

Root Causes of the Conflict in South Sudan

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INTRODUCTION

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



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

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

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

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

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

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

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

STATECRAFT AS A SOLUTION TO THE CONFLICT IN SOUTH SUDAN

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

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

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

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

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

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

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

SOME LESSONS ON STATECRAFT

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

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

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

1. NATIONAL CONSULTATION

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

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

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

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

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

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

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

2. NATIONAL CONSENSUS

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

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

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

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

3. STATE CONFIGURATION

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

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

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

- The Principle of Rotation – The location of the office of the president/prime minister, etc., shall rotate geographically, 2 terms each, per region: Greater Equatoria, Greater Upper Nile and Greater Bahr El Ghazal. In addition, a presidential candidate must win majority votes in two and a half regions to be declared as validly elected.
- The Principle of Alternation – When a president or a prime minister is from one region, the deputy must be from another region and the president of the senate or the speaker of the parliament from another region, at all times.
- The Principle of Proportional Representation – Each ethnic group shall be represented in state institutions, bodies, programs and mechanisms, including the civil service, proportional to its national numerical strength.

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

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

- The Principle of Reverse Intergovernmental Resource Allocation – More resources shall be allocated to lower levels of government.

- Equitable Gender and Generational Representation – Women and youth shall be equitably represented in all structures and levels of government.

4. CONSTITUTION-MAKING

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

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

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

MECHANISM FOR IMPLEMENTATION

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

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

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

Such a management could do the following:

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

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

CONCLUSION

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

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



About the Author

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

