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**MANDATING AN INTERIM GOVERNMENT:  
THE FOUNDATION FOR RESILIENT INSTITUTIONS AND  
EFFECTIVE GOVERNANCE IN POST-CONFLICT SOUTH SUDAN**

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A Proposal by the Development Policy Forum  
Ebony Center for Strategic Studies  
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## 1. Executive Summary

This proposal by the Development Policy Forum (DPF) is made in the context of a statement from the U.S Secretary of State, Mr. John Kerry in which he reported that President Salva kiir Mayardit has agreed to the idea of an interim government<sup>1</sup>. The proposal seeks to build a consensus around the concept of an interim government by advancing some ideas. In this regard, The DPF team calls for the formation of an Interim Government of South Sudan (IGSS) with a clear mandate expressed in its mission, specific objectives, and defined outputs that would enable it to lead the country's transition to democracy over a term not to exceed 36 months, beginning on July 9<sup>th</sup>, 2015. The mission and objectives are guided by an overarching vision of sustained peace, economic growth, and poverty eradication through resilient institutions and effective governance.

The team provides a conceptual framework for the elaboration of political rationale, tenure, size, composition, selection criteria, and the nature of the legislative process for IGSS during the interim period.

The IGSS is conceptualized to consist of a Collegial Presidency (CP) and a Cabinet headed by a Prime Minister. Three alternatives are given with respect to the legislative branch of government during the interim period.

The Cabinet would report to a Collegial Presidency. The CP will consist of five (5) members with high qualities of personality and character. The head of the CP will be called Interim President (IP) with two deputies. The post of Interim President will rotate among the three regional representatives in the Collegial Presidency every six months. The Collegial Presidency would play an oversight role rather than an active role in the day-to-day management of the government.

In the interim period, a Prime Minister and two Deputies, representing the three greater regions, will head the government (i.e. Executive). The DPF recommends eighteen (18) ministries and thirteen (13) commissions. And authorities/agencies Ministers will be chosen on the basis of a robust set of criteria, e.g. technical knowledge, experience, and moral solvency.

The Interim Government's legal basis will be set out in an extraordinary Act of the National Legislature of South Sudan. As a non-elected government, the IGSS must be especially mindful to be inclusive in its decision-making practices, making its performance the basis of its own legitimacy. A proposal towards the creation of terms of reference is included, as well as a logical framework for Monitoring and Evaluation of the IGSS's performance.

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<sup>1</sup> The idea of transitional government is now officially accepted for it is contained in the "Agreement to Resolve the Crisis in South Sudan," signed by President Kiir and Dr. Machar on 9 May 2014 in Addis Ababa, Ethiopia.

## 2. The Context

Most African countries inherited, at independence, a set of transplanted colonial institutions of governance that guided them in the early stages of their social, political, and economic development. South Sudan was, in contrast, born out of a bitter history of internal colonialism and humiliation; a history that had in turn trapped her in a vicious circle of blame, denial and finger pointing.

The starting point for a fresh start for South Sudan must therefore be an acceptance of responsibility by all South Sudanese, especially the elite, that we are the masters of our own country and of its destiny. This point must be emphasized in our deliberations on the proposed interim government: National Sovereignty grounded in the social contract between the State and citizenry, which is based on the fruit of so many years of struggle, is non-negotiable. Instead, we South Sudanese must acknowledge the weaknesses in the system of governance we have been exercising since 2005 and correct them. South Sudan needs a Fresh Start for building resilient institutions and effective governance with a solid backing and support from her development partners.

We must, nonetheless, acknowledge that South Sudan has twice now missed historic opportunity for a fresh start to build resilient institutions for effective governance. The first was at the beginning of the Comprehensive Peace Agreement (CPA), when we failed to implement on the one hand, the SPLM Strategic Framework for War-to-Peace Transition, and on the other the Joint Assessment Mission (JAM) document. The second was at independence on July 9, 2011 when we failed to formulate a comprehensive development program that could have provided promising livelihoods to our people in general, and to our youth in particular.

The proposed interim government would be the last chance for South Sudan to put in place robust institutions and effective governance; the alternative is to face our fate as a failed state.

Alarmingly, serious analysts have even called for South Sudan to be placed under a UN trusteeship, arguing that the country is rapidly becoming a failed state. We, however, strongly believe it is our duty to safeguard the sovereignty that cost our country's so many sacrifices to achieve. South Sudan has great potentials to become a viable state if her leadership were to be made to utilize them fully and effectively. The proposed interim government provides such an opportunity.

To achieve this, the Development Policy Forum puts forward the present proposal to create an Interim Government for South Sudan (IGSS) to lay the foundation for a modern state, on the one hand, and to lead the transition to multiparty democracy and social stability, on the other. We are mindful, nonetheless, that workable security arrangements and a robust legal framework must be formulated before the establishment of the IGSS.

This paper is based on the contributions received at the First DPF Discourse for 2014, held on May 10, 2014 at the Juba Grand Hotel. The drafting exercise is informed by the seminar held in February 2014 by the Development Policy Forum (DPF), managed by Ebony Center for Strategic Studies (ECSS): *A New Start for South Sudan: Building Lasting Institutions and Effective Governance*.

The concept of an interim government was implicit in the thinking of the organizers of the February seminar. Moreover, we in the DPF have been encouraged to hold this discourse by a recent statement from the U.S Secretary of State, Mr. John Kerry in which he reported that President Salva kiir Mayardit has agreed to the idea of an interim government.

The rest of this note is organized as follows: section 2 prescribes the vision, mission, specific objectives, outputs, and activities of the Interim Government for South Sudan; section 3 outlines the conceptual framework for IGSS; and section 4 highlights some of the legal pre-requisites for the establishment of an interim government.

### **3. Vision, Mission, and Specific Objectives of the Interim Government**

The vision, mission, and specific objectives of the IGSS essentially constitute its Terms of Reference (TOR) within the overall legal framework (i.e. interim constitution) for the interim period.

#### *3.1 The Vision*

*The vision of IGSS is sustained peace, economic growth, and poverty eradication through resilient institutions and effective governance.*

#### *3.2 Mission of the IGSS*

The mission of the IGSS is to create governance structures (agencies) and practices within those agencies that, when guided by democratically created institutions (laws), will produce civil peace, sustainable livelihoods, and the gradual sense of nationhood and belonging for the people of South Sudan.  
Specific Objectives of IGSS

The following objectives constitute the mandate of the interim government:

1. To carry on all the normal functions of government following the principles of good governance;
2. To finalize the constitutional review process and prepare a popular consultation mechanism, such as a referendum, to allow the adoption of a permanent constitution for South Sudan no later than January 9, 2018;
3. To facilitate registration of all the political parties and ensure their adherence to the basic principles of multiparty democracy;
4. To ensure the active participation of the people, as citizens, in politics and civic life through freedom of expression, independent judiciary and media;
5. To carry out the constitutionally mandated census, register voters, and organize free and fair elections within (3) years for a new government;
6. To transform/reorganize the SPLA into a modern & professional national army that reflects, all the nationalities of South Sudan, in its composition, orientation and outlook;

7. To undertake civil service reform to become an effective, efficient, and apolitical civil service of South Sudan, which includes establishment of strong structures of the rule of law;
8. To revitalize agriculture and create sustainable rural livelihoods by directing oil revenues to rural infrastructure and agricultural development<sup>2</sup>;
9. To restore international political capital South Sudan accumulated during the liberation struggle as demonstrated by a strong international support during the referendum as well as during the celebrations of independence on July 9, 2011;
10. To rehabilitate institutions/structures of social capital as by way of restoring a culture of tolerance, trust and cohesion while promoting the values, and norms of a peaceful and dignified society at peace and harmony with itself;
11. To expedite the repatriation, relief, rehabilitation, reconstruction and resettlement (5Rs) of conflict-affected areas, while healing the trauma from conflict; and
12. To. Invest in education as the foundation for sustainable development.

### *3.3 Deliverables and Associated Activities*

The above twelve (12) specific objectives would in turn determine the number of outputs (deliverables) that are expected to be delivered by the IGSS. An illustrative set of activities required to produce these deliverables would constitute the core functions of the IGSS and have been given in Annex A of this document.

## **4. Conceptual Framework for the Interim Government**

This section sets out the political rationale underpinning the concept of an interim government, tenure of the IGSS, the nature of the executive (relationship between the Presidency and the Prime Minister and his/her Cabinet), the composition, and criteria for the selection of members of the Executive, the legislative process during, and the territorial/administrative organization of South Sudan in the interim period.

### *4.1 Political Rationale of the IGSS*

The Interim Government's political mission shall be to safeguard national sovereignty by depoliticizing key decision-making functions by placing the administration of the state in the hands of persons with certain qualities of personality and character, supported by relevant technical knowledge and experience.

Placing the administration of the state in trusted hands belonging to neither of the parties in conflict will create necessary, though not sufficient conditions for

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<sup>2</sup> Dr. John Garang's strategy was to make agriculture the engine of economic growth of the economy and use oil revenues to fuel this engine by constructing 10,000 km of paved roads by 2011.

building resilient institutions that would address the underlying causes of conflict. Such institutions would draw their legitimacy from the constitution.

The idea of a transitional government of national unity (GONU) is not supported in this proposal. This is because power-sharing arrangement is inherent in the concept of GONU. And it is the power-sharing arrangements within the Government of Southern/South Sudan (GoSS) during the period 2005 – 2013 that have embroiled the country in the current violent conflict. But, the key driver of political instability is the internal struggle for power and resources within the SPLM, which the country cannot afford to be carried into the interim period. President Kiir was democratically elected and must be allowed to complete<sup>3</sup> his term of office on July 8, 2015 without diluting it by GONU.

#### 4.2 Term in Office of the IGSS

The tenure of the Interim Government will be for a transitional period of 36 months (three years), beginning on July 9, 2015 when the terms of office of the current constitutionally elected president and the national legislature end.

#### 4.3 Size, Composition, and Criteria for Selection of the IGSS

The paper proposes that the size and composition of IGSS be as follows:

The Head of State shall be in the form of a Collegial Presidency (CP) that shall make decisions by consensus. The collegial presidency shall have five (5) members – each of the three Greater Regions being represented by one person; one women representative; and one representative of the armed forces to be nominated by the sitting president whose tenure ends in July 2015.

An Interim President shall head the Collegial Presidency and shall have two deputies. Members of the Collegial Presidency representing the three (3) Greater Regions of Bahr el-Ghazal, Equatoria, and Upper Nile shall rotate in the posts of Interim President and first and second deputy president every six (6) months.

#### Collegial Presidency: Indicative Rotation Schedule

<b>Duration</b>	<b>Interim President</b>	<b>First Deputy</b>	<b>Second Deputy</b>
<b>July 2015-Jan. 2016</b>	Greater Upper Nile	Greater Bahr-el-Ghazal	Greater Equatoria
<b>Jan. 2016-July 2016</b>	Greater Bahr-el-Ghazal	Greater Equatoria	Greater Upper Nile
<b>July 2016-Jan. 2017</b>	Greater Equatoria	Greater Upper Nile	Greater Bahr-el-Ghazal
<b>Jan. 2017-July 2017</b>	Greater Upper Nile	Greater Bahr-el-Ghazal	Greater Equatoria
<b>July 2017-Jan. 2018</b>	Greater Bahr el-Ghazal	Greater Equatoria	Greater Upper Nile
<b>Jan. 2018-July 2018</b>	Greater Equatoria	Greater Upper Nile	Greater Bahr el-Ghazal

<sup>3</sup> Ukraine scenario readily comes to our minds; a scenario that was a consequence of removing an elected president before completing his constitutionally mandated term of office. It is a mockery to democracy to dislodge duly elected president from office without legal procedures, such as impeachment, etc.

The collegial presidency will play an advisory role and exercise the dignified protocol and ceremonial functions of state, but it shall not be concerned with the day-to-day management of the government (i.e. executive functions). By involving all regions of the country it will seek to promote social cohesion, trust, and will oversee the performance of the Prime Minister and his/her Cabinet.

The executive will be headed by a prime minister (PM) with two deputies – one for the economic sector and the other for the security sector of the Council of Ministers. The PM will be the head of government, but report to the Collegial Presidency in the conduct of government business. The PM and his/her deputies must represent the three Greater Regions of Bahr el-Ghazal, Greater Equatoria, and Greater Upper Nile. That is, if the PM is, say, from Greater Equatoria, then the other two regions must each have a deputy PM (DPM).

The Cabinet – Council of Ministers (CoM) will consist of twenty-one (21) members: Prime Minister (PM), two (2) deputies, and eighteen (18) ministers<sup>4</sup>. The following are the proposed ministries for the IGSS:

1. Foreign Affairs and International Cooperation
2. Defence and Veteran Affairs
3. Finance and National Economy
4. Interior
5. Justice
6. Information and Culture
7. Petroleum
8. Agriculture and Forestry
9. Education and Scientific Research
10. Civil Service and Administrative Reform
11. Transport
12. Trade
13. Industry and Mining
14. Animal Resources and Fisheries
15. Health
16. Social Development
17. Housing and Urban Planning
18. Inter-state Coordination

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<sup>4</sup> Eluzai et al; unequivocally recommend an interim government of technocrats, the Sudd institute rule out the direct political role of the international community in any future administration, interim or otherwise. The international community's role should, instead, be restricted to helping with mediation processes, protection of civilians, provision of humanitarian services, and exertion of positive pressure on the parties to end the violence and reach a comprehensive, homespun political settlement.



Commissions and Authorities:

1. Auditor General Chamber
2. Council of Economic Advisors (CEA)
3. Environmental Protection Authority (EPA)
4. South Sudan Investment Authority (SSIA)
5. South Sudan Revenue Authority (SSRA)
6. South Sudan Anti-corruption Commission (SSACC)
7. National Bureau of Statistics (NBS)
8. National Elections Commission (NEC)
9. National Constitution Review Commission (NCRC)
10. Peace and Reconciliation Commission (PRC)
11. Disaster Management Authority (DMA)
12. South Sudan Electric Power Authority (SSEPA)
13. Food and Drug Control Authority (FDCA).

*4.4 Criteria for Selection of the IGSS*

Trust is a necessary, though not sufficient condition for the success of the IGSS, especially when public trust in government has recently been in short supply from some segments of the society (e.g. IDPs in UNIMISS camps). The emphasis on trust is particularly important given the scale of the violence the country has undergone. One of the most pernicious legacies of the internal conflict is the destruction of the minimum bonds of trust between the nascent South Sudanese state's senior politicians. The extreme distrust that has built between members of the post-CPA political elite makes it imperative to place the day-to-day administration of the government in the hands of persons with personal integrity and political morality to embark on the process of building lasting institutions and effective governance in post-conflict South Sudan.

A set of robust eligibility criteria will be formulated and applied on those to serve in the Interim Government. Candidates for office should have a career trajectory largely outside the realm of party politics. The leaders of the Interim Government should clearly state that they have no further ambitions in the political realm, and must agree not to be eligible for election for a 10-year period following the end of the Interim Administration, unless a two-thirds majority of the post-interim period legislature decides otherwise.

The current National and state parliamentary committees will be tasked with proposing specific eligibility criteria for shortlisting of candidates. Separate parliamentary committees will undertake the vetting of the candidates, ensuring their diversity and qualifications. Involving parliamentary instances in this way will extend some of the elected lawmakers' legitimacy to the new interim authorities, even though they will not themselves be elected.

*4.5 The nature of legislative process during the interim period*

Interim arrangements provide a framework within which all the political parties will prepare themselves for competitive politics in a multiparty democracy system that will be enshrined in the permanent constitution.

The alternative would be to allow one of the warring parties to monopolize the post-conflict political process, imposing new political arrangements on the defeated. But such a government would not be stable and would instead invite renewed conflict. Interim Government can promote stability in what could otherwise be a period of turmoil. It must use the limited time of its tenure to create conditions for greater public participation and the consideration of a wider range of social issues, creating the conditions for lasting peace to be enshrined in new constitutional arrangements. Moreover, the temporary nature of the arrangements makes it possible to find more imaginative solutions and cover issues that might not be dealt with in a permanent constitution.

There are three proposals advanced in this paper.

- The first is to elect an Interim National Legislative Assembly (INLA) with its membership based on the number of the current counties (89) in the Republic of South Sudan. The sitting President shall appoint, in consultation with all the political parties represented in the current NLA, 100 (89+11 representing ten states and one for Juba the capital city) members based on a set of criteria, such as 25% for women with relevant technical knowledge and experience in the legislative process.
- A second alternative, given the impracticality of carrying out a census and voter registration in current conditions, the tenure of the current NL (NLA + Council of States) should be extended for a further (Two) years. An arrangement/agreement is needed as to their status in line with the constitutional reform process.
- A third option is not to have a standalone legislative body during the interim period. The rationale is that the task of governance during the interim period is more concerned with the implementation of the peace agreement. And this process requires less legislation and more of execution of decisions and programs of government, e.g. the constitutional review process, population census, voter registration and holding of elections are tasked to existing relevant commissions. Hence, the CP will have legislative functions during the interim period.

#### *4.6 Political Structure and Decentralisation*

The current governance structure of the South Sudanese state – national, state, county, and Payam - which has been stipulated in the CPA, in the interim constitution of Southern Sudan (ICSS), and in the Transitional Constitution of South Sudan (TCSS) must be maintained. This does not, however, mean replicating national IGSS offices and institutions at the state level.

### **5. Establishing the Legitimacy of the Interim Government**

During a transition, legality is needed to ensure the continuity of the state's normal administrative functions -- keeping order, collecting taxes, providing basic services, implementing development programs/project, operating courts, etc. The legality of interim arrangements and of the interim government's actions must be made resistant to judicial challenges. This is a special concern because it may not be possible to act in accordance to the letter of the Transitional

Constitution of 2011. The key is for the Interim Government's legal basis to reflect a broad national consensus.

One option would be to base the Interim Government's legitimacy on an extraordinary Presidential Decree. This solution, however, is unlikely to prove sustainable: the mandate the people extended to President Kiir in the 2010 is too imprecise and its contents too contested to serve as the foundation for the legality of an Interim Government, in particular given the serious breakdown of the SPLM as a party, the nearly universal perception that it has failed to deliver on its promises.

Today, the National Assembly is the only elected body that retains an aspect of broad national legitimacy, because its members come from every region of South Sudan and represent many different ethnic groups.

A second best option, then, would be for the Interim Government's legality to be based on an extraordinary Act of the National Legislature of South Sudan. This act would postpone the mandated 2015 general and presidential elections by three (3) years and gives the Interim Government clear Terms of Reference (as proposed in section 3 of this document) for the 2015-2018 period.

The imprimatur of legislative involvement in the vetting of candidates for posts within the Interim Government ministers will be absolutely essential to establishing its legitimacy. In any transition there are legal norms that are directly linked to the legitimating principles of the outgoing system. For the Interim Government, maintaining legality is crucial to help ensure the obedience of those who identify with the outgoing regime – not least among them, the security forces.

Because it will not itself be the result of an election, the Interim Government's legitimacy will ultimately rest more on the results it achieves than on its origins. Selecting a small number of highly capable individuals and giving them broad powers for a limited time-span can assure effectiveness.

The practice of public consultation and constant information sharing on the government's intentions and actions can be crucial to sustaining the perception of an Interim Government's legitimacy. Because negotiations themselves often have a dynamic effect on the relations among the parties, it is not unusual for interim arrangements to be modified during an Interim Government's term of office.<sup>5</sup> Interim arrangements must therefore include some flexibility to take account of emerging power realities, but must be rigid in creating a hard time limit, after which a return to full multi-party democracy must be guaranteed.

The interim period is critically a peace and security interim period that requires parallel processes to support the executive.

The National Legislature, through an act of parliament, will sanction a commission to seek Justice and Accountability for war atrocities and crimes against humanity. Members of the commission will include independent investigations and transitional justice of war atrocities as part of the peace

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<sup>5</sup> South Africa went through two distinct stages of interim arrangements. At first the interim government continued with the system and government set up under the old (and disputed) constitution.

agreement. Multi-disciplinary members (national and international) ethnically diverse and giving regard to traditional justice system where necessary.

Such arrangements can, however, give rise to their own problems, as the parties may see them merely as a truce, before political “war”. Interim arrangements can be used to hijack the reform process, a danger the Interim Government must be on its guard against.

### *5.1 Putting in place short-term support pillars*

Putting in place short-term support pillars and critical parallel processes during the interim period would, therefore be one of the challenges to face the proposed IGSS.

The Interim Government must, as a matter of urgency:

- a) Pursue an agreement on an unambiguous mandate for African, Regional and UN troops to enforce peace in support of the interim administration, secure humanitarian corridors, protect IDPs and others;
- b) Create a joint intelligence cell to pull intelligence and analysis to support the Interim Government, the operations of the African, Regional and UN troops and communications with the armed opposition groups; and
- c) Set in motion the creation of a professional national army.

### *5.2 Safeguarding public order in worst affected areas*

In order to guarantee public order and internal security for the people in the areas most affected by the war (e.g. Bor, Malakal, Bentiu, Nasir, etc.) the Interim Government will establish a strong police force with United Nations support to carry the responsibility for defending against revenge killings, threats, as well as the responsibility for overall security of the different communities for the purpose of safeguarding their internal security and public order.

### *5.3 Interim constitutional arrangements as roadmap*

In many cases it is impossible to understand the design of a permanent constitution that follows without grasping the dynamics of the interim arrangements that gave rise to it. Interim constitutional arrangements serve as a school for institutional learning, where expectations about what is acceptable and what is not, start to harden even before being formalized in a permanent constitutional text.

The interim arrangements must therefore be seen as a roadmap<sup>6</sup> to the new permanent constitution but with guarded attention to the role and motivations of the participants. This is especially true for those arrangements negotiated under international auspices.

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<sup>6</sup> Roadmaps were used in Afghanistan, Cambodia, Kenya, and Sudan

## **6. Annex A: Logical Framework for Mandate Implementation**

The following Annex contains an illustrative Logical Framework that could be implemented as a mechanism for the Monitoring and Evaluation of the Interim Government of South Sudan's tenure.

To guarantee accountability, the Auditor General Chamber would produce quarterly reports updating the nation on the specific progress achieved in each quadrant of the IGSS's Mandate. This would create verifiable benchmarks against which the government's performance could be measured, and help establish a culture of service delivery inside the government.

A fully worked-out Logical Framework for the delivery of the IGSS mandate will require detailed study over a period of weeks, and be created as an outcome of consultation with key stakeholders. What follows is, therefore, proposed for illustrative purposes only, and would be reformulated on the basis of the "Work in Progress" created to such an effect.

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