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RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

P. O. Box 34, Juba, South Sudan • Tel: +211 (0)956 305 780
Email: thesudd.institute@gmail.com • www.suddinstitute.org

POLICY BRIEF

December 4, 2018

Fixing Governance is Key to Stability in South Sudan

Abraham A. Awolich

Summary

Many analysts and observers of politics in South Sudan point to weak governance as the malefactor for the political crises and lack of progress on socioeconomic development in the country. This policy brief, therefore, identifies major governance challenges in South Sudan and assesses whether the recently signed R-ARCSS addresses them. Among key governance challenges is lack of strategic direction, that is, no vision to rally the people around and without this, the country has difficulty in forging a national identity. Second, there is lack of political will to move the country forward. Third, there is impunity and willful disregard for the rule of law. Fourth, power is concentrated in the executive and the presidency, with the legislature and the judiciary subordinated; vertically, power is concentrated in Juba to the disadvantage of the periphery. Fifth, the government has had very poor performance record when it comes to major services such as health, education, food security, water and sanitation, energy and critical infrastructure more generally. Lastly, although not the least, rampant corruption has eroded public trust in government and stunted development in the country.

These drawbacks have combined to create a highly fragile political and security situation in the country, resulting in the much-dreaded war, massive displacement, restrained fundamental freedoms, famine and horrific human rights and humanitarian situations in the country. The revitalized Peace Agreement attempts to address most of these challenges¹.

1. Introduction

The nascent Republic of South Sudan is reeling from a multidimensional crisis that has had devastating effect on the formation of the state and forging of a new nation. While many factors have contributed to the crisis, poor governance

¹This policy brief was produced with the support of the Royal Norwegian Ministry of Foreign Affairs through the Royal Norwegian Embassy in Juba, South Sudan.

partly explains much of the crisis². Until governance is fixed, many citizens, experts and observers alike claim, South Sudan is unlikely to escape instability trap. This policy brief, therefore, identifies major challenges of governance in South Sudan and assesses whether the Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCSS) optimally caters to these challenges. The assumption is that knowledge about existing gaps on governance would lead to corrective measures being taken against prevailing governance weaknesses.

The paper starts with the definition of governance to prepare the readers. In the second section the paper looks at South Sudan's experience with governance from 2005 to present. This section essentially looks at how South Sudan has been governed over the last 13 years by reviewing various international, yet related assessments on governance. The brief then looks at the R-ARCSS's governance provisions to assess whether the issues identified have been addressed adequately. The paper concludes with actionable recommendations intended as remedial fixes to any inadequacies in the Agreement to deliver good governance.

2. Defining Governance

Both academic and applied research literature carry many definitions on governance which revolve around three dimensions: authority, decision-making and accountability. Governance determines who has power, who makes decisions, how other players make their voice heard and how accountability is rendered³. At the very basic level, the word "government" and "governance" are used interchangeably to describe the exercise of authority and decision-making in any country, an organization or institution (Raadschelders, 2008). However, current scholarship distinctly separates the two. Government is the entity that exercises authority while governance is about how society or groups within it, organize to make decisions and how to arrive at the rules, structures, and systems that bound and limit the exercise of that authority and delineate rights and obligations of actors.

Authority is simply defined as the legitimate power. Power on the other hand is the ability to sway the conduct of others and authority is the right to do so (Raadschelders, 2008). Weber distinguishes among three kinds of authority, according to their source of legitimacy; traditional authority originates from history, charismatic authority stems from personality, and legal-authority is grounded in a set of impersonal rules (Weber, 1947). When people speak of democratic or good governance, they are referring to a system based on legal-authority. Weber conceptualized modern state as characterized by a body of laws, bureaucracy, compulsory jurisdiction over territory, and the monopoly over the legitimate use of force (Raadschelders, 2008, p. 34).

Many international development organizations such as the World Bank and UNDP have been the driving force behind the concept of good governance. For example, the

² See the African Union Commission of Inquiry for South Sudan Final Report 2015

³ <https://iog.ca/what-is-governance/>

World Bank defines governance as ‘the exercise of political power to manage a nation’s affairs (World Bank, 1992). The UNDP departed slightly from the state centric definition of governance in its 2004 Conceptual Framework on Good Governance, defining governance as “complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences” (Maguire, 2004).

Good governance is the degree to which the country’s institutions and processes are transparent, accountable to the people and allow them to participate in decisions that affect their lives (Maguire, 2004). Good governance addresses the allocation and management of resources to respond to collective problems; it is characterized by the principles of participation, transparency, accountability, rule of law, effectiveness, equity and strategic vision (Maguire, 2004).

In summarizing the key concepts of good governance, five key attributes emerge (Peters B. G., 2010): First, good governance starts with a strategic vision, which guides the society’s actions. Strategic vision requires the integration of goals across all levels of the systems. Second, good governance requires priority setting and coordination because there are many competing actors with competing goals, so effective governance, therefore, requires establishing some priorities and coordinating the actions taken by all actors according to those priorities. In setting these priorities, the question of voice and legitimacy becomes important, that is, both men and women, and indeed all sectors of the society, have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intentions and interests.

Third, good governance is all about performance, which is that all public institutions and processes have the broader aim to serve all stakeholders and to meet their needs. This also means that the public processes and institutions produce results that meet the needs of citizens while making the best use of available resources. Fourth, there is a need for a monitoring and accountability mechanism where individuals and institutions involved in governance learn from their actions so as to adjust or reform (Peters G. , 2010). Lastly, good governance is largely concerned with fairness, meaning, all groups in each country have equal opportunity to improve or maintain their well- being. It also means that the legal frameworks should be fair and should be enforced impartially.

These five attributes of good governance suggest that there has to be some way of measuring progress towards the strategic vision and the priorities being implemented (Besançon, 2003). Measurements are desired because they set standards for improvement and achievement as well as indicate where reforms are most needed (Besançon, 2003). Doing this is the only pathway to fixing governance in each country. There are a number of institutions around the world that measure governance comparatively.

What they measure tend to be the capacity of the state⁴: First, the capacity of the state’s bureaucracy and administration is measured. The quality of state bureaucracy and

⁴ See Besley and Persson 2009 and 2011

administration is very important because it has the primary responsibility to design and to implement public policies. Second, state's legal capacity is measured, which is the capability of the state to enforce legal decisions and rights and the ability to provide security and protection to all citizens. Third, a state must also have infrastructural capacity, which simply refers to the territorial reach of the state and the extent to which it can exercise control over its territory. Fourth, state must have strong fiscal capacity, that is the ability to raise and manage revenues from taxes and other sources prudently. Lastly, the state must have military capacity, that is the ability of the state to guard against external aggression and ensure internal harmony. With this summary we can now review how South Sudan did over the last thirteen years in terms of governance.

3. South Sudan's Experience with Governance 2005-Present

As indicated previously, this section reviews South Sudan's experience with governance from 2005 to the present. For the purposes of this analysis, South Sudan's short history can be divided into three phases. Phase I was the six years of interim period from 9th July 2005 to 8th July 2011. Phase II is the short period after independence from 9th July 2011 to 14th December 2013. The last period is the crises period from 15th December 2013 to the present. In reviewing South Sudan's performance on governance, we look at the five broad attributes of good governance as discussed: 1) strategic vision, 2) legitimacy and voice, 3) performance, 4) accountability, and 5) Fairness and we look at how others have assessed or have reported on South Sudan.

3.1 Strategic Vision

During the interim period (**phase I**), the SPLM had an overarching goal of restoring peace through development and to "leap-frog into the 21st Century global economy" (SPLM Economic Commission, August 2004). The end goal was for the SPLM to bring about fundamental and democratic transformation of the Sudan by restructuring power on a new basis that allows for the establishment of good governance. After the death of Dr. Garang however, what became urgent and the priority of the Government of Southern Sudan (GoSS), was to ensure the right of the people of South Sudan to self-determination through timely conduct of the referendum (SPLM, 2008). Specifically, the government that was envisioned in the Interim Constitution of Southern Sudan was to lay the foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law (Ministry of Legal Affairs and Constitutional Development, 2005).

Many efforts by the SPLM to engage other armed groups through the South-Sudan dialogue led to the 2006 Juba Declaration⁵ and subsequent integration of militia groups

⁵ Visit

https://peacemaker.un.org/sites/peacemaker.un.org/files/SD_060108_JubaDeclarationOnUnityAndIntegration.pdf

into the SPLA, in what became popularly known as the “big tent”⁶ policy, speak to the commitment of the GoSS to laying a strong foundation for national unity. When the results of Southern Sudan referendum were announced on 30th January 2011⁷, the fruits of these efforts were realized, and the unity of the people was confirmed. By the time South Sudan declared its independence on 9th January 2011, the people of South Sudan were strongly united and there was a great sense of optimism⁸.

When South Sudan moved to **phase II** of its transition into statehood, things changed. During the period between 9th July 2011 and 14th December 2013, many South Sudan started to be disillusioned about the direction of the country. The country was experiencing widespread communal violence, there were active rebellions following the 2010 elections and tensions with the erstwhile enemy in the Sudan were rising yet again. These tensions forced South Sudan to shut down its only source of revenue, oil, in January 2012, just five months after independence⁹. The oil shut down has had devastating effect for South Sudan and many experts have claimed it is responsible for the current conflict¹⁰.

These events heightened state fragility in the country and there was some feeling of uncertainty. For example, when IRI conducted public opinion surveys in in September 2011, asking citizens their thoughts on the direction of the country, 56% of the respondents said the country was heading in the right direction (IRI-South Sudan, April 24 to May 22, 2013). When the same survey was repeated in May 2013, only 47% said the country was heading in a good direction. When citizens were asked why they thought the country was going in a wrong direction, many citizens cited growing insecurity and crimes, food shortage, and lack of infrastructure, among others, as the main reasons (IRI-South Sudan, April 24 to May 22, 2013).

Similarly, the Fund for Peace’s Fragile State Index (FSI) ranked South Sudan since 2011 in the top three fragile countries¹¹. Besides all this, corruption in government became a major concern among citizens. Consequently, Transparency International’s Corruption Perception Index (CPI)¹² has ranked South Sudan at the bottom of the table since the country started ranking in 2013.

Phase III in South Sudan’s short history is characterized by complete breakdown of national unity, upsurge in violence and great insecurity, massive displacement and

⁶https://suddinstitute.org/assets/Publications/572b7eb5a5988_TheQuestionOfBigGovernmentAndFinancialViability_Full.pdf

⁷ Read more on <https://www.bbc.com/news/world-africa-12317927>

⁸ Details of this can be found in

<https://www.nytimes.com/2011/07/10/world/africa/10sudan.html>

⁹ <https://www.nytimes.com/2012/01/24/world/africa/south-sudan-shuts-off-oil-in-dispute-with-sudan.html>

¹⁰ See Alex De Waal, Kleptocracy gone Bankrupt

¹¹ See the Fund for Peace website <http://fundforpeace.org/fsi/category/publications-and-downloads/>

¹² Visit CPI website <https://www.transparency.org/research/cpi/overview>

increasing claims of illegitimacy of the government. In 2018 IIAG ranking¹³, South Sudan was ranked 53rd country out of 54 African countries assessed, scoring abysmal 19.3 out of 100 possible scores overall and scoring only 7.3 out of possible 100 points on personal safety. In this phase of history, South Sudan completely lost strategic direction. For example, a report produced by Tetra Tech ARD in 2013 found that South Sudan was struggling to forge a national identity and warned that if the sub-national identities remain strong enough to challenge the national identity, and therefore the national government, those challenges and struggles will threaten not only the viability of the state, but also the viability of democratic governance (Hyman, 2013). This warning was issued in 2012 evidently, the events of December 2013 to the present speak truth to this.

3.2 Legitimacy and Voice

In both phase I and II of South Sudan history, the government and all institutions of governance enjoyed a lot of legitimacy. This is because the ruling party, the SPLM garnered broad base support through its liberation credentials and its efforts to ensure the conduct of the referendum as well as its declaration of independence meant that all citizens had their vote. For example, when citizens were asked to rate President Kiir in September 2011 and 83% of the respondents rated him favorably (IRI-South Sudan, April 24 to May 22, 2013). All sectors of society in South Sudan felt included after independence, although few groups had perceptions of being marginalized. For example, when IRI asked citizens in 2013 whether they were better off being in an independent, country, majority of the respondents (74%) said they were better off (IRI-South Sudan, April 24 to May 22, 2013).

Towards the end of phase II and the beginning of phase III, issues began to arise. The apparent mismanagement of politics within the SPLM surfaced and this began to sow seeds of discord both within the political class and the general public. When the President dissolved the government on 23rd July 2013¹⁴, the legitimacy of the government, issues of inclusion and issues of voice became victims of the situation. This was the beginning of the political contest and where the politicians began to expose the level of corruption that was being suspected. By the time South Sudan reached phase III in 2014, legitimacy and voice were all doubt in South Sudan. The political space as well as fundamental freedoms shrunk significantly. The war conditions in the country increasingly being fought along ethnic lines were the last straw¹⁵.

3.3 Performance of Government

For most South Sudanese, the greatest challenge and the most important post-independence deficiency is poor governance (Hyman, 2013). Effective governance at the national level, according to Sager and Gastil (2006), refers to processes, mechanisms and

¹³ Find out more on Mo Ibrahim Foundation website <http://mo.ibrahim.foundation/>

¹⁴ Read more on the Guardian <https://www.theguardian.com/world/2013/jul/24/south-sudan-salva-kiir-sacks-cabinet>

¹⁵ <https://www.bbc.com/news/world-africa-25427965>

policies that equitably deliver essential public goods and services that citizens have come to expect. Government effectiveness is judged by citizens not just on procedural grounds but on whether it actually works (Hyman, 2013). A government that works effectively is one that delivers essential public goods, such as public safety; law and order; reasonable justice; basic infrastructure; basic social services such as education, water, and health care; and the instruments and policies for economic growth and some measure of prosperity (Hyman, 2013).

The African Union Commission of Inquiry for South Sudan (AUCISS) established in 2014 that the crisis in South Sudan, has roots in, and is indeed a crisis of weak governance, weak leadership and weak institutions, conflation of personal, ethnic and national interests and the problematic nature of the transition instituted by the CPA (AUCISS, 15 October 2014). The government did not initiate any major developmental projects either before or after independence. There is only one tarmac road between Juba and Nimule, built with funding from the United States. Juba, the seat of government is still powered by privately own individual diesel generators, there is no running water in all cities and towns. The only existing major investment in the country is the oil infrastructure, which was built by Sudan government prior to the CPA time. Even this critical infrastructure is dilapidating slowly without proper maintenance or renovation.

The IRI 2013 survey shows that citizens were not satisfied with government performance in a number of critical service areas. For example, only 41% of citizens were satisfied with the way the government was handling communal violence and insecurity (IRI-South Sudan, April 24 to May 22, 2013). The same survey shows only 32% were happy with education, 24% with the roads, and 21% were satisfied with health services while only 16% and 14% approved government performance in handling food security and corruption respectively. Even the signature development program of the government, Constituency Development Fund (CDF), was never heard of by 70% of the respondents (IRI-South Sudan, April 24 to May 22, 2013).

Although the government got a lot of support from the international community and it received a lot of money from oil proceeds, it has little to show for this. Schooling conditions remain appalling in the country and the health systems and infrastructure is grossly inadequate. The reach of government is unjustifiably limited, insignificant or non-existent in many places. Failing to invest in critical services is a recipe for failure.

This explains why governance in South Sudan was found to have failed spectacularly, and the main hindrance to effective governance was the lack of political will (Hyman, 2013). Other reasons leading to ineffective governance, according to the report include limited government capacity in human, financial, institutional, systemic, and technical capacity to deliver its mandate. The second part of the problem is nepotism and patronage. When the state picks and chooses who gets the benefits and who doesn't on the basis of blood relationship, friendship, or loyalty, it is likely to be very inefficient in doing its job (Hyman, 2013). That is, individual who have the right sets of skills, talents and leadership abilities will not get the jobs to run the state.

The third part of the problem is the growing economic, political, and social gap between the power elite and the rest of the country. The fourth is the imbalance in the economy, specifically the disproportionate costs of a bloated military budget vis-à-vis social service sectors. The fifth problem is the amelioration provided by donors who have delivered food and medicines throughout two or three decades of struggle, and continue to do so, taking over the responsibility of government (Hyman, 2013).

It is on the basis of these weaknesses that the AUCISS recommends that irrespective of the political settlement that is reached, the post-conflict dispensation in South Sudan must include renewal of existing institutions and the construction of new ones to better respond to the imperatives of effective, inclusive, accountable and democratic governance (AUCISS, 15 October 2014).

3.4 Oversight and Accountability

Many reports and commentaries talk about prevailing impunity in South Sudan as underlying the political crises in the country¹⁶. The rules of the democratic game are weak at best or at worst absent in South Sudan. The Tetra Tech ARD report had this to say, “More challenging by far to a successful democratic transition in South Sudan is the weakness, almost absence, of consensus about the rules of the democratic political game” (Hyman, 2013, p. 11). The rules of the democratic game are mainly a subset of the legal system, which is also weak (Hyman, 2013). The report points to the fact that there is both the lack of consensus about the rules, and the willful disregard of democratic practice by elements of the power elite who are clearly familiar with how democracy functions in other countries but choose not to be bound by such rules (Hyman, 2013). The implosion of the SPLM 2015 and the ensuing struggle for power and degeneration into the civil war, speak to the unclarity of the rules as well as the complete disregard for these rules.

During phase II of South Sudan transition, a number of issues surfaced pointing to a shrinking competitive democratic space in South Sudan. Among these was the apparent growing concentration of power and resources in the hands of a power elite in the country. Power concentration is “the rise of governmental, military, and party elites that are increasingly powerful and able to act with little meaningful accountability” (Hyman, 2013, p. 4). This power concentration is manifested in four areas: dominance of central government over the states, indeed over the rest of South Sudan (center versus periphery); the executive branch of government vis-à-vis the legislative and judicial branches; the SPLM vis-à-vis other political parties; and the power elite within the top echelons of the SPLM vis-à-vis rank-and-file of the SPLM members (Hyman, 2013).

Two structural realities have created the concentration of power and resources in South Sudan (Hyman, 2013). First, South Sudan emerged from its long war of liberation as essentially a one-party state led by a liberation movement rather than a true political party. The SPLM is not a Leninist party with near-absolute party discipline; rather it is

¹⁶ See Amnesty International Reports, reports of human rights watch, UNMISS reports

‘lumpy’ with many power centers within the party, all of which revolve around individuals, and in some cases, communal loyalties, not so much around competing visions or ideologies (Hyman, 2013).

The second and the more consequential factor enabling the concentration of power in South Sudan is oil, reminding us of a well-established, strong correlation between rentier states and political authoritarianism (Ross, 2012). The causal argument is on the balance of resources between state and society; that is, oil revenues give the state significant resources vis-à-vis its own society, allowing the state to remake key institutions of society (Hyman, 2013). Having access to oil revenues, states no longer need their own societies as a source of revenues to run the institutions of power and governance, and thus societies lose their key leverage to force political openness on the state (Hyman, 2013). In this situation, any political actor will tend to tone down criticism of the state in the hope of retaining patronage payments from the state, hence the collapse of accountability mechanisms.

Another aspect enabling power concentration is the SPLM’s ties with the SPLA and its conflation with the government. It has been difficult to disentangle the power elite with overlapping military (SPLA), political (SPLM), and governmental identity (Hyman, 2013). The interconnected political, military, government, and economic structures and personnel are really the defining character of South Sudan’s political economy (Hyman, 2013).

Developing an accountable government requires also the present of non-state actors that demand public officials to account. These actors include a vibrant independent media, active and robust civil society and academia, trade unions, and a thriving private sector and middle class. If these sectors were functioning in full capacity, they could pose a substitute for electoral competition or a material threat on the closing political space and the growing concentration of power (Hyman, 2013). The independent media is very frail and in general, civil society is weak, in part because of financial constraints, but also because the power elite discourages alternative, competing voices and organizational mobilization outside the SPLM (Hyman, 2013).

While the situation of civil society and media was bad in 2012 and 2013, it is nearly collapsed now. The World Press Freedom Index ranked 180 countries from 1 being the best rank to number 180 being the worst performing country in press freedom. The Index started ranking South Sudan from 2013 to 2018. South Sudan has consistently been declining in ranking. For example, in 2014, South Sudan was ranked 119/180. By 2016 and 2017 it dropped to 140 and 145/180 respectively.

All this goes to show that South Sudan is lacking in all aspects of an open, transparent and accountable government. With power concentrated in the executive, the legislature cannot be counted on to check the excessive powers of the executive. The judiciary on its part has both inherent weaknesses on top of the fact that it is subordinated also to the executive. Other non-state accountability institutions are insignificant in terms of their relative power to extract any concessions out of government. There have been so many instances of constitutional violations, but no one either in the states or local governments

or private sector has dared to take the government to court for apparent violations. State governors can be removed without a cause and no complain would be raised though this is an apparent violation of the constitution.

The country has slowly drifted towards authoritarianism with no evidence of resistance. Accountability is therefore pronounced dead in South Sudan and with it goes good and democratic governance.

4. Fixing Governance in South Sudan through R-ARCSS

In the backdrop of the governance challenges we have just discussed, this section looks at the extent to which the Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCSS) has addressed these limitations. To realize this, we must look at how the Agreement addresses the five features of good governance namely as discussed in the literature: strategic vision, legitimacy and voice, performance, accountability and fairness.

As a start, we look at whether the Agreement provided for any new strategic vision for the country. In the R-ARCSS's preamble, the parties simply stated that they are recommitted to laying the foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law (IGAD, 12 September 2018). This is simply a reiteration of what is contained in the Transitional Constitution of South Sudan 2011 as amended in 2015 (Ministry of Justice, 2011). It is assumed therefore that the parties to the R-ARCSS did not draw any new vision to guide the country, they simply recommitted to a vision which they have failed so many times to implement. Despite the lack of a new vision, there are provisions in the R-ARCSS that set out mandates for the Revitalized Transitional Government of National Unity (RTGoNU).

For example, Article 1.2 (1—15) of the R-ARCSS mandates the RTGoNU to implement this Agreement and restore permanent and sustainable peace, security and stability in the country. The government is given authority to undertake healing and reconciliation efforts, and to carryout security, financial, and judicial reforms. These provisions speak to the vision aimed at creating an enabling conditions for a united, peaceful and prosperous society in South Sudan. When and if carried out diligently, this could guide the country during the envisioned transitionary period and hopefully South Sudan can finally exit moving from one transition to another as has been the experience over the last thirteen years.

Regarding the question of legitimacy, consensus and voice, Article 1.3.1 sufficiently addresses the composition of the RTGoNU comprising of five political groupings representing nearly all South Sudanese political communities. Should the Agreement be implemented fully, the voices of various political forces would be well represented. What is more is that the parties to the Agreement consider gender parity as an important social and political objective, so Article 1.4.4 gives women 35% participation in the executive of the RTGoNU. Similarly, the parties have also made a provision to include

the youth in the government, particularly the Ministry of Youth and Sports in the RTGoNU is to be given to someone that is under the age of 40 years¹⁷. Furthermore, the Agreement directs the parties to give due consideration to national diversity, gender, and regional representation in all appointments.

Voice and legitimacy also deal with issues of consensus, that is, decision-making in the government and other public institutions must account for diverse and differing interests. To address this, the Agreement¹⁸ provides for a decision-making in the presidency and in the Council of Ministers that is based on the spirit of collegial collaboration. Where the presidency failed to reach consensus, at least 4 out of 6 members of the presidency shall take a decision. In the Council of Ministers, two-third majority (67%) of the Council of Ministers could make a decision should there be any stalemate. This provision is specifically important when it comes to constitutional and judicial appointments, appointment of state governors, establishment of independent, interim, and ad hoc commissions and committees. The provision also applies to the initiation of any legislation related to the implementation of the Agreement.

Similar decision-making mechanisms have been extended to the Legislature, where decisions should be made by consensus and or by two-third majority (67%) when consensus cannot be reached. These provisions serve to lessen the impact of power concentration in the executive and in the hands of the president in particular.

We have discussed previously concerns about the concentration of powers in the executive and much more so in the hands of the president. The Agreement has, to a larger extent, addressed the issue of the concentration of powers¹⁹. The power sharing arrangements of the R-ARCSS gives the Transitional Government of National Unity (TGoNU) 50% in the presidency and 50% to the three opposition groups of SPLM-IO, Former Political Detainees (FDs), and South Sudan Opposition Alliance. In the Council of Ministers, the TGoNU gets about 57% while various opposition groups get 43% of ministerial portfolios. In the legislature, the government gets 60% while various opposition groups get 40%. In states and local governments, government gets 55% while the opposition get 45% of varying portfolios. To a great extent, the concentration of power has been diffused, but the issues of willful disregard for the law and the political will to do the right thing remain the biggest hurdles.

One question that remains is whether democratic space would be open to all for political competition and political accountability in the country. Democratic governance hinges on political competition based on clear and agreed rules. A major problem in South Sudan, leading to the current crisis, had been lack of political competition and lack of clarity of the rules of political game (Hyman, 2013). Political accountability is the idea that the governing coalition or party is given a mandate to govern by the citizens through elections. The citizens give such mandate on the basis that the governing party offers the best alternative among other alternatives in meeting their needs and interests.

¹⁷ See the Agreement Article 1.4.5

¹⁸ R-ARCSS Article 1.9.6.1

¹⁹ See Article 1.5 (1, 2), Article 1.10.1, Article 1.14.2, and Article 1.16.1 of the R-ARCSS

If such party fails to govern as expected, they are held to account through periodic elections (Awolich, December 2015).

The R-ARCSS is entirely an attempt to re-establish the basis for peaceful competitive politics. Chapter I of the Agreement²⁰ lays out the plan for democratic elections 60 days before the end of the transitional period. One thing that remains largely problematic in the Agreement is the fact that the checks and balance between the three branches of government remains weak. It is apparent that power remains concentrated in the executive and both legislature and the judiciary remain subordinate. Another concern is the extent to which the military will stay out and above politics. Demilitarizing politics is one of the objectives of this Agreement, but the success of this exercise largely depends on political will. If the parties fail to demilitarize politics, war may be inevitable before after elections.

In the previous sections, we discussed the failure of the government to perform over the last 13 years and citizens have expressed their frustration in many different ways. The Agreement attempts to address this challenge by clearly articulating what the RTOGNU would do during the 36 months of its existence²¹. Its performance could be measured using the implementation matrix of the Agreement, which delineates clearly when certain provisions should be implemented. This of course would make it easier to judge government performance. Of great interest are the reform items outlined in Chapter IV of the Agreement.

Many human rights reports and internal documentation inside South Sudan point to pervasive impunity in South Sudan, including unwillingness to carryout court decisions. Various international ratings as discussed previously, show that South Sudan practice limited accountability. Accountability is multidimensional and so we have to break it down to specifics to understand the implications of the Agreement. The first aspect of accountability in the context of this paper is the normal government accountability to citizens and to various accountability institutions. The Agreement does not really address issues of accountability of the political leadership to citizens in the short-term. That is, the voice of citizen doesn't really feature until much later towards the end of the transitional period when they can participate in an election. Article 1.20 (1-12) provides for elections 60 days before the end of the transitional period. This is an opportunity for citizens to elect leaders that they believe speak to their interests.

Chapter VI of the Agreement offers another opportunity for citizens to participate in the making of the constitution. Particularly, citizens are likely to be vocal on matters of term limits, executive powers, powers of the president, vertical relations between central, state, and local governments. Chapter IV of the same Agreement lists a number of institutional reforms both in the accountability and economic sectors. Some of these reforms, if implemented diligently, could pave way for a more transparent, efficient, and credible system in South Sudan.

²⁰ Article 1.20 (1-12)

²¹ Article 1.2 (1-15)

The second aspect of accountability is under Chapter V of the R-ARCSS, which deals with the transitional justice. Provisions under this chapter call for the creation of three important institutions to deal with the impact of violence on citizens. The first institution mandated by the Agreement is the Commission for Truth, Reconciliation and Healing (CTRH), which is mandated to tackle the legacy of conflicts, promote peace, healing and reconciliation among the people of South Sudan. This institution's mandate provides a rare opportunity for both the victims and perpetrators of violence to confront the bitter experiences of the violence and to seek mechanisms for a peaceful closure to this dark chapter.

The second entity to be established to address war crimes is the Hybrid Court for South Sudan, which is mandated to investigate and prosecute individuals bearing responsibility for violations of international law and South Sudan law during the conflict from 2013 to the end of the transitional period. This entity shall, for the first time, hold people to account for violence in South Sudan's history. Lastly, the Agreement obliges the R-TGoNU to establish Compensation and Reparation Authority (CRA) to administer Compensation and Reparation Fund (CRF), with the aim to provide material support to citizens whose property was destroyed by the conflict to rebuild their livelihoods. This is also going to be the first time ever, for victims of violence in South Sudan, to have their damages being considered.

In summary, the Revitalized Agreement on the Resolution of Conflict in South Sudan attempted to address major governance challenges in South Sudan. Specifically, the issue of the concentration of power in one party has been resolved by the Agreement, at least for the envisioned transitional period. However, the issue of the concentration of power in the executive has not been resolved and so the parliament and the judiciary are likely to continue to be subordinated to the executive. The powers of the president have also been curbed and to a larger extent the presidency is to function more like an upper chamber of the council of ministers. The Agreement also largely addressed the issue of political inclusion, issues of fairness and consensus, that is, all political forces shall each have a share of the national executive, legislature as well as a share in the state and local governments. Women and youth have also been included in terms of their participation in various government levels.

What will remain as a challenge is the question of political will to do what is in the interest of citizens. The Agreement did little to address the issue of rents from oil creating an imbalance of power between citizens and the government. While the Agreement proposes some reforms aimed at addressing the high perception of corruption in government and to improve government performance, no one has confidence that this would be done. Lastly, and the most importantly, the Agreement has not entirely resolved the question of the military being mixed in politics. Hence, South Sudan still has a long way in being able to govern its people as is expected of a good government.

5. Recommendations

In light of the many issues of governance raised in this paper, the following recommendations are offered to address governance gaps:

1. Setting a clear strategic direction for the country during the transitional period should be the priority of the RTGoNU. If the vision is to lay the foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law as articulated in the Agreement, there is need for SMART objectives to monitor progress towards this goal.
2. Lack of political will and willful disregard for the rule of law have been cited, and there is a lot of evidence to support this, as the main reason for the failure of governance in South Sudan. The Agreement does little to address this and so there is a need for a national mechanism to coerce political leaders to provide the much-needed political will to unite and move the country forward.
3. Concentration of power in the executive branch remains intact, a situation that weakens accountability and in fact weakens the desire of the leadership to provide the political will needed, because they face no consequences. The Agreement for reasons known to all, failed to aggressively address this matter. Perhaps, the remedy may be to induce accountability measures externally through pressure groups from civil society and the media and through international mechanisms.
4. The Sudd Institute and all national think tanks should develop through adoption of various tools for measuring governance in South Sudan. This will enable close monitoring of government functions and give citizens a sense of where progress is being made and where the government is failing.

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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.

About the Author

Abraham A. Awolich is a founding member of the Sudd Institute and is currently the Acting Executive Director in addition to running administration and finance department. Awolich is a policy analyst and his research interests are in governance, public administration, political economy, community development and poverty.