

# **The Transitional Government of National Unity:**

## **The View of the Political Parties**

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## **Background to Conflict:**

The violence that has engulfed South Sudan since the 15<sup>th</sup> of December 2013, has thrown our people into the throes of another civil war just over two years after our hard won independence. Thousands of innocent lives were killed, close to 1.5 million persons displaced as IDPs or refugees, properties destroyed and some towns razed to rubbles. The conflict quickly acquired an ethnic dimension with targeted ethnic killings in Juba followed by revenge killings in Bor, Bantiu, Malakal and other places. Thus, the social fabric between our communities was in tatters in a matter of days, a setback that will take years of hard work and reconciliation to mend. Hunger is looming and threatens to extend to next year as we are about to miss the rainy season. Therefore, stopping this senseless war and the attainment of peace is the priority to which all South Sudanese should pay undivided attention.

The immediate trigger to this senseless war was a struggle over power within the ruling party, SPLM. There are also remote causes and factors that led to the rapid spread of the war the way it did. These are rooted in deficiencies in our governance system, security organs that lack a national character, weak infrastructure and absence of service delivery to our people outside towns. Therefore, the resolution of the conflict demands national action by all the stakeholders in the country.

Tragic as it is, this war provides an opportunity for the South Sudanese to resolve all the outstanding issues facing the country once and for all in order to bring about a just and sustainable peace that would create a conducive environment for nation-building.

## **The Peace Talks**

The IGAD-mediated peace talks commenced in the first week of January 2014, and on the 23<sup>rd</sup> the two parties signed an agreement on the cessation of hostilities and the status of the detainees. The cessation of hostilities agreement was received with jubilation by our suffering people. However, the jubilation did not last as the fighting continued with the same, if not more, ferocity. Failure to stop fighting as demanded by the cessation of hostilities agreement and lack of progress in the peace talks in Addis Ababa, prompted the IGAD leaders and the IGAD partners to summon the two principals of the warring parties for a meeting in Addis Ababa which culminated in the 9<sup>th</sup> of May 2014. This agreement was a turning point in the peace negotiations as it transformed the talks from bilateral into multilateral. The multi-stakeholder roundtable conference was in the spirit of the inclusiveness all the communiqués of the IGAD heads of state and government have been calling for since 27<sup>th</sup> of December 2013. The stakeholders were named as the two warring parties, political parties, SPLM Leaders (Former Detainees), Civil Society Organizations and Faith-based Leaders. In this context, the two principals agreed:

*“to ensure the inclusion of all South Sudanese stakeholders in the peace process, and the negotiation of a transitional government of national unity, in order to ensure broad ownership of the agreed outcomes”.*

They further agreed:

*“that a transitional government of national unity will offer the best chance for the people of South Sudan to take the country forward; and that such a government shall oversee government functions during a transitional period, implement critical reforms as negotiated through the peace process, oversee a permanent constitutional process, and guide the country to new elections and thus **direct** our respective representatives to the IGAD- led peace process to negotiate the terms of a transitional government of national unity”.*

This was how the concept of the transitional government of national unity recently came about. Additionally, the IGAD summit held in Addis Ababa on the 10<sup>th</sup> of June which was attended by the two principals of the warring parties stressed in its final communiqué the following:

*“3. Further **commends** their [the two leaders] commitment to expedite and complete dialogue on the formation of a transitional government of national unity within sixty (60) days as well as to ensure unhindered humanitarian support to affected people with immediate effect;*

*4. **Applauds** the two leaders on their signing of the 9 May 2014 landmark agreement in Addis Ababa, which provided the basis for negotiating a transitional government of national unity; and committed them to ensure the inclusion of a broader range of South Sudanese stakeholders in the negotiations, namely: the Government of the Republic of South Sudan, the SPLM/A In Opposition, SPLM leaders (Former Detainees), political parties, civil society, and faith-based leaders in the peace process”.*

## **The Transitional Government of National Unity**

The transitional government of national unity suggested by the principals of the warring parties to offer the best chance for the people of South Sudan to take the country forward, is meant to prepare a level ground for a healthy democratic practice in our country after the transitional period by carrying out the necessary reforms in the system. In other words, to create Good Governance that is good for those in government and those outside it.

In suggesting a resolution to the current conflict we need to be mindful of the following:

1- The armed rebellion led by a faction of the SPLM, SPLM/A-IO, has no legitimacy as it is an attempt to overthrow a constitutional order through violent means. However, it enjoys the support of a sizeable section of the South Sudan community and the government could not subdue it. Therefore the government must seek a peaceful resolution to the armed conflict.

2- The government has been hanging on the legitimacy thread to maintain the status quo. Nevertheless, legitimacy is a covenant between the people and their government. Both must deliver on their part of the bargain. Therefore, if the government fails to provide security to its citizens resulting in death of thousands, displacement of a million plus, and destruction of their properties; or falls short in delivering services to them to promote their welfare, it should not behave as if it is “business as usual”. As much as the government can claim legitimacy not to be overthrown by force, it must also admit to have failed in carrying out its main responsibility in providing security to its people and consequently must be ready to accept unavoidable changes within the government institutions, structure and leadership dictated by the need to bring this war to an end.

3- Sovereignty of the country is currently contested between the two warring parties; each has claim over some territories of the country. Only a Peace Agreement will restore the exercise of sovereignty to the legitimate government that enjoys the confidence of all its people.

4- It is the two warring parties that are capable of stopping the war since it is only they who control the means of violence. Hence, their consent to and/or involvement in the Peace Agreement is unavoidable.

5- However, the two parties were together in ruling South Sudan for the last eight years. This is a period characterized by failure to deliver services and to build a national security sector, just to mention two critical areas. The same period saw some SPLM leaders and government officials growing into millionaires overnight and corruption became rampant. Hence, the two warring parties alone (which are actually one political party) are incapable of playing the role of the midwife to the genuine reforms the transitional government is meant to bring about. Hence, the negotiation and composition of the transitional government of national unity must involve all stakeholders.

### **Tasks/Functions of the TGoNU**

The purpose of the transitional government is to establish and consolidate peace, instil confidence of the people in their government and lead the country to a genuine multi-party democracy. It is of vital importance that the forthcoming transitional government should be depicted in the minds of the people of South Sudan as a **Government of Reform Programme** and should practically be seen as such.

The 9 May Agreement between the President of the Republic and the former Vice President did specify the tasks/functions of the Transitional Government of National Unity as to: *“oversee government functions during a transitional period, implement critical reforms as negotiated through the peace process, oversee a permanent constitutional process, and guide the country to new elections”*. By way of elaboration, these functions shall be as follows:

- 1- carry on all the normal functions of government during the transitional period predicated on good governance;
- 2- implement the Peace Agreement. This includes critical reforms in the security sector, civil service, national economy, etc... **These reforms will be spelt out in detail as a programme of the government.**
- 3- oversee an integrated process of national reconciliation and healing;
- 4- carry out a population census (if time allows);
- 5- convene the national constitutional conference that shall discuss and agree on the principles of the permanent constitution for the country;
- 6- produce a draft permanent constitution and put it to a popular referendum for adoption;
7. facilitate registration of all the political parties and ensure a level democratic field for them consistent with the basic principles of multiparty democracy;
8. ensure the active participation of the people, as citizens, in politics and civic life through the exercise of fundamental freedoms, independent judiciary and the media;
9. revitalize agriculture and create sustainable rural livelihoods by directing oil revenues to rural infrastructure and agricultural development;

10. invest in service delivery such as health sector, education, water and infrastructure;
11. Reform the diplomatic service, consolidation of relations with countries and regional and international bodies;
12. expedite the repatriation, relief, rehabilitation, and resettlement of the refugees and IDPs, and reconstruction of conflict-affected areas, while healing the trauma from conflict; and
13. conduct free and fair elections towards the end of the interim period on the basis of the permanent constitution.

### **Duration of the TGoNU**

The transitional period shall commence as soon as the institutions and structures agreed upon in the Peace Agreement are set in place and the transitional government of national unity constituted. A reasonable balance needs to be struck between the necessity for a short period before the elected organs thereafter take control, and a longer one to implement the most essential reforms that must be effected so as to ensure a stable democracy after the transitional period.

It is suggested that the transitional period be not more than **three** years commencing on the date of the conclusion of the Peace Agreement.

### **Structure and Composition of the TGoNU**

The only realistic way to end the current devastating war, especially that it was caused by fighting over power, is through a power sharing formula inclusive of all the stakeholders that puts the warring parties in key leadership roles in the transitional government. However, since both are incapable of implementing the anticipated reforms, given their track record in power for eight years in addition to vested interests, we believe that that task must be put in more capable hands. It will be a false peace that puts power only in the hands of the warring parties. Therefore, all political parties and national figures should be part and parcel of the TGoNU.

**It cannot be overemphasized that our country will enjoy sustainable peace, not just a stop of war, when and only when the suggested and agreed reforms are implemented during the transitional period.**

In order to translate the Reform Programme into tangible reality, we believe that, despite the obvious differences, the experiences of Zimbabwe between President Robert Mugabi and Prime Minister Morgan Tsvangirai, and the Kenyan experience of President Mwai Kibaki and Prime Minister Raila Odinga, on the one hand and that of Cote D'Ivoire between President Laurent Gbagbo and Alassane Ouattara on the other, are examples that can inform the situation in South Sudan since December 15, 2013 and its way forward.

It is therefore suggested that the Transitional Government of National Unity be formed as follows:

1. The executive on the national, state and local levels shall be constituted from all political parties in proportions to be negotiated;
2. On the national level, top executive power shall be shared between a President (SPLM-IG) who shall be the Head of State and a Prime Minister (IO) who shall be the Head of Government. Details of the powers of each office shall be agreed in the Peace Agreement;
2. There shall be a lean Council of Ministers comprised of the SPLM factions and the political parties in proportions to be negotiated;
3. There shall be a national single chamber parliament composed of 250 members (composed in the same proportions as the executive) with a Speaker being an agreed national figure (1), and a State Assembly in each State composed of 48 members.
4. Women shall comprise at least 25% of the executive and legislative organs.
5. The number of independent commissions, institutions and authorities shall be revisited and they shall be reconstituted as agreed in the peace Agreement.

### **All Southern Sudan Political Parties Conference**

Could this destructive war have been avoided? Maybe.

A successful “All Southern Sudan Political Parties Conference” was held in October 2010. The conference brought together all South Sudan political parties, civil society and faith-based organizations. It deliberated and took decisions on the issues and challenges facing Southern Sudan by then. The Conference resolutions are summarized in the Final Communique, dated 17 October 2010 (2).

The Final Communique of the Conference outlined the course of action to be taken in relation to reconciliation, preparation for the referendum, post-referendum issues and the follow-up mechanism of the Conference’s resolutions. Indeed, it was the rare display of unity witnessed at the conference and thereafter that contributed immensely to the high turnout of the Southerners and their overwhelming vote in the referendum. The follow-up mechanism, made up of the Leaders of all South Sudan Political Parties, under the chairmanship of the President of GOSS, held regular monthly meetings since the 18<sup>th</sup> of October 2010. It was agreed in the last meeting in December that the first meeting of the follow-up forum after the referendum would be held a week after the final result of the referendum was announced.

### **Road Map for Post-Referendum Issues:**

The Final Communique spelt out clearly the issues that need to be tackled should the outcome of the referendum favour secession of South Sudan (Point 3b of the Communique). These were:

1. There shall be a Transitional Period as from 9<sup>th</sup> July 2011, the length of which shall be agreed upon by all the parties.
2. H.E. Salva Kiir, President of GOSS, to be the President of the Republic of South Sudan during the Transitional Period.
3. There shall be formed a national broad-based transitional government.
4. As soon as the result of the referendum was announced the Government of Southern Sudan shall form a Constitutional Review Commission to review the

current Interim Constitution of Southern Sudan 2005 (in accordance with Article 208(7)), to be adopted by the SSLA as the Transitional Constitution of the Republic of South Sudan.

5. GoSS shall convene an all-party National Constitutional Conference to discuss and agree on the Permanent Constitution.
6. General Elections shall be held at the end of the Transitional Period to elect the Constituent Assembly that shall promulgate the permanent constitution.

The SPLM reneged on this agreement and the road map was thrown into the wastebasket (3). The similarity between the current discussion on the Transitional Government and that of 2010 is striking. Therefore, if the road map of 2010 was to be respected, the current situation might have been avoided.

### **Legitimacy of the Transitional Government**

It is important to stress from the outset that whatever arrangements are agreed upon in the peace process should not affect the continuity of the state's administrative functions. To begin with it is the power of the consensus of the people of South Sudan through their stakeholders that renders the process legitimate. The instruments of power that will give legality to the peace agreement will be driven by that consensus. Therefore, once consensus has been built on the transitional arrangements and other aspects of the peace agreement, the parties to the agreement will form a representative Committee to transform the Peace Agreement into a legal and constitutional text that shall be incorporated into the current Transitional Constitution through amendment. It cannot be overemphasized that the change must come through the current constitutional instruments, however defective they may be.

The government has argued throughout this crisis that the current President is a legitimate one and hence should be allowed to complete his term and that acting otherwise would set a dangerous precedent. However, legitimacy has continuous obligations demanding that the government delivers on its contract with the citizens to govern them well. When the government becomes unable to deliver on its part of the contract, the citizens have the right to replace it with another. The current crisis has led to the loss of thousands of innocent lives, destruction of property, massive displacement of citizens, towns razed to the ground, break down of security in a sizable part of our country and, above all, disruption of our social fabric. All these were not due to natural calamities beyond our control, but by our own hands! It was government's responsibility to provide security to its citizens and their property and to protect the sovereignty of the country. In fact, the sovereignty of the country is currently challenged by an armed rebel group. Surely, all these developments have dented the legitimacy of the government and for peace to be restored to our beleaguered country, the government must be prepared to make the necessary concessions to make a peace agreement possible. On the other hand, the leader of the rebel group was the second man in the regime from its inception until a few months before the violence erupted and can hardly distance himself from the failures of the government for all the eight years or so. Thus, his demands for the President to be removed by force cannot be taken seriously. Herein, stems the inevitability for both sides to make the compromises required to make peace possible.

In this crisis, we have not one but two dangerous precedents we do not want set. The first is that a legitimate government be changed by violent means, and the other is that a legitimate government grossly fails to carry out its main function, especially the security of its citizens, and would want to maintain the *status quo ante*.

### **Other Suggestions for a Transitional Arrangement**

From the moment the current crisis broke out, South Sudanese, inside and outside the country, have come out with different well thought out proposals for the resolution of the conflict by peaceful means. Remarkably, almost all of them were in agreement that an interim/transitional period was necessary to bring about just and sustainable peace and to prepare a level democratic field for a healthy multi-party system after the interim/transitional period.

There is little difference of views on the mandate of the interim/transitional government. They differ only on the structure and composition. It is not the intention to review these proposals here, only to highlight the options offered on the points of difference. One proposal (4) concludes that *“Both President Kiir and Dr Machar have placed their own ambitions ahead of the interest of the South Sudanese people. As such we believe that the conflict can only be ended radically if both step aside and allow a new generation of leader to emerge and chart a new course for South Sudan”*. This call finds support from Ajak (5) but that that leader must come from *“mid-level cadres of the SPLM/A”* with *“intellect, sound judgement, vision and charismatic ability who would implement the agreement with rigor and determination”*. On the other end of the spectrum, Hakim et al (6) argue that *“the sitting president should be allowed to complete his remaining term of office... so as not to set a dangerous precedent”* and that *“a broad based and inclusive government of technocrats should be formed to guide the nation through into the next election”*. Which means it is the sitting president to accede to and appoint such a government of technocrats. The Development Policy Forum (7) suggests a collegial presidency and technocratic cabinet headed by a Prime Minister but to assume office on July 9, 2015 *“when the terms of office of the current constitutionally elected president and the national legislature end”*. What happens from the moment the Peace Agreement is signed up to 9 July 2015, and what will the armed rebels be doing in the meantime remains unaddressed. Peace Agreements are supposed to come into effect from the time of signing.

This position of the political parties takes a middle point. It contends for the retention of the sitting President as a symbol of legitimacy whereas everything else is subject to negotiation on the understanding that when the Peace Agreement is concluded the current constitution must be amended so as to incorporate its provisions. Our position extends the period of the sitting president to the end of the interim/transitional period, well beyond the expiry of his term of office. This should constitute some of the trade-offs to other concessions he must make. At the same time, the leader of the armed rebellion cannot be wished away and would not settle for anything less than enjoying an effective power in the transitional government.

On a personal level, the ideal solution would have been for all the politicians to set aside during the interim/transitional period and give way for technocrats to clean the mess we have created for the last nine years. The politicians would then spend their time building their



parties and preparing for the general elections that will come at the end of the interim/transitional period. This is a gargantuan task. However, politics being what it is in South Sudan and bearing in mind that the war broke out in the first place over power, that will remain a far-fetched dream. I hope I can be proved wrong.

## Notes and References:

(1) The current two chamber parliament is composed of National Legislative Assembly of 332 members (162 of whom were appointed) and the Council of States of 50 members (all of whom were appointed). Hence, 212 members (64%) were appointed. Therefore, the argument that it is an elected institution cannot be sustained.

(2)- The Final Communiqué of the All Southern Sudan Political Parties Conference, Juba, 17 October, 2010.

(3)- The first violation of this road map came when the President of GOSS issued Decree No. GOSS/PD/J/002/2011 dated 21<sup>st</sup> January 2011, before the final result of the referendum was announced, appointing a Constitutional Review Committee comprising 24 members, all of them, except one who declined to serve, were from the SPLM. The political parties presented to the President of GOSS a petition requesting that the decree be reviewed to be more inclusive as required by the resolutions of the Conference. No action was taken on that until the meeting of the Leadership Forum took place on the 16<sup>th</sup> of February 2011, when it was agreed that fourteen (14) additional members representing the political parties, civil society and faith-based organizations be added to the Committee to be more inclusive. Hence, the President of GOSS issued Decree No. GOSS/PD/J/008/2011 dated 17<sup>th</sup> February 2011 to that effect. It was thought that the controversy over the Constitutional Review Committee was laid to rest. However, the President of GOSS issued another decree on the 21<sup>st</sup> of February 2011, appointing additional seventeen (17) members of the SPLM into the Committee, thus, making a total of 41 SPLM members against 11 for the other political parties and 3 for the civil society and faith-based organizations. This step was the more surprising given the fact that when the political parties asked for the inclusion of their members in the Committee, the SPLM was arguing for non-inclusion on the grounds to keep the membership of the Committee small!

(4)- Lasu, Kwaje and Benjamin Okuka, "South Sudan: Way Forward", Equatorial South Sudanese Community Association- USA, 16 February 2014

(5)- Ajak, Peter Biar, "The Alternative Proposal", 12 May 2014, [DPF@ebonycenter.org](mailto:DPF@ebonycenter.org)

(6)- Hakim, Eluzai; Mairi J Blackings; Martin Mikaya; Laura Beny and Charles Bakheit, "The Interim Government Arrangements: Addendum One", [eluzaihakim@doctors.org.uk](mailto:eluzaihakim@doctors.org.uk); [mairijb@yahoo.co.uk](mailto:mairijb@yahoo.co.uk); [martin@mail.clarityconnect.com](mailto:martin@mail.clarityconnect.com); [lbeny@umich.edu](mailto:lbeny@umich.edu); [sakib@squ.edu.om](mailto:sakib@squ.edu.om). This is a sequel to their earlier paper "Unleashing the Potential for Good Governance in the Republic of South Sudan", 2 February 2014.

(7)- Development Policy Forum, "Mandating an Interim Government", 16 May 2014, [DPF@ebonycenter.org](mailto:DPF@ebonycenter.org)