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A COMPILATION OF OPINION PIECES BY
THE UNDP SOUTH SUDAN COUNTRY OFFICE

BREAKING THE VICIOUS CYCLE OF CONFLICT IN SOUTH SUDAN

A CALL TO ACTION

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Foreword

The recent eruption of fighting in Juba, reflects the multifaceted underlying challenges of peace consolidation. The Agreement to Resolve Conflict in the Republic of South Sudan remains salient both in letter and spirit. It is critical that we reflect carefully and dispassionately on what must be done to engender and consolidate peace, and put the country on the path of transformation and prosperity.

My colleagues at UNDP have reflected on this very issue given the unfortunate turn of events in Juba. I am pleased to share with you their thoughts which I hope will trigger further reflections on the critical pathways and priority actions to achieve the aspiration of sustainable peace and development in South Sudan.

This thought product seeks to highlight three main issues. First, it speaks to the need to re-commit to a broadly owned and a shared national vision to meet the hopes and

aspirations of all the citizens of this young nation. Second, it points to what must be done in the immediate term to bolster prospects for social cohesion, stability, and growth including: restoring trust in public service; addressing widespread trauma, revamping the rule of law, ensuring a voluntary, safe and dignified return of the displaced population, and ensuring partnerships, including the civil society. And lastly, our actions must strike the right balance between humanitarian and recovery efforts to prevent a relapse into conflict.

In moving forward, let me share a few additional points. **First** and foremost, South Sudan and its leaders must stay true to the spirit of the Agreement on the Resolution of the Conflict in the Republic of South Sudan and re-dedicate themselves to its implementation immutably. This also means creating awareness of the peace agreement across the nation. However difficult its implementation may be, the spirit of the Agreement is to restore peace and usher in opportunities to place the country on the path of sustainable development. The unfortunate Juba events should not derail the indomitable spirit of the South Sudanese. Peace cannot be kept by force; it can only be achieved through mutual trust, understanding and a genuine spirit of accommodation. This must be the business of not only the top leadership of the nation, it has to be the business of everyone that calls this great nation home. As Gandhi said, "You must be the change you wish to see in the world," and every South Sudanese citizen must take the first step in being the change they want to see in this God-given country they call home.

Second, amid the complex challenges that confront the country, many of which are structural in nature, the

Transitional Government of National Unity (TGoNU) must demonstrate quick wins and a strong and irreversible commitment to political, legislative, policy and structural reforms. This is what is needed to unlock the potential of the economy, the entrepreneurial energies of its people, and create the much needed enabling environment and the space for the peace dividend to be realized. A strong political will and commitment to implement a well-crafted reform agenda will undoubtedly help bridge the trust and credibility deficits and unlock much needed continued support and funding from the international development partners.

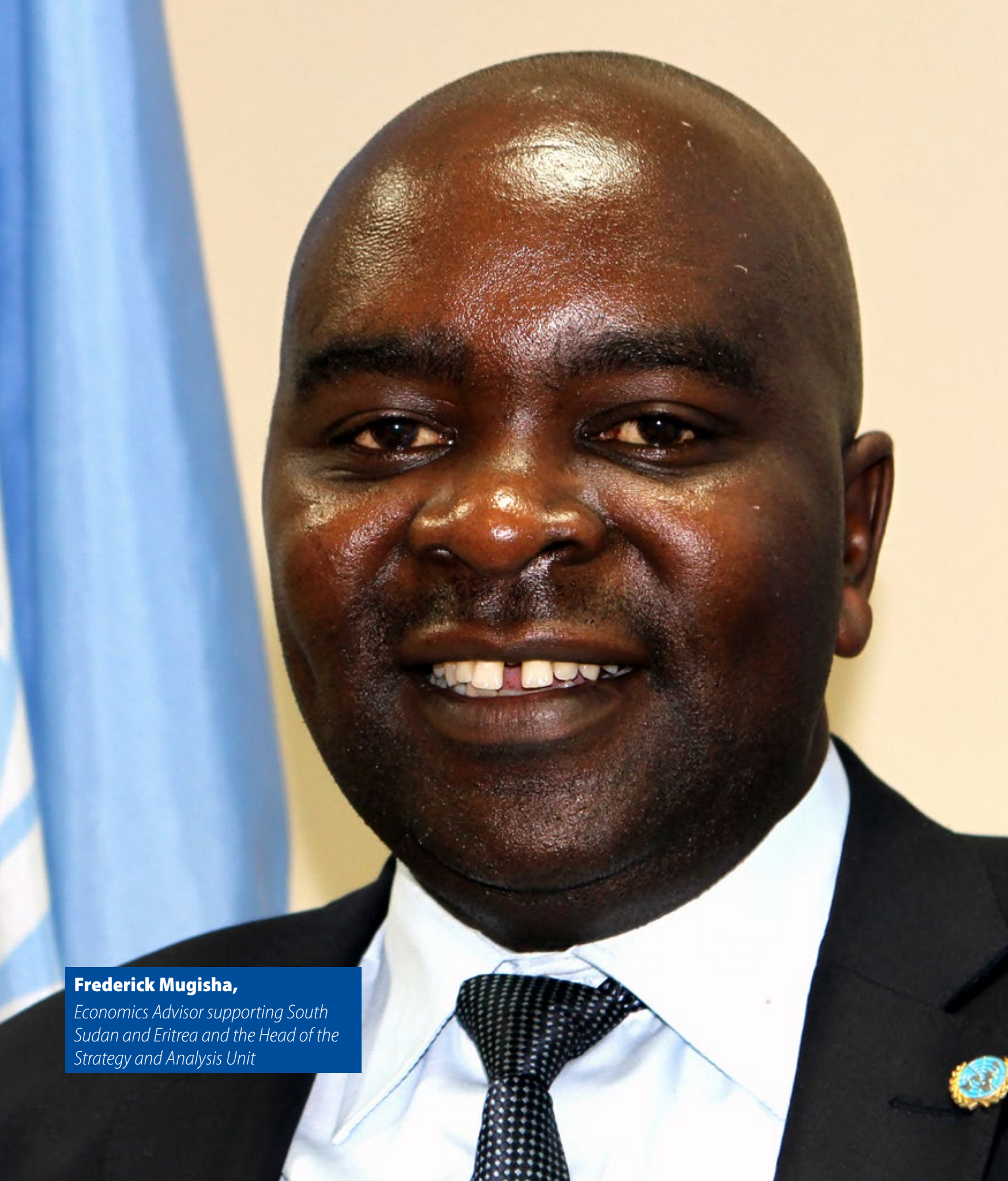
The **third** priority is directly related to the preceding one. As a matter of urgency, the country must not lose any time in articulating and implementing a smart agenda of reform to stabilize the economy in the immediate term, and work towards its recovery and growth. The dire macroeconomic crisis and runaway inflation may potentially be the ultimate 'spoiler' of the peace agreement, and immediate reform actions needed to stabilize the economy must not be delayed. Whilst any macroeconomic reforms come with socio-political risks, the costs of doing nothing could potentially be much higher and truly damaging.

Fourth, addressing the urgent humanitarian needs that confront the country should remain a top priority. With the cessation of hostilities, however, there is now an excellent opportunity to invest in an integrated package of recovery and stabilisation measures, such as in rebuilding diversified livelihoods to reinvigorate local economies and restoring basic social services. But this must start with facilitating the voluntary, safe and dignified return, resettlement

and reintegration of the internally displaced persons. The programme of return and reintegration must be guided by international norms and best practices, and complemented by investments in recovery and stabilisation initiatives at the local levels. Communities can start to realize the dream of the South Sudan they want, and be an effective part of the process of transformation and nation building.

Lastly, it is fundamental that South Sudan works towards nation-building and crafting a true national identity. Building a true national identity will help establish the foundation for trust and reconciliation. In a real sense, South Sudan's transition to a peaceful dynamic and vibrant society rests on nurturing the spirit of trust and reconciliation and an unwavering reliance and on peaceful resolution of any disagreement. §

Eugene Owusu



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Re-Commit to the Nation's Shared Vision

RATIONALE FOR IMMEDIATE ACTION

The recent unfortunate outbreak of fighting in Juba signifies the need to unify the nation around a shared sense of purpose, a shared vision for the future that is more optimistic than what is shaped by the aftermath of the Juba conflict. Experience from countries that fought bitter battles such as Rwanda, Sierra Leone, and Uganda shows that when a nation articulates a vision that citizens own themselves, it inspires actions that -- with time -- consolidate peace and help the country embark on the process of its transformation. The experience of these countries also affirm that nations do not have to wait until complete cessation of hostilities, instead the shared view of the future hastens the implementation of cessation of hostilities, and facilitates national healing.

The building blocks already exist. In 2010, the Government of Southern Sudan (GOSS) initiated discussions on a 'Vision 2040', which was then revised in 2011 and in 2015. The vision document is currently under consideration with the National Legislative Assembly. In addition, an Agreement on Resolution of Conflict in the Republic of South Sudan (ARCISS) was signed to bring an end to the mid-December 2013 conflict. The ARCISS can be thought of as concrete actions towards the nation's vision.

The six pillars of the ARCISS include:

1. Reform institutions to serve South Sudanese better
2. Silence the guns through a permanent ceasefire
3. Ensure voluntary and dignified return of all groups to their homes
4. Build a vibrant economy in which citizens participate and improve their lives
5. Undertake truth, healing, and reconciliation
6. Draft a national constitution that reflects the aspirations of South Sudanese

According to the South Sudan Vision 2040, the South Sudanese aspire to:

1. an educated and informed nation
2. a prosperous, productive, and innovative nation
3. a free, just, and peaceful nation
4. a democratic and accountable nation
5. a safe and secure nation
6. a united and proud nation
7. a compassionate and tolerant nation

South Sudan ought to leverage the Global Goals on Sustainable Development (SDGs) and the Africa Agenda on the future we want for Africa to articulate and achieve its view of the shared future.

COUNTRY EXPERIENCES

Every nation, including South Sudan, would like to transform and to realize a future in which its people are not at war but at peace and where people have a fair shot at improving their lives. With ongoing conflict, the question is whether this is even possible. Rwanda, Sierra Leone, and Uganda all experienced

similar conflicts in the past but have since turned a positive page. These countries provide an important lesson that underscores the value of a shared vision of the future: nations commit to a shared vision of the future in order to consolidate peace and transform.

Three important lessons on the experiences faced by the Rwandans, Sierra Leoneans, and Ugandans stand out. **First**, all the three nations did not wait until complete cessation of hostilities to articulate a shared vision of the future. Instead, the shared view of the future directly hastened the cessation of hostilities. Engaging partners with a stake in the countries created a sense of ownership of this vision, even when active conflict was ongoing.

Second, the journey was shared – by citizens, government, private sector, and civil society. To live a shared view of the future means that citizens, government, private sector, and civil society must align their dreams, plans, and strategies to achieve the nation's vision and work every day to make it a reality.

Third, the vision functioned not just as an aspiration, but provided a roadmap with specific benchmarks for its realisation and was mainstreamed into the national planning processes – including the medium-term sector plans and expenditure frameworks, and annual plans and budgets.

PATHWAYS



Figure 1 Pathways to attaining a nation's shared vision Source: Own conceptualisation

Citizens, government, the private sector, non-government actors and partners in development must live and enable others to live the nation's vision in order to realize it. That is the basis for realizing a nation's vision. If it is a vision for peace, no stakeholder should preach violence. The pathway involves three actions: **first**, make it your business, that is, commit to live the nation's shared vision. **Second**; integrate it, that is, align it to your own. And **third**, live it, that is, live your own vision. The three actions are supported through coordination, accountability and guidance.

CALL TO ACTION

A call-to-action agenda is proposed that has 5 components:

First, initiate broad based consultations on what the South Sudan citizens want as their nation's shared vision. Preferably the consultation should be led by the Presidency, and include the President, the First Vice President, and the Vice President. Then, consolidate the outcome of the consultations, validate, and design means of implementation.

Second, engage a wide range of partners to create awareness of the nation's shared vision, as well as achievable goals. The vision is a long-term strategy, achieved through the implementation of mid-term national and sector strategies. In turn, the national and sector strategies are implemented through annual plans and budgets that contain priorities for a given year.

Third, strengthen the means of implementation and revitalize partnership to achieve the nation's shared goals, including mechanisms of financing.

Finally, follow up and review to ensure accountability across the multiple partners. It is incorrect to assume that only governments will help achieve the nation's shared goals. Accountability is shared across the spectrum of national and sector actors.



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Initiate Conflict-Sensitive Public Service Reform

RATIONALE FOR IMMEDIATE ACTION

The unfortunate recent fighting in Juba may imply further delays in rehabilitating and reforming the civil service (see Figure 2) provided for in the Agreement on the Resolution of Conflict in South Sudan (ARCISS). Yet a professional, accountable, and impartial public service which is representative of all sections of society is essential for restoring trust, confidence, and effective transition. The Transitional Government of National Unity (TGoNU) inherited a public service whose capacity remain nascent with limited capacities as well as tools. Reforming the way the public sector is structured and governed is, therefore, the catalyst to consolidate peace and transform South Sudan for the better.

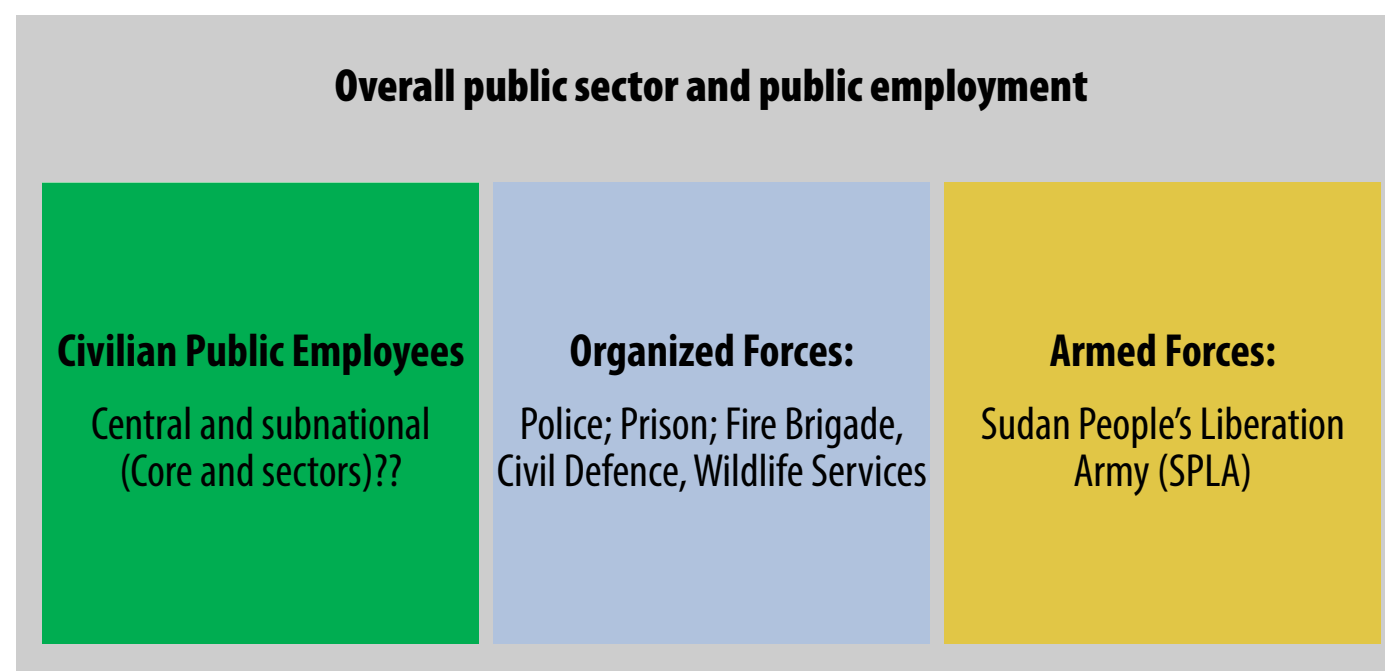


Figure 2 Groups within the Overall Public Sector in South Sudan

Source: World Bank, SS-Governance Review for South Sudan, Improving Human Resource Management for Strengthened Service Delivery, Report No: ACS13610

Although a new transitional government has been formed, South Sudan's public institutions are weak and the government is unable to consistently pay its civil servants and provide adequate coverage of basic services. The multiple challenges that enervate the functionality and utility of South Sudan's public service at this juncture are: high public service cost; high security-related employment; low and eroding pay level; lack of conducive working conditions; and low skill levels of civil servants.

It's worth highlighting the key reform efforts attempted by the Government in the past. In providing

the legal and institutional framework for the public sector, South Sudan has put in place the Civil Service Act (2011); SPLA Act (2009); the Police Service Act (2009); the Prison Service (2011), and the Wildlife Service (2011). In addition, the Ministry of Labor, Public Service and Human Resources Development, Civil Service Commission; and Ministry of Cabinet Affairs were established at national level. The establishments of the South Sudan Electronic Payroll System; Human Resources Management Information System; and pension system are key efforts in public service reform.

COUNTRY EXPERIENCES

Rebuilding a capable and inclusive public sector though public service reform is key for stability and recovery in post-conflict countries. In many post-conflict countries, re-establishing the government's legitimacy and renewing the social contract depends on the ability of political leaders to gain the trust and confidence of diverse and sometimes hostile constituencies. However, public sector reform is also one of the most complex and difficult aspects of restoring governance and rebuilding war-torn societies.

Post-conflict public service reform is further complicated by the fact that countries differ substantially in the nature of post-conflict government. In Iraq, Afghanistan, and Timor Leste, an entirely new government based on new constitutions had to be created, along with partially or wholly new civil service systems. In Kosovo and Bosnia-Herzegovina, a new state had to be fashioned during a transition from a UN trusteeship or externally controlled governing authority, requiring the recruitment of new government officials and the transfer and reorientation of officials working for the previous governing authority. In Cambodia (similar to South Sudan) a coalition government had to be formed from opposing factions, sometimes requiring a balancing of the civil service by recruiting new public officials from dissident groups. In Ethiopia, an existing government had to be strengthened to establish its

legitimacy with and extend its authority to territories or groups who militarily opposed the ruling regime. Thus, each country required a different set of public service capacity and government personnel.

PATHWAYS


South Sudan's historical legacies demonstrated that the country is trapped in the vicious cycle of conflict. As a result, post-conflict reform programme in South Sudan calls for conflict-sensitivity in all components and stages of the public service reform. A conflict-sensitive approach involves understanding the conflict context (a conflict analysis), assessing how the planned reform interacts with the conflict (a two-way dynamic), and designing and implementing reform programmes in the light of this understanding. "Do No Harm" is an important principle of conflict-sensitivity. A conflict-sensitive public sector reform would require a consciously diverse and representative public service in terms of composition (through equitable hiring, promotion, affirmative actions, rotation, and placement procedures) as well as in terms of its policy-making and equitable distribution of services.

CALL TO ACTION

Public service reform is a long-term project. There is a need to put in place arrangements for governance, coordination and management to ensure continued commitment, guidance, and accountability. The arrangement should involve all public service reform stakeholders (citizens, development partners, media, CSOs, private sector). Accordingly, the following are three immediate actions needed in South Sudan:

First, public sector reforms in South Sudan need to be launched through a declaration by the Presidency of the TGoNU. This will set in motion the government's intention to embark on a reform programme or agenda. This will help to put public service reforms in the national priorities and conversation; seek support from the leadership and the public and define the benefits to the nation. It will be good to do this in consultation with leadership of public sector institutions, citizens and civil society organisation.

Second, establishing a reform Secretariat which is necessary to coordinate and manage the public service reform processes. The secretariat needs to be attached to the Ministry of Labor, Public Service and Human Resources Development. It is important that this secretariat is linked to critical forums for undersecretaries, stakeholders as well as development partners.

Lastly, developing a conflict-sensitive Public Service Reform Strategy to setup an over-arching public sector reform vision to be realized; strategic objectives to be achieved; reform components with their strategic directions; implementation arrangements, milestones and action plans; costs; and monitoring and evaluation mechanisms. 



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Deal With Trauma

RATIONALE FOR IMMEDIATE ACTION

The recent conflict in Juba which started on 8th July 2016 reinforces a strong belief that the psychological and physical health of each person is important for the individuals to play their crucial role in rebuilding South Sudan. The recent conflict opened the wounds that had not healed from the December 2013 conflict as well as decades of conflict in South Sudan. The severe economic distress and accompanying loss of income and the breakdown in the rule of law is likely to have cumulatively added and worsened the trauma. In a society ravaged by a legacy of war, trauma healing and related psychological and social-support can contribute immensely to the development of a stable, peaceful and functional society in a post-conflict environment. While it is widely accepted that individuals affected by trauma may not fully return to the pre-trauma state

– because traumatic events forge an indelible imprint on the traumatized – there are still opportunities for individuals and communities to recreate themselves with appropriate psychosocial healing as a component of social-reconstruction.

Psychological trauma is a type of damage to the psyche that occurs as a result of extraordinarily and severely distressful events that shatter one's sense of security, making one feel helpless. Trauma is often the result of an overwhelming amount of stress that exceeds one's ability to cope or integrate the emotions involved with that experience. In South Sudan, the severe, repeated, long standing violent conflict has made trauma worse, increasingly difficult for the citizens to bear, thereby calling for urgent action and for mechanisms to initiate trauma healing. Failure to address trauma among South Sudanese makes them more vulnerable for perpetual repeat of violent cycles and retaliation as people with trauma tend to be less willing to forgive those who harmed them and have higher sentiments for revenge.

PATHWAYS

The pathway to address trauma is to take a life cycle approach as children, youth and adults reinforce each. Children, like their parents experienced loss of close family members, and in some cases violent death. Children lack the emotional development and

life experience to make sense of the trauma, even more so than adults and are therefore susceptible to transmitting trauma across generations. Teenage youth are no exception. As they transition to adulthood, life events during conflict tend to completely alter their lives and environment, and rob them of their teenage and young adulthood. Finally, adults, in particular women are often in need of trauma healing. Women feel humiliated and are gripped by a feeling of powerlessness to prevent the violence and knowing that their sons may be taking part. They may themselves be victims of traumatic experiences such as sexual violence. However, they are also more likely to be left behind after husbands and children are killed in conflict. The loss of a husband or children can make it difficult for women to provide for their families, thereby adding further humiliation that may lead to self-hate and low self-esteem. All these factors need to be taken into account in undertaking the healing work.

CALL TO ACTION

The Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS) provides for creation of the Commission for Truth, Reconciliation and Healing (CTRH). The mandate of the Commission is among others, to spearhead efforts to address the legacy of conflict, promote peace, national reconciliation and healing. The starting point for

the government to address the problem of individual and community psychological healing is to establish the legal framework for the CTRH. In the 'healing' mandate of CTRH, the Commission, working with other stakeholders including the United Nations (UN), international non-governmental organisations (INGOs), CSOs and faith-based institutions (FBOs) should conduct some quick impact activities aimed at setting up the communities on a healing path.

These five actions include:

First, elaborating a policy framework for psychosocial healing in order to ensure there are standards applied across-the-board in the provision of psychosocial trauma healing by different actors. Standard curriculum should be developed in collaboration with stakeholders to ensure safety of practice. In the spirit of the ARCISS, the CTRH can "...adopt best practices for promoting reconciliation and healing from Africa and elsewhere."

Second, training of South Sudanese experts should be incorporated in university curriculum in the medium-long term. In the short term, training of professional and lay people as volunteers to take part in psychosocial healing should be carried out through coordinated short courses by professional psychologists. This can be done in collaboration with the UN system, FBOs, INGOs and CSOs with expertise in the area.

Third, engage in community-integration programs, including community centred approaches to healing and reconciliation. These programmes have demonstrated that psychosocial healing can be an effective way to heal post-conflict societal trauma and contribute to rebuilding society with an improved quality of life as seen in former Yugoslavia and Rwanda. In Rwanda for example, programmes utilized writing or drawing about one's experiences and as an oral society, reflection and discussion in small groups about their writing and drawing proved useful. These can be useful methods to reach out to children and teenagers. Lectures were also conducted to help victims understand why the genocide occurred, what effects these types of experiences can have on individuals and communities, and how healing can be achieved. A human security approach is also a good example of community integration program, which places the welfare of people at the core of programmes and policies. Social-economic activities for adult especially women can be incorporated into group healing programmes. Bible-based trauma healing workshops, which were very effective just after the country gained independence from Sudan in 2011, can also be incorporated. Such workshops should be supported through faith-based institutions because they are respected and have legitimacy, as they have accompanied the people during previous decades of conflict.

Fourth, encourage the use of and supervise proceedings of traditional dispute resolution, reconciliation and healing mechanisms. It would be important to tailor the healing techniques to local conditions as exemplified by Rwanda in the aftermath of the genocide. Reconciliation and healing programmes, such as the Gacaca courts which embraced truth-telling, proved to be more effective as individual survivors came to terms with what happened to their relatives. The community was also involved in determining remedial measures such as reparation, compensation and punishment.

Lastly, provide safe spaces for trauma survivor healing. The goal of trauma healing is to give victims a feeling that they have control over their lives again. The first step in the healing programmes is to provide such a physical space. For example, the Comboni Missionaries have built a \$2.4 million USD safe centre in the outskirts of Juba, which when opened will cater for more than 200 people at the same time. The centre has separate accommodation and recreational centre for children and adults, meaning families can attend the healing sessions together. The centre will provide a feeling of safety which will encourage victims to open up and reveal details of their ordeal. Such centres could be constructed, in partnership with development partners, in other parts of the country to provide for safe spaces for community

psychosocial healing programmes. The safe spaces could also incorporate sporting grounds for the children and youth which can be integrated into the healing process. 📄



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Strengthen The Rule of Law

RATIONALE FOR IMMEDIATE ACTION

The strengthening of the rule of law to recover from conflict is crucial. Conflict and its immediate aftermath are often typified by a surge in general lawlessness, crimes related to violence including the use of fire arms, and sexual and gender based violence. Recent and continued conflict has compromised South Sudan's nascent judicial, legal and security sectors' ability to respond to their mandate to ensure the safety and security of the nation. Moreover, the breakdown of rule of law is the most significant indicator of the escalation of conflict and, therefore, critical to the prevention of further conflict. This situation compromises the accessibility and effective delivery of justice and security, and compromises the legitimacy of the institutions responsible to deliver these services. The immediate restoration of legal

services and reforms of rule of law institutions are essential to rebuild confidence between authorities and communities, demonstrate a break with the past and deliver peace dividends. Relevant government institutions need to be empowered to respond to the immediate needs related to security, justice and the remnants of impunity while also laying down the foundation for institutional reforms and capacity development. The restoration of legal services will enable communities and individuals to pursue productive livelihoods and build community resilience and respond to other developmental challenges.

COUNTRY EXPERIENCES AND MODIFICATIONS

While every country has its own unique experiences, the prevailing situation in South Sudan is similar in some respects to countries that have post conflict reform experiences. The experiences of Rwanda and Sierra Leone are relevant in that rule of law institutions underwent periods of recovery after periods of conflict.

In Rwanda, as in South Sudan, the rebuilding of every public sector institution was a priority after the conflict. The 1994 genocide that resulted in the death of over a million people and the previous civil war that had lasted for almost four years, left the country in shambles. There was a huge number of displaced persons internally and in neighboring countries. Refugees of previous conflicts were returning in a disorganized manner, amid a lack of shelter for

survivors and new returnees. Resolving contestations over land ownership and distribution was a challenge, and there was high prevalence of trauma and suspicion among citizens, and insecurity incidents were rampant.

The justice system had suffered severe reversals. An already weak justice sector was significantly destroyed. Most of its judicial personnel had either been killed or had fled the country. Out of 758 magistrates of whom just 45 had a law degree, only 244 were left in the country. Out of 70 prosecutors only 12 were present, and out of 631 supporting staff/clerks only 137 remained. Thus, the judiciary was ill-equipped to deal with the 125,000 people arrested on suspicion of having participated in the genocide in addition to others who were still at large and suspects of ordinary crimes and disputes.

The restoration of the judicial system was very important and the new government recruited and gave training to different people interested in becoming prosecutors, judges and court clerks. By 2002, the number of magistrates had risen from 244 to 700, the prosecutors from 12 to 246, court clerks from 59 to 325 and administrative assistants in the prosecution services from 56 to 123. Recruitment of judicial personnel was combined with the restructuring of police forces from formerly different fragmented units to create a single National Police Force in 2000. With these efforts, the transitional government had managed to somewhat re-establish the pre-genocide (1994) capacities in the rule of law sector.

The traditional justice system played a crucial role in the restoration of justice services. It was resolved that the prosecution of genocide related cases was not possible only through formal courts. The process was very slow, expensive and inaccessible to ordinary citizens. It was estimated that if genocide related cases were to be tried through ordinary courts, it would take Rwanda over 100 years to complete just 125,000 cases. The finalisation of these cases was important to restore public confidence in public institutions and ensure sustainable peace. While Rwanda insisted on prosecution instead of amnesty, the government also prioritized the achievement of unity and reconciliation. Therefore, Inkiko-Gacaca – a traditional mechanism where men of wisdom in communities engaged disputants, their relatives and neighbors in resolving family, land, and other minor conflicts, was adopted. The creation of Gacaca Courts took over the bulk of the genocide related cases and gave space to the reconstruction of the formal court system in Rwanda. Overall law reform processes were ushered in, starting with a restructuring of the judiciary, creating a cohesive judicial body with both administrative and financial autonomy, and separating the prosecution services from the ministry of justice. Though without practical experience, the National Public Prosecution Authority and courts were able to recruit staff (judges and prosecutors) with at least a law degree. In 2008 the Institute of Legal Practice and Development started providing trainings in legal practice for judges, prosecutors and lawyers.

Through the combination of capacity building, providing infrastructure, institutional reforms and the use of traditional dispute resolution mechanisms, Rwanda was able to address its rule of law deficit in a few years. The post 1994 situation in Rwanda has similarities that can be compared with South Sudan in terms of lack of resources, capacity gaps and the destruction of infrastructure. Customary law and dispute resolution mechanisms have survived decades of conflict and continue to play an important role in South Sudan. Consequently, the general problems facing both nations are not entirely dissimilar and South Sudan can customize the Rwanda specific responses to its circumstances.

In post conflict Sierra Leone, the international community supported an integrated, sector-wide support to the justice sector, involving the police, judiciary, legal sector, prisons, customary justice systems and civil society organisations through capacity building, training and organisational development. Reform of the police began with the publication by the President of a Policing Charter which stressed the primacy of the police in maintaining internal security and the police objective of ensuring the safety and security of the people, rather than protecting the State. In Sierra Leone, a model of Local Needs Policing was developed to meet the needs and expectations of the local community while reflecting national standards and guidelines. The key difference from the past was greater delegation to field level, and more consultation with communities. An important

part of the reforms was to establish a strong senior management team and develop a reputation for openness and accountability. Systems for audit and the investigation of complaints were established and the police began to develop an effective relationship with the media. A further important strand was the setting up of family support units to tackle the appalling level of crime against women and children that had become a feature of Sierra Leone during the civil war.

Strong comparisons lie between South Sudan and Sierra Leone in terms of approaches to post conflict policing development. Models of community policing and confidence building measures and special units that respond to gender based violence have been experimented by the South Sudan police. The requirement for strong oversight mechanisms as well as a strong management cadre cannot be understated. Between 1998 and 2002 the Sierra Leone police had made good progress in most of these areas and opportunities for comparisons and adoption of best practices exist.

Further interventions include the strengthening of the courts through the restoration of court buildings that had been destroyed in the State capital and in some of the provincial capitals. Capacity support was also provided through the provision of an expatriate legal draftsman as well as the provision of expatriate expertise to prosecute and try corruption cases. It must be noted that the Sierra Leone Truth and Reconciliation Commission had identified endemic corruption as one

of the contributory causes of the civil war. Therefore, an anti-corruption commission and specialised courts were established to fast track the prosecution of corruption cases. A pilot national legal aid scheme was established. It handled over 3,000 cases in one year, with an average of 144 cases being diverted away from the courts each month. These interventions are relevant in South Sudan to restore the depleted justice system and provide crucial to support the rejuvenation of adherence to legal principles and their enforcement.

PATHWAYS

Determining appropriate responses to legal reforms and addressing rule of law gaps, will depend on identifying the key fundamental issues that undermine a thriving rule of law sector. The first underlying issue relates to general criminality and the need for a paradigm shift in social behavior, founded on the recognition of the rule of law by the general public and government institutions and functionaries. The second relates to lack of adherence to legal norms by the justice and security sectors in the discharge of their duties and the importance of creating legal certainty. The third issue relates to the challenges encountered by the judiciary in enforcing its orders due to inadequate enforcement mechanisms and a militarized environment, and the need to redress this situation through sector-wide coordination and reforms. These three issues are equally important and interconnected and the

system cannot function effectively in the absence of any of them.

Addressing the question of legality through paradigm shift in socio-normative order

Societies that have undergone prolonged conflict tend to be characterized by a general disregard for social order and legal norms. Conflict often distances communities from government services, and law and order is often the first casualty of war. Communities tend to be governed by their own norms, rely on their customs to settle disputes and adapt to a militarized environment. Thus, it takes a deliberate drive to reconnect communities with the national legal order. The required paradigm shift from adaptability to rules of survival (including rule by the gun), to the rule of law, is as testing as it is urgent.

Three factors that undermine the establishment of a social belief system that is entrenched in legal norms lies in elite capture, webs of alliances and what I call, the “apology of customs and traditions”. This involves the reliance on customs and traditions to justify the disregard of the national laws and violation of the human rights provisions that are embedded in the Transitional Constitution of South Sudan. In this regard, customs and traditions are relied on as an excuse to violate constitutional provisions, even though the Constitution clearly provides that every law is subject to its provisions. Socialisation around ethnic protection and filial relations create a culture

of impunity and a total disregard for law and order. It is usual to hear middle class and the elite attempt to vindicate practices that are clearly at odds with the Transitional Constitution with the assertion that such practices are the customs of the people. The disregard for the law in social relations is, when thought appropriate, often justified by customary practices whose legality are sometimes fantasized to even surpass constitutional demands by even practitioners of the law. Incidents of total disregard for law and order, including judges being openly threatened by high ranking civil servants and military officers, merely because they have applied the law; or relations of victims forcefully removing suspects from police cells and meting out personal justice, should always be met by the full force of the law.

The transformation of the current social belief system that relies on social and ethnic alliances, instead of the rule of law is not an easy task. This requires transformation and acceptance of the principle that law should govern the State, as opposed to governance by the arbitrary decisions of individual government officials. A recognition of the notion that every citizen is subject to the law, and equal under the law, including law makers themselves, is crucial. The influence and authority of the law within the society, particularly as a constraint upon behaviour, including behaviour of government officials needs to be embedded in the social consciousness of the public. However, acceptance of the rule of law by citizens is only possible if respect for the law is seen

to be practiced at the helm of the society. Constant sensitisation of the public as to the applicable laws and the requirement of conformity is also important. Mostly, legal awareness raising has been undertaken by civil society. National stakeholders also need to join in the bandwagon. Members of the public especially in rural areas tend to countenance the views of government functionaries whose input is necessary to complement and validate the message of civil society. Further, the government has better media resources of disseminating information and is empowered to enforce sanctions when citizens disobey the law. The culture of legality can only be maintained by a concerted and deliberate effort by government functionaries in ensuring a natural expectation that acts of lawlessness and criminality are followed by punishment in accordance with the law. This can only be achieved when the public see the law in action through a functional rule of law sector.

Enhancing legal certainty to address non-adherence

South Sudan’s Transitional Constitution is founded on strong democratic and human rights traditions. The Constitution is reflective of post-third wave democratisation era that is founded on principles of good governance and immutable adherence to civil, political and socio-economic rights. The Transitional Constitution as well as a number of legislations contain strong provisions protecting women’s and children’s rights. The principle of constitutional supremacy is embedded in the Transitional Constitution, which

expressly demands conformity to its provisions from state constitutions and all other laws.

It is crucial to establish legal certainty and adherence to legal principles by the courts at all times and without distinction. The rule of law requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, legal certainty, avoidance of arbitrariness and procedural and legal transparency. South Sudan has adopted the common law tradition, a system of binding precedent. This means that generally, previous decisions made by the courts, must be followed in subsequent cases.

While adherence is an ideal situation, it will be naïve to assume that this will be achieved as a quick fix solution. Serious reforms of the judiciary including ensuring their independence are important. It is important to quickly improve the conditions of service of judges so as to create motivation, boost their effectiveness, bring out the best of performance, and attract the best brains to the judiciary. A solid judiciary, combined with private legal practitioners who are equipped with the skills and resources to persistently challenge violations of the Constitution, particularly the bill of rights in the Supreme Court, will result in a tradition whereby the legal system becomes the natural protector of individual rights. This will also present an opportunity to create sound jurisprudence that recognizes the protection of human rights on which the public can rely.

Practical measures required to ensure and sustain adherence will require supporting the capacity of justice sector personnel to apply the required legal provisions. Unless the human component of these institutions are empowered to enforce the rule of law through legitimate mechanisms, the threat of relapse into conflict will remain real. It is important to design curriculum and conduct training of judicial officers, prosecutors and law enforcement officers on fair trial rights, investigations and prosecutions of sexual and gender based violence. Rule of law institutions must be assisted in developing strategic plans and measures for structural and institutional reforms.

Strengthening sector-wide coordination and reforms to galvanize enforcement mechanisms

A general lack of adherence to legal norms is reminiscent of societies in conflict, and require concrete measures to ensure the protection of civilians by strengthening national capacities to counter rule by the gun culture with the rule of law. South Sudan requires the creation of safe and secure environments if recovery and stabilisation is to take place in its stable regions. This also requires that the judiciary is empowered to enforce its judgments and enable it to have consequential powers to address any disregard of its orders. The security forces should step in to ensure that their personnel do not interfere in court processes and more importantly, that the police are empowered to enforce court orders and to respond to any resistance to such enforcement. This

will require political will and commitment from the highest levels of the key institutions of the rule of law sector including the Judiciary of South Sudan, South Sudan National Police Service, National Prisons Service of South Sudan, Ministry of Justice, South Sudan Human Rights Commission, relevant parliamentary oversight committees and the Sudan People's Liberation Army. The Judiciary should engage these institutions to establish a joint monitoring committee to determine the impediments to the enforcement of its decisions and to deter the constant use of threats against judges, lawyers and other litigants by military personnel, highly placed government officers and other members of the public who claim to be "well connected" in respect of on-going litigation. It is even more important to address such threats or retaliatory action when judgment has been given against parties who threaten to take the law into their own hands. This should be considered as interference with the course of justice, which should always attract swift and stern legal consequences.

The court police responsible for the execution of judgments should be provided with support from other law enforcement agencies. This will require establishing a joint unit including the police and personnel of the Sudan People's Liberation Army. The joint unit should be closely supervised by senior personnel of their respective institutions. The joint unit should report to the joint monitoring committee frequently to ensure oversight and effectiveness. The establishment of this arrangement should not detract

from the overarching need to restructure the justice and security sectors by strengthening democratic oversight and supporting systems and mechanisms that foster judicial independence; strengthening systems for effective monitoring in the justice, security and human rights sectors; promoting civilian oversight of security institutions, including through the engagement of civil society; supporting and development of national roadmaps for inclusive security arrangements in accordance with international human rights standards including informal arrangements.

The justice sector should extend its presence in the country, especially in rural areas. The shortage of court and police structure infrastructure should be addressed. The judiciary is under staffed and the emoluments of judges should be revised to attract capable candidates and retain present staffing. The availability of continuous legal education to judicial officers, prosecutors and member of the bar while increasing professionalism and robustness in the security sector should be optimized.

CALL TO ACTION

The immediate steps taken to re-establish responsive and accountable rule of law institutions are essential to the foundation on which lasting peace and order can be built. Four immediate steps are proposed:

First, empower rule of law institutions to counter the rule of law vacuum through lawful means and to pave

the way for institutional reform in the recovery phase. Efforts should be made to respond to the immediate needs related to security, justice, while also laying a foundation for capacity development of rule of law institutions. Special attention should be given to ensure access to justice for displaced and war affected populations, especially women and youth. Parallel efforts should also be made to ensure confidence building measures between civilian populations and the security sector. Communities should be empowered to have closer linkages with the formal justice system and gradually enable communities to access the system and enjoy the protection of the State. However, support to the immediate restoration of justice and security during or following conflict needs to be accompanied by efforts to plan medium and long-term reform to these sectors. More particularly, support to the immediate restoration of justice and security needs to be accompanied by raising awareness of the public to ensure awareness of the availability of legal service providers and adherence to the rule of law.

Second, strengthen capacity of personnel of the rule of law institutions to ensure the efficiency of the judiciary, police, prosecutors and prisons personnel. These institutions should receive training in efficient administration as well as awareness of the law and its application. To ensure the adequate presence of legal services, judges, prosecutors and other personnel of the justice sector should be recruited and deployed throughout the country, and their conditions of service improved. It is also necessary to ensure the provision

of legal services by renovating or constructing courts and police buildings.

Third, effect institutional restructuring. It is important to support systems and mechanisms that foster judicial independence. Separation of powers and a self-regulating judiciary are important to the effective application of the rule of law. The judiciary should be independent and not answerable to the executive. Judges should have security of tenure and should have physical protection of their person and premises. Legal certainty should be supported through the establishment and regular publication of law reports. The office of the public prosecutor should be constituted as an independent institution and the decision to prosecute should lie with the director of prosecution alone.

Lastly, compliance with the orders of the courts should be demanded from all citizens, regardless of their status. Coordinated responses are crucial for the enforcement of court orders. This requires joint monitoring and implementation of the enforcement of court orders by all rule of law institutions as well as the Sudan People's Liberation Army. This requires the involvement of the highest levels of these institutions as well as regular parliamentary oversight. §



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Enable Voluntary, Safe and Dignified Return, Resettlement and Re-Integration

RATIONALE FOR IMMEDIATE ACTION

The rationale for the voluntary, safe and dignified return, resettlement and reintegration of internally displaced persons (IDPs) is self evident and intuitive. Displacement has been seen as a life-changing event and adversely affects people in multifaceted ways. Most of the 1.66 million IDPs across South Sudan, have been living in extremely adverse and difficult conditions including sleeping in the open/overcrowded tents with poor hygiene, constrained water supply and under provisioning of health and educational facilities for a period of nearly three years now since the onset of the conflict in December 2013. Vulnerable groups of population including women, children, elderly and the disabled face particular challenges including of women and girls being exposed to high likelihood of sexual and gender based violence, children of lack of a playing

area and of educational facilities and poor to non-existent basic services. The livelihoods and income flows of the IDPs get disrupted and traditional community based coping mechanisms either get weakened or crumble down under such circumstances. As a coping strategy, while some of the IDPs take to informal micro business activities, most of them do not have any predictable source of income are practically underemployed/unemployed. Overall, as UNDP field assessments in multiple locations show, the coping abilities of the IDPs have been tested to the extreme over the past three rainy seasons (from May to October) when the living conditions deteriorate further and the population particularly children face grave often life threatening risks of malaria, water borne diseases and outbreak of epidemics such as typhoid and cholera. The Juba conflict has further exacerbated the appalling living conditions of the IDPs and residents of Juba. Overall, the lack of adequate food, nutrition and livelihood opportunities has been a major concern for humanitarian agencies particularly with the unfortunate Juba events of the rampant looting of local markets, disruption of supplies of goods and the looting of the warehouses of both the World Food Programme (WFP) and Food and Agriculture Organization (FAO).

Following the signing of the peace agreement and more importantly post the formation of the Transitional Government of National Unity (TGoNU), the issue of safe, dignified and voluntary return of the IDPs within a durable solutions framework was at the

front and centre of the TGoNU agenda and began to receive serious attention from all the key stakeholders.

Intentions surveys carried out recently amongst the IDPs in the Protection of Civilian sites (PoCs) of Juba, Bor, Wau, Mingkaman, Malakal, Melut and Bentiu on their eventual safe and voluntary return provided a good basis for the discussions on durable solutions. The intention survey was a critical field level exercise to arrive at a nuanced understanding of the key underlying drivers behind the intentions of the IDPs to return to their places of origin. The survey highlighted the 'push' and 'pull' factors that informed their decision to move to the PoC, their decision to stay and their expectations before they make the eventual decision to return in the future. Whilst insecurity (absence of fighting) was cited by an overwhelming number of the IDPs, a very high majority (36-45 percent) of the IDPs also cited access to food and health services as a factor which continued to influence their decision to stay behind in the PoCs.

Importantly, 70 percent of the IDPs highlighted their being influenced by the recent signing of the peace agreement and spoke about it as a strong incentive for them to feel motivated to move out of the PoC sites. Also, the survey and UNDP field studies have stressed the need for working simultaneously on reconciliation issues at the community (both intra- and inter-community) and local political level in order to prepare the ground for the IDPs to return.

There is an overarching need to create conditions of return in the areas of origin particularly in areas such as Upper Nile, Bor and Pibor with a range of integrated recovery and stabilisation interventions. Field visits suggest that even if return were to happen *ceteris paribus*, there is practically 'nothing' for the IDPs to return to their places of origin in order to rebuild their lives including virtual absence of any shelter, livelihood, cattle, health and educational services which perpetuates the ever increasing need for humanitarian interventions. Importantly, there are strong links between persistence of displacement and developmental impacts on the country as a large chunk of the population comprising nearly 20 percent of the national population is underemployed and hence not productively engaged in any systematic economic activity.

Notwithstanding the rationale, currently, the topical issue of return, reintegration and resettlement of the IDPs has faced a serious setback with the outbreak of the Juba conflict on 8 July, rekindling the community fears on a potential spillover of the Juba events to the states and even as a worst case scenario a tendency for the country to slip back into conflict. However, the return agenda needs to be anchored firmly in any political narrative post the Juba conflict including with the national, regional and international development community. The continuation of the current state of affairs for the millions of displaced persons is untenable and must squarely lie at the heart of reaching a political settlement between the

rival political groups of SPLA/M in government and SPLA-IO.

The Governance Framework on IDPs

The international governance framework on the IDPs and the guiding principles seeks to holistically address all key aspects of displacement starting from “protection from displacement, protection and assistance during displacement and durable solutions” with a rights based approach. These principles are consistent with the international human rights and humanitarian law and have been recognized by the relevant international bodies including the Human Rights Council and the UN General Assembly as an ‘important framework for the protection of IDPs.

The guiding principles on internal displacement (Principle 28) lay down the IDP’s right to a durable solution and the role of national authorities, humanitarian and development actors to assist the IDPs in crafting these durable solutions including strategies, activities and determination of criteria to demonstrate achievement of durable solutions. It explicitly says that the competent authorities have the “primary duty and responsibility to establish conditions as well as provide the means, which allow IDPs to return voluntarily, in safety and in dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.” Needless to say, these principles are also in the best interests of the State for long term “peace, stability,

recovery and reconstruction in post crisis countries” allowing the full development and expression of the productive potential of its population. These guiding principles are generic in nature. They are applicable to a wide variety of situations of internal displacement including natural and man made disasters and hence need to be tailored down to specific context and situations such as in South Sudan. They are intended to complement the more detailed operational guidelines to be adopted by the humanitarian, development, national or local authorities. Voluntary return or resettlement without any coercion and a free exercise of choice of residence by the IDPs is a critical criteria for a credible process of ensuring durable solutions.

As per the guidelines, durable solutions through return, reintegration and relocation can be achieved through the following pathways:

- Sustainable reintegration at the place of origin
- Sustainable local integration in areas where IDPs take refuge
- Sustainable integration in another part of the country

In terms of roles and responsibilities, the “primary responsibility to provide durable solutions for the IDPs and ensure their protection and assistance needs to be assumed by the national authorities.” It is also pertinent to note that the opportunities for durable solutions arise only once the ‘immediate cause of displacement’ has been resolved. The search

for durable solutions is often a complex and gradual process which needs to satisfactorily address the human rights including rights to security, property, housing, education, health and livelihoods, meeting of humanitarian needs including temporary shelter, food rations, emergency health services and peacebuilding which entails political, economic and social stabilisation. Durable solutions can be led by national coordinating mechanisms and involve both the humanitarian and development actors for a coherent and comprehensive strategy. Experience shows that systematic investments in early recovery including establishment of local governance structures, state protection institutions, provision of basic services and peace building have a multiplier impact on the achievement of durable solutions in an accelerated and sustainable manner.

Following the formation of the TGoNU, the humanitarian and development actors were understood to be in advanced preparatory discussions towards agreement on strategy, framework and the operational guidance to ensure return, reintegration and relocation for durable solutions. The guiding principles of ensuring a coordinated approach through humanitarian protection, early recovery and developmental activities and integrating refugees into the IDP support programmes were under finalisation. Also, sustainability criteria including ensuring long term safety, security and freedom of movement, adequate standard of living, access to livelihood and access to justice were seen as essential elements of the approach.

The Juba Conflict must not be allowed to derail the larger peace process and consequent return, reintegration and relocation of IDPs

The unfortunate events of 8 July in Juba have raised question marks on the larger issues of political settlement which appear to be still unresolved and a political consensus to implement the Peace Agreement in its letter and spirit including as per the provisions of Chapter III. Under Chapter III of the Peace Agreement pertaining to Humanitarian Assistance and Reconstruction, the Government of the Republic of South Sudan has committed to creating an enabling political, administrative, operational and legal environment for the delivery of humanitarian assistance and protection. Inter alia, provisions encompass the right of refugees and IDPs to return in safety and dignity and to be afforded physical, legal and psychological protection; respect for the right of refugees and IDPs to citizenship and the establishment of mechanisms for registration and appropriate identification and/or documentation of affected populations including their children, spouses, property, land and other possessions which might have been lost during the conflict; and exercise of the right of the refugees and IDPs to return to their places of origin and/or live in areas of their choice in safety and dignity.

Further, the TGoNU was mandated to institute programmes for relief, protection, repatriation, resettlement, reintegration and rehabilitation of IDPs

and returnees in coordination with UN and other relief and humanitarian agencies. Specially consideration was to be afforded to conflict affected persons including children, orphans, women, widows, war wounded in the provision of public service delivery, including access to health and education services and extending to the host communities the same benefits of protection and humanitarian services.

A key positive impact of the formation of the TGoNU was expected to be on the creation of an enabling nationwide environment of peace and reconciliation which in turn would safeguard the right of refugees and of the over 1.6 million IDPs to return in safety and dignity. It was estimated that many of the IDPs, nearly 20,000, were returning on their own volition following the signing of the peace agreement and the formation of the TGoNU. Indeed, 70 percent of the IDPs had highlighted being influenced by the recent signing of the peace agreement and that the peace agreement was a strong incentive for them to move out of the PoC sites and from other areas. This sentiment was already being validated on the ground.

However, during the Juba conflict, the PoCs appeared to be a target of the conflict with several IDP casualties being reported. The cumulative impact and trauma of the intense fighting has heightened the sense of insecurity amongst the IDPs within the PoCs of the lack of meeting of hearts and minds between the two rival political groups along ethnic lines. Anecdotal evidence suggests that the prospects

for return have been negatively impacted and may just be stalled until a new political settlement is reached and the spirit of political accommodation, peace and reconciliation across the country takes hold in a visible way. As one of the IDPs expressed his scepticism, "I have heard about peace, but I would like to see [with emphasis] peace before I can think about return and moving out of the PoC." Over 3,000 new IDPs have sought shelter at the UNMISS camp in Topping, as well approximately 12,000 in PoC 3 in Juba. This is also an indicator that the issue of return appears to have been pushed back in the current country environment.

COUNTRY EXPERIENCES AND LESSONS FOR SOUTH SUDAN

Experiences relating to the return of the IDPs across countries and regions highlight a number of challenges, opportunities and lessons learnt which may be adapted for practical application to South Sudan. Four major cross cutting challenges which impact the overall political environment and ultimately informs the decision on return of the IDPs have been observed. The same have been harnessed from country case studies of Sudan, Kenya, Mali, Uganda and Sri Lanka and are listed as follows:

First, lack of either an appropriate policy and legislative framework on IDPs or non-adoption/partial implementation of the policy framework where it exists; lack of comprehensive, efficient

and disaggregated data on the IDPs and adequate provisioning of operational and institutional capacity to facilitate return.

Second, lack of a participatory process of IDP return wherein IDPs are engaged on the terms and conditions of their return also appears to be an important constraint observed across countries although varying in degrees. This results in an unsatisfactory reintegration of IDPs and is often carried out without a full complement of economic, governance and basic services provisioning in the areas of return. As a result of this, the affected population continues to face serious bottlenecks which prevent normal resumption of life.

Third, lack of sufficient cooperation from the national authorities with the international communities has also been observed as a constraint. This was the case in the Darfur region of Sudan which has approximately 2.7 million IDPs making it one of the “widespread and protracted internal displacement contexts in the world.”

Finally, lack of sufficient donor resources disbursed in a timely manner which can supplement the national effort in assuring a satisfactory resolution of the multifaceted problems of the IDPs in the areas of return and provision of durable solutions.

While the importance of reaching a political settlement is critical in initiating a process of durable return particularly when the political understanding

between the two rival groups has been breached, it is certainly not the case that nothing can be done in the current context. There are instances when even in the midst of protracted conflicts, voluntary movements of people, referred to as partial community returns particularly related to seasonal farmers movements have been observed as in the case of Darfur. These cases of partial return may be interesting to study further towards potential application in the case of South Sudan particularly of the farming communities during the course of planting season as there may be opportunities to facilitate such movements. Areas such as Mingkaman, where a large contingent of IDPs have been displaced and have their farm just across the river Nile could be potential sites to facilitate partial dynamic return to take advantage of the planting season. Anecdotal accounts suggest that these dynamic opportunistic returns do occur but not in any systematic manner. It needs to be noted that the year 2016 is the third straight year wherein the IDPs have been uprooted from their places of origin and will miss out on the vital agricultural planting season, if seasonal returns are not facilitated.

CALL TO ACTION

While it will be unrealistic to expect that the process of IDP return, relocation and reintegration would be implemented systematically in the near term in the aftermath of the recent Juba conflict, some preparatory work can be undertaken and completed

in anticipation of future returns. In this perspective, the TGoNU along with concerned humanitarian actors and international development partners should consider the following four actions within the overall governance framework and best practices on durable solutions:

First, carry out a preliminary needs assessment of the IDPs and intentions survey keeping in view different scenarios and eliciting feedback on options;

Second, prepare and adopt a national strategy, framework and operational guidance for return, relocation and return which can be a living, dynamic document and updated as the situation evolves;

Third, Recognize the dire situation of the IDPs and their appalling living conditions and strongly push for a political settlement and work towards creation of a conducive and enabling environment for the return of the IDPs;

Lastly, adopt a coordinated and integrated approach to the challenge of the return of IDPs and the preparatory work around the same. There is now an increasing recognition that displacement combines humanitarian and developmental aspects and comprehensive approaches which involve the humanitarian and development actors with additional bilateral and multilateral assistance are absolutely vital toward durable solutions. 🌱



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Enable a Strong, Constructive Civil Society for Transitional Justice

RATIONALE FOR IMMEDIATE ACTION

The recent outbreak of fighting in Juba in July 2016 makes it all the more evident that South Sudan's recovery from decades of violent conflict will not be achieved in the immediate future. It will require significant and genuine political will which is difficult to muster in a political area characterised by high levels of distrust and frequent shuffles. A strong, constructive and more united civil society that truly represents the views and addresses the concerns of the people has become indispensable for South Sudan to come to terms with its past in order to build a more peaceful future.

Societies like that of South Sudan emerging from violent conflict, are characterized by weak institutions, deep divides, destroyed infrastructure, a lack of rule of law, and more often than not, a deeply distressed

economy. Amidst all this, they are faced with the daunting tasks of rebuilding the country, dealing with the violence of the past; combatting impunity; addressing war-related trauma; reconciling the nation; and building a shared national vision. As violence has touched all levels of society, all levels of society will be required to restore the broken relationships and rebuild the country. Transitional justice can greatly contribute to achieving some of these high ambitions if approached diligently and with victims at its heart. To date, South(ern) Sudanese peace processes have focused more on the needs of the belligerents than those affected by the violence. A victim-centred approach requires actors that are in touch with the needs of those most affected by the conflict. In South Sudan, this requires a strong, constructive and more united civil society that transcends ethnic divisions and is uninfluenced by politics.

Any transitional justice process is contentious by nature and has the potential to spark opposition if not designed with care and heed for the context or implemented in a hostile environment. The success of any transitional justice process and institution is determined by the degree to which it can help the individual as well as the broader society to come to terms with large-scale violence of the past. Public engagement is thus a fundamental component. Like in many other situations, the transitional justice mechanisms proposed in Chapter V of the Agreement of the Resolution of the Conflict in the Republic of South Sudan (ARCSS) are novel to South Sudan and

still largely unknown to the general populace. A recent study by the South Sudan Law Society (SSLS) and UPEACE found that 67% of respondents in Juba and 74% of respondents in Wau had not heard about the Commission for Truth, Reconciliation and Healing (CTRH). Similarly, 69% of respondents in Juba and Wau had not heard about the Hybrid Court for South Sudan (HCSS). For the proposed mechanisms to have any reconciliatory effect, it is fundamental that they stand in service to the needs and grievances of those affected by the conflict.

Civil society can play a crucial role in transitional justice at various stages of the process. In this context, civil society is understood to be the civil parts of a South Sudanese society that are actively engaged in helping the country and its people come to terms with the past and build a peaceful future. This includes national non-governmental organisations, faith-based leaders, youth associations, women's groups, victim groups and professional associations. The focus of the paper will be on the South Sudanese non-governmental organisations (NGOs). In its early stages, civil society can lobby and put pressure on national and international actors to create a conducive environment; commit to the process and establish the mechanisms; reach out to the people with information about proposed transitional justice processes and help them understand the proposed mechanisms; facilitate consultations with conflict-affected people and gather their perceptions; facilitate dialogue between citizens and political elite; engage in dialogue to form a

commonly agreed upon understanding of transitional justice in the respective context; and add important issues to the transitional justice agenda.

In the formative stages of the process, civil society can solicit and represent the views and needs of conflict-affected people to safeguard a victim-centred approach; provide technical assistance in the establishment of the mechanisms; and take on a watchdog role in the appointment of commissioners and judges.

In the implementation phase of the mechanisms, civil society can directly communicate with the conflict-affected population through outreach programmes and help citizens access the mechanisms. It can also play a constructive role by researching and monitoring the proceedings of the mechanisms and the reform agenda, as well as the impact they have on the population and provide recommendations for improvement.

Civil society is thus uniquely positioned to amplify the voice of citizens audible in transitional justice processes, and facilitate constructive engagement between all levels of society and with the international stakeholders. Without the involvement of a strong, constructive and more united civil society, transitional justice processes in South Sudan will not address the root causes of the conflict(s) needed to stop the cycles of violence once and for all.

COUNTRY EXPERIENCES

A fundamental principle of transitional justice is that it must be home-grown and led by national actors. This protects against an imposed and/or one-size-fits-all approach, ensures domestic buy-in and sustainability. Acknowledging the importance of an approach that is particular to and closely fitted to dynamics of South Sudan and the civil society landscape, experiences in other countries offer valuable lessons. Comparisons can be found in South Sudan's neighbouring country, Kenya.

The 2007 presidential election results in Kenya sparked a wave of violence resulting in the deaths of nearly 1500 and forcing almost 300,000 people to flee from their homes. Civil society actors played a strong role early on to monitor the 2007 elections. When the violence broke out, they were quick to document the violence and advocate for accountability measures and other transitional justice initiatives. An African Union (AU) brokered power-sharing coalition agreement provided for the establishment of several commissions of inquiry, including the Commission of Inquiry on Post-election violence, the independent Review Commission on the Elections, a National Ethnic and Race Relations Commission and the Truth, Justice and Reconciliation Commission (TJRC). The Waki Commission and Independent Review Commission on the Elections completed their work in September and October 2008. Their recommendations included (1) creation of a special tribunal to prosecute perpetrators of post-election violence; (2) a constitutional review;

(3) establishing a Truth, Justice and Reconciliation Commission (TJRC) to investigate past violations; and (4) major police force reform and the merging of Kenya's two police forces—the Administration Police and the Kenya Police Service.

Amongst other stakeholders, civil society played an instrumental role in the drafting of the TJRC Act. A Civil Society Coalition and the Multi-Sectoral Task Force on Transitional Justice functioned as quality control for the enabling legislation and they successfully advocated for it to be aligned to international law and standards. As will be needed for the Commission on Truth, Reconciliation and Healing (CTRH) in South Sudan, Kenyan civil society groups contributed significantly to deliberations about the crimes/violations to be investigated; the historical period to be covered; powers and privileges of the Commissioners; resources to conduct its mandate; gender equity; provisions to ensure implementation of recommendations; provisions on witness protection and the process and selection criteria for commissioners and other staff.

The Kenyan situation illustrates that an active and strong civil society can have the power to either bolster or undermine transitional justice mechanisms. Given the highly politically charged environment and strong prevalent culture of impunity and corruption in South Sudan, a strong civil society is needed to ensure that the process is not misused. This potential role is negatively challenged by the ever decreasing space for civil society to operate.

PATHWAYS

To date, a combination of lack of capacity, poor communication and coordination, competition and ethnic fault lines have hindered civil society to engage constructively in the peace process in South Sudan. To a certain degree, competition is inherent in the process of coalition-building and the phenomenon is not unique to South Sudanese civil society organisations. However, for civil society engagement to positively contribute to the implementation of the peace agreement in general and transitional justice in particular, civil society must find ways to transcend divides, develop and embody common goals and principles, and leverage comparative advantages. In this, they must be guaranteed freedom to operate without fear and government influence and with sufficient support from the international community, on their terms.

Transcend divisions: Civil society in South Sudan needs to recognize that there is more that unites civil society than that which divides. The current divides that make commentators describe South Sudanese civil society as 'divided' and 'weak' primarily run along four lines: ethnic; political; urban/rural; and South Sudan-based/diaspora organisations. Although there are civil society organisations (CSOs) that claim neutrality and are perceived as more neutral than others, many CSOs are nonetheless influenced by ethnic standpoints and interests. Especially in relation to transitional justice which is inherently contentious,

difference in standpoints is easily misinterpreted as political backing of one of the conflicting parties. Being unaffected by politics and ethnicity is incredibly difficult in contexts that are inherently political and in which conflict broke out along ethnic lines. Nevertheless, without trans-ethnic and cemented bonds, civil society runs the risk of being subjected to divide and rule tactics employed by actors with an interest to derail or otherwise disrupt the process.

Engage at the grassroots level: “Juba is another planet” said a member of a church women’s group during a focus group discussion organized by a South Sudanese civil society organisation in Yirol. Civil society organisations in South Sudan need to get out of Juba and reach down to the grassroots level in order to understand and work to address the concerns of the people. Civil society has been characterized as being dominated by elite who operate primarily in Juba. Some of these organisations do connect with communities and community-based organisations, though at times these connections are primarily used to show a level of ‘community-presence’ to donors. Juba-based organisations tend to be more familiar with donor lingua and therefore receive the majority of the attention. This leaves the rural and more community-based civil society organisations unattended to and not frequently consulted on issues of national importance. For instance, the communication between civil society organisations involved in the IGAD-led peace process and those operative in the rural sphere left much room for improvement, as did the communication by

the IGAD representatives with the Juba-based civil society organisations. It is crucial that the Juba-based organisations reach out and form partnerships with the community-based organisations and bridge the gap to ensure that citizen’s needs are sufficiently taken into account.

Collaborate with civil society in the diaspora: Divisions are also evident between civil society organisations based in Juba and those in the diaspora. On the one hand, South Sudanese-based organisations are quick to question the legitimacy of diaspora organisations and their ability to represent the needs and voices of the South Sudanese population. Yet, many in the diaspora became active as refugees of the December 2013 crisis and are themselves affected by the conflict. On the other hand, diaspora-based organisations have accused of being government supporters. This divide became apparent during the IGAD-led peace negotiations when a group of Juba-based civil society organisations formed the coalition known as Citizens for Peace and Justice (CPJ). Though they were effective in engaging with the stakeholders in the peace process, their representativeness was consistently subject to scrutiny and in the end, they were unable to form a platform to develop common civil society standpoints on matters negotiated upon during the peace process. Instead of overly contesting each other’s legitimacy, civil society organisations would be more effective if they operated based on their respective strengths. Whereas South Sudanese-based organisations might be better positioned to gather and

represent citizens’ views, diaspora organisations are well-placed to mobilize resources; and are often well-positioned to lobby with high-level decision-makers in their host countries, and at regional and international level. Additionally, they are well-placed to lobby with communities in the diaspora who form a vast network and strong lobby on matters related to South Sudan. Many of these communities are composed of South Sudanese who fled the violence in December 2013 or were exiled and who wish to return to a peaceful South Sudan. If the respective strengths can be galvanized, the combination could be very powerful and civil society can become more than the sum of its parts.

Build coalitions around a shared agenda and common cause: The process of which organisations would represent civil society during the IGAD-led peace process laid bare the divisions amongst civil society. At the time, CPJ was the most organized and actively engaged in the peace process and sent a delegation of fourteen representatives from Juba to participate in the peace talks. The representatives were selected during a workshop that was attended by all the major coalitions. However, it did not take long for the Government to accuse the representatives of favoring the Sudanese People’s Liberation Movement – In Opposition (SPLM-IO). The CPJ representatives were substituted by seven Juba-based organizations and seven diaspora-based organizations but were permitted to retain four representatives. For any civil society coalition to be successful, it will need to have a minimum level of acceptability by all camps. Civil

society organisations also found themselves competing for resources rather than concentrating efforts to rally behind a common cause and place themselves in a position where they could engage collectively and strategically with the donor community and the parties to the peace process. At times this competition is caused, or fueled, by limited availability of funds in relation to the demand by civil society organisations and competitive calls for project proposals by funders, be it UN agencies, international organisations or development partners.

To avoid similar dynamics from undermining civil society's role in transitional justice, civil society will have to champion a common agenda, develop common guidelines and commit to a shared vision and mission. It is crucial that civil society has a jointly agreed upon direction, shared understanding of its role and the coordination and communication mechanisms in place to operationalize this role. A promising development to this end, is the recent establishment of the Transitional Justice Working Group (TJWG). The TJWG is a group of CSOs that have united around a shared interest in promoting transitional justice in South Sudan. In early 2016, they started the development of a Strategic Plan which enables the working group to set out a direction of civil society's involvement in transitional justice. At the same time, it offers international backers a 'go to' group for transitional justice that is grounded in national ownership.

Forge strategic partnerships: There is still room for civil society in South Sudan to tap into the potential of strategic partnerships with actors such as faith-based institutions, academia and the media. A USAID-backed initiative known as the "Voluntary Civil Society Taskforce on the Implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan" is exemplary of this although it is still too early to assess its effectiveness. It suffices to say that the civil society would be well advised to explore strengthened partnerships based on a clear understanding of each other's respective goals.

Strengthen thematic expertise: Given the novel nature of transitional justice in South Sudan, few civil society organisations are fully equipped and knowledgeable to engage on the technical aspects of the concept. A similar lack of expertise on issues such as security sector reform, rule of law and federalism prevented civil society organisations from impacting the decisions being taken during the peace process. This need for thematic expertise opens up opportunities for further learning, to forge partnerships with academic institutions and involve both international and national experts who are well-versed with the complexities and technicalities of transitional justice mechanisms and processes.

The ARCSS places responsibility on South Sudan and the African Union Commission (AUC) and the Transitional Government of National Unity (TGoNU) to make crucial decisions about the design of the mechanisms. Civil society will have a say in this and the understanding

of technical and context-specific knowledge, coupled with their ability to influence decision-makers, is critical to shaping institutions that are prudently deliberated upon with solid understanding of the consequences of the decisions being made. Indeed, the ARCSS allocates responsibilities to civil society to collaborate with the Ministry of Justice and Constitutional Affairs (MoJCA) to conduct national consultations that are to inform the enabling legislation of the Commission for Truth Reconciliation and Healing (CTRH) and to take part in the Executive Body of the Compensation and Reparation Authority (CRA). International actors can support civil society to organize safe forums that bring together academics, faith-based institutions, government stakeholders, civil society organisations and victim groups to discuss transitional justice issues relevant to the dynamics in the context.

Pool funding and permit longer funding cycles: After the signing of the Comprehensive Peace Agreement (CPA) in 2005, many civil society leaders joined the government, draining much needed capacities from civil society organisations. This left a rather inexperienced civil society, with a handful of strong organisations that attracted the lion's share of the available resources. More recently, this vacuum has allowed a younger generation of civil society leaders to emerge. Here lies an opportunity for the international community to pool their funds and strengthen the organisational capacity of CSOs to create a stronger civil society across the board.

Following the CPA, civil society organisations, highly dependent on donor funding, largely operated around donor's priorities to gain much-needed access to funds. Initiatives have been event and issue-driven, with a strong focus on the 2011 referendum. The short donor funding cycles (generally between 3 – 12 months) are anything but conducive for long-term processes such as transitional justice that require decades. The majority of civil society finds itself in survival mode and providing lip service to priorities as they are perceived by the donors in a bid to secure funds. This runs the risk of civil society organisations being perceived by others as proxies of the donor community, rather than representatives of the South Sudanese citizenry. Indeed, the Government views many civil society organisations with skepticism and weary of an international agenda to reform the government, thereby posing a threat to their political interests and survival. Civil society organisations involved in transitional justice and their supporters would be wise to carefully weigh the costs and benefits of visible international backing; be it financial or in-kind.

CALL TO ACTION

To date, a combination of lack of capacity, poor communication and coordination, competition and ethnic fault lines have hindered civil society to engage constructively in the peace process. The

environment in which civil society operates in South Sudan is becoming increasingly restrictive and hostile. The enactment of a new NGO Act has given rise to more controlling policies and freedom of expression is seriously curbed.

Despite the tragedies of decades of conflict, and the inherent difficulties of operating in such contexts, civil society in South Sudan has shown potential for growth. The recent forging of coalitions such as the Transitional Justice Working Group and the voluntary civil society task force are promising opportunities for civil society to maximize their effectiveness. For civil society engagement to positively contribute to the implementation of the peace agreement in general and transitional justice in particular, the immediate steps can be taken.

By civil society:

- Find ways to transcend divides, unite around a common agenda or long-term strategy, develop and embody common goals and principles, develop a shared understanding of the role of civil society in transitional justice in South Sudan, leverage comparative advantages and commit to the bigger picture;
- Conduct a nation-wide mapping of civil society organisations involved in transitional justice

and create a central database to be used in coordinating civic engagement and advocacy efforts at all levels of society;

- Put in place coordination and communication mechanisms to operationalize the joint strategy and task division. Establish periodical forums (common platforms) at all levels where civil society, community-based organisations and other stakeholders can interact about transitional justice issues. Create satellite platforms in locations with a high/active diaspora population such as Kampala and Nairobi and possible Australia, the United States and other countries;
- Actively reach out to communities at the grassroots level whilst maintaining enough clout with national-level actors in Juba in order to optimize civil society's potential to bridge gaps between communities and decision-makers and be able to give voice to the communities;
- Strengthen (existing) partnerships with (inter) national experts, faith-based institutions, the media and between coalitions;
- Generate acceptability and trust among all camps in the TGoNU and be a constructive partner to the government while retaining independence and objectivity.

By the Transitional Government of National Unity (TGoNU):

- Create a conducive environment where civil society can operate freely, effectively and independently;
- Amend the NGO Act to legally support a conducive environment for civil society;
- Guarantee security for civil society actors to operate with freedom of movement and expression.

By the international community:

- Though much of the unification and building of alliances can only be done by civil society leaders themselves, donors and other international partners can play a conducive role by improving their own coordination, offering joint support to strengthen civil society, avoid causing or fueling competition, and prolonging funding cycles for projects to be able to work on long-term processes.

Ensure that strategic interventions by the international community are complementary and supportive of civil society strategies and interventions;

- Provide support to enhance thematic expertise

by supporting regional exchanges and making available resources for technical expertise where needed;

- Support civil society to organize safe forums that bring together academics, faith-based institutions, government stakeholders, civil society organisations and victim groups to discuss transitional justice issues relevant to the dynamics in the context;
- Urge the government to create a conducive environment where civil society can operate freely and independently.
- Provide physical security for civil society actors where needed. 📍



Jean Luc Stalon,

*Country Director ad interim and
the Head of Programmes*

Balance Humanitarian and Recovery Assistance

Development and humanitarian practitioners have debated for a long time about best approaches to address complex and protracted crisis around the world. The traditional model of sequenced interventions from lifesaving to recovery has proven to be inadequate in a crisis where people simultaneously need immediate humanitarian assistance and support for resilience and coping mechanisms. The historic World Humanitarian Summit (WHS) held in Turkey in May 2016, called for new and coherent approaches inter-alia on addressing the root causes of the conflict and bringing humanitarian, development and peacebuilding efforts together. It set a new course to balancing the humanitarian and development dimensions in countries with a protracted crisis. This new balanced approach has transformative potential and marks a turning point that will influence the way of rebuilding countries in complex crisis.

At a global level, the Overseas Development Institute has highlighted that humanitarian appeals are now recurrent with some appeals in their eighth year and people are living in forced displacement for up to 17 years. Conflict and fragility have been identified as one of the biggest bottlenecks to the achievement of the 2030 Agenda for Sustainable Development, across a variety of heterogeneous country contexts. Nearly two-thirds of countries in conflict failed to meet the Millennium Development Goals for reducing poverty by half by 2015.

South Sudan, the youngest nation in the world, is in the midst of a major humanitarian, development and security quagmire. It is hemmed in by multiple political, socio-economic and humanitarian crises of unprecedented dimensions. Around 6.1 million people, or nearly half of the total population of the country, are in need of humanitarian assistance. An estimated 4.8 million persons are 'severely food insecure' with Northern and Western Bahr el Ghazal and Unity states worst hit. Following the fighting in Juba which erupted on July 8, more than 60,000 people have fled to Uganda, Kenya and Sudan. Nearly 12,800 people have been newly displaced within the country, with many located at UNMISS sites. The stories behind these numbers show the situation has particularly impacted women and children.

In cases of complex emergencies and protracted conflict where political settlements break down and the nature of the conflict gives rise to an uncertain

outlook for stability and peace, we find the traditional linear models of 'relief first and development later' do not work and are not fit for purpose. In South Sudan, we offer two main reasons for championing a balanced approach of inter-related humanitarian and development response to crisis:

First, the relatively peaceful zones where recovery and stabilisation interventions are possible should be a key focus in targeting assistance. This approach will build effective firewalls and prevent a slow spillover of the conflict in areas which are simultaneously vulnerable yet have managed to remain relatively peaceful, stable and unaffected. Building resilience is now central to the way in which the UN is responding to fragility. For example, the South Sudanese agriculture sector, a mainstay of up to 90 percent of the population in the country, and critical to the country's food security, faces constraints to growth including a lack of agricultural tools and equipment, quality seeds, lack of storage capacities to minimize post-harvest losses. A number of agricultural livelihood initiatives by UNDP in Jonglei, Lakes and Warrap states helped local farmers cultivate crops despite an unsettled external operating environment. Given the ongoing rainy season is suitable for planting, the sector needs immediate help. Farming communities in areas like Aweil, in Northern Bahr el Ghazal, for instance, have been reaching out for private sector investments for farming support, including from Sudan. Seasonal voluntary movements, referred to as 'partial community returns' have been observed

even in the midst of protracted conflicts as found in Darfur. If carefully managed, voluntary movements of internally displaced persons can be facilitated in the same vein, for example from Mingakaman to Bor, in order to help impacted communities cultivate and safeguard their produce in an organized manner. Similarly, the preparatory process which underpins the production of Gum Arabic, can with relatively small investments, yield incomes at scale for communities traditionally engaged in this business. Similarly, strengthening nascent state-level institutions, traditional authorities, and community-level peace structures, to make governance work for the most vulnerable groups, must not stop. By augmenting resilience among local communities and institutions in tandem, these steps will contribute to preventing and mitigating the chronic humanitarian aid dependency syndrome spiraling out of control in South Sudan.

Second, and related to the preceding discussions, the 'ideal' case assumption of linear sequencing of assistance which kicks in after peace takes hold across the length and breadth of the country and after the macro-economic rescue package has been put in place, is increasingly seen as unrealistic in the short run. There is, instead, growing acknowledgment that development progress must be sustained and protected in even the most fragile and crisis-affected settings. Although the country cases are not strictly comparable, UNDP has sought to continue its development work in Syria, Libya and Yemen with this perspective in view. Working in unsettled and volatile conditions is the new

standard, and all creative and innovative interventions must be explored in complex settings, such as in South Sudan, while take lessons learned from other country case studies. Thus, for instance, during the aftermath of the mid-December 2013 crisis in South Sudan, new localized conflict hotspots emerged, and in some of the peaceful states and communities, such as Western Equatoria, the conflict was led by the so-called 'Arrow Boys' of mostly unemployed local youths. While macro-economic stability for South Sudan will be a critical enabler, efforts to revitalize the local economy through local production and exchange must be continued in a conflict-sensitive manner with due diligence for human rights. Similarly, in the context of protracted conflict 'merit interventions' are considered necessary recovery, stabilisation and development interventions. Examples of these interventions include re-establishing local security through community policing; renewal of the rule of law and promoting access to justice to SGBV survivors and other vulnerable groups; supporting community-level governance accountability mechanisms; and support to reforming, recreating, or building local and community-level governance institutions and processes for the restoration of social cohesion. Building the resilience of communities and their institutions through an integrated package of recovery and stabilisation programmes where opportunities exist is a 'no regret investment' and must be pursued irrespective of the national political governance context, which is yet to become fully stable.

In conclusion, South Sudan must not be allowed to slide further on the development indicators, despite the unfortunate political upheavals it has encountered through its five-year journey post-independence. The Transitional Government of National Unity must provide strong leadership and inspire one and all to rise above the narrow political and ethnic differences which have stalled development progress. Indeed, South Sudan will be closely watched as a litmus test of the collective political leadership in the country and the international community to live up to its resolve and pledge of leaving no one behind. 📌



This compilation of opinion pieces by the UNDP South Sudan Country Office one way in which the staff of United Nations Development Programme share their thoughts on pertinent development issues. Many of the thoughts shared are at an inception stage, and therefore their publication is meant to inspire debate both within the United Nations Development Programme and with stakeholders in South Sudan. Follow us on Twitter @UNDPSouthSudan and on Facebook at Facebook.com/UNDPSouthSudan.



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Resilient nations.*