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Naivasha Peace Pillars and Replication in Subsequent Agreements

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Introduction

The negotiations of the long civil war culminated in the January 2005 signing of the Comprehensive Peace Agreement (CPA) mediated by the Inter-Governmental Authority on Development (IGAD) and supported by a coalition of Western States including: Italy, the Netherlands, Norway, the United Kingdom and the United States of America. The agreement proposed a transformation of the Sudanese State that would provide for shared power in a Government of National Unity (GoNU), shared wealth derived from oil production and other sources of revenue, a new autonomous Government of Southern Sudan (GoSS) and a Constitution that recognizes ethnic and religious diversity within a modern human rights framework.

The peace agreement identified a 6 year interim period for the new democratic government to 'make unity attractive', and within which multi-party elections would be held. The ultimate decision for or against unity would come with the January 2011 referendum when Southerners are given the chance for self-determination, to decide whether to remain as part of a unified 'New Sudan' or to secede and become an independent state. Peace-making in Sudan succeeded in 2001-2005 primarily because of the leadership, vision and personal compatibility of the chief negotiators plus an unusual focus and clarity of international policy amid the unusual geo-political environment following September 11, 2001. The agreement established the GoNU and the GoSS and oil revenues began to flow south. However, even this favourable configuration of elements and initial progress could not over-ride the major contradiction and future obstacle for a real democratic transformation of the Sudan. The CPA remained an agreement signed by the two strongest political-military groups in the country. The legacy

of the CPA continue to exhibit itself in South Sudan’s peace initiatives to stop post-independence period.

Pillars of the Naivasha Peace Agreement

The CPA granted dominance to the GoS and SPLM in governance and reduced the need to bring other political forces into the government and broaden southern unity. While CPA implementation was sliding and the SPLM temporarily pulled out of the GoNU in October of 2007 in protest for non-compliance by the NCP, other challenges to national unity were also evident in the SPLM’s rejection of the National census results necessary for planning the elections in early 2010. Widespread perceptions held that the elections would not be fair or free. Distrust in the political will of the NCP to fully engage and fulfil its commitments to the CPA was growing, while belief that secession remains the only viable option for the South had already overtaken Garang’s vision for a unified New Sudan.

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The agreement stipulated an independent mechanism (Assessment and Evaluation Commission – AEC) to monitor implementation of the CPA. The UN established the United Nations Mission in Sudan (UNMIS) as a full-fledged peacekeeping mission to support implementation of the CPA. It came into being with UN Security Council’s adoption of resolution 1590 on 24 March 2005. Parties to the Sudan conflict and the IGAD mediators invented four pillars that held together the CPA.

The first pillar was power sharing was signed by the GoS and the SPLM on 26 May 2004. The agreement allocated percentages for positions to signatories (GoS and SPLM), other northern parties and other southern parties in the legislature, the executive, the Judiciary, other institutions and commissions at three levels of government. The levels were the national government, the government of Southern Sudan and state governments.

The second pillar was wealth sharing that parties to the conflict signed on 7th January 2004. The parties to the CPA elaborated guiding principles and provisions for sharing wealth. The principle of equity guided the allocation of wealth among beneficiaries in Sudan and South Sudan. Oil revenue dominated negotiated percentages for the National government 50%, government of South Sudan 42%, the oil producing states, 2% Western Kordofan 2%, the Ngok Dinka 2% and the Misseriya 2%.

Thirdly, resolution of conflicts in three areas namely, Abyei, Kordofan and Blue Nile constituted the third pillar of the agreement. This Naivasha protocol signed on 26 May 2004 recognized the need to address conflicts in the three regions that fell outside competencies of the CPA. Based on those principles contained in the preamble of the protocol, parties agreed based on the peculiarity of the areas to prescribe the form of governments, administration, elections and security arrangements. Other than Abyei, which was given the choice to join South Sudan in case of secession, the other two area had the choice of integrating into Sudan or voting to stay as autonomous areas within united Sudan.

Finally, the fourth pillar was the security arrangement, which in fact was the first Naivasha Protocol signed on 25th September 2003. The security arrangement was the most delicate aspect of the CPA as far as implementation was concerned. One complexity of the Protocol was the creation of two armed forces, the establishment of the Joint Integrated Units (JIUs) and status of Other Armed groups (OAGs). The two armed forces stayed separately from one another while the JIUs were to be the future army of unified Sudan. The fact is that the JIUs were never integrated at all. The status and roles of the OAGs were just disruptive in

the implementation of the CPA. Clashes between the SPLA and JIUs were frequent in Malakal town, while the split of OAGs disoriented the SPLA and consequently, the GoSS. The OAGs shifting of alliance between Khartoum and Juba created havoc that spread into the community, especially in Greater Upper Nile region. For example, the security situation in Southern Sudan steadily deteriorated at the central government and community levels. As of September 2009, 140,000 people were displaced because of clashes between communities in Jonglei, Upper Nile and Lakes States. Violence perpetrated by the Lord's Resistance Army (LRA) in the Equatoria States had forced a further 65,000 Sudanese to leave their homes by the summer of 2009. The number of violent tribal clashes were increasing since January 2009. In Jonglei State, alone these clashes have claimed more than 1,500 lives. The worst attack took place in Pibor County, where more than 400 people were killed; the incident was followed by revenge attacks in which large numbers of civilians were killed and displaced. On August 29, 2009, another 42 people were killed and 60 injured in a clash between communities in Twic East County of the Jonglei State. The fighting led to the displacement of 24,000 people from their homes. The SPLM complained that elements of the National Congress Party continued to arm communities and encourage different communities to fight each other based on past grievances to destabilize the GoSS. This pattern of inter-communal violence continued into independence of South Sudan on 9th July 2011.

In short, things went wrong with formation of government and the SPLA as the national army of South Sudan during the interim government. The army was composed of the SPLA proper and a multitude of armed groups and the very militia groups that used to fight on the side of the government of the Sudan. The amalgamation of those forces lay the foundation of mistrust and dissidence. Unresolved issues in the SPLM and inability to reform and restructure the SPLA precipitated structural dysfunction of the whole system of governance at independence. These factors triggered the civil war barely two years after independence of South Sudan.

December 2013 Crisis and Civil War

The civil war that erupted on 15 December 2013 has a background, which we cannot ignore. Disputes and problems that bedevilled South Sudan relate to negligence of the government to pursue genuine transformation of policies in governance and in the security sector. Absence of separation of structures of the ruling party and the national army caused political instability in the country. Independence of South Sudan led political leaders to redefine the role on the SPLA in a new political setting and in the context of constitutional obligations. The Transitional Constitution of South Sudan (TCSS) describes the role of the SPLA as the national army and its structures. By virtue of Art.151 of the TCSS, the SPLA became the national armed forces of the Republic of South Sudan. The TCSS states that the SPLA should reflect the following qualities: non-partisan, national in character, patriotic, regular, professional, disciplined, productive and subordinate to the civilian authority.

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The SPLA mission as the national armed forces is to uphold the Constitution and defend the sovereignty of the country. In addition, its function was protecting the people; securing the territorial integrity of South Sudan; defending the country against external threats and aggression. The role of the army included participation in emergencies, reconstruction, disaster management and relief in accordance with the Constitution and the law. These new roles of the SPLA called for professional training programmes to enhance the process of broad-based transformation. As South Sudan achieved independence in July 2011, it was incumbent on the political leadership to engage fully in reform

programmes and projects. However, legacies of the prolonged civil war continued to haunt the post-conflict South Sudan in its endeavour to establish a credible security sector.

The leadership of the government of South Sudan, the SPLM and the SPLA failed to control events leading to the eruption of the civil war and are responsible for prolonging it to an alarming proportion

The Juba Declaration that took place in January 2006 sealed the process of reconciliation. This arrangement paved the way for absorption of about 18 militia groups under a number of warlords.

One researcher made an exhaustive list of different militia groups allied with either the SAF or the SPLA. Many militia groups divided into splinter groups under new leaders who joined the government. The inaction of government to disarm the opposition civilian armed groups at an early stage enabled them to launch rebel movements. On the practical level, many scholars admit that South Sudan did not do enough to create

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an effective security structure, establish improved mechanisms of governance, develop a vision of security, and defence policies that could create a basis of political legitimacy.

Researchers and scholars in so many studies came to similar conclusions that the leadership of the government of South Sudan, the SPLM and the SPLA failed to control events leading to the eruption of the civil war and are responsible for prolonging it to an alarming proportion. The power struggle within the SPLM came to surface in April 2013 and escalated in stages until the civil war broke out on 15 December 2013. This crisis fractured the SPLM/A into three distinctive factional groups. The first group is the SPLM/A in government (IG); the second group in the SPLM/A in opposition (IO) referred to by the government as rebels; and the third group is the SPLM former detainees (FD). The new landscape of South Sudan political crisis presented a serious security challenge to mediation efforts of the IGAD and its partners.

IGAD negotiated several cessations of hostility agreements with no effects on the ground. Such agreements bought time for more military confrontations. The agreements never trickled down to field commanders. Nevertheless, conflicts escalated further whenever the

negotiating parties in Addis Ababa underscored such agreements.

Processes of reconciling the armed factions of the SPLM/A became tricky and complex for IGAD mediators and other regional actors. Mediators in the IGAD region and beyond found themselves embroiled in the messy negotiations of South Sudanese crisis. Conflicts of interest crept relatively faster into relations among IGAD mediators because of the military intervention of Uganda to fight on the side of South Sudan government.

There is no doubt that Sudan reacted to the Ugandan intervention by covertly supplying military bases, logistics, and hardware to the SPLM/A (IO) for operations in Upper Nile. This situation impaired the capacity of IGAD summits to thrash out the violence in South Sudan. Critics attribute the failure of the Agreement on Resolution of the Conflict of South Sudan (ARCISS) to the replication of some Naivasha pillars as solution of the civil war after independence of the country. The pillar of power sharing in the agreement was source of contention among factions of the SPLM, the other political parties and the government.

Another contentious issue was the pillar of security arrangement. The status of two armies in South Sudan and Juba in particular was already an invitation of violence in the national capital. The small space of Juba could not accommodate two armies. Like the CPA, the issue of regions dominated the negotiations. In the whole process of governance, the issue of Pibor and Abyei statuses came to the fore. The status of these areas called for special administrations. Parties to the conflict, especially the government, could not accept this ARCISS provisions on security arrangements. Although wealth sharing was not coming out clearly in the agreement, it showed in the allocation of ministries. The Ministry of Petroleum was at the centre of

competitive demands of negotiators. The replication of the Naivasha principles contributed more to delays of signing the ARCISS.

The agreement did not change the attitude of the warring parties on the ground. Many South Sudanese thought the Arusha Forum was a diversion from the mainstream negotiations that were taking place in Addis Ababa under the auspices of IGAD. Others thought it was a process of forum shopping to evade immediate solution of the ongoing crisis

As the IGAD-led negotiations stagnated, it was thought that the fractured SPLM/A was the real handicap to progress of any peace initiative. Thus, other African leaders thought of unifying the SPLM as a prerequisite for ending the crisis of South Sudan. African ruling parties like Chama Chama Mapinduzi of Tanzania and the African National Congress convened in Arusha to reconcile the fractured SPLM. Facilitators prioritized unity of the party as a way forward to end the devastating civil war that raged in the country. All factions of the SPLM/A cut a deal, which underscored the need to implement the Cessation of Hostilities Agreement signed by parties to the conflict.

African leaders underestimated the degree of mistrust in the SPLM. The Arusha initiative culminated in an Agreement signed on 21 January 2015. The agreement did not change the attitude of the warring parties on the ground. Many South Sudanese thought the Arusha Forum was a diversion from the mainstream negotiations that were taking place in Addis Ababa under the auspices of IGAD. Others thought it was a process of forum shopping to evade immediate solution of the ongoing crisis.

ARCISS AND Renewed Civil War

When the mediators tabled the final version of the ARCISS for signature, the leaders of the SPLM/A (IO), the representative of the SPLM/A (FD) and other stakeholders signed the agreement. The President of South Sudan declined to sign the Agreement on 17 August 2015. It is only after persuasion that he later signed the agreement on 26 August 2016 after registering 26 reservations. This act was already a signal to IGAD and the international community that implementation of the agreement would be problematic. This became a reality in the process of implementation. So many reasons contributed to the delay of the formation of the Transitional Government of National Unity (TGoNU). Besides the problem of security arrangement, the most controversial factor was the decision of the government to create 28 states, while the agreement based its implementation on 10 states. President Salva Kiir issued decrees on 24 December 2015, in which he dissolved the 10 states and created 28 new states. The SPLM/A (IO) refused to agree to a text that states anything other than 10 states as in the August agreement.

Consequently, the process of establishment of the TGoNU stalled once more. Because of the many reservations made by the government, and the new administrative structure of the states, the return of Riek Machar to Juba terribly delayed, but happened only under tremendous pressure from IGAD and its partners. Riek Machar's return to Juba on 29 April 2016 marked the beginning of implementation of the ARCISS. Relations were far from being cordial between signatories of the August agreement. Both sides obstructed implementation of the ARCISS. The few months of power shar-

ing were quite difficult and full of disagreements between the power sharing parties in the TGoNU.

The superficial local knowledge of South Sudan’s conflict played a critical role in the conception and implementation of the peace agreement known as ARCISS. All indicators showed that the agreement was lopsided when the government landed so many reservations and the kind of rhetoric that followed preparations for the establishment of the TGoNU. While IGAD and partners put pressure on the government to sign the ARCISS, a similar pressure was put on the SPLM/A (IO) to return to South Sudan so that the formation of TGoNU is finalized. The reluctance of Riek Machar to return to Juba was influenced by the kind of debate about the numbers of the opposition army to be stationed in Juba and the type of weapons the SPLA (IO) should bring along with them. This pointed to hidden problems that required further exploration by mediators.

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The ARCISS went for a security arrangement that permitted the existence of two armies in such a small space like Juba. It prescribed also the demilitarization of the city where the existing national army had to deploy 25 miles outside Juba. This was the greatest shortcoming in the peace agreement. It was just a replicate of the security arrangement in the CPA, but the context was completely different. The two armies were in two different parts of the Sudan. Despite the larger space separating the two armies, there used to be clashes wherever their locations were. For example, the Joint Integrated Units (JIU) Clashes with the SPLA more than twice in Malakal Town in Upper Nile. As relations deteriorated between the SPLM-IG and SPLM-IO, both parties directed their frustrations and anger against the international community.

On 2 July, unknown gunmen killed a senior SPLA (IO) officer in a dubious circumstance. The SPLA (IO) forces killed five government soldiers in retaliation at a checkpoint in Juba. The violence escalated into a full-fledged fight in Juba. The period 7–11 July 2016 witnessed deadly clashes in Juba city between the SPLA (IG) and SPLA (IO) in which over 300 people perished, including two Chinese peacekeepers. At the same time, approximately 36,000 people sought protection at UNMISS facilities in the capital city. Riek Machar and some of his soldiers escaped to the bushes of Equatoria. Government forces, the SPLA (IG), pursued Riek Machar with his forces until they entered the Democratic Republic of Congo. The UN mission received them in Garamba National Park. The Juba violence distorted provisions of the ARCISS, which led to revised implementation of the power-sharing and security arrangements. This development prompted the IGAD Plus and AU Peace and Security Council to issue communiqués endorsing deployment of the Regional Protection Force. Following the deteriorating security and humanitarian situation in South Sudan, the UN Security Council adopted resolution 2304 on 12 August 2016, which extended and detailed the new mandate of UNMISS in South Sudan, which included protection of key facilities in Juba and Juba International Airport.

Most disputes in South Sudan are political and include unresolved grievances between the national government and local communities. They can be resolved through tolerance and mediation between the people and their own government

The new civil war introduced new elements to the original civil war that started on 15 December 2013. The July confrontation between the government forces and the SPLA (IO) in Juba spread to other areas in greater Equatoria. The new rebellion in the area engulfed both territories in the west and the east of the Nile. These military operations forced an exodus of the civilian population to neighbouring countries. South Sudan’s civil war flooded Uganda with nearly one million refugees.

The immediate problem is that new rebel groups controlled strips of territories in formerly peaceful areas of the country. Some of these groups claim to pay allegiance to the SPLA (IO), while others do not. This new development complicated the security and power-sharing arrangements stipulated in the ARCISS of August 2015. The negative impact of the 7 July 2016 incident is the proliferation of armed groups and armed movements in Equatoria and West Bahr el Ghazal regions. Before the rupture of peace on 7 July 2016, only two warring parties, SPLM/A (IG) and SPLM/A (IO) and one non-armed faction of the SPLM/A (FD) existed as the main actors in the civil war. However, the number of rebel groups and local militia groups continued to rise, especially in Equatoria where the civil war was absent since December 2013.

Conclusion

The fighting was over resolvable issues such as the creation of 28 to 32 new states, land grabbing and other local grievances in the country. Armed opposition groups and disgruntled communities have little confidence in the government's dealing with root causes of the civil war. Most disputes in South Sudan are political and include unresolved grievances between the national government and local communities. They can be resolved through tolerance and mediation between the people and their own government. The endless formation of armed groups is the continuous source of instability in South Sudan, which has already uprooted nearly 3 million people. The proliferation of so many rebel groups risks leading to lack of common agenda for handling the civil war. In addition, there is the fear in South Sudan that regional mediators and international backers are focusing excessively on demands of the government, rebel movements and opposition leaders, while failing to understand the rapidly changing dynamics of on the domestic scene. National and regional leaders need to focus attention on ways to empower faith-based groups, civil society and local communities to facilitate locally owned peace.

So many actors are stuck in the quest for shares and participation in the governance sector of power sharing. There is no social contract between the government and the population of Southern Sudan, the ARCISS was agreed between the SPLM/A and the opposition and power is controlled by the military and political elites who dominate the government and the security services

Although the Higher Level Revitalization Forum (HLRF) deal was concluded on 5th August 2018, it followed a similar pattern of borrowing from ideals of the CPA except for the security arrangements. We have witnessed similar reservations from all parties to the conflict. Governance, a form of power sharing, has remained a thorn in the side of parties to the conflict and interested stakeholders. So many actors are stuck in the quest for shares and participation in the governance sector of power sharing. There is no social contract between the government and the population of Southern Sudan, the ARCISS was agreed between the SPLM/A and the opposition and power is controlled by the military and political elites who dominate the government and the security services. Although the principles of participation are found in the agreement they are yet to be put into practice. It remains to be seen how best, the warring parties and interested stakeholders would behave in face of the challenges facing state-society relations.



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