through a referendum similar to the one in the south. Section 5.1 of this Resolution stated that "[t]here shall be established by the Presidency, Abyei Boundaries Commission (ABC) to define and demarcate the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905, referred to herein as Abyei Area." *Id.* at 68. The result of the ABC was rejected by the government in Khartoum. *See Fresh Fighting Breaks Out in Sudan North-South Border Region,* SUDAN TRIBUNE (Mar. 21, 2008), http://www.sudantribune.com/Fresh-fighting-breaks-out-in-Sudan,26451.
The local administration of Abyei has been dissolved. *Sudan: Abyei Seizure by North "Act of War," Says South,* BBC NEWS AFR., http://www.bbc.co.uk/news/world-africa-13491445 (last updated May 22, 2011). The referendum has not taken place. *See Sudan*: *Thousands Displaced by Abyei Violence "At Risk,"* IRIN (Mar. 8, 2011), http://www.irinnews.org/Report.aspx?ReportID=92129.

SUDAN: AN OVERVIEW

Sudan, known as *Bilad al-Sudan*, or "the land of the blacks,"[18] is the largest country on the African continent — 2.5 million sq km or about 1 million square miles, approximately one-third of the size of the United States of America — almost equal in size to the United States east of the Mississippi River.[19] According to some estimates, the country has 500 different ethnic groups speaking 130 languages.[20] Peter Bechtold, Chairman Emeritus of the Near East and North Africa Studies, Foreign Service Institute, U.S. Department of State, reports a higher number consisting of 600 ethnic groups speaking 400 languages and dialects.[21] Sudan has a rich cultural heritage as a cradle of African civilization.[22] Historians call it "The Corridor to Africa."[23] It shares a border with nine states: Egypt to the north, the Libyan Arab Jamahiriya to the north-west, Chad and the Central African Republic to the west, the Democratic Republic of the Congo to the south-west, Uganda to the south, Kenya to the south-east, and Eritrea and Ethiopia to the east.[24] The region which became Sudan in 1821, after an invasion by

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[18] SHORT-CUT TO DECAY: THE CASE OF THE SUDAN 26 (Sharif Harir & Terje Tvedt eds., 1994); MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12, at 75.

[19] Peter K. Bechtold, *Darfur, the ICC and American Politics*, MIDDLE E. POL'Y COUNCIL, http://www.mepc.org/journal/middle-east-policy-archives/darfur-icc-and-american-politics (last visited Feb. 11, 2012); *Background Note: Sudan*, *supra* note 4.

[20] *Garang's Speech at the Signing Ceremony of S. Sudan Peace Deal*, SUDAN TRIBUNE (Jan. 9, 2005), http://www.sudantribune.com/TEXT-Garang-s-speech-at-the,7476.

[21] Bechtold, *supra* note 19.

[22] Charles Bonnet, *Excavations at the Nubian Royal Town of Kerma: 1975-91*, 66 ANTIQUITY 611, 611-25 (1992); SHORT-CUT TO DECAY, *supra* note 18, at 21-22.

[23] WILLIAM Y. ADAMS, NUBIA: CORRIDOR TO AFRICA (1984).

[24] *The World Fact Book: Sudan*, *supra* note 5; MOHAMED H. FADLALLA, SHORT HISTORY OF SUDAN 1 (2007).

Ottoman and British forces,[25] has a history that spans several millennia.[26]   The country was subdivided into kingdoms and sultanates that occasionally fought for supremacy at various periods.[27]   After the British annexation of Egypt in 1882, the British took over Sudan after three years of struggle between 1896 and 1899 and ruled it in conjunction with Egypt up until 1956.[28]   Khartoum, the capital city of the Republic of Sudan,[29] is located at the confluence of two rivers: the Blue Nile, carrying with it the residue and richness from Lake Tana as it passes through the highlands of Ethiopia, and the White Nile.[30]   The White Nile is a source of life for inhabitants along its path, flowing from Lake Victoria along the Kenya-Uganda and Tanzania borders.   Sudan is rich in mineral wealth with an abundance of crude oil and gold, and agricultural products such as cotton, livestock, gum Arabic, millet/sorghum, sesame, and wheat.[31]   In addition, it also has large cattle ranches throughout

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[25] MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12, at 76.

[26] *Id.* at 77.

[27] Julie Flint, *Darfur, The Forgotten Sudanese War*, WORLD PRESS REV., Mar. 2004, at 32, 32.

[28] R. S. O'Fahey, *Islam and Ethnicity in the Sudan*, 26 JOURNAL OF RELIGION IN AFRICA 258, 260-62 (1996). This was the second conquest of the Sudan in the nineteenth century. The first was the Turko-Egyptian conquest of 1821.

[29] *Sudan Profile: Facts*, BBC NEWS AFR., www.bbc.co.uk/news/world-africa-14095114 (last updated Dec. 14, 2011). After July 9, 2011, Khartoum remains the capital city for Sudan while Juba is the capital city of the Republic of South Sudan. *South Sudan Profile: Facts*, BBC NEWS AFR., www.bbc.co.uk/news/world-africa-14069082 (last updated July 5, 2011). There was an ongoing discussion about moving the capital city out of Juba, and on September 3, 2011, the Council of Ministers voted to move the capital of South Sudan to Ramciel. *South Sudan Relocates its Capital from Juba to Ramciel*, SUDAN TRIBUNE (Sept. 3, 2011), www.sudantribune.com/South-Sudan-relocates-its-capital,40027. As of the date of the writing of this paper, Juba remains the physical capital in South Sudan.

[30] The World Fact Book: Sudan, *supra* note 5.

[31] United Nations Statistics Division, *Sudan*, UNDATA (2009), http://data.un.org/CountryProfile.aspx?crName=SUDAN; *The World Fact Book: Sudan*, *supra* note 5.

the country and exports a surplus of cattle, sheep, and camels to the Arabian Gulf countries.[32] In 1956, Sudan became the first country administered by Great Britain in Africa to become independent after World War Two.[33] "The Sudan's Civil War, also the first in postcolonial Africa, began with the Torit Mutiny, a few months before independence was attained on January 1, 1956."[34] Since its independence, Sudan has been ruled by a series of unstable parliamentary governments and military regimes.[35] Sudan came into existence in 1821, during the early part of the Condominium Rule, as a result of Turco-Egyptian occupation of the region south of Egypt.[36] This arrangement of the joint British and Egyptian government ruled Sudan from 1899 to 1955.[37] Capturing the transition in Sudan from one political rule to the next is quite fascinating, yet challenging. Much has been written in the past about the cultures of various ethnic groups, land, and history of the country, so time will not be spent on those subjects.[38] On January 9, 2011, South Sudan exercised its right to self-determination as enshrined in the

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[32] OMAR HASSAN EL DIRANI, MOHAMMAD A JABBAR, BABIKER IDRIS BABIKER, CONSTRAINTS IN THE MARKET CHAINS FOR EXPORT OF SUDANESE SHEEP AND SHEEP MEAT TO THE MIDDLE EAST 8, *available at* http://mahider.ilri.org/bitstream/handle/10568/7/ResearchReport_No16.pdf?sequence=1.

[33] DOUGLAS H. JOHNSON, THE ROOT CAUSES OF SUDAN'S CIVIL WARS 9-19 (2003)

[34] *Id.*

[35] *See The World Fact Book: Sudan, supra* note 5.

[36] MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12, at 76.

[37] Francis M. Deng, War of Visions: Conflict of Identities in the Sudan 11 (1995).

[38] ADAMS, *supra* note 23; THE BRITISH IN THE SUDAN, 1898-1956: THE SWEETNESS AND THE SORROW (ROBERT O. COLLINS & FANCIS M. DENG EDS., 1984); E.E. EVANS-PRITCHARD, THE AZANDE: HISTORY AND POLITICAL INSTITUTIONS (1971); FADLALLA, *supra* note 24.

provisions of the CPA, and voted overwhelmingly for secession from north Sudan.[39]

The challenges facing the new state in the south are enormous. Among the pending issues that have yet to be resolved are the fate of Abyei,[40] Southern Kordofan,[41] and Blue Nile.[42] **Second,** concern remains for many Sudanese living in the Disputed Border Regions, as well as southerners in north Sudan and northerners based in South Sudan.[43] **The situation is explosive in the disputed border regions.[44] This urgency prompted UN experts to warn that if the problem in Abyei is not brought under control, it "could derail the implementation of the peace agreement that ended the country's civil war . . . ."[45] Third,** Sudan's giant north-south border— 2,010 km (1,250 miles) long— remains un-demarcated, with progress slow on fixing the boundaries.[46] **Fourth, debt and legal treaties have not been settled.** Sudan's crippling debt, estimated at US$36.8 billion, of which US$30.8

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[39] U.N. Secretary-General, *Report of the Secretary-General on the Sudan*, ¶ 2, U.N. Doc. S/2011/239 (Apr. 12, 2011); *SSRC Announces Final Referendum Results, supra* note 9.

[40] Comprehensive Peace Agreement, *supra* note 3, at 63.

[41] Comprehensive Peace Agreement, *supra* note 3, at 71.

[42] *Id.*

[43] U.N. Secretary-General, *Report of the Secretary-General on the Sudan*, ¶¶ 1-7, U.N. Doc. S/2011/314 (May 17, 2011); U.N. Secretary-General, *Report of the Secretary-General on the Sudan*, ¶¶ 14, 17, 19, 21, U.N. Doc. S/2010/681 (Dec. 31, 2010); U.N. Secretary-General, *Report of the Secretary-General on the Sudan*, ¶¶ 17, 25, U.N. Doc. S/2010/388 (July 19, 2010).

[44] *See, e.g., Sudan: Abyei Seizure by North "Act of War," Says South, supra* note 17.

[45] *Abyei Conflict Could Derail Sudan's North-South Peace Process, UN Warns*, UN NEWS CTR. (Mar. 14, 2011), http://www.un.org/apps/news/story.asp?NewsID=37754&Cr1#.

[46] DOUGLAS H. JOHNSON, WHEN BOUNDARIES BECOME BORDERS: THE IMPACT OF BOUNDARY-MAKING IN SOUTHERN SUDAN'S FRONTIER ZONES 9, 28 (2010), *available at* http://riftvalley.net/?view=publications.

billion was in arrears at the end of 2010,[47] remains a major concern in the north as well as in the south. The National Congress Party ("NCP") and the Sudan People's Liberation Movement/Army ("SPLM/A") have not reach an agreement over Sudan's staggering debt. The NCP want the debt to be divided between the two states. Throughout the two decades of war, the NCP spent the money borrowed on military expenditure to wage a war with the South and neglected development in South Sudan.[48] The SPLM/A insist that South Sudan should not shoulder the liability of repayment because it never benefited from the loans.[49] **Fifth,** building a southern identity is a work in progress. Without a common northern enemy, many fear political fractures within the south.[50] Sixth, there is a failure to integrate militia after a process of demilitarization, disarmament, and reintegration of former combatants.[51] Leaders in the south must work to bring together often-disparate groups, including opposition forces and those outside the mainstream SPLA movement to form a truly inclusive political community.[52]

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[47] *Sudan: Country Brief, Context*, THE WORLD BANK, http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEX T/SUDANEXTN/0,,menuPK:375432~pagePK:141132~piPK:141107~theSiteP K:375422,00.html (last updated Apr. 2011).

[48] *Sudan: Birth of a Nation*, 52 AFRICA CONFIDENTIAL, no. 2, Jan. 21, 2011, at 3; *Sudan: Khartoum's Debt Threat*, 52 AFRICA CONFIDENTIAL, no. 12, June 10, 2011.

[49] *U.S. Official Says Cancelling Sudan's Debt a Lengthy Process*, SUDAN TRIBUNE, Jan. 13, 2011, http://www.sudantribune.com/U-S-official-says-cancelling-Sudan,37598.

[50] *Analysis: Key Challenges for Southern Sudan After Split*, IRIN, *available at* http://www.irinnews.org/PrintReport.aspx?ReportID=91863.

[51] U.N. Secretary-General, *Report of the Secretary-General on the Sudan*, ¶¶ 12-16, U.N. Doc. S/2010/314 (May 17, 2011); MAREIKE SCHOMERUS & TIM ALLEN, SOUTHERN SUDAN AT ODDS WITH ITSELF: DYNAMICS OF CONFLICT AND PREDICAMENTS OF PEACE 15, 62 (2010), *available at* http://www2.lse.ac.uk/businessAndConsultancy/LSEConsulting/recentRepo rts.aspx#Southern_Sudan.

[52] SCHOMERUS & ALLEN, *supra* note 51, at 62.

CITIZENS WITHOUT A COUNTRY: THE PLIGHT OF IDPS AND REFUGEES

The violence in Sudan has already cost the lives of millions, and there is no sign that the violence has ended. Instead, in the period shortly after the referendum, hundreds of people have been killed in clashes in the south and in the disputed regions. Sudan Tribune, USA Today, and IRIN reported that in March 2011, more than 100 people were killed in two separate clashes involving the SPLA and "armed elements identified loyal to renegade groups operating in the two states of Greater Upper Nile."[53] The months of January and February were no less violent since the Geneva-based organization, Small Arms Survey, reported that more than 200 people were killed when Lt. Gen. George Athor, a dissident SPLA commander, took up arms after losing in the governorship election of Jonglei state.[54] The problem is exacerbated by two other matters, which complicate the situation in south Sudan further: Internally Displaced Persons ("IDPs") and refugees returning from neighboring countries or from outside of Africa altogether. A look at USAID statistics reveals the magnitude of the problem.

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[53] *South Sudan Army Clashes With Rebel Group, Over 100 Dead,* SUDAN TRIBUNE (Mar. 8, 2011), http://www.sudantribune.com/South-Sudan-army-clashes-with,38227. *See also More Than 100 Killed in Disputed Sudan Region*, USA TODAY (Mar. 3, 2011), www.usatoday.com/news/world/2011-03-03-Sudan_N.htm; *Sudan*: *Thousands Displaced by Abyei Violence "At Risk"*, *supra* note 17.

[54] *George Athor's Rebellion, Jonglei State*, SMALL ARMS SURVEY, http://www.smallarmssurveysudan.org/pdfs/facts-figures/armed-groups/southern-sudan/emerging/HSBA-Armed-Groups-Athor.pdf (last updated Apr. 2011).

Table I: Numbers of IDPs and Refugees in Sudan[55]

Number at a Glance		Source
IDPs in Sudan	In Darfur: 1.9 million In S. Sudan: 29,021 In N. Sudan: 1.7 million[56] In E. Sudan: 68,000 **Total: 3.7 million**	U.N.-November 2010 OCHA[57]-February 2011 UNHCR[58]-December 2009 OCHA-October 2010
Sudanese Refugees	From Darfur: 275,000 From S. Sudan: 138,270 **Total: 413,270**[59]	UNHCR-January 2010 UNHCR-February 2009
North-South & Three Areas Returns January 2005 to November 2010 October 30, 2010 to February 8, 2011	IDPs: 2 million Refugees: 330, 000	UNHCR-November 2010 OCHA/RCSO[60]February 8, 2010

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[55] This table of statistics is duplicated from a report issued by USAID. *See* USAID, SUDAN – COMPLEX EMERGENCY: FACT SHEET #2, FISCAL YEAR (FY) 2011 1-2 (Feb. 18, 2011), *available at* http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/sudan/template/fs_sr/fy2011/sudan_ce_fs02_02-18-2011.pdf.

[56] Figure includes approximately 400,000 IDPs living in four sites recognized by Sudanese authorities. Most IDPs in northern Sudan live in informal settlements in and around Khartoum. *Id.*

[57] U.N. Office for the Coordination of Humanitarian Affairs ("OCHA"). *Id.*

[58] Office of the U.N. High Commissioner for Refugees ("UNHCR"). *Id.*

[59] According to UNHCR, as of February 13, 248 Sudanese refugees had returned to Southern Sudan since October 30, 2010. *Id.*

[60] U.N. Resident Coordinator's Support Office (RCSO). *Id.*

The **South Sudan Relief and Rehabilitation Commission** ("SSRRC") reported that 21,000 people are stranded in deplorable living conditions in IDP camps around Khartoum.[61] These people sold property and businesses off when it was announced by the GOSS that they should return to the south. In the case of Abyei, the region that connects South Sudan to Sudan, violence has already cost hundreds of lives. The UN staffs in Abyei suggest that more than half the population has left town, with the number of displaced estimated to be around 100,000.[62] Lastly, the number of South Sudanese living in the north ranges from 1.5 million to 2 million, and a large number will not return to the south due to the difficult living conditions and current instability in the region.[63] These are the realities as they stand: proliferation of ethnic violence, a disputed border region pending consultation, millions of IDPs stranded throughout the country, and over half a million refugees yet to find a permanent home. In addition to the numerous challenges facing the south, the most pressing issue that it will have to resolve, should it decide to solve the issues fueling the ensuing violence, is the question of citizenship.[64] In order to

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[61] *Sudan: Managing the Great Trek Southwards*, IRIN, Mar. 10, 2011, http://www.irinnews.org/Report.aspx?Reportid=92150.

[62] U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, SUDAN: ABYEI CRISIS, SITUATION REPORT NO. 12 (Sept. 6, 2011), *available at* http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Situation %20Report%20_12%20on%20Abyei%20Crisis%209%20June%202011.pdf. *See also* USAID, *supra* note 55 (stating that there are 68,000 IDPs in Eastern Sudan); *Sudan: Managing the Great Trek Southwards*, *supra* note 61; *Sudan: Thousands Displaced by Abyei Violence "At Risk"*, *supra* note 17 (indicating that UN staff in Abyei suggest more than half the population has left town).

[63] Marina Ottaway, *Southern Sudanese Living in North Sudan*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 21, 2011), http://sudan.carnegieendowment.org/2011/01/21/southern-sudanese-living-in-north-sudan; *Briefing Paper on Southern Sudan: IDPs Return to Face Slow Land Allocation, and No Shelter, Basic Services or Livelihoods*, INTERNAL DISPLACEMENT MONITORING CTR. (May 30, 2011), http://www.internal-displacement.org/briefing/south-sudan; *Sudan: Managing the Great Trek Southwards*, *supra* note 61. *See also* Richard Downie, *Southern Sudan's Referendum*, CTR. FOR STRATEGIC & INT'L STUDIES (Jan. 5, 2011), http://csis.org/publication/southern-sudans-referendum.

[64] AMIR H. IDRIS, supra note 12, at 19-22; Ibrahim Abdullah, When Does an Indigene/Immigrant Become a Citizen? Reflections on the Nation-State in Contemporary Africa, 7 AFR. SOC. REV. 113, 113-17 (2003); Mahmood

conceptualize the violence occurring in Sudan, one must first and foremost understand the issues that led to the violence and continue to sustain the cycle of violence over time. The main issues that link Côte d'Ivoire, Nigeria, Liberia, Sierra Leone, Ethiopia, Somalia, Burundi, Rwanda,[65] Democratic Republic of Congo,[66] Uganda, Kenya, and South Africa, to the event that has led to the breakup of Africa's biggest country, Sudan, are those of citizenship and nativity,[67] a question of who belongs and who does not belong.[68] Who is a native and indigenous to the homeland, and who is foreign, alien, or non-native in a tribal homeland?   These questions center on the legitimacy to have a native authority to advocate for one's right.   They revolve around the issue of belonging, and the rights and entitlements that accompany civil citizenship.   Most postcolonial African conflicts have revolved

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Mamdani, Understanding the Crisis in Kivu: Report of the CODESRIA Mission to the Democratic Republic of Congo September, 1997, CTR. FOR CIVIL SOC'Y (Nov. 20, 1998), http://ccs.ukzn.ac.za/files/mamdani.kivu.pdf [hereinafter Mamdani, Understanding the Crisis in Kivu]; Zambakari, Post-CPA Era, supra note 12.

[65]For a good case study on Rwanda's citizenship crisis, see MAHMOOD MAMDANI, WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM, AND THE GENOCIDE IN RWANDA (2002).

[66]For a good case study on the Democratic Republic of Congo (DRC)'s citizenship crisis, see Georges Nzongola-Ntalaja, *Global Insights: Citizenship, Political Violence, and Democratization in Africa*, 10 GLOBAL GOVERNANCE 403, 403-09 (2004); Mahmood Mamdani, *The Invention of the Indigène*, LONDON REVIEW OF BOOKS (Jan. 20, 2011), http://www.lrb.co.uk/v33/n02/mahmood-mamdani/the-invention-of-the-indigene [hereinafter Mamdani, *The Invention of the Indigène*]; Mamdani, *Understanding the Crisis in Kivu, supra* note 64.

[67] MOHAMED OMER BESHIR, THE SOUTHERN SUDAN: BACKGROUND TO CONFLICT (1968); MOHAMED OMER BESHIR, THE SOUTHERN SUDAN: FROM CONFLICT TO PEACE (1975); IDRIS, *supra* note 12, at 19-22; MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12; NEW SUDAN IN THE MAKING? ESSAYS ON A NATION IN PAINFUL SEARCH OF ITSELF (Francis M. Deng ed., 2010); SHORT-CUT TO DECAY: THE CASE OF THE SUDAN, *supra* note 18; Francis M. Deng, *Ethnicity: An African Predicament*, 15 Brookings Rev. 28, 28-31 (1997).

[68] *Identity, Security and the Renegotiation of National Belonging in West Africa: Reflections on the Cote d'Ivoire Crises and its Repercussions on the West Africa Region*, CODESRIA (May 15-16, 2003), available at http://www.codesria.org/spip.php?article582&lang=fr.

around the question of citizenship.[69] Today Sudan is the defining example of the failure to reform the colonial system and build an inclusive polity.[70] To illustrate the point and the difficulty in building a more equitable society that engages in a peaceful nation-building that is democratic, transparent, and inclusive of the diversity within the country, I will present the case of an Ethnic Administrative Division in South Sudan: the One County-One Tribe Policy. In doing so, I hope to bring the study of South Sudan into the mainstream study of postcolonial Africa, along with the challenges that most African countries face and the dilemma of unity in diversity.[71]

PROBLEMS OF THE SUDAN: NORTH AND SOUTH

The 20th century was a period in human history replete with never-before-seen violence. One cannot help but ask: what is the reason behind the proliferation of violence in the postcolonial Sudan? Is it that violence is embedded in Sudanese cultures? If the kind of violence taking place after independence from the late 1950s is not revolutionary, counter-revolutionary, or even anti-colonial, how does one make sense of this new kind of violence?[72] Let us first explore the grievances that led to the signing of the CPA to frame the larger problem, and then turn to the specifics by looking at the politics of county creation in South Sudan and how that is laying the groundwork for future conflicts.

On January 9, 2005, the SPLM/A and the GOS signed a peace agreement called the CPA, which ended the conflict in South Sudan that had been going on since 1983. Between the

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[69] Zambakari, *Post-CPA Era*, *supra* note 12.

[70] *Id.*

[71] Francis M. Deng, *Sudan: A Nation in Turbulent Search of Itself*, 603 ANNALS AM. ACAD. POL. & SOC. SCI. 155, 160 (2006).

[72] Mahmood Mamdani, Columbia Univ., Making Sense of Non-Revolutionary Violence: Some Lessons from the Rwandan Genocide, Text of the Franz Fanon Lecture 1 (Aug. 8, 2001), *available at* http://ccs.ukzn.ac.za/files/Mahmood%20Mamdani's%20Frantz%20Fanon%20lecture.pdf [hereinafter Mamdani, Making Sense of Non-Revolutionary Violence].

First Civil War and the SPLA/M uprising in 1983, there was another group, which referred to itself as Anyanya II.[73]   The movement started shortly after the Addis Ababa Agreement and initiated military operations starting in 1978 in Eastern Upper Nile on the Ethiopian border.[74]

The CPA was the outcome of the so-called Machakos peace process, which began in July 2002. It was composed of six partial agreements that have been signed by the two parties (NCP and SPLM/A).[75]   The Agreement included important stipulations for South Sudan to achieve the goal of self-determination for the people through a referendum organized in 2011.[76] The signatories to the CPA came to the realization that South Sudan had been continuously dominated by North Sudan.[77]   Resources were not allocated equally between the regions.[78] Power was highly centralized in the hands of a few in Khartoum.[79] To cite one case, the process of Sudanization of the civil service, which took place shortly after the Juba Conference of 1947, resulted in only six out of 800 posts going to

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[73] John Young, *John Garang's Legacy to the Peace Process, the SPLM/A & the South*, 32 REV. AFR. POL. ECON. 535, 538 (2005).

[74] *Id.*

[75] JOHAN BROSCHÉ, SHARING POWER −ENABLING PEACE? EVALUATING SUDAN'S COMPREHENSIVE PEACE AGREEMENT 2005 17-18 (2009), *available at* http://www.ucdp.uu.se/gpdatabase/info/Sud%203.pdf.

[76] Comprehensive Peace Agreement, *supra* note 3, at 1. Part A, Section 1.3 reads: "That the people of South Sudan have the right to self-determination, *inter alia*, through a referendum to determine their future status." *Id.* at 2. Part B, Section 2.5 states that "At the end of the six (6) year Interim Period there shall be an internationally monitored referendum, organized jointly by the GOS and the SPLM/A, for the people of South Sudan to: confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession." *Id.* at 4.

[77] BROSCHÉ, *supra* note 75, at 17-18.

[78] Cobham, *supra* note 13, at 463.

[79] SCHOMERUS & ALLEN, *supra* note 51, at 14.

southerners.[80]   The history of South Sudan, along with other marginalized areas, is one of deliberate policies by each postcolonial government to marginalize socially, politically and economically peripheral regions in Sudan.[81]   Thus, the CPA set out to correct the imbalances through power-sharing,[82] decentralization of authority, and equal allocation of revenue from oil between the north and the south.[83]   More importantly, the CPA included the provision for a referendum on the self-determination of the south to be held at the end of the interim period.[84]   The interim period has seen development in South Sudan as a result of the wealth-sharing provision, which allocated 50 percent of the revenue from oil to the GOSS. In the area of reform of national and local institutions of governance, however, reform has been contradictory, as the London School of Economics' report showed.[85] According to the CPA, too much centralization of power in Khartoum was part of the problem in Sudan, so decentralization became a *de facto* solution.[86]   In southern Sudan the government experimented with decentralization only to return to a highly centralized system. At the local level, the government policy was to enact legislation called the Local Government Act in 2009,[87] which was seen as a way to delegate power to the local institutions.[88]

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[80] David S. Bassiouni, Keynote Address by Dr. David S. Bassiouni to ESCA-USA 10th Annual Conference 4 (Sept. 4-5, 2010).

[81] Christopher Zambakari, *Old Sudan and New Sudan: Political Crisis and the Search for Comprehensive Peace*, PAMBAZUKA NEWS (Jan. 26, 2012), http://www.pambazuka.org/en/category/features/79401/print.

[82] Comprehensive Peace Agreement, *supra* note 3, at 9. This agreement is known as the Protocol on Power Sharing.

[83] Comprehensive Peace Agreement, *supra* note 3, at 45. This agreement is known as the Protocol on Wealth Sharing.

[84] Comprehensive Peace Agreement, *supra* note 3, at 1.

[85] SCHOMERUS & ALLEN, *supra* note 51, at 9, 15.

[86] *Id.* at 38-39.

[87] The Local Government Act, 2009 (2009) (S. Sudan), *available at* http://www.ldphs.org.za/resources/local-government-database/by-country/sudan/sub-national-

However, this policy too is tainted by something familiar in Sudanese history: the mode of rule adopted by British strategists to govern Sudan.[89]   This was an administrative mechanism characterized by a duality in law, which translated into parallel structures, one governing those in the urban areas, and another system governing the peasants in rural areas.[90]   It was a policy that enabled British colonial administrators to divide up the majority of peasants into hundreds of smaller minorities and effectively deny them the political rights to mobilize or act as a majority.[91]   The next section looks at the consequences of this way of organizing the mass in the countryside.

ETHNIC ADMINISTRATIVE DIVISION-ONE COUNTY-ONE TRIBE

Historically, south Sudan was composed of three provinces: Bhar el Ghazal Region, Upper Nile, and Equatoria.[92]   Today the south consists of ten states: Central Equatoria, Eastern Equatoria, Jonglei, Lakes, Northern Bahr El Ghazal, Unity, Upper Nile, Warrap, Western Bahr El Ghazal, and Western

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legislation/The%20Local%20Government%20Act%202009.pdf.   This Act was made "[i]n accordance with the provisions of Article 59(2)(b) read together with Article 85(1) of the Interim Constitution of Southern Sudan," which was enacted in 2005. *Id. See also* INTERIM CONST. OF S. SUDAN (2005), *available   at* http://www.chr.up.ac.za/undp/domestic/docs/c_SouthernSudan.pdf.

[88] The Local Government Act, 2009, *supra* note 87.

[89] Zambakari, *Post-CPA Era*, *supra* note 12.

[90]   *See generally,* MAHMOOD MAMDANI, CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM, ch. 4 (1996) [hereinafter MAMDANI, CITIZEN AND SUBJECT].

[91] Christopher Zambakari, *South Sudan and the Nation-Building Project: Lessons and Challenges*, 6 INT'L J. AFR. RENAISSANCE STUD. 32, 39 (2011) [hereinafter Zambakari, *Nation-Building*].

[92] *See* SHORT-CUT TO DECAY: THE CASE OF THE SUDAN, *supra* note 18, at 108.

Equatoria.[93] According to a report by the London School of Economics on the dynamics of conflict in Sudan,[94] the best case study that illustrates the tendency for a proliferation of states, counties, and homelands is seen with the Eastern Equatoria State ("EES"), which until recently had two main districts: Torit and Kapoeta. Kapoeta was the first to then subdivide into three counties: north (Didinga), south (Buya), and eastern (Toposa and Nyangatom). Torit subdivided into three more counties: Magwi (Acholi and Madi), Ikotos (Dongotona and Lago), and Lafon/Lopa (Lopi and Pari).[95] Today, Eastern Equatoria has eight counties, and this number is increasing.[96] The division is not arbitrary or accidental but reflects the reality on the ground, local and national politics above, and real grievances at the local level.[97] The capital of a county is located in the dominant tribe's homeland, which gives the tribe both political representation and access to resources.[98] The most important resource is land.[99] Government representatives are recruited from home areas.[100] This method of ruling and organizing the mass of peasantry is not unique to Sudan.[101] It is, in fact, one that is fairly common in Africa.[102] The creation of Ethnic Federalism, a constellation of tribes with corresponding local governments,

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[93] *About South Sudan, Government, State Governments*, EMBASSY OF THE REPUBLIC OF S. SUDAN IN WASH. D.C.,
http://www.gossmission.org/goss/index.php?option=com_content&task=view&id=351&Itemid=176.

[94] SCHOMERUS & ALLEN, *supra* note 51, at 42.

[95] *Id.*

[96] Zambakari, *Nation-Building*, *supra* note 91, at 43.

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.* at 42.

[101] *Id.*

[102] Zambakari, *Nation-Building*, *supra* note 91, at 42.

can be seen in the case of Nigeria, which has a provision in its constitution called the Federal Character Commission,[103] or in the Ethiopian constitution,[104] which mandates that each tribe has a homeland or 'One County-One Tribe Rule.'[105] Uganda has an institution devoted to the management of the mass of peasantry in the rural areas called the Ministry of Local Government.[106] Sudan has copied this mode of governance, and through the Local Government Act of 2009, created a hybrid system incorporating a Customary Law and Council into Local Governance. This is an institutional legacy from the British mode of rule in Africa, indirect rule, which functioned on a dual system: one governing over the urban city dwellers and another over the peasants in the countryside.[107] Even when done with

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[103] CONSTITUTION OF NIGERIA (1999), § 14(3). "The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies." *Id.* §153(1)(c) establishes the Federal Character Commission. The Third Schedule, Part 1, §7 states: "The Federal Character Commission shall comprise the following members: (a) a Chairman; and (b) one person to represent each of the states of the Federation and the Federal Capital Territory, Abuja." *Id.* The Third Schedule, Part I, §8(1) empowers the Commission and states: "In giving effect to the provisions of section 14(3) and (4) of this Constitution, the Commission shall have the power to: (a) work out an equitable formula subject to the approval of the National Assembly for the distribution of all cadres of posts in the public service of the Federation and of the States, the armed forces of the Federation, the Nigeria Police Force and other government security agencies, government owned companies and parastatals of the states." *Id.*

[104] Minasse Haile, *The New Ethiopian Constitution: Its Impact Upon Unity, Human Rights and Development*, 20 SUFFOLK TRANSNAT'L L. REV. 1, 19-20 (1996); Mahmood Mamdani, Columbia Univ., Political Identity, Citizenship and Ethnicity in Post-Colonial Africa, Keynote Address at the Arusha Conference: "New Frontiers of Social Policy" 16 (Dec. 12-15, 2005) [hereinafter Mamdani, Keynote Address at the Arusha Conference].

[105] Zambakari, *Nation-Building*, *supra* note 91, at 42-43.

[106] MAMDANI, CITIZEN AND SUBJECT, *supra* note 90, at 60-61 (1996).

[107] *Id.* at 16-22.

the intent of satisfying certain disenfranchised groups, this policy produces enormous violence and instability within a country. It preempts the creation of a truly inclusive state and focuses on a mode of governance, which produces many smaller 'nation-states' within the larger state.

The division is built on certain assumptions. It is argued by proponents of this continuous subdivision that the political map must follow the cultural map of a region at both the national level and the county level.[108] African countries that adhere to this policy also rely on ethnic quotas to fill positions in government, federal institutions, universities, and the armed forces.[109] This raises a series of questions about qualification for those positions and the unintended consequences of the policy itself. How does the state identify who can and cannot apply for jobs in state institutions?   What are the criteria used in recruiting for these positions and how does the state achieve its objectives without turning citizenship into an ethnically-defined membership in a native homeland?

The real problem is that cultural and political boundaries should coincide and that the state should be a nation-state — such that the natural boundaries of a state are those of a common cultural community.[110]   Mamdani has made this observation in a number of places in regards to other African countries,[111] and the crisis that ensues as various groups seek to have representation by having a tribal homeland. Mamdani writes, "For no matter how much we redraw boundaries, the political crisis will remain incomprehensible until we address

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[108] Mamdani, Keynote Address at the Arusha Conference, *supra* note 104, at 4.

[109] The case of Nigeria is illustrative of these tendencies. *See* CONSTITUTION OF NIGERIA, *supra* note 103, Third Schedule, Part 1, §8.

[110] Mamdani, Keynote Address at the Arusha Conference, *supra* note 104, at 4.

[111] Mahmood Mamdani, When Does a Settler Become a Native? Reflections on the Colonial Roots of Citizenship in Equatorial and South Africa, Inaugural Lecture (May 13, 1998); Mahmood Mamdani, *Understanding the Crisis in Kivu, supra* note 64; Mamdani, Keynote Address at the Arusha Conference, *supra* note 104; Mahmood Mamdani, *The Invention of the Indigène, supra* note 66.

the institutional – political – legacy of colonial rule."[112] As this paper is being written, the Lopit and the Pari have filed for new counties, claiming that they can no longer coexist with each other.[113]

Today, there are demands in South Sudan to create counties based on ethnicities, and each ethnicity should be entitled to its homeland.[114] With a country as diverse as Sudan, one must ask: where does this process of continuous political fragmentation end? There is one problem that is a direct outcome of this particular mode of organizing a population: political violence. What happens when IDPs and refugees return to South Sudan? Where will they live? Should they be confined to already demarcated states with respective counties, or should they also fight to have their own counties? How about immigrants? What happens to immigrants who do not have a county? If right to land and political representation follows an ethnic system whereby everyone has a homeland, what happens to immigrants who have neither a homeland in Sudan, nor a representation in the form of a native authority? The answer lies in a particular form of the state that has emerged in Africa after independence.[115]

The reality of the postcolonial state in Africa can be summarized as follows: in an increasingly integrated global economy, people move to wherever they have the chance for a better life. A dynamic economy moves people, mostly labor migrants, outside their 'tribally defined homeland' and forces them to cross over different boundaries. However, the colonial state especially penalizes those that are most dynamic, those who respond to favorable economic conditions across political

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[112] Mamdani, Keynote Address at the Arusha Conference, *supra* note 104, at 4-5.

[113] SCHOMERUS & ALLEN, *supra* note 51, at 43.

[114] *See* MAREIKE SCHOMERUS AND TIM ALLEN, SOUTHERN SUDAN AT ODDS WITH ITSELF: DYNAMICS OF CONFLICT AND PREDICAMENTS OF PEACE 40-42 (2010), http://www2.lse.ac.uk/businessAndConsultancy/LSEConsulting/pdf/southe rnSudan.pdf.

[115] Abdullah, *supra* note 64, at 113; MAMDANI, CITIZEN AND SUBJECT, supra note 90, at 52-90.

boundaries, those who go in search of employment and better living conditions outside of their countries. It brands them as aliens, non-indigenous, or foreigners.[116] The cases of the Banyarwanda in Uganda and in Eastern Congo, the Ghanaians in Nigeria, and the Burkinabe in Ivory Coast, are illustrative of these tendencies in the postcolonial period.[117] In each of the mentioned cases, violence has been the outcome as those defined as natives and indigenous confront those branded as non-natives and non-indigenous.

In the next section, I will discuss the colonial state in Africa and the relevance of its study as it applies to South Sudan. In doing so, I hope to show that the development in Sudan is not unique to Sudan, but is a problem that affects all African countries. Last, I will look at the reform of that state and draw relevant lessons from a country where a successful reform has been undertaken, war brought to an end, and the example that inspired the signing of the CPA. The same lesson has applied where mass violence has been stopped, such as in Mozambique. The Mozambican National Resistance ("RENAMO") was involved in some of the most heinous crimes in Mozambique: cutting off hands, maiming, burning villages, deliberately targeting civilians, and kidnapping children and forcing them into carrying out brutalities against their own parents and friends.[118] The U.S. State Department estimates that one million Mozambicans perished during the civil war.[119] In Mozambique,

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[116] Mahmood Mamdani, *Social Movements and Constitutionalism in the African Context* (Ctr. for Basic Research, Working Paper No. 2, 1989); Mamdani, *Understanding the Crisis in Kivu*, supra note 64; Mamdani, Keynote Address at the Arusha Conference, *supra* note 104, at 4; Nzongola-Ntalaja, *Global Insights, supra* note 66.

[117] Abdullah, *supra* note 64; Mahmood Mamdani, *The Social Basis of Constitutionalism in Africa*, 28 J. MOD. AFR. STUD. 359, 367 (1990).

[118] Glenda Morgan, Violence in Mozambique: Towards an Understanding of Renamo, 28 J. MOD. AFR. STUD. 603, 607-09 (1990); Mahmood Mamdani, Good Muslim, Bad Muslim: A Political Perspective on Culture and Terrorism, 104 AM. ANTHROPOLOGIST 766, 769 (2002); Thandika Mkandawire, The Terrible Toll of Post-Colonial 'Rebel Movements' in Africa: Towards an Explanation of the Violence Against the Peasantry, 40 J. MOD. AFR. STUD. 181, 206-7 (2002).

[119] *Background Note: Mozambique*, U.S. DEPT. OF STATE (Nov. 4, 2011), http://www.state.gov/r/pa/ei/bgn/7035.htm.

like in South Africa, violence was brought to an end through political reform. Today, RENAMO sits in Parliament and not in prison.[120] The peace agreement signed in 2005 between the SPLA/M and the GOS was also modeled on a similar understanding, whereby there was no military victory but a stalemate between the adversaries.[121] Both parties agreed with the signing of the CPA that no one was to be held accountable for the atrocities committed in Sudan during the civil war.[122] The key in every case has been political reform of the state, and prioritizing political reform over criminalizing opponents. At the core of the political reform is the recognition that we must not see all public violence as criminal. It was only when the South Africans decriminalized political adversaries, expanding the realm of political membership, that there was an opening for dialogue that resulted in the transformation ushered in during a post-apartheid South Africa. That same political imagination was at work in the dialogue that delivered the CPA in Sudan, and the violence came to an end. The African example of how to resolve the citizenship question, manage diversity within unity, and reform the colonial state can be seen within South Africa's transition from apartheid to a democratic system. This, more than the lessons of the European nation-state, is relevant for containing non-revolutionary violence based on political exclusion in South Sudan.

MAKING SENSE OF NON-REVOLUTIONARY VIOLENCE IN AFRICA

In light of the recent developments around Africa, Bret Stephens, a Deputy Editor for the Wall Street Journal, called for a new kind of colonialism in Africa to help solve Africa's problems. He wrote recently in his column:

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[120] MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12, at 285-86.

[121] Comprehensive Peace Agreement, *supra* note 3.

[122] Mahmood Mamdani, *The New Humanitarian Order*, 287 THE NATION 17, 22 (Sept. 29, 2008).

> It means that colonialism, for which the West has spent the past five decades in nonstop atonement, was far from the worst thing to befall much of the colonized world. It means, also, that some new version of colonialism may be the best thing that could happen to at least some countries in the postcolonial world.[123]

What Stephens failed to come to terms with was the devastating legacy of colonialism in Africa, from which Africa has yet to fully recover five decades later. Instead of contextualizing the violence and its corresponding twin on the continent, underdevelopment, Stephens saw the problem as internal and prescribed the solution to be a 'new version of colonialism' to be externally imposed. Implicit in his analysis is that colonial power brought law and order to the colonies. The departure of colonial powers led to chaos and lack of development. This also shows the failure to understand the nature of postcolonial violence in Africa. Stephens is not saying anything new that has not been said before. His western-centric view, which denies that African agencies are capable of producing progressive movements and leading social transformation, has its roots in European racist scholarship.[124] It is neither original, nor supported by historical fact. Rather, it is a viewpoint created politically. Any policy designed to bring lasting peace in former colonies must begin with the question of citizenship, which is what most of the violence revolves around.[125] At the heart of the colonial system of governance was dualities in how the colonized were organized, and how those deemed civilized were governed.[126] It was a project enforced by law, whereas the urban civilized were governed under common

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[123] Bret Stephens, *Haiti, Sudan, Cote d'Ivoire: Who Cares?*, Wall St. J., Jan. 11, 2011, at A15.

[124] GEORG WILHELM FRIEDRICH HEGEL, THE PHILOSOPHY OF HISTORY 91-92 (J. Sibree trans. 1956).

[125] Zambakari, *Post-CPA Era*, *supra* note 12.

[126] *Id.*

law, natives were governed under customary law.[127] Customary law, in turn, discriminated based on membership in an ethnic homeland.[128] It was a system that privileged those considered natives and discriminated against those considered aliens, foreigners, and non-natives.[129] To move forward requires that we rethink the institutional legacy of colonialism and the legacy of the postcolonial state in Africa. It demands political imagination in thinking of a different future, one based on moving forward, and not one based on the wrongs of the past.

Those who study violence distinguish between two dominant forms: violence that makes sense, and violence that does not make sense. In an attempt to come to terms with the consequences of a bloody and violent century,[130] which still continues into the 21st century, scholars group revolutionary violence, anti-colonial struggles during the decolonization phase, and counter-revolutionary violence, as meaningful and humane. This kind of violence is said to be progressive.[131] The second kind of violence is said to be reactionary and regressive; thus, it is counter-productive. This latter kind is meaningless violence that seems to defy reason, and therefore lies outside the scope of understanding. It is devoid of meaning.[132] The former is a legacy from the European Enlightenment, which viewed politically organized violence as a necessary component of progress. The latter is linked to the process of state formation in Africa.[133] It is an outcome of the mode of rule used to colonize Africa in the 19th century.

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[127] *Id.*

[128] *Id.*

[129] MAMDANI, CITIZEN AND SUBJECT, *supra* note 90.

[130] Peter Wallensteen, *War and Peace: Lessons from the 20th Century: The Hoirup Inaugural Lecture*, 89 SCANDINAVIAN REV. 5, 6 (2001).

[131] Mamdani, Making Sense of Non-Revolutionary Violence, *supra* note 72, at 8.

[132] *Id.*

[133] IDRIS, *supra* note 12, at 2-3.

Columbia University's leading scholar on African Politics, Mahmood Mamdani, has called the latter type of violence that is devoid of meaning, "non-revolutionary violence."[134] Progressive violence or 'good violence' is also associated with the legacy of Karl Marx, who famously professed "revolution is the midwife of history."[135] This tradition finds its genesis in the French Revolution.[136] Since the French Revolution, violence has been understood as essential to progress.[137] On the other hand, Marxist paradigm failed to account for non-revolutionary violence – violence that does not remain class specific, but transcends both class and ethnicity.[138] "Its failure was in its inability to understand the kind of violence that pits the impoverished and disempowered against each other."[139] With non-revolutionary violence, the lines of battle are not drawn by wealth and poverty, but by differences not economic in nature.[140] In Africa, we see a significant reduction in interstate conflict,[141] but a proliferation of ethnic conflicts within states with an increasing death toll for civilian population, including both direct and indirect conflict deaths.[142] This development can be

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[134] Mamdani, Making Sense of Non-Revolutionary Violence, *supra* note 72, at 1.

[135] Mahmood Mamdani, *Culture Talk: Six Debates That Shape Discourse on "Good" Muslims*, 22 AM. J. ISLAMIC SOC. SCI. 95, 101 (2005).

[136] *Id.*

[137] *Id.*

[138] Zambakari, *Nation-Building*, *supra* note 91, at 37.

[139] *Id.* at 37-38.

[140] Mamdani, Making Sense of Non-Revolutionary Violence, *supra* note 72, at 1.

[141] Lotta Themnér & Peter Wallensteen, *Armed Conflict, 1946-2010*, J. PEACE RES. 525, 525-26 (2011), *available at* http://jpr.sagepub.com/content/48/4/525.

[142] GENEVA DECLARATION SECRETARIAT, GLOBAL BURDEN OF ARMED VIOLENCE 2-3 (2008), *available at* http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-full-report.pdf; Thandika Mkandawire, *The Terrible Toll of*

seen in Sudan. Whereas the CPA brought the war between the north and south to an end, the south has been plagued by mass interethnic violence. The Border States,[143] eastern and western regions, Abyei, and Southern Kordofan, all have been engulfed in a series of violence.[144]   This kind of violence is non-revolutionary. The outcome of non-revolutionary violence easily leads to ethnic and racial cleansing.

POLITICAL VIOLENCE AND ETHNIC CLEANSING

Most violence in Africa is related to access to resources and participation in the political process. The most important of resources is access to land. A good place to start is to study how land was treated under colonial rule. For the British, the lessons learned in India led to the removal of land from the market and handed over to the native authority,[145] who effectively governed its allocation to those designated as natives, and deprived those considered non-natives. According to leading British colonial administrator, Lord Lugard: "the native authority is thus *de facto* and *de jure* ruler over his own people . . . . He exercises the power of allocation of lands, and with the aid of the native courts, of adjudication in land disputes and expropriation for offences against the community."[146] In this sense, a non-native could rent but not own land. Land belonged to the collective membership and was accessed as a customary right. Given that the rich, whether native or non-native could purchase land

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Post-Colonial 'Rebel Movements' in Africa: Towards an Explanation of the Violence Against the Peasantry, J. MOD. AFR. STUD. 181, 181-83 (2002).

[143] The Border States mentioned in the Comprehensive Peace Agreement for special status include Abyei, Southern Kordofan, and Blue Nile. *See* Comprehensive Peace Agreement, *supra* note 3, at 65, 73.

[144] Christopher Zambakari, *In Search for Durable Peace: The Comprehensive Peace Agreement and Power Sharing in Sudan*, INT'L J. HUM. RTS. *14 (forthcoming Fall 2012).

[145] SIR HENRY SUMNER MAINE, LECTURES ON THE EARLY HISTORY OF INSTITUTIONS 81-82 (7TH ED. 1914); HON. SIR F. D. LUGARD, THE DUAL MANDATE IN BRITISH TROPICAL AFRICA 286 (4th ed. 1929).

[146] LUGARD, *supra* note 145, at 203.

anywhere, what then was the reality of the poor peasant? If "you could not afford to buy land in the first place, you could still claim land 'customarily', in your 'home' area, from your 'customary' chief, as a 'customary' right, under 'customary' law."[147] The outcome was a strong sense of ethnic belonging. All this led to a heightened sense and drive to belong to a tribe, whose land will be accessed exclusively as a customary right from the native authority by those considered natives of the land.

From the 1930's through the 1940's, the British colonial policy in the south gained momentum. Besides the conscious effort to shape the identity of the subjects in both the north and south, a far more brutal outcome of the British Southern Policy was reflected in the forceful displacement of people from one region, where they were considered non-indigenous, to another, where they were considered indigenous. It involved the purification of all the ethnic groups considered foreign to the region.[148] Contacts between the two regions were restricted. Historically, Sudan was also home to immigrants from East and West Africa, who moved to wherever the living conditions were suitable for settling, and to those making their way to the Mecca. Tribes such as Banda, Dongo, Kreish, Feruge, Nyangulgule, and Togoyo, who adopted Islamic and Arabic cultures and maintained constant contacts with Arab tribes in Central and Western Sudan (Darfur and Khordofan), were forcefully removed from their regions and resettled in other areas away from the influence of their northern Arab neighbors.[149] The policy adopted and implemented throughout southern Sudan resembled a similar project in apartheid South Africa with the administration of a Pass System.[150] Characteristic of this project was the re-tribalization of the population, where the ethnic

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[147] Mahmood Mamdani, Columbia Univ., When Does a Settler Become a Native? : Reflections of the Colonial Roots of Citizenship in Equatorial and South Africa 2 (May 13, 1998).

[148] BESHIR, THE SOUTHERN SUDAN: BACKGROUND TO CONFLICT, *supra* note 67, at 51.

[149] *Id.*

[150] GENERAL J.C. SMUTS, AFRICA AND SOME WORLD PROBLEMS 73-103 (1930).

groups were fragmented and restricted from moving outside the tribal homeland. This was a political project focused on ethnic cleansing and racial purification so as to create a homogenous group throughout Sudan.   Mohamed Beshir captured the outcome of the Southern Policy as it was being implemented throughout South Sudan:

> In pursuance of this policy, all natives of Darfur and Khordofan were prevented from entering Bahr al Ghazal. No natives of the latter were allowed to go to Khordofan or Darfur. The traditional contact between the Dinka and Arabs which took place annually at the common grazing grounds of Bahr al Arab was reduced to the minimum. The Dinka settled in the north were asked to return so that "a more complete separation could be enforced." A Pass System, similar to that applied in South Africa, was applied, in order to control the contact between north and south. In a meeting held at Kafia Kingi on 14 February, 1940, between District Commissioner, Western District, Bahr al Ghazal, and his counterpart in Darfur, it was agreed that only those Northerners who had passes signed by the District Commissioner would be allowed to enter Raga District.[151]

The British colonial project shaped and changed the very nature of the organization of resistance through the mechanism of law.   This included the Closed District Ordinances, an administrative division of Darfur into tribal homelands, and the imposition of a dual system of governance, one in the north and a different one in the south.[152] This project defined individuals and grouped them into categories and enforced the distinction in law.[153] The policy laid by the British in the early 20th century in Sudan also explains the cycle of violence in Darfur in the west

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[151] BESHIR, THE SOUTHERN SUDAN: BACKGROUND TO CONFLICT, *supra* note 67, at 51.

[152] Zambakari, *Nation-Building*, *supra* note 91, at 40

[153] MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12, at 152-63.

of the country and the deadlock over the disputed regions, with Abyei being the most contested area.[154]   So explosive is the dispute over Abyei that it is instructive to compare it to yet another explosive and unresolved dispute between India and Pakistan over Kashmir.[155]   Abyei has already proved to be a destabilizing force for North and South Sudan.   Without reaching a region-wide consensus, which will settle the underlying issues over political participation and access to pasture and land, Abyei may end up turning into Sudan's 'Kashmir'.[156]   The problem in Abyei between the Ngok, Dinka and the Misseriya, and the conflict between the Camel Nomads of the north in Darfur and the agriculturalists in Southern Darfur, is that the demand for tribal homeland in South Sudan revolves around the same issues: political representation, access to pasture for cattle, and claims to a tribal homeland being advocated for on behalf of the tribe.[157]   Without resolving the underlying issues, the violence will not subside.   Instead, the frequency and intensity of the new waves of violence will be far more deadly, given that the region is heavily armed, and because the central governments in North and South Sudan do not have a monopoly over arms as demonstrated by the outstanding rebellions currently underway in western Sudan (Justice and Equality Movement, or "JEM", SLM/A, and the several armed militias in the Republic of South Sudan).[158]   The regions have not been thoroughly demilitarized.   Militias have not been completely disarmed and reintegrated into the armed forces or society.[159]   The central governments in Khartoum and Juba have

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[154] *Id.*

[155] Zambakari, *Nation-Building*, *supra* note 91, at 46.

[156] *Id.*

[157] Flint, *supra* note 27, at 32.

[158]   *Southern   Dissident   Militias,*   SMALLARMSSURVEYSUDAN.ORG, http://www.smallarmssurveysudan.org/facts-figures-armed-groups-southern-sudan-emerging.php (last updated July 2011); *Southern Dissident Militias*, THE SUDAN HUMAN SECURITY BASELINE ASSESSMENT PROJECT, http://www.smallarmssurveysudan.org/facts-figures-armed-groups-southern-sudan-emerging.php (last updated July 2011).

not acquired total monopoly or control over arms and traffic of weapons into the region.

Land has always been an asset in Africa. It is the source for livelihood for the mass of the peasantry. With British indirect rule, access to land, and participation and representation in local governance, was assigned to native authorities who administered land and settled local disputes.[160] Violence in the postcolonial period cannot be understood as revolutionary or counter-revolutionary.[161] This violence does not fit into existing paradigms because it is not based on non-market distinctions.[162] It is not animated by class distinction.[163] It is rather the outcome of a distinction made by the state and inscribed in law.[164] It must be understood as a result of a particular mode of organizing the colonized. It is the outcome of the process of state formation.[165] Furthermore, the kind of violence that is ethnic in character, whereby the battle lines are not drawn by wealth or poverty,[166] cannot be solved by a top-down approach, foreign aid, development assistance, or military intervention.[167] This is because, to use the words of Frantz Fanon, postcolonial violence pits the "Wretched of the Earth" against each other, the

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[159] LYDIA STONE, FAILURES AND OPPORTUNITIES: RETHINKING DDR IN SOUTH SUDAN 1-3 (May 2011), *available at* http://www.smallarmssurveysudan.org/pdfs/HSBA-SIB-17-Rethinking-DDR-in-South-Sudan.pdf.

[160] LUGARD, *supra* note 145, at 203.

[161] MAMDANI, CITIZEN AND SUBJECT, *supra* note 90, at 1-2.

[162] Mamdani, Making Sense of Non-Revolutionary Violence, *supra* note 72, at 2.

[163] *Id.*

[164] *Id.*

[165] *See* IDRIS, *supra* note 12, at 23-41.

[166] Mamdani, Making Sense of Non-Revolutionary Violence, *supra* note 72, at 1.

[167] *See* FRANTZ FANON, THE WRETCHED OF THE EARTH (C. Farrington trans., 1963).

poor against the poor, and the disempowered against the disenfranchised.[168] Wealth and poverty are not the determining factors, but rather non-economic factors are the driving force fueling and sustaining what Mamdani has called "non-revolutionary violence."[169] The base of this violence was laid in the colonial period. Its legacy and institutions were inherited at independence by nationalists.[170] Rather than reform the institutions inherited at independence, African states have struggled over the past five decades to fix what colonialism left behind. Some countries have demonstrated the will to move forward after the tragedy of colonial administration.[171] In the last section, I want to return to the conceptual framework of the New Sudan, pioneered by the late Dr. John Garang, as an alternative nation-building project.[172] I will argue that this alternative offers the best solution to the problems of the Sudan in the north, the south, and in the disputed border regions. I will contextualize the discussion by drawing on the experience in South Africa, where violence was brought to an end without resorting to criminal justice. In this light, the CPA can be seen first and foremost as a political settlement, which brought 21 years of war to an end without anyone standing trial.

NEW SUDAN: A WAY FORWARD

The current study of Sudan suffers from an epistemological weakness, lack of familiarity with the history of the country, and too much emphasis on political systems rather than critically

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[168] *Id.*

[169] Mamdani, Making Sense of Non-Revolutionary Violence, *supra* note 72, at 1.

[170] *See id.* at 16-17.

[171] In East Africa, the best case that illustrates a successful reform of the colonial state is that of Tanzania under the leadership of President Nyerere. In his keynote address to the East African Legislative Assembly Symposium in June 2011, Mamdani observed that it is the only country in the region where a group has not been persecuted collectively on a racial or ethnic base.

[172] JOHN GARANG, THE CALL FOR DEMOCRACY IN SUDAN 118-42 (Mansour Khalid, ed., 2nd ed. 1992).

analyzing the foundation upon which the postcolonial institutions are built.[173] The notion that the conflict in Sudan is one between Arabs and Africans, Muslims and Christians, north and south,[174] can be partially explained by historicizing the legacy of the late colonialism in shaping the very landscape in which debate takes place. No one understood this problem better than Dr. John Garang, who pioneered the vision and concept known as the New Sudan. In redefining the problem in Sudan from the problem of the south, Garang effectively included all marginalized regions in the struggle for liberation and reform of power at the center.[175] The national identity crisis of whether Sudan is African or Arab is a contested issue today. In the North, the emphasis has been placed on the Arab/Islamic character of the state.[176] With the secession of the south, the tendency in the north has been to consolidate the Arab identity while silencing all marginal identities within the north.[177] The opposite phenomenon is taking place in the south where the

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[173] IDRIS, *supra* note 12, at 3.

[174] Framing the conflict in Sudan as one between "Arabs and Africans," "Muslim and Christians," and "north and south" is misleading. Garang attempted to shift this paradigm by contextualizing the conflict and providing an alternative history and causes of the conflict by linking the cause to a particular form of the state and demanding that power be fundamentally restructured. One of the successes of the SPLM/A under Garang was to redefine the problem in national rather than regional terms. Other scholars have also challenged the radicalized history, which has been dominant in the colonial and postcolonial period. For alternative explanations, *see* MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12; IDRIS, *supra* note 12; GARANG, THE CALL FOR DEMOCRACY IN SUDAN, *supra* note 172; DENG, WAR OF VISIONS, *supra* note 37; G. NORMAN ANDERSON, SUDAN IN CRISIS: THE FAILURE OF DEMOCRACY (1999).

[175] GARANG, THE CALL FOR DEMOCRACY IN SUDAN, *supra* note 172, at 118-42.

[176] IDRIS, *supra* note 12.

[177] The current crisis in the disputed border regions and the violence in Darfur are illustrative of the tendency to consolidate an Arab identity while silencing other ethnicities in the north. South Kordofan and Darfur have some of the most diverse, multiethnic, pluralistic communities in the north and west of Sudan. The government in Khartoum has been trying to group these diverse nationalities under one umbrella, Arabs.

elites have moved quickly to shape the identity of the country as African, secular and black. It has been noted that this struggle for national identity has been one of the contributing factors to the violence in Sudan.[178] He wrote: "This multiple denial of a Sudan which is uniquely Sudanese and not an appendage to Arabism, Islamicism or Africanism lies at the root of the political problems of the 'Sudan.'"[179] Most scholars dismiss the easy and simplified answer, which is characteristic of the way the problems in Sudan have been reported in the media.[180] Norman Anderson rightly dismissed the notion that the problem is 'Arabs' against 'Africans' and claimed that the relationship between the 'Arab' and the 'African', north and south, is complex.[181] Sudan has a historical relationship with the outside world, including the Mediterranean and Arabia, predating recorded history. During the Islamic era, Muslim Arabs chose to intermarry and assimilate rather than rely on conquest and force.[182] Garang took this vision a bit further in his analysis of what constituted the problems of Sudan and offered a model of nation-building rooted in the concepts of unity in diversity, respect for human rights and rule of law, equitable distribution of national resources, devolution of power from the center to historically marginalized regions, and value of multiple identities. Sudan is a melting pot of nationalities, religions, and languages.[183] There will be no peace if some groups feel marginalized, intimidated, and territorially besieged. The

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[178] SHORT-CUT TO DECAY, *supra* note 18, at 14.

[179] *Id.*

[180] See, generally, Peter K. Bechtold, Darfur, the ICC and American Politics, 16 MIDDLE E. POL'Y 149 (2009); Ammina Kothari, *The Framing of the Darfur Conflict in The New York TImes: 2003-2006*, 11 JOURNALISM STUD. 209 (2010).

[181] ANDERSON, *supra* note 174.

[182] MAMDANI, SAVIORS AND SURVIVORS, *supra* note 12, at 200; CHRISTOPHER ZAMBAKARI, *South Sudan and the nation-building project: Lessons and challenges*, International Journal of African Renaissance Studies - Multi-, Inter- and Transdisciplinarity (Forthcoming April 16, 2012), 8 (2012).

[183] GARANG, THE CALL FOR DEMOCRACY IN SUDAN, supra note 172, at 127.

problem can be seen in regions that have people with multiple identities: Abyei, Kordofan, Nuba Mountains and Blue Nile. Dr. Amir Idris, Associate Professor of African Studies and Associate Chair of the Department of African and African American Studies at Fordham University, captured this dilemma recently in the Sudan Tribune. He wrote:

> I was born and raised in the north by two parents who came from two different worlds. My father came from southern Sudan and my mother was born and raised in the north. I married a woman who is a southern Sudanese. Our two children are proud to define themselves as Canadian.[184]

Despite the independence of the south, South Sudan is still linked to the north socially and economically.[185] Oil makes up 98% percent of government income in South Sudan.[186] Though the oil fields are located in the south, the port and refineries are located in the north.[187] The south is so inextricably linked to the north that it can be argued that the south cannot find peace if the north is unstable, and the opposite can be seen as true for the north. The difficulty can be seen in the attempt to solve the problem in Abyei. The referendum on self-determination did not undo relationships forged historically over thousands of

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[184] Amir Idris, *I Hate to Choose: Personal Reflections on the Referendum*, SUDAN TRIBUNE, Nov. 21, 2010, *available at* http://www.sudantribune.com/I-hate-to-Choose-Personal,37003.

[185] The CPA mandated that oil revenue be shared equally between the two parties to the agreement during the interim period. GLOBAL WITNESS, FUELLING MISTRUST: THE NEED FOR TRANSPARENCY IN SUDAN'S OIL INDUSTRY 4 (Sept. 2009), *available at* http://www.globalwitness.org/library/fuelling-mistrust-need-transparency-sudans-oil-industry. Agreements over the distribution of oil revenue in post-CPA era have not been finalized. The government in South Sudan depends heavily on revenue from oil, which accounts for 98% of its income. *Id.* at 7, 17.

[186] *Id.*

[187] *Id.* at 5.

years, and it did not change the social and cultural fabric of the country.[188]

Rather than to prematurely de-link all relationships between the north and south, Sudan can learn a lesson from the South African experience where violence was effectively brought to an end, and an inclusive political community, which accounts for the diversity within South Africa, was created and inaugurated with the first election in 1994. South Africa, like Sudan, had the option to perpetuate an endless war or reach a political settlement. It opted for the latter. The terms of the settlement are instructive in settling the crisis in the disputed regions and all marginalized areas in Sudan. The solution in north and South Sudan demands a similar political imagination like the one in South Africa. A research specialist in South Africa notes this imagination: "it was the fact that the contending political forces imagined the future of what South African citizenship might look like after apartheid, and that this imagination was shaped by the historical particularity of state formation in South Africa, by both its limits and its possibilities."[189]

This political imagination, crucial in propelling South Africa forward, was summarized in South Africa's Freedom Charter of 1955. The Charter presented a vision of South Africa that is similar to what Garang envisioned for Sudan, and declared: "that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people."[190] In 1994, Mandela reiterated the concept and premise of the new South Africa. He identified what appears to be the Achilles heel of the nation-building project throughout Africa in noting that the challenge today for political leaders was "to build a nation in which all people - irrespective of race, colour, creed, religion or sex - can assert fully their human worth; after apartheid, our people

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[188] Zambakari, *Nation-Building*, *supra* note 91, at 48.

[189] Suren Pillay, *The Political Imagination of State Reform: Reflections on the Making of Political Community after Apartheid in South Africa,* CODESRIA BULL., no. 1 & 2, 2010, at 35, available at http://www.codesria.org/spip.php?article1209&lang=en.

[190] *The Freedom Charter*, AFR. NAT'L CONG., http://www.anc.org.za/show.php?id=28 (last visited Feb. 16, 2012).

deserve nothing less than the right to life, liberty and pursuit of happiness."[191]   Mandela also warned that failure to properly manage diversity within an inclusive framework was a recipe for disaster, which destroys the human capital and the potentials of citizens. The New Sudan vision as presented at the Koka Dam Conference on March 20, 1986, was a conceptual framework for a country that was inclusive of all its multiple ethnic groups, and embracing all nationalities, races, creeds, religions, and genders.[192] It was a country in which all Sudanese were equal stakeholders.[193] Specifically, the New Sudan, as initiated by the signing of the CPA, was a country voluntarily united in justice, honor and dignity for all its citizens, regardless of their race, religion, or gender.[194] To turn the vision into reality required a shift of historical significance, not only in Sudan, but also in Africa. Given the legacy discussed in this paper, most countries in Africa have failed to fully reform and move beyond the colonial state and its institutional apparatus, reforming both the center and the sphere of customary authority, which has remained mostly intact since independence. The proposed Second Republic is a move away from defining the problem in ethnic or regional terms, and defining it in national terms, hence Garang's insistence that there was no southern problem, but rather a national problem in Sudan.[195] This national problem will remain in both the north and the south as long as the institutions at the national and local level of governance remain unreformed.

In South Africa, the African National Congress realized that victory was not possible. It also acknowledged that apartheid South Africa was a racially exclusive state. The solution was not in re-racializing the post-apartheid state through a demand for a black majority, but rather, de-racializing and reforming the

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[191] Nelson Mandela, *The Future of South Africa*, AFR. NAT'L CONG. (Mar. 1, 1994), http://www.anc.org.za/show.php?id=3652.

[192] GARANG, THE CALL FOR DEMOCRACY IN SUDAN, *supra* note 172, at 118.

[193] Zambakari, *Nation-Building*, *supra* note 91, at 49.

[194] GARANG, *supra* note 172, at 118.

[195] *Id.* at 125-28.

state.[196] The limit of the South African transition from apartheid to a post-apartheid democratic system is that it managed to de-racialize the civil services and the state at the center, but it continues to uphold the customary sphere without reforming it in the name of tradition. Such is the limit in South Africa, but that is a problem that it is working out as it moves forward. The lesson of South Africa is "[i]t recognized that all belonged and that the creation of a single political community was the goal. Race, ethnicity and history defined the answer in the past, but will not define it in the future."[197] "For north and South Sudan, those who will pay allegiance to the national flag, those who choose to have a common future not bound by the past, those Sudanese who chose to live side by side as friends and neighbors, will have to put the past aside and work for a peaceful common future."[198] That the living must be prioritized over the dead is the lesson of South Africa.[199] South Africa belongs to "belongs to all who live in it."[200] North and South Sudan belong to the North and South Sudanese.

CONCLUSION

This paper started by demonstrating the successes of the CPA, which established the Interim Constitution of Southern Sudan, and effectively ended the war between the north (NCP) and South Sudan (SPLA/M). The CPA, enacted in 2005, formed the semi-autonomous GOSS in the southern part of the Republic of Sudan, and effectively ended the violence that has devastated Sudan since 1955. A brief history of Sudan was offered to provide a background to the rest of the paper. Next, the plight

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[196] Pillay, *supra* note 189, at 37.

[197] *Id.*

[198] Zambakari, *Nation-Building*, *supra* note 91, at 50.

[199] Mahmood Mamdani, Columbia Univ., Lessons of Nuremberg and Codesa: Where Do We Go From Here? (July 14, 2010), *available at* http://humanities.ufs.ac.za/dl/userfiles/Documents/00000/98_eng.pdf.

[200] AFRICAN NATIONAL CONGRESS, THE FREEDOM CHARTER (1955), *available at* http://www.anc.org.za/show.php?id=72.

of IDPs and refugees was presented, illustrating the daunting task of managing the inflow of displaced people in the various parts of Sudan. The number of South Sudanese living in the north ranges from 1.5 million to 2 million, and a large number of them will not return to the south due to the difficult living conditions and current instability in the region. Among the key issues that affect both the GOSS and the GOS are the proliferation of ethnic violence, a disputed border region pending consultation, millions of IDPs stranded throughout the country, and over half a million refugees yet to find a permanent home. A case study was presented to illustrate the tendency for the proliferation of counties in South Sudan. It was argued that **this mode of organizing the mass of peasantry pre-empts the creation of a truly inclusive state, and focuses on a mode of governance that produces many smaller 'nation-states' within the larger states in South Sudan. The division is built on the assumptions that the political map must follow the cultural map of a region at the national level and at the county level. The real problem with this logic is that no matter how many counties are created and how much the map of the country and region is redrawn, the political crisis will remain. This political crisis always leads to political violence.**

The proliferation of ethnic violence in Sudan is best understood as an indispensable component of the process of state formation and colonial governmentality, deployed to colonize African colonies in the late 19th century. To move forward and pre-empt future violence requires political imagination to rethink an alternative future based on a common future, rather than a common past and descent. The solution for both governments in north and South Sudan is found in Garang's conceptual framework of the New Sudan,[201] which is consistent with the other successful case in the African context, South Africa's transition from apartheid to a democracy. The lesson of South Africa is the creation of a single political community inclusive of the diversity within the country. The New Sudan vision is the most progressive attempt at reforming the state in Sudan. It theorizes a political reform of the colonial state in Sudan, the building of an inclusive community where citizens will not be discriminated against based on race, color, creed, religion, ethnicity or sex. Race, ethnicity and history

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[201] GARANG, *supra* note 172, at 118-42.

defined the solutions in the past, but race and ethnicity will not define solutions in the future. The solutions to Sudan's problems cannot be imposed by force; they cannot be externally imposed upon the Sudanese from outside. Any forceful and externally enforced solution has not worked in the past and will not work in the future.