



SUDAN PEOPLES' LIBERATION MOVEMENT
GENERAL HEADQUARTERS
SPLM LEADERS (FPD)

PRESS STATEMENT

**Position of SPLM Leaders (Former Political Detainees) on the Creation of
18 New States in the Republic of South Sudan by Presidential Order No.
36 dated 02/10/15**

In view of the recent Presidential Decree creating 18 new States out of the existing 10 States, bringing the number of States in South Sudan to 28, we, the SPLM Leaders (FPD) would like to state our position on this important national issue as follows:

1. The creation of more states at this particularly delicate time when the country is geared towards the implementation of the Agreement for Resolution of Conflict in South Sudan (ARCISS) is unfortunate and unnecessary as it adds more uncertainty with regards to the status of the Agreement and its implementation.
2. The creation of more states would no doubt complicate the power sharing ratios that were painstakingly negotiated in the Agreement. Whereas the power sharing ratios were determined on the basis of the existing 10 States, it is now not clear whether that formula would apply to the newly created states, particularly when the President emphatically stated that he will soon appoint the Governors of the new states.
3. The issue of Federalism was one of the contentious points during the negotiations, because the SPLM-IO insisted that Federalism should be implemented in the Agreement immediately and fully, which both the Government of South Sudan (GRSS) delegation and ourselves (FDs) rejected on grounds that no proper study has been conducted and for lack of rational and scientific criteria laid down for creating new states.

In addition to the above, we submit that the Presidential Decree is not in consonance and indeed undermines fundamental provisions of the existing Transitional Constitution of South Sudan (TCSS) 2011, as illustrated below:

- (i) Article 162 (1) stipulates that "The territory of South Sudan is composed of ten States governed on the basis of decentralization;

- (ii) Article 162 (3) stipulates that “State boundaries shall not be altered, except by a resolution of the Council of States approved by two-thirds (2/3) of all members;
- (iii) Article 162 (3) stipulates that “names of states and their capital towns shall not be altered, except by a simple majority of all members of the Council of States on the recommendation of the relevant State Assembly;

Article 59 on Competences of the Council of States reads:

The Council of States shall be competent to:

- (9) approve changes in State names, capital towns and boundaries;

Article 48 on Devolution of Power reads:

- (2) The National government shall exercise its Competences in accordance with this Constitution and the law;

Powers of the President under Article 101:

The Presidential Order is issued, based on the powers of the President under sub-articles 101 (b), (k), (u) and (f) as described below:

- 1) Sub-article 101 (b) above is the power of the President to supervise constitutional and executive institutions and provide exemplary leadership;
- 2) Sub-article 101 (k) empowers the President to establish independent institutions and commissions;
- 3) Sub-article 101 (f) empowers the President to initiate constitutional amendments and legislation and sign bills passed by the National Legislature into law; and
- 4) Finally, Sub-article 101 (u) empowers the President to exercise any other function as may be prescribed by law (this presupposes the existence of specific law that gives power to the President and cannot be quoted in vacuum as this Order purports to do).

The above Sub-articles of Article 101 should be read in harmony with the Competences of the Council of States and the relevant State Assemblies referred to above. Otherwise, the Presidential Order is in violation of the Constitution, particularly the powers of both the Council of States and the Legislatures of the affected States. This is certainly the case, given that the Presidential Order states that it can only be changed or amended by the President.

The Presidential Order and the Peace Agreement:

- (1) The power-sharing in the Agreement at State level is predicated on the existing ten (10) States. What will happen to the already agreed power-sharing formula at State level?
- (2) The Agreement left the details of the envisaged federal system to the upcoming constitution-making process which shall be undertaken within the 30 months of the Transitional Period. If it has now become a matter of utmost urgency to restructure the States administratively, would this not require reviewing and amending the Agreement by the Parties in accordance with its provisions?

Surely, there is need for the Presidential Legal Advisor, Hon. Lawrence Korbandy, the Hon. Minister of Justice, Paul Wanawila and Hon. Minister of Information and Broadcasting, Michael Makuei, should give satisfactory legal clarification as to the constitutionality of the Presidential Order, which purports to alter the State boundaries, names and capitals without reference to the Council of States and the relevant State Assemblies. The least thing that South Sudan needs at this difficult time of its history is the conscious and willful disregard for, and violation of its Constitution by the very people who bear the most responsibility for its protection. Constitutionally, the role of the President in the legislative process is limited to assenting to bills and signing them into law after their passage by the National Legislature or by the relevant House, and in very rare instances, issuing provisional orders having the force of law, particularly when the National Legislature is not in session. The power to issue provisional orders is however constrained under Article 86(5) which stipulates that “ the President shall not make any provisional Orders on matters affecting the Bill of Rights, **the decentralized system of government**, general elections, annual allocation of resources and financial revenue, penal legislation or **alteration of the administrative boundaries of states.**” From this quoted sub-article (5) of Article 86 of the Constitution, Presidential Decree N0. 36, cannot be justified as a Provisional Order within the preview of Article 86 of the Constitution and therefore unconstitutional.

Looking at the economic implications of the creation of the 18 new states, we submit that with the current low oil prices which are likely to persist for the next two years or more, a dilapidated oil infrastructure, high rate of borrowing and indebtedness of the state coupled with Khartoum’s Transitional Financial Assistance (TFA) arrangements, the country will not have adequate resources to operate effectively and support a lean government let alone financing the new bloated structure. Moreover, the Government itself has not even quantified the cost of implementing the Agreement: how this will be financed and how to prioritize and sequence them in view of limited and inadequate resources.

During the Pre-Interim Period our efforts, in particular that of GRSS, should be focused on undertaking activities that lay the ground for smooth and full implementation of the Agreement. GRSS should focus on improving public security, providing services, resettling the IDPS and returnees from neighbouring countries and rebuilding the capacity to govern but not in proliferating new administrations that will accommodate a handful of elites.

In our view, the details of the federal system provided for in ARCISS should be left to the constitution-making process that is both people-centered and people driven. We have all agreed to conduct and complete this process during the Transitional Period through democratically and lawfully established institutions and mechanisms.

In conclusion we strongly urge the Government to consider the following courses of action:

1. Suspension of the Presidential Order No 36 during the Pre-Interim Period and to follow the proper and normal procedure for amending the constitution through the legislative process in order to allow for participation of all political forces of the country in the discussion of this important matter. Anything agreed during these inclusive discussions would then be translated into a Legislative Bill for consideration by the National Legislature.
2. Establishment of a National Boundaries Commission to undertake careful study of the administrative boundaries of the States in order to avoid conflict among the communities as a result of the creation of the new States and to ensure stable and non-conflictual state boundaries.

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04 October, 2015
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