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NATIONAL SECURITY STRATEGY DEVELOPMENT

South Sudan Case Study

Working Paper

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1. Introduction:

South Sudan gained its independence on July, 9th 2011 after more than two decades of conflict. The independence came as a result of a referendum conducted six months earlier that was made possible by the Comprehensive Peace Agreement (CPA) of 2005. The CPA ended what was then the longest civil war on the African continent between successive regimes in Khartoum and the Sudan People's Liberation Movement / Army (SPLM/A) – a Southern-led insurgency that mobilized and organized the people of Southern Sudan to challenge the hegemony of Arab and Islamic North that sought to impose its religion and culture on the rest of Sudan. The CPA created a six year-transition period in which Southerners were granted autonomy via the SPLM/A-led Government of Southern Sudan (GOSS) and established a Government of National Unity (GoNU) composed of both Northerners and Southerners to make unity attractive to Southerners. Needless to say, after six years of transition, the unity never became attractive to Southerners and they voted overwhelming to create their own state.

The independence provided Southerners the opportunity to correct the defects they saw in the institutions of Sudan as they design the organizations of their new state. Throughout the transition period, SPLM/A leaders had complained about the broad unconstitutional powers of the National Intelligence and Security Service (NISS) of Sudan, and fought unsuccessfully for reforms. But now as masters of their own state, it was assumed that the reforms they sought then would now form the bedrock of their approach to the design of security organs of independent South Sudan. This proved to be an illusion.

This case study explores South Sudan's efforts to establish security institutions following independence. Although the country does not have a National Security Strategy, it drafted a National Security Policy in October 2013, but the document was neither approved by the Council of Ministers nor adopted by the National Legislature. This case study investigates why that was the case, and presents lessons that can be learned from the experience of South Sudan.

2. Background:

The political confusions that would later hinder the adoption of South Sudan National Security Policy by the Cabinet and the Parliament were evident from the very beginning. During the transition period, the Intelligence Service was unified in the National Intelligence and Security Service (NISS) headquartered in Khartoum. At the beginning of the transition period, SPLM/A seconded personnel from, General Intelligence Service, Military Intelligence and Signal Units of the SPLA to become part of NISS. But due to decades of mistrust between North and South, the SPLM/A felt it was necessary for some institutions to be established in parallel to protect GOSS presidency and minimize infiltration by Khartoum. Hence, Special Branch (SB) was established for this purpose in 2006. In addition, Public Security, which has provided security functions in "liberated areas" controlled by the SPLM/A during the civil war, continued to function during the interim period under the oversight of GOSS Ministry of Internal Affairs.

Following the overwhelming vote for secession in January 2009, the Southern leadership embarked on the drafting of what became the South Sudan Transitional Constitution of 2011

and broader preparations for the independence. But in the backdrop of these major tasks, political struggles were taking shape in the background that would later have enormous consequences on the new republic's approach to the design of security organs. In May 2011, two months before the independence, the president dissolved the Special Branch and Public Security, and transferred senior Southern officials, who were part of the NISS and who were leading the efforts to create the Intelligence Service of the emerging independent South Sudan, back to the military. In the same order, the SB and the Public Security were to be reorganized along with the Southern portion of the NISS into the NSS. This cleared the way for junior officials to later rise to the top leadership of the NSS. While a draft version of the Transitional Constitution began circulating in May, a final text was adopted only a day before independence. Article 160 (2a) of the Transitional Constitution clearly states that while the two Directors General of the NSS – the Internal Security Bureau (ISB) and the General Intelligence Bureau (GIB) – shall be appointed by the President, they would first need to be endorsed by the Minister of National Security. Yet, the President appointed the two Directors General (DGs) on the Independence Day before appointing the Minister. The Minister was appointed nearly a month later after the two DGs have been operating and have established basic structures.

Upon assuming office, the Minister decided to first review the structures the two DGs had established before his appointment and postulate a doctrine for the NSS that is markedly different from that of NISS. He appointed a committee composed of senior officials from the two Directorates and staff from his office. This effort led to the development of the White Paper on Intelligence and National Security, which provided both a new doctrine of the NSS and lean structures for effective management of the organization. When this work was presented to the overall NSS leadership, attended by the two DGs and chaired by the Minister, it was rejected mainly by the DG of ISB, Gen. Akol Koor Kuc, who was among the junior staff that found their way to prominence after the President had transferred more senior members back to the army. This was a clear sign of insubordination under Article 159 (b) of the Transitional Constitution, but the Minister could not prevail. The Minister tried to involve the President, but President seemed uninterested. The Minister also reached out to the Parliamentary Committee on Defense and Security, and although the Chairman of the Committee was sympathetic to his efforts, nothing of consequence materialized. These incidents unleashed a supremacy battle within the NSS between the Minister and the two DGs while a larger political brawl was already underway in the ruling party, the SPLM.

3. The Drafting Process

The Drafting, Consultation Process, and Stakeholders:

The Drafting Committee was composed of 13 members, drawn from the NSS, the national army, the police, and the civil society. The Chairman of the Committee was from the Ministry of Defense, although he had been a senior Intelligence officer before his transfer back to the

military. The Secretariat was all drawn from the Office of the Minister. In collaboration with the Governors of the 10 states of South Sudan, the Committee ensured that a focal point for each state was appointed. In June 2012, the Drafting Committee, in collaboration with the African Union and the United Nations Mission in South Sudan (UNMISS), held a planning meeting in Juba, in order to identify a roadmap for the development of the National Security Policy and Strategy (NSP&S) and a subsequent implementation strategy. The Committee consulted existing policy documents of South Sudan, including the South Sudan Development Plan, the South Sudan Vision 2040, the Comprehensive Evaluation of the Government of South Sudan among others. The Committee also consulted documents of similar nature from Ethiopia, Uganda, and Kenya. Since the Minister was traveling at the time, he asked the Deputy Minister of Defense, Dr. Majak D'Agoot, to chair this planning meeting.

The actual drafting process was officially launched in September 2012 in Juba, the capital city, and attended by various stakeholders of national and international stature. At the launch of the Committee's work, Professor *Eboe Hutchful*, chair of the Africa Security Network, praised the initiative and remarked, "*By Beginning to develop a national security policy, South Sudan was moving in a direction other African countries were just beginning to understand*". The President was supposed to be the guest of honor at this event, but at the last minute, he didn't show up. Instead, he sent his Legal Advisor to address the gathering. And while the Advisor said all the right things, including that the process must be inclusive and consult the people of South Sudan as well as benefit from international experience, the absence of the President left many questions.

During these planning meetings, one of the discussions centered on whether the National Security Policy and Strategy (NSP&S) can be drafted as a single document or whether it made sense to divide the tasks into two. Experts from Adam Smith International, UNMISS and others came to hold workshop with the committee and to clarify the difference between a Policy and a Strategy and the appropriate sequencing regarding the two. Following these sessions, the Committee resolved to draft a National Security Policy first.

In March 2013, the initial (zero draft) was ready. Between March and May 2013, the Drafting Committee started a countrywide consultation process with the support of UNMISS at all levels of government (national, state and county) with the aim of:

- Creating Awareness on the initial (zero) draft;
- Engaging stakeholders in discussions of its content and incorporate their views;
- Reaching an agreement on the document
- Developing the final draft to be submitted to the Council of Ministers and Parliament.

In each state of the ten states, three days of consultations were held, targeting: the state government, the state legislature, the state judiciary, traditional authorities, religious leaders, women, youth and civil society organizations. It is estimated that more than 4000 persons have

been involved in this process of consultations. Between July and August 2013, a series of one-day national level consultations were held with: the National Legislature, Judiciary, Ministry of Defense, Ministry of Interior, National Security Services, the Governance Cluster of ministries, the Development Cluster of ministries, and civil society organizations. Noticeably, the two DGs refused to attend the Committee's consultation with the NSS.

Immediately following the completion of the six-month national consultation process, the President fired the Minister of National Security. This was the culmination of the power struggle within the SPLM and within the NSS; the move left little doubt about who had the President's ear. This left the Drafting Committee in a limbo with a great deal of confusion. When a new Minister was appointed towards the end of July 2013, he met with the committee, but it was clear that his interest was solely on the drafting of the NSS Act. However, the committee continued with its work despite little political support and a final draft National Security Policy was handed over to the new Minister of National Security in October 2013.

By then, the power struggles within the SPLM were crowding everything out and in December 2013, violence erupted in Juba that quickly turned into a civil war. The draft National Security Policy was conveniently put aside and an NSS Bill that contained everything that had outraged the SPLM/A leaders in a similar bill for the Khartoum-based NISS Bill was before the Parliament. Despite opposition from many members of the Parliament, the Bill was passed through sheer intimidation.

Foreign Technical Expertise:

The security sector reform program supported by international donors (US, Norway and UK) and UN before and after the independence of South Sudan played a critical role not only in assisting the initiation of the development of National Security Policy but also in supporting the entire drafting process and countrywide consultation. In particular, the United Nation Mission in South Sudan (UNMISS) with Chapter VII mandate put UN in strategic position to support and strengthen security sector including its program of enhancing the capacity of South Sudan in national security policy/strategy making and in monitoring, oversight and accountability. The successful countrywide consultation to build consensus and vision on the draft national security policy document was largely facilitated by UNMISS. In addition, an UNMISS Security Advisor worked hand-in-hand with the committee throughout the process. Moreover, a Security Advisor from DfID funded Adam Smith International also supported the drafting committee. This foreign expertise was instrumental in shaping the draft National Security Policy.

4. **National or Sectorial Security Strategy Document**:

Purpose, Objectives and Coverage:

The draft National Security Policy provides a rationale, purpose and objectives of the National Security Policy, and postulates an in-depth analysis of South Sudan's strategic environment, including internal and external threats to its national security.

Definition of security and Identification and prioritization of security threats:

The 2011 Transitional Constitution sets security of citizens as the primary duty of all levels of government but without defining it explicitly. The letter of the Parliamentary Committee on Defense and Security calling for the development of the National Security Policy stresses the security of citizens and their property as well as the protection of the State as equally important. The draft National Security Policy adopts these provisions as well as the emerging international best practices the places human security at the heart of national security policies and operations.

The 2014 National Security Service Act fails to define "national security" or even "security" but defines instead "enemy," which means a natural or unnatural person who or which is (a) in state of war with the Republic, (b) threatening security of the Republic, (c) carrying out an act of sabotage or terrorism against the Republic and (d) is in collaboration with the enemy in (a, b and c). The Act defines national security not only as "state-centric" but also from the lens of "intelligence". This is not surprising as the Act was promulgated during civil war that erupted in 2013 after internal political struggle.

The 2011 Transitional Constitution clearly spells out in Article 160 that the National Security Council shall define national security Strategy based on the analysis of all threats to national security of South Sudan. Without National Security Policy, each security institution and agency identify and prioritizes its own security threats.

Linkage with Other Sectorial Security Strategies and Sub-national Levels:

The draft National Security Policy maps out the national security threats and formulates national security goals and objectives guided by the national core values and interests. It then spells out the mandates of each security organization and assigns them to address specific threats. It was hoped that this document would be followed by each security sector agency/institution to develop its detailed security strategies for the implementation of the draft National Security Policy. In fact, the 2008 SPLA Defense White Paper should have ideally been developed after the National Security Policy had been developed since the Policy provides guidance on sectorial policies and strategies.

The 2011 Transitional Constitution and the 2014 National Security Service Act provide for establishment of security committees at sub-national levels (state and county). However, these security committees are, as discussed before, becoming part of the National Security Service (Intelligence) and operating without National Security Policy/Strategy.

Confidentiality:

The National Security Policy was envisaged and intended to be a public document since it is about security and safety of citizens as articulated by the Presidential Legal Advisor and representative of the President during the launching of the work of the Drafting Committee in September 2012. The only confidentiality should have been during the implementation of each strategy of each and every institution tasked in the policy.

Oversight Institutions and Mechanisms

The draft Policy provides mechanism for national and sub-national mechanisms for security coordination and Parliamentary oversight as provided in the Constitution, the conduct of business of the parliament, and the 2014 National Security Service Act. Without the National Security Policy, the National Parliament and State Assemblies have established specialized standing committee for Defense, Security and Public Order. Also the National Security Council provides oversight of all security sector agencies and institutions.

Periodic Re-assessment of Security Threats

The Constitution and draft National Security Policy provide for periodic reassessment of security threats as the basis for updating the National Security Policy/Strategy. Without national policy guidance for the reassessment and analysis of national security threats, the culture of reacting to security threats becomes dominant in the security sector.

5. Why the Process Failed and the Consequences of Failure:

The process failed for primarily two reasons:

The first reason was the power struggle between the Minister and the two DGs. This was directly created by the President's failure to observe the Constitution on the very first day of South Sudan's independence. By appointing the DGs first before appointing the Minister, the President was clearly sending a signal as to whom he really trusts to lead the NSS. When the Minister came in with intentions to streamline the NSS structures and provide a doctrine, this was seen by the two DGs as an attempt to get rid of them. Their reaction was to resist everything that the Minister was doing. The Minister felt powerless. The DGs were clearly running the show, detaining and assassinating dissidents without the knowledge of the Minister. Whenever Minister speaks out against such acts, for instance at the funeral of Isaiah Abraham – a political commentator who was assassinated by "unknown gunmen" – he was portrayed as not sufficiently loyal to the President by the two DGs. This really complicated his policy formulation efforts.

Additionally, the Minister's decision to appoint a former Intelligence officer who had been transferred to the military by the President played into these fears. It was interpreted to the DGs as Minister's attempt to get rid of them and return the ex-Senior Officers who had been transferred to the military back to the

NSS. From the very first day of his appointment, the Chairman of the Drafting Committee was treated with suspicion by the two DGs and their allies. They starved the process of resources and if it had not been for the external support, the process would have become delinquent. Moreover, the Minister's decision to bring the Deputy Minister of Defense, who had presided over agencies that later became part of the NSS, was also met with suspicion. D'Agoot had been previously accused of trying to stage a coup, and although the allegations were baseless, they were believed by those around the President. This was hugely problematic for the Minister of National Security.

The second reason was the power struggle that was underway in the SPLM. This Minister played into this dynamic in his efforts to pass security policies. This was partly motivated by frustration as well as genuine efforts to prevent the NSS from heading into the wrong direction. When it became clear that the President was unsupportive and was instead encouraging the insubordination against the Minister, the Minister decided to work with Vice President Riek Machar. Not only the Minister, but many within his circles, including the Deputy Minister of National Security, who presided over the Drafting Committee's planning meeting, were putting together a broad coalition to challenge the President. These efforts were being reported back to the President. As a result, the President saw everything that the Minister was doing with suspicion and with the lenses of what was taking place within the SPLM.

This was deadly effective in getting the President to come heavily behind the two DGs. By then, it became clear that he didn't control the Political Bureau, the highest organ of the SPLM. As a result, he began to be too reliant on the NSS to project power and maintain control. Hence, he was no longer interested in genuine security sector reforms and he came to see these efforts as attempt to disempower him and make him vulnerable. He also saw those pushing for these reforms as his personal enemies.

The new Minister quickly realized this and adapted his strategy. Since the President had no interest in reforms, he proposed none and instead shelved the draft National Security Policy. He realized that the two DGs ran the show, and he decided not to challenge their control over the NSS. Instead, he promised them alliance. That's why he is still the Minister till now.

The Consequence:

The failure to adopt the National Security Policy meant that threats against the state were not clearly defined nor were mandates and mechanisms of coordination across various security organs in the country. In fact, it was entirely unclear whose security was being advanced. As a result, the unclarity of mandates and coordination mechanisms produced unhealthy competition among security organs. For instance, the role of police continues to be intruded and undermined by the National Army and the National Security Service. Sensing the overreliance of the President on the NSS to achieve political outcomes, the new Minister of NSS tabled the National Security Service Bill at the Parliament. It was adopted through questionable Parliamentary procedures in 2014. This law blurred the division of labor in security sector and created overlapping jurisdictions. The Act has given the National Security Service the constitutional powers of police to arrest, detain, seize and search instead of its constitutional

mandate of information gathering and analysis and advice to the relevant authorities. Also, the national army's military intelligence that is responsible for all collected information during army mission has also encroached into the civilian powers of police to arrest, detain, seize and search. South Sudan now have security organs that do not like each other and whose mandates overlap.

Inter-agency Coordination and Collaboration mechanisms

The 2011 Constitution provides for the establishment of security coordination bodies at national level (National Security Council) and security committees at state and county levels. The 2014 National Security Service Act establishes the composition of the National Security Council as consisting of the President (chair), Vice-President (deputy chairperson), Minister of National Security (secretary) and ministers responsible for Defense, Foreign Affairs, Justice, Finance, Interior as members.

The Act gives the Council the power to develop the National Security Policy, coordinate among security organs, and follow-up the implementation of security programs, plans and policies and to meet once every week. Although the Constitution provides for the establishment of the Council by law, the 2014 National Security Service (Intelligence) Act, paradoxically, makes the Council one of its organs and defines its composition, power and functions. The 2014 Act also provides for establishment of Technical Security Committee to be chaired by the Minister of National Security and with the membership of the DG of ISB (Secretary), DG of GIB, the Chief of General Staff of SPLA, Inspector General of the Police, Director of Military Intelligence, and the Undersecretaries of ministries of Foreign Affairs, Justice and Finance.

While these coordination mechanisms have been established, they are operating as part of the National Security Service (Intelligence). This has allowed the NSS to usurp the powers and functions of other security sector agencies and institutions. Rather than having the normal functions of gathering and analyzing intelligence and advice the relevant authorities as provided for in the Constitution, the Act gives the National Security Service (Intelligence) the power to maintain security, protect the Constitution, safeguard the national social fabric and safety of South Sudanese from any internal and external danger. Besides these vertical security coordination mechanisms, the government established horizontal coordination mechanisms such as security sector budget working group as the main security body for coordination, planning and implementation of security related issues. This Group consists of both government spending security sector institutions and agencies and development partners.

Resource Allocation and Implementation of Security Objectives:

The Security Sector Working Group produces security sector annual budget plans that set security priorities and expenditure allocations for the next three years and also maps donor support in security sector. It is the main forum for security sector planning and budgeting and sets out the security sector objectives, targets and expenditures. However, its role has been

limited to the annual preparation of security sector budget plans. Besides the Security Sector Working Group, the National Security Council is the body responsible for following up the implementation of security sector programs, plans and policies but without national security policy/strategy. Despite the establishment of the Council, the security sector continues to take the lion share of the overall budget; creating imbalance between security and development needs. Also, the security sector budget plans are prepared without overarching national policy/strategy that results in overlapping in allocating resources, neglect of other security sector agencies such as police and concentration of security resources with national army and intelligence.

6. Conclusion and Lessons Learned:

The drafting process of the National Security Policy in South Sudan provides a good example of limitations of technical rigor in the face of unsupportive political environment. South Sudan took the lead in developing its National Security Policy in a structurally fragile political environment that resulted in the demise of such process instead of producing a policy response to address such environment. South Sudan's case makes it plain that such consequential national policies cannot possibly succeed in absence of political will and leadership that is committed to seeing them succeed. Regardless of how wonderful the process is, if the political leadership is threatened by it, the chances of its succeeding are slim.

Moreover, the case also highlights the importance of ensuring such processes are not seen through the prisms of local politics. The power struggles between the Minister and the two DGs and the brawls within the SPLM collectively handicapped the process and delegitimized it in the eyes of various factions. This was clear in the lack of interest from the President and from the NSS to fund the process. As a result, the process came to rely extensively on external resources. Hence, ensuring buy-in by relevant security organs and the political leadership are key to success. The process needs to be owned by the top leadership.