



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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WEEKLY REVIEW

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The Release of South Sudan's Political Detainees and the Prospects for Peace

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Introduction

After several months in detention, the government of South Sudan has decided to stay the charges of treason that were brought against four prominent South Sudanese politicians in relation to the government's allegation that they had been part of a plot to overthrow the government of President Salva Kiir Mayardit. A total of eleven politicians were accused and arrested in December 2013. Of these, 7 were released on bail late January, with the remaining 4 set free on April 27th, 2014, a hundred and forty five days since they were arrested in December 2013. Some members of the public have called it a pardon while others have termed it dropping of charges. This is misleading because staying of a case is totally different from either a pardon or dropping of charges. So on what legal basis are they released before the trial could finish? What does it mean to stay a case? The government bases the release of the former detainees on section 25 of South Sudan's Code of Criminal Procedure Act, 2008 which states: "The minister (of justice) may after completion of an investigation and at any stage of inquiry and before the finding in any trial, stay the criminal proceedings against any accused on reasonable grounds."

On announcing the stay of the charges, the Minister of Justice Paulino Wanawilla cited public interest and the need for peace and reconciliation in the country as the reasonable grounds for releasing these political detainees. Staying of a case simply means suspending it, according to legal dictionary. Legally, a suspended case may be recalled for trial as the president suggested in his speech following the release of the detainees. However, this does not mean that the released politicians would definitely be brought back to trial. It is just what the action implies.

In announcing their release, President Kiir stated that his decision was brought on by two realities, namely the international pressure and his own reasoning that their release might increase the chances of a peaceful settlement for the on-going conflict, which pits his government and the rebel movement led by the ousted Vice President Riek Machar Teny. "Even if we were to find them guilty and we hang them, it would not serve our quest for

peace...this way is better,” the President declared. The release of detainees has been one of the key demands made by the rebel movement as crucial to a peaceful dialogue.

The Sudd Institute joins the rest of South Sudanese to celebrate this decision, as it was only just and fair that these gentlemen were freed. The long incarceration of Pagan Amum Okiech, former Secretary General of the ruling Sudan People’s Liberation Army (SPLM), Oyai Deng Ajak, former Minister for National Security, Majak Agoot Atem, former Deputy Minister of Defense, and Ezekiel Lul Gatuath, former head of the South Sudan Liaison Office in the United States, had weighed heavily on the conscience of the nation. The legality of their detention, the long period they had spent in jail before their trial begun and procedures followed, were questionable by standards of the laws of South Sudan and the international statutes. What is even more commendable is that the justice system has shown its ability to be transparent and independent, indeed a development we must all applaud and encourage as a trend that our country could promote.

We congratulate the government for its efforts to be seen to do justice. There are innumerable cases across Africa in which the governments have executed people for fabricated coups, and the fact that South Sudan’s government did not go down this road is reassuring for many citizens, that our country has broken that old African tradition, and that it has spared the lives of these leaders who had contributed so immensely to the country’s freedom struggle.

The concerted and consistent international pressure, which has been mounting ever since the conflict erupted, both for peace and justice, is unquestionably linked to the decision of release. But that the government’s decision should come at this particular time is probably more closely related to this week’s upcoming visit by the United States Secretary of State, John Kerry and the United Nation’s Commissioner for Human Rights, Navi Pillay. Though these high level visits are mostly spurred by the recent reports of mass murder in Unity State by Riek Machar’s rebel movement and the attacks on IDPs inside a UN protected zone in Bor by armed local youth, both of which have raised the specter of genocide, the government saw the detentions as an unnecessary source of confrontation in this climate of global pressures. It can be an easy win in favor of smoothing relations with the US and the UN, which had been quite rocky, to put it mildly, over the period of the conflict.

As well, the government has been losing traction in attempts to sustain the burden of proving an act of coup plot. This proved especially cumbersome in the face of key witnesses either withdrawing to appear before the court or declaring the absence of a coup. As the court proceeding increasingly depressed the government’s charges, this new decision certainly comes at the right time, both politically and in the desire to restore peace in the country. Had the trial continued to conclude with a judicial verdict that sets the accused free, it would have been politically clouding for the government, considering the consequences that these charges have had on the country in the last few months.

Reactions

Despite the fact this is a good gesture for peace and greater public interest, people are seeing it differently. The skeptics, including the rebel leader, Riek Machar, in an interview with the BBC Focus on Africa, alleged that the government released the detainees because the charges were indeed false and these detainees had been innocent. Others believe that the government did not have a strong case in the court and that the court was going to dismiss the case. The skeptics argue that in order for the government to save face and avoid a possible embarrassment, it instead decided to halt the case and perhaps most likely to drop the charges and offer amnesty.

Others contend that the government is genuinely trying to bring peace to the country and so the release of the detainees is a gesture of goodwill from the President and he should be appreciated for taking such a courageous step. The supporters of the President claim that many people had initially doubted the ability of the high court to fairly try the cases. Many supporters of the detainees and even the detainees themselves had mocked the court, with some calling it a kangaroo chamber. As the case progressed, the court acted independently and the government had respected its integrity and independence. All this goes to show that the government is probably committed to the rule of law. The government supporters claim that, although the case of the government appeared weakened, there was enough evidence to convict the accused. Hence, the decision to release the accused politicians is out of goodwill and in respect of the international calls. They call upon the international community to bring pressure to bear on the rebels to reciprocate this gesture in order to build confidence between the two parties to commit themselves to peaceful resolution of the conflict.

There is, however, a third group that is displeased with the release of these political figures. The group argues that these politicians should not have been released before the court verdict. This is because the public wants to know who started this conflict and who should be held to account for the atrocities that followed the violence, they argue. Others wish the process had gone all the way to the end both to show the maturity of the courts and the government's commitment to the constitution and the rule of law. Still, others, who are disappointed by the decision, feel that the move perpetuates the impunity that has become the signature policy of this government. They worry that even those with blood in their hands will be pardoned and the cycle of impunity will viciously continue unabated.

More significantly, the decision is subject to varied interpretations, so it has resurrected an ongoing debate, which is, whether there was coup in the first place. For the freed detainees, it is certainly a decision that has venerated them and upheld their innocence. For the rebels, it is a decision that proved their point that the coup story was cooked and the real culprit for the violence is the President and his confidants. For the President and his supporters, the decision goes to show that he is not a villain, but a peacemaker and a forgiver, a man who stands to unite the people of South Sudan once again as he did during the CPA through part of independence. For the international community, that has had so little to celebrate in light of this war, it is a diplomatic win. Their continued pressure on the government has produced results, although a little too late.

Although South Sudanese can debate all they want the question of coup or no coup, unfortunately, that does not end the conflict. The question now is whether or not these four will exercise their apparent weight in South Sudanese politics to push for peace, if they still have the influence over the various leaders who are now locked into the vicious violence that has engulfed the country. Notably, the four were not the only ones detained and released in the name of peace.

International Pressure and Implications

The on-going conflict was initially sparked by accusations that the Vice President, together with a group of other politicians that had been sacked back in July 2013 when the President relieved his entire cabinet, had attempted to stage a coup against President Kiir. Following its alleged and foiled coup attempt, the government rounded up eleven politicians and detaining them on charges that ranged from being accomplices in the coup plot to the more serious charges of treason. Three others, Riek Machar Teny, Taban Deng Gai and Alfred Lado Gore, escaped and are now the ones leading the rebellion. They remain wanted by South Sudan's justice system.

When the Inter-Governmental Agency on Development (IGAD), a regional grouping of East African countries, started to intervene to mediate a peace process, the rebels made a precondition that their comrades in detention be released immediately in order to join the peace talks. Riek Machar had hoped that they would join his rebellion, and IGAD leaders, namely Kenya's Uhuru Kenyatta and Ethiopia's Hailemariam Desalegn, descended on Juba in order to pressure the government to release the detainees so as to give peace a chance.

More countries, including the United States, Norway, Britain and the Netherlands, joined the pressure group of countries, asserting that the continued detention of these politicians was the immediate hindrance to peace. The government budged and let go of seven out of the eleven and handed them into the custody of President Kenyatta. But on arrival in Kenya, they held a press conference in which they surprised everyone with their declaration that they were not joining the rebellion, that they denounce violence and that they were going to work for peace. There was a huge sigh of relief among many citizens and a great deal of disappointment among the rebel leaders. The former detainees then traveled to Addis Ababa, the venue of the IGAD-led peace talks.

Unfortunately, their role in the peace process became increasingly unclear as time went on. The foreign powers that had held the peace talks nearly hostage to the release of detainees have not been able to demonstrate how the detention was linked to the absence of peace. The push for their release should have focused on the illegality of their detention under South Sudan's laws, not as a condition for peace talks the way the rebel movement was demanding it. Many South Sudanese have said that the Group of Seven, as they have become known, had no clear role in the peace process other than as ordinary resource persons similar to the civil society activists. But the group of seven has set itself up as a third party in the negotiations, and this is increasingly seen as an attempt on their part to write themselves into whatever the peace process might produce. Now more and

more South Sudanese are beginning to wonder whether the insistence by world leaders to impose these seven onto the peace process is driven by other considerations, besides peace for the people of South Sudan.

Conclusion

In conclusion, as the international community's persistence on linking the release to the success of the peace process has not borne fruit in the case of the seven former detainees, there is no clear reason that freeing the last four gives the people of South Sudan any hope of immediate peace. Their freedom, as it finally came, has been widely celebrated for reasons more to do with their rights, justice and the shaky case that the government had against them, rather than for any illusions that these men will change the dynamics of the conflict toward settlement. President Kiir underscored this glum prospect when he said that "I hope these four will not do what the previous seven did, when they traveled to Addis Ababa and set up a third front, which has now caused more delays in the negotiations." Of course, it will be their right as free citizens to choose what path they take, but not all South Sudanese are holding their breath about the ability of these four to be the panacea for the complex military, political, ethnic and humanitarian context in which peace is being sought.

We contend that the release of the political detainees will not end the violence per se, but it created a positive atmosphere on which confidence can be built. The government should take a step further; perhaps, the President should meet one-on-one with the former detainees and begin the process of reconciliation himself with them and create a reform agenda both within the party and the wider government. We believe if such confidence building measures are taken, the eleven former detainees may collaborate with the government to convince those in arms to seek political reforms through peaceful means. Reform agenda coming from the government in collaboration with the eleven former detainees will save the government from being spoon-fed by the rebels on reforms and allow the burden to fall on those in the rebellion to respond, and this may sway international opinion favorably towards the government's efforts. This may also give the IGAD mediators and the international community the leverage to bring pressure to bear on the rebels to drop their demand and stated objective of overthrowing an elected government. It demonstrates that the government is genuinely concerned about the lives of its citizens.

We believe that the act of releasing the eleven politicians demonstrates President Kiir's usual speed to offer the olive branch. Having taken this step, we appeal to him and to all other leaders, especially on the rebel side, to do more of this kind of peace gestures. To make concessions is a sign of foresight, statesmanship and a desire to end the suffering of South Sudanese, not weakness. We call upon President Kiir to go the extra mile and offer the rebels such concessions as well, perhaps even a public apology for the killing that has taken place on both sides under his watch, and promise to do better. This would leave the ball in the rebel movement's court and assure him a place in history as the man who saved the country from total ruin.

We also believe that the government should urgently embark on serious diplomatic efforts and unveil a plan to end the crisis. It is no longer strategic for the government negotiators to wait and be spoon-fed by the rebels and the mediators. It must have a plan of its own on how to end the crisis. This plan should include regional, international and national initiatives. The Inter governmental Authority on Development (IGAD) and the Africa Union (AU) have some leverage over Juba because of their economic investments. They should use it. Also, South Africa has sent envoys and the AU dispatched a Commission of Enquiry to Juba. None of these efforts have shown positive changes on the ground as civilians in large numbers continue to be killed on a daily basis.

Regional efforts need to focus more on a sustainable ceasefire that would allow access to humanitarian interventions and broad-based (participatory) national consultations on a lasting constitutional order, rather than on bilateral agreements between President Kiir and Dr. Teny. That liberal ideology (of the absence of war is equal to peace) failed with Khartoum and Juba for the Comprehensive Peace Agreement (CPA), and will not work now. South Sudan needs to urgently address unresolved national political issues that have lingered since the 1970's. Regional individuals and institutions can facilitate the dialogue in South Sudan. Armed groups alone cannot maintain the peace. The peoples of South Sudan must be meaningfully involved, at all levels, in finding a solution to the problem and in maintaining the peace. Without solutions to the outstanding problems, South Sudan, on its own, may find it very difficult to resolve its main conflict within the ruling SPLM and elsewhere.

The international (friends of South Sudan) should use their leverage in more effective ways. Although there are serious problems of democratizing dominant political parties and movements after civil wars, the international bodies missed the opportunity to advance pluralism in South Sudan by solely supporting the SPLM initiatives. As the SPLM seems to be fragmented the institutions may assist the nation by supporting the emergence of multiparty democratic spaces, voices and structures.

National efforts that prioritize reconciliation, principled power sharing and equitable distribution of social services (peace dividends) can lessen ethnic tensions. "Ethnic conflict is a reflection of elite insecurities rather than widespread animosities among communities. Ethnic or religious mobilization therefore, hides class and individualistic interests that are divorced from the broad objectives of nation building and reconstruction." South Sudan, at this time, lacks national cohesiveness that could be translated into national institutions. This must be recognized and deliberately worked on by the political leadership. Very importantly, South Sudan's leaders need to get rid of the dangerous "exile mentality" which prevents them from investing their energies at home and embracing wholesome national ties to address years of underdevelopment and to design the way forward. "Regional and international persons and institutions can help, but cannot determine the pace and shape of measures to work on a constitution, demilitarized politics, and diversify the economy". But reintegrating skilled South Sudanese from abroad requires government's collaboration.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

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