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POUR LE DÉVELOPPEMENT

15 August 2014

RESPONSE OF POLITICAL PARTIES

SINGLE NEGOTIATING TEXT ARISING FROM DRAFT II FRAMEWORK FOR POLITICAL AND SECURITY NEGOTIATIONS TOWARDS RESOLUTION OF THE CRISIS IN SOUTH SUDAN

PREAMBLE

Concerned about the grave crisis facing South Sudan that has continued since 15th December 2013, consuming the country and the region as a whole and resulting in senseless loss of life, mass displacement of populations and wanton destruction of property;

Mindful that the crisis in South Sudan cannot be permitted to continue amid the looming threat of full scale war and subsequent nationwide war-induced famine;

Cognizant that the crisis in South Sudan must be addressed expeditiously to stop the killings, end the war and restore peace and stability in the country;

Recognizing that there are African solutions for African problems drawn from a rich African experience of resolving crises of this nature;

Acknowledging the ongoing concerted efforts led by the political leadership of the IGAD Region who have thus far convened four Extraordinary Summits between December 2013 and June 2014, and initiated the South Sudan Dialogue for National Reconciliation and Healing mediated by the three IGAD Special Envoys;

Further acknowledging the extensive consultations carried out by the Special Envoys throughout the region and beyond;

Recalling the achievements made thus far by the Parties to the conflict, the signing of the Cessation of Hostilities Agreement on 23rd January 2014, the establishment of the Monitoring and Verification Mechanism and its operationalization, the deployment of the Protection Force for the IGAD Monitors under the mandate of UNMISS, and the inclusive participation of other South Sudan stakeholders in the political dialogue;

Applauding the critical support provided by IGAD Partners and friends of South Sudan to the peace process in its entirety and in efforts towards the resolution of the conflict;

Now, therefore, the **Stakeholders Agree** that it is time to resolve *in the spirit of fraternity and solidarity* the crisis in South Sudan without further delay as follows:

1. AGREED PRINCIPLES

To find a comprehensive solution that will address the political, security economic and social deterioration of South Sudan and replace war not just with peace, but also with human security, social, political and economic justice, which respects the fundamental human and political rights of all the South Sudanese people.

1.1 The following Documents shall form the basis of the Terms of Reference (TOR) for the Political Negotiations:

- a) IGAD Agenda Phase II Session III of 28th April 2014; Agenda of 30th July 2014 adopted by the stakeholders on 9th August 2014;
- b) Agreement to Resolve the Crisis in South Sudan, Addis Ababa, 9th May 2014 endorsed and further elaborated by the 26th Extraordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan on 10th June 2014;
- c) Agreement on Recommitment to Humanitarian Matters in the Cessation of Hostilities Agreement between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (In Opposition) (SPLM/A-IO) on 6th May 2014.

1.2 Establish a Transitional Government of National Unity (TGONU) that will offer the best chance for the people of South Sudan to take the country forward;

1.3 Negotiate a transitional agenda, mandate and powers of a TGONU that will oversee government functions during the Transitional Period and implement critical reforms that will be negotiated through the peace process;

1.4 Ensure the inclusion of all South Sudanese Stakeholders in the peace process, and the negotiation of a TGONU, in order to ensure broad ownership of the agreed outcomes; Stakeholders include: the two direct negotiators (the GRSS and SPLM/ A (In Opposition), and others such as the SPLM leaders (former detainees), political *parties*, civil society, and faith-based leaders;

1.5 Agree on participation of all South Sudanese Stakeholders, in the negotiations on transitional governance, the permanent constitution, and any other items that concern the political future of the country and reconciliation of South Sudanese communities;

1.6 Agree that the TGONU shall oversee a permanent constitution process, and guide the country to new elections.

2. THE TRANSITION PROCESS

In order to end the conflict and to secure a peaceful and prosperous future for all the people of South Sudan and in order to collaborate in the task of governing the country, the Stakeholders hereby agree to:

2.1 TRANSITIONAL GOVERNANCE ARRANGEMENTS

(a) Establishment of the Transitional Government of National Unity (TGoNU)

I. There shall be established a broad-based TGoNU at National level and corresponding government structures at State and local levels;

II The nature and the structure of the TGoNU shall be equitably constituted with their mandates defined by this Agreement;

III The people of South Sudan, in their social and political diversity, shall *be entitled to* participate in the institutions of the TGoNU at all levels, which shall respect the need for representation and inclusiveness in the staffing and management of its agencies, organs, departments and ministries without prejudice to merit;

IV The different pillars of government (Executive, Legislature and Judiciary) as reformulated for the Transitional Period, shall operate independently and ensure *that* the principle of checks and balances is upheld. The different pillars of government (Executive, Legislature and Judiciary) as

reformulated for the Transitional Period shall operate independently and ensure the principle of checks and balances is upheld;

(b) The Mandate of TGoNU

The mandate 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 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.

(c) Leadership of the TGoNU

1. On the national level, executive power shall be shared between a President who shall be the Head of State and a Prime Minister who shall be the Head of Government. The President shall be assisted by a Vice President;
2. On the State level the top Executive officer shall be the Governor assisted by a Deputy Governor who shall also hold a ministerial docket;
3. On the local level, the county shall be led by the Commissioner.

(d) Structure and composition of TGoNU

First: The Structure of TGoNU

The structure of the TGoNU shall be as follows:

1. The executive of the new transitional government of national unity (TGoNU) on the national and State levels as well as the County Commissioners shall be constituted from persons nominated by political parties in proportions shown below.
2. On the national level, the Council of Ministers shall comprise of twenty-one (21) line Ministers as detailed below.
3. There shall be no more than five Deputy Ministers to be limited to a few ministries such as Foreign Affairs (one), Finance and National Economy (two), etc.
4. There shall be a national single chamber Parliament composed of 250 members and a State Assembly in each State composed of 48 members.

5. Women shall comprise at least 25% of the executive and legislative organs.

Second: Composition of TGoNU

1. The Council of Ministers, Parliament, State Assemblies, State governments and County Commissioners shall be composed of persons nominated by political parties as follows: SPLM factions, 60% and other political parties, 40%.
2. Representation of the political parties in the national Council of Ministers shall be in the same proportion above in the three ministerial sectors of governance, economy and services.
3. The actual composition of the national Council of Ministers, governments of the States and County Commissioners shall be subject to negotiations and included in the Peace Agreement.
4. Independent Commissions, Institutions and Authorities shall be revisited and whatever is agreed upon shall be reconstituted in the same proportions as in (1) above.
5. The President and Prime Minister shall, respectively, be from SPLM-IG, and SPLM-IO. The Vice President shall be from the political parties other than the two mentioned.
6. The Speaker of the national Parliament shall be an agreed national figure.

The Council of Ministers

The Council of Ministers will be presided over by a Prime Minister who will be responsible for running the day-to-day affairs of government but reports to the President in the conduct of government business.

The composition of the Council of Ministers shall reflect competence and regional balance.

Similar arrangements shall apply on the State level. The State Council of Ministers shall comprise the Governor, Deputy Governor (who shall also hold a ministerial docket) and six Ministers, two of whom shall be women.

The national Council of Ministers shall comprise of the following portfolios:

No	Line Ministry	Ministerial Sector
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1	Cabinet Affairs (including Inter-state Coordination)	Governance
2	Foreign Affairs	
3	Defence	
4	Interior	
5	Justice	
6	Information and Communication	
7	Parliamentary Affairs	
8	Finance and National Economy	Economy
9	Energy and Mining	
10	Commerce, Industry and Investment	
11	Agriculture	
12	Animal Resources and Fisheries	
13	Transport and Roads (including bridges)	
14	Water Resources and Irrigation	
15	The Environment (including Forestry, Wildlife Conservation and Physical Planning)	
16	Civil Service and Administrative reform	Services
17	General Education	
18	Higher Education and Scientific Research	
19	Health	
20	Culture, Tourism and Sports	
21	Social Welfare and Humanitarian Affairs (including gender, veterans' affairs, etc.)	

Third: Appointment, Replacement and Removal Procedures

1. Each political party shall select the number allocated to it and gives the names to the appointing authority;
2. In the event that the performance of the member nominated by a political party is not satisfactory, the appointing authority discusses the matter with the Leader of the political party concerned who shall nominate a replacement in case they agree that this is the course of action to take.
3. In the event that a political party may want to withdraw its nominee, the party leader submits a written request to the appointing authority, and the latter shall accede to such a request.
4. The details of replacement and removal of government political office bearers shall be negotiated and included in the Agreement.

(e) Functions and Powers of TGoNU

The functions and powers of the Transitional Government of National Unity shall be as follows. These tasks shall be transformed into programmes that the TGoNU shall implement:

- 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.**
- 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 returnees 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.
 - I. ~~The Presidency~~
 - II. ~~The Cabinet — Composition, allocation of portfolios, appointment, replacement and removal procedures~~
- (f) Decision making mechanisms in the TGoNU
By consensus
- (g) Dispute resolution mechanism
To be worked out in the agreement
- (h) The seat of the TGoNU shall be in Juba
- ~~(i) The National Legislature comprising the National Assembly and the Council of States~~
- ~~(j) Other independent commissions and institutions such as the Judicial Service Commission, Civil Service Commission, Anti-Corruption Commission, etc.~~

The following independent commissions and authorities are the most essential:

1. General Audit Chamber
2. South Sudan Relief and Rehabilitation Commission
3. National Revenue Authority
4. Anti-Corruption Commission
5. National Bureau of Statistics
6. National Elections Commission
7. Political Parties Council
8. National Reconciliation and Healing Commission
9. Electric Power Authority
10. Human Rights Commission
11. Civil Service Commission
12. Fiscal and Financial Allocation and Monitoring Commission
13. National Land Commission
14. Refugees Commission
15. Disarmament, Demobilization and Reintegration Commission
16. National Corporation for Radio and Television
17. National Petroleum and Gas Corporation
18. Bureau of Standards.

(k) The ~~National~~ Judiciary

First: The Judicial Power

1. The independence of the Judiciary

- (1) The judicial power is an independent authority and shall be vested in the judges; it shall be exercised by the Constitutional Court, by the courts at the national level provided for in this Agreement, and by the courts of the states.
- (2) The judiciary shall be subject to the Constitution and the law which the judges shall apply impartially without fear or favour. Any interference in judicial matters or legal cases is a punishable crime.
- (3) The Judiciary shall be independent administratively and financially.

2. Opinion of the Judicial Authority on Bills

Any Bill on the affairs of the Judiciary or affecting its work shall be presented to the Judiciary for comment. If it objects to the Bill or any of its provisions, the Bill shall not be adopted except by a vote of two thirds of members of the National Assembly.

3. Immunity of judges

- (1) Justices and Judges are independent, not subject to removal, and no authority is above them in their judicial work except the law, and they are equal in rights and duties.
- (2) The law shall specify the conditions and procedures of their appointment, secondment or retirement; and regulate their discipline; all this in a manner that will preserve the independence of the Judiciary.

4. Publicity of Court Hearings

Court hearings shall be public, except when considerations of public order or morality make the court to decide that a hearing be conducted in camera. In all cases, the verdict of the court shall be pronounced in a public hearing.

Second: The Judiciary and Public Prosecutions

1. Competence of the Judiciary

The Judiciary has jurisdiction to adjudicate in all disputes and offences except those that fall under other judicial authorities. It alone has the power to settle disputes related to the affairs of its members.

2. Public Prosecutions

Public Prosecutions are an integral part of the judiciary, with the responsibility to investigate, raise and direct criminal proceedings except as specifically exempted by law. Other functions of Public Prosecutions shall be determined by law.

3. Appointment of the Attorney General

Public Prosecutions shall be under the responsibility of an Attorney General appointed by the President of the Republic from amongst the deputies of the Chief Justice, Vice-Presidents of the Courts of Appeal or Assistants of the Attorney General on the nomination of the High Judicial Council, for a period of four years or the remainder for his retirement age, whichever is the earlier, and only once during his/her service.

Third: The Constitutional Court

1. Jurisdiction of the Constitutional Court

- (1) The Constitutional Court is an independent judicial organ on its own. It is the custodian of the Constitution and the constitutions of the states, and has the authority to look into the following matters and issue decisions and sentences thereon and follow up their implementation in accordance with the Constitution and the law:
 - (a) the interpretation of the Constitution and legal provisions;
 - (b) have original jurisdiction to decide on disputes that arise under the Constitution and the constitutions of states at the instance of individuals, juridical entities or governments;
 - (c) have original and final jurisdiction to resolve disputes between the states and between the national Government and a state in respect of areas of exclusive and concurrent competences;
 - (d) adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws that are inconsistent with the Constitution or the constitutions of the states to the extent of the inconsistency;
 - (e) protection of rights and fundamental freedoms guaranteed by the Constitution;
 - (f) have criminal jurisdiction over the President in accordance with the constitution;

- (g) any other matters as shall be assigned to it by law.
- (2) The decisions of the Constitutional Court shall be final and binding.

2. Composition of the Constitutional Court

- (1) The Constitutional Court shall be composed of a President, three Vice Presidents, five senior Judges according to judicial seniority and two Advocates of at least twenty years' standing.
- (2) The President of the Constitutional Court shall be appointed by the President from among the three Vice Presidents of the Court; and the Vice President of the Court shall be appointed by the President on the recommendation of the general assembly of the Court.
- (3) The Constitutional Court shall be assisted by a general assembly, the composition and functions of which shall be prescribed by law.
- (4) Organisation and procedure of the Constitutional Court as well as the terms and conditions of service of its members and employees shall be regulated by law.

3. Publication of decisions of the Constitutional Court

Decisions of the Constitutional Court shall be published in the official Gazette. The law shall regulate the consequences of a court's ruling that a legal provision is unconstitutional.

Fourth: Structure of the Judiciary

1. Courts and Judicial Institutions

- (1) The Judicial power shall comprise the Supreme Court, Courts of Appeal and lower courts, and any judicial institutions formed by the High Judicial Council.
- (2) The Judiciary shall be decentralized and there shall be establishment state judicial institutions to the level of High Courts whose decisions shall be appealable to the National Courts of Appeal and to the Supreme Court.
- (3) The Chief Justice is the head of the Judiciary and the Chairman of the High Judicial Council.
- (4) The judicial power shall be under the administration of the High Judicial Council.
- (5) The law shall regulate the composition of each court, competences and the procedures to be followed before it.

2. The High Judicial Council

The High Judicial Council is an independent council responsible for the administrative affairs of the Judicial power, including public prosecutions. The law shall regulate the composition and functions of the council; and the conditions of service of its members and employees.

Fifth: Advocacy

Advocacy is an independent private legal profession and one of the pillars of justice. The law shall regulate the profession including the safeguards required to create a conducive environment for the advocates to perform their work freely.

(l) ~~State, local governments and State legislatures~~

~~I.— If the transitional period extends beyond the current mandate of elected bodies and officials, their mandate shall be automatically extended to cover the full transitional period until the elections.~~

~~II.— In the areas affected by conflict in Unity, Upper Nile and Jonglei States, the Presidency in consultations with the citizens of the said states, shall establish the State governments and local authorities.~~

(m) Duration of the TGoNU.

There shall be a Pre-Transitional Period whose commencement and duration shall be ~~two (2) months commencing with~~ *on* the signing of the peace agreement;

- a) The Peace Agreement negotiated, and the necessary amendments to the Transitional Constitution, shall be presented to the National Legislature for adoption within ~~three (3) weeks~~ *three (3)* weeks from the conclusion of the Agreement. The Legislature will not introduce any amendments to the text.
- b) The amended Transitional Constitution shall not be amended or repealed during the Transitional Period except by way of special procedures and qualified majorities in order that the provisions of the Peace Agreement are protected, as provided for ~~in the~~ *rein* ~~Transitional Constitution~~, and shall form the basis upon which South Sudan will be governed during the Transitional Period.

- c) The Stakeholders shall refrain from any form of unilateral revocation or abrogation of the Peace Agreement.
- d) The amended Transitional Constitution shall be the supreme law of the land. It shall regulate the relations and allocate the powers and functions between the different levels and pillars of government.
- e) ~~South Sudan shall work towards sound ideological and political path by undertaking the renewal and re-launching of the Sudan People's Liberation Movement (SPLM) both as a political party and as a vehicle for addressing leadership crisis within the Party.~~

2.2 TRANSITIONAL PERIOD:

- a) The TGONU *and its institutions as provided for in the Peace Agreement shall be established and come into existence* ~~will commence~~ at the end of the Pre-Transitional Period and shall last for *three(3)* years;
- b) During the Transitional Period, critical institutional reforms in the Security Sector, Civil Service, Judiciary, Economic and Financial Sector, Service Delivery, Reconstruction and Development, Media, Natural Resource Sector, Physical Infrastructure, Foreign Policy, Commissions, National Security Agencies, Police, Prisons, Wildlife Services, Civil Defence, National Elections Commission, National Bureau of Statistics, and Social Services Sector, and review of the Political Parties Act shall be carried out as stipulated in the Agreement;
- c) The TGONU shall determine whether to conduct a census for the purpose of elections or use available statistics to carry out elections;
- d) During the Transitional Period, ~~national~~ *general* elections shall be organized by the TGONU *and conducted towards the end of the transitional Period*. The TGONU shall agree upon:
 - I. The system of national and state-level elections;
 - II. The sequence and timeframe for each phase of national and state-level elections;

- III. The process to reform ~~the composition of~~ the electoral management bodies, the political parties registrar council; and their mandates; and relevant legislation pertaining to these bodies;
- IV. The process for redressing electoral complaints and disputes;
- V. The mechanisms for ensuring public education and consultations throughout the electoral process.
- VI. The details of the electoral process which shall include provisions to ensure an inclusive and transparent process.

3. TRANSITIONAL SECURITY ARRANGEMENTS AND PERMANENT CEASEFIRE

Upon signing of the Agreement the Parties commit to total separation of the two warring parties, the assembly and/or cantonment of all military forces at pre-designated sites, to enable personnel, weapons and equipment accountability, screening, reorganization and/or disarmament and demobilization. In view of this, the Parties Agree to:

3.1 Immediate cessation of all hostilities and observance of a permanent ceasefire *agreement* that is independently monitored and verified.

Elements of the permanent ceasefire agreement shall include:

- 1. An end to all military operations and to all armed actions in South Sudan from the time of cease-fire.*
- 2. All combat forces shall remain in the area under their control at the time of the cease-fire.*
- 3. Both parties agree to forbid any individual or collective acts of violence. Any underground activities contrary to public order shall cease.*
- 4. Movements of individual members of both combat forces outside the areas under their control shall be allowed only if these individuals are unarmed and authorized by their respective authorities.*
- 5. The plans for stationing of troops from the national army shall be such as to avoid any contact between them and the combat forces of SPLM/A-IO.*
- 6. Specification of the location of assembly/cantonment sites, population centres that are to be demilitarized, and a withdrawal timeline.*
- 7. Time frame for the movement of troops to assembly/cantonment sites.*
8. The results of the Strategic Defence and Security Review will dictate the length of time forces remain in assembly/cantonment areas.

3.2 ~~Negotiate the location of assembly / cantonment sites, population centers that are to be demilitarized, and a withdrawal timeline, which will form part of a peace agreement;~~

- ~~• Movement begins immediately upon signing the Peace Agreement / Permanent Ceasefire and should be complete in X days. The results of the Strategic Defence and Security Review will dictate the length of time forces remain in assembly / cantonment areas.~~

3.3 Upon signing of the agreement the stakeholders agree to the complete withdrawal of foreign and allied forces ~~from — to —~~ in accordance with the provisions of the Cessation of Hostilities Agreement *and its implementation matrix that shall form part of the Permanent Cease Fire Agreement;*

- ~~• The withdrawal to start within X days from — to —, and to be completed within X days~~

3.4 Upon signing of the agreement the Stakeholders shall, within X days after the adoption of the Permanent *Peace* Agreement, establish a Ceasefire Management Mechanism that consists of two elements:

- The Ceasefire Commission responsible for the day-to-day operational management of the ceasefire and security arrangements process through the supervision of the Monitoring and Verification Teams and;
- The Joint *Political* Commission responsible for addressing political issues that might impede progress as well as disputes that cannot be resolved by the Ceasefire Commission. The stakeholders shall agree to the composition of these structures;
- The mandate of the IGAD Monitoring and Verification Mechanism (MVM) shall be amended within the same timeframe to reflect the Peace Agreement/Permanent Ceasefire provisions.

3.5 The TGoNU commits to forming a committee to conduct a holistic Strategic Defence and Security Review (SDSR), to be complete within *six (6)* months after

signing the Peace Agreement. The TGoNU further commits that the results of the Defence and Security Review will provide detailed policies for subsequent transitional security arrangements, and security sector reform, including security sector management and oversight, security force structures and composition, demobilization, and amalgamation/integration.

- 3.6 The stakeholders shall consider the following parameters as the basis for the terms of reference for the SDSR committee:

The Aim of the Strategic Defence and Security Review:

The aim of SDSR in South Sudan is to lay the ground for a significant change in how the country formulates and delivers its defence and security policy. The SDSR seeks to do this through a comprehensive assessment to clarify the requirements of South Sudan's national army and its relationship with other security institutions and actors.

Guiding Principles:

The following principles underpin a successful SDSR:

- National ownership, supported by regional/international assistance, resources, and academia;
- Conducted in a comprehensive, logical and rational manner, with each phase building on the previous one;
- Inclusive, consulting with individuals and organizations from within and outside TGoNU;
- Open and transparent, with the outcome of each phase communicated as widely as possible.

Phases:

Phase 1: Firstly, a strategic security assessment that examines the military and non-military security challenges that affect RSS currently and in the future; Secondly, a security policy framework, clarifying the responsibilities of different bodies and agencies in responding to these security challenges, including the

management and oversight of the security sector; Thirdly, a revised defence policy, identifying the specific role and missions of the national army and outlining a vision for its modernization.

Phase 2: An analysis of the operational capabilities that South Sudan's national army will require to meet the challenges identified in Phase 1, and the supporting systems and structures that are needed to ensure effective utilization of these capabilities. The key output should be a range of strategic models, specifying the level of human resources, equipment, and training needed to develop the military to respond to defence and security priorities, and the associated financial implications.

Phase 3: The findings of Phase 2 are submitted to the political leadership for evaluation. Their task is to decide which model, or combination of models, best meets the needs of the nation, along with the level of expenditure required. The findings of the review should then be published in a White Paper on Defence and Security, approved firstly by the executive and then by the legislative assembly.

Phase 4: The Ministries of ~~Security~~, Defence and Interior *as well as any other security organ* produce annual plans to turn RSS' vision of defence and security into practical, costed programmes.

- 3.7 During the transitional period the TGONU commits to equitable composition / participation in the key national security management and oversight bodies, including a National Security Council, Parliamentary Security Committee and Military Command Council. Modalities of appointments to these bodies shall be as provided in the Peace Agreement.
- 3.8 Implementation shall be informed by the findings of the **Strategic** Defence and Security Review, which will guide the composition and terms of reference of the bodies for the remainder of the transitional period.

4. RESOURCE, ECONOMIC AND FINANCIAL MANAGEMENT

In order to promote sound economic and financial management and systems, the transitional government will be enabled to collect revenue efficiently, spend responsibly and be transparently accountable to its citizens. This is necessary for promoting legitimacy and addressing unanswered grievances at the root of the

conflict as one of the mechanisms for consolidating statehood. In view of this, stakeholders agree to:

- 4.1 A long-term EFM reform programme as an agenda for the Transitional Government and public sector management to be implemented with the ~~existing~~ *reformed* institutional and legal architecture;
- 4.2 The reform should help to establish effective, transparent and accountable management of oil and non-oil revenue, expenditure including public procurement and payroll, granting of public concessions, public borrowing and debt management ~~compliant~~ *in compliance* with ~~existing~~ the laws;
- 4.3 Clear lines of authority, public disclosure requirements, and reporting channels among the Ministry of Finance and Economic Planning, the Ministry of Petroleum, the Central Bank, the Presidency, line Ministries, and the National ~~Legislature~~ *Assembly*, as laid out by the laws should be adhered to;
- 4.4 The independence of the Audit Chamber is to be guaranteed, ~~its operations~~ *and it shall be* empowered to eliminate any political interference, with the National ~~Legislature~~ *Assembly* playing its oversight role in the fight against corruption;
- 4.5 Enable the Anti-Corruption Commission to fully perform its functions (of protecting public property, investigating and prosecuting cases of corruption, combating administrative malpractices in public institutions, demanding that all persons holding public offices make confidential formal declarations of their income, assets and wealth) without prejudice to the powers of the Judiciary;
- 4.6 *To bring to justice all cases of corruption as from 2005 to date.*
- 4.7 To bar and punish all citizens, including political leaders, who are found to have condoned or engaged in corrupt practices, from public office in accordance with the Penal Code;
- 4.8 To develop a code of Ethics and Integrity for public officials;
- 4.9 Establish a high level, competent and effective oversight mechanism that controls incoming revenues, their allocation in broad terms through the budget and the effective spending for the planned purposes. The oversight mechanism should be made up of all key stakeholders, including representatives of civil society and from the international community;

4.10 To make sound financial choices during the transitional period, the oversight mechanism ~~should~~ *shall* foresee provision of technical and advisory resource commitments to economic governance by the international community.

5. TRANSITIONAL JUSTICE, RECONCILIATION AND HEALING

Cognizant that the people of South Sudan yearn for peace, justice, reconciliation and healing, the Stakeholders agree to respect and uphold the following rights set out in the Bill of Rights of the South Sudan Transitional Constitution, 2011 and in UN General Assembly resolution 60/147¹ as elaborated upon in the United Nations' Principles on Impunity²:

- a) Right to truth³.
- b) Right to access to justice.⁴
- c) Right to reparation and rehabilitation⁵.
- d) Right to 'never again' or the guarantees of non-repetition.⁶

5.1 The Stakeholders agree to establish processes and mechanisms for accountability and reconciliation that shall include, but will not be limited to:

- a) A National Commission for Truth, Reconciliation and Healing, which may be hybrid in composition, to spearhead efforts to address the legacy of conflict in South Sudan through:
 - i. establishing an accurate and impartial historical record of human rights violations, which shall include the identification of victims and perpetrators;
 - ii. recording the experiences of victims;

¹ GA Res'n 60/147 (UN Doc. No. A/RES/60/147 (2006) dated 16 December 2005:

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/147

² ECOSOC, Commission on Human Rights, PROMOTION AND PROTECTION OF HUMAN RIGHTS: Impunity, Add. 1 "Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity," Principle 2, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005):

<http://www.derechos.org/nizkor/impu/principles.html>

³ Article 22 of GA Res'n 60/147 and articles 32 and 24 of the Transitional Constitution

⁴ Articles 1 – 14 of GA Res'n 60/147 and articles 10 -14, 18, 19 and 20 of the Transitional Constitution

⁵ Articles 15 – 22 of GA Res'n 60/147 and articles 10 -14, 18, 19, 20, 28 as read with other articles of the Transitional Constitution.

⁶ Article 23 of GA Res'n 60/147 and articles 10 -14, 18, 19, 20, 28 as read with other articles of the Transitional Constitution.

- iii. investigating the causes of conflict and making recommendations to prevent the repetition of conflict;
 - iv. facilitating local and national reconciliation and healing.
- b) A judicial body to investigate and prosecute individuals bearing the greatest responsibility for violations of international humanitarian law, and/ or applicable South Sudanese law, committed since 15 December 2013. Such a body shall:
- i. be established in cooperation with regional and international authorities particularly cooperate with the African Union Commission of Inquiry for South Sudan;
 - ii. be of a hybrid nature involving both local and foreign investigators, prosecutors and judges;
 - iii. prioritize and fast-track the investigation and prosecution of those most responsible for violations of this peace agreement that constitute crimes under international humanitarian law, and/ or South Sudanese law;
 - iv. not be impeded or constrained by any statutes of limitations, immunities or amnesties in respect of the prosecution of serious violations of international humanitarian law;
 - v. be required to leave a permanent legacy on the South Sudanese criminal justice system through training, mentoring and capacity building of local practitioners.
- c) A Reparations Commission to assess the needs of victims, and develop and implement reparation programmes, including urgent reparations, consistent with the UN Basic Principles and Guidelines on the Right to Reparation.⁷ The government shall be required to fund the reparations programmes and to seek assistance from the international community in respect of any shortfalls.

⁷ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147), 21 March 2006: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>

- d) Other bodies or processes to advance the rights referred to under this section, including statutory, customary and traditional mechanisms.

5.2 The Stakeholders agree that national legislation must be enacted within *six (6)* months of the signing of this Agreement to establish the bodies referred to in sub-clauses 5.1 (a), (b) and (c); and to operationalize such bodies within *two (2)* months of the promulgation of such legislation.

5.3 The Stakeholders agree that the specific mandates of the bodies created in terms of this clause shall be guided by consultations with the affected communities and shall:

- a) be independent and autonomous;
- b) be fair and impartial;
- c) employ members and staff who are suitably qualified, not implicated in the subject matter, broadly representative of society; and observe gender *parity representation*;
- d) have the necessary investigative and other powers to complete their mandate; and that secrecy laws shall not apply to their investigations;
- e) protect the dignity, safety and wellbeing of victims and witnesses;

6. HUMANITARIAN ISSUES

The Stakeholders recognize the destructive impact of the war, acknowledge the massive displacement of the South Sudanese people, and are aware of the disastrous economic, political and social consequences of the conflict for South Sudan and the region; and realize the devastation, loss of life and instability the conflict has caused to South Sudan. The stakeholders hereby agree to address the following:

- a) Humanitarian issues resulting from the conflict;
- b) Ensure unhindered humanitarian access and relief intervention to all conflict-affected areas;
- c) Institute programmes of relief, repatriation, resettlement, reintegration and rehabilitation of IDPs and returnees. In particular, to provide special programmes for war/conflict affected persons (children, orphans, women, widows, war wounded, etc.), including reconstruction of war-affected areas.

7. PARAMETERS FOR A PERMANENT CONSTITUTION

To give effect to the Principles set out in Part 1, the Stakeholders hereby agree on the following parameters to guide a people-driven permanent constitution-making process. ~~The on-going Constitutional Review Process shall be reinvigorated to ensure inclusiveness and representation.~~

7.1 The stakeholders shall decide:

- (a) A process for producing an initial draft constitution (*National Constitutional Conference or Constituent Assembly*) including mechanisms for determining the leadership and other membership and decision making processes of the body that produces the initial draft;
- (b) The role of the TGoNU in the constitution-making process;
- (c) The composition, leadership, decision making processes and functions of the national body that will deliberate upon and endorse the draft permanent constitution;
- (d) The timeframe for each phase of the constitution making process and mechanisms for ensuring that the time frame is maintained and the process is completed before the end of the Transitional Period;
- (e) The method of promulgation of the Permanent Constitution; and
- (f) Key issues to be debated and decided upon in the constitution making process including the values and principles underpinning the Republic, structure of the state (~~national government, states and local government~~ *federal, decentralized or unitary*), the system of government (presidential/parliamentary), good governance (ethics, integrity, public financial management, independent institutions, etc.), and security (civilian control).
- (g) The mechanisms for ensuring public education and consultations throughout the constitution-making process.

(h) A law shall *be enacted to* set out the details of the constitution making process and shall include provisions securing an inclusive process, transparency, and consensus building.

8. IMPLEMENTATION MECHANISMS

- a) Matrix and joint implementation mechanism;
 - b) Activities, action plan, timeframe, etc.;
 - c) Witnesses
 - d) Monitoring, Evaluation and Follow up Mechanisms for the Peace Agreement
- I. Independent mechanisms to monitor the implementation of the Peace Agreement shall be established. Such mechanisms will comprise members of the stakeholders, members from the IGAD region and from the international community;
 - II. The criteria for the selection of such a body and by what process appointments and removals shall be agreed;
 - III. The body shall be responsible to manage and resolve conflicts over implementation or interpretation of the agreement.
 - IV. Individuals, groups and parties to the conflict shall be accountable for their actions. In this regard, those found responsible for atrocities and other crimes being investigated by AU Commission of Inquiry for South Sudan, shall be removed or barred from the Interim Government.
 - V. The Stakeholders agree to establish a Code of Conduct binding on all parties to this Agreement, within 30 days of the signing of the said Agreement. The Monitoring, Evaluation and Follow-Up Mechanism will monitor compliance with the Code of Conduct, and report to the oversight mechanisms established in the Agreement and to the Guarantors.

9. GUARANTORS OF THE AGREEMENT

1. IGAD, in collaboration with the International Community, shall guarantee the implementation of this Agreement. ~~by the Parties to the conflict in South Sudan.~~