

## **'The Future of South Sudan and the Peace Agreement'**

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Thank you, Rosalind, for the introduction, and to Chatham House for hosting me. Let me state at the outset that I do not speak for IGAD, nor the Joint Monitoring and Evaluation Commission (JMEC), nor any other institution.

First, I want to acknowledge that my departure from South Sudan in April this year was not a happy one – I was formally expelled from the country days before the transitional government was formed, and at that stage, despite how it appears in retrospect, some meaningful, if limited, progress had been made. That fragile progress, has, as you know, been smashed by the devastating return of widespread violence, callous, criminal and systematic disregard for human life, and a toxic breakdown of national identity and the country's social fabric.

The government's action hurt. I took it very personally. My mental and physical health suffered in the months afterwards. Having spent most of my life since 2005 thinking about, living in, and working on South Sudan, it was not the way I wanted to leave.

That said, much, much worse has been suffered by people much more vulnerable, almost every day before and since. And it is for that reason that people like me should be vocal and persistent and not shy away from uncomfortable truths.

### **Errors of the mediation**

As peacemakers, or as people trying to help peacemakers, we are far too often not reflective. We are so caught up in the daily crisis we usually lack the capacity to see where we are, let alone where we are going and what exactly we are trying to achieve. I don't necessarily mean this in broad terms – as a mediation, we had a clear objective, to find a way to peace – but in our interim objectives and strategy, in the manner of our precision and technique and thinking.

The odds against peace are often much worse than those in favour of war: chances are not improved when mediations make mistakes, and work poorly due to infighting and inconsistency. The outcome might not have been much different, but we could have done better, much better.

Here, in my view, are three of the most serious mistakes we made as the IGAD mediation. It's not an exhaustive list. First, as I've just alluded to, we were not a cohesive mediation. National rivalries, personal rivalries, office politics, part time working: none of this helped our cause.

Second, for too long we were boxed in by the model of the Comprehensive Peace Agreement (CPA) and the North Sudan-South Sudan negotiations of the late 1990s and early 2000s. The most common external critique, both of the mediation and which extends to the subsequent agreement, has been that it erroneously pursued power sharing arrangements.

I will return to discuss power sharing later but this problem of methodology is about far more than power sharing. It limited our imagination. And that of the negotiating parties. It narrowed the range of solutions considered feasible, in many areas. It constrained the format and practice of talks. It conceptualized the conflict in inappropriate terms to those actually existing.

The third mistake: we failed to sufficiently involve the people of South Sudan, and build on the constituency for peace that comes from communities, from areas far removed from the politics of Juba, from individuals, from other patriots.

Fundamentally, almost all processes of this kind involve elites of one type or another, so I am not suggesting that there was some idealist panacea of elusive actors who were not included that would have magically made the process better. What I am talking about is, for example, mediators making an effort to visit places other than the capital when conducting consultations or trying to understand events that are taking place.

Or being more transparent about what is going on behind closed doors, and allowing more national media the opportunity to explain the story to South Sudanese, beyond stock-piece set interviews. Very few people in South Sudan really knew what was happening in the Addis talks. We did a poor job of explaining what we were doing. This was a 1990s-era mediation in a very different media and information world – even in South Sudan, despite the national media's limits.

For all these mistakes, I apologise to the people of South Sudan, that we did not do better; that I did not do better, push harder, speak louder, or be more creative.

This history is important because these sorts of problems persist through the signing of the peace agreement and its subsequent implementation, and non-implementation. I have consistently said that the agreement is troubled, and in many crucial respects, flawed. Without revisiting the important, but by now well-chronicled, long history of these flaws, let me instead offer two lesser-known points. First, to confront one of the most persistent ideas that has bedeviled this agreement, what I call the myth of imposition; and second, offer one argument as to what is different about this agreement, which is its strong emphasis on transitional justice, both restorative and retributive.

### **The myth of imposition**

Almost any discussion of this peace agreement begins with the caveat that the principal parties who signed it – the government of President Salva Kiir and the SPLM/A (In Opposition) – were reluctant to do so. That the agreement was imposed on them by the region and the international community, against their wishes, and if they had only had more time a better deal would have been reached. This is untrue. The idea that the agreement was imposed, wholesale on the parties, is a dangerous simplification. It is a myth, the myth of imposition.

To explain: a substantial amount of the text tabled to the parties in August 2015 was not originally written by foreign hands. It was the text, in many cases, verbatim, produced in the various committees and working groups of the negotiations. This is why, for example, Chapter IV, on economic and financial management, is a laundry list of projects and development priorities, with structural reforms scattered throughout the text – because it is what the parties wanted, and how they wrote it.

The same is true of Chapter III, humanitarian assistance and reconstruction, with the exception of some details concerning the special reconstruction fund, over which there were disputes. Now, you might ask, what about governance? What about security? Aren't those the core of the agreement? It is true that there were many more issues in these chapters in which the agreement's text did not represent the original position of any of the parties, but a middle position. There are many tricky compromises. Some were more practical and workable than others. But even on these matters, a great deal of the form and content is that of the parties, with some bridging compromises made along the way. The idea that the text represents some completely alien version of what the parties had been discussing is false.

## **Power sharing**

To return to power sharing: the reason this is a power sharing agreement is because the parties wanted power sharing. Not because IGAD, nor anyone else, thought power sharing was necessarily the only option. But because the parties wanted it, and without addressing the power structures of the country, they were going to continue the war. The argument had about power sharing was not the principle of it, but the numbers. Who got what and how far should it be spread?

Mediation, contrary to some opinion, is not about getting what the mediators want. Just because you think something is not the best, or not even a good idea, does not mean you can prevent it or insist on a preferred alternative.

## **The truth concerning transitional justice**

Which brings me to transitional justice. Even here, two of the three key pillars of Chapter V – the Commission for Truth, Reconciliation and Healing, and the Hybrid Court for South Sudan, were largely agreed by the negotiators. Of the issues in that chapter, it was compensation and reparations which the government negotiators rejected, and in that sense were forced to accept. Not reconciliation, not accountability.

Now, you might doubt what I have just said, but let me point out that the three mediating countries, Ethiopia, Kenya and Sudan, are, to be diplomatic, not known for their enthusiasm for internationalized forms of justice and accountability, nor were their foreign ministers nor generals serving as mediators. The push for justice and reconciliation to be part of the agreement came from the parties, it came from the South Sudanese.

Some people say that such processes should only happen organically, from within the society, and have critiqued the Addis arrangements for not originating in this way. Yes, there was international advice and expert contributions, but the need, the desire that there should be some accountability – perhaps not fully comprehensive nor fully perfect – was acknowledged, was recognized, was discussed repeatedly in the time we were in Addis, begrudgingly, perhaps by some, particularly on the side of the government, but accepted as a legitimate aim.

This is a crucially important divergence with past peace processes in South Sudan. This is the first comprehensive, national agreement – the first – to

have specific, detailed, meaningful provisions on reconciliation, healing, and accountability, which have historically not been included.

It was recognition, that, whatever problems existed in South Sudan, to change the trajectory of the future such matters could no longer be deferred. There was disagreement about the details, to be sure, but again, not about the principle. Check the government's reservations tabled at the signing in August 2015, and you will only find objections to compensation and reparations, not to the other elements of transitional justice. And this is why this agreement is different.

### **The way forward**

All this history does not mean that there are not opponents to all manner of aspects of the agreement, including the ones I've mentioned, or that the agreement is by itself sufficient to make a difference. One can easily question how much the government's negotiators, for example, were really competent in their tasks, or consulting and informing their leadership or thinking through the significance of issues, or whether they really thought anyone would hold them to their obligations. Or that there weren't second thoughts by some on certain provisions, as with the Hybrid Court, evidenced by the infamous and disputed New York Times op-ed published in the names of Salva Kiir and Riek Machar in June.

And that was all before the events of July, and subsequent months: the outbreak of fighting in Juba, the escalation of fighting in so many states elsewhere, the fracturing of the armed opposition, the departure of many of the independent civilian voices from the transitional government, the fact that nearly a quarter of the population is now displaced either internally or to other countries, while the rest faces economic collapse and/or starvation. I am not naïve – all, almost any, of these developments individually, risks making the historical considerations irrelevant.

Last week in Juba, my old boss, the chair of JMEC, the former president of Botswana, Festus Mogae, described the peace agreement as 'undoubtedly compromised,' but 'alive.' If it is alive, it is barely so, critically endangered.

Meanwhile, the government says it is working to implement the agreement. It is pragmatic for the government to say so, even more so since the SPLA-IO split, with Riek Machar having called for the current government to be dissolved and the transitional institutions suspended. Having hollowed out the agreement, the government will cling to the fiction it now helps provide:

Riek, Lam Akol, Pagan Amum, etc., are for war, but those who remain in Juba are for peace.

If nothing changes, the likely trajectory is that the government will continue to say it honours the agreement, for the life of the agreement and the so-called transitional government, a quite short two and a half years, with the term of that government now due ending in October 2018, while doing the absolute minimum to improve the situation, because, having consolidated power, there is no urgency felt to do anything else. Absent quantifiable and manageable expectations, continued pressure, and a renewed sense of urgency, there will be no path out of the abyss.

Oversight mechanisms are not useful if they are not honest about the situation, and if they do not look sufficiently forward and propose solutions. The international community's attention has focused on the deployment of a new 4,000 strong regional protection force, with a UN mandate. While there are legitimate reasons for the deployment of such a force, at the moment, this is largely a solution of soldiers without a strategy. And as long as there is no political strategy, there is little prospect that the force, should it ever fully deploy, will make much of a meaningful difference.

So what should be done? I will not pretend I have the answers, but let me end with three suggestions.

The first – which has been called for by many others, for some time now, – is an arms embargo. I am almost reluctant to raise this because the issue is so emotive, but for me the fact that there is still debate about an embargo is inexcusable. It is simple. The embargo is not primarily about punishment, nor is it about leverage, even if the South Sudanese see it in terms of the former, and some of the international community see it in terms of the latter. It is about prevention. Now, it is true that most deaths in South Sudan are caused by low-tech means, and that being killed by a rocket is the same as being killed by a bullet. But as fighting in Juba and near Wau this year showed, the war is becoming more sophisticated, more hi-tech.

Any measure that can reduce the prevalence of more sophisticated weapons in South Sudan is, inherently, in the interests of peace. However, much like the regional protection force, an arms embargo is not a solution to all or even a few of South Sudan's problems. It must, again, be one component of a broader political strategy. But there is no question that there is still the potential for a much bigger, broader conflict, and for that reason preventive measures are still urgently needed. I understand that Russia may veto any

resolution that comes forward at the Security Council, for reasons that are not necessarily to do with South Sudan. But Russia too has been a victim: two Russian helicopters operating for the United Nations have been shot down by armed forces in South Sudan, in recent years, in 2012 and 2014. I would urge the Russian government to not let global geopolitics get in the way of doing the right thing for the people of South Sudan.

At the same meeting of JMEC last week, the United States announced that it would closely focus on two indicators to test the seriousness of the parties' commitment. These are, one, the status of the ceasefire between the government and the armed opposition, and whether the government will accept deployment of the regional protection force, and two, the inclusivity of the government and whether it makes a credible effort to include, or re-include, independent and critical voices. I welcome advocating for such clear, comprehensible tests. But I would argue that these two matters alone are insufficient for South Sudan's crisis to end.

In addition, regional and international partners should hold the government to its rhetoric, focusing on three crucial elements: the alleviation of humanitarian suffering, economic restructuring and genuine progress towards reconciliation and formal and informal accountability, which as I have explained were largely accepted elements of the peace process. None of these objectives necessarily requires inclusivity, at least not immediately, which, I fear, is in the short term out of reach, because no one now declared in opposition has confidence in the government's sincerity. The only way that can change, is if the government demonstrates goodwill by and through its actions, not its rhetoric.

In addition to these three areas, the resolution of internal state boundaries, which the government has previously acknowledged it must address, in places like Malakal, is critical. The government knows all too well that it is condemning the country to decades of further instability if it does not address its internal boundaries fairly.

Finally, to be honest with ourselves: South Sudan has been a troubled place for years, and it will remain a troubled place for years. This is not about futile inevitability, but instead raises the question of a generational approach. For states in the region, where do they want to be in relation to South Sudan in twenty years' time? Do they imagine it still to be the poorest country in East Africa? Still producing massive refugee populations? Is merely containing today's crisis enough?

For the broader international community, the questions are not dissimilar. A generation of humanitarian and development assistance – tens of billions – has been spent, and the future looks equally bleak, as another generation is on the cusp of being lost. Regional instability is practically assured. What kind of bilateral and multilateral relationships can be envisaged, and worked towards, not only now but in the future? It may seem perverse to talk about a long-term future when implementation of the peace process practically crashed on take-off, but being short-sighted is not going to help either.

And finally, for South Sudanese, the most important masters of their destinies: a better South Sudan is also a generational effort. Local, inter-communal peace is worth pursuing, even if there is chaos elsewhere. Notwithstanding what I've said about the agreement, neither reconciliation, nor justice, need be only top-down processes. In fact, they cannot only be top-down processes. Thinking in terms beyond one or two years may be difficult, but it is also necessary. Even if amidst such destruction and despair, where the future seems most distant, it is necessary.

None of this is easy. And it is not a solo effort, nor a linear effort, nor an obvious one.

But it must be attempted.

Thank you.