

# South Sudan: The Politics of Delay

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## Overview

1. International sponsors of South Sudan's peace process should respond creatively to the delay in forming the Transitional Government of National Unity (TGNU). An intemperate response, which might include a new, immovable and near deadline or rapidly imposing sanctions, runs two risks. First, it jeopardizes the ceasefire—the truly substantial achievement of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS). Second, a deadline could be an opportunity for the government of Pres. Salva Kiir Mayardit to reinforce its authoritarianism. The 100-day extension provides an opportunity to put in place inclusive processes to address South Sudan's governance crisis.
2. This memo uses three concepts to frame the challenges and opportunities arising from the recent (and recurrent) postponement of the formation of TGNU. The concepts are: (1) the politics of delay (*'tajility'*); (2) deadline diplomacy; and (3) political *unsettlement*. The memo argues that recurrent postponement of a definitive political settlement is a characteristic of a turbulent political marketplace, and that it serves the interests of political actors (stronger and weaker conflict parties have different calculations), but also can potentially be leveraged by civil society. International partners should explore how best to utilize the political opportunities arising from recurrent delay and non-settlement of definitive political issues to support civic agendas.
3. The TGNU was scheduled to be formed on 12 November, a date set following a postponement agreed six months prior. Just before the deadline, the parties (GRSS and SPLA-IO) agreed on another 100-day postponement. International partners, notably the U.S., had insisted on meeting the 12 November deadline and were upset by the delay, threatening punitive action. This is unfortunate and is based on short-sighted analysis.
4. The virtues of the R-ARCSS are: (1) it ended the proxy conflict between Sudan and Uganda; (2) it put in place a ceasefire between the GRSS and SPLA-IO which has held (and brought with it other tangible benefits such as increased movement of people and trade and delivery of humanitarian aid); (3) it provided some protected space for political dialogue involving not only the principal parties but smaller parties and civil society as well; and (4) it allowed for time to find creative solutions to irresolvable political differences.
5. The R-ARCSS can also serve as a mechanism for monitoring and constraining the power of the warring party that emerged militarily dominant from the war, namely the GRSS led by Pres. Kiir. The government is consolidating its authority, using its control over oil revenues and other income streams to extend its patronage reach, using the National Security Service as its enforcement instrument. International pressure should focus on strengthening the checks on repressive rule. Prioritizing the deadline to form the TGNU runs the risk that the Kiir government will use the deadline as a pretext to lurch further into authoritarianism.
6. Assessing the R-ARCSS delays in the light of this analysis allows us to shift policy focus from an unhelpful over-concentration on the by-the-book implementation of R-ARCSS deadlines and formal arrangements, and instead identify more creative possibilities for addressing South Sudan's political, governance and humanitarian crises.

## Framing the Challenge

7. This section provides three analytical tools for examining a peace process within a turbulent political marketplace.

### ***The Politics of Delay***

8. An Anglo-Sudanese term 'tajility', from the Arabic *tajil* ('delay') refers to the political skill of procrastination. In a situation in which there is low confidence in a durable political settlement, it makes sense for a political actor to postpone—perhaps indefinitely—making a clear and irreversible political commitment.<sup>1</sup> There are sound reasons rooted in Sudanese and South Sudanese history for adopting the political strategy of delay.
9. Conversely, it is the periods in Sudanese and South Sudanese history in which political arrangements have been provisional or interim, that have seen some of the most inclusive politics. One of the reasons for the relative stability of the CPA Interim Period was that it precisely was *interim*: the political parties were able to postpone irresolvable questions. Ironically, the competitive elections held in 2010 led to the consolidation of power in the hands of the dominant parties and a narrower political space.
10. *Tajility* is frustrating to international partners that operate according to bureaucratic logics and fixed timelines. But it has a logic for the domestic parties in the context of a turbulent political market. *Turbulence* means that circumstances are constantly changing, so that politicians are constantly calculating their options on the assumption of fluctuating conditions. The *political marketplace* means that transactional politics dominate bureaucratic-institutional logics. For the stronger party (in this case the GRSS) *tajility* provides an opportunity for cutting informal bargains rather than being limited by formal processes. The stronger party can also exploit a deadline to enforce its will on a weaker one—as Pres. Kiir has done, by threatening to exclude SPLA-IO leader Riek Machar from his allotted position as vice-president, should the latter fail to agree to take up his position on disadvantageous terms.
11. Delay in formalizing a political agreement usually favours the strong over the weak. However, it can provide opportunities—points of leverage or simple gambles—for weaker parties. Thus, for the SPLA-IO, *tajility* is a strategy of hanging on in the not unreasonable expectation that circumstances will change for the better.<sup>2</sup> For small parties and civil society, the externalized peace process itself may provide opportunities for influence that may be diminished in the domestic political dispensation that follows a formal agreement. On the other hand, the no-war no-peace situation can be a pretext for a government to label its critics as 'rebel sympathizers', while a well-crafted agreement can provide guarantees of civil and political liberties. Delays can also exact a psychological toll on ordinary people, who long for an element of order in their lives.

### ***Deadline Diplomacy***

12. Negotiators commonly impose deadlines for the completion of their negotiations. Third party conflict mediators occasionally set deadlines for peace negotiations. Generally speaking, the better the quality of the agreement (procedurally and substantively) the less likely that it will become subject to an externally imposed deadline. Nonetheless, a deadline may help focus the parties on a disciplined process and bring them to a resolution. A Sudanese example is the conclusion of the Naivasha talks between the Government of Sudan and the SPLM/A, when a frustratingly slow process was brought to a conclusion in the last quarter of 2004 after the internationals imposed a deadline of 31 December.
13. Successful cases of deadline diplomacy are characterized by: (1) a joint commitment by the belligerent principals to achieve a successful outcome, which is facing obstacles (such as internal dissent within their respective parties) that can be overcome; (2) a significant commitment by the international sponsors to

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1 See: Martin W. Daly, 2007. *Darfur's Sorrow: A History of Destruction and Genocide*, Cambridge, Cambridge University Press.

2 John Garang and Khalil Ibrahim of JEM were both practitioners of relying on holding on during adversity so that they could seize the propitious moment when it finally arose. In both cases, of course, they ultimately ran out of time.

support the implementation of the agreement; leading to (3) a high level of confidence among all concerned that the outcome will be a durable settlement.

14. On other occasions, deadlines can be dangerous. They can pressure belligerents into unstable arrangements, cutting short talks before they reach maturity. A deadline—and especially recurrent deadlines—can also hamper the mediators. Even when the parties do not take a deadline seriously, the mediators are obliged to follow the instructions of the authorities that mandate them, such as the UN Security Council. This can prevent the mediators from establishing creative and inclusive processes necessary for addressing the substantive issues. Haste is the ‘seventh sin’ of mediation.<sup>3</sup> An example is the Darfur negotiations of 2006, when the international sponsors lost patience and complained about the ‘waste’ of money on a protracted peace forum—with hindsight surely a false economy.<sup>4</sup>
15. Failed instances are characterized by: (1) a low level of confidence among the belligerent parties that the deal on paper is indeed workable in the immediate term and durable in the longer term; (2) political gamesmanship by the parties as the deadline approaches, with national actors exploiting the internationals’ investment in the deadline to extract other gains; (3) international sponsors’ priorities overriding those of the conflict parties and the people;<sup>5</sup> (4) willful ignorance among the internationals about the challenges and dangers of implementing the deal; leading to (5) the timetable becoming more important than the issues. In these circumstances the mediator becomes a party to the negotiations, using pressure, incentives and persuasion to promote a formula that is owned by mediation rather than the conflict parties.

### **Political Unsettlement**

16. In political science writing, the concept of a ‘political settlement’ can refer to any power arrangement, formal or informal.<sup>6</sup> However, in common parlance it refers to a formalized political dispensation such as power-sharing within a peace agreement, formulated according to a quasi-constitutional logic.<sup>7</sup> The concept of political *unsettlement*—for example recognizing that the political dispensation contained in peace agreement contains many unresolved issues—provides a framework for grappling with opportunities provided by the politics of delay in a context of turbulence.<sup>8</sup>
17. In the context of a complicated peace process in a protracted war, such as South Sudan, the framing of political unsettlement entails recognizing the following:
  - a) The value of ‘hooks’; namely vaguely-specified provisions in a peace document that can be used as the basis for future advocacy and action. Examples might be references to transitional justice or gender equality.
  - b) ‘Creative non-solutions’: mechanisms that allow for co-existence in spite of fundamental disagreements without resolving the issues that created the conflict, which may involve workarounds for implementation requirements.

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3 Lakhar Brahimi and Salman Ahmed, 2008. ‘In Pursuit of Sustainable Peace: The seven sins of mediation.’ New York University, Center for International Cooperation, May.

[https://peacemaker.un.org/sites/peacemaker.un.org/files/SevenDeadlySinsOfMediation\\_BrahimiAhmed2008.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SevenDeadlySinsOfMediation_BrahimiAhmed2008.pdf)

4 The term ‘deadline diplomacy’ was coined by Laurie Nathan in this context. See Laurie Nathan, 2007. ‘The Making and Unmaking of the Darfur Peace Agreement,’ in Alex de Waal (ed.) *War in Darfur and the Search for Peace*, Harvard University Press; also Laurie Nathan, 2006, ‘No Dialogue, No Commitment: The perils of deadline diplomacy for Darfur,’ Geneva, Small Arms Survey, December, <http://www.smallarmssurveysudan.org/fileadmin/docs/issue-briefs/HSBA-IB-04-Darfur.pdf>

5 The full list of Brahimi and Ahmed’s seven sins is: ignorance, arrogance, partiality, impotence, haste, inflexibility and false promises.

6 Mushtaq Khan, 2018. ‘Power, pacts and political settlements: A reply to Tim Kelsall,’ *African Affairs*, 1-25.

7 Tim Kelsall, 2018. ‘Towards a universal political settlement concept: A response to Mushtaq Khan,’ *African Affairs Virtual Issue: Political Settlements Research in Africa*, pp. 656–669.

8 Christine Bell and Jan Pospisil, ‘Navigating inclusion in transitions from conflict: The formalised political unsettlement’, *Journal of International Development* 29, 5 (2017), pp. 576–593; Jan Pospisil, 2019. *Peace in Political Unsettlement: Beyond Solving Conflict*, London, Palgrave Macmillan.

- c) Processes of ‘disrelation’ or ‘segmentation’: the possibility for actors to settle on local issues without being part of a political agreement or process at the national level—opting out by withdrawing to a safe zone or choosing to fly under the radar, in a way that possibly minimizes the potential of local conflicts to escalate into the ‘big’ political contestation.
18. In addition, there is (d): an externally-facilitated peace process as a protected political forum, in which belligerents, political parties and civil society actors can engage, debating concepts and policies, and forging coalitions. One of the features of Sudan and South Sudan over the last twenty years has been that such expanded peace talks, including the satellite civil society fora and parallel engagement with international sponsors, provide opportunities for open political dialogue at times when such dialogue is impossible internally. Two features of such an expanded peace process are significant: (a) they are protected insofar as they take place outside the country and are sponsored by international actors; and (b) the supplementary dialogues do not have formal political implications.
  19. In Sudan and South Sudan, the most open, inclusive and creative periods of political process have been either expanded peace processes or interim/provisional political arrangements. When political settlements have been concluded, this wider civil-political space has usually closed down.<sup>9</sup>

## The R-ARCSS Predicament

20. The R-ARCSS was designed in accordance with an international standard template, was engineered as a political marketplace bargain in Khartoum, survived the demise of the al-Bashir regime, and for the last year has been kept alive by a combination of IGAD and international partners. It has been characterized as ‘coercive mediation’ with a power-sharing formula imposed on the parties.<sup>10</sup> The deadlines have been demanded by the internationals, and in particular the U.S., who have pressed the parties on the November deadline, rather than on the issues.
21. One of the objectives of the deadline for forming the government was for the internationals to be able to declare that the problem of war in South Sudan was solved, and for them to move on. For the U.S., declaring success was a step towards washing its hands of involvement, given that the South Sudanese belligerents have lost all their friends in Washington DC. As a tactic for political disengagement, this is unlikely to work. The more they cut against the grain of South Sudanese politics, the more that the internationals own the process and its outcomes.
22. The R-ARCSS has delivered the following gains:
  - a) A robust ceasefire between GoRSS and SPLA-IO. This is a major success and is a precious achievement to be protected.
  - b) In turn, this has led to freer movement of people, improved livelihoods and trade, returns of displaced people, aid delivery, and steps towards the normalization of everyday life.
  - c) An end to the proxy war between Sudan and Uganda.
  - d) A focus for civil society mobilization which has made many positive contributions including keeping the Chapter V provisions (notably democratization and justice) alive.
  - e) Better representation of women than in any established government in South Sudan.
  - f) Parallel dialogue initiatives which have articulated important critiques of the government and addressed issues not included in the agreement, such as the succession from Pres. Kiir.

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<sup>9</sup> The paradox is encapsulated in the ambiguity of the name ‘Comprehensive Peace Agreement’. In English, ‘comprehensive agreement’ implies an inclusive one; in Arabic *shamil* implies an exclusive, sealed deal (*shamil* is from the same root as *shumuliya*, totalitarianism).

<sup>10</sup> E.g. Luka Biong Kuol, 2019. ‘The 2018 South Sudanese Peace Agreement: A litmus test of coercive mediation,’ in Zambakari Advisory, *South Sudan Peace Agreement and Peacemaking*, Africa Special Issue, Spring.

23. Note that these successes are related to the process as well as the provisions of the agreement, and that they are associated with 'hooks' and 'creative non-solutions', which may diminish or disappear when the R-ARCSS shifts from being an aspiration to a fixed agenda for by-the-book implementation.
24. The R-ARCSS text replicates some of the most problematic elements of the ARCSS including:
  - a) The allowance for shared security control over Juba between the warring parties, leading to subsequent negotiations for protection force for the leading opposition figures (especially Riek Machar), composed jointly of GRSS and SPLA-IO forces. This is a near replica of the formula that led to the June 2016 fighting in Juba and the collapse of the ARCSS.<sup>11</sup>
  - b) A process of cantonment that enables the registration (paper mobilization) of large numbers of opposition troops in anticipation of future integration into the unified national army. This contributed to the expansion of the war in the Equatorias by expanding the SPLA-IO franchise during the brief interim prior to the collapse of ARCSS.
  - c) In addition, the R-ARCSS leaves unresolved some key issues including demarcating the boundaries of the states (now de facto 32), clarifying domestic revenue raising and sharing responsibilities between states and the central government, and nominating governors and county commissioners (the number of counties has increased from 79 before independence to as many as 320 today, according to credible estimates). These are likely to be contentious processes that are likely to lead to violence.
  - d) A swift transition to competitive elections, which will set the senior political leaders against one another as occurred in 2013, the proximate cause of the civil war.
25. As implied from the above, there are real dangers to imposing the R-ARCSS in South Sudan. Those dangers will be amplified if the principal diplomatic effort over the coming three months is focused on new pressures on the parties to meet the new deadline.
26. Some of the most tangible dangers can be reduced with careful intervention during the implementation phase. However, why take unnecessary risks when there is timely warning? Why not instead make the peace process work with the grain of South Sudanese politics rather than against it, using the delay in creative ways to address some of the most pressing problems and encouraging opportunities?

## The Utility of Delay

27. The principal utility of delay is that, in accordance with the precept 'do no harm', it maintains the ceasefire—by far the most important achievement of R-ARCSS. The downside danger of deadline diplomacy is a relapse into armed conflict.
28. As the 12 November deadline approached, residents of Juba feared that this would be the trigger for new conflict rather than a step towards peace. Some panicked and began to pack their bags to leave the city. The South Sudan Civil Society Forum took a lead in finding a median path between the South Sudanese parties and the internationals. The international position was no delay; the GRSS wanted an immediate formation of the TGNU with or without the opposition; and the SPLA-IO wanted a six-month delay. The compromise formula was a postponement of 100 days, with interim deadlines and specified actions.
29. The key issues identified by the Civil Society Forum should be a focus for reflection and action, as follows:
  - a) *The creation of the Necessary Unified Forces (NUF)*. On paper there is a wholly unrealistic plan for the formation of a new national army through the integration of opposition forces. The numbers of soldiers from both the national army and the SPLA-IO to be integrated into the NUF is 83,000. This includes a disproportionate number of SPLA-IO fighters in comparison to their actual fighting strength. The government is also using the cantonment process as an opportunity for recruitment and consolidation. The donors have, to date, correctly refused to fund the process of cantonment

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<sup>11</sup> Alan Boswell and Alex de Waal, 2019. 'South Sudan: The perils of payroll peace,' CRP Policy Memo, March.

and integration as well as any consequent DDR, which has reduced the dangers inherent in this 'payroll peace' strategy.<sup>12</sup> According to the R-ARCSS, as signed by the parties, the formation of the NUF is supposed to be a precondition for establishing the TGNU. The prospects of achieving this are zero and it could then become the pretext for further delay. The 100 days' delay is an opportunity to revisit this provision in a creative manner. The fact that the ceasefire is holding means that it should be possible to decouple the formation of the NUF from the formation of the government. A possible alternative approach would focus on incentives for demilitarizing forces and strengthening community oversight over military units in their localities.

- b) *The security of Vice-President Riek Machar.* The failure of the personal security provisions for VP Machar was the trigger for the collapse of the ARCSS in 2016 and the subsequent renewal and escalation of the war. There are other cases of political assassination and disappearance. This is an obvious red line for Machar; it is a devastating commentary on the political culture and disrespect for human rights in South Sudan (and by implication the readiness of the international community to compromise on human rights); and it would be tragic if the peace process were to fail on this single issue.
- c) *Resolving the controversy over the number of states and their boundaries* (and other related issues such as financing and appointment of state governors and county commissioners). There is no agreement on the number of states—the current de facto 32 or another number. The delay is an opportunity to reaching agreement on this issue. Some state and county boundaries are highly contentious (e.g. Malakal and Raja) and could easily become the spark for local conflict. The state boundary issue cannot be resolved quickly as there is not enough time for the necessary processes of resolving local claims over territory and delineating the boundaries (let alone demarcating them on the ground). High-level efforts are underway to cut a deal on this, but it is essential to recognize that such a deal would be only the opening of a longer (and necessarily consultative) process to resolve the issues.

30. Additional issues should be pursued during the 100 days:

- d) *National dialogue.* This has proved to be an opening in which a host of important issues can be raised, including succession planning for the national leadership.
- e) *Transitional justice.* There is a widespread clamour for holding the political and military leadership accountable for their crimes, corruption and reckless disregard for the interests of the people. At the same, time there is evidence of efforts by the government to block the establishment of the hybrid court and there are concerns that prosecutions under the current circumstances could endanger the peace. While high-level criminal accountability (through the hybrid court) may not be politically feasible at the moment, this should not preclude necessary steps towards the establishment of the institution. It is also urgent to push forward immediate practical measures to promote the rule of law to respond to everyday violations of human rights, and in response to ongoing intercommunal violence. Grassroots legal empowerment programmes in particular are viable and likely to be effective,<sup>13</sup> and can also contribute to a transitional justice process more specifically tailored to South Sudan's circumstances and with a higher degree of South Sudanese ownership.
- f) *Land.* The national land policy is due to be presented to the national assembly. This is an important step that could provide space for the South Sudanese to begin addressing the many pressing land issues that have arisen as a result of the conflict, including widespread secondary occupation, land grabbing and disputes over administrative boundaries. The enactment of the policy should be followed by public education, consultation, and implementation including restitution of illegally acquired land, suspending land survey and registration processes in areas that have experienced large-scale displacement until more people have returned to their homes, and establishing processes to address land disputes.
- g) *Security sector reform.* Past SSR efforts in South Sudan have been counter-productive, and international donors and consultants have learned that supply-driven, template-based approaches for SSR are doomed to fail (at a considerable expense). Comparative experience indicates that a

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<sup>12</sup> Boswell and de Waal, *op. cit.* 2019, 'The perils of payroll peace.'

<sup>13</sup> Rachel Ibreck, 2019. *South Sudan's Injustice System: Law and activism on the frontline*, London, Zed.

precondition for SSR is a civic coalition, literate in security issues, that can demand SSR and build alliances with elements within the security services. This should be explored in South Sudan.<sup>14</sup>

- h) *New states and fiscal decentralization*. New boundaries are not the only conflict risk associated with plans to potentially triple the number of states in South Sudan. Tensions between states and Juba over the authority to raise and spend locally raised revenues were simmering before the 2013 conflict, and appear to have accelerated as states increasingly depend on locally mobilized finances following month-long delays in the payment of civil service salaries. Meanwhile, South Sudan's Transitional Constitution, the 2009 Taxation Act and the 2009 Local Government Act do not clearly define all state level revenue raising and revenue sharing responsibilities. Initiatives to more equitably raise and share public finances, such as devising and implementing a clearer formula for domestic resource mobilization and revenue sharing between the central government and states, should be explored.

## Conclusions

31. There are many outstanding questions in South Sudan that can be addressed in the coming 100 days. It is impractical to expect these issues to be settled, but it is possible to minimize the risks of regression (the breakdown of the ceasefire and a return to war) and it is feasible to move forward on crucial topics, as outlined in the previous section. Insofar as the internationals want to signal their discontent with the parties' lack of good faith and their determination to see a better outcome for the South Sudanese people, they are advised to apply pressure on resolving the key issues, rather than applying pressure on the deadline.
32. Currently, the single most important concern is maintaining the ceasefire in South Sudan: a slow political process is far preferable to a return to war. A close second is maintaining forward motion in addressing the host of governance issues facing the country; continued discussion is better than a lurch into authoritarianism. This memo indicates that the 100-day delay should be seen by international policymakers, not as a new focal point for intensified deadline diplomacy, but as an opportunity for advancing consultation and strengthening action towards a civic peace agenda. It also offers South Sudanese civil society actors an analysis of elite politics and syntheses of research findings that are relevant for further deliberation and advocacy.
33. International diplomatic practice in South Sudan has, for the most part, pragmatically adopted operating procedures that take account of the disorderly nature of South Sudanese politics. However, we argue that such practice would be more effective if it were informed by a vocabulary and framework that enables a more structured understanding of the benefits, as well as the downsides of delay. The concepts of *tagility*, deadline diplomacy, and political unsettlement are useful in this respect.

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14 Sarah Detzner, 2019. 'Security Sector Reform in Sudan and South Sudan: Incubating the Preconditions for Progress,' CRP Occasional Paper.

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