DRIVERS OF HUMAN RIGHTS VIOLATIONS IN SOUTH SUDAN

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The denial of basic human rights to millions of citizens in the world's newest state of South Sudan does not seem to feature highly on the global agenda. Yet, this is the basis for transforming the country into a democratic and fully institutionalized state. Most attention is focused on the conflict of the country with the Sudan over ownership and allocation of oil resources. South Sudan's independence in July 2011 was a result of the lengthy peace deliberations that culminated in the Comprehensive Peace Agreement (CPA) signed in Kenya in 2005. Within the ambit of this agreement the South Sudan People's Liberation Army/Movement (SPLA/M) government strongly asserted its commitment to the protection of citizens by strengthening security institutions. However, the realization of a secure environment for the citizens remains elusive. As a result, the country continues to witness an increasingly high incidence of human rights violations resulting from violent conflicts across most of the States, with puzzling government response. The quandary for many analysts is that these violations seem to be executed by the national army in its fight against the highly organized rebel groups. Yet, the state has the obligation to protect the citizens against any form of violations. The purpose of this analysis is therefore to contextualize the human rights violations in the post-conflict state.

Introduction

Human rights have a mixed history in the newly created sub-Saharan country South Sudan. The poorly structured security institutions and hidden political contradictions have recently been blamed for inhibiting the implementation of the 2005 Comprehensive Peace Agreement (CPA) and thereby hindering democratic rule. The country is struggling to get politics right, develop a new constitutional order that respects individual and group rights as well as institute a culture of governance that incorporates the people and liberates their energies for economic development. For some analysts the changes happening in South Sudan since the signing of the CPA in Kenya are merely a façade and are not likely to bring about real change.

It is worth noting that the last two years since the Republic of South Sudan was inaugurated as the 54th country of Africa, the old barriers created by the Anglo-Egyptian Condominium (1899-1956) policy have been deconstructed and new hopes created (Deng 1995; Douglas 2003). However, while marginalization may be a thing of the past among many south Sudanese, it has not eradicated the dictatorial tendencies of the incumbent leadership. The oscillating political instability in almost all of the ten States across the country exposes civilians to brutality of both the national army and organized criminal groups. Indeed, scholars on South Sudan have predicted that despite the praise that surrounded the signing of the CPA, and the critical role ascribed to the former lea-

der of the South Sudan People's Liberation Army/Movement (SPLA/M) John Garang, the peace process would face prolonged challenges due to its inadequacy and short-sightedness (Young 2005; Adwok 2000; Young 2003; Rolandsen 2011). This murky history provokes that the initial hopes of citizens are diminishing at an alarming rate due to an increase in killings of civilians, abduction of women and children, cattle theft and the condoning of violence by some government quarters.

Conceptual Issues

The concept of human rights is context-specific. Its interpretation and usage is governed by political and socio-economic variables across regions and cultures, which prompts a proliferation of definitions. In this paper, there are two ways in which human rights are perceived: in a narrow developing country's perspective; and the broader universal one.

The Human Rights concept especially as it relates to development of institutions seems elastic (Kibwana (1993). Segura (2006) further observes that many African governments, South Sudan included, see the concept of human rights as merely providing a yardstick to criticize and/or evaluate their performance with a Western bias. This perhaps explains the reasons behind the perception across Africa that international instruments such as the ICC „unfairly" target African leaders. However, given the dubious nature of most of the African political elites this serves to illustrate their repellence of justice for

A Sudan People's Liberation Army (SPLA) tank in Turalei, South Sudan. (Source flickr, Tim Freccia, ENOUGH Project)

the victims of dictatorial rule and the impunity that accompanies class politics. This thinking furthermore contradicts the UN core values and the consolidation of international peace as well as the prevention of conflicts across the globe.

On the same line of argument, most African political leadership view human rights as an ideology or theoretical construct employed to criticize their leadership (Mutua 1993). Such a pessimistic attitude arises due to several reasons. Many leaders fail to recognize that the provision of human rights in their countries can act as a liberating and empowering force which can place their countries on the path to development (Sen 1999; Annan 1998). Indeed, among the many causes of conflicts in the new Republic of South Sudan, lack of economic opportunities and the vague land policies are ranked high (GOSS 2011). Scholars and practitioners have always considered human rights in different ways. For example, Amartya Sen and Kofi Annan have argued that some aspects of the human rights approach such as ethics may not necessarily be universal. Nevertheless, trends on human development indicate that this

approach has been applied in countries emerging from long-lived conflicts with profound impact on poverty eradication and institutional transformation (Todaro and Smith 2003; Keohane 1984).

Institutional Failure or Political Negligence?

This paper hypothesises that no clear line exists between the different arms of government in South Sudan, thus leading to ineffective coordination of human rights policies.

The Government of South Sudan has made efforts towards developing a functioning criminal justice system (CJS). The focus has been on establishing the South Sudan police, prison services and courts, constructing necessary infrastructure and passing new legislation. Personnel in these institutions have benefited from global capacity building initiatives by peacekeeping training institutions such as the International Peace Support Training Centre (IPSTC). However, for a number of reasons, including uncoordinated capacity building activities, perpetual weak-

nesses in both military and rule of law institutions seem to prevail. This in turn leads to a high rate of human rights violations whenever there is an outbreak of violence.

The South Sudan Police Service was instituted in 2005. Whilst the mandate of the police is well articulated by the Ministry of Interior, the service is largely unable to discharge this mandate due to lack of sufficient resources and trained personnel. In fact, the police service is commonly described as the „weakest link" in the criminal justice system. Following the CPA, a large number of former SPLA combatants and members of numerous militia groups were transferred to both the police and prison services. As a result, the service faces a significant loss in capacity. This makes citizens vulnerable to risks of rape, abduction and child labour. UN OCHA reported in 2011 that about 3,400 people died due to violent incidents (Human Rights Watch 2012).

The second crisis hampering the protection of human rights in South Sudan is the complexity of a plural legal system. Both statutory and customary courts draw on multiple sources of law. The basis

Doing research in the field. (Source Francis Onditi)

for criminal punishment is an amalgam of British-introduced common law embodied in statutes as well as the unwritten customs of over 50 indigenous ethnic groups. There is also evidence that Islamic law continues to have subtle influence on judicial practices. Furthermore the blotted prison service coupled with ill trained staff compound the challenges facing the justice system.

On the political side, governance experts and analysts on South Sudan have repeatedly warned that one of the crises to the political legitimacy of the GOSS is building an effective governance structure that brings the SPLA under civil control (Deng 1995). This brings to focus certain points of concern. One is the professionalization of the SPLA as a standing army and an improvement in the capacity and procedural policies of related government bodies. The SPLA has yet to decentralize operational structures and down-size an estimated 210,000 soldiers who currently use 40% of the GOSS's national budget (GOSS, 2011).

Moreover, the transparency and accountability in the trading of arms in South Sudan has been called into question. Under the CPA, arms transfers to Sudan's „ceasefire zone", which also included South Sudan, were prohibited without the express authorization of the Joint Defence Board (JDB) that is comprised of equal membership of Sudan Armed Forces (SAF) and SPLA. It is also important to note that SPLA does not yet have an elaborate and transparent structure of reporting

arms imports but has a legitimate right to obtain military equipment and material as part of its outgoing professionalization towards a modern army capable of defending its sovereignty (Mike, 2009).

The lack of command, control and communications (C3) structures has led to reliance on the initiatives of local commanders. Dispersed units are dependent on support from the local population or have to resort to self-reliance methods to survive. This rather loose command system provides operational and tactical flexibility but undermined strategic cohesiveness. The integration of an estimated 50,000 organized armed groups (OAGs) especially after the Juba Declaration, complicate the SPLA's internal structures as the integration of former adversaries into the hierarchy triggered tensions over the distribution of ranks (Small Arms Survey, 2008). The crisis facing the GOSS towards defending human rights against violations is also disregarded by the ethnicity-driven system of appointment to the security arm of government. This has slowed the efforts of transitioning from a guerrilla military to a professional national defence force that can uphold and defend the national, regional and international human rights principles.

Finally, there seems to be a convergence of the two major factors driving human rights violation in GOSS. The weaknesses in the political organization led by SPLA/M spills over to the security organs including police and prison. Though idealists (Morgenthau and

Thompson 1991) have asserted that the politics of a country are governed by laws of the land, this may not be the case for states emerging from conflicts such as South Sudan. This is due to a combination of factors including the subtle military rule that is slowly building a class state in Juba at the expense of the population that is exposed to the brutal arm of the security forces-government and organized militia groups.

Conclusions

The aim of this article was to identify both institutional and politico-military factors that drive inter-communal conflicts and their implications on the status of human rights in the new Republic of South Sudan. The uncoordinated institutions of police, prison and the military has been found to be an outcome of both historical factors as well as the fixation of the current regime to reward the former fighters without considering the professional gaps that exist in the entire system. This dual (institutional and politico-military) jittery indicate that future research in this area will be more informative if it focuses on post-SPLA/M internal governance and how this relates to the status of the country's Human Rights Framework and the entire Criminal Justice System (CJS). ■

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A soldier from SPLA, Sudanese People's Liberation Army, Juba, Southern Sudan. (Source flickr, Stein Ove Korneliussen)