

**POST- CONFLICT RECONSTRUCTION IN SOUTH SUDAN:
A CRITICAL ASSESSMENT, JULY 2011 - JULY 2012**

BY

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**A RESEARCH SUBMITTED IN PARTIAL FULLFILMENT OF THE
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DECLARATION

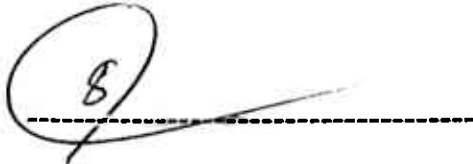
This research is my original work and has not been submitted for a degree to any other University.



Date 19/11/2012

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This research project has been submitted for examination with our approval as University supervisor.



Date 19/11/2012

Dr. Ibrahim Farah

DEDICATION

To my two children, Amina and Salim, for their words of encouragement, patience and understanding.

To my colleagues, Lorna Odero, Kodeck Makori, Nancy Murega, Susan Kiteme and Julius Mukwe, without whom this work would not have been possible.

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ABSTRACT

This study examines post-conflict reconstruction of South Sudan which gained its independence from the Government of Sudan on 9th July, 2011, as the outcome of a referendum as contained in the Comprehensive Peace Agreement(CPA) signed in 2005 , thus ending Africa's longest civil war. Its main objective is to examine the state of reconstruction in post – conflict South Sudan, to establish the ways reconstruction efforts can be better done to remedy the immediate needs of the people and to document the lessons learnt from the reconstruction efforts in the same.

The study is based on grounded theory which is deemed suitable in post- conflict reconstruction. Most of the information for the study was gathered from secondary data on published information on the topic. The study discovered that post conflict reconstruction is externally driven, with minimal local participation in the design or ownership of the process. Thus more studies are needed to explore the potential benefits of indigenous forms of participatory post-conflict reconstruction that emphasize post conflict transformation based on a genuinely democratically rooted practice that is sensitive to issues of civic empowerment, national ownership, capacity – building at all levels and an equitable and sustainable peace.

LIST OF ABBREVIATIONS AND ACRONYMS

AUHIP - African Union High-level Implementation Panel

CDD - Community Driven Development

CPA - Comprehensive Peace Agreement

CSIS - Centre for Strategic and International Studies

DUP - Democratic Unionist Party

ECOWAS - Economic Community of West African States

EU- European Union

GoS- Government of Sudan

GOSS- Government of South Sudan

GT- Grounded Theory

ICC- International Criminal Court

IDPs - Internally Displaced Persons

IGAD - Inter-governmental Authority on Development

JEM- Justice and Equality Movement

JIUs - Joint Integrated Units

JIPUs - Joint Integrated Police Units

NIF -National Islamic Front

NRC- National Reconciliation Commission

NGOs - Non-Governmental Organizations

PSO - Peace Support Operations

SAF- Sudan Armed Forces

SIPRI - The Stockholm International Peace Research Institute

SPLA - Sudan People's Liberation Army
SPLM/N - former Nuba and other allies to the south
TRCs - Truth and Reconciliation Commissions
UN - United Nations
US - United States
UNMIS - United Nations Mission in Sudan
USIP- United States Institute for Peace
UNMISS - United Nations Mission in South Sudan
UNOSOM II - United Nations Operation Somalia II
VOA - Voice of America

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Background

Boutros-Ghali (1992, 1995) initially defined *post-conflict reconstruction* as peacebuilding in relation to a conflict continuum from pre-conflict prevention to peacemaking and peacekeeping. He views peace-building as involving actions to identify and support structures that would strengthen and solidify peace to avoid a relapse into conflict.¹ Call and Cousens (2008) see peace-building as actions undertaken by international or national actors to institutionalize not only peace but also a modicum of participatory politics that can be sustained in the absence of an international peace operation.²

The UN Security Council views successful post-conflict reconstruction as requiring short and long - term actions tailored to address the particular needs of societies sliding into conflict or emerging from it. These actions should focus on fostering sustainable development, the eradication of poverty and inequalities, transparent and accountable governance, the promotion of democracy, respect for human rights and the rule of law, and the promotion of a culture of peace and nonviolence.³

¹Boutros-Ghali, Boutros. 1992. *An Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992*. United Nations Official Document System A/47/277; S/24111; Boutros-Ghali, Boutros. 1995. *Supplement to —An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*. United Nations Official Document System A/50/60; S/1995/1.

²Call, Charles, and Elizabeth M. Cousens. 2008. —Ending Wars and Building Peace: International Responses to War-Torn Societies. *International Studies Perspectives* 9: 1–21.

³UN Security Council resolution 1377 (2001) Threats to international peace and security caused by terrorist acts. <http://www.un.org/Docs/scres/2001/sc2001.htm>.

Lederach (1995) provides another definition he calls the moderate standard.⁴ This standard measures post-conflict reconstruction as no renewed warfare plus decent governance. Post-conflict reconstruction's success is thus defined by looking at both war recurrence and the quality of post-war governance, which also shows a mixed record of outcomes.

Post-conflict reconstruction is viewed by Doyle and Sambanis (2006) as activities undertaken in post war societies that are geared toward economic and social cooperation with an aim of building confidence, developing the social, political, and economic infrastructure to prevent future violence, and laying the foundation for a durable peace.⁵

The signing of a peace agreement or other event that marks the official end of war, signals the beginning of post conflict reconstruction. Large bilateral or multilateral agencies arrive to work with national governments, and to manage and disburse most funds for social and economic reconstruction. In 2002 a consortium of international actors, including the Center for Strategic and International Studies, published the Post Conflict Reconstruction Framework⁶ which identifies three phases of activity between the "cessation of violent conflict and the return to normalisation."⁷ While overlapping and not always consistent, the phases are helpful in identifying priorities and understanding the continuum from war to peace. The initial response comes immediately after the end of widespread violence and is characterized by the provision of emergency humanitarian services, stability and military interventions to provide basic security. Internationally such responses also include the deployment of peacekeepers. The transformation or transition phase is a period in which legitimate local capacities emerge and should be

⁴Lederach, John Paul. 1995. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, DC: United States Institute of Peace Press.

⁵Doyle, Michael W., and Nicholas Sambanis. 2006. *Making War and Building Peace: United Nations Peace Operations*. Princeton, N.J.: Princeton University Press.

⁶Post-Conflict Reconstruction Framework at <<http://www.csis.org/isp/pct/framework.pdf>>

⁷Ibid

supported, with particular attention needed for restarting the economy, including physical reconstruction, ensuring functional structures for governance and judicial processes and laying the foundations for the provision of basic social welfare such as education and health care. The final phase or the period for fostering sustainability is a time when recovery efforts should be consolidated to help prevent the resurgence of conflict. Military actors—particularly international peacekeepers—withdraw and society begins to “normalise” during this phase.

Societies emerging from conflict have become a growing concern for many international donors. There is awareness that while war has ended, peace, especially sustainable peace, is not so easily forthcoming. Dire poverty, ongoing ethnic, political or religious rivalry, the proliferation of arms, nonexistent governments and infrastructure all pose tremendous threats that can easily lead a country back into war. Simultaneously and despite the overwhelming challenges, the post conflict period is also a period of hope and opportunity. Coming after years or even decades of fighting, it is a time—albeit brief—when financial and technical resources are available to help address the root causes of war and shape the future of a nation.

1.1 Statement of the Research Problem

Africa has been a theatre of various forms of conflict since independence marked by both exogenous (example, the Cold War) and endogenous (example, authoritarian rule) factors for the larger part of its post-independence existence. Since independence, African countries, one after another, have been engulfed in political turmoil which have (sic) not only derailed the hastily launched pre-independence democratic process as a successor to the colonial oligarchic administration but has also brought about strife, violence and civil war in many countries in the course of competition for political power and control of resources.

Intra-state conflict constitutes one of the major challenges facing the achievement of the triple agenda of development, democracy and peace as the war in Sudan's Darfur region. It is evident that the challenge for peace-building and democracy-building is enormous and daunting, yet not insurmountable in Africa today. A new trend in the world today is that traditional inter-state conflict is increasingly giving way to intra-state conflict whereas most violent conflicts over the course of the twentieth century have been *between* states, in the 1990s almost all major conflicts around the world took place *within* states.⁸

Many studies have been conducted on post conflict reconstruction; on the one hand there is emphasis on the role of the UN mandate, mission, and impact on peace operations, as well as the role of the UN in acting as a transitional authority and international economic support in post-conflict countries.⁹ On the other hand there are scholars who have examined state building and democratization in post-conflict societies.¹⁰ Prior research on post-conflict reconstruction has mostly focused on the UN leaving out domestic actors and external players involved in this process. Local actors remain key ingredients in post-conflict reconstruction as conflict among warlords and peace spoilers at the local level may derail any effort at the post-conflict state building.

The rebuilding of devastated countries can be seen as a series of non integrated activities carried out by international agencies and government serving political and other agendas. The result is that calamities of war are often accompanied by calamities of reconstruction. In order to better

⁸Harris, P. and Reilly, B. (eds) (1998) *Democracy and Deeprooted Conflict: Options for Negotiators*, Stockholm: IDEA.

⁹Chesterman, Simon, Michael Ignatieff, and Ramesh Thakur. 2005. —Introduction: Making States Work. | In *Making States Work: State Failure and the Crisis of Governance*, edited by Simon Chesterman, Michael Ignatieff, and Ramesh Thakur, 1–10. Tokyo: United Nations University Press.

¹⁰Barnett, Michael. 2006. —Building a Republican Peace. | *International Security* 30 (4): 87–112.

understand the process of reconstruction, the study seeks to present a qualitative inquiry based on the grounded theory.

1.3 Objectives of the study

General Objective

The general objective of this study is to critically analyse the post-conflict reconstruction of South Sudan

Specific Objectives

- i. To determine the state of reconstruction in post conflict South Sudan
- ii. To establish the ways reconstruction efforts can be better done to remedy the immediate needs of people
- iii. To document the lessons learnt from the reconstruction efforts in South Sudan

1.4 Literature Review

The conflict in Sudan started in 1956 after the departure of the British who were the colonizing power from 1898 to 1952; leaving behind two regions that viewed the independence of Sudan in different ways.¹¹ This was partly as a result of the separate administrative structures put in place by the British; that allowed the two regions to be viewed and developed in different ways.

It was, therefore, only a matter of time before conflict would occur as there were no clear structures to address the issue of the many years of underdevelopment in southern Sudan.¹²

A first attempt by the new government to discuss the issues of marginalization and underdevelopment for the South was convened in 1965.¹³ However, this meeting did not yield

¹¹ F.M. Deng, *War of Visions; Conflict of Identities in the Sudan* (Washington DC, USA, The Brookings Institution, 1995), pp. 9-18.

¹² E. O'balance, *Sudan, Civil War, and Terrorism 1956-1999* (New York: St Martins. 2000), p.209.

any results as the protagonists failed to reach any comprehensive solution other than proposing that a joint commission be set up to further explore peace initiatives. There was an escalation in armed conflict in the south and after another bloodless coup by Colonel Jaafar Nimeiri in 1969; a further attempt was made at reaching a peaceful solution to the problem.

The Addis Ababa Peace Conference in 1972 may have been a turning point in efforts to resolve the problem as it culminated in a Presidential Decree by President Nimeiri that provided for the Southern Provinces Regional Self-Government Act of 1972. The Addis Ababa Agreement provided for constituent local elections and an autonomous regional government in Southern Sudan, which were issues that had been pursued by the South for many years.

In May 1983, the Sudanese People's Liberation Movement and the Sudanese People's Liberation Army led by Colonel John Garang were formed with the aim of providing a formidable opposition to discriminatory government policies that marginalized the South following the abrogation of the Addis Ababa Agreement. The declaration of Sharia law for the whole country, and sub-division of the south into three regions created an untenable situation for any negotiations; and for a period of ten years there was intensified rebel activity in the South.

In this study post-conflict reconstruction is seen as state building. Kisangani and Pickering (2010), view state-building as the ability of state managers to penetrate society and to extract resources while simultaneously retaining their autonomy from societal interests.¹⁴ Some scholars argue that state-building in post-colonial countries takes a similar path as that of Europe in the 16th Century. The assumption here is that just like early European countries, African countries

¹³The European Sudanese Public Affairs Council, "*Working for Peace in Sudan. The Peace Process, a Chronological History*"(2001), pp.1-5.

¹⁴Kisangani, Emizet, and Jeffrey Pickering. 2010. —Transnational Rebels, Military Intervention, and Post-Colonial State Building. | Unpublished.

face interstate threat and hence they have to extract more resources from their citizens to keep off external threats (Thies 2007).

It is vital to recognize that in the post-colonial building the contemporary threats to the state are from domestic actors as they compete with the state for power or resources given the sanctity of colonial borders enshrined by the UN Charter (Taylor and Botea 2008, Kisangani and Pickering 2010). In Africa, most of the current post-conflict reconstruction is a result of civil wars that have been fought between governments and domestic non-state actors. The recognition of domestic actors helps to explain post-conflict reconstruction in Africa.

Scholars focus on the UN's mandates and missions in post-conflict nations in theorizing on post-conflict reconstruction. One of the UN's most distinctive undertakings since the end of the Cold War is peacekeeping.¹⁵ Boutros Boutros-Ghali (1995) former UN Secretary-General lays out the UN's ambitious and growing role in peace and security. He foresees the UN carrying out a number of activities rapidly in an evolving international system.¹⁶ His argument is that the UN has an obligation to provide technical assistance for the transformation of deficient national structures and capabilities and for the strengthening of new democratic institutions. He describes the essential goal of peacebuilding as the creation of structures for the institutionalization of peace (Ibid).

Doyle and Sambanis (2006) evaluate how the UN can assist with post-conflict peacebuilding that results in sustainable and participatory peace.¹⁷ They articulate the logic of a —*peacebuilding triangle* as: the deeper the level of hostility between domestic factions and the

¹⁵Doyle, Michael W., and Nicholas Sambanis. 2006. *Making War and Building Peace: United Nations Peace Operations*. Princeton, N.J.: Princeton University Press.

¹⁶Boutros-Ghali, Boutros. 1995. *Supplement to —An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*. United Nations Official Document System A/50/60; S/1995/1.

¹⁷Doyle, Michael W., and Nicholas Sambanis. 2006. *Making War and Building Peace: United Nations Peace Operations*. Princeton, N.J.: Princeton University Press.

lower the level of local capacities for reconstruction, the higher the level and degree of international assistance is needed to succeed in establishing a sustainable peace. In their conclusion, they state that short-term measures of peace building success depend on the level of the international community's assistance to the reconstruction of post civil war societies.

Stedman, Rothchild, and Cousens (2002) also in their examination of peace agreement implementation within the UN mandate contend that the presence of spoilers and neighbouring states opposing the peace agreement can derail post-conflict reconstruction efforts.

Other studies show that democratization and the process of transitional governance is an important phases in post-conflict reconstruction. The contenders of such thoughts discuss the international community's focus on reconstructing the institutional infrastructure of rationalized bureaucracy and electoral democracy as a peace building strategy.¹⁸

Flores and Nooruddin (2009) notes that post-conflict democratization retards recovery and that post-conflict environments resulting from outright military victory by either side is likely to endure peace compared to that resulting from negotiated settlement. A study by Colin and Roelfsema (2008) shows that democratization and post-conflict elections are associated with higher, not lower, risks while higher post-conflict income and faster growth significantly reduce the risk of civil war relapse, Hartzell and Hoddie (2003) test this proposition by examining 38 civil wars resolved through negotiation mechanisms between 1945 and 1998. They found that the durability of peace is related to specifications of power sharing among the rival groups in the peace agreement.

Paris, (2004) points that international post-conflict reconstruction efforts have historically tended to neglect state building. He further emphasizes that recent international involvements have

¹⁸Colin, Jennings, and Hein Roelfsema. 2008. —Civil Conflict, Federalism and Strategic Delegation of Leadership. I Discussion Papers in Economics No. 08-03. Glasgow: University of Strathclyde Department of Economics. http://www.strath.ac.uk/media/departments/economics/researchdiscussionpapers/2008/media_101946_en.pdf.

increasingly shown that rebuilding or establishing at least a minimally functioning state is essential to post-conflict reconstruction.¹⁹ Collier (2008) opines that any successful efforts to peaceful coexistence after a civil war requires institutions to ensure law, order, and the repression of resurgent violence as well as the establishment of legitimate institutions of decision-making and the foundations for economic recovery in the form of revenue generation, the creation of stable environments for investment, or the capacity to deliver core services to a vulnerable population.²⁰

1.4.1 Reconstruction and development

Over the past decade, it has become increasingly apparent that the challenge of post-war reconstruction is essentially a *development challenge*, but one which takes place within the particular environment and amid the specific circumstances of a war-torn society. This includes the usual economic challenges of growth, inclusiveness, stability and sustainability, as well as the political development challenges related to the restoration of relationships between people, and between people and local/national institutions. Each of these challenges will be magnified and compounded by the legacies of conflict, and the continuing problems associated with an unstable security environment.

Reconstruction, as the first step in a long-term recovery process, entails economic, social and psychological readjustment, that is, the full range of integrated activities and processes that have to be initiated in order to reactivate the development process that has been disrupted by the conflict. Activities include: restoration of the physical infrastructure and essential government

¹⁹ Paris, Roland. 2009. —Understanding the —Coordination Problem in Postwar Statebuilding. In *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, edited by Paris, Roland, and Timothy Sisk, New York: Routledge.

²⁰ Collier, Paul, AnkeHoeffler, and Mans Soderbom. 2008. —Post-Conflict Risks. *Journal of Peace Research*, 45 (4): 461–78.

functions and services; institution building to improve the efficiency and effectiveness of existing institutions; the structural reform of the political, economic, social and security sectors. However, post-conflict reconstruction can still prove ineffective, if it is not also guided in its practice by a 'conflict transformation' perspective and taking such a view immediately changes the focus and aim of post-war reconstruction in a fundamental way, directing the work towards peace building and the threefold goal of hope, healing and reconciliation.

1.4.2 Justice and Reconciliation

Reconciliation refers to restoration of a minimal level of confidence and trust between former foes, the capacity to reconcile, co-exist and work together, interact and compete for resources and disputes settlement peacefully. Education, training and community interaction play a very important role.²¹

The healing of bitter memories and the restoration of trust is a delicate, highly complex process that cannot be rushed and which may take generations to achieve. The willingness of those on either side of a conflict to participate in post-conflict reconstruction activities is a positive, usually pragmatic, first step but it should not be mistaken as a sign that deep-seated resentments no longer exist.

The re-establishment of a legal or justice system cannot by itself, bring about healing, although it can help to create the environment in which responsibility for crimes is attributed and the perpetrators of indiscriminate violence are punished. Reconciliation requires the capacity on both sides to forgive and to repent.

²¹Lederach, John Paul. 1995. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, DC: United States Institute of Peace Press.

Building peace requires sound foundations based on a commitment to righting wrongs and achieving an acceptable level of social justice and accountability. From this perspective, reconstruction too, should have a corrective dimension that promotes socio-economic change and not just the restoration of the *status quo*, if it is to secure not only the successful implementation of initial reconstruction activities, but more importantly, to sustain that investment into the future.

The role of the international community is crucial in a post-conflict setting and in some cases rehabilitation is a necessary process, particularly where the afflicted community is not able to tackle it. Otherwise the fragile peace could deteriorate further and revert back to violent conflict in some cases. Rehabilitation is crucial in the sense that it implies generative change. A study by Carbonnier (1998)²² pointed out that rehabilitation deals with the restoration of entitlements of crisis ridden people and household. Further, he states that reconstruction could encompass both rehabilitation and regeneration, although it could also elements of peace-building, transition, solidification and development.

Barakat (1995)²³ and Kumar, (1997) points that rehabilitation, recovery, and reconstruction are terms that can be used interchangeable. The concept of reconciliation is important in the discussion of post-conflict reconstruction. Lederach (1997)²⁴ refer to the conflict resolution, reconstruction and reconciliation as three components that needs to be approached together.

²²Carbonnier, Gilles, 1998. Conflict, postwar rebuilding and the economy: A critical review of the literature: United Nations Research Institute for Social Development (Geneva)

²³Barakat, S. and Strand, A. 1995. *Rehabilitation and Reconstruction of Afghanistan: A Challenge for Afghans, NGOs and the UN*. Disaster Prevention and Management, Vol 4: 1

²⁴Lederach, John Paul. 1995. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington, DC: United States Institute of Peace Press.

1.4.3 Participation of Local actors

The reconstruction of each post-war society reinforces the importance of local solutions to this increasingly global issue. Too often, local people are portrayed simply as victims and passive-recipients of international largesse. In reality, their creativity, pragmatism and resilience, are of critical importance in the process of rebuilding after conflict. Local solutions and responses to the challenges and dilemmas of reconstruction frequently are cheaper, more effective and more sustainable than externally imported solutions. Moreover, they have the significant benefit of harnessing local materials/skills/know-how and thereby help in the process of restoring dignity, confidence and faith in local capacities. Yet in many cases lessons are not passed on.

Unfortunately however, both national governments and international actors often fail to build on the capacities of local people, local dynamics and local initiatives either because of ignorance or because they don't fit with externally conceived and designed programmes and projects. Consequently, too often local people are regarded as a liability to be neutralised rather than an asset to be utilised.

The fixed-term, pre-planned project culture that characterises many donor-funded interventions, is particularly unsuited to most post-conflict scenarios, since it allows no space for solutions to evolve as people recover their confidence, understand their changed circumstances, identify possible courses of action, and thus become able to make choices about what they need to know and learn in order to pursue their goals. Often the cart is put before the horse: organisational structures are imposed and skills training is delivered in measurable packages of "person hours" long before the real institutional and capacity building needs can be understood.

It is however, never the case that no social institutions or capacities survive, though often it is the 'rule-based' institutions of non-formal collaboration in civil society that are strengthened by the

struggle to survive a war, while formal organisational structures may indeed have broken down. The donor haste to see recognizable organisations in place often ignores these pre-existing institutional capacities instead of building on them but, the lessons learned about *best practice* for development are applicable and indeed even more necessary in recovery from war.

1.5 Justification of the Study

While peace is a fundamental prerequisite for development and stability throughout the world, the converse is also true; namely that conflict breeds mal-development and instability. Development and peace themselves cannot be achieved under conditions of conflict (especially violent conflict) that in turn generates political instability. It also goes without saying that political instability itself does not constitute a healthy diet for democracy. The interface between democracy and development and its implications for conflict resolution cannot be overemphasized: Democratisation is directly and positively correlated with conflict resolution/prevention; Socio-economic development is directly and positively correlated with democracy; and therefore, democratisation and socio-economic development are necessary prerequisites for the resolution/prevention of deep-rooted conflict. The Comprehensive Peace Agreement (CPA) signed in Nairobi in 2005 after two and a half years of negotiations brought to an end many years of war and an opportunity for self-determination of the Southern Sudanese.²⁵ The CPA provided for a broad referendum after six years; and this period has been characterized by innuendo and suspicion that is historical in nature.²⁶ Post-conflict peace building of strife-torn

²⁵ *Comprehensive Peace Agreement signed between the Government of the Sudan and the Sudanese Peoples Liberation Movement/Army*, (Nairobi Kenya, 2005).

²⁶ A. Hardallo, "Possible challenges and impediments to the Naivasha Peace Agreement" in H.A. Ati and G.D. Tayeb (eds), *Peace in Sudan So near .. So far..?*, Proceedings of the Sudanese National Civic Forum, Dialogue Sessions 2007-2008, (2009), pp. 35-37.

⁹ International Crisis Group, "*Sudan's Comprehensive Peace Agreement: The Long Road Ahead*" Africa Report No. 106, (Brussels, ICG. 2006), pp. 7-9.

societies poses monumental socio-economic and institutional challenges: To achieve a broad-based recovery from conflict, countries face a daunting range of tasks: building peace and securing political stability, recreating or strengthening the basic functions of state administration, resettling refugees and internally displaced persons, demobilizing combatants, and rebuilding basic economic and social infrastructure, public expenditure reform (shifting public money from the military and into development), revenue reform (changing the origin and method for collecting taxes and other revenues), trade and currency reform (altering the structure of import tariffs and quotas as well as policy towards the foreign exchange markets), financial sector reform (adjusting controls on lending and borrowing by the financial system), and sector reforms (changing policies for agriculture, industry, energy, and utilities). While responses will differ from one context to another, this study seeks to analyse post-war reconstruction efforts proceeding in South Sudan. Without reconstruction, peace cannot be guaranteed as such the current study cannot be more timely as Sudan and South Sudan still exhibit elements of conflict hence documenting the post-conflict reconstruction efforts will be very apparent.

1.6 Hypotheses

Post-conflict reconstruction in South Sudan is at an advanced state

- i. Reconstruction efforts can be done in a way that remedies the immediate needs of the people
- ii. There is a lot to learn from the reconstruction efforts in South Sudan

1.7 Theoretical Framework

Grounded Theory Approach

Grounded theory method was developed by two sociologists, Barney Glaser and Anselm Strauss. Their collaboration in research on dying hospital patients led them to write the book *Awareness of Dying*. In this research they developed the constant comparative method, later known as Grounded Theory Method.²⁷

Grounded theory method is a systematic generation of theory from data that contains both inductive and deductive thinking. One goal is to formulate hypotheses based on conceptual ideas. Others may try to verify the hypotheses that are generated by constantly comparing conceptualized data on different levels of abstraction, and these comparisons contain deductive steps. Another goal of a grounded theory study is to discover the participants' main concern and how they continually try to resolve it. The questions the researcher repeatedly asks in grounded theory are "What's going on?" and "What is the main problem of the participants and how are they trying to solve it?"

Grounded theory method does not aim for the "truth" but to conceptualize what's going on by using empirical research. In a way grounded theory method resembles what many researchers do when retrospectively formulating new hypotheses to fit data. However, applying the grounded theory method the researcher does not formulate the hypotheses in advance since preconceived hypotheses result in a theory that is ungrounded from the data.²⁸

²⁷ Glaser, Barney G. and Strauss, Anselm L. (1967) *The discovery of grounded theory: strategies for qualitative research*. Chicago.: Aldine.

²⁸ Ibid

If the researcher's goal is accurate description, then another method should be chosen since grounded theory is not a descriptive method. Instead it has the goal of generating concepts that explain the way that people resolve their central concerns regardless of time and place. The use of description in a theory generated by the grounded theory method is mainly to illustrate concepts.

In most behavioral research endeavors persons or patients are units of analysis, whereas in GT the unit of analysis is the incident.²⁹ There are typically several hundred incidents analyzed in a grounded theory study since usually every participant reports many incidents.

When comparing many incidents in a certain area, the emerging concepts and their relationships are in reality probability statements. Consequently, GT is a general method that can use any kind of data even though the most common use is with qualitative data.³⁰ However, although working with probabilities, most GT studies are considered as qualitative since statistical methods are not used, and figures not presented. The results of GT are not a reporting of statistically significant probabilities but a set of probability statements about the relationship between concepts, or an integrated set of conceptual hypotheses developed from empirical data.³¹ Validity in its traditional sense is consequently not an issue in GT, which instead should be judged by fit, relevance, workability, and modifiability.³²

This theory is applicable to this study in the sense that the approach consist of a set of steps whose careful execution is thought to guarantee a good theory as the outcome. The argument for

²⁹ Ibid

³⁰ Thomas, G. and James, D. (2006). Reinventing grounded theory: some questions about theory, ground and discovery, *British Educational Research Journal*, 32, 6, 767–795.

³¹ Kelle, Udo (2005). "Emergence" vs. "Forcing" of Empirical Data? A Crucial Problem of "Grounded Theory" Reconsidered. *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research [On-line Journal]*, 6(2)

³² Glaser, Barney G. and Strauss, Anselm L. (1967) *The discovery of grounded theory: strategies for qualitative research*. Chicago.: Aldine.

choosing grounded theory as the strategy of qualitative inquiry for this study lies in the fact that post conflict reconstruction as a field of study lacks a real cohesive theory.

1.8 Research Methodology

This study primarily employed a secondary approach to data collection. The researcher settled on this method because of financial implication that did not allow for the researcher to travel to South Sudan to get first-hand information. Trust was a key factor for this particular study because the researcher heavily relied on published information on post conflict re-construction to help make inferences for this study.

1.8.1 Methods of data collection

The research will adopt qualitative and quantitative techniques of data collection. They include key informant interviews and secondary methods.

1.8.2 Secondary data

Secondary data include information from books, journals, world organization's reports, newspapers reports and a variety of internet reports.

1.8.3 Chapter outline

Chapter One introduces the research topic by providing a brief overview of the background; statement of the problem; objectives; justifications; theoretical framework; literature review; research question and objective; and methodology of the study.

Chapter Two will delve into the historical background of CPA, pending issues in the CPA, the prospect for war and/or peace, and the status of returning refugees and IDPs

Chapter Three gives an Overview post-war reconstruction and recovery: Political and Economic Approaches

Chapter Four will constitute data analysis and presentation

Chapter Five will constitute the Conclusion.

CHAPTER TWO

POST CONFLICT RECONSTRUCTION IN SOUTH SUDAN: AN OVERVIEW

2.0 Introduction

After decades of violent conflict, Sudan began its journey to peace with the signing of the Comprehensive Peace Agreement in 2005. This was a bold step away from conflict and continued warfare to peace. The prolonged war and devastation basically means that South Sudan has started from scratch. Despite this, the aspiration of the southern Sudanese are high and the demands on their government remains relentless. This chapter examines the historical background of the Sudan conflict, the new republic after cessation, the pending issues in the CPA, the prospects of war and/or peace and an overview of Sudan government's post war reconstruction/recovery.

2.1 Background

Civil conflict in different African states has taken up a sizeable portion of time and effort that could have been devoted to post colonial state building. Conflicts between marginalized groups or regions with governments abound in many African countries. But the case of Southern Sudan stands out as one of the longest Civil Wars on the continent.³³ The disputed access to natural resources ranges from availability of farming and pasture land³⁴ to the extraction of oil; and perceptions that this revenue is used by the incumbent government in fueling more conflict. In the case of the North-South conflict, the popular perception is that it was a predominantly

³³International Crisis Group, "*The Khartoum-SPLM Agreement: Sudan's uncertain peace*" Africa Report No.96(Brussels, ICG. 2005), p.1 .

³⁴M.A Assal.*Sudan. Identity and conflict over natural resources.Houndsmill.Vol. 49.No.3. 2007. Pp101-105*

Islamic North fighting against the predominantly Christian South; with the former being accused of trying to enforce its religion and culture on the later through Sharia Law.³⁵

The historical background to conflict has been attributed to the failure by the British who colonized Sudan to develop policies that would have united the country.³⁶ For example, the “Southern Policy” that prohibited the use of Arabic in the South, and restricted Islamic teaching may have also increased the animosity between the two regions. These issues form some of the Structural causes of conflict not only in Sudan but elsewhere in Africa and the failure to address them could be the weakest link in any endeavor to achieve peace.³⁷

The Comprehensive Peace Agreement (CPA) signed in Nairobi in 2005 after two and a half years of negotiations brought to an end many years of war and an opportunity for self-determination of the Southern Sudanese.³⁸ The CPA provided for a broad referendum after six years; and this period has been characterized by innuendo and suspicion that is historical in nature.³⁹ One of the major stumbling blocks is the issue of sharing the oil revenues and authority to issue contracts to foreign oil exploration companies. The CPA provided for roughly a 50-50 sharing of the revenues but the intricacies of how this would be implemented has led to accusations from both sides and a near stalemate in resolving the problem.⁴⁰

³⁵ F.M. Deng, “Sudan: A nation in Turbulent Search of Itself” *Annals of the American Society of Political and Social Science*, Vol. 603. Law, Society and Democracy: Comparative Perspective. (2006), pp. 155-162.

³⁶ *Ibid*, pp. 155-162

³⁷ L. Alexander and D. Smith, “Evidence and Analysis: Tackling the Structural Causes of Conflict in Africa & Strengthening Preventive Responses” (Commission for Africa. 2004), pp. 1-7.

³⁸ *Comprehensive Peace Agreement signed between the Government of the Sudan and the Sudanese Peoples Liberation Movement/Army*, (Nairobi Kenya, 2005).

³⁹ A. Hardallo, “Possible challenges and impediments to the Naivasha Peace Agreement” in H.A. Ati and G.D. Tayeb (eds), *Peace in Sudan So near .. So far..?*, Proceedings of the Sudanese National Civic Forum, Dialogue Sessions 2007-2008, (2009), pp. 35-37.

⁴⁰ International Crisis Group, “Sudan’s Comprehensive Peace Agreement: The Long Road Ahead” Africa Report No. 106, (Brussels, ICG. 2006), pp. 7-9.

The conflict in Sudan started in 1956 after the departure of the British who were the colonizing power from 1898 to 1952; leaving behind two regions that viewed the independence of Sudan in different ways.⁴¹ This was partly as a result of the separate administrative structures put in place by the British; that allowed the two regions to be viewed and developed in different ways. It was, therefore, only a matter of time before conflict would occur as there were no clear structures to address the issue of the many years of underdevelopment in southern Sudan.⁴²

A first attempt by the new government to discuss the issues of marginalization and underdevelopment for the South was convened in 1965.⁴³ However, this meeting did not yield any results as the protagonists failed to reach any comprehensive solution other than proposing that a joint commission be set up to further explore peace initiatives. There was an escalation in armed conflict in the south and after another bloodless coup by Colonel Jaafar Nimeiri in 1969; a further attempt was made at reaching a peaceful solution to the problem.

The Addis Ababa Peace Conference in 1972 may have been a turning point in efforts to resolve the problem as it culminated in a Presidential Decree by President Nimeiri that provided for the Southern Provinces Regional Self-Government Act of 1972. The Addis Ababa Agreement provided for constituent local elections and an autonomous regional government in Southern Sudan, which were issues that had been pursued by the South for many years.

⁴¹ F.M. Deng, *War of Visions; Conflict of Identities in the Sudan* (Washington DC, USA, The Brookings Institution, 1995), pp. 9-18.

⁴² E. O'balance, *Sudan, Civil War, and Terrorism 1956-1999* (New York: St Martins. 2000), p.209.

⁴³ The European Sudanese Public Affairs Council, *Working for Peace in Sudan. The Peace Process, a Chronological History* (2001), pp.1-5.

In May 1983, the Sudanese People's Liberation Movement and the Sudanese People's Liberation Army led by Colonel John Garang were formed with the aim of providing a formidable opposition to discriminatory government policies that marginalized the South following the abrogation of the Addis Ababa Agreement. The declaration of Sharia law for the whole country, and sub-division of the south into three regions created an untenable situation for any negotiations; and for a period of ten years there was intensified rebel activity in the South.

2.2 Status of Returnees

Returnees comprise of internally displaced persons (IDPs) and refugees. IDPs may be defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.” (Refugees, on the other hand, are those persons or group of persons, who have experienced similar situation but have crossed an internationally recognized state border.⁴⁴

One of the objectives of the recently enacted Land Act (2009) in South Sudan is to facilitate resettlement and reintegration of IDPs, refugees, and other categories of persons whose rights to land were or are affected by the civil war.⁴⁵ This demonstrates the serious concern of the Government of South Sudan (GOSS) and the people of Southern Sudan in general about the proper management of the return and reintegration process. This process is sensitive and complex because most returnees are keen to settle in urban centers where there is great promise of access to social infrastructure, such as health facilities and schools. In the rural areas, the

⁴⁴(UNHCR, 1998)

⁴⁵ Land Act 2009, Section 5(1).

customary system and traditional authorities are capable of dealing with indigenous returnees who seek to access their ancestral land. They are not however equipped to deal with influx of people who are not indigenous to their communities.

The ICSS guarantees residence for every Southern Sudanese in any part of Southern Sudan. This means the GOSS cannot force individuals to return to their ancestral homes. However, as has been repeatedly stated in consultation workshops held by SPRP in the different States, Southern Sudanese who relocate into an area and who do not belong to that area's indigenous ethnic group or clan are considered "outsiders." They do not belong to that "community" and have no rights to claim land and settle in areas customarily claimed by that community. A chief or community leader can allocate land to such "outsiders" on temporary basis, provided that they respect local customary practices of the host community. Ultimately, outsiders are expected to relocate to their areas of origin or are forced to do so if necessary. Thus, the general expectation is that IDPs and refugees should be reintegrated in their ancestral communities. According to the NRC-led report (August 2004) "people tend to go back to their areas of origin because they can fall back on local safety nets, traditional solidarity mechanisms and kinship ties for re-integration into society. Belonging to a group is essential part of the livelihood strategy of rural people in Sudan. Furthermore, most Sudanese societies have health distribution mechanisms in place that may facilitate the recovery of individuals of the armed conflicts. People are well aware of local coping mechanisms and have a good understanding of the local socio-ecologic environment to make a living".⁴⁶

⁴⁶ Paul V. De Wit. Land Policy Development in Post-conflict Sudan: Dealing with Balance in a Fluid Environment (February 2008).

2.3 Restitution of Property and Land

Restitution refers to the return of property to a rightful owner from whom it was taken. With respect to land, restitution means giving a piece of land or property to the rightful owner. It could also mean compensating an individual or community for lost land or property, appropriated by individuals or government for public usage. According to De Wit (2008), in Sudan there seems to be two different dimensions for the restitution of land rights.⁴⁷ For example, there are individual and household rights of IDPs and refugees that were lost in the conflict itself. Secondly, there are longer standing historical grievances and injustices which are mainly groups' claims, and often more complex to address, and have contributed to the emergence of the conflict itself. These are exemplified by the forceful displacement of people by the petrol concessions and mechanized schemes in petroleum producing areas and in the Greater Upper Nile States, respectively. De Wit then goes on to suggest a number of effective and tested tools that could be used for restitution of land and property rights, universally as well as in Southern Sudan.⁴⁸

In Southern Sudan, the issue of restitution of land and property rights arose as preparation for repatriation of IDPs and refugees was under consideration. A number of workshop recommendations from the period immediately following the signing of the CPA highlight the growing attention to property restitution issues.⁴⁹

However, the lack of a comprehensive policy and legal framework to guide the process of institution of land represents a key challenge to the restitution of land and property.⁵⁰ This has different impact for urban and rural areas. In rural areas, the presence of customary institutions

⁴⁷Ibid

⁴⁸Ibid

⁴⁹ Michael O. Odhiambo. Southern Sudan Land and Property Study and Workshops, December 2009: p.19.

⁵⁰Ibid

and traditional mechanisms for dealing with restitution of land makes the process easier for the reintegration of returnees than is the case in urban areas.

A key recommendation was that traditional methods be used for tracing ancestral lands, negotiating with those who are using such lands, and for resettling the original owners and resolving any disputes that may arise. Workshop reports, however, acknowledged the limit to what can be achieved by means of tradition and customs, especially for migrants and women. The case of women is particularly difficult under customary land tenure system, as their rights are normally mediated through male relatives. Even where traditional institutions are willing to allocate land to women, they are constrained by the fact of being considered along with other returnees as “outsiders.” This is because most Southern Sudanese customary laws do not accord women complete human rights on equal basis as men. Their rights are always guaranteed through husband or male relative.

The challenges of restitution in urban areas are different because of high demand for land and the great pressure brought to bear on land management institutions to meet a variety of demands and interests. The lack of clear policy and legal framework, and limited institutional capacity in terms of human resources and equipment all compound the situation.

The 2009 Land Act made an initial step in establishing a process for addressing claims for restitution of rights to land and lost property as a result of forced displacement resulting from the civil war. Further, the Act states that claims for restitution and compensation should be made to the Land Commission, traditional authority or any other recognized community representative within three years from coming into being of the Land Act (January 2009).⁵¹

⁵¹ Land Act, Chapter VII: Land Administration and Management, Section 41, 2009.

Unfortunately, so far the majority of people are not aware of this requirement and nothing much has been done to raise the awareness of the population of these provisions of the Act. A number of stakeholders have publicly voiced serious concerns about the implications of this provision for people who have restitution claims as not enough time is given considering the widespread lack of awareness regarding filing claims.

Another core theme of the workshops is the issue of land and property rights taken over by government institutions for public use without compensation. Examples cited at workshops are cases of land grabbing by top government officials and oil companies bypassing local authorities and communities and embanking on drilling such as occurred in Jonglei State. Similar incidents of taking land without consultation by mining and oil companies, as well as investors using land for commercial farming, was reported in NRC Kapoeta workshop. Eviction of local people for expansion of town and road construction was also reported in Western Equatoria workshop. All these incidences point to the need for a clear legal framework for land acquisition and appropriate compensation by government and other stakeholders.

2.4 Pending Issues in the CPA

When the CPA was signed in 2005, it signified the end of the most recent two decade-long civil war by creating a power sharing agreement between President Omar al-Bashir's Government and the southern secular Sudan People's Liberation Movement (SPLM). The CPA allowed the SPLM and the South to essentially govern itself as an autonomous state. While credited as bringing a shaky peace, which at times has been tested, this agreement was only temporary pending the outcome of a referendum in 2011 on whether the South would choose to secede from the North.

Prior to the referendum, the CPA had made provisions to negotiate a number of issues that would be important post-referendum. However in the period leading up to the referendum, despite international support, it became apparent that a number of these issues would remain unresolved before the referendum date. Rather than delaying the referendum and therefore testing the shaky peace, the referendum was pushed through -- despite key issues not being addressed.

According to AU report on negotiations relating to the implementation of the CPA-the Sudan Framework Agreement from the African Union High Level Implementation Panel on Sudan [AUHIP] headed by the former President of South Africa, Mr. Thabo Mbeki, there are four (4) outstanding unresolved issues. These are; Abyei question; North-South border deadlock; stalemate over popular consultations in the Blue Nile and Southern Kordofan states; and Security arrangement dilemma between the North-South divide.⁵² Against the provisions and intentions of the constituent protocols that formed the CPA, it is certainly obvious that of the six (6) main protocols, the yet-to-be resolved issues borders on a chunk of four (4). This is really critical for the end of the acclaimed 'successful' CPA owing to the misperceived successful conduct of the referendum.

2.5 Stalemate over popular consultations in the Blue Nile and Southern Kordofan states

The plight of the GoS-oppressed and marginalized people of Blue Nile and Southern Kordofan states made the protocol concerning them prescribe a popular consultation as against referendum. This because they are frontal states, part of North Sudan, endowed with resources and opposed to the government in Khartoum. This population, for their neglect by GoS overtime, fought alongside SPLM/A during the civil war but was not initially at Machakos for the 2002 protocol to participate in the negotiations. Until the 2004 protocol that addressed their concerns by

⁵²AU Press Release 31 March 2011

prescribing popular consultation with the people to either accept the CPA as final peace agreement or renegotiate with the GoS. According to a special report by United States Institute for Peace [USIP] in November 2010, the popular consultations had started especially in Blue Nile state but yet unknown outside the locality of the affected states, while that of Southern Kordofan is not expected to begin any sooner.⁵³ The stalemate here therefore is the fact that the process since 2004 has been slow and with the outcome of the referendum in February 2011, there are new concerns as to what would be the fate of these 'traitor population' in the hands of the unyielding government in Khartoum. For the fact that they are border areas between the north-south divide, their fate is hanging in a balance whether to remain independent also, which may be very difficult or to go with the South, which appears implausible.

On January 24, 2011, Voice of America [VOA] News reported Jason Gluck of the USIP, an expert on Sudan popular consultations as saying that much of the demands for popular consultations on *the critical issues in Southern Kordofan, in Blue Nile, in Darfur and in other states as well really boil down to power sharing, wealth sharing, a greater degree of genuine autonomy for the states themselves.*⁵⁴ In this case, the CPA could not have been able to predict the reaction of the Government in Khartoum to these demands with potential implications for disintegration of Sudan. Obviously, no mechanism in the CPA with its inclusion of right for self determination has the capacity to resolve the new or unforeseen issues of greater push for autonomy by these states especially in Southern Kordofan, Blue Nile and elsewhere in Sudan ahead of the declaration of independence in the South.

⁵³Gluck 2010

⁵⁴VOA News 24 January 2011

2.6 Border Demarcation: the Abyei Issue

Even in Sudan's colonial times when the British governed the North and South as two separate states, the North-South border has never been clearly defined. Seemingly without consideration, the border region dissects water basins, differing tribal areas and even oil reserves. While there has been some agreement over the exact demarcation along some areas of the border, other areas remain contested between both the two governments and between local communities and tribes who fail to recognize any north-south demarcation. For nomads who migrate between the North and South depending on their farming patterns, the refusal of President Omar al-Bashir to offer dual citizenship means any border demarcation could become seriously contentious -- especially if any border enforcement disrupts the nomad's normal livelihood patterns.

One area of particular contention along the border is the oil-rich Abyei region in the center of the country. Both the North and South perceive the area as part of their respective districts. A separate referendum was meant to take place in Abyei in which the region would decide whether to be part of the North or the South. After the governments failed to agree, however, this has been indefinitely delayed.

Post referendum, the fate of the Abyei region is still particularly contentious. Fighting already is reported in the region as local rebels loyal to one side or the other fight for dominance over the area before the referendum outcome is announced.

In no particular order but because of the connectedness of these issues, the North-South border deadlock arises first from the provision of the Machakos protocol 2002 that consolidated Southern Sudan regional autonomy over some six states. This particular clause required a delineation of borders to really ascertain the full extent of landmass coverage under the influence

of the divides. Having signed the agreement, unforeseen issue over Abyei became prominent and a source of concern. It is the concern over what sector of the divide this resource- rich portion falls that created impetus for the protocol on the Resolution of Abyei Conflict. Consequent upon the North-South border problem, several mechanism provided by the CPA have been set up to execute the border clause most of which centres now on Abyei. This concern would not be clearly understood especially where the issues stand today except the Abyei issue is considered.

For the geostrategic importance of Abyei, what was never envisaged as an issue reflective in the struggles over land, water, grazing and movement between the Ngok, Dinka and Misseriya ethnic groups became very important and finally the balance upon which every argument between the divide rests. In this case the CPA had no clue in resolving the new issues of social categorization, ethnic struggles, rights and access to land, water and grazing right.

The obvious issue of contention the CPA was concerned with was majorly how to share oil-revenue from that region between the residents and a determination of status for Abyei either as part of the North or South should secession occur.

In each of these CPA provisions, implementation has not taken effect; a permanent status for Abyei is still unachievable and CPA stipulated resources to the locals are much in doubt if they ever get to the people. The task to determine a permanent status for Abyei through a referendum in connection with the north-south border divide has brought new issues of Abyei citizenship determination to the fore. The question of who are bonafide residents of Abyei and who should participate in the proposed referendum have been fiercely debated between the local NgokDinka and Misseriya ethnic groups, and regionally between the governments in Khartoum and Juba. As the case is now, it appears the answer to the future of Sudan is hanging on the Abyei question.

2.7 North-South Security Arrangement Dilemma

There is a prevailing volatile situation in the disputed areas between the belligerent divide against the stipulations of the CPA calling for demobilization, disarmament and re-integration (DDR) of militias and sectional soldiers. The formation of Joint Integrated Military Units (JIUs) with constituents of Sudan Armed Forces (SAF) and the SPLA to man the restive and debated areas is one of the major provisions on the Security arrangement protocol. However, today there have been several skirmishes in the disputed areas as well as southern Sudan orchestrated by unsatisfied powers of the CPA. Under the prevailing circumstance, there is still a large presence of SPLA in the northern states of Blue Nile, Southern Kordofan and Abyei especially around the oil fields based on a confidential UN report. The GoS is also an equal player in the game regardless of the JIUs deployed to the restive areas. There has been an allegation of partiality and complicity leveled against GoS loyalists in the JIUs as standing by and allowing the militia attack causing ethnic tension to escalate. The JIU itself is polarized and to worsen the case; the deployment of the Joint Integrated Police Units (JIPUs) has aggravated the security condition between the Misseriya and Dinka ethnic groups as the former claimed that the JIPUs were out to witch-hunt them and constitute obstructions to their nomad activities.⁵⁵In spite of the 2005 ceasefire agreement, skirmishes and wanton destruction perpetrated by either of the major belligerents, coloured with un-incorporated militias and spoilers, have complicated the security environment in Sudan. Though the CPA stated what it thought would promote national unity, reconciliation and stability, it has no in-built or existing mechanism of compliance to address the polarization of the JIU. This is purely a difficult attitudinal issue seen in the light of in-group out-group differentiation struggles even in mechanism (JIU) that ought to serve to promote and preserve national unity. Therefore, the intended purpose of the JIU initiative has been derailed.

⁵⁵Bubna M 2011, "Brewing Insecurity in Abyei" *Enough Project*, 24 March

2.8 The prospects of war and/or peace

In mid-April 2012, some nine months after South Sudan's independence, after 99 per cent or more of the South Sudanese people opted in their referendum in January for that (CPA-sanctioned) course, are many and varied: The month of April saw an astonishing turbulence of events, from the apparent near-agreement in Addis Abeba on some key issues of vital importance to basic stability and the declarations of a new negotiating climate, the situation deteriorated into open and direct warfare between the Southern Sudan People's Liberation Army (SPLA) and the northern Sudan Armed Forces (SAF) – the regular armies of the two independent states – in the hypersensitive and oil-rich border areas of Abyei- Heglig-northern Unity State.

These ominous events came, or exploded, on top of a series of other negative events that shook the stability of both Sudans and strained relations between them even further: the expiry of the northern ultimatum to southerners remaining in the north on 9 April (register as foreigners or leave!); the continued, protracted fighting in South Kordofan and Blue Nile between SAF and its allied Arab locals and SPLM/N (former Nuba and other allies to the south), in cooperation with the Justice and Equality Movement and possibly others from the Darfur scene; the absence of agreement between the main contenders on any of the important post-CPA issues, including oil; and the humanitarian consequences of all these clashes within and between Juba and Khartoum.

And in reaction to the events in the Heglig area the northern side declared abandonment of the peace negotiations in Addis, conducted since last summer and before under the auspices of the African Union High-level Implementation Panel (AUHIP) led by former South African president Thabo Mbeki, and heavily supported by all other international stakeholders in Sudan's peace, the UN, the US, the EU, IGAD and others. So, in April, the world witnessed a classical recipe for war, and, after the partition, no longer an intra-state civil war but a not-so civil war between two

newly independent states, with upgraded armed forces (thanks to the generous support from suppliers in various corners of the world) capable of more lethal harm, compared to the more “primitive” civil war years: governments shaken under economic and political pressure, military dynamics already in motion, hard to contain and control, bellicose language on political platforms and in the media, vital stakes at hand, lots of spoilers around, lots of unsettled scores and bones of contention, a long history of seemingly fruitless diplomatic efforts at peaceful settlement, and a forum for diplomatic negotiations cancelled. And the general lesson from peace research remains that the probability of war is more often than not higher in regions where there has been war before, that post-war environments are more likely to see war (re)emerge than is the case for environments with a peaceful past – no matter the force of the war-fatigue factor.

In recent months, events in South Sudan and Sudan have led many people to ask whether the two countries are at war or peace, and how peaceful each of them is internally. The two countries’ armies have clashed directly, and cross-border incursions have recurred. Rebel groups have continued to shelter and draw support in one country while fighting in the other. People (civilians and combatants) have been killed and injured in violence, and the economies of each country have begun to stagnate or contract, together causing a mounting toll of suffering and loss of life. Is this peace? Is it inevitable that patterns of violence, peace and economic opportunity in the two Sudans should be like this? And how was it that the “comprehensive peace” that was in place during 2005-2011 brought the two countries to this situation?

At the present time, after the recent deterioration in relations between the two countries, it is tempting to think that the critical question is how to stop the current clashes and conflicts. However, as the history of conflict, peace and peace agreements in Sudan and South Sudan shows, it is a mistake to focus only on apparent solutions to current crises.

2.9 Post-war reconstruction

Post-conflict governments face highly distinctive problems of fiscal management, both on how revenue is raised and how expenditures are implemented. The design of one important source of revenue, natural resource extraction, taxation and aid are some sources.

2.10 The promotion of local governance

A decentralised approach is commonly held to be particularly important in post-war contexts where central governing structures are weak or remain contested. Local structures then become critical for providing goods and services, particularly for vulnerable groups, and to promote local-democratic processes. Experts nevertheless warn that no activities at the local level will succeed in the long run without a functioning national state structure. Thus a primary determinant of success in sustaining a peace process and preventing a resumption of war or an interminable stalemate, must be that a country is capable of running itself and is a functioning member of the UN system.⁵⁶

Design and political motivations are important factors determining the effect of decentralisation and local governance programs. Central- local (or regional) relations are typically sensitive and may be complicated by hidden agendas. Paradoxically, perhaps, the central government may use formal programs of decentralisation to enhance its control on the local level, e.g. Museveni's transformation of the Resistance Councils in Uganda, and the National Solidarity Program of the Karzai administration in Afghanistan. Externally initiated programs of decentralisation must be particularly carefully designed if they are going to work. In Somalia, UNOSOM II pursued a "bottom- up" strategy to establish district and regional councils that would elect members to the

⁵⁶Woodward 2004

national transitional government. The councils were to be seen as a democratic counterforce to the 'warlords'. In practice, however, the district councils became empty shells largely devoid of authority, mainly because the Somali warlords and other leaders preferred a "top-down" approach. In Bosnia, the system imposed at Dayton turned out to be overly decentralised and reproduced the structural faults of the former system. The overall result has, among other things, been a decrease in the quality of service delivery and mono-ethnic dominance of local power.⁵⁷

Community Driven Development projects (CDD) have generally been effective in establishing or expanding essential social services and physical infrastructure at the local level. On the other hand, poor and socially excluded groups often have difficulties in responding to the opportunities created by CDD-type projects. Established authorities may prevail, or even be strengthened with the infusion of new funds. The experience with regard to the role of women is mixed. Including women in community-based organisations in Rwanda worked generally well, while less so in Indonesia.⁵⁸ Addressing the needs of vulnerable or less privileged groups may often require more targeted and supply-driven approaches. Applying the model to post-war situations entails particular challenges if villages have been divided or if resources are distributed unequally among previously hostile areas.

Giving the communities' new resources to dispose of under such conditions can generate new conflict unless appropriate structures of cooperation and reconciliation are established. Experiences from Indonesia and Afghanistan show that frameworks for dispute mediation at the local level may bring together divided societies.

In brief, the fortunes of decentralisation as a technique for managing conflict have been varied. In Bosnia, decentralisation of powers to the different entities, cantons and municipalities has

⁵⁷Woodward 2002

⁵⁸Strand 2003

been extreme, yet for the most part it has ratified ethnic cleansing rather than resolving the underlying conflicts. In contrast, decentralisation in South Africa has not made serious inroads into the powers of central government, presupposing a notion of *cooperative* rather than *competitive* devolution.⁵⁹ The overall lesson is that decentralisation must be tailored to the specific requirements of peacebuilding in the country's particular national context.

For the Sudan, many will argue that earlier attempts of decentralisation have done little to reverse two centuries of centralised decision-making, one reason being that administrative powers and responsibilities have not been coupled with sufficient economic resources. On local levels, the "native administration" that used to function quite well in several parts of the country (until the 1970s), also in the important area of natural resource management, has not been substituted with institutions with the necessary resources, competencies and legitimacy to resolve conflicts and generally run the affairs of diverse communities and regions. The extensive political autonomy agreed for the GOSS will change things in a major way and could also be applied to other areas of the country although this is not envisioned so far.

However, many of the national conflicts have been played out at the local level in different parts of the Sudan. Local tensions can be reduced by rehabilitating the older institutions that regulated inter-group relations. Land is a significant issue in many parts of the country. But attention will also have to be paid to establishing clear areas of responsibility between local forms of administration at the province and regional/state levels to avoid the build up of some of the broader tensions that led to the civil war.⁶⁰

⁵⁹Bastian and Luckham 2003

⁶⁰Manger et al. 2003

2.11 Civil rights organisations

Many donors support *human rights organizations* that build rights awareness on grassroots levels. These are often anchored in a national human rights commission, or human rights monitoring linked to larger peace commissions (as in Nicaragua). Human rights work on the micro- level of this kind has been important, yet its overall effectiveness is highly dependent upon macro- level support in the form of national policy and international assistance. Support for development of human rights organisations in Cambodia on both local and national level has, for instance, been considered a major success and achievement. In the Sudan, a fairly large number of civil society organisations have emerged in recent years (such as women's groups, charities and religious associations). They need to be supported as crucial actors in a peacebuilding process.

National, institutional support is necessary to establish the principle of no impunity through firm prosecution of violations. In the case of refugees returning to conflictual post-war situations, both national and international support is required to establish a reasonable absence of fear. Fear of reprisals was a main reason why Hutu refugees were reluctant to return to Rwanda after the genocide. In Bosnia, it took concerted efforts by the international community – including provision of incentives to both refugees and local authorities – to encourage returns to areas that had been ‘cleansed’.⁶¹

2.12 Grassroots projects: Empowerment, cooperation and dialogue

Several projects in war-torn societies have been designed to *empower victimised and traumatised communities*. Projects of this kind have been established to assist the indigenous people in Guatemala, who suffered enormously from systematic violence perpetrated by the ‘security’

⁶¹Uvin 2000

forces during the war. One project, for instance, sought to strengthen the Mayan people's capacity to articulate their interests in policy discussions.

The theory that personal contact reduces hostility – amplified by the conflict transformation theories of Lederach (1997) and Kriesberg (1998) – has informed numerous projects. The assumption is that participation in common projects and structured interaction among previously divided communities will help restore (or create) positive social relations.

Cooperative projects of this kind have been particularly common in the post-war Balkans. Evaluations of cross-ethnic contact groups of youth and NGOs suggest they have been effective but – as in the case of grass-roots human rights initiatives – vulnerable to renewed conflict on the national level. As stated above, the CSIS report (2004) also makes recommendations for the Sudan in this area.

Recognising that peace must be built from below as well as from above, South Africa pioneered the use of *grass-roots peace committees*. Designed to foster tolerance and prevent violence on the local level, the committees were linked to a regional- national structure. They have since been emulated elsewhere (e.g. Sri Lanka and Nicaragua), and are generally considered important in contributing to conflict management in deeply divided societies.⁶²

2.13 The prospects for democracy in the Sudan

One of the main recommendations of the CSIS report *"To Guarantee the Peace: an Action Strategy for a Post-Conflict Sudan"* (2004) is that donors must begin to press for "the liberalisation of autocratic governing structures in both southern and northern Sudan". According to the report, neither the GOS nor the SPLM/A have been empowered by democratic elections. Several violations of human rights are well documented in both regions, though the north is

⁶²Kumar 1999:9

considered the worst offender. Freedom of assembly, freedom of speech and the formation of political parties have been stifled in both areas.

While many will agree with this recommendation, the international community will be well advised to consider the historical background for the current situation before pressing for changes that may otherwise be short-lived and therefore unproductive. First, post independence Sudan has seen several democratic governments, i.e. governments that came to power on the basis of elections. But Sudan-style democracy has done little to prevent the state from becoming a vehicle for particularistic interests and a continuous source of conflict which has robbed it of its consensus-building character. A dilemma of earlier Sudanese democracy has been its tendency to slip into majority tyranny, particularly with respect to the South but also with respect to other areas of the country. Also, the stable ethnic-religious identity support for the three major parties before 1989 (Umma, NIF, DUP) meant that there was practically no (democratic) way to change the government.

A core issue fuelling the civil wars has been the inadequacy of the state structures to accommodate conflicting demands made on them by rival groups. Such restructuring requires agreement on a basic set of rules which will make it possible for the parties to exist in the same public arena without violent conflict. In brief, there is clearly a need to construct new imaginative structures that are less conflictual and more accommodating of local autonomy and social values. A constitutional review process will be crucial whereas hasty democratisation, if based on insufficient knowledge, may precipitate a new crisis, just as formal democratisation in Sudan has often coincided with the intensification of civil war.

Regarding SPLM/A, experiences from elsewhere, including the Horn of Africa, clearly indicate that it will be a challenging task to move from being a guerilla movement to a political party

complying with principles of democratic governance. A major lesson from the literature is that democracy cannot easily be designed, and particularly not by outsiders. But there is still enormous potential for constructive institutional design, policy choice, and changes to the culture of politics, which can make democracy more responsive to problems of inequality and conflict.

What matters most, however, is the overall commitment to political and social inclusion, rather than the political formulas by which it is brought about. This is clearly a major challenge in the Sudan.

2.14 Conclusion

Post –conflict reconstruction is viewed by Doyle and Sambanis (2006) as geared toward economic and social cooperation aiming at confidence- building, developing` the social, political and economic infrastructure to prevent future violence and laying foundation for a durable peace.” Post-war reconstruction is mainly a development challenge of growth, inclusiveness, stability and sustainability as well as political development challenges. The conflict in Sudan which had begun in 1956 and ended with the signing of the CPA in 2005 and the outcome of the referendum which led to the independence of South Sudan poses a major challenge for the government of South Sudan ,which this paper seeks to address from the inception of independence in July,2011 to July 2012.

CHAPTER THREE

POST- CONFLICT RECONSTRUCTION IN SOUTH SUDAN: A CRITICAL ASSESSMENT

3.0 Introduction

Peace-building is difficult to define and even more difficult to achieve in practice. Post-conflict peace-building are “strategies designed to promote a secure and stable lasting peace in which the basic human needs of the population are met and violent conflicts do not recur”.

This definition takes a long-term focus and incorporates the goals of both negative peace (absence of physical violence) and positive peace (absence of structural violence), a distinction first outlined by Galtung. The signing of a peace agreement or other event that marks the official end of war signals the beginning of post conflict reconstruction. Large bilateral or multilateral agencies arrive to work with national governments, and to manage and disburse most funds for social and economic reconstruction. This transition from war to peace is not smooth. More often than not “emergency relief, rehabilitation work and development assistance co-exist...and interact.”⁶³

3.1 Transitional Justice and Sustainable Peace

The international community will, in peace operations and during post-conflict reconstruction, begins to assist and supply transitional justice, in a space where some forms of justice mechanisms already exist, but also where there is a void of such mechanisms. These transitional justice mechanisms are essential to stability and sustainable peace. Transitional justice

⁶³ As stated in the *1997 Development Assistance Committee (DAC) Guidelines on Conflict, Peace and Development Co-operation*. 29 July 2012 <<http://www1.umn.edu/humanrts/instate/OECDdev.htm>>.

mechanisms are created to deal with crimes that were committed during a conflict period, at a stage where that society is at the cusp of transition from a society of conflict to one of democracy and peace. Transitional justice mechanisms may take a number of forms. Most prominently these include the international criminal court, international tribunals, special courts, truth commissions, local courts and traditional methods of justice.

3.2 Justice and Reconciliation

Justice and order are important aspects of peace-building in a post-conflict situation where there is a need to end violence, disarm combatants, restore the rule of law, and deal with the perpetrators of war crimes and other human rights abuses. The need to overcome or transform the enmities developed during a violent conflict and “build bridges between ordinary people” suggests a need for reconciliation. This paper is concerned with the challenges and dilemmas of meeting these human needs for justice and reconciliation in the aftermath of violent conflict.

Very few studies have considered the roles of justice and reconciliation in the success or failure of peace agreements and peace-building processes in sustaining a long-term peace. For example, neither David nor Stedman and Rothchild mention the role of transitional justice in their analysis of post-conflict peace-building.⁶⁴ Nor do they include any reference to the role of psychological reconciliation between former enemies in the quest for peace. Cousens and Kumar do not discuss justice or reconciliation in their overall conclusions, although one of the contributors, Orr, does mention the absence of justice as a root cause of the conflict in El Salvador and the role of improvements in human rights protection and administration of justice in supporting peace-

⁶⁴C.-P. David, “Does Peacebuilding Build Peace? Liberal (Mis)steps in the Peace Process”, *Security Dialogue*, 30:1 (March 1999), pp. 25-41; Stephen J. Stedman & Donald Rothchild, “Peace Operations: From Short-Term to Long-Term Commitment”, *International Peacekeeping*, 3:2 (Summer 1996), pp. 17-35.

building in that country.⁶⁵ Another researcher, Hartzell, also acknowledges the role of justice in peace-building, but declines to include it in her analysis.⁶⁶ Bertram, by contrast, highlights the dilemma of how to deal with those accused of past human rights abuses and the question of “amnesty or reconciliation”. She describes it as “one of the most troubling quandaries for peace builders” and claims that a policy of impunity or blanket amnesty creates “ominous implications for UN efforts to build democracy and a sustainable peace”.⁶⁷

Reconciliation is the ultimate objective in all post-conflict societies and post-conflict reconstruction processes, however, is often very vaguely defined, if at all. It has been referred to as acknowledgement and repentance from the perpetrators and forgiveness from the victims,⁶⁸ as non-lethal co-existence,⁶⁹ as democratic decision-making and reintegration, and as encompassing four concepts namely truth, mercy, peace and justice,⁷⁰ concepts which in themselves are difficult to define.

It is imperative to distinguish national and individual reconciliation, national reconciliation is achieved when societal and political processes function and develop without reverting to previous patterns or the framework of the conflict. Individual reconciliation is the ability of each human being to conduct their lives in a *similar* manner as prior to the conflict without fear or

⁵Elisabeth M. Cousens&Chetan Kumar (eds), *Peacebuilding as Politics: Cultivating Peace in Fragile Societies* (Boulder, Colorado: Lynne Rienner, 2001)

⁶Carolyn A. Hartzell, “Explaining the Stability of Negotiated Settlements to Intrastate Wars”, *Journal of Conflict Resolution*, 43:1 (February 1999), pp. 3-22.

⁷E. Bertram, “Reinventing Governments: The Promise and Perils of United Nations Peace Building”, *Journal of Conflict Resolution*, 39:3 (September 1995), pp. 387-418.

⁸Monteville in K.Avruch&B.Vejarano, “Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography”, *The Online Journal of Peace and Conflict Resolution*, Issue 4.2, Spring 2002, p. 4.

⁹David Crocker in J.D.Tepperman, “Truth and Consequences”, *Foreign Affairs*, March/April 2002, p. 7.

⁰John Lederach in A.Odendaal, “For All Its Flaws. The TRC as a Peacebuilding Tool”, *CCR*, vol. 6, no. 3/ 4, December 1997, p. 1

hate. This distinction is crucial because it is possible to achieve national reconciliation without achieving individual reconciliation. National reconciliation may come at the expense of reconciliation at the individual level, although political processes may proceed and progress individuals may find greater difficulties in dealing with their experienced traumas.

Although there is currently a growing consensus of the relationship between peace and justice, for example the UN Secretary General has emphasized the importance of integrating justice into the peace process,⁷¹ reconciliation is still frequently described as incompatible with justice. The justice versus reconciliation, justice versus peace, justice versus truth debates all emphasise that justice is retributive and reconciliation is restorative and that there is a trade-off involved. Hence inferring that justice, in the meaning of criminal proceedings of one type or another against individuals to attain individual guilt followed by punishment, will not lead to reconciliation, stability or peace.

3.3 Local Trials

Holding local trials in post-conflict societies is a transitional justice mechanism to deal with past crimes and human rights abuses. These types of trials can be conducted with or without the direct assistance of the international community. They can include the participation of international judges, for example, judging panels where two out of three judges are local, and one is international, or they can consist entirely of local judges and prosecutors. They can apply local law only or they can apply a transitional form of law, which may include international human rights law or UN laws and treaties.

In a transitional period, if local trials are chosen as a vehicle for justice for past abuses, a multitude of combinations may be employed during this period in a court of law. There are

⁷¹ Draft report Wilton Park Conference, "Transitional Justice and Rule of Law in Post-Conflict Societies: The Role of International Actors", 24-26 January 2005, p. 2.

numerous positive and negative outcomes and effects of applying local trials to deal with the past in a transitional period. However, the key issue which need to be addressed prior to even contemplating the potential of local trials to deal with human rights abuses is the state of the judiciary and the judicial system in post-conflict societies.

3.4 The Judicial System and Judiciary in Transitional Societies

In many post-conflict societies that have been marred by conflict for years, it is not only the military, police and other government agencies that need extensive reform, but also the judicial system. The judicial system may have stopped functioning during the conflict or it may not have functioned even prior to the conflict. It may have been entirely corrupt, encouraging or supportive of human rights abuse conducted by government agents, or simply close to non-existent. An authoritarian regime is always reflected in its judicial system and by its judiciary. The extent of its corruption and/or non-functioning is entirely variable depending on the state and can be found along a continuum from nonexistent/ non-functioning to fully functioning containing minor cases of corruption. It is extremely unlikely, almost certainly impossible, that any post-conflict society will immediately upon the cessation of hostilities be able to conduct fair and impartial trials. This is not necessarily only the result of corruption and abuse, but also due to the fact that judges or prosecutors might no longer exist. Even the infrastructure, such as a court room, where trials are held might have disappeared.

Judicial reform cannot be obtained within a short timeframe. It requires an extended period of time as well as extensive resources. However, prior to obtaining full reform of the judicial system interim solutions can be established. In a transitional period, the international community plays a crucial role in supporting not only the development of the judicial system to ensure a stable transition to democracy, but also to ensure fair trials in local courts should the state choose

this mechanism to deal with human rights abuses. There have been several examples of these types of ad hoc solutions. In East Timor, special panels were created which consisted of both international and East Timorese judges.⁷² This is a hybrid type solution which is cheaper than a fully-fledged international tribunal and it can be of more value because of the inherent local ownership of such a process. Additionally, civil society will see the effects of this mechanism. It involves their own government taking control of the process, signalling a change towards accountability. This hybrid can be a solution in transitional countries, which seek to prosecute perpetrators during the transitional period. It is not without its problems. In East Timor, it suffered from a lack of resources and understaffing. The pressure to conduct such trials without having had sufficient judicial reform was severe and it was observed that 'the Dili District court fails to meet even minimal standards for a fair trial',⁷³ which undermines justice and accountability rather than serving them.

Local trials have been criticised for conducting emergency justice and for their potential violation of rule of law norms.⁷⁴ This should not be an argument for never using local trials, only that before such trials are conducted, a certain level of reform must have taken place. For this to be possible international assistance is crucial. In a transitional society, it can be problematic deciding which laws to apply – the laws that the previous abusive regime applied might have been against human rights law and retroactive penal reform which cover such abuses is then technically violating rule of law norms, because they cannot be punished if it was not covered in the law when they committed the act.⁷⁵ There are two points, which must be emphasised in this

⁷²E. Mobekk, "Truth, Justice and Reconciliation in East Timor", in report on East Timor by the Geneva Centre for the Democratic Control of Armed Forces (DCAF), http://www.dcaf.ch/publications/Working_Papers.128.pdf

⁷³Charles Scheiner in "East Timor Still Awaits Justice One Year after UN Call for International Tribunal", East Timor Action Network

⁷⁴L. Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, p. 105.

⁷⁵Minow, *Between Vengeance*, p. 30. On retroactivity in trials in general. *Ibid.*, pp. 30-38.

connection. First, international human rights law concerning crimes against humanity and genocide is considered binding on all states, so that regardless of local law during the conflict or authoritarian regime, the perpetrators can be tried for these crimes. Second, this is why it might be pertinent, particularly where there is an international mission, to establish a transitional law for post-conflict societies which can be applied until such time as the new regime has been able to determine and legislate on new laws, which include criminal codes and penal law. This transitional law and its application must be accepted in full by the local government, and not enforced by the international community. Perpetrators can then be tried under such law, which would be based on customary human rights law and any treaty that the country is a signatory to which protects human rights. This is similar to the Justice Rapid Response (JRR) initiative, which argues for short-term assistance until long-term assistance can be given. This may also limit the chances of 'victor's justice', which is often raised as an argument against local trials. The risk of victor's justice is greater unless there is a reformed judicial and penal system or a hybrid transitional court in place.

3.5 Retributive Justice

This is prosecution in a court of law and is often linked to a westernised way of seeking to right wrongs, where the punitive element is crucial. Yet, civil society in numerous post-conflict societies in the developing world have demanded trials and argued that without them impunity reigns.⁷⁶

Numerous objections have been raised against the use of trials in post-conflict societies. One of these is that the political situation may be such that trials are not a possibility – it may destabilise the peace agreement or obstruct the transition to democracy. Many new regimes avoid using

⁷⁶For example, in South Africa, East Timor, Haiti, Rwanda, Sierra Leone.

retributive justice because they do not want to jeopardise their positions by angering the outgoing regime and its supporters, which in turn can incite to violence if they feel persecuted, and this must be acknowledged as a very real possibility. However, the new regime and stability may be threatened if no action is taken. In post-conflict societies, particularly in a transition to democracy, civil society expects change. Accountability for acts of torture and violence is a crucial underpinning of a democratic society. If this is not forthcoming, it may threaten stability and reconciliation, whilst fostering disillusionment. Furthermore, it can send a signal to the perpetrators that impunity and not the rule of law reigns, indicating that there has been little real change. Accountability for human rights abuse must be established from the very beginning in a transitional society. This does not necessarily mean that it has to be established through local courts of law, but the significance of the change from authoritarianism to democracy is one of accountability and the importance and symbolism of this shift is not to be underestimated or ignored.

Retributive and punitive justice is often equated with vengeance. However, vengeance can be avoided if trials are properly conducted. Instead of heightening the chances of vigilante justice and a spiral of vengeance and violence, a judicial process can reduce it, because civil society conceives that the judicial system is dealing with the alleged perpetrators. In other words, it 'transfers the individual's desires for revenge to the state or official bodies.'⁷⁷ Vigilante justice has a higher chance of increasing when there are few or no attempts at dealing with past crimes by any transitional justice mechanism.

It might seem that a punitive mechanism will provide a higher deterrence effect than a non-punitive mechanism. However, the level of deterrence in trials for human rights abuse during

⁷⁷Minow, *Between Vengeance*, p. 26.

conflict and war is very questionable. As Justice Jackson stated, '*personal punishment, to be suffered only in the event the war is lost, is probably not to be a sufficient deterrent to prevent a war where the war-makers feel the chances of defeat to be negligible.*'⁷⁸ The deterrence effect of local trials may lie, not in deterring future conflicts or wars, but in deterring further acts of violence in a transitional post-conflict society, not by members of an armed force, but by individuals and former combatants recognizing that there is a transition to another type of regime, where accountability is the rule not the exception.

Another criticism against trials is that local judicial systems are not able to handle the potentially vast number of cases and hence only a few cases will be heard and the process will seem arbitrary and unfair.⁷⁹ The *gacaca* courts attempted to circumvent this problem by dealing with nearly all perpetrators of the genocide through this process of criminal justice.⁸⁰ After the genocide in 1994, over 130,000 people were detained in prisons, eight years later 125,000 were still in detention. There are over 10,000 courts established and 250,000 judges to deal with the crimes committed during the genocide.⁸¹ There is a reported consensus among Rwandan government leaders and the international community that the process is flawed, in particular it does not incorporate international standards guaranteeing a fair trial.⁸² Putting a whole country on trial, in effect, leads not only to immense practical and ethical problems, but also to questions of how useful such an approach is and what can be achieved.

Additional criticisms against local trials emphasise that they focus on the perpetrator not the victim, they can lead to re-victimisation and they focus on individual guilt not patterns of

⁷⁸Justice Robert Jackson, opening statement to Nuremberg tribunal, The Trial of German Major War Criminals, the International Military Tribunal at Nuremberg, 1945 in Minow, *Between Vengeance*, p. 25.

⁷⁹L. Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, p. 105.

⁸⁰R. Webley, *Gacaca Courts in Post-Genocide Rwanda, Report*, UC Berkely War Crimes Studies Center, 2003

⁸¹Ibid

⁸²IRIN, "Gacaca Courts Get under Way".

widespread abuse.⁸³ Unfortunately, there is little doubt that trials can lead to re-victimisation and the reliving of trauma and, therefore, complicate the process of individual healing. Truth-telling is always a risk, which is also present in giving testimony to truth commissions. Whether the risk is greater in local trials than in truth commissions is something that must be further researched in countries that have had both a truth commission and local trials to establish the extent of re-traumatisation in both groups. However, in both instances there are advantages with finally being able to tell the truth to a body of authority, which may change the victim's own situation and, in the case of a trial, punish the perpetrator. It is not necessarily negative that trials focus on the perpetrator. It may be what the victims want. Courts are not able to deal with the traumas experienced by the victims but they are, however, a vehicle to reduce fear. If perpetrators are punished, it may reduce the general fear in civil society which is always present, particularly when perpetrators of past crimes roam the streets freely and live in the neighbourhoods of their victims. Reconciliation can come about as a result of seeing the change in society, when impunity is no longer present and by the fact that violations have been acknowledged by a court of law. Local trials in post-conflict societies are hampered by many shortcomings; however, their positive effects should not be ignored

3.6 Restorative justice

Within transitional justice we can distinguish retributive and restorative justice approaches.

Retributive transitional justice focuses on the wrongdoings of the perpetrators and its goal is not reconciliation, "except in the most abstract sense. We reconcile with the murderer by imagining he or she is responsible to the same rules and commands that govern us all."⁸⁴ Indeed,

⁸³Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, pp. 104-105.

⁸⁴Martha Minow, *Between vengeance and forgiveness. Facing history after genocide and mass violence* (Beacon Press, Boston 1998) 26.

“Reconstruction of a relationship, seeking to heal the accused or indeed, healing the rest of the community, are not the goals [of trials] in any direct sense.”⁸⁵ Since the 1970s, restorative justice offers an alternative to the latter, and is the name given to “a variety of different practices, including apologies, restitution, and acknowledgments of harm and injury, as well as to other efforts to provide healing and reintegration of offenders into their communities, with or without additional punishment.”⁸⁶ Restorative justice often involves direct communication, with or without facilitator, of victims and perpetrators and some or full representation of the relevant affected community, to provide a setting for acknowledgment of fault by the offender, restitution to the victim, and ideally a new mutual understanding, forgiveness, and new understandings for improved behaviours.⁸⁷ Where the ontology of retributive justice largely views individuals as autonomous, restorative justice largely sees them as relational. It is derived from the idea that people are ethically responsible for those around them and therefore essentially linked to their community.⁸⁸

In the case of mass atrocity, restorative justice is said to address the “re-integrative needs of both victims and most perpetrators.”⁸⁹ It is being argued that restorative justice attempts to address the concerns of the victims, the perpetrators and the community as a whole. Proponents of restorative justice argue that it is a victim-centered approach, in contrast to retributive justice in which “offenders are held accountable not to the victim but to the state. Beyond testifying, victims are rarely considered in criminal trial processes.”⁹⁰ Information that would be ‘irrelevant’

⁸⁵ Ibid

⁸⁶ Carrie Menkel-Meadow, ‘Restorative justice: what is it and does it work?’, *The Annual Review of Law and Social Sciences* 21 (27) 2007, 2.

⁸⁷ Ibid

⁸⁸ Clifford G. Christians, ‘Ethics and politics in qualitative research’, in: Norman K. Denzin and Yvonna S. Lincoln eds., *Handbook of qualitative research* (Sage, Thousand Oaks 2000) 142.

⁸⁹ Laura Stovel, ‘When the enemy comes home: restoring justice after mass atrocity’, *Restorative Justice Conference* (Vancouver June 2003). Available at: www.sfu.ca/crj/database/scholar/130_03.htm, 5.

⁹⁰ Ibid

in a criminal trial, is often for the victims very important. Kiss notes that the humanity of both victims and perpetrators can be recovered by putting personal and institutional transformation before retribution.⁹¹ Restorative processes can enable perpetrators to make amends and restore a human relationship between them, victims and other members of the community. Finally, many proponents of restorative justice see it as a way to reconcile communities.⁹² Especially through contemporary warfare, entire societies are victimized and the social fabric is severely undermined. For them to feel secure, acknowledged and respected within their community again, restorative processes can be helpful.⁹³ Some of the claims of proponents tend to be overly optimistic and sometimes even unconvincing. They show what can follow, but by no means what will be a consequence of restorative processes. Hamber argues that restorative justice can be useful to break down some of the previous barriers and silences but “future individual interventions will need to be considerably more profound.” As victim’s responses are not monolithic, but complex and subtle, taking part in restorative justice processes will often be merely one condition of the victim’s healing process, not a sufficient condition.

Proponents of retributive justice argue that the restorative justice approach is a second best option, promotes deterrence, and that retributive justice is needed from the start of a transitional process to build up the judiciary of the concerning country. This brings forth the question in what circumstances restorative justice is a feasible and desirable alternative to retributive justice.

According to Stovel there are three interrelated elements put forward in restorative justice and peacebuilding literature: the severity of crime, the context of the crime and the perpetrator’s

⁹¹Elizabeth Kiss, ‘Moral ambition within and beyond political constraints: reflections on restorative justice’, in: Robert I. Rotberg and Dennis Thompson eds., *Truth v. justice. The morality of truth commissions* (Princeton University Press, Princeton and Oxford 2000) 69.

⁹²Stovel, 9.

⁹³David Backer, ‘Victim’s responses to truth commissions. Evidence from South Africa’, in: MunaNdulo ed., *Security, reconstruction, and reconciliation. When the war ends* (University College London Press, London 2007)

192. Also:

Jeong, 165.

willingness to take responsibility for the crime.⁹⁴First of all, the severity of the crime. It is often argued and indeed practised that restorative justice should not hold for the instigators of the mass atrocity. In the case of Sierra Leone we see that Charles Taylor is being tried, and the limited amnesty approach is being practised for the ‘lesser’ criminals. Stovel gives the example of child soldiers in Sierra Leone, who all committed the most horrendous crimes versus Foday Sankoh, who may not even have bloodied his own hands. In the case of Uganda, Joseph Kony and other high figures within the LRA have faced ICC arrest warrants, while it is very well possible that their (often kidnapped) soldiers will be faced with traditional ‘matooput’ or another limited amnesty proposal. Secondly and thirdly the context, intent and knowledge of the perpetrator, and his attitude after the crime, his willingness to forgive, repent and change.⁹⁵

3.7 Truth Commissions

Since 1973, more than 20 “truth commissions” have been established around the world, with the majority (15) created between 1974-1994. Some were created by international organizations like the United Nations (UN), a few by nongovernmental organizations (NGOs), and the majority by the national governments of the countries in question. The most recognizable form of restorative justice are truth and reconciliation commissions (TRCs). In terms of sheer numbers, they are also the most significant new transitional justice institution. TRCs are at the very basis commissions that inquire into human rights violations to support an ongoing peace process or to promote democratic reforms. These inquiries into the happenings often involve a process in which the perpetrators offer truth in exchange for (limited) amnesty. TRCs serve diverse purposes.

⁹⁴Stovel, 30.

⁹⁵Ibid

In the last twenty years, establishing a truth commission in a post-conflict society has become increasingly popular. The demand for truth and truth-telling after conflict has grown and the international community has sought to strengthen the emphasis on truth commissions. Hence, since 1974, at least 25 such commissions have been established around the world, and often the first thing that newly elected politicians in a transitional democracy cry out for is the establishment of a commission. Truth commissions, as are currently perceived, stem from the numerous Latin American commissions held in the 1980s,⁹⁶ however, they have changed somewhat, particularly in the context of a post conflict society, which has experienced international intervention. There is an underlying assumption that truth commissions are a path to reconciliation and peace for all post-conflict societies, and that they are to be preferred to other transitional justice mechanisms. However, as with all transitional justice mechanisms, a truth commission's aim, mandate and what it can achieve is context dependent.

The very name of truth commissions establishes that what a truth commission seeks is the 'truth'; nonetheless, the truth is a very complex concept that must be treated with caution. Truth, in the form of narratives, is never simply uncovered, but is partially constructed and affected by numerous processes and actors. At best it is subjective. Not all truth commissions acknowledge the complexities of 'truth', which is exacerbated even more in the aftermath of conflict. The TRC was one commission which recognised this problem and, consequently, outlined four different types of truths that could exist, namely, factual, personal, social and healing.⁹⁷ Although this acknowledged the complexity of 'truth', it may not have made it less problematic when applying it in the TRC's process. Defining the truth as merely factual may be one method of

⁹⁶USIP, *Truth Commissions Digital Collection*, <http://www.usip.org/library/truth.html> and P. Hayner, *Unspeakable Truths. Facing the Challenges of Truth Commissions*, Routledge, London, 2002.

⁹⁷<http://www.truthcommission.org>

circumventing the complexities of truth. However, 'shared facts do not necessarily conduce to shared truths.'⁹⁸ This makes it vital that the problematic nature of truth is acknowledged and addressed when constructing a truth commission.

Reconciliation, as truth, is central to truth commissions. Numerous truth commissions have the very concept in their name and nowhere perhaps was it as strongly emphasised as in South Africa where forgiveness and *ubuntu* was underlying the whole process. Truth commissions, because they are bodies where individual testimonies are heard can indicate to the individual victims that individual reconciliation is the objective. However, because a truth commission tracks the overall general pattern of human rights abuse and investigates the social and political factors leading to abuse, the focus and outcome is more that of national reconciliation. In East Timor, the political elite, headed by Xanana Gusmao, underlined the importance of reconciliation, and discouraged trials, but supported the work of the Commission of Reception, Truth and Reconciliation.⁹⁹ There was an underlying assumption that trials would lead to instability rather than justice and that the truth commission was the best mechanism for reconciliation. However, on an individual level people felt aggrieved and wanted not only local trials, but also an international tribunal.

Truth commissions are established to investigate human rights abuses, perpetrated in a specific time period, usually during conflict and civil unrest. The human rights abuses investigated can vary in range from assault to mass killings. They investigate abuses usually perpetrated by military, government or other state institutions. They are non-judicial bodies, which do not have the authority of the courts and cannot punish – they give recommendations, however, whether or

⁹⁸Ibid

⁹⁹http://www.easttimorreconciliation.org/Gusmao_Justice_E.htm, V.Hearman, "Leaders Reject International Tribunal"

not these are implemented is entirely dependent upon political will. Truth commissions allow victims and their relatives to disclose human rights abuses; some commissions also let the perpetrators give their account of events. They are established and given authority by the local governments or international organisations, in some cases by both. They only exist for a specified time period, but can have a multitude of different procedures and organisational arrangements. The focus is not so much on the individual, but on establishing the pattern of human rights abuse committed within a timeframe.

The aims and objectives of truth commissions are broadly to determine and create a historical record of human rights abuses, whilst giving the victims an opportunity to be heard and instituting by its process an official acknowledgement that these acts took place and must not be forgotten, and ultimately leading to or assisting in reconciliation of the post-conflict society.

Truth commissions are a positive contribution to the overall reconciliation process of a post-conflict society. Knowing and establishing the truth is a right in such societies, however, the question is whether or not it is a duty. Should all post-conflict societies have truth commissions, is it the best solution for all? Not all states have found this to be so – both Mozambique and Cambodia declined, for different reasons, from establishing truth commissions because they did not want to relive the historical facts, fearing in part what the consequences of such a process might be.¹⁰⁰

Truth-telling is often seen as a first step in the process of achieving justice and reconciliation on an individual level. Yet, truth commissions without any other process of justice, as evidenced by numerous cases, will not be sufficient for many of the victims.¹⁰¹ Moreover, although they are, in

¹⁰⁰ Hayner, *Unspeakable*, Mozambique, pp. 186-195 and Cambodia, pp. 195-200.

¹⁰¹ *Ibid*

effect, established for the victims of abuse it can be questioned as to whether or not they have helped them.¹⁰² For example, the Commission of Reception, Truth and Reconciliation in East Timor facilitated reconciliation between East Timorese very well. However, the key opponents in the conflict were Indonesia and East Timor. It is doubtful that the commission's work will be able to influence reconciliation between these two key parties to any significant extent. Conducting reconciliation between East Timorese is made easier by the fact that Indonesia is seen as the key perpetrator of human rights abuse and that in many instances the militias were trained by them and that they have less responsibility than Indonesians.

There is a right for all to know the past and have human rights abuses documented; however, it should not be an obligation or duty to establish a truth commission in a post-conflict society.¹⁰³

The decision of what types of transitional justice mechanisms should be applied must be related to the specific context. A truth commission may not necessarily be the answer in all cases. Truth commissions undoubtedly contribute, and can contribute significantly to reconciliation and stability, but they are not the only mechanism and if they are conducted with the absence of other justice mechanisms they are, on their own, unlikely to lead to national *and* individual reconciliation. Reconciliation is too large a task to be obtained by only a truth commission. It is not an issue either, as some argue, that truth commissions 'could well be a better option than prosecutions.' It is a combination of different mechanisms, which together may lead to reconciliation. What combination is better for each particular post-conflict society is dependent upon several factors. Three of these factors are: First, the context, history and background of the conflict, which includes peace agreements and political will and ability to co-operate. Second,

¹⁰²R. Basic, "Truth Commissions: One option when Dealing with the Recent Past in Countries that Have Endured War or Dictatorships", *Committee for Conflict Transformation Support*, Newsletter 18, <http://www.ccr.org/ccts/ccts18/trucomm.htm>

¹⁰³P. Hayner, "International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal", *Law and Contemporary Problems*, vol. 59, no. 173, Autumn 1996, pp. 177-178.

the international community, its support for transitional justice and how it influences the processes in the country. Third, the culture of the country, how this affects rule of law norms and the way in which perpetrators are dealt with in general. These three factors are essential when discussing all transitional justice mechanisms. The discussion on truth commissions must therefore be viewed with these factors in mind. It is not possible to say that a truth commission is or is not the right tool in all circumstances. The solution to dealing with past crimes in one post-conflict society will vary significantly from that of another. A holistic approach to reconciliation, which may or may include truth commissions, must be applied.

3.8 Traditional Justice Mechanisms

These methods of justice take many different forms, and vary extensively from community to community. They are generally considered restorative justice, but they can also have punitive functions. However, on a broad and general level they are mechanisms for solving disputes, conflicts and crime at the community level. It is often focused on the fact that the perpetrator is part of the community and although he/she can be punished for the crimes committed, it is not in the sense of incarceration. The perpetrator may serve the community and repay for his/her crimes. This serves the greater good of the community rather than separating the perpetrator from the community.

Unlike truth commissions and the type of ad hoc/hybrid local trials discussed above these mechanisms are in constant use for present crimes and conflict resolution, they are not a mechanism created or developed to deal particularly with past crimes of human rights abuse in a post-conflict setting. They can, because of their focus on reconciliation and their both restorative and retributive nature, be a valuable mechanism to use in the context of post-conflict transitional justice.

There are several arguments for both applying and being cautious with promoting traditional mechanisms to past crimes in a post-conflict setting. In the last few years, traditional mechanisms to address past crimes have been increasingly promoted, particularly in a UN peace operation context.¹⁰⁴ Internationally, they have therefore taken on a greater importance, but without establishing what it is they can achieve. They are often purported as a means of reconciliation and tools of conflict resolution and it is in this role that they are promoted as a vehicle for dealing with human rights abuse in post-conflict societies. There are, however, a number of issues that must be raised.

Traditional mechanisms frequently deny the perpetrator the rights of a fair trial, as the African Commission on Human and Peoples' Rights has pointed out, *'it is recognised that traditional courts are capable of playing a role in the achievement of peaceful societies and exercise authority over a significant proportion of the population of African countries. However, traditional courts are not exempt from the provisions of the African Charter relating to a fair trial.'*¹⁰⁵ Not only the trial, but also the punishments meted out can be against international human rights law and standards.

Applying mechanisms whose punishments may contradict international human rights laws, to deal with breaches of those very same human rights laws should not be encouraged by the international community. This is not to argue against using traditional mechanisms, however, blanket support of *all* justice mechanisms termed 'traditional' should not be given just because there is an assumption that these, by their very definition, will be superior to any other mechanism due to local ownership and culture. Assessments of not only the mechanisms in each

¹⁰⁴UN Secretary General mentioned traditional mechanisms in the Introductory Statement at the Security Council meeting on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 6 October 2004.

¹⁰⁵Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, pp. 113.

case and country, but also when and to what crimes it can best be put to use in a post-conflict setting must be made.

Traditional mechanisms can, undoubtedly, promote reconciliation in certain circumstances. In the case of Mozambique, which rejected both trials and a truth commission, traditional methods of healing in the post- conflict context were used with great success.¹⁰⁶ The combatants of the conflict returned to their communities and went through traditional healing and justice mechanisms. Reasons for Mozambique's success included the particular context of the conflict, the focus on not reawakening the traumas of the war and society's desire for healing. It is important to underline that as with trials and truth commissions the extent of the potential for success of these mechanisms are dependent upon numerous factors including the context of the conflict, the culture of the country and the international community's role.

Traditional mechanisms are designed, in general, to deal with minor altercations and crime – if they are to be applied in a post-conflict society dealing with past crimes it may be better to utilise them at this level, for example, house burning, assault and minor altercations and violence on property and person. For larger crimes, including crimes against humanity, other mechanisms may serve the purpose of reconciliation more effectively. In East Timor, traditional mechanisms were used for militia members that had burned houses and conducted minor assaults. They were asked by the community to rebuild houses and perform community services and thus were reintegrated into the community. However, frequently the community did not want people who committed major human rights violations to return and they were transferred to other parts of the country. However, again, it is entirely dependent upon context, since in Mozambique the healing

¹⁰⁶A. Honwana, "Sealing the Past Facing the Future: Trauma Healing in Rural Mozambique", *Conciliation Resources*, http://www.c_r.org/accord/moz/accord3/honwana.shtml,

rituals worked even in more severe cases. The reintegration of boy soldiers was particularly successful.¹⁰⁷

3.9 The International Criminal Court

Almost simultaneously with the end of the Cold War, the interest in an international criminal court resurfaced. The idea of such a court was first seriously proposed in 1921 simultaneously with the establishment of the League of Nations. In 1937 the League of Nations even opened a convention for signature and ratification. The convention did not enter into force because there was too little agreement and too few signatory states before the Second World War started to take shape.¹³⁶ Only in 1989, a coalition of Latin American and Caribbean states requested the General Assembly to put the creation of an international criminal court on the agenda as a response to the problem of international 'narco-terrorists'.¹⁰⁸

This time, an international penal court would become a reality, although it would have to wait a subsequent ten years. Finally, in 1998 the Rome Statute to the International Criminal Court was adopted after a conference in Rome by a vote of 120 to 7. On April 11, 2002 the Rome Statute had received enough ratifications to become a binding treaty, and to come into force on July 1, 2002. The ICC is an independent, permanent penal court that will only try individuals accused of the most serious crimes. These include genocide, crimes against humanity, war crimes and the crime of aggression.¹⁰⁹

The Court has jurisdiction over individuals whose nation has signed and ratified the Rome Statute. Individuals have played a very limited role up to the end of the twentieth century.

International law has shifted from contractual norms between states, to one in which individuals

¹⁰⁷Thompson, "Beyond", p. 192.

¹⁰⁸Johnson, 27-28.

¹⁰⁹www.icc-cpi.int.

can be held accountable.¹¹⁰ The ability of the International Criminal Court to hold individuals criminally accountable for international crimes is arguably among the most dramatic shifts in international law a radical departure from centuries of state-centric jurisprudence. The Court can also prosecute if the crime took place in a country that signed and ratified the Rome Statute. Non-state parties can make a declaration accepting the jurisdiction of the Court over a crime committed by its nationals or that occurred on its territory after the Rome Statute became legally binding in 2002. The United Nations Security Council can also refer a situation to the ICC prosecutor, irrespective of the nationality of the accused or the location of the crime.¹¹¹

The Court's "principle of complementarity" is important here: the Court can only act when cases are not investigated and prosecuted by a national judicial system, or if those investigations and prosecutions are not genuine and are obviously meant to shield those individuals from true legal action. As of April 2008, the ICC has 105 member states that have both signed and ratified the Statute.¹¹²

The International Criminal Court has some clear advantages compared to international ad hoc tribunals. First of all, the ICC is the product of a multilateral treaty, whereas the ad hoc tribunals are created on an ad hoc basis by the United States Security Council. The ICC is a permanent international criminal tribunal.¹¹³ Consequently, it will avoid the delays and costs of creating ad hoc tribunals. Since the headquarter, judges, investigation team and other personnel of the Court are already in place, the initial costs of a war crime trial are less than if a whole new ad hoc tribunal has to be set up. Moreover, tribunals are often only established when political

¹¹⁰Ibid

¹¹¹Ibid

¹¹²Ibid

¹¹³Ibid

settlements are not feasible (anymore), and only when the Security Council supports their establishment.

Furthermore, cases that do not attract a lot of attention in the international community will have a better chance to be settled through the ICC than through an international *ad hoc* tribunal. When the state is incapable of bringing war criminals to justice and does not get support from the United Nations Security Council, it can now refer the case to the ICC prosecutor itself. This is one part of the so-called 'principle of complementarity'. The other part is that when states are not willing, or show clear signs of unwillingness through extremely low sentences and shady or unconditional amnesty, like in the case of Pol Pot, the ICC has the right to investigate and try once again, if the state is a member state, if the atrocities were committed on the territory of a member state or through a referral of the Security Council.

4.0 CONCLUSION

Post-conflict peace-building commences after official end of war and the beginning of post conflict reconstruction. Post conflict reconstruction is undertaken by large bilateral, multilateral and national governments. These players face the challenges of providing transitional justice and reconciliation mechanisms whose application must abide by international human rights.

CHAPTER FOUR

POST CONFLICT RECONSTRUCTION IN SOUTH SUDAN: A CRITICAL ANALYSIS

4.0 Introduction

This section explores the post-conflict reconstruction and peace building problematic in Africa. It critically examines the nature, purpose, design and ideological foundations of various attempts to rebuild post-conflict states and consolidate peace in Africa. The challenges of peace building are critically analyzed. They include the embedding of peace under different layers of the peacekeeping and peace building processes, involving multiple actors, unclear entry and exit points, and including the inherent contradictions and tensions in the liberal peace paradigm.

Peace building means different things to varied actors and observers. The focus of this chapter is on post-conflict peace building in societies emerging from internecine civil wars that approximate Kaldor's (2001) "new wars" thesis. The United Nations definition of peace building as an "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict"¹¹⁴ is adopted within the context of this chapter.

4.1 Emerging Issues

i) Interrogating Post Conflict Reconstruction

This is also taken as a point of departure for interrogating post-conflict reconstruction and peace building with a view to assessing the sustainability of the contemporary "normalization" regime. In this regard, questions are raised about the possibilities of extant peace-building as a derivative of Cox's "riot control"?: To what extent do contemporary intervention strategies serve to

¹¹⁴UN Secretary General's Report 'An Agenda for Peace', (June 1992:para 5).

relocate violence from the public to private spheres, and thereby achieve strategic, state and regime stability, as opposed to the transformation of societies? How do current interventions approximate prophylactic strategies designed to serve the strategic objective of interveners – that is to police the socioeconomic, political, cultural and security frontiers of a real and imaginary liberal zone of peace and empire of liberty?¹¹⁵ And to what extent do extant interventions essentialize peace building, thus constituting a “regime of truth”?

Admittedly, postwar reconstruction and peace building predates 1990 and transcends West Africa on account of the post- 1945 Marshall Plan in Western Europe and the expanded mandates of UN peacekeeping missions in Namibia and Cambodia. Paris (2004:1), for instance, notes that civil wars accounted for 94% of all armed conflicts in the world in the 1990s and that between 1989 and 1999 at least 14 peace building missions were launched to consolidate peace in Angola, Mozambique, Rwanda, Cambodia, Bosnia, Croatia, Guatemala and El Salvador, among others.

Also, the United Nations has launched over 55 peace operations since 1945, of which over 80% began after 1989 and at least 30% have been under way since 2003.¹¹⁶ The analyses of multiple experiments at postwar reconstruction and peace building reveal frequent failures or mixed results at best Krause and Jutersonke¹¹⁷ (2005:448) for example, conclude that “not only do about half of all peace support operations (including both peacekeeping and more expansive peace building operations) fail after around five years, but there also seems to be no clear idea of what ‘success’ or ‘failure’ actually means, nor of what an appropriate time-frame for measuring

¹¹⁵Berger, M. (2006) ‘From Nation-Building to State- Building: The Geopolitics of Development, the Nation-state System and the Changing Global Order’, *Third World Quarterly*, 27(1), pp. 5–25.

¹¹⁶Dobbins, J. et al. (2003) *America’s Role in Nationbuilding: From Germany to Iraq*. Santa Monica:RAND.

¹¹⁷Krause, K. and O. Jutersonke (2005) ‘Peace, Security and Development in Post-Conflict Environments’, *Security Dialogue*, Vol. 36, No.4, pp. 447–62.

success might be". If the poor success rate of pre-2000 peace building was generally seen as being rooted in, or as purely administrative and technical matters, post-2001 global dynamics have heightened the politicization and ultimately the securitization of peace building.

The post-2001 American-led War on Terror and major revisions of the global geostrategic security calculus have made post conflict reconstruction, peace building and state-building not only buzz-words, but key drivers of foreign policy in Western capitals. Thus Kosovo, Afghanistan and Iraq assumed prominence in this respect because of prioritized geopolitical and strategic linkages to the socioeconomic well-being and security of major global powers. West Africa is also a major location for post-conflict reconstruction and peace building. This derives from the sub-region's appalling record of insecurity, civil war and state collapse since the 1990s, not least in Liberia, Sierra Leone, Côte d'Ivoire, Niger and Guinea-Bissau. Indeed, the sub-region significantly epitomized the widespread deterioration in security across Africa in the 1990s. The Stockholm International Peace Research Institute (SIPRI 2002:65) notes the continent's unenviable record of 19 of the total of 57 armed conflicts across the globe between 1990 and 2001. The civil wars of the 1990s and their "legacy" of recurring insecurity have sharply demonstrated the umbilical linkages between security and development.

The challenges of conflict prevention, peace building and development encapsulated in Duffield's "Global Liberal Order" (2001:2) is most acute, not only in individual countries, but also assumes a sub-regional dimension in West Africa. In interrogating peace building in Africa, the extent to which post-conflict reconstruction, alongside violent conflicts and government dysfunctionalities, reshape the boundaries, powers, functions, size and domineering roles of the state in agenda setting, is explored. In this regard, the proper sphere of intervention (is it rebuilding institutions and society?); the interests driving interventions and interveners relative to

place and time; and the scientificity of different forms of interventions (convictions about how it guarantees peace and security) are interrogated. Also, the extent to which extant peace building attempts to “re-governmentalize”⁶ the state – that is, reinvent the state – and how this is informed by or informs previous experiences at state building in Africa is critically analyzed. Does it become Young’s(2004) possible experiment and transition into a “post-post” or “neo-post” colonial state in Africa? The problematization of extant conflicts and post-conflict peace building exposes and illuminates several interesting and important paradoxes: for instance, between stability and change; peace and security; reform and transformation; imposition of liberal peace and Fukuyama’s (2005:XV) “light-footprint”(short term and minimal cost of engagement)¹¹⁸; and between mere reconstruction or rebuilding and invention. Similarly, post-conflict settings underline the paradox between the need for a big and a small state; set time-lines and endless engagement (dependency); and between humanitarianism and political realism, or militant humanitarianism.

The key objective is to re-examine post- conflict peace building as formulated and practiced as a viable and only regime of truth with a view to stimulating recognition of the need for and building of alternative regimes of truths and a variety of “liberal peaces”¹¹⁹. This comes from a belief that an uncritical and poor conceptual basis of post-conflict peace building can be problematic because of the kinds of goals and objectives being formulated; the un-sustainability of its policies, institutions and structures over the long term; and the impact on populations beyond power elites and warlords. This essay relies heavily on secondary sources, including published academic journals and books, media reports and previous and ongoing research on conflict and security in Africa. The conception and practice of contemporary post-conflict peace

¹¹⁸Fukuyama, F. (2005) *State-Building: Governance and World Order in the 21st Century*. London: Profile Books.

¹¹⁹Cooper, N. (2005) ‘Picking out the Pieces of the Liberal Peaces: Representations of Conflict Economies and the Implications for Policy’, *Security Dialogue*, Vol. 36(4), pp. 463–78.

building in Africa is tailored to stability rather than change, and “security” as opposed to “peace”. Inherent in this assertion is the debate about the possibility or impossibility of achieving change and stability and peace and security simultaneously. It is contended that external actors, faced with the highly conflictual, costly and time-consuming nature of change processes,¹²⁰ discreetly and rationally opt for stability and security as opposed to transformation in post-conflict societies in West Africa and other Third World countries. The stability-security goals are limited to regimes (state-level), coated in a liberal orthodoxy and designed to achieve the political and geostrategic objectives of interveners, including protecting the statist international system, stemming refugee outflows and undercutting potential infrastructures of transnational terrorism.

ii) Definitional Problems

The foregoing view is founded on three interrelated subtexts: first is the reality that extant post-conflict peace building is often reduced to, or synonymous with peacekeeping and post-conflict reconstruction (defined as the physical rebuilding and/or reform of socioeconomic, political and security institutions and capacities after peace accords).¹²¹ Peacekeeping and post-conflict reconstruction as components and phases in the peace building continuum overlap with, but do not equate with peace building.

As such, the transformative goal of peace building involves, but transcends the rituals of cleansing, right sizing (down- sizing) or invention of bureaucracies.¹²² It is the view in this essay that traditional and expanded peacekeeping (Peace Support Operations – PSO) and institutional re-engineering represent only technical and administrative tasks designed to prevent a relapse

¹²⁰Pearce, J. (2005) 'The International Community and Peacebuilding', *Development* 48(3), pp. 41–9.

¹²¹Williams, A. (2005) 'Reconstruction' before the Marshall Plan', *Review of International Studies*, 31, pp. 541–58.

¹²²(Montgomery and Rondinelli 2004:27)

into Galtung's "direct violence". Meanwhile, the more enduring and demanding peace building centred on transforming inherent "structural violence" and achieving "positive peace" are either downplayed or considered insignificant relative to regime stability, at least in the short term. The failure of the sub-region's main security actor and apparatus – the Economic Community of West African States (ECOWAS) – to articulate any policy or institutional mechanisms for peace building beyond peacekeeping or at best, peace-support operations, tangentially illustrates this. Second, the emphasis on a "security first approach" and a relapse into "peace as-collusion" – paying-off of warlords and factions for peace¹²³ – sacrifices resources and commitments towards sub-national peace building. Hence, the skewing of peace accords to co-opt and reward potential spoilers legitimises new relationships of power and relocates violence from the public (state-level) to domestic, private and community domains.¹²⁴

Third, the overarching role and powers of external actors as drivers of peace building, underpinned by the moral and ideological commitment to liberal reforms as the ultimate source of domestic and international security, wrongly assumes war and peace as diametrical opposites.¹²⁵ It also attempts to securitize democracy, as opposed to democratizing security, and represents a Foucaultian technology of "normalization" – part of a systematic creation, classification and control of anomalies in the constituents (states) that comes from the promise to isolate and normalize deviant behaviours (civil wars and state collapse).¹²⁶ Hence, "normality is

¹²³Keen, D. (2008) *Complex Emergencies*. London: Polity Press.

¹²⁴Heathershaw, J. (2007) 'Peace building as Practice: Discourses from Post-conflict Tajikistan', *International Peacekeeping*, Vol. 14, No. 2, pp. 219–36.

¹²⁵Keen, D. (2008) *Complex Emergencies*. London: Polity Press.

¹²⁶Duffield, M. (2005) 'Social Reconstruction: The Reuniting of Aid and Politics', *Development*, 48(3), pp. 16–24.

identified with democracy; abnormality with nondemocratic rule".¹²⁷ The liberal and neo-liberal emphasis of extant peace building thus becomes a technology of intervention, control, policing, security and projection of liberal internationalism.¹²⁸ Even where liberal peace is a viable strategy for transforming post-conflict societies to achieve positive peace (Guttal 2005), key questions arise over its implementation, especially in relation to the sequencing and pacing of reforms and institutionalization.¹²⁹

iii) Issues in Post-conflict Reconstruction

In terms of furthering the understanding of post-conflict environments, this study makes two key contributions. First, this research explores reconstruction in the environment that exists in the immediate aftermath of the conflict when such environments are still characterised by emergency needs. Post-conflict environments are characterised by emergency needs that require projects of quick impact. As the environment stabilises, these needs evolve. Interventions made to address such needs become more long-term in the type of impact they envisage and are geared towards providing sustainable development. Post-conflict reconstruction entails making this transition from emergency to sustainable development in the most effective manner.

iv) Post conflict reconstruction in South Sudan

Chronic violence and insecurity still affect large swathes of South Sudan, eroding the fragile development base and creating urgent humanitarian needs. Between January and May 2011, close to 200 conflict incidents were recorded within South Sudan. Thousands were killed in this

¹²⁷Zanotti, L. (2006) 'Taming Chaos: A Foucauldian View of UN Peacekeeping, Democracy and Normalization', *International Peacekeeping*, 13(2), pp. 150–67.

¹²⁸Rubinstein, R. (2005) 'Intervention and Culture: An Anthropological Approach to Peace Operations', *Security Dialogue*, Vol. 36, No. 4, pp. 527–44.

¹²⁹Paris, R. (2004) *At War's End: Building Peace after Civil Conflict*. New York: Cambridge University Press.

fighting and 116,000 people were displaced.¹³⁰ The conflict in Abyei in May and June 2011 caused the displacement of as many people again.

While South Sudan is relatively rich in resources – from oil to fertile land and minerals – competition over and access to these resources is a key source of intra-South conflict.¹³¹ In January, 2011, 90% of *payams*(administrative districts) surveyed across six states reported conflicts over water, as “there are too many people and not enough water.”¹³² Land is increasingly another source of dispute.¹³³

Competition over resources often manifests itself along tribal lines. The country has more than 52 tribes, with complex relationships and often a history of mutual distrust and suspicion. Perceived inequality in access to political, social and economic opportunities feeds these rivalries,¹³⁴ with tribalism often being used as a ‘political tool’.¹³⁵

There is a particular risk of young men taking up arms along tribal lines or joining militias.¹³⁶ They have grown up during years of violent conflict and now face an uncertain future. Viable livelihoods are scarce in South Sudan. More than 80% of the population live in rural areas, but agriculture is only practised at a subsistence level, and agriculture receives less than 2% of the

¹³⁰United Nations in Southern Sudan, *Helping South Sudan During its First Three Years: The work of the UN agencies, funds and programmes*, 2011

¹³¹Mareike Schomerus, Tim Allen et al, *Southern Sudan at odds with itself: Dynamics of conflict and predicaments of peace*, LSE & DESTIN, 2010; Netherlands Ministry of Foreign Affairs, *Aiding the Peace: A Multi-donor Evaluation of Support to*

Conflict Prevention and Peacebuilding Activities in Southern Sudan 2005-2010, December 2010

¹³²South Sudan protection cluster rapid needs assessment: data analysis, <http://southsudanprotectioncluster.org/wpcontent/uploads/2011/01/Rapid-Needs-Assessment-v1.pdf>

¹³³Norwegian People's Aid, *New Frontier: a baseline survey of large-scale land-based investment in South Sudan*, March 2011;

Mareike Schomerus, Tim Allen et al, *Southern Sudan at odds with itself*

¹³⁴Strategic Communication Laboratories, *Promoting Post-Referendum Stability in Southern Sudan: Jonglei and Unity States*, May 2011

¹³⁵Mareike Schomerus, Tim Allen et al, *Southern Sudan at odds with itself*

¹³⁶Netherlands Ministry of Foreign Affairs, *Aiding the Peace*

national budget. People in South Sudan are concerned that those jobs that do exist are awarded on the basis of tribal connections rather than merit.

Compounding this issue are the thousands of small arms and light weapons easily available across South Sudan.¹³⁷ These have made raids, banditry and militia attacks easier to carry out and more violent.¹³⁸

In the last few years, the government of South Sudan managed to reduce the size of the SPLA and to incorporate other armed groups into the national army. This represents a real achievement, under challenging circumstances. Yet the state's capacity to provide security for its citizens and prevent outbreaks of fighting remains limited.¹³⁹ International provisions for the protection of civilians, through the mandate (now expired) of the United Nations Mission in Sudan (UNMIS) likewise proved relatively ineffectual.¹⁴⁰ This was due to limited commitments from the international community, a weak and unclear mandate, excessive bureaucracy and, in the assessment of the former head of mission, the "organisational hypocrisy" of the international actors in Sudan.¹⁴¹ The new peacekeeping force for South Sudan, UNMISS, was approved by the Security Council on 8 July. UNMISS now has the opportunity to learn from the failings of its predecessor mission and demonstrate international commitments to building peace in South Sudan.

Internationally supported attempts to address the root causes of violence and insecurity through local-level peace-building have a mixed record, with reported instances of peace-building

¹³⁷ P. Wezeman, "Arms Supplies to North and South Sudan", in Henrik Boll Stiftung, *Sudan – No Easy Ways Ahead*, (Berlin, 2010).

¹³⁸ Human Security Baseline Survey, South Sudan and Saferworld, *Sudan: Hoping for the best, preparing for the worst?* December 2010

¹³⁹ Mareike Schomerus, Tim Allen et al, *Southern Sudan at odds with itself*

¹⁴⁰ Tearfund, ICCO, World Vision, Save the Children, Handicap International, Cordaid, Christian Aid, IRC, Caritas, and Oxfam, *Rescuing the Peace in Southern Sudan*, January 2010

¹⁴¹ P. Schumann, 'International Actors in Sudan: The Politics of Implementing Comprehensive Peace', in Henrik Boll Stiftung,

Sudan: No Easy Ways Ahead (Berlin, 2010)

conferences serving as a prelude to further fighting.¹⁴² At the national level, the churches and other faith-based organisations play an important role in supporting processes of reconciliation, as well as in trying to foster a sense of national identity.¹⁴³ They represent the main indigenous civil society institution present at the community level, have strong local networks and are well respected as a result of the support they provided to civilians caught in conflict during the war years. However, some civil society members we spoke to in Juba said that the church was often brought in to mediate too late, once disputes had escalated.

Alongside the challenge of providing security to its citizens, the government of the Republic of South Sudan is now attempting to establish effective governance structures across a large, very poor and very diverse territory with scant infrastructure. To do so, it needs to ensure that it provides a common governance framework within which all citizens can participate. The era of the Comprehensive Peace Agreement was distinguished by a high degree of political accommodation and unity in the south across different parties and interest groups. However, the existence of patronage along tribal lines threatens to undermine this already fragile accord.¹⁴⁴ Complicating the situation, South Sudan's nascent institutions of law and order must contend with a significant capacity gap within their ranks – for example, 80% of the police force is illiterate.¹⁴⁵

To address some of these concerns, the President has promoted a policy of 'zero tolerance' of corruption¹⁴⁶ and has established an Anti-Corruption Commission. However, South Sudan does

¹⁴²Saferworld, *Sudan: Hoping for the best, preparing for the worst?* December 2010; Mareike Schomerus, Tim Allen et al, *Southern*

Sudan at odds with itself

¹⁴³Irin News, "Sudan: Insecurity, land conflicts threaten peace in Upper Nile State", 22 June 2011.

¹⁴⁴International Crisis Group, *Politics and Transition in the New South Sudan*, Africa Report no. 172, 4 April 2011

¹⁴⁵Saferworld, *Sudan: Hoping for the best, preparing for the worst?*

¹⁴⁶Reuters, "S. Sudan's Kiir says no to corruption in new state", 8 February 2011,

<http://www.trust.org/alertnet/news/ssudanskiir-says-no-to-corruption-in-new-state>

not yet have a public financial management act, a procurement act or an audit act. Without this regulation in place, the exact mechanisms by which South Sudan's citizens will be able to hold the government accountable to these commitments are not yet clear. Establishing clear lines of communication between the government and its citizens – in both directions – is crucial. If communities have not been consulted with, and do not understand the reasons for a given decision on how resources are allocated, they are likely to draw their own, potentially unfavourable, conclusions about the process by which the decision was made.

The churches, other faith-based groups, and civil society at large should play a key role in holding the government to account, and fostering participation in this process at the community level. The media – especially radio – also has an important role to play in promoting a culture of transparency and accountability, and its growth has so far been impressive.¹⁴⁷ However, the two main regulatory frameworks intended to set out the terms by which these civil society organisations (with the exception of faith-based groups) and the media operate, the NGO Bill and the Media Bill, are currently stalled in parliament.

4.3 Conclusion

Post conflict reconstruction for countries emerging from internecine civil wars, like South Sudan, for the sake of national, regional and global security is imperative that all the key actors need to identify and support structures that strengthen and solidify peace in order to avoid a relapse into conflict defined by the UN. Of key importance is the implementation, taking into account the sequencing and pacing of reforms and institutionalization.

¹⁴⁷Strategic Communication Laboratories, *Promoting Post-Referendum Stability in Southern Sudan* (see note 15); Mareike Schomerus, Tim Allen et al, *Southern Sudan at odds with itself*

CHAPTER FIVE

CONCLUSION

5.0 Summary

This study has traced the genealogy of contemporary post conflict reconstruction architecture in South Sudan. It argues that contemporary peace building is often confused, conflated with and embedded in peacekeeping. Moreover, global geopolitical dynamics (the end of the Cold War and the onset of the War on Terror for example) and changes in the forms of warfare (new wars) have altered and continue to influence the form, challenges, scope and objectives of peace interventions by Western countries, especially in Africa.

Since gaining their independence, most African countries have experienced political turmoil of various magnitudes. The basic problem was identified as the intra-state conflict which constitutes one of the major challenges hindering the triple agenda of development, democracy and peace, although these challenges have proved not to be unsolvable. A crucial point is that post conflict reconstruction remains largely externally driven, with minimal local participation in the design or ownership of the process.

The study is based on the Grounded Theory developed by two sociologists Anselm Strauss, and Barney Glaser, (*The discovery of grounded theory: strategies for qualitative research*, Chicago, 1967, Aldine ¹⁴⁸ which is not descriptive but has a goal of generating concepts that explain the way people resolve their core concerns regardless of time and place, based on qualitative inquiry.

¹⁴⁸ Glaser, Barney G and Strauss, Anselm L (1967) *the discovery of grounded theory: strategies for qualitative research*. Chicago: Aldine

This theory is ideal for the research as post conflict reconstruction as a study lacks a real cohesive theory. Thus the GT is applicable to the South Sudan situation.

South Sudan joined the community of nations as its youngest member on 9th July, 2011, after the signing of the Comprehensive Peace Agreement in 2005. Despite the high hopes and expectations from its nationals and vast natural resources, South Sudan is embarking on its restoration from scratch. Pending issues in the CPA renders peace between the two Sudans as an uncertainty. The demarcation of the north/south border was not considered although the issue “is intertwined with questions of land ownership, land use, and land rights, which are usually articulated as questions of the collective rights of ethnic groups¹⁴⁹,” (*Johnson Douglas Page10- When Boundaries Become Borders, 2010*) as well as oil and other resources.

The prospects for democracy on sides are wanting. The South Sudan government is made of former guerilla fighters of the SPLAM and to transform themselves into complying with democratic governance is quite a challenge for establishment of governance institutions.

5.2 Key Findings

The paper contends that the conception and practice of post conflict reconstruction in South Sudan is largely skewed towards the domestic and international priorities of interveners, mostly extra- African actors. Therefore, the impact of such interventions includes the alienation of the interests of the masses in post-conflict societies and, worse still, the superficial treatment of the roots of conflict that does not go beyond the stabilization and security of the postwar government. What this does is to increase the risk of the reintegration of post-conflict societies into the vicious cycle of the prewar situation, and the putting at grave risk of an already fragile

¹⁴⁹ Johnson, Douglas H, *When Boundaries Becomes Borders, The impact of boundary making in Southern Sudan Frontier zones, Rift Valley Institute, Kenya/UK 2010*

post-conflict “peace”¹⁵⁰. It is important to note that the foregoing analysis underscores the organic connections between the meaning, tools and practice of post conflict reconstruction in South Sudan through global patterns, especially the liberal peace paradigm orthodoxy. Therefore, the extant forms and practices of peace building in the sub-region are more likely to achieve negative peace (cessation of physical violence) because of international humanitarianism, as well as to ensure regime stability that reduces the risk of international terrorism.

However, they are unlikely to achieve sustainable peace and transform the structures of violence inherent in certain interactions, socio-political relations and practices in African sub-region. More studies are needed to explore the potential benefits of indigenous forms of participatory post conflict reconstruction that should emphasize post-conflict transformation based on a genuine democratically rooted praxis and practice that is equally sensitive to issues of civic empowerment, national ownership, capacity-building at all levels and an equitable and sustainable peace.

5.1 Recommendations

Both sides should ensure that all areas of conflict in South Sudan are accessible to aid agencies, and allow agencies to negotiate with all armed groups to ensure their access, so that South Sudan’s people are not again left in danger and without life-saving services.

The international community needs to support peace-building efforts within South Sudan, both through providing the new UNMISS mission with the mandate and logistical capacity to deploy where necessary, and through support to national civil society organisations, including the churches.

¹⁵⁰ Ibid

There is need by the donor community to invest in governance structures and promote institutional development in South Sudan that will facilitate the rule of law. This move will help Government of South Sudan to learn from the history of central- government legislation and to introduce laws to provide for a more equitable allocation of resources. The ill effects on the borderlands could be thwarted by recognizing and addressing land legislation enacted by successive central governments in Sudan.

Connections across international borders have historically been a source of tension and livelihoods for borderland communities. For the case of southern Sudan, there were some other forms of inter-communal cooperation, as refuges from conflict, or as bases from which to organize political and military opposition. Therefore, creation of cross- border authorities, including joint traditional courts supported by a joint police force drawn from the communities themselves to deal with issues arising out of cross-border grazing, will ease tension build trust and promote good neighbourliness at the grass-root level.

The setting up and institutionalizing of bilateral joint- border commissions between the two Sudans. ¹⁵¹ and between South Sudan and her other neighbours would foster peace, promote development activities such trade, cultural, educational, research and others for sustainable peace for the region as a whole.

¹⁵¹ Johnson, Douglas H, *When Boundaries Become Borders The impact of boundary making in Southern Sudan Frontier zones*, Rift Valley Institute, Kenya/UK 2010.

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