REPORT ON FIFTH SESSION OF HIGH-LEVEL BREAKFAST DISCUSSION AND STRATEGIC THINKING ON THE PEACE PROCESS IN SOUTH SUDAN



EFFECTIVENESS OF TECHNICAL BOUNDARIES COMMITTEE (TBC), INDEPENDENT BOUNDARIES COMMISSION (IBC), AND REFERENDUM COMMISSION ON NUMBER AND BOUNDARIES OF STATES (RCNBS) FOR R-ARCSS IMPLEMENTATION

5TH SESSION REPORT | 22ND FEBRUARY 2019



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I - THE FUNCTION AND ATTENDANCE

The Center for Strategic and Policy Studies (CSPS) organized a HIGH-LEVEL BREAKFAST DISCUSSION AND STRATEGIC THINKING ON PEACE PROCESS IN SOUTH SUDAN at Pyramidd Continental Hotel in Juba on 13 February 2019. The event brought together 56 renowned policy and decision makers, experts, traditional authority, opinion leaders and activists who are linked directly or indirectly to the peace process in South Sudan (actors from government, political parties/movements, civil society, academia, experts, diplomatic missions, TBC, UNMISS, IGAD and JMEC). The participants arrived at the venue at prime morning time and took breakfast in the main Restaurant (07:35h – 08:35h a.m.) before converging in the Conference Room prepared for the Breakfast Discussion, which lasted for 3 hours (08:35h to 11:35h).

II – THE OBJECTIVE OF DISCUSSION

The topic of the discussion was "Effectiveness of Technical Boundaries Committee (TBC), Independent Boundaries Commission (IBC), and Referendum Commission on Number and Boundaries of States (RCNBS) for R-ARCSS Implementation". The objective was to provide a forum for the participants to deliberate critically on the topic and propose well-informed way forward for resolving the issues of tribal boundaries and number of states of South Sudan. The following were the expected outcomes:

- 1). Involvement of best impartial experts on local government, history, geography and anthropology of South Sudan in finding objective and pragmatic way forward for resolving the tribal and boundaries conflict amicably based on evidence and consensus.
- 2). Timely allocation of resources for facilitating scientific research, credible reports and sound recommendations without tradeoff between territorial sovereignty and local boundaries of tribes and states of South Sudan.
- 3). Comprehensive consultations with well-informed sages and local leaders of South Sudan on jurisdictional indigenous issues based on mechanisms of traditional conflicts resolution over land and administrative boundaries.
- 4). Identifying the specific resources and powers that should be devolved strategically between the national government, states government, local government and traditional authority in South Sudan.
- 5). Incorporating TBC, IBC and RCNBS constructive findings and consensus into constitutional making process to enhance social, political and economic stability with culture of peace.
- 6). Carry out radical reforms and transformation of the legislative national council of states as well as states and local government with correct contextualization of traditional authority while adopting the best practices of global modernization.

Dr. Douglas H. Johnson, a renowned historian and expert, honoured the Breakfast Discussion by travelling from Oxford to Juba in order to give his insights on this topical issue of R-ARCSS based on his established wealth of experience on land borders and boundaries of South Sudan. Hon. David Deng Athorbei, a veteran local administrator and former minister in many portfolios of Government in South Sudan, moderated the deliberations cordially for the participants to share their ideas on how best the issue of tribal boundaries and number of states could be resolved professionally and amicably, including assistance from technical experts and partners. The critical R-ARCSS mechanisms for resolving the issue of tribal boundaries and numbers of states were summarized as follows:



1.0 Technical Boundary Committee (TBC) and Independent Boundaries Commission (IBC)

The TBC and IBC shall be established to recommend fact-based solution to the issue of states of South Sudan and local government, including settlement of the problem of tribal boundaries. They shall set their own internal regulations for the mandated tasks. They shall enjoy support of experts from South Sudan, IGAD region, AU, Troika and the rest of international community. They shall take decisions by simple majority with consensus of at least seven vote of South Sudanese members for endorsement of the final report, including record of any dissenting minority view.

The TBC may receive and study relevant materials submitted by local communities or any other individual. It shall define and recommend within 60 days the border demarcation of tribal lands as they stood on 1 January 1956, especially those that have been disputed seriously. Population size, social cohesion, geographical survey, economic viability, among others, shall be considered in recommendations presented in the final report (R-ARCSS, Article 1.15 and Annex E).

The IBC may sub-cluster itself into 3 teams consisting of 5 representatives to speed up fact-finding mission and recommend viable options on boundaries and number of states (32, 21 and 10, etc.). It shall submit the final report to IGAD Executive Secretariat and HLRF Mediation within 90 days. IGAD shall communicate this immediately to the parties for consensus on solution to the problem in accordance with R-ARCSS procedures (R-ARCSS, Article 1.15).

2.0 Referendum Commission on Number and Boundaries of States (RCNBS)

If the TBC and IBC do not present their final report in 90 days or if the parties disagreed with the TBC/ IBC recommendations and failed to reach a consensus on issue of states, the IBC shall automatically get transformed into RCNBS under direct joint responsibility of AU and IGAD. The RCNBS shall use the recommendations of TBC/IBC while taking into account the dissenting positions of parties. The report shall inform the setting of technical question(s) for referendum. The RCNBS may treat each state differently with separate ballot questions, if deemed necessary.

The result of RCNBS shall be binding for reconstitution of States and Local Government as well as the Council of States. Governors, Ministers, MPs/Speakers, County Commissioners, and Local Councils of the states shall be appointed relative to prominence of each party there—55% TGoNU, 27% SPLM/A-IO, 10% SSOA, 08% OPP and with FDs to get 3 ministers in states of their choice deducted from opposition share (R-ARCSS, Articles, 1.14, 1.15 and 1.16).

However, if any tribe objects to the solution recommended by the TBC/IBC and agreed by the parties, it shall take the matter to Permanent Court of Arbitration at The Hague. The arbitration award shall be final and binding in settling tribal boundaries grievances. RTGoNU and subsequent governments shall implement The Hague Award accordingly without delay (R-ARCSS, Article 1.15.18.7).

3.0 ANNEX E: Mediation Team Proposal on Article 4 as of 19 August 2018 as provided for under Article 1.15.17.8 of R-ARCSS

The TBC shall draw a list and map of tribal boundaries currently in dispute as a consequence of introducing the 32 states. The TBC shall restrict its work to addressing those boundaries and shall specify the tribal boundaries of 1.1.1956 that were violated by the 32 states. Tribal boundaries not affected by the 32 states are not required to be listed or mapped.



The IBC shall propose rectifications for the boundaries of the 32 states found by the TBC as violating tribal boundaries of 01/01/1956. Furthermore, the IBC shall agree by consensus, and on the basis of its already set guidelines, on number and boundaries of states that are most appropriate for the Republic of South Sudan. The guidelines shall be drawn beforehand and right at the beginning of the work of the IBC, including the TBC report, population size and social cohesion, geographic size, and economic viability, among others. Also the IBC shall study all viable alternatives for determining the number and boundaries of states (32, 21 and 10 states options) based on consensus on what is appropriate.

If the IBC fails to agree on the number and boundaries of states, the RCNBS shall conduct a referendum on this matter to ask South Sudanese to choose one of the following option: IBC proposal for rectifying the boundaries of the 32 states, confirming the 32 states, adopting the 21 states, reverting to the 10 states or any other number of states agreed by the IBC.

Given these mechanisms and background, Dr. Douglas drew the attention of the participants to the notes he summarized from the recommendations from previous sessions of High-Level Breakfast Discussions, which spelt out the role to be played by each category of those involved in R-ARCSS. Also provided the common false assumption on boundaries of South Sudan.

3.1 First Session: Changing Perceptions and Confidence Building:

Leadership: Settle amicably the issue of 32 states and activate Governors and Speakers Forums to assist in consolidating peace and development at the grassroots, including reception of refugees and returnees. Help the IGAD Mediation, Executive Secretariat and the Parties to R-ARCSS to build Citizens: consensus on settling the issues of 32 states of the incumbent TGONU and 21 states of SPLM/A-IO. Provide checks and well-researched technical advice on how to settle amicably Stakeholders: the sensitive and emotional pending issue of states by the parties without rushing to referendum. Persuade the leaders of the parties to negotiate a compromise that would settle amicably Guarantors: the critical issue of states without complications of irresponsible politicization. Partners: Encourage dialogue between leaders and citizens to reach an amicable resolution on the issue of 32 states without delay.

3.2 Third Session: Consensual Modalities for Permanent Constitution Making:

Leadership: Retrace good historical heritage of South Sudan and diagnose root causes of conflicts to enrich the garnered principles, values and ideals that need to be enshrined to permanent constitution, including Bill of Rights.

Citizens: Help the parties and the government with archives of heritages, humanistic principles and traditional values of South Sudanese, including oral testimonies of the root causes and resolution of conflicts.

Stakeholders: Assist the parties and government with scientific research for authentic history, heritage, values, ideals and principles as well as objective diagnose of root cause of conflicts.



- Guarantors: Share the respective African experiences, values, ideals and principles with the parties and government of South Sudan so as to do better in constitutional making without reinventing the wheel.
- Share with the people, parties, government and stakeholders of South Sudan experiences Partners: of the international values, ideals and principles that are suitable for modern constitutional making.
- Leadership: Assert the role of ministry of federal affairs in the synergy required for a comprehensive constitution making in South Sudan based on the demands of the people and what they see fit for their posterity with unity in diversity.
- Citizens: Demand from the government to extend the work of Ministry of Federal Affairs to all the states and local government with mandate of coordination constitution making process together with the NCRC and Ministry of Justice.
- Advocate for Ministry of Federal Affairs to be mandated as part of institutions that are to Stakeholders: be tasked with management of constitutional making process together with NCRC and Ministry of Justice.
- Share experiences of coordinated synergy of government institutions to manage the Guarantors: constitution making process with strong links to states and local government, including traditional authorities.
- Enhance the capacity of Ministry of Federal Affairs to contribute robustly in promoting Partners: federalism in accordance with the context of South Sudan with adoption of suitable international experiences on devolution of powers and resources to lower tier of government.





3.3 Dispelling the False assumptions about the borders and tribes in South Sudan:

- 1). By 1 January 1956 tribal boundaries throughout South Sudan were complete and clearly *mapped.* Maps are at best diagrams showing the state of knowledge at any given time. The process of surveying and mapping the whole of Sudan was unfinished by independence. In the late 1930s the survey department stopped adding topographical details to the 1:250,000 maps (the most detailed maps produced). Many of the administrative boundaries marked on those maps are drawn through blank spaces that show no topographical details on which to anchor a boundary. Nor do these maps fully record demographic changes or settlement patterns. The date of Sudan's independence was decided by parliament only a few days before 1 January 1956 and no special map was drafted to show the state of the country or the location of its peoples on that date. There was no magical map left behind by the condominium rulers.
- 2). There is a 1956 map that shows all tribal boundaries accurately. "Sudan Tribes Sheet 3", the 1:2,000,000 map for South Sudan first produced in October 1946 is the only map from the condominium period that attempts to show the general location of the main tribes. Changes to provincial and district administrative boundaries were updated in subsequent versions of the map, but tribal locations were not. The map's representation of topographical features is simplified and cannot be relied on for locating boundaries on the ground because of some shifting of places here and there for administrative pragmatism (e.g. the case of Kafia Kengi from Bahr el Ghazal to Kordofan and back). It was more for travellers' use than anything else.
- 3). The 1956 districts represented single tribal territories. Most districts contained multiple tribes. Communities who were related to each other, or who shared resources were often placed together in the same district. Communities who had a history of competition or conflict were often included in the same province so that a single administrative authority could manage their relationships. Even when some districts were divided in two with the introduction of rural councils in 1960, councils still contained multiple communities, often of different ethnicities. The exception was Bor District and part of Azande land.
- 4). Tribal territories are primordial, they have existed for a long time. Most South Sudanese societies were disrupted in some way by 19th century wars and slave raids, with whole populations moving away from their homes and settling elsewhere. Administrative boundaries created in the 20th century reconstructed and redefined many tribal territories to cater for the interest of colonial rulers via rural councils.
- 5). Seasonal movement defined ownership. Seasonal movements indicate a right of access and/or use of resources, not ownership. Neighbouring pastoralists and even cultivators often have overlapping rights to land and water, exercised at different times of the year. These rights have been managed by a single administrative authority either at the district level, where different communities were included in the same district, or at the provincial level, where neighbouring communities cross district boundaries. One example of this is Salem tribe who spent more time in Shilluk Kingdom than in Kordofan in their original herding areas. The other example is Ngok Dinka of Abyei and Misseriya where everybody moves. The other more example was Gaawar Nuer and Nyarweng Dinka who speak each other languages fluently. That was why the grazing areas were managed administratively rather than tribally to minimize conflict of interest by any of the tribes over the land.



Dr. Douglas Johnson considered the creation of many counties in South Sudan since 2005 and worsened by proliferated 28 and 32 states with uncontrollable establishment of counties, to be more of creation of tribal conflicts that didn't exist before among or within tribes. He cited the academic journal article written by Peter Hakim Justin & Lotje De Vries titled "Governing Unclear Lines: Local Boundaries as a (Re) source of Conflict in South Sudan" as a relevant case to note. The abstract of this article states the following:

"South Sudan's administrative boundaries stem from the colonial period. Since it gained independence in 2011, subsequent rounds of reshuffling of the political system, internal borders, and power relations have been a source of confusion, elite manipulation, and conflict throughout the country. This paper explores the impact of this confusion by focusing on multiple shifting linkages between administrative boundaries and identities and shows how the mobilization of ethnic identities has become central to territorial claims and creating territorial borders. We use three local conflicts in Central Equatoria State to illustrate how claims of belonging and entitlement are being used by elites for economic, political, and socio-cultural gains. The three cases also show how such manipulation increases the likelihood of ethnic division and conflict. Following the decision by the government in 2015 to increase the number of states from 10 to 28 in October 2015, further manipulation of borders and identities is likely to occur and could result in more violence, ethnic-based conflict, and human suffering."

Hakim's and Lotje's research brought out the created tribal and boundaries conflict by Pojulu/Pojulu over Wonduruba in former Lainya County, Mundari/Bari over Mongalla in former Terekeka County, and Adiyo/ Kakwa over former Yei River County. According to them, these conflicts are politically motivated with economic impilication of control of large land and resources by those interested in business and large investment.

Dr. Douglas warned that if TBC, IBC and R-ARCSS parties think that referendum is a solution to the problem of the boundaries and numbers of states, let them see what Brexit brought to UK in the European Union with emergence of unexpected border problem of Northern Ireland. Even if RCNBS is established it would not resolve the tribal land disputes by mere vote of 'Yes' and 'No". This is where analysis of past experience and commission of scientific research is mandatory, including retrieving archives that were neglected or lost/dmaged due to war vandalism or poor storage. According to him, lack of archives and historical records in the country could lead to costly manipulation of South Sudan by those who are in possession of such valuables (individuals or governments). What is important is peace and stability but will the work of TBC/IB and RCNBS achieve this cardinal goal? Below is an original gazetted Map of South Sudan that Dr. Douglas used for illustration during his keynote talk.





IV- THE PILLARS OF ACTION POINTS AND WAY FORWARD

The Fifth Session of the HIGH-LEVEL BREAKFAST DISCUSSION AND STRATEGIC THINKING ON THE PEACE PROCESS IN SOUTH SUDAN was successful in its timing; the level of frank and cordial practical sharing of ideas; and proposition for way forward to resolving the issue of tribal boundaries and number of states. The keynote talk by Dr. Douglas Johnson and guide of discussion by Moderator Hon. Athorbei provided enlightening ideas from practical experience on what need to be done for the future of South Sudan based on peaceful co-existence of the local communities as it used to be historically. All the participants commended the importance of the discussed topic. Their contributions are summarized into these key pillars for R-ARCSS implementation and realization of peace in the country:

- 1). Taking good note of the relevant historical experiences of the people and governments that ruled South Sudan based on clearly mapped administrative boundaries.
- 2). Recognizing local knowledge and mechanisms of peaceful co-existence and resolution of conflicts via leadership of tribal sages and traditional authority.
- 3). Constant consultations with the grassroots and local leaders on issues that have great bearing on their livelihood rights and duties.
- 4). Gathering and keeping of archives and historical records of the people and governments so that these are revisited constantly as guiding references for posterity.
- 5). Prioritizing the safeguards for international boundaries as unifying factor of the people while paying great attention to local boundaries, especially for administrative and economic purposes with easy access to services.
- 6). Establishing a special cooperation with the neighboring countries, the previous colonial countries and other international entities that were involved in the management of internal affairs of South Sudan in the past.
- 7). Ensuring that peace and inclusive development of local communities is the end-game of demarcation of internal or international boundaries of South Sudan.
- 8). Stemming out the false assumption, confusion or complication by those who wants power and resources that is available with the communities of South Sudan regardless of promotion of the welfare and developmental dividends for the people.
- 9). Learning from best experiences of other countries regarding prudent management of land boundaries, especially in the era of human rights and globalization.
- 10). Creating good legacy of posterity without encouraging bitterness that might be caused by conducting referendum on internal borders and boundaries issues.





Based on these pillars and garnering the recommended way forward during the high-level engagement of above-mentioned experts and discussants, the following action points have been gleaned for best practices that are urgently required for parties, stakeholders, regional guarantors and international partners to consider for making success story of R-ARCSS on Chapters I and Annex E on Boundaries and Number of States of South Sudan:

S/N	Leadership	Citizens	Stakeholders	Guarantors	Partners
1.	Avoid taking decisions on false assumptions about tribal boundaries of South Sudan while taking great note of the officially mapped historical administrative boundaries of local units of the government.	Dispel the false assumptions about tribal boundaries of South Sudan, instead search the truth of the officially mapped historical administrative boundaries of local units of the government.	Disseminate the officially mapped historical administrative boundaries of local units of government to demystify false assumptions about tribal boundaries of South Sudan.	Ensure that the problem of boundaries and administrative units of tribes and states of South Sudan are resolved based on historical truths and salient facts of the present local realities.	Assist in facilitating the dissemination of truthful knowledge and reality of the tribal and states boundaries of South Sudan, including availing official maps and historical records.
2.	Take value in recognition of indigenous knowledge and traditional mechanisms used by traditional authority for nurturing co-existence and resolving conflicts over land; its boundaries, ownership, tenure, lease and utilization.	Hold to the value of indigenous knowledge and traditional mechanisms of ensuring co-existence of communities and resolution of conflicts over land and local boundaries; their ownership, tenure, lease and utilization.	Conduct strong continuous awareness about value of indigenous knowledge and traditional mechanisms of co-existence of communities and resolution of their conflicts over land and boundaries at grassroots.	Encourage South Sudanese to take stock of recognition for indigenous knowledge and traditional mechanisms of co-existence and resolution of their conflicts over land and boundaries of communities and states.	Support the experts and researchers on South Sudan to take stock of indigenous knowledge and traditional mechanisms of co-existence and resolution of conflicts over land and boundaries of communities and states.



3.	Conduct regular consultations with the local experts, experienced traditional leaders and communities at the grassroots on issues of land boundaries and states, and build consensus to avoid resort to referendum.	Demand for and welcome wider consultations with traditional authority and local communities on resolution of issues of land boundaries and number of states, including consensus building by parties.	Urge for timely consultations with traditional authority and local communities on issues of land boundaries and number of states, including lobby for consensus building.	Encourage South Sudanese to conduct consultations with traditional authority and communities to resolve issues of land boundaries and number of states amicably without resorting to referendum.	Assist South Sudanese with expertise on comparative management and resolution of conflicts over local land boundaries and viability of number of states without invoking the conduct of referrndum.
4.	Give value to archives and historical records on boundaries, borders and local administration about the people and governments in South Sudan.	Help in gathering of historical materials and past records to be kept and preserved in well-managed and secured museums.	Play catalytic role of paying great attention to historical archives and past records to be preserved for South Sudan.	Share best experiences of preservation of archives and past records with access for South Sudanese to emulate for their country.	Support South Sudanese to establish secure spaces (museums) for keeping archives and historical records.
5.	Give priority to demarcation of international borders of South Sudan and treat this as unifying factor for the people as their local issues of boundaries are settled amicably based on historical facts and emerging realities.	Cooperate with government and experts in the demarcation of boundaries of communities and number of viable states of South Sudan, but without losing the bigger focus on the unifying international borders.	Assist the government and local communities with expertise in boundaries demarcations and research on number of viable states of South Sudan within a clear international territory with the neighbors.	Cooperate with the government and communities of South Sudan to adopt the best international practices of international border demarcations and management of internal boundaries	Support South Sudan to adopt the best international practices of international border demarcations and management of internal boundaries with peace and cooperation.
6.	Establish and cement special cooperation with former colonial and the neighboring countries, Turkey, Egypt, UK, France, Belgium, U.S, Italy and other countries that have connection to history and currently affairs of South Sudan.	Use public diplomacy to assist the government of South Sudan to gain additional benefits from international relations with the former colonial powers and neighbouring countries.	Lobby with the former colonial powers and neighbouring countries to accord South Sudan with special privilege of access to valuable archives and historical records.	Lobby for South Sudan internationally so that it could be offered access to valuable archives and historical records, including repatriation of some of these heritages.	Treat South Sudan with special privilege and help it to build its own archives and establish its historical records for the benefits of posterity with references based on precedents.



7.	Always put peace ahead as the cardinal virtue worth the purpose of the demarcation of internal and external boundaries of South Sudan and with the interest of the people above any other consideration.	Adopt the culture of peace and friendly approach to resolution of issues of boundaries of communities and number of states for governing the grassroots with stability.	Help the government and people of South Sudan to inculcate culture of peace in resolving issues of boundaries of communities and number of states credibly.	Conduct regular mediations for South Sudanese to build consensus and reach good agreements for resolving the issues of boundaries of communities and number of states for posterity.	Support South Sudanese to build consensus and reach good agreements (directly or mediated) for resolving the issues of boundaries of communities and number of states for posterity.
8.	Consider the opportunity of inclusive development and progress for the communities of South Sudan, as the main criteria for demarcation of boundaries of communities and determination of number of states.	Take the timely demarcation of boundaries of communities and determination of number of states as opportunity for inclusive development and progress for South Sudan.	Promote the demarcation of boundaries of communities and determination of number of states as opportunity for progress of South Sudan with stability.	Encourage South Sudanese to take the demarcation of boundaries of communities and determination of number of states as opportunity for development with stability.	Assist South Sudanese to take the demarcation of boundaries of communities and determination of number of states as opportunity for development of their country.
9.	Establish legal, political and social guarantees against those who intent to confuse and complicate the boundaries and land issues of the communities so that they could utilize the situation of conflict to gain power and resources that is available with the communities of South Sudan	Be aware of the politicians and business persons from using the issues of boundaries and administrative units of the communities and states of South Sudan to create local conflicts so as to extract resources and exploit the situation of desperation for protection.	Discourage the politicians and business persons from using the issues of boundaries and administrative units of the communities and states of South Sudan to create local conflicts and extract resources in exploitative manner.	Bring to serious account the politicians and business persons who use the issues of boundaries and administrative units of the communities and states of South Sudan to create local conflicts and extract resources regardless of people welfare.	Levy sanctions on politicians and business persons who use issues of boundaries and administrative units of the communities and states of South Sudan to create local conflicts and extract resources in the expense of welfare of the people.
10.	Learn from best experiences of other countries and work keenly to establish a legacy worth sharing for posterity/others regarding wise management of boundaries and states problems in South Sudan.	Strive to benefit from experiences of other countries and come up with unique legacy worth sharing for posterity and other countries regarding management of land boundaries.	Bring home the best experiences of other countries and record the good legacy of South Sudanese boundaries management worth sharing with others.	Encourage South Sudanese to leave behind good legacy of amicable boundaries demarcations and land management worth sharing with posterity and others countries.	Persuade South Sudanese to leave behind good legacy of amicable boundaries demarcations and land management worth sharing with posterity and others countries.



ABOUT THE CENTER

South Sudan Center for Strategic and Policy Studies (CSPS) was established in July 2011 with aims of participating in the development of the country through applied research to enhance the debate on governance, nation and state-building in South Sudan, with the purpose of adding objectivity, critical thinking, nurturing strategic thinking, progressive and well-informed leadership.

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