

Deliver Peace Through Powersharing

A Comparative Analysis

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Introduction

After several months of political and diplomatic shuttling by mediators, South Sudan finally has a peace deal. Broadly, the new agreement recognises the evolution of the conflict and no longer considers the civil war as binary duel between the two protagonists but rather as involving many actors. It also accepts that Uganda and Sudan, the closest allies to the various conflict parties, play an instrumental role in realising a lasting and sustainable peace agreement. The agreement has attracted wide criticism, especially in the manner in which key players such as the Troika (the United States, Norway, and the United Kingdom) and other stakeholders had been excluded from the final phase of the process held in Khartoum, Sudan. Most importantly, the Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) has been attacked for not doing enough to tackle corruption, state-capture by elites and social injustices which have been regarded as the main drivers of the conflict since 2013 as cited in various reports by AU and UN experts.² So much has been spoken of the bad peace deal signed by different stakeholders, including conflict parties and the international community. What remains unclear is a comparative analysis of the R-ARCSS and its predecessor - the Agreement on the Resolution of the Conflict in South Sudan (ARCSS), and the realities that have changed the dynamics of the conflict.

Despite the flaws in the recently signed R-ARCSS in terms of tackling the ambiguous border demarcation mechanisms and shortcomings in the cantonment process, the new agreement offers another opportunity to stabilise the country if political and military leaders show the required political will to implement it. The R-ARCSS has strengthened inclusivity of various stakeholders such as youth, women, faith-based groups and civil society in the governance process. Most importantly, it included a detailed implementation matrix that is binding parties to uphold it. Although the agreement favours the incumbent government, it has broadened the participation of the different armed and unarmed groups during the transitional period. This paper attempts to comparatively analyse the underlying similarities and dif-

¹ This article was originally published by The Institute of Social Policy and Research (ISPR), a public policy and research centre specialising in social, economic and governance policy research in Juba, South Sudan and titled "A Second Chance to Deliver Peace through Power Sharing: A Comparative Analysis of South Sudan Peace Agreements." It is reproduced here with permission from ISPR and its Chief Executive Officer, Malish John Peter.

² AU Commission of Inquiry Report on South Sudan October 15, 2014 available at http://www.peaceau.org/uploads/auciss_final.report.pdf

ferences between the 2015 ARCSS and the 2018 R-ARCSS, specifically focusing on the Governance Chapter which is the critical part of the agreement that determines the power dynamics between the different actors. It also digests the key facts for use by advocacy groups within and outside of South Sudan. The first section provides a snapshot of the conflict's context since 2016 and the reasons why the 2015 ARCSS collapsed. The second part analyses the transitional governance arrangements under the two agreements and concludes with critical enablers for successful implementation of the agreement.

Context of the Conflict

Since 2016, South Sudan's conflict has become multifaceted in scope and number of armed actors. Since the escalation of violence in 2016, several armed groups³ have sprung up and complicated the search for political settlement. Central to this is the continued fragmentation of the ruling Sudan's People's Liberation Movement and Army (SPLM/A), and counterdefections of different generals and politicians in the government and opposition groups. At the regional level, Uganda and Sudan have been deeply involved in the civil war and both have resisted any peaceful resolution without their interests being secured. Uganda wants to fortify its porous border, which is already susceptible to internal threats to President Museveni's government, control South Sudan's internal market and possibly the oil sector for its new refineries and pipeline to the Dar es Salaam port.⁴ On the other side, Sudan's economic woes and the unresolved disputed areas along the border with South Sudan necessitated Khartoum to change its policy towards the Government of South Sudan. President Bashir⁵ has real-

... Uganda and Sudan have been deeply involved in the civil war and both have resisted any peaceful resolution without their interests being

ised that neither the government or opposition groups will achieve absolute military victory. Sudan's new strategy is two-fold: to work with any party that guarantees their rights to acquisition of the disputed areas and oil fields, and to keep South Sudan under its lenses against any potential that might emanate from the Blue Nile and South Kordofan insurgency.

Why Revitalise the 2015 ARCSS?

The Inter-Governmental Authority on Development (IGAD) brokered ARCSS had a short-lived implementation in 2016 focusing on power-sharing and wealth control, and did not prioritise the implementation of important provisions, such as cantonment and integration of the forces, which could have paved the way for robust security, economic and governance reforms. The signs of the eminent collapse of the ARCSS were clear parties continued to disagree over the size of opposition soldiers and the type of weaponry to be allowed into the capital, Juba. Also, continued contestation of the expansion of the states by the opposition among other indications showed that the agreement was bound to fail.

But most importantly, the failure of the enforcement mechanisms by the guarantors of the agreement further emboldened impunity as the belligerent parties selectively implemented what suited their interests. Little peace dividend was experienced at the community

level as inadequate political will to address social injustices, combat communal fighting, stop repression of minorities and limited reforms to stabilise the economy meant that the Transitional Government of National Unity (TGONU) failed to deliver.⁶ The situation was further aggravated by the fresh fighting that flared at the Presidential Palace and escalated into a full blown civil war across the country.

The failure of the ARCSS to stop the conflict, jump-start the economy, establish a new political discourse and achieve significant progress in stabilising the country, IGAD initiated a High Level Revitalization Forum (HLRF).⁷ The HLRF was mandated to review the implementation progress of agree-

3 South Sudan Country Report: Children and Security, April 3, 2018 available at <https://www.childsoldiers.org/wp-content/uploads/2018/05/South-Sudan-April-2018.pdf>

SPLM IO Advance Team, December 4, 2015, available at, <http://www.eyeradio.org/list-splm-io-advance-team/>

4 Uganda, Tanzania set new fast track deadline for oil pipeline, May 6, 2018, available at <https://observer.ug/news/headlines/57627-uganda-tanzania-set-new-fast-track-deadline-for-oil-pipeline.html>

5 On April 11, 2019, President Omar al-Bashir, who seized power in a military coup in 1989 and has ruled Sudan in an autocratic style for nearly 30 years, was overthrown as popular protest which started in 2018 engulfed the country. He was arrested in a coup by the armed forces but protestors are still demanding the military hand over power to civilians government.

6 DANIDA Country Program Strategy 2016 – 2018, available at <http://um.dk/en/~media/UM/English-site/Documents/Danida/About-Danida/Danida%20transparency/Consultations/2015/SSD%20country%20programme.pdf>

7 IGAD Communiqué, June 12, 2017 available at https://igad.int/attachments/article/1575/120617_Communique%20of%20the%2031st%20Extra-Ordinary%20IGAD%20Summit%20on%20South%20Sudan.pdf

ment, reconstitute a broad-base transitional government and develop new electoral timeline. The revitalisation agenda was limited to the Governance and Security Arrangements and Permanent Ceasefire chapters as the nexus of the collapsed deal. Since July 2017, IGAD had engaged the various South Sudanese stakeholders, including new armed groups, to negotiate a broad and inclusive peace agreement that will result in sustainable peace, security and stability. Consequently, after 15 months of intense negotiations, the parties and stakeholders signed the revitalised agreement under the auspices of Sudan on 12 September, 2018.⁸

Comparatively, there is little difference in the guiding principles and approach to resolve the conflict between the two agreements. Both agreements comprehensively captured the structural and institutional weaknesses that led to the civil war in 2013 and 2016, and the required reforms to stabilise the country. Contrary to expectations, the agreements failed to tackle the cracks in the Sudan People's Liberation Movement (SPLM) and the state-capture by elites. Neither of the agreements provided a framework to address the root causes of community violence, hatred and stereotypes that fertilised the civil war. Most importantly, both the ARCSS and the R-ARCSS believed that the political elites are only responsible for the violence, and that by forming coalition governments they would work together to stabilise the country, and tackle other issues that triggered the civil war. This assumption is somewhat justified given the patriarchal societal set up in South Sudan. However, the question of political trust and ideological differences between the main political actors demand a close watch by the guarantors, civil society and the citizens if this new deal is to succeed.

Analysis of the Agreements

Chapter One of the R-ARCSS establishes the Revitalised Transitional Government of National Unity (R-TGONU) based in Juba. The R-TGONU is tasked to implement the agreement to restore peace, security and stability in the country. It is also responsible to carry out necessary institutional and policy reforms that will provide safe environment for the return of internally displaced people (IDPs) and refugees. The R-TGONU will also oversee the promulgation of

new permanent constitution. Whereas the 2015 ARCSS provided for only 90 days or three months of a pre-transitional period to set up institutions and mechanisms to implement the provisions of the deal, R-ARCSS extended this period to eight months or 240 days with similar functions to complete. This is a significant shift from ARCSS. The expanded pre-transitional period is required to facilitate cantonment of forces, implement key security provisions as well as build confidence between the parties to fully embark on the implementation of the agreement. This is a positive gesture in the new agreement to allow parties sufficient time to prepare for the transitional period.

Additionally, the R-ARCSS also establishes a National Pre-Transitional Period Committee (NPTC) tasked with the responsibility to oversee the implementation of pre-transitional activities. These activities include reunification of forces, ratification of the agreement and establishment of institutions for the transitional period. In addition, raising awareness on the agreement, initiating national reconciliation and healing, reviewing relevant laws, implementing security arrangements, devolving powers to the states and local governments and fundraising for the implementation of the agreement are also part of pre-transitional activities.⁹ This was not the case under the ARCSS as there was no specific body tasked with overseeing pre-transitional events, instead the events were directly coordinated by the government. Even the opposition team that arrived in Juba in December 2015 ahead of the formation of the TGONU did not possess the legal tools that would reinforce their work.¹⁰ This caused delays and further contestations ahead of implementation of the agreement. Generally, both agreements retained the period of the transitional unity governments equivalent to three years (36 months) before general elections are held.

The R-ARCSS has been attacked for its inability to clearly find a lasting solution to the issue of states, which was central to the collapse of the 2015 ARCSS among other issues. It is worth mentioning that IGAD acknowledged the creation of more states in 2015 as a violation, but failed to enforce its own resolution¹¹ that called for the restoration of the 10

⁸ Revitalised Agreement on the Resolution of the Conflict in South Sudan, September 12 2018, available at <https://igad.int/programs/115-south-sudan-of-fice/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan>

⁹ Revitalised ARCSS 2018, <https://igad.int/programs/115-south-sudan-of-fice/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan>

¹⁰ SPLM IO Advance Team, December 4, 2015, available at, <http://www.eyeradio.org/list-splm-io-advance-team/>

¹¹ IGAD: Creating New States in South Sudan Violates Peace Deal, October 13,

states. IGAD attempted to resolve the matter through the revitalised agreement which include; establishing mechanisms to address the number and border conflicts arising from the creation of new states through the Technical Boundary Committee (TBC) and Independent Boundary Committee (IBC). These bodies will look into the number and tribal borders of the newly created states, with a possibility of referendum if no consensus is reached. Although this was a good way forward to expedite and resolve the numerous conflicts emanating from the delineation of the new states, it still lacks strong safeguards, consensus and credibility that will ensure that the process does not trigger new disagreement and conflict among stakeholders that will affect the implementation of the new deal.

What is New in the R-ARCSS?

The 2018 R-ARCSS provides for the establishment of a new revitalised transitional government of national unity (R-TGONU). In the new agreement, there are significant changes in the scope of executive and legislative arms of government. The size of the government has been expanded because the number of actors in the conflict has increased, and almost every party demands adequate representation in cabinet and parliament. For example, in the 2015 ARCSS, the presidency had three members (president, first vice president and vice president) and 30 cabinet ministers, but in the 2018 R-ARCSS, the presidency and the cabinet will be composed of six members and 35 ministers respectively. This manifests a significant increase in number of the executive team disproportionate to the actual population of the country.

Unfortunately, in spite of fact that lack of rule of law has continuously been cited as part of the root causes of the civil war, there is little urge to overhaul the justice sector that oversees constitutional order and rule of law. As the case with the 2015 deal, the judiciary remains a peripheral focus of the mediators, parties and the agreement itself despite its critical role in ensuring accountability, balance of power and justice that are important ingredients of a stable country. On the positive side, the R-ARCSS has put in place mechanisms to restructure and reform the justice sector to deliver its mandate.

Most notable gesture of the R-ARCSS is the increased affirmative action that increased the participation of women

by 35 percent in all government levels and calls for youth involvement in governance structures and decision-making processes. This is something the ARCSS was lacking. It remains to be seen whether parties will adhere to these commitments as far as affirmative action is concerned.

Power Sharing at the Executive Level

Presidency

The executive arm of government is comprised of the presidency and the Council of Ministers (COM). In the new agreement, the presidency has been expanded from a three-member entity in the ARCSS [president, first vice president (FVP) and vice president (VP)] to a six-member presidency which will have the president, FVP and four more VPs. Whereas the president retained similar powers and authority as enshrined in the Transitional Constitution of South Sudan 2011 (TCSS) (as amended) and the 2015 ARCSS, the new agreement witnessed reduction in the powers and authority of the FVP as some of the functions were assigned to, or shared with, the new VPs. For example, the FVP lost control over the other clusters (economic, social, infrastructure and gender and youth). The FVP also lost some powers as the chief inspector and in-charge of the implementation of the agreement to a coordinated teamwork responsibility.

Similarly, the agreement introduced collegial responsibility in addition to the consensual and voting mechanisms in decision-making regarding policy decision matters, especially on appointments of constitutional post holders within the presidency. The FVP retained the deputy roles in all constitutional institutions in the governance, economic and security bodies and the COM. In the 2015 ARCSS, the president and FVP shared powers on constitutional appointments. The president had his powers limited in certain decision-making that would affect the ARCSS implementation, for example, declaration of state of emergency and war. The agreement also required consultations and consent of the FVP. Meanwhile, the ARCSS also made the FVP in charge of the implementation and put the FVP in the driving seat of the peace process. All these provisions have changed in the new agreement. The expanded presidency has witnessed the powers and status of the president remain unchanged or maybe strengthened by having additional vice presidents to easily pass decisions. In the new formation, TGONU has 50 percent of the presidency and the opposition cumulatively possesses 50 percent as well. The R-ARCSS requires at least four members of the presidency or 67 percent of the votes to pass decisions if no

2015, available at <https://www.voanews.com/a/south-sudan-igad-peace-agreement-delays/3004183.html>

consensus is reached. This puts the TGONU on the upper side as they simply need one more VP to decide. On the other hand, the agreement also offers an opportunity for the opposition to consolidate their solidarity and push for the reforms they lobbied for if they find common ground to work together and convince either the president or one vice president to vote on their side. Most importantly, the R-ARCSS has no veto powers for the president or first vice president to block decisions, which can be seen as a positive safeguard.

In a nutshell, the new agreement reinstated the status quo ante 2016 with few changes to capture the new realities. It further individualised certain portfolios to avoid the 2016 internal split in the opposition camp that was largely blamed for the post-July 2016 escalation of violence. The South Sudan Opposition Alliance (SSOA) proposals for structural adjustments, such as non-executive president, lean government and federal system to be adopted during the transitional period lost ground in the new R-ARCSS.

Council of Ministers

The role of the Council of Ministers in the R-ARCSS remains the same as in the 2015 agreement, including implementation of the agreement, development policies, supervision of sub-national government entities, initiation of bills, and management and allocation of resources to support government programmes. However, there is significant increase from 30 ministers under the 2015 ARCSS to 35 ministers in 2018, making it the highest proportional rate of cabinet to population in Africa. This means that, on average, each cabinet minister serves 342,857¹² of South Sudanese people. The new agreement retains the selection of ministerial portfolios by consensus or on a rotational basis across the clusters with the incumbent TGONU to pick first followed by SPLM, SSOA, FD and other political parties (“OPP”) respectively. The selection procedure is fair enough to ensure balance of power between the parties across ministerial clusters. Comparatively, the TGONU took 57 percent of the cabinet portfolios and the combined opposition took 43 percent. The numbers of deputy ministers are split 50 percent each between the incumbent TGONU and the oppositions.

From the civil society perspective, there is no sufficient justification for this bloated government.

From the civil society perspective, there is no sufficient justification for this bloated government. South Sudan is experiencing the worst economic crisis in the region.¹³ Nearly every sector needs resources and investment to scale up development. Therefore, this size of government does not reflect the urgent priorities and desires of the citizens as it may stifle the effective use of available resources to benefit the wider citizenry in favour of the few elites.

The decision-making process under the R-ARCSS in the Council of Ministers is by consensus or requires a 67 percent majority vote in the COM meeting with a quorum of not less than 23 or 66 percent of cabinet ministers present. The same threshold was required under the ARCSS, but the new agreement has disadvantaged the opposition this time as far as decision-making power is concerned. Based on the calculation of the distribution of existing portfolio, TGONU requires at least 24 votes in a full cabinet meeting or 15 ministers in

12 Calculated from the extrapolated population of South Sudanese at 12,323,419 million according to <http://www.ssnbss.org/>

13 World Bank South Sudan Economic Outlook, July 2018 Report, <http://documents.worldbank.org/curated/en/928961533737855697/pdf/129303-WP-PUBLIC-SouthSudanEconomicUpdateJuly.pdf>

a quorum attended meeting to pass any policy and enforce reforms. The advantage is that the TGONU has a very limited chance to push through decision in a full cabinet meeting without buy-in from other parties. On the other hand, TGONU is better placed to easily pass decisions in case all its ministers (20) plus three others attend a quorum cabinet meeting. For the opposition, without bipartisan agreement on bills, reforms or policies, they have no chance to push any decision because they have only 15 ministers cumulatively, which falls short of making the required quorum to pass policy frameworks or any reform in a full cabinet meeting. This means that implementation of the reforms in the various sectors will largely depend on TGONU or a bipartisan agreement at the cabinet level, but the opposition has a greater chance to influence policy at the presidency level.

Power Sharing at the Transitional National Legislative Assembly

The 2015 ARCSS created the Transitional National Legislative Assembly (TNLA) composed of the post-independence national assembly and new additional Members of Parliament (MPs) appointed by the then Government of South Sudan (GRSS) and Sudan People's Liberation Movement in Opposition (SPLM-IO) in 2016. The new deal provides an opportunity for restructuring the TNLA to form the Revitalised Transitional National Legislative Assembly (R-TNLA) and expands an already huge national assembly from the existing 400 MPs to 550 MPs, with additional 150 MPs to be nominated by the parties. As per the new power sharing arrangements in the revitalised TNLA, TGONU gets 332 seats or 60 percent, SPLM-IO 128 or 23 percent, SSOA 50 or 9 percent, FDs 10 or 2 percent and Other Political Parties ("OPP") 30 or 5 percent respectively. This makes the R-TNLA the largest parliament in the region and globally by MP-per-population ratio. As per the latest extrapolated population, each MP will represent 21,818¹⁴ South Sudanese. Africa's richest by gross domestic product (GDP) and most populous nation – Nigeria, with over 195 million people, has only 469 combined senators and representatives (MPs) equivalent to one Nigerian MP to 544, 098 people.¹⁵ This clearly shows how the political power that comes with significant authority to control

wealth has been the centre of focus of the conflict and peace negotiations by the parties and regional actors.

In the R-ARCSS, decision making in the R-TNLA is by consensus, but in the event of disagreement, two-thirds or 67 percent of the members' present is required to pass any decision. The biggest miss in the R-ARCSS is the silence of the deal on specific quorum to effectively safeguard potential manipulation during enactment of crucial policy reform frameworks or bills. This is problematic. The new deal also gives the TGONU the leadership of the assembly as Speaker and Second Deputy Speaker will be appointed by the government. Based on the allocation of seats in the R-TNLA, TGONU already has a 60 percent majority and only requires 37 additional MPs to obtain the two-third majority vote to pass any bill. Equally, TGONU has enough seats (332 MPs) to block any policy or bill that might be considered pro-opposition or tabled by opposition groups. On the other hand, the opposition groups, with combined seats of 218 MPs or about 40 percent voting power, are extremely weak and may not push through any bill or policy without bipartisan agreement from the TGONU. In comparison, the incumbent TGONU power balance in the assembly dropped from 83 percent (332 MPs out of 400 MPs) under the 2015 ARCSS to 60 percent under the R-ARCSS and the opposition cumulatively gained 40 percent from just 17 percent in the 2016 TNLA. Consequently, the expected law and policy amendments enshrined in the R-ARCSS to support the reforms in the country rest in the hands of the incumbent government. The agreement has put the incumbent TGONU in the driving seat of the agreement implementation, as such its success will depend on the government's political will.

Council of States

The Council of States in the new agreement remains unattended to because its reconstitution will largely depend on the outcome of the IBC report on the number and boundaries of states. The failure to resolve the "states issue" means that this will not be reconstituted until the final decision is made on the administrative structure of the country. This presents fresh challenge to the R-ARCSS implementation, which was not the case in the ARCSS. Equally, there is a missed opportunity to reform the Council of States to become an effective body. As it stands, the institution maintains its vague and unstructured identity as a collection of old politicians and traditional leaders without a clear mandate within the system of governance.

14 Calculated from the extrapolated population of South Sudanese at 12,323,419 million according to <http://www.ssnbss.org/>

15 Nigeria has 469 Senators and Representatives for 184million Nigerians according to World Bank, Nigeria Country Overview, October 12, 2017, available at <http://www.worldbank.org/en/country/nigeria/overview>

Reforms in the Judiciary

Perhaps one of the greatest weaknesses of the 2015 ARCSS was the inadequate emphasis and the lack of a clear road-map on judicial reforms and constitutional safeguards of the agreement. The ARCSS did not explicitly explain the role, composition and mechanism for reforms in the judiciary to be undertaken despite being the weakest, yet, critical arm of the government in the country. The acknowledgement of the need to ensure independence of the judiciary, supremacy of the rule of law and scanty recommendations for judicial reforms within the framework of the Judiciary Act 2011 were not enough under the ARCSS. On the other hand, R-ARCSS attempts to amplify the need to expeditiously reform the justice sector and strengthen it to become an independent institution. The new agreement mandates the establishment of the Judicial Review Commission (JRC) composed of the parties. However, the R-ARCSS provisions in articles 1.17.4 and 1.17.5 lack clarity as to who shall chair the JRC. Also, the establishment of the constitutional court under the R-ARCSS was something missed in the ARCSS. This would help in constitutional interpretation in matters relating to the provisions of the agreement during the implementation to address any misconception and interpretation conflicts that largely befell the previous deal. But without clear guidelines as to the composition and independence of this new court, again, its effectiveness and efficiency will depend on the political elites' interests and agenda.

Reforms at the State and Local Government Levels

The ARCSS was signed on the basis of the 10 states. However, in October 2015 through a presidential order, 28 states were created. This further increased to 32 states after various petitions and conflicts by communities in the Upper Nile and Western Equatorial regions. The creation of the new states is one of the notable acts of violation, which set the stage for the 2016 political crises. Although IGAD¹⁶ condemned it and resolved the reinstatement of the 10 states, the failure to enforce the decision made parties to make away with it. During the pre-HLRF consultations conducted by the IGAD Special Envoy to South Sudan Ambassador Dr. Ismail Wais, different stakeholders expressed reservations with regards

to the intentions of the new states delineation.¹⁷ Among the arguments are the questions of whether it was a priority for the people of South Sudan, resources availability to finance expansion of more administrative structures, the lack of consultations with the people and the ethnic inclination and distribution of the states. As a result, several options were proposed which included, the three regions, 10 states or 21 old districts. Unfortunately, no progress was made even at the HLRF to resolve this critical issue to-date.

Consequently, the R-ARCSS tried to resolve the issue of the number and boundaries of the new states through community consultations and a referendum. For the incumbent government, this was the right approach to give people the power to decide whether the number of states must be reduced. But, for the opposition groups it is a ploy to stamp and approve the legitimacy of the new states since they do not believe that the IBC and TBC can amicably find a solution. The opposition even doubt the government's political will to ensure that the referendum is free, fair and credible. It is worth mentioning that since 2015 the number of counties, payams and bomas created as a result of the new states is overwhelming. This will increase public expenditure on already ineffective local governments. Above all, it creates the newest conflict dynamics at the local level as rival parties will attempt to secure positions – shifting the dogfight from Juba to the peripheries.

Regardless of the outcome of the TBC and IBC process, the R-ARCSS has to some extent strengthened the inclusivity of the opposition groups in the governance structures at the state and local government levels. The agreement allocated positions to the incumbent government and all opposition groups across the country unlike the ARCSS that allowed power sharing only in the former Upper Nile region. It is partly because of the expansion of the conflict across the country. The R-ARCSS allocates 55 percent to TGONU, 27 percent to SPLA/M-IO, 10 percent to SSOA and 8 percent to Other Political Parties (“OPP”) accordingly. The power sharing ratios apply to governors, state cabinets, state assemblies and county commissioners. In this case, the opposition has

17 IGAD Pre-HLRF Consultations Report, November 2017, <https://paanluwel2011.files.wordpress.com/2017/12/report-of-the-pre-forum-consultations-on-the-hlrv.pdf>

16 IGAD Asks Government to Pause 28 States Plan, January 31, 2016 available at <https://paanluwel2011.files.wordpress.com/2017/12/report-of-the-pre-forum-consultations-on-the-hlrv.pdf>

gained since by the time the agreement was signed, the government was in control of the greatest proportion of the country. The opposition can take advantage of their presence at the local level to mobilise and solidify their support base ahead of the general elections in 2022 if they think strategically and the R-TGONU does not restrict freedoms of movement, expression and association, which are key ingredients to implementation.

Enablers for Successful Implementation of the Revitalised Agreement

The revitalised peace agreement signed in September was received cautiously by the international community, with South Sudan's traditional friends from the Troika (the United Kingdom, United States, and Norway) not committing any financial support towards its implementation. Internally, the incumbent government has moved to popularize it among its constituencies. Meanwhile, several opposition parties are split into factions with those who support the peace deal and others who rebuked the process and the way the agreement was mediated in Khartoum. In this section, the paper outlines the critical enablers for this agreement to successfully deliver peace, stability and dividends to the people.

Maintain Harmony in the Incumbent TGONU

Unfortunately, the governance arrangement has not clarified how the parties in the incumbent TGONU can relate and share the portfolios having seen SPLM-IG, SPLM-FDs (Juba) and SPLM-IO (Taban Deng Gai Faction "TDG") factions amalgamated into one party. This puts the former SPLM-IO under the current First Vice President General Taban Deng Gai on the brink. Similarly, the SPLM-FDs and the National Political Parties Alliance or Political Parties Agenda under Dr. Elia Lomuro, who are part of the incumbent TGONU, may demand to be included. Hence, the task ahead is how the new R-TGONU will strike a balance of inclusivity of the different groups in the incumbent TGONU to maintain the harmony and unity which is critical for the new government during the transitional period. Any break up in the incumbent government can easily lead to violence as the usual way to seek national and regional attention and fight for power.

Unify the Fragmented Opposition Groups

Since the HLRF negotiation moved to Khartoum, most of the opposition groups experienced splits. The most affected formation is the South Sudan Opposition Alliance (SSOA) which witnessed the split of its founding members. For example, the National Salvation Front (NAS) of General Thomas Cirilo and the South Sudan National Movement for Change (SSN-MC) under Governor Bangasi Bakasoro both tore apart. Within the incumbent TGONU, the political parties alliance or agenda experienced power struggle over control of the alliance between Dr. Elia Lomuro and Hon. Joseph Ukel.¹⁸ This fractious nature of the political parties could threaten efforts to implement the R-ARCSS successfully. The South Sudanese have witnessed the disastrous effect of the split in the SPLM in opposition in 2016. This is something the new government must tackle to avoid similar mistakes. A united, strong and coherent opposition group will strengthen the implementation of reforms enshrined in the peace deal.

18 USAP Party Chairman Refutes Allegations on his Dismissal, March 14, 2018 available at, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/21355/USAP-Party-Chairman-Refutes-Allegations-Of-His-Dismissal.aspx>

Strengthen an Independent Judiciary

The judicial sector in South Sudan demands clear reforms to make it effective and efficient to enforce constitutionalism and rule of law. The new agreement calls for reforms without specifying measures to ensure independence, impartiality and credibility of the institution to deliver on its mandate as per the Transitional Constitution of South Sudan 2011 (TCSS) (as amended). This lack of clarity could become a potential power struggle area as far as dispensing justice is concerned if the appointment, firing and supervisory role of the judiciary is not clearly defined in the agreement to safeguard against individual or group influence. The yet to be established constitutional court under the new agreement offers a massive opportunity to ensure any contradiction arising from the constitution and R-ARCSS can be handled by this court. Its effectiveness and efficiency to handle judicial reforms will depend on the political elites.

The implementation of the new states activities during the pre-transitional period remains the most difficult and tricky part of the implementation process...

Resolve the Number and Borders of States

It is worth mentioning that this matter played a central role in the fallout between the Government of the Republic of South Sudan (GRSS) and Sudan People's Liberation Movement in Opposition (SPLM-IO) that resulted in fresh fighting in 2016. IGAD's mechanism and process to address the "states issue" through the Technical Boundary Committee (TBC) and Independent Boundary Committee (IBC) seems to be a better option. However, the assessment of tribal borders and determination of the number and borders of the new states is poised to attract controversies if not conflict at the community level. The implementation of the new states activities during the pre-transitional period remains the most difficult and tricky part of the implementation process to be watched with interest by the guarantors, civil society and the citizens.

Implement Clear Devolution Mechanism

South Sudan is ethnically very diverse and large, which makes it one of the most difficult countries to administer. Successive regimes in Sudan did not find the right formula to govern the region due to these unique features. In the ARCSS, the governance system retained the unitary decentralised form, which was blamed for monopolizing power and creating patronage leadership that led to the civil war. Apart from the reluctant government, most stakeholders have argued for a federal governance system as a mechanism to increase citizen participation in governance, reduce interethnic violence and improve service delivery, but there is little evidence to show the superiority of federalism over other systems in South Sudan.¹⁹ It is critical for the new peace agreement to provide clear and strict parameters to enforce devolution of power and resources to the subnational governments in order to decongest Juba. So far, politicians believe and crave for appointment in Juba because the system is highly centralised, so that to earn a living and respect one has to force their way into the national portfolios. This must be discouraged by making public jobs in states and counties attractive to politicians and the middle class.

¹⁹ Malish, J. (2018). Understanding the Proposed Governance Systems for South Sudan, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3134311

The SPLM Factor – Rethink the Reunification Push

The reunification of the ruling (and opposition) SPLM factions as a de facto solution to the country's crises is complicating the search for permanent peace. Disagreement among the elite SPLM leaders should not hold the country hostage as SPLM as a party is responsible for the current stalemate in South Sudan. The pursuit of peace should seek an alternative and holistic approach that addresses the deepest root causes of the violence and conflicts in the country. The various SPLM factions are unlikely to reunite and pursue their liberation struggle collectively because the party has been destroyed beyond reformation. There is no trust among leaders to coexist in the same party. Any sustainable peace negotiation should treat the different SPLM factions as independent entities the same way as other political parties in the country. The new transitional government should create a conducive space for new ideas and political pluralism to flourish in the post-conflict South Sudan.

Political Will, Trust and Confidence

Political will and mutual trust are immeasurable and unenforceable. The success of implementing the R-ARCSS, especially the governance, security and economic reforms depends hugely on the political will, mutual trust and shared desire of all parties to stabilise South Sudan and deliver services to its citizens. The new agreement was built around the 2016 formation that is now the incumbent TGONU and SPLM IO (Riek Machar). The incumbent TGONU received the proposals it tabled in the new deal. It has the upper hand in the presidency, cabinet and national assembly. This success also comes with a responsibility that, should the R-ARCSS fail to deliver, the new government will have no excuse or scapegoat to blame. Globally, it is difficult to point out a successful coalition government and even harder

to find one in Africa. Kenya and Zimbabwe coalition governments are good examples where parties did not have an easy working relationship as per the signed agreements. The July 2016 gun-battle at the State House (J1) in Juba is a testament of how fragile coalition government without trust and confidence among the parties can be.

The writing of the future social contract between the government and the people must be people-driven and establish safeguards that no individual or group should have leeway to manipulate it.

Participatory Permanent Constitutional Making Process

The future of South Sudan depends on what type of permanent constitution will be promulgated, the extent of citizens' involvement in its writing and ownership of the document by the people. The political crises that befell the country are largely to be blamed on a constitution that concentrated power in the executive level, and particularly in the presidency. The writing of the future social contract between the government and the people must be people-driven and establish safeguards that no individual or group should have leeway to manipulate it. The regional experience in Uganda, Burundi and DR Congo ought to be taken into consideration – that parliament cannot be entrusted to defend the constitution from potential manipulation. It is important for stakeholders, particularly the civil society, to map and identify some of the fundamental doctrines of the basic structure of the constitution that can only be changed through a countrywide referendum. This can safeguard the country from sliding back to chaos in the short and long term.

Uganda and Sudan Factors

So much has been discussed about the effect of Uganda's and Sudan's direct involvement in

the conflict as well as in arbitration to resolve the civil war. The Khartoum Declaration Agreement²⁰ provided unreasonable terms that are recipe for future chaos. South Sudan should not trust its former foe that had done everything to marginalise its people for years. By giving Sudan the responsibility to secure oil fields, border demarcation and claim of contested areas like Abyei is in jeopardy. It further exposes the government to rely on Khartoum for strategic decisions, such as national security. On the other hand, Uganda's incursion into South Sudan militarily, regardless whether to safeguard the peace or not, demands scrutiny by the civil society, government and international partners. This should not create laxity and imbalance of power in the security sector that will weaken genuine reforms to create and professionalise the national army.

Engagement of the International Community - UN, TROIKA and AU

The ARCSS collapsed because the primary guarantor (IGAD) went to sleep immediately after the signing ceremony in August 2015. Other regional and international players did not fully get behind the parties to implement the deal. The pressure that led to the finalisation of the agreement particularly from the Troika (the United Kingdom, United States, and Norway) and the UN Security Council disappeared. This mistake is already taking place, with various international partners cautiously welcoming the peace deal and employing a “wait and see” approach. It is critical for the international community to directly engage the parties to make sure that this deal is implemented. The consistent split in foreign policy towards South Sudan by major powers affects genuine implementation. Also, international pressure on Sudan and Uganda remains an important tool to ensure that both use their leverage to get the peace deal implemented. The Troika, particularly the US and the UK, spend billions of funds to support Uganda's military, and the recent normalisation of relations between Sudan and the West provides an opportunity to pressure the two countries to positively impact the implementation of the R-ARCSS instead of emboldening impunity.

Conducting National Housing and

20 Khartoum Declaration of Agreement Between Parties of the Conflict in South Sudan, June 27, 2018, available at, <https://igad.int/programs/115-south-sudan-of-fice/1874-khartoum-declaration-of-agreement-between-parties-of-the-conflict-in-south-sudan>

Population Census

The revitalised agreement provides for the conduct of the first National Housing and Population Census since the independence of South Sudan. It is worth mentioning that the national census is an important programme that the R-TGONU must prioritise as the basis for permanent determination of governance structures in the country. Since 2011, the national census has been a highly politicised activity in the corridors of power despite its critical importance in providing statistical guidance in planning and budgeting. Therefore, the new government must move away from looking at the census through a political lens but rather as basis to stimulate an objective development agenda moving forward.

Civic Education and Citizen Engagement

Lessons must be drawn from the successful civic education during the Comprehensive Peace Agreement (CPA) – 2005, Referendum (2011), general elections (2010) and population census (2008). These key programmes were successful during the CPA era due to the mass civic education of the population on key timelines and events. The R-ARCSS must take the same approach. The peace deal must be owned by the people. The citizens must be the first guarantors of the agreement. The role of the R-TGONU, civil society, faith-based groups and partners is critical. International partners should increase funding to civil society to reach out to the communities with basic information about the agreement. The civic education on the R-ARCSS should also target all the organised forces including the various armies, police, prisons and national security actors to ensure that everyone understands the text of the agreement and what roles and responsibilities the leaders have committed themselves to uphold.

Open Space for Civil Society and the Media

The role of the civil society in governance or humanitarian response cannot be underestimated. They complement various government agencies by delivering lifesaving interventions in the remotest areas that some area members of parliaments have not even accessed. In the governance and accountability sector, civil society plays a crucial role in building the local peace, advocating for social justice and providing oversight over government to ensure proper utilisation of public funds. These roles support the government as such and it is prudent that the R-TGONU opens the space for the civil society and the media to inform the citizens and support the peace implementation process.

Upholding Fundamental Freedoms and Basic Rights

The ongoing efforts by the government and parties to build trust and confidence are important steps towards the implementation of the R-ARCSS. However, the same confidence and trust needs to be built among the citizens to freely engage in their daily lives. This includes the need to guarantee the right to movement, expression and assembly to show political will to do things differently. The incumbent government has a crucial role to play to put the population in the peace mood. Creating an enabling environment that upholds these freedoms and basic rights will also showcase the government commitment towards political pluralism. It enables the government to explore various policy options based on research that will benefit its programming in the implementation of the peace. Above all, this is an important confidence building and policy shift that will earn the government allies in the international community as far as social, civic and political rights are concerned.

Timely Investigations, Identification of Individuals and Reporting of Ceasefire Violations

The 2015 ARCSS has largely failed to deliver because of impunity among the parties. This was coupled with inadequate investigations, reporting and action using agreed monitoring mechanisms, such as the Ceasefire Transitional Security Arrangements Monitoring Mechanisms (CTSAMM) and the Joint Monitoring and Evaluation Commission (JMEC), on those who have violated the terms of the permanent ceasefire. For the R-ARCSS to hold, things must change. The reconstituted Ceasefire Transitional Security Monitoring and Verification Mechanism (CTSAMVM) and the Revitalised JMEC must swiftly investigate, identify individual violations and publicly report to the citizens those caught breaching the ceasefire terms. This will help not only IGAD and the international community to know who is against peace, but it will equally put the citizens as primary stakeholders to know those behind the continuation of the civil war. The parties should also demonstrate willingness to punish (within the means of the law) individuals for their actions on security breaches, which will reduce the possibility of generalising violations.

Conclusion

The revitalised agreement mirrors the 2015 ARCSS. Whereas the incumbent government gained ground in the new deal, it has also been assigned a huge responsibility to deliver on it. The R-ARCSS reflects the position of the incumbent government since the HLRF negotiations began in 2017. It has reduced the chances of scapegoating others for the failures to implement the deal. This should provide a rare opportunity for the government to demonstrate leadership and stay on course to implement what it advocated for. The new transitional government should implement the enablers in this report if this peace agreement is to succeed. Equally, the R-ARCSS offers the opposition an opportunity to unite and work together to push for the reforms that will open up democratic space that embraces political pluralism, participation of citizens and fair sharing of the national development agenda. Politically, the new agreement is more inclusive than its predecessor as it has brought on board most of the known armed and unarmed groups into the bloated coalition government. This could prove decisive in reducing the number of actors who will remain at large and pursue violence despite the various split in the opposition camps which must be addressed.

The R-ARCSS strengthens inclusivity of the broader non-state actors outside the conflict,

which include the faith-based groups, business community, academia, civil society, youth and women in the various mechanisms and institutions it created. The women's affirmative action increased from 25 percent to 35 percent along with the recognition of the urgent need to include young people in governance and decision-making process. This is a significant change in the R-ARCSS and a positive step towards increasing participation and involvement of citizens in the governance process.

It is critical for the international community to support this new peace deal morally and financially. There is no bad peace that is better than war (see chapter by Nichola Mandil Ukeil). The fragmented policies among the regional and international actors towards South Sudan negatively affect any momentum to hold violators accountable. It is important for partners to approach South Sudan's peace process with a united voice and action to ensure parties uphold their commitments.

About the Author

Malish John Peter is a public policy expert and chief executive officer of the Institute of Social Policy and Research. In the last 10 years, Malish worked with several INGOs in South Sudan in different programs such as governance, civil society, education, health, community development and micro-enterprise development. He holds a Master of Arts in public policy from University of Nottingham, United Kingdom; Bachelor of Business Administration from Nkumba University, Uganda; and a diploma in social works and social administration from the Institute of Management Studies, Uganda.