

**University of Nairobi  
Institute of Diplomacy and International Studies**

**Critical Analysis of the Persistence of Human Rights Violations in  
South Sudan (1989-2005)**

**This dissertation is submitted in partial fulfilment of the  
requirements for the award of Master of Arts degree in International  
Studies**

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**Declaration**


I, Peter Ogecha, declare that this dissertation is my original work and has not been submitted either in part or in whole and is not currently being submitted for a degree in any other University.

Signed: -----

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This project has been submitted for examination with my approval as a University Supervisor.

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**Dedication**

This study is dedicated to Bathsheba Mokeira Nyaboke, my mother, whose love for education shaped my vision and thinking of higher education.

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## **List of Abbreviations**

AU- African Union

CPA Comprehensive Peace Agreement

CSI Christian Solidarity International

DRC- Democratic Republic of Congo

E.U- European Union

ICG- International Crisis Group

ICRC International Commission of the Red Cross

IGAD Intergovernmental Authority on Development

IMF International Monetary Fund

INGOs International Non Governmental Organizations

NIF-National Islamic Front

NC National Congress

NGO Non Governmental Organization

OLS- Operation Lifeline Sudan

OAU- Organization of African Unity

PDF Popular Defence Forces

SPLM/A Sudan People's Liberation Movement/Army

UNHCR United Nations High Commission for Refugees

## **Abstract**

Sudan is the largest African country neighbouring nine countries. Its expanse implies that any conflict within the Sudan is likely to have contagion effect on its nine neighbouring countries. The Sudan is a multiracial, multicultural, multilingual, multireligious, and multiethnic country whose predominantly Christian South has had protracted human rights violations by both the Khartoum government and the SPLM/A. At least each neighbouring state has felt the cross-border effects of human rights violations in South Sudan. The country has Arabs and non-Arabs in the North and the African peoples in the South, all contesting for the soul of the nation. The predominantly Christian South has always been governed by the Arab/Islamic elites of the North since independence guided by Islamic laws and with the mentality that Southerners are inferior.

There has been protracted struggle by the people of South Sudan for basic needs such as security, recognition, acceptance, fair access to political institutions economic participation among others. Negotiations have been made from time to time and yet diverse oppression and discrimination prevails. One is left to wonder as to why the practice is not coming to an end. For the purpose of this research, special attention will be given to the 1989-2005 period, that is from the year President Omar El Bashir took over up to the signing of the Comprehensive Peace Agreement. This research task examines various policies and practices which prevent human rights norms from being employed in the protection of human dignity in South Sudan.

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## Chapter One: Introduction

According to the 1956 census,<sup>1</sup> Sudan has an estimated 572 ethnic groups with the majority living in the South of the country where they are mixed with variant degrees with migrants from turkey, Egypt, Albania, Poland among others. This makes Sudan a multiracial, multicultural, multilingual, multireligious, and multiethnic country. Sudan, which is the largest country in Africa bordering nine countries, can be aggregated into three principal categories: the Arabs and non-Arabs in the North, and the African peoples in the South, all contesting for the soul of the nation.<sup>2</sup> This struggle has been ongoing since Sudan gained independence. Out of this struggle, an estimated two million have been killed while others have turned into refugees and displaced persons.<sup>3</sup>

This research is aimed at critically analyzing and building an in-depth understanding of the persistence of human rights violations in South Sudan, which acts as a threat to the realization of peace in Sudan and in the entire region. The key players in the Sudan conflict within which human rights are violated include, The National Islamic Front (NIF)-Khartoum; Sudan People's Liberation Movement (SPLM), which claims to represent the 'New Sudan' school of thought and the National Congress (NC) with its Sudan Armed Forces which represents the 'Old Sudan' system.<sup>4</sup> Other players include foreign nations.

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<sup>1</sup> Korwa, G. Adar, J.G.N. Yoh and Eddy Maloka, Sudan Peace Process: Challenges and Future Prospects (Pretoria: Africa Institute of South Africa, 2004), pp. 23-45

<sup>2</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood", in Ricardo R. Laremont, Borders, Nationalism and the African State, (Boulder: Lynne Rienner Publishers 2005), p. 33

<sup>3</sup> Rok Ajulu, "African Security: Can Regional Organizations Play A Role?" in Shannon Field, (Ed), Peace in Africa: Towards A Collaborative Security Regime, (Johannesburg: Institute for Global Dialogue, 2004), p. 274

<sup>4</sup> *Ibid.*, p. 6

Sudan Armed Forces which represents the 'Old Sudan' system.<sup>4</sup> Other players include foreign nations.

Special attention will be given to the 1989-2005 period, that is from the year President Omar El Bashir took over up to the signing of the Comprehensive Peace Agreement, CPA. The year 1989 is key to this study because two reasons. Firstly, the year 1989 coincides with the bloodless military coup that overthrew a relatively democratic government.<sup>5</sup> This happened under the command of the current president, General Omar El-Bashir. Secondly, it is in this year that the International Law Institute stated that the obligation to respect human rights is *erga omnes* that is they give states an interest in their prohibition.<sup>6</sup>

A number of reasons make human rights violations in South Sudan worth studying: Firstly as Ramsbotham notes, Sudan is one of the countries where there exists "prolonged and even violent struggle by communal groups for such basic needs as security, recognition and acceptance, fair access to political institutions and economic participation."<sup>7</sup> Secondly as Ajulu observes, "Almost all the countries in the region have felt the contagion effects of this war ... Kenya, Uganda and Ethiopia have provided succour to refugees."<sup>8</sup> Therefore, this problem is no longer an exclusive affair of the Sudan; it is a regional issue timely for research. True in Keller's words that a domestic

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<sup>4</sup> Ibid., p. 6

<sup>5</sup> Charles Humana, World Human Rights Guide. Third Edition. (New York: Oxford University Press, 1992), p.302

<sup>6</sup> R. Howse & M. Mutua, "Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization" in H. Stokke and Arne Torsten (eds), Human Rights in Development: Yearbook 1999. (The Hague: Kluwer Law International, 2001), p.61

<sup>7</sup> Oliver Ramsbotham, T. Woodhouse and H. Miall, Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts. Second Edition. (Cambridge: Polity Press, 2005), p.84

<sup>8</sup> Rok Ajulu. "African Security: can Regional Security Play a Role?" op. cit. p. 274

conflict is the most serious threat to regional and national security and it will continue to be in the foreseeable future.<sup>9</sup>

This research task will endeavour to comprehend the gap between policy and implementation. According Washington<sup>10</sup> the gap between policy and implementation refers to the various events or obstacles which prevent social policies and human rights norms from being employed in the protection of human dignity.

### **Statement of the research problem**

In the Sudan, there has been protracted struggle by the people of South Sudan for basic needs such as security, recognition, acceptance, fair access to political institutions economic participation among others. The colonialist left; the Cold War began and ended; presidents emerge in Sudan and go; negotiations have been made from time to time; Sudan is a signatory of some International Instruments of Human Rights such as the Universal Declaration of Human Rights and the Banjul Charter and yet diverse oppression and discrimination prevails.

The current president Omar El-Bashir came to power through a bloodless military coup, which would have been expected to usher in a 'bloodless regime', but it has not. In the early 1990s, there was an outcry from the UN Security Council, the European Community and the US over diverse oppression in the Sudan but nothing changed. One is left to wonder as to why the struggle against diverse oppression and discrimination in

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<sup>9</sup> Edmond J. Keller, "Introduction: Toward a New African Political Order" in E.J. Keller and D. Rothchild (eds), Africa in the New International Order: Returning State Sovereignty and Regional Security. (Boulder: Lynne Rienner Publishers, 1996), p.11

<sup>10</sup> Joe Louis Washington, "The Gap Between Policy and Implementation" in B.K. Goldewijk, A. C. Baspineiro and P. C. Cabonari (eds), Dignity and Human Rights: The Implementation of Economic, Social and Cultural Rights. (New York: Intersentia, 2002), p.293

South Sudan is unending. What is this that creates an enabling environment for persistence of human rights violations in South Sudan? This research task seeks to investigate the enabling environment behind the persistence of human rights violations in South Sudan. This study is hoped to develop an in-depth understanding of the various events and policies which prevent International human rights norms from being embraced in the protection of human dignity in South Sudan.

### **Objectives of the study**

This study is broadly focused on the South Sudan Conflict with specific academic interest on the persistence of human rights violations which act as an obstacle to the realization of peace. It is as well hoped to expand knowledge in the area of the challenges facing the enforcement of International Human Rights Norms in a sovereign state and for this case, Sudan.

#### **The specific objectives:**

- 1) To examine various policies and actions of both the Khartoum government and SPLM/A responsible for the escalation and protraction of human rights violations in South Sudan
  - 2) Investigate the relevance of the colonial policies in the present day human rights violations in South Sudan
  - 3) Analyse the role played by foreign states in preventing international intervention efforts.
-

## Literature review

This part will review literature on the conceptual foundations of international human rights protection and debates on human rights abuses in South Sudan and the obstacles to the realization of fairness. It is against this background that the entire research will be carried on.

### International human rights

According to Wallace,<sup>11</sup> human rights are regarded as those fundamental and inalienable rights which are essential for human life. They are inalienable in the sense that if alienated, human dignity will be eroded. International Law divides Human rights into three classifications: First generation rights (civil and political rights); second generation rights (economic, social and cultural rights) and third generation rights (group rights).<sup>12</sup> The three classifications are interrelated and interdependent. This study will be based on Lous' assumption that human rights are universal, inalienable, interdependent and interrelated.<sup>13</sup>

According to Goldewijk, the core and foundation of human rights is human dignity, which is inherent in each and every person by the virtue of his or her being human.<sup>14</sup> This implies that human dignity does not come from status, nationality and ethnicity of individuals. This makes human rights universal in character for they accrue to all on the basis of human dignity. This then calls for a moral obligation to respect all

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<sup>11</sup> Rebecca M. M. Wallace, International Law. Fourth Edition. (London: Sweet and Maxwell, 2002), p. 210

<sup>12</sup> *Ibid.*, p. 210

<sup>13</sup> Joe Louis Washington, "The Gap Between Policy and Implementation" *op. cit.* p. 293

<sup>14</sup> B.K. Goldewijk, "From Seattle to Porto Alegre: Emergence of A New Focus on Dignity and the Implementation of Economic, Social, Cultural Rights" *op. cit.* p. 6

other persons no matter their status, nationality, ethnicity among other conditions. Failure to do so violates human rights.

The preamble of the UN charter reaffirms “faith in fundamental human rights, in the dignity and worth of the human person.”<sup>15</sup> With reference to Article 1(3) of the UN charter, one of the purposes of the UN is to promote and encourage respect for human rights and fundamental freedoms for all without distinction. Article 5 of the African Charter on Human and People’s Rights states that human beings are inviolable. Every person shall be entitled to respect for his life and integrity.<sup>16</sup> On the same, Article 5 of the Universal Declaration of Human Rights states that no one shall be subjected to torture or cruel, inhuman treatment.<sup>17</sup>

A number of reasons make it difficult to enforce international human rights norms. Macalister-Smith observes that Neither the United Nations Charter nor the Universal Declaration of Human Rights imposes on the United Nation’s members legal obligation to respect the rights they proclaim.<sup>18</sup> Golstein<sup>19</sup> points out that enforcing the norms of human rights involves penetrating a state’s internal affairs. With regard to this, states regard human rights as concerns falling within their frontiers and not a matter to be subjected to International Law. On this ground, applying sanctions as a regulatory measure against rogue states stands rejected. On the same, Goldstein notes that, any step that involves cutting off trade or contact with a country that violates human rights tends

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<sup>15</sup> United Nations Charter, 1945, Preamble

<sup>16</sup> African (Banjul) Charter on Human and Peoples’ Rights, 1986, Article 4 (Adopted in Nairobi on June 1981. Entry into force: 21 October 1986 in accordance with Article 63)

<sup>17</sup> Universal Declaration of Human Rights, 1948, Article 5

<sup>18</sup> Peter Macalister-Smith, International Humanitarian Assistance: Disaster Relief Actions in International Law and Organization, (Dordrecht: Martinus Nijhoff Publishers, 1985), p. 63

<sup>19</sup> Joshua Golstein, International Relations, Fifth Edition. (Delhi: Pearson Education, Inc. 2003), p. 298

to further isolate citizens whose rights are already being violated.<sup>20</sup> Even if states may regard human rights as an internal matter. according to Wallace the position of International Law is that severe violations of human rights in any state are not an exclusive affair of that state.<sup>21</sup>

## **Human rights violations**

Washington holds that the struggles between various groups and governmental forces for the satisfaction of basic human needs are assumed to lead to gross and systematic human rights violations.<sup>22</sup> Human rights violations can be in the form of racism. According to Fredman, racism is about relationships of domination and subordination based on colour and other grounds such as culture, religion and language. It involves hatred of the 'other' in defence of 'self' in which case the 'other' is 'inferior.'<sup>23</sup> Martin, Schnably, Wilson, Simon, and Tushnet contend that Human rights violation can take the form of "extermination"<sup>24</sup> which involves using intentional killing through malnutrition, denial of medical attention, eliminating the weakest first like the elderly, the poor, children and women. This drives victims to submission for they find themselves in a perpetual state of misery. The above scholars add that torture is the intentional infliction of severe pain or suffering, be it physical or mental upon a person.<sup>25</sup>

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<sup>20</sup> Ibid., p. 298

<sup>21</sup> Rebecca M. M. Wallace, *op. cit.* p. 211

<sup>22</sup> Joe Louis Washington, "The Gap Between Policy and Implementation" *op. cit.* p.296

<sup>23</sup> Sandra Fredman, "Combating Racism with Human Rights: The Right to Equity" in Sandra Fredman (ed), Discrimination and Human Rights: The Case of Racism. (Oxford: Oxford University Press, 2001), p.10

<sup>24</sup> F. F. Martin, S. J. Schnably, R.J. Wilson, J. S. Simon, and M. V. Tushnet, International Human Rights and Humanitarian Law: Treaties, Cases and Analysis. (Cambridge: Cambridge University Press, 2006), p. 476

<sup>25</sup> Ibid., p. 476



Galtung observes that oppression can take form of locking people in concentration camps, or locking people outside the country or in distant parts of the country.<sup>26</sup> Takougang projects that human rights abuses bring political instability and subsequently detriment the economy by discouraging investments by both locals and foreigners and might actually lead to capital flight.<sup>27</sup>

According to Bakuwa, beliefs in different religions are so divergent to the extent that the pursuit of one's beliefs might be in direct conflict with other religions.<sup>28</sup> Galtung points out the idea of internationalisation of culture.<sup>29</sup> This is all about the desocialization from one's own culture while get resocialized into another culture. In such a case, the subjected group is compelled to express dominant culture and not its own. This brings about suppression, and suppression of one group leads to liberation wars as in Sudan. Jeong points out that "Liberation wars in parts of Africa just like in Asia represent a struggle against domination, exclusion and repression."<sup>30</sup>

## **Human rights violations in South Sudan**

This section seeks to analyse human rights violations of South Sudanese in the historical context. Bakuwa observes that in Sudan, there is no person or class of people that has escaped oppression from National Islamic Front Security agents; not even the

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<sup>26</sup> Johan Galtung, "Cultural Violence," *Journal of Peace Research*. Vol. 27, No. 3, (1990), p. 293

<sup>27</sup> J. Takougang, "The Future of Human Rights in Sub-Saharan Africa" in John M. Mbaku (ed), *Preparing Africa for the Twenty-First Century: Strategies for Peaceful Coexistence and Sustainable Development*, (Aldershot: Ashgate, 1999), p.187

<sup>28</sup> R. C. Bakuwa, "Containing Local Conflicts from Turning into Civil Wars" in D. Milazi, M. Mulinge and E. Mukamaambo (eds), *Democracy, Human Rights and Regional Cooperation in South Africa*. (Pretoria: Africa Institute of South Africa and SAUSSC, 2002), p. 146

<sup>29</sup> Johan Galtung, "Cultural Violence" *Journal of Peace Research*. Vol. 27, No3. (1990), pp. 292-293

<sup>30</sup> Howan. W. Jeong, *Peace and Conflict Studies: An Introduction*. (Aldershot: Ashgate, 2000), p. 61

sick for they are denied an opportunity to seek medical help abroad.<sup>31</sup> Many people have died as a result of failure to access medicine or as a result of hunger either at home or in state prisons.

EL-Talib<sup>32</sup> notes that the Southern Colonial policy set by the British introduced passports and permits ordinance that controlled the movements between Northern and Southern Sudan for almost thirty years. This resulted in the progressive physical exclusion of Northerners and Southerners from moving to each other's habitat. EL-Talib adds that this travel restriction arrangement created a cessationistic thinking and behaviour which later manifested itself in agitations for self-rule and eventual conflict. In a move to address the cessation agitations, the Addis Ababa Agreement which took place on May 3, 1972 realized the first Regional self-rule for Southern Sudan.<sup>33</sup> But come May 1983, the SPLM/A emerged with new issues to denounce these agreement, bringing about a new phase of armed conflict. This situation was from time to time worsened by rebel's continued rejection of any discussion with the government.

Abel Alier observes that the colonialists had a system of employment that saw the Southerners receive lower rates than their counterparts in the North.<sup>34</sup> The policy of wage disparity in conjunction with others obstructed the progress of the country towards unity during the transitional period that preceded independence.

Idris notes that since 1920s, the British administrators had a mentality of calling the Southerners 'African'.<sup>35</sup> This re-enkindled racial identity in which case Sudan was

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<sup>31</sup>R. C. Bakuwa, op. cit. pp. 110-111

<sup>32</sup>Hassan E. EL-Talib, "Background to the Country and People" in Korwa G. Adar, J.G.N. Yoh and E. Maloka. op. cit. p. 24

<sup>33</sup>Ibid. p. 25

<sup>34</sup>Abel Alier, Southern Sudan: Too Many Agreements Dishonoured. (Southern Court: Ithac, 2003), p. 32

<sup>35</sup>Amir H. Idris, Sudan's Civil War: Slavery, Race, and Formational Identities (Lewiston: The Edwin Mellen Press, 2001), p.45-46

divided into the 'Arab' North and 'African' South. Under such distinctions, the South was inferior to the North. The Northerners were regarded as civilized because they were subjected and used to a body of law while Southerners were not, instead in the South tribal custom differed from one people to another.

Mayer<sup>36</sup> notes that in the Sudan and Pakistan, constitutional rights provisions were suspended during islamization programs. This was intended to bring the law and administration of justice into conformity with the standards of the Sharia Law. Khalil holds similar views.<sup>37</sup> For instance in 1983, Nimeiri embraced the islamization program and in the following year, he declared a state of emergency which allowed him to suspend all constitutional rights provisions in the Sudanese constitution. However in 1985, the popular revolution brought a replacement of Sudanese constitution by an interim constitution, which reverted Sudan to a free and democratic system. But the Bashir regime abrogated the interim constitution and subsequently suspended all the rights and freedoms that the Sudanese had enjoyed. Mayer further notes that in 1989, the Bashir regime disbanded the independent Sudan Human Rights Organization and replaced it in 1991 by a government controlled organization which was not committed in condemning Sudanese government for any human rights violations.<sup>38</sup> In attempt to convince the outside world that the regime was respecting human rights, a new Human Rights Committee was created in 1993. This was however disapproved by the UN Human Rights Commission report on human rights situation in 1994.

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<sup>36</sup> Ann Elizabeth Mayer, Islam and Human Rights: Tradition and Politics. Second Edition (Boulder: West View Press, 1995), pp. 31-32

<sup>37</sup> Mohamed Ibrahim Khalil, "Human Rights and Islamization of the Sudan Legal System" in Yusuf Fadi Hasan and Richard Gray (eds), Religion and Conflict in Sudan. (Nairobi: Paulines Publications Africa, 2002). pp. 59-61

<sup>38</sup> *Ibid.*, pp. 181-182

Nhial, Kafi and Seisi<sup>39</sup> assert that during 1992–1993 period, there existed pervasive nature of human rights abuses in the Sudan which caused an outcry from the UN Security Council and the US but the trend did not change. Their persistence makes these scholars to point out that the Khartoum government has become immune to international criticisms and scornful of human rights organizations.

With the regard to violating the rights of young people, Leonardi<sup>40</sup> observes that in the 1980s the SPLA propaganda encouraged thousands of young boys to cross to Ethiopia to join school, just to find themselves in the SPLA training camps and the infamous ‘Red Army’ of soldiers. The most vulnerable were those labeled as ‘Orphans’ or ‘unaccompanied minors’. On the other hand, the Khartoum government, suspected young men to be in support of the rebels if they did not join the government forces or their local militia. Girls were taken to be wives of soldiers while some girls married soldiers to secure protection from rape by other soldiers.

Nhial, Kafi and Seisi further observe that behind Bashir’s regime is Islamic religious Zealotry<sup>41</sup> dedicated to turning the Sudan into a homogenous Islamic theocratic state, thus oppressive to the overwhelming majority of non-Muslim Southern Sudanese. Their being non-Muslims disqualifies them certain civil and political rights for instance they are not eligible for the office of the head of state or for the top army position; they cannot bear witness against Muslims in court of law and the homicide punishment cannot be applied in their case should one of them be murdered by a Muslim.

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<sup>39</sup> A.A.J Nhial; N.T.Kafi, Eltigani Seisi, “Human Rights Abuses in Sudan,” in Review of African Political Economy: Setting an Agenda for Change in Africa, No. 58 (ROAPE Publications Ltd: Published by Tylor & Francis Ltd. Nov. 1993), pp. 110 - 117

<sup>40</sup> Cherry Leonardi, “Liberation or Capture Youth Between ‘HAKUMA’ and Home .During Civil War and After its Aftermath in Southern Sudan” in Africa Affairs: the Journal of the Royal African Society. vol.106 No.424 July 2007 pp.398-399

<sup>41</sup> A.A.J Nhial; N.T.Kafi, Eltigani Seisi, “Human Rights Abuses in Sudan,” op. cit pp. 110-117

The 1962 Missionary Act<sup>42</sup> that was introduced by General Ibrahim Abboud is at the moment applied to the letter. It for instance forbids Christians to build worship centers in Northern Sudan. Islamic Religion has been made a mandatory subject in the study curriculum. The radio and TV stations are monopolized by the government and they exclusively air Islamic literature. Moreover, non-Muslims are denied licenses for commercial activities and access to credit on the ground that their businesses are not operating in accordance with Sharia law.

Humana<sup>43</sup> records a number of actions taken by the Sudan government, which either degrades human dignity or limits human freedom. After the 1989 bloodless military coup, political rallies were forbidden thus shunning political demonstrations within the country. This in turn made local groups which for instance monitor human rights violations to operate secretly. Moreover, Islamic fundamentalists dominate the judicial system and yet it is meant to serve both Muslim and non-Muslims and they are increasingly dominating the university life. More over, Newspapers that do not conform to the government and religious directives were banned.

O'Fahey notes that "Sudan's recent past can be analyzed in terms of seeing it as a struggle between different groups for control over resources. Here group can stand for a state, a religious brotherhood, a political party or a self identified ethnicity."<sup>44</sup>

Gale<sup>45</sup> observes that the North advanced the policies of Arabization and Islamization which translated into the spreading of Arab ideologies and expansion of

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<sup>42</sup> Ibid., pp. 112-114

<sup>43</sup> Charles Humana, World Human Rights Guide. Third Edition. (New York: Oxford University Press, 1992). pp. 302-303

<sup>44</sup> R.S. O'Fahey, "Islam and Ethnicity in the Sudan", in the Journal of Religion in Africa. Vol. 26 Fasc. 3, (August 1996), p. 258

<sup>45</sup> Suverino F.B. Tombe Gale, Shaping a Free Southern Sudan: Memoirs of Our Struggle 1934-1985 (Limuru: LOA Catholic Mission Council, 2002), pp. 451-452

Muslim faith to non-Arabs and non-Muslims. Gale further holds that the conflict between the universality and relativity of human rights standards has been most pronounced in Sudan because Sudan applies Sharia law with Islamic penalties. When such accusations were made, the government defended itself by saying that Sharia laws were not only reflective of Sudanese cultural values but were the dictates of Islamic Law given by God.<sup>46</sup> Ironically, Sudan is a signatory of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.<sup>47</sup>

Johnson<sup>48</sup> notes that the policy of Islamization is so severe and conflict inducing. For instance, Muslims who opposed the government, especially in the Nuba Mountains were declared unbelievers who it was legal to kill. On the other hand, Arabization, carries with it racism which is particularly evident in the wide spread rape of Muslim women from non-Arab groups.

Adar, Yoh and Maloka<sup>49</sup> point out that the majority of Sudanese people believe that unbalanced development is responsible for the conflict in Sudan more than ethnic and religious issues. The unbalanced growth, concentrated all infrastructure and social overhead activities in the Northern part of the country, making the North more developed than the South, thus leaving the South marginalized. Alier has similar views that the South was neglected in the social and economic development.<sup>50</sup> He further contends that money was used for the maintenance of an army station in the South for punitive patrols

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<sup>46</sup> Ibid., pp. 451-452

<sup>47</sup> Ibid., pp. 451-452

<sup>48</sup> Douglas H. Johnson., "Darfur Peace, Genocide, and Crimes Against Humanity in Sudan" in Preben Kaarsholm (ed), Violence, Political Culture and Development in Africa. (Oxford: James Currey, 2006), p. 97

<sup>49</sup> K. G. Adar, J.G.N. Yoh and Eddy Maloka, op. cit. p. 3

<sup>50</sup> Abel Alier, op. cit. p. 32

and administrative controls instead of initiating development projects.<sup>51</sup> As a result of this, the Northerners accessed education more than Southerners. For instance in 1956 when the policies of Sudanization were taking place, only six Southerners were found qualified to be posted for the 800 positions appropriated for Southern Sudan.<sup>52</sup>

### **Obstacles to the realization of fairness in South Sudan**

Stedman is of the idea that “conflicts become prolonged because the antagonists come to fear the consequences of settlement”<sup>53</sup> Settlement implies prosecution of the people who were for instance involved in humanitarian crimes, looting and conducting illegal business. Such people may taint the peace process, thus continuity of human suffering.

When neighbouring or foreign countries influence an intrastate conflict, it tends to be complex and difficult to bring to an end. Foreign countries have directly or indirectly promoted the Sudan crisis. Bakuwa points out that foreign countries may fuel conflicts in another country by supporting groups, which are sympathetic to their ideologies.<sup>54</sup>

Copson is of the idea that the Sudan war could have had lower levels of violence had there been no foreign involvement.<sup>55</sup> For instance, Ethiopia’s military aid, as well as other forms of assistance energized SPLM/A’s resistance. In such a resistance, human suffering is inevitable. Similar observations are made by Deng, Kimaro, Lyons,

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<sup>51</sup> Ibid., p. 32

<sup>52</sup> Hassan E. EL-Talib, op. cit. p. 35

<sup>53</sup> Stephan J. Stedman, “Conflict Resolution in Africa: A Conceptual Framework” in F.M. Deng and I.W. Zartman, Conflict Resolution in Africa. (Washington: The Brookings Institution, 1991), p. 368.

<sup>54</sup> R.C. Bakuwa, op. cit. p. 147

<sup>55</sup> Raymond W. Copson, Africa’s Wars and Prospects for Peace. (Armonk: M.E. Sharpe, INC 1994), p.143

Rothchild and Zartman.<sup>56</sup> Egypt too is a key player in the Sudan conflict. Connel records that in an attempt to resolve the long-lasting conflict between the North and the South, in the year 2002, IGAD mediators proposed a self-rule for South Sudan after a six years transition in such a way that Sharia law could remain in effect in the North.<sup>57</sup> But Egypt minding its control over the Nile headwaters made Mubarak to warn that independence for Southern Sudan would tear the region to shreds.<sup>58</sup>

Reeves notes that, "Oil revenues presently stand as the greatest obstacle to a resolution of the conflict."<sup>59</sup> The discovery of oil, the need to sell it and the need to purchase it by foreign nations acts as a barrier to the realization of peace in South Sudan. This is because revenues gotten from oil projects and concession sales go directly to the National Islamic Front of the ruling regime and are used in sustaining this longest and most destructive civil conflict in the world.<sup>60</sup> Oil is crucial because, the conflict re-ignited in 1983 because of Chevron's discovery of oil reserves in the late 1970s. This was made possible by Nimeiri's attempt to redraw the boundaries in order to place oil reserves in the North.<sup>61</sup>

Hutchison highlights that the SPLM which is the leading rebel movement in South Sudan got split in 1991 into two rival factions thus reducing the prospect of

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<sup>56</sup> F. M. Deng, S. Kimaro, T. Lyons, D. Rothchild and I.W. Zartman, Sovereignty as Responsibility: Conflict Management in Africa. (Washington: The Brookings Institution, 1996), p. 152

<sup>57</sup> Dan Connel, "Peace in Sudan: Prospect or Pipe Dream?" in Middle East Report, No. 228, 2003 (Middle East Research and Information Project). p.6

<sup>58</sup> Ibid., p.4

<sup>59</sup> Eric Reeves, "Oil Development in Sudan" in the Review of African Political Economy. Vol. 29, No. 91, 2002, p. 167

<sup>60</sup> Ibid., p. 167

<sup>61</sup> Ibid., p. 167



realizing peace.<sup>62</sup> Its split marked the beginning of a new phase of an already lengthy civil war within which human rights are violated. Within the SPLM, leadership struggles ensued as John Garang claimed supremacy because of his former military rank and his advanced education.<sup>63</sup> This situation was worsened by Garang's vision of liberating the entire Sudan. This attracted resistance among Southern civilians and military recruits because it went against Southerner's feelings of nationalism that had been maturing since the first civil war.<sup>64</sup> All these brought about a dramatic shift in the regional balance of power in favour of the government of Sudan during the 1991-2000 period.<sup>65</sup>

Johnson holds that China and Russia's growing interest in the Sudan's oil has prevented the Security Council from taking more robust action.<sup>66</sup> Korwa, Adar, Yoh and Maloka hold a similar idea that the UN is incapable of taking action because China and Russia are permanent members of the UN Security Council and have strong ties with Sudan. Whereas China and Russia are involved in the Supply of arms in exchange of oil, Malaysia provides bridging loans to IMF on Sudan's behalf.<sup>67</sup>

The literature in this section shows that there is no single factor which can comprehensively explain the persistence of human rights violations in South Sudan. Although much has been written on the problem under investigation, not much has been done to document together and link various factors responsible the perpetuation of human rights violations in South Sudan.

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<sup>62</sup> Sharon E. Hutchison, "A Curse From God? Religious and Political Dimensions of the Post 1991 Rise of Ethnic Violence in South Sudan" in the Journal of Modern African Studies, Vol. 39 No. 2, 2001 (Cambridge University Press), pp. 308-311

<sup>63</sup> *Ibid.*, p. 311

<sup>64</sup> *Ibid.*, p. 80

<sup>65</sup> *Ibid.*, p. 308

<sup>66</sup> Douglas H. Johnson, *op. cit* pp. 97-98

## Theoretical Framework

According to Frankfort-Nachimias and David Nachimias, a theory is a conceptual framework which helps in explaining and predicting phenomena of interest and there after make intelligent practical decisions.<sup>68</sup> Groom asserts that it is hard to cogitate without a theory because facts do not speak for themselves.<sup>69</sup> Theory enables a researcher to discern patterns or relationships which may seem unconnected. In so doing, it allows one to comprehend rather than merely apprehend.

This particular study will use the Peace Research Paradigm to investigate and develop an in-depth understanding of the persistence of human rights violations in South Sudan. The Peace Research Paradigm is built on the Structuralist Theory of International Relations. The Peace Research Paradigm is championed by scholars like Johan Galtung.

Groom observes that within the framework of structuralism, reality is perceived in terms of relationship between elements.<sup>70</sup> Emphasis is on the existing structure which takes a life of its own and in turn determines future behaviour. Individuals in such a structure find it difficult to either escape from the prevailing structural constraints or create new areas that are pleasant to them. Boulding<sup>71</sup> points out that within such structures, people burn with anger at oppression, poverty, violence and insults to human dignity.

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<sup>67</sup> Korwa, G. Adar, J.G.N. Yoh and Eddy Maloka, op. cit. pp. 72-73

<sup>68</sup> Chava Frankfort-Nachimias and David Nachimias, Research Methods in the Social Sciences. Fifth edition. (London: St. Martin's Press, 1996), p.36

<sup>69</sup> A. J. R. Groom, "Paradigms in Conflict: The Strategist, the Conflict Researcher" in J. Burton and F. Dukes (eds), Conflict: Readings in Management and Resolution. (London: Macmillan, 1990), p.71

<sup>70</sup> Ibid., p. 71

<sup>71</sup> Kenneth E. Boulding, "Twelve Friendly Quarrels with Johan Galtung", Journal of Peace Research. No.1. Vol. XIV (1977), p. 78

According to Galtung,<sup>72</sup> a society can have structural conditions in which people are unable to realize their full potential; in which case somatic and mental realizations are below their potential realization. If a given structure of relationship is unjust and inequitable, the weaker party stands to lose. In such a case, no actor directly harms the other but rather the unjust structures. People existing in such an environment are prevented by structural constraints from developing their talents or interests in a normal manner or even realising that such development are possible.

The Peace Research Paradigm is relevant to this study because it endeavours to promote the realization of values like justice and humanity within the society<sup>73</sup> thus bringing better life in a safer world for the participants, and such is what is needed in South Sudan. This paradigm further has it that, the oppressed should be aided in the struggle to break down the existing oppressive system and make the parties symmetrical.<sup>74</sup> Secondly, the Peace Research Paradigm is relevant in the study of the seemingly unending human rights violations in South Sudan for it is aimed at post-revolutionary peace unlike strategist paradigm which creates imposed stability brought by the use of force to suppress the oppressed.<sup>75</sup>

### **Justification of the study**

There is a great deal of writings on human rights violations on South Sudan with various intentions like to show the extent of human suffering; calling on the International Community to intervene; to evoke sympathy for well wishers to donate basics to the

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<sup>72</sup> Johan Galtung, "Violence, Peace Research," *Journal of Peace Research*. Vol.3 (1969), p. 168

<sup>73</sup> Johan Galtung, "Violence, Peace Research," *op. cit.* p. 190

<sup>74</sup> A. J. R. Groom, "Paradigms in Conflict: The Strategist, the Conflict Researcher" *op. cit.* p. 94

<sup>75</sup> *Ibid.*, p. 96

Southerners among others. While looking at the causes the South Sudan problem, most authors emphasise on one factor while leaving others or mentioning them in passing. Little effort has been made in taking a polycasual approach in explaining the persistence of human rights violations in South Sudan. This study will endeavour to fill that gap that has been left by authors, analyst and policymakers in examining human rights violations in South Sudan. It seeks to identify various factors which interact and make the continuation of human rights violations in South Sudan possible. This is because there is no single factor, which can comprehensively explain the protracted nature of human rights violations in the South Sudan.

The research findings will make materials available to scholars, researchers, and students interested in studying on the same. Moreover this study is hoped to inform both local and international policy makers concerned with International human rights protection. The study is hoped to contribute to the study and understanding of the factors that can make human rights violations persistent in a state. In so doing, mechanisms will be developed on the understanding, resolving and preventing the protraction human rights violations and subsequently ensure peace.

### **Hypotheses**

This research aims at investigating the following hypotheses:

1. The Islamization process in the Sudan contributes to the generation and protraction of human rights violations in South Sudan.
2. The involvement of foreign countries in the Sudan conflict prevents human rights intervention by the International Community.
3. Inequitable resource distribution between South and North Sudan exacerbates human rights violations in South Sudan.

## Methodology

This study will utilise both primary and secondary data collection methods. Face to face interviews will be utilized in the collection of primary data. Nondirective Interview will be used which according to Frankfort-Nachimias and D. Nachimias is a form of non-structured interview which does not involve a schedule to ask a specified set of questions<sup>76</sup> Respondents will be encouraged to reveal their perception of the problem under investigation. This method is preferable over questionnaire method because firstly it will allow the researcher to probe for clarity and secondly, it will enable the respondent to seek clarity of the asked question. Fowler observes that respondents while answering questions can give inaccurate answers when they do not understand the question.<sup>77</sup> The targeted people for primary data collection will be people who have had practical experience with the problem under investigation. Respondents will be drawn from both local and international human rights organizations; Organizations working with refugees from Sudan; scholars of International Studies, political science, philosophy among others. Sudan nationals living in Kenya too will be interviewed. Open-ended questions will be used to allow the streaming of consciousness. Primary data will be useful in supplementing secondary data.

Secondary data collection method will involve reading and analysing published works in the form of books, journals, magazines, periodicals and articles. International Instruments such as Conventions and Charters on human rights and war will as well be consulted. Both primary and secondary data will be analysed to help justify the

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<sup>76</sup> Chava Frankfort-Nachimias and David Nachimias, op. cit. p.235

<sup>77</sup> Dawn Burton, "Questionnaire Design", Dawn Burton (ed), Research Training for Social Scientists. (London: Sage Publications. 2000), p. 336

hypotheses, thus fulfilling the objectives of the research. The approach will be both descriptive and analytical.

### **The scope and limitations of the study**

This study will focus on human rights violations in South Sudan with an assumption that North Sudan is pacific. Special attention will be given to the Omar el Bashir's regime since 1989 up to the signing of the peace process. However, predecessor regimes will as well be examined to generate historical knowledge of human rights violations in South Sudan. Because of limited time, no journey will be made to South Sudan to collect primary data; instead, the Sudanese living in Kenya and people who have had practical experience with the problem under investigation will be interviewed.

## **Chapter outline**

### **Chapter one: The research proposal**

This is the background to the intended study and how is to be achieved. It contains the research problem, objectives of the study, justification of the study, literature review, hypotheses, theoretical framework, methodology and chapter outline.

### **Chapter two: The nature of human rights violations in South Sudan**

This chapter will analyse the nature of various violated human rights of the people of South Sudan. This will lead to investigating the enabling environment for the protraction of such practices.

### **Chapter three: The underlying factors behind human rights violations in South Sudan**

This part will present various factors behind the protraction and the escalation of human rights abuses in South Sudan.

### **Chapter Four: Critical analysis the persistence of human rights violations in South Sudan**

This chapter will critically analyse the issues raised in the research study. This will in turn lead to the conclusion of the study.

### **Chapter Five: Conclusion**

The Conclusion will be drawn from the research findings with a keen interest as to whether the hypotheses have been justified or not leading to the recommendations for action.

## Chapter Two: The nature of human rights violations in South Sudan

### Preliminary considerations

This chapter will dwell on analysing the nature of various violated human rights of the people of South Sudan. Even though this study focuses on the events, practices and policies of 1989-2005 period, practices of the preceding periods will be analysed to recognise the historical perspective of the problem under investigation for the present ways of human living are assumed to have their roots in the past. The objective of this chapter is not to “prove” the existence of human rights violations in South Sudan, but rather to analytically document, describe and put together flagrant violations of human rights by the Sudan government in the context of the North-South disharmony.

Sudan, which is the largest country in Africa bordering nine countries is faced with the challenge of embracing the diversities of the country based on mutual accommodation and respect.<sup>78</sup> South Sudan which is key to this study is composed of three provinces: Bahr el Ghazal, Upper Nile and Equatoria.<sup>79</sup> However, during the IGAD talks, SPLM proposed that the Southern Confederal State shall consist of Bahr el Ghazal including Abyei, Equatoria, Southern Blue Nile, Southern Kordofan and Upper Nile<sup>80</sup>

For the purpose of this study, the following definition will capture what constitutes gross human rights violations:

‘gross, systematic violations’ refers to, violations instrumental to the achievement of governmental policies, perpetrated in such a quantity and in such a manner as

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<sup>78</sup> Francis M. Deng, “Sudan’s Turbulent Road to Nationhood”, in Ricardo R. Laremont, Borders, Nationalism and the African State, (Boulder: Lynne Rienner Publishers 2005), p. 33  
Ibid., p.33

<sup>79</sup> Oliver Albino, The Sudan: A Southern Viewpoint, (London: Institute of Race Relations, 1970), p. 1

<sup>80</sup> Peace Through Development: Perspectives and Prospects in the Sudan, February 2000. Published by the SPLM. Signed by James Wani Iga, Chairman SPLM Political Affairs Commission., p. 5



to create a situation in which the rights to life, to personal integrity or to personal liberty of the population as a whole or of one or more sectors of the population of a country are continuously infringed or threatened.”<sup>81</sup>

According to, Nhial, Kafi and Seis,<sup>82</sup> in the Sudan, a number of people have died in the hands of the government’s security forces or because of negligence. In the South, people have died out of hunger or hunger related diseases. While some die in state prisons, some die in secret ghost houses. According to Petterson, Ghost houses were residences in Khartoum or Omdurman that were used as small prisons for political detainees, but the government denied their existence. Those detained in ghost houses had no access to family or legal representation.<sup>83</sup> In the Sudan there is “no single aspect of human life that has been spared; no person, classes of people or professionals have escaped the ill-treatment and humiliation of the National Islamic Front (NIF) security agents. Southerners as well as Northerners, Christians and muslims alike...”<sup>84</sup>

### **An overview of arabization and islamization policies and practices**

Arabization and islamization policies and practices, restricts free practise of religion of Southerners who are predominantly Christian; it invokes racism, it justifies the application of Jihad on non-Muslims and exclusion of non-Muslims in state administration among others. According to Ambrose Riny,<sup>85</sup> the Southerners (blacks) despise the Northerners (Arabs). In the same way, Arabs of the North despise

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<sup>81</sup> Peter R. Baehr, Human Rights: Universality in Practice. (Houndmills: Palgrave, 2001), p. 20

<sup>82</sup> A. A. J. Nhial, N. T. Kafi E. Seisi, “Human Rights Abuses in Sudan,” in Review of African Political Economy: Setting an Agenda for Change in Africa. No. 58 ROAPE Publications Ltd. Published by Tylor & Francis Ltd. Nov. 1993, p. 110

<sup>83</sup> Donald Petterson, Inside Sudan: Political Islam, Conflict and Catastrophe. (Boulder: Westview Press, 1999), p 107

<sup>84</sup> A. A. J. Nhial, N. T. Kafi E. Seisi, “Human Rights Abuses in Sudan,” op. cit. p. 110

Southerners. Arabs believe they are a 'superior' race and they are therefore not willing to share the country with the non-Arab of Sudan regardless of race and religion. The successive Khartoum governments have worked hard to persuade the world that Sudan is an Arab and Muslim country, a reality, which embitters Southerners.<sup>86</sup>

Due to the fact that the Sudan was divided into two by colonialists: The Arab North and African South, the education system in the South was distinct from that of the North. Whereas education in the North was run by Arabs, education system in the South was run by missionary societies while receiving large financial subsidies from the state.<sup>87</sup> Soon after independence, the government assumed full responsibility to ensure a unified educational policy as a basic element in nation building. While the government took such a move, the Southerners felt that the Arab dominated government was taking away from them a missionary charged system they were used to.<sup>88</sup> What was unfair to the Southerners is that after independence, the mission schools in the South were nationalized to enable the government to spread Islam through them.<sup>89</sup>

At the dawn of independence (1956), the British transferred the administration to Northerners, Arabs. Following this, the Northerners hurried to resume the activities the Southern Policy had halted.<sup>90</sup> A number of steps were taken by the Arab administrators to govern South Sudan, among them: Arabic was made the only official language of administration and education; Muslim preachers were moved to the South to Islamize and to improve the North-South relationships; Better educated Arabs under colonial rule

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<sup>85</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood" op. cit. pp. 52-53

<sup>86</sup> Jor Madut Jok, War and Slavery in Sudan. (Philadelphia: University of Pennsylvania Press, 2001), p. 109

<sup>87</sup> S.F. Boki Tombe Gale, Tombe, Shaping a Free Southern Sudan: Memoirs of Our Struggle 1934-1985. Limuru: LOA Catholic Mission Council, 2002, p. 452

<sup>88</sup> *Ibid.*, p. 452

filled the region, thus monopolizing all the institutions of the South like the Civil service, finance and banking, education, and the secret police. This made the South not to have a say in the formation and the shaping of the country's identity. The result of this was the civil strife.<sup>91</sup>

In 1983, the Republican Order Number One<sup>92</sup> enabled Nimeiri to abrogate the Addis Ababa Agreement, thus returning the regional powers to the central government and declared Arab the official language of the South, replacing English. The Order as well ignored direct secret ballot elections for the Southern Regional Assembly and dissolved its power to veto Central government law and it transferred the power to control armed forces in the South to the Central government.

The 1973 Constitution, which contained guarantees for the respect of human rights, supremacy of the law and independence of the judiciary, was amended in 1975 in elimination of all previous guarantees for human rights. This was followed by the 1983 "laws of September" which made Numeiri the Imam of Islam. He decreed Islamic law as the only guiding force behind the law of the Sudan. This called for creation of Emergency Courts to replace judicial system, which subsequently led to terrorizing people. A democratic system according to a multi-party parliament was brought through the 1986 elections but war continued in the South.<sup>93</sup>

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<sup>89</sup> Oliver Albino op. cit. p. 98

<sup>90</sup> Jor Madut Jok, op. cit. p. 17 See also: Oliver Albino, op. cit. p. 103

<sup>91</sup> Jor Madut Jok, op. cit. pp. 17-18

<sup>92</sup> International Crisis Group, God, Oil and Country: Changing the Logic of War in Sudan, ICG Africa Report No. 39, (Brussels: ICG Press 2002), p. 12

<sup>93</sup> Amin Mekki Medani, Crimes Against International Humanitarian Law in Sudan 1989-2000. First edition. (Cairo: Dar EL Mostaqbal EL Arabi, 2001), pp. 21-21

Come 1989. General Omar al-Bashir overthrew a democratically elected government of al-Saiq al-Mahdi, replacing it with fundamentalist Muslim dictatorship.<sup>94</sup> This regime abrogated the interim constitution and suspended all the rights and freedoms that the Sudanese had enjoyed in a brief period of democracy which had come into being in 1986.<sup>95</sup> Following the 1989 coup, the NIF set the stage for repression of all democratic opposition, disappearance of opponents and further entrenchment of Islamic law, which in turn eliminated rights of women. Between 1991 and 1993 three military coups attempts were made and in the same period opposition took the form of unions and women and students' serious protests against Bashir's regime. However, the government responded by arresting hundreds of union members, students and women.<sup>96</sup>

Bashir's regime is dedicated to turning the Sudan into a homogenous Islamic theocratic state, thus oppressive to the overwhelming majority of non-Muslim Southern Sudanese<sup>97</sup> During the North-South war, Sudanese Christians were forced to fight in the spirit of Muslim faith by being compelled to shout the war cry Allahu Akbar, La ilah lah.<sup>98</sup> As people lacked food due to war, food was used to coerce people into religious conversion.<sup>99</sup>

With regard to religion, the US Commission on International Religious Freedom identified Sudan as the World's most violent abuser of the right to freedom of religion

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<sup>94</sup> Gabriel Warburg, "Mahdison and Islamism in Sudan" in International Journal of Middle East Studies, Vol. 27 NO. 2 (May 1995), p. 219

<sup>95</sup> Ann Elizabeth Mayer., Islam and Human Rights: Tradition and Politics. Second Edition. (Boulder: Westview Press, 1995), pp. 32-33

<sup>96</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, Getting In: Mediators' Entry into the Settlement of African Conflicts. (Washington, D.C: United States Institute of Peace Press. 2006), p. 147

<sup>97</sup> A.A.J Nhial; N.T.Kafi, Eltigani Seisi, "Human Rights Abuses in Sudan," op. cit., pp. 110-117 See also: International Crisis Group, op. cit. p. 14

<sup>98</sup> Ibid.. p. 110

and belief.<sup>100</sup> Islamic law is enforced with severe and degrading punishments. Security forces attack Christian Churches, schools, hospitals and missions in Nuba Mountains and in the South.

According to Prendergast's 1990 documentation,<sup>101</sup> at least 5,500 people have been held without trial since Bashir came to power. Besides that, the Bashir Junta has dismissed most women from public service with Bashir's thought that an ideal woman cares for the family, performs household duties and committed to Islam. Archbishop Gabriel Zubier Wako alleges that Southerners are denied their right to worship and are the target of anti-Christian propaganda in the Media.<sup>102</sup> Slaves are cut off from their families, religion and culture, and denied access to education. This is with an aim of forcing them to learn Islam.<sup>103</sup>

According to Amnesty International, the Bashir regime began arabizing the education system in the South in 1991. The language of instruction in South Sudan was changed from English to Arabic and the study of Islam was made mandatory. This made some students to leave the country on foot.<sup>104</sup> Students who attempted to escape on foot to Uganda were shot at, rounded up and tortured by military intelligence. Those who were taken to the military intelligence headquarters in Juba were lashed.

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<sup>99</sup> Jor Madut Jok op. cit. pp. 4-5

<sup>100</sup> International Crisis Group, op. cit. p. 125

<sup>101</sup> John Prendergast, The Struggle for Sudan's Soul: Political and Agrarian Roots of War and Famine. (Washington: Center of Concern, September, 1990), p. 23

<sup>102</sup> Ibid., pp. 24-25

<sup>103</sup> International Crisis Group, op. cit. pp. 122-125

<sup>104</sup> Jemera Rone and John Prendergast, Civilian Devastation: Abuses by All Parties in the War in Southern Sudan. Edited by Karen Sorensen. (New York: Human Rights Watch, 1994), pp. 50-53

In 1992, all Catholics and Protestants expatriate missionaries were expelled from Juba for Khartoum. This created a gap they had filled of supplying relief and in reporting on government abuses.<sup>105</sup>

Jihad was legalised in Kordofan and Southern Sudan through the issuance of a religious decree by six pro-government religious leaders on 27<sup>th</sup> April, 1992. This was met by rebellion characterised by killing Muslims, raping Muslim women, desecrating mosques, defiling the Koran among others.<sup>106</sup> The Popular Defence Forces (PDF), which is under the Command of the General Commander of the regular Army gradually got, transformed to Mujahidin whose members were mainly from National Islamic Front (NIF) and whose policy is indoctrination.<sup>107</sup> The PDF therefore serves as an instrument of indoctrination and the militarization of the Sudanese Society. The PDF's trainees are formed to make sacrifices required by the Mujahedeen status. (Mujahin refers to group of people who take part in the holy war). They are formed to regard the rebels of Southern Sudan as outlaws and agents of the enemies of the Islamic state of the Sudan, who have to be fought through a holy war.

### **Regional resource imbalance and deprivation**

In terms of resource, there is an imbalance between South Sudan and North Sudan; the North has bigger share to itself than the South, thus depriving Southerners that which is rightfully theirs. According to the 1941 documentation,<sup>108</sup> the Southern Policy which was engaged in Africanization of the South neither produced a Southern Sudanese for

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<sup>105</sup> Ibid., p. 64

<sup>106</sup> Abdel S. Sidahmed, "The Unholy War: Jihad and the Conflict in Sudan" in Yusuf F. Hassan and R. Gray (eds), Religion and conflict in Sudan (Nairobi: Paulines Publications Africa, 2002), p. 87

<sup>107</sup> Ibid., pp. 88-89

executive work nor did it encourage Southerners to seek administration jobs. This created a human resource imbalance between the North and the South. This explains why many Northerners came to be hired to administer the South, creating a ground for political and economic deprivation of Southerners. The empowered Northerners made decisions and implemented them in favour of the North to the disfavour of Southerners.

In 1956, when a committee was appointed to draft a national constitution, only three out of the 46 members were Southerners. Their aspiration for a federal constitution was outvoted.<sup>109</sup> In 1958, General Ibrahim Abboud seized power after which he suppressed opposition and accelerated the policy of Islamization of the South. Its severity forced thousands into exile.<sup>110</sup> This was later met by opposition from the Anya-Nya (“snake poison”), Southern Sudanese Military movement.

Deng notes that the Black Book in looking at the 1989-1999 regional representation in the executive branch of government, the Northern region provides 79.5 per cent of national representation within government while Southern region provide 16 per cent of national representation. This then means that the Northerners dominate in governance and economically as well.<sup>111</sup> Deng further notes that the Black book observes that wealth distribution is in favour of the North even staff appointments such as drivers are recruited from among the advantaged group of the North.<sup>112</sup> Moreover, with regard to the exploration and production of Oil, the National Council for Distribution of Resources was formed whose composition has 76 per cent of its seats held by Northerners followed by the South and non-Arab regions of the North holding 12 per cent each of the seats.

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<sup>108</sup> Oliver Albino, op. cit. p. 21

<sup>109</sup> International Crisis Group, pp. 9-10

<sup>110</sup> Ibid., p.9-10

<sup>111</sup> Francis M. Deng, “Sudan’s Turbulent Road to Nationhood,” op. cit. p. 57

According to Kok,<sup>113</sup> in the 1970s and early 1980s the South's central government projects stagnated due to lack of funds and managerial will while the North's development and service projects were flourishing. Kok adds that the central government allocated the South only 23.2 percent sums for special development budget. The South's lack of investment and development was reflected in a widespread shortage of services and high levels of unemployment. Southerners were excluded from the training programmes in oil technology, which was sponsored by the Ministry of Energy and Mining.<sup>114</sup> Moreover, oil companies operating in the South were instructed to ignore Southern government officials, a directive which Total did not embrace.

Kok<sup>115</sup> further observes that, a number of institutions in the South were relocated in the North. Following the discovery of oil in the South, Nimeiri replaced Southern troops with Northerners at Bentiu, the site with extensive oil deposits. This went against the Addis Ababa Agreement, which allowed the South a degree of financial autonomy and the right to collect all central government taxes on industrial and agricultural activities in the region. The oil refinery was moved from Bentiu to Kosti in the North. This in turn perpetuated underdevelopment. The situation was worsened by the construction of a pipeline to the Red Sea to export Crude oil and import refined oil. This was aimed at keeping oil out of the reach of Southerners. This brought about imbalanced resource distribution for it denied Southerners employment and urbanization of their

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<sup>112</sup> Ibid., p. 58

<sup>113</sup> Peter Nyot Kok, "Adding Fuel to the Conflict: Oil, War and Peace in the Sudan" in M. Doornbos, L. Cliffe, A.G Ahmed and J. Markakis (eds), Beyond Conflict in the Horn: Prospects for Peace, Recovery and Development in Ethiopia, Somalia and the Sudan (The Hague: Institute of social studies, 1992), pp. 106-107

<sup>114</sup> Ibid., pp. 106-107

<sup>115</sup> Ibid., pp. 108-109 See also: International Crisis Group, op. cit. pp. 99-112



locality. The government's decision to build a refinery in the North instead in the South where oil was found deprived the South of its resource.<sup>116</sup>

## **Forced displacement**

Various human rights bodies have declared forced evictions to be "gross violations of human rights."<sup>117</sup> Forced eviction involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the state. In other forms of displacement, people may flee for reasons of personal safety and security due to the government's failure to prevent conditions of insecurity.<sup>118</sup> In such a case, individuals lose their personal possessions and increase the vulnerability of women and children. Evictions deny people the right to adequate housing recognized by International Human Rights Law.<sup>119</sup>

With regard to the right to resources in the Sudan, there is struggle for exclusive right to oil, prime agricultural land, water and River Nile. In an attempt to access Southern oil fields and provide security for production, the government forcefully displaced indigenous people in the neighbourhood of the oil regions and it even engaged in changing the identity of villages to create new history.<sup>120</sup> The government while displacing people from the rich-oil areas of Bentiu, killed males in mass while women

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<sup>116</sup> Oystein H. Rolandsen. Guerrilla Government: Political Changes in the Southern Sudan During the 1990s (Nordiska: Afrikainstitutet, 2005 Uppsala), p. 25

<sup>117</sup> Human Rights. Forced Evictions and Human Rights. Fact sheet No. 25. Adopted by the World Conference on Human Rights. Vienna, 23 June 1993. p. 5

<sup>118</sup> *Ibid.*, pp. 6-10

<sup>119</sup> *Ibid.*, p. 15

<sup>120</sup> International Crisis Group, *op. cit.*, pp. 99-100 See also: Francis M. Deng, "Sudan's Turbulent Road to Nationhood," p. 55

and children were nailed to the trees with iron spikes.<sup>121</sup> During raids, captives were sexually abused.<sup>122</sup> All these atrocities were aimed at gaining control over the oil fields.

During the 1986-1989 period, the government engaged itself in causing havoc in rural areas of the South using Southern tribal militias, making the people to move to government-held towns. Following this, the government aired a propaganda that government controlled areas are attractive to the Southerners unlike the impoverished, hostile, and disorganized conditions under the SPLA controlled areas.<sup>123</sup> However, this backfired as Southerners who migrated to the North were treated as second or third class citizens.

In 1992, the Juba government violated the rules of war by forcibly displacing over 100,000 civilians and crowded them in the city centre followed by burning of homes and crops left behind by civilians. Moreover, the starving civilians were denied the right to leave Juba.<sup>124</sup> This goes against the law of forced displacement. Article 17, Protocol II of 1977 Additional to the 1949 Geneva Conventions prohibits forced displacement of civilians for reasons connected to conflict.<sup>125</sup> It however provides for two exceptions: the immediate safety of civilians and imperative military reasons. Evacuation is necessary if the area is in danger due to military operations or if the presence of civilians hampers military operations. Once hostilities in the areas have ceased, the civilians have a right to return to their homes.<sup>126</sup>

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<sup>121</sup> Amin Mekki Medani, Crimes Against International Humanitarian Law in Sudan 1989-2000. First edition. (Cairo: Dar EL Mostaqbal EL Arabi, 2001), pp. 181-182

<sup>122</sup> Helen Fein, "Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia and Sudan: Links Between Human Rights, Health and Mass Death, in Health and Human Rights, vol. 2, No. 2 (1997), p. 28 See also: Amin Mekki Medani, op. cit. pp. 181-182

<sup>123</sup> Jor Madut Jok, op. cit. pp. 117-118

<sup>124</sup> Jemera Rone and John Prendergast, op. cit. p. 68

<sup>125</sup> Protocol II of 1977 Additional to the 1949 Geneva Conventions, Article 17

<sup>126</sup> Jemera Rone and John Prendergast, op. cit. p. 68

During the 1992-1995 period. Millions of people in South Sudan were displaced from their homes, some of whom fled to refugee camps in Uganda, Kenya, Zaire, Ethiopia and the Central African Republic while others lived in displaced-persons' camps in South Sudan and the Khartoum area. The situation was further aggravated by the government's denial of international NGOs permission to provide relief in such camps.<sup>127</sup> This step was aimed at covering the government's failure to meet the needs of displaced people. Besides such vices, the Islamist NGOs at Malakal were using relief supplies as a tool to Islamize in the camps.<sup>128</sup>

### Starving of civilians

International Law illegalises starving of civilians in armed conflict. Article 14 of the Second Additional Protocol (which compliments the Fourth Geneva Convention) forbids the starvation of civilians as a method of combat.<sup>129</sup> Starvation is a forbidden method of warfare, which involves deliberate depriving civilians food. It is prohibited to destroy objects indispensable to the survival of the civilian population such as foodstuffs, agricultural areas, crops, livestock drinking water among others.<sup>130</sup>

In between 1984 and 1988, the SPLA was engaged in starving civilians as a method of combat. They prevented food relief from reaching government-controlled towns to starve the population and force them to surrender or leave. The SPLA accomplished this by attacking a food convoy, forcing closure of Juba airport, shooting

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<sup>127</sup> Donald Petterson, Inside Sudan: Political Islam, Conflict and Catastrophe. (Boulder: Westview Press, 1999), p. 29

<sup>128</sup> *Ibid.*, pp. 31-32

<sup>129</sup> Second Additional Protocol (which compliments the Fourth Geneva Convention). Article 14

<sup>130</sup> Pietro Verri, Dictionary of the International Law of Armed Conflict (Translated from French to English by Edward Markee and Susan Mutti) (Geneva: International Committee of the Red Cross, 1992), p. 109

down civilian airplanes for instance in Malakal.<sup>131</sup> The 1992-1993 battles between SPLA-mainstream and SPLA-United indirectly caused deaths of thousands because relief operation was obstructed by fighting and imposed restrictions by both rebel forces and the government of Sudan. In a number of incidents, the military could not leave behind anything useful to human life for instance, if they could not carry grain, they either burnt it or dumped it in water.<sup>132</sup> Moreover, in early 1990s the SPLA forces committed an offence of forced portering in which case civilians were forced to porter supplies like Sorghum and artillery for the SPLA forces.<sup>133</sup>

The government too was involved in starving of civilians. The situation of starvation was worsened by the Bashir's obstructionist policies towards international endeavours to avail food by the ICRC and the UN sponsored OLS to the needy civilians in SPLA administered areas.<sup>134</sup> In March 1992, ICRC was expelled accused of helping to recruit children into the SPLA and giving logistical support to the rebels. These accusations were due to its humanitarian assistance to the people who fled Pochalla.<sup>135</sup> This is in violation of the provisions of International Law because Article 18 of the Second Additional Protocol (which compliments the Fourth Geneva Convention) invites relief societies located in the territory to provide civilian population with foodstuffs and

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<sup>131</sup> Jemera Rone and John Prendergast, op. cit. pp. 112-113

<sup>132</sup> Ibid., pp. 92-98 See also: Donald Petterson, op. cit. pp 51; Shalon E. Hutchison, "A Curse From God? Religious and Political Dimension of Post 1991 Rise of Ethnic Violence" in The Journal of Modern African Studies, Vol. 39, No 2, June 2001. (Cambridge University Press), pp. 318-319 and Helen Fein, "Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia and Sudan: Links Between Human Rights, Health and Mass Death", in Health and Human Rights, vol. 2, No. 2 (1997), p. 23

<sup>133</sup> Jemera Rone and John Prendergast, op. cit. pp. 192-193

<sup>134</sup> John Luk, "Relief, Rehabilitation and Reconstruction in the SPLM/SPLA Administered Areas During the Transitional Phase and Beyond" in M. Doombos, L. Cliffe, A.G Ahmed and J. Markakis (eds), Beyond Conflict in the Horn: Prospects for Peace, Recovery and Development in Ethiopia, Somalia and the Sudan (The Hague: Institute of social studies, 1992), pp. 43-44

<sup>135</sup> Jemera Rone and John Prendergast, op. cit. pp. 38-39

medical supplies.<sup>136</sup> The government further denied transport for foodstuffs for the South; government troops looted food and resold them at black market prices.<sup>137</sup> After 1989, the government decreed that all aid should be availed through Islamic charities. Secondly, the government decreed that food aid administered and monitored by foreign-aid workers as an intolerable intrusion in Sudanese sovereignty.<sup>138</sup>

The already unstable suffering and deprived population was required to pay tax to the SPLA. The taxation was at the discretion of the area commander either in the form of cattle or grain. Civilians who did not comply faced confiscation of their goods. For instance in Equatoria, every family head was required to give one tin of grain or cassava per month. If a family skipped a month, the tax was doubled in the coming month. The justification for taxation was that the civilians should know the implication of their politics by supporting the war or give in to the oppressive Arabs.<sup>139</sup>

Closely linked with starvation, is genocide by attrition. Genocide by attrition decimates group members through “creating conditions undermining physical and mental health that regularly result in the death of part of a group and demoralization and atomization of the remainder.”<sup>140</sup> The government’s policies of depriving a group of livestock, land and home, producing and aggravating famines through denial of relief; having displaced people without water and sanitation and segregating people by gender amounts to the vice of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.<sup>141</sup>

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<sup>136</sup> Second Additional Protocol (which compliments the Fourth Geneva Convention), Article 18

<sup>137</sup> Helen Fein, op. cit. p. 25

<sup>138</sup> Ibid., p. 26

<sup>139</sup> Jemera Rone and John Prendergast, op. cit. pp. 181-182

<sup>140</sup> Helen Fein, op. cit. p. 30

<sup>141</sup> Ibid., p. 30

Aid organizations working in Sudan would not publicize the cause of genocide by attrition, with a justification of fear of expulsion. Since the voluntary organisations survived by raising donations from the public, they usually ascribed famine to natural conditions such as drought, this would then spur public generosity. Most of them evade the fact that famines were directly and indirectly as a result of wilful political action.<sup>142</sup> Since both the government and the SPLA were involved in violating the rights of Southern Sudanese and since INGOs were denied access to the suffering civilians, the civilians were left without any guardian.

### Slavery of South Sudanese

A slave is a person in the condition or status of being owned.<sup>143</sup> Slavery in all its forms is a gross violation of human rights prohibited in all general human rights treaties. Slavery denies equal dignity and equality of rights of all human beings.<sup>144</sup> The government institutionalised slavery to depopulate some places of Southern Sudan using armed militias.<sup>145</sup> Jok contends that the successive Khartoum regimes since the re-eruption of the North-South civil war (1983) have encouraged enslavement of Southern blacks and increasingly Christian Sudanese by Northern Arab Muslims.<sup>146</sup> Slaves were captured to supply labour, as a means of attacking rival ethnic groups and to serve as house-helpers and concubines.<sup>147</sup> The Dinka people of the South are the most targeted not

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<sup>142</sup> Ibid., p. 34

<sup>143</sup> Jor Madut Jok, Jor Madut Jok, War and Slavery in Sudan. (Philadelphia: University of Pennsylvania

Press, 2001), p. 4

<sup>144</sup> Peter R. Baehr, Human Rights: Universality in Practice. (Houndmills: Palgrave, 2001), p. 21)

<sup>145</sup> International Crisis Group, op. cit. pp. 122-125

<sup>146</sup> Jor Madut Jok, op. cit. p. 1

<sup>147</sup> John Prendergast, op. cit. p. 24

only because of their historical conflicts they had with Arab tribes but also because they are the majority in the SPLA.

The government in the 1990s denied the existence of slavery, thus defending itself against accusations of pursuing slavery. The government said that what was on the ground was abduction and tribes settling scores. The government chose to confess that there were incidents of “abduction” of women and children in areas of military operations and that slavery is driven by tribes settling scores.<sup>148</sup> But according to 1999 Human Rights Report by the UN Human Reports Rapporteur, those involved in slavery were the Sudanese Army and the Popular Defence Forces.<sup>149</sup> But what remains “unanswered” is, why has the government not dealt with cases of abduction if at all it is not involved? With regard to the passive attitude of the government over practices of slavery, the special Rapporteur termed this passiveness as an approval and inclusive political support for slavery.<sup>150</sup>

Jok contends that the slavers do not fear any legal measures because the government and the authority of the state stand behind them.<sup>151</sup> Civilians are left on their own or in the care of NGOs. Christian Solidarity International, (CSI) responded to the practice of “slavery” in areas of military operations by engaging itself in buying back the abducted by paying 50 dollars for each person. However, this gesture was criticised by international human rights organisations as an act of promoting slavery.<sup>152</sup> In 1993, it was estimated by local authorities that at least 14,000 Dinka men, women, and children had

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<sup>148</sup> Amin Mekki Medani, Crimes Against International Humanitarian Law in Sudan 1989-2000, First edition. (Cairo: Dar EL Mostaqbal EL Arabi, 2001), p. 169

<sup>149</sup> Jor Madut Jok, op. cit. pp. 4-5

<sup>150</sup> Amin Mekki Medani, op. cit. p. 174

<sup>151</sup> Jor Madut Jok, op. cit. p. 2

<sup>152</sup> Amin Mekki Medani, op. cit. p. 170

been abducted and driven to the North. However, other sources suggest that the Dinka parents may have been pawning their children to Arabs out of desperation.<sup>153</sup> Why should a government engage itself in raids? The government of Sudan is said to use raids in Southern Sudan as a means of attracting foreign aid.<sup>154</sup> For instance, the raids of Dinka villages forced people to migrate to the North to seek for government protection. The government refers the “raided” people as refugees as away of soliciting foreign disaster relief which it takes charge of distributing, after taxing it.

### **Coercive assimilation of children**

According to the study conducted by the International Crisis Group, generations of children, especially in the Southern regions have never had sustained access to basic education, health care, clean water or adequate food.<sup>155</sup> A number of these children end up in the North where one would expect to be accorded decent treatment. Contrarily, in the 1990s, children of Southerners in Khartoum were snatched and coercively assimilated. For instance in 1992 the government seized children from the street who were out on an errand and sent them to the closed street children’s camps. While in this camps, they were given new Arabic names and made to practice Islamic prayer regardless of their religious beliefs.<sup>156</sup> Southern “street children” in Khartoum were rounded up, beaten and compelled to convert to Islam and drop their African names. When the Bashir regime meets these claims, it defends itself by saying that these children are better off in

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<sup>153</sup> Jor Madut Jok, op. cit. pp. 2-3 See also: Helen Fein, op. cit. p. 24

<sup>154</sup> Jor Madut Jok, op. cit. pp. 4-5

<sup>155</sup> International Crisis Group, God, Oil and Country: Changing the Logic of War in Sudan, ICG Africa Report No. 39, (Brussels: ICG Press 2002), p. 4

<sup>156</sup> Helen Fein, op. cit. p. 28



the Islamic schools than on the streets.<sup>157</sup> If it is true, why do a number of them opt to run away?

### **Recruitment of child soldiers**

The rules of war illegalize the voluntary or involuntary recruitment of soldiers under the age of fifteen.<sup>158</sup> The SPLA was involved in the recruitment of child soldiers to take part in hostilities. For instance in 1980s, in Ethiopia, SPLA was allowed to administer the “minors camps” separate from the main camp. Minors were given military training in these camps and later let out to engage in military service, for instance guarding checkpoints and civilians. In Sudan, some unaccompanied minors were kept in unaccompanied minors’ camps for military training.

Since there were limited education opportunities in South Sudan, the Southern children were enticed to go to Ethiopia where they would be enrolled for studies, just to find themselves in minors’ camps for military training.<sup>159</sup> Within the Sudan, the SPLA trained boys in Kapoeta camp marked with “Jesh Amer” (Red Army) until August 1991.<sup>160</sup>

### **Indiscriminate attacks**

According to the rules of war, civilians are not objects of attack by the military. While engaging in war, the military units must avoid methods of warfare which are not discriminative. Customary International Law forbids making civilians the targets of land

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<sup>157</sup> Jor Madut Jok, *op. cit.* p. 103

<sup>158</sup> Jemera Rone and John Prendergast, *op. cit.* p. 195

<sup>159</sup> *Ibid.*, pp. 196-199

mines or any other weapons. This is because civilians are not legitimate military targets. Landmines were used in Juba to suppress the people from leaving the area.<sup>161</sup> Rolandsen states that in the Sudan, “The civilians could be used as human shields in the fighting by placing them near important military targets or at the borders between factions’ areas of control. This was aimed at making the opposing factions lose credibility if it attacked.”<sup>162</sup> This goes against the provisions of protecting civilians. Article 13 of the Second Additional Protocol (which compliments the Fourth Geneva Convention) provides for protection of civilians against the dangers arising from military operations: civilians as well as individual civilians shall not be the objects of attack.<sup>163</sup>

In 1990, SPLA split into two factions: SPLA-Torit and SPLA-Nasir/United. They engaged themselves in war and as they did that, they violated the following rules of war against the rights of civilians:

“...indiscriminate attacks on civilians living in the territory of the other SPLA faction; summary executions and disappearances; torture; holding prisoners in harsh conditions; pillage of civilian assets (cattle and grain) and destruction of civilian property (the burning of houses) in the opposing faction’s territory; capturing civilians, principally women and children from the territory of the other faction; denying unaccompanied minors the opportunity to be voluntarily reunited with their families ...”<sup>164</sup>

According to International Law of Armed Conflict, bombardment is a legitimate method of warfare but it is subject to prohibitions and limitations with respect to medical units,

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<sup>160</sup> Ibid., pp. 230-233

<sup>161</sup> Jemera Rone and John Prendergast, *op. cit.* p. 69

<sup>162</sup> Øystein H. Rolandsen, *op. cit.* p. 49

<sup>163</sup> Article 13 of the Second Additional Protocol (which compliments the Fourth Geneva Convention)

cultural property, non-defended localities and demilitarized zones. Bombardment of the civilian population and indiscriminate bombardments aimed at spreading terror is illegal.<sup>165</sup> In the ideal sense, civilians enjoy general protection against the dangers of military operations. In 1992 the government engaged itself in indiscriminate bombing in Kapoeta, Torit, Equatoria, Southern Blue Nile and other areas killing several civilians.<sup>166</sup> The government forces attack civilians as a means of weakening the SPLA. On the other hand, SPLA used guerrilla tactics.

Random bombardment may as well be aimed at preventing people who had been displaced from settling and becoming self-sufficient. This forces civilians to run into the bush without shelter, drink, food or medicine.<sup>167</sup> The government of Sudan justifies its action of bombing civilian zones by saying that it targets civilian areas because the SPLA forces are based in those areas.<sup>168</sup> The government denied that the bombings were indiscriminate because they were aimed at military targets of the armed opposition.

Generally, civilians were exposed to military danger rather than protecting them. This is because attacks took place in villages where there was no military presence and yet civilians are not legitimate military targets. The military antagonism between Garang and Machar's forces brought about human sufferings and more ethnic massacres within Southern ranks. Due to the war between the two factions, a number of people were killed

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<sup>164</sup> Amin Mekki Medani, op. cit. p. 90

<sup>165</sup> Pietro Verri, Dictionary of the International Law of Armed Conflict. (Translated from French to English by Edward Markee and Susan Mutti (Geneva: International Committee of the Red Cross, 1992), pp. 26-27

<sup>166</sup> Jemera Rone and John Prendergast, op. cit. pp. 45-46 See also: International Crisis Group, op. cit. p. 115 and John Luk, "Relief, Rehabilitation and Reconstruction in the SPLM/SPLA Administered Areas During the Transitional Phase and Beyond," op. cit. p. 43

<sup>167</sup> Amin Mekki Medani, op. cit. pp. 190-191

<sup>168</sup> *Ibid.* p. 195

in Bor; this later came to be known as Bor massacre, but neither faction accepted responsibility.<sup>169</sup>

From the reviewed literature, it has emerged that the South Sudanese faced the challenge of oppression right from colonialism, thus setting precedents for the current practices in the Sudan. The Northerners were empowered at the displeasure of Southerners. At independence, leadership was handed down to Northerners who were more educated than Southerners. This was followed by the islamization of Southerners, met with opposition. The South's oil was diverted to the North accompanied with mass displacement of Southerners around the oil areas, depriving Southerners the right to development. During the civil war and North-South Sudan conflict, Southerners were starved, beaten, raped, bombed, enslaved, children recruited as soldiers, among others. A number of calls were made to end human suffering, for instance right from early 1990s (at the early stage of Omar el Bashir's rule) and onwards but little has changed. The US, EU, UN and NGOs have yelled against human suffering in South Sudan and yet the structurally laid trend seems on going. One is left to wonder as to why South Sudanese suffering is unending.

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<sup>169</sup> Ibid. pp. 92-98 See also: Sharon Hutchinson, *op. cit.* pp. 318-319 and Helen Fein, *op. cit.* p. 23

## **Chapter Three: The underlying factors behind human rights violations in South Sudan**

### **Introduction**

This chapter will analyse various actions and policies behind the protraction of human rights violations in Southern Sudan. This part will employ a polycasual approach in documenting all possible inter-related underlying factors behind the protraction of human rights violations in South Sudan.

### **The Southern Colonial Policy and the aftermath of independence**

Analysing the Southern Colonial Policy and the aftermath of independence will create an awareness of the foundations of human rights violations South Sudan.

According to Anyang' Nyongo,<sup>170</sup> Sudan's history of internal conflicts must be traced way back to British colonialism. The British embraced the "divide and rule" tactics to administer Sudan in which case they divided Sudan into two: The North (Arab and Moslem) and the South (African and non-Moslem). In 1919, the Southern provinces were formally closed to all Northerners except government officials. The British's "Southern Policy" was aimed at deterring economic integration of the two regions and to as well avoid the North's Arabic and Islamic influence on the South Sudanese. The closed South was presumed to assist in preserving English values such as Christianity, English language and legal traditions. Later in 1947, economic and political power of the entire Sudan was centred in the North, setting a stage for discord.

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<sup>170</sup> Peter Anyang' Nyongo, "Implications of Crises of Conflict in the Upper Nile Valley" F. M. Deng and I. William Zartman (eds), Conflict Resolution in Africa. (Washington D.C.: The Brookings Institution, 1991, pp. 104-105 See also: International Crisis Group, God, Oil and Country: Changing the Logic of War in Sudan, ICG Africa Report No. 39. (Brussels: ICG Press 2002), p. 8

Come independence in 1956, Sudan was a country with highly differentiated South and North<sup>171</sup> due to the application of Southern Policy. Maundi,<sup>172</sup> observes that on the eve of independence, the British and Northern Sudanese Nationalist Movement made a move of integrating the North and South into one independent Sudan. However, Southerners rejected this step in fear of socio-economic exploitation for the benefit of the North as it had been. This led to the first civil war in 1955, which was later put to an end when the South was granted regional autonomy by the Addis Ababa Agreement of 1972, negotiated by Numayri and the South Sudan Liberation Movement (SSLM). Unfortunately, this agreement was abrogated in 1983 by the very government that had negotiated it, leading to the second North-South civil war.<sup>173</sup> Why did it fail? The Northern elite had never accepted it in the first place, while the Southern political elite were trapped in their own tribal rivalries.

The early 1960s period was preoccupied with asymmetrical military confrontations between the North and Southern rebels (The Anya-Nya). This was made complex by the fact that political activities in the South had been banned prompting rebels to organise themselves in Uganda as in recruiting Sudanese refugees to the Anyanya armed movement.<sup>174</sup> However, in 1966 the rebels were accused by the civilians of torture and imposing taxes and running their tribunals.<sup>175</sup> This made the civilians to ask Premier Mahgoub for arms to protect themselves against the Anyanya. As a result, "Peace villages," free from guerrilla intimidation were created. In 1967, Numeiry

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<sup>171</sup> Peter Anyang' Nyongo, "Implications of Crises of Conflict in the Upper Nile Valley" op. cit. p. 105

<sup>172</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, Getting In: Mediators' Entry into the Settlement of African Conflicts, (Washington, D.C: United States Institute of Peace Press, 2006), p. 124

<sup>173</sup> *Ibid.*, p. 125

<sup>174</sup> Edgar O'Ballance, The Secret War in the Sudan 1955-1972, (London: Faber and Faber Limited 1977), pp. 60-63

advanced a number of oppressive steps: he suspended the constitution, issued an order for the dissolution of all political parties, warned that strikers would face the death penalty and suspended newspapers except government owned ones.<sup>176</sup>

## Religious and racial issues

Asante-Darko argues that “in the Sudan, the corrupting of religion for political ends characterized the early political history of that country and continued to be the dominant cause of the country’s past and current armed conflicts.”<sup>177</sup> The self-appointed leadership which came to power in 1958 engaged itself in anti-Christian campaign to please the Islamic North to the disadvantage of non-Muslim South. Come 1962, the Supreme Council of the Armed Forces created a Missionary Societies’ Act which translated into the expulsion of all Christian missionaries in Southern Sudan.<sup>178</sup>

Regional autonomy was perceived as a solution to the South’s problems. The 1972 Addis Ababa accord introduced regional autonomy within the United Sudan but the government undermined it in 1983 by dividing the South into three provinces, followed by the introduction if Islamic laws applicable to all Sudanese. Various Sudanese governments have responded to the South’s demands militarily and with the retention of Islamism on non-Muslim South. This keeps Southerners “ever” oppressed.<sup>179</sup>

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<sup>175</sup> Ibid.. p. 89

<sup>176</sup> Ibid.. pp. 104-105

<sup>177</sup> K. Asante-Darko, “Political Corruption and Armed Conflicts: A study of Angola, Sudan and the former Zaire.” In Kwame Frimpong and G. Jacques (eds), Corruption, Democracy and Good Governance in Africa: Essays on Accountability and Ethical Behaviour. (Gaborone: Lightbooks, 1999), pp. 182-183

p. 188

<sup>178</sup> Ibid.. p. 189

<sup>179</sup> Ibid.. p. 189

Whereas North Sudanese regard themselves as Arabs, South Sudanese identify themselves as predominantly African of various ethnicities. These self-images evoke superiority of one group over the other.<sup>180</sup> Jok notes that enslavement of Southerners is a result of developed racist ideology, which ascribes Subhuman status to the enslaved communities. The Arabs of the North are from time to time noted calling Southerners “abeed” which means slaves.<sup>181</sup>

Sudan is a multiracial, multicultural, multilingual, multireligious, and multiethnic country. but the Khartoum government does not respect such identities. Tier observes that projecting values of one community onto the national plane has been a consistent policy of various regimes in the Sudan. There has been continuous failure of the political leadership to respect diversity in the laws and in so doing, creates despair and bitterness, which destroys the society.<sup>182</sup> If peace is to be achieved, suppression of the legitimate aspirations and expectations of others to express their beliefs, customs and way of life should be repudiated.<sup>183</sup> Tier remarks that true co-operation can only be between equals and for common goals. Tier further argues that in an Islamic State that also contains non-Muslims. there can be no equality of rights. The result would be the same if the Sudan were a Christian or Jewish state, which also contains non-Christians and non-Jews respectively.<sup>184</sup> As for Sudan, the South and the North, Moslems and non-Moslems are not equals plus they have different goals.

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<sup>180</sup> Jor Madut Jok, War and Slavery in Sudan. (Philadelphia: University of Pennsylvania Press, 2001), p. 7

<sup>181</sup> *Ibid.*, p. 8

<sup>182</sup> Akolda M. Tier, “Mixed Civil, Sharia and Customary Jurisdictions and Law in an Ethnic Conflict Setting: The Case of Sudan,” in Yusuf Fadl Hasan and Richard Gray (eds), Religion and Conflict in Sudan: Papers from an International Conference at Yale, May 1999 (Nairobi: Paulines Publications Africa, 2002), p. 82

<sup>183</sup> *Ibid.*, p. 82

<sup>184</sup> *Ibid.*, p. 82



According to Maundi, Zartman, Khadiagala and Nuamah, "Race and religion continue to be the basis of organizing the Sudanese nation-state, generating exploitative and discriminatory policies that aggravate the crisis of national identity."<sup>185</sup> Deng<sup>186</sup> states that identity is all about who gets what, occupies what position, or plays what role in the political, economic social and cultural life of the country. If the elite wield massive powers, then the minority may be subject to oppression. Rupesinghe and Anderlini assert that when political, economic, social and judicial powers are concentrated in the hands of the ruling elite; the rights of a minority group may be either eroded or ignored. This may call for armed conflict as a way of expressing opposition, which becomes progressively difficult to stop with both sides unwilling to give up.<sup>187</sup>

In September 1983, Islamic laws were imposed by the then-president thus undermining the religious diversity of the country. This was greeted by opposition from Southerners, a move that was perceived by Northerners as anti-Arab and anti-Islam. This made the government to encourage the Baggara to attack the Dinka of the South.<sup>188</sup> In the same year, Numeiry announced that the criminal code would be replaced by the Sharia throughout the country, including the non-Islamic South.<sup>189</sup> He was however overthrown in 1985. Hopes for a settlement were high under the civilian coalition led by Sadiq al-Mahdi, which came to power in 1986. He however faced the challenge of not making

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<sup>185</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, op. cit. p. 126

<sup>186</sup> Ibid., p. 126

<sup>187</sup> Kumar Rupesinghe and S. Anderlini, Civil Wars, Civil Peace: An Introduction to Conflict Resolution (London: Pluto Press, 1998), p. 30

<sup>188</sup> Jor Madut Jok, op. cit. p. 13

<sup>189</sup> Raymond W. Copson, Africa's Wars and Prospects for Peace. (Armonk: M.E. Sharpe, Inc. 1994). p. 31

critical concessions needed on the Islamic Law because of Islamist pressures from the opposition and among his own supporters.<sup>190</sup>

Jok contends that, “Sudan is a country where old habits die hard.”<sup>191</sup> He adds that slavery persists in Sudan because “The factors that fuelled the practice in the old days persist in Sudan because of the racial setup, religious ideological conflict, poverty, labour exploitation and political instability.”<sup>192</sup> When such conditions prevail in any society, they almost trigger slavery or slavery-like practices. The re-emergence and high-rise in slave raiding are built upon the racial construction of the country and the cultural ideologies that make up the identity of the Sudanese people. This is perhaps like that because the slavers are radical Muslims full of racial superiority.

The racial construction and cultural ideologies cannot singly help explain the new slavery of Southerners. There must be other aiding factors like “unresolved” civil war and labour needs in the North. On the same, Jok argues that “the war became the driving force for slavery as well as the shadow that concealed the practices of slavery from the outside world.”<sup>193</sup> Besides racism and war as factors behind slavery, Jok contends that Slavery in Sudan occurs within a historical context of Southern labour migration to the North. The Southerners have lived to migrate to the North and work for wealthy merchant farmers.<sup>194</sup>

In the late 1970s and early 1980s, the North expanded commercial agriculture in Southern Darfur and Western Kordofan, which necessitated the Dinka migrants to provide and continue to provide much of the labour. The violence inflicted on Southern

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<sup>190</sup> Raymond W. Copson, *op. cit.* p. 31

<sup>191</sup> Jor Madut Jok, *op. cit.* p. 5

<sup>192</sup> *Ibid.*, p. 6

<sup>193</sup> *Ibid.*, p. 6

villages causes migration of labourers to the North, supplemented by raids. Raids are as well done to fill the government's "peace Camps" which were set to relocate the rural people to reduce the SPLA supporters. Peace camps are also used to attract foreign aid, which is in turn taxed heavily.<sup>195</sup> When the government is faced with accusations, it defends itself by terming slavery an inevitable consequence of war. But war alone cannot enable slavery had there been no racial, religious and cultural superiority held in the North, the need to attract foreign aid and the need for labourers in the North. If it is true that it is war which enables the practice of slavery, why can't the government bring to judgement officers involved? Medani notes that the Law of National Security gives Security officials impunity for all the violations and crimes they commit against human rights, in disregard of all International Covenants and Conventions ratified by Sudan.<sup>196</sup>

During the Abuja talks, Nigeria noted that the Sudanese leadership was unable to appreciate the country's cultural and religious diversities.<sup>197</sup> During the 1993 Abuja II Initiative, the government spelled its position to respect religious linguistic and cultural diversities. On the other hand, it embraced the principle of majority rights. This was rejected by SPLM/A for the principle meant that the Muslim majority would have the leeway to decide whatever was in their interest without minding the interests of other groups. The Abuja peace process was concluded with the government swearing that self-determination "will come through the 'mouth' of the gun" while SPLM/A said that it will

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<sup>194</sup> Ibid., pp. 11-12

<sup>195</sup> Ibid., p. 12

<sup>196</sup> Amin Mekki Medani, Crimes Against International Humanitarian Law in Sudan 1989-2000. First edition. Cairo: Dar EL Mostaqbal EL Arabi, 2001), pp. 96

<sup>197</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, op. cit. p. 145

be part of an Islamic state if defeated militarily.<sup>198</sup> It emerges that religion was the significant factor that led to the failure of the Abuja Peace Process.

With regard to the mediation efforts, the regimes in Khartoum have been picking and dropping mediators since 1986, thus they have made the peace process a farce. Moreover, in all the negotiating sessions, the Sudan government delegations have been pursuing a single agenda of a united Sudan which is Islamic and Arab in Cultural orientation. This connotes racial and cultural superiority of the Arabs and above all they have been pursuing a political agenda that denies the people of South their inalienable right to self-determination.<sup>199</sup> It is however worth noting that IGAD finally drove home the peace process. IGAD entered the Sudanese conflict as a mediator after formal endorsement by the principal parties to the conflict in the second quarter of 1993; however, it took an informal role since 1983. IGAD was the only internationally recognised and acknowledged mediator of the Sudanese peace process whose results emerged at the beginning of year 2005.<sup>200</sup>

The application of Jihad war against the Southerners in the late 1980s and 1990s, served as a significant factor within which human rights were violated. The National Islamic government in “disrespect” of cultural diversity of Sudan embraced Jihad in Kordofan and Southern Sudan. Jihad could have not been possible had there been no organizations in support of it. For instance, the Mujahidin’s efforts were strengthened by the Nidaa al-Jihad (established in 1991), who provided them with material support and

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<sup>198</sup> Ibid., p. 146

<sup>199</sup> Peter A. Nyaba, Politics of Liberation in South Sudan: An Insider's View. (Kampala: Fountain Publishers. 1997), pp. 157-158

<sup>200</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, op. cit. p. 123

looked after their families and the families of martyrs.<sup>201</sup> Nidaa al-Jihad organization engages itself in tax-free investments and operates a radio broadcast in the Nuba Mountains to “rekindle the spirit of Jihad.” Why allowed to engage in tax-free investments if at all the government is not involved? Other organizations that were involved in supporting the war effort of the government were Munazamat al-Shaheed (Martyr Organization), and Salam al-Izzah (Peace with Pride) (a woman’s voluntary organization committed to attracting the support of women and calling for food for the holy warrior.)<sup>202</sup>

The religious factor is so strong such that whoever tries to point out any perceived vice linked to Sharia law automatically gets perceived by the Khartoum as an enemy of Islam worth ejecting. In 1994 when the UN Special Rapporteur presented to the UN Human Rights Commission punishments in Islamic Sharia which are not in conformity with International Human Rights Conventions, the government responded by accusing the Special Rapporteur of insulting Islamic religion. This was followed by a denial of the right to enter Sudanese territories for two years.<sup>203</sup> This had an effect of back-peddalling the role of the UN in human rights administration in the Sudan.

### **Regional border, regional resource imbalance and oil issues**

The issue of regional border of South Sudan became dovetailed with the issue of oil and economic development. The South’s main asset is oil.<sup>204</sup> The South’s resources have always been targeted for development in the North. Why develop the North first

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<sup>201</sup> Abdel S. Sidahmed, “The Unholy War: Jihad and the Conflict in Sudan” in Yusuf F. Hassan and R. Gray (eds), Religion and conflict in Sudan, (Nairobi: Paulines Publications Africa, 2002), pp. 87-90

<sup>202</sup> Ibid., p. 90

<sup>203</sup> Amin Mekki Medani, op. cit. p. 88

using the South's resources? Jok states that "the attitude in the North has always been that the benefits of development in the North will trickle down to reach the South eventually."<sup>205</sup> So far, there seems to be no signs of trickle-down development in Sudan.

Sudanese socio-economic development is characterized by regional disparities.<sup>206</sup> South Sudan's development has been neglected by successive regimes. Yong-Bure notes that the British saw nothing of immediate economic interest in South Sudan. They controlled its territory because the Nile flows through it, whose valley they wanted to use to produce cotton for Lancashire textile industry. As a result, the South remained behind in economic, educational and political advancement.<sup>207</sup> The 1958 military government did not take any initiative in improving the economic field of the South but rather relocated to the North schemes originally considered for the South: for example a sugar factory meant for Mongala was relocated to Ganeid and paper factory for Malakal was relocated to Aroma in the North. The 1965 Round Table Conference tried to resolve the problem. all in vain.<sup>208</sup> In the 1980s, the government had available development budget for the South but was no longer being released for development. Whatever development that took place was destroyed during the 1955-1972 war.<sup>209</sup> The South region turned out to be the most backward and the least developed under the control of Northerners.<sup>210</sup>

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<sup>204</sup> Jor Madut Jok, op. cit. p. 118

<sup>205</sup> Ibid., p. 135

<sup>206</sup> B. Yongo-Bure, "The Underdevelopment of the Southern Sudan Since Independence" in M.W. Daly and Ahmad A. Sikainga (eds), *Civil War in the Sudan*. (London: British Academic Press, 1993), p. 51

<sup>207</sup> Ibid., p. 52

<sup>208</sup> Ibid., p. 53

<sup>209</sup> B. Yongo-Bure, "The Underdevelopment of the Southern Sudan Since Independence." op. cit. pp. 59-

<sup>210</sup> Kamal El Din O. Salih, "Conflict Resolution: The Case of Nigeria and Sudan" in Mohamed O. Bashir (ed). *Southern Sudan: Regionalism and Religion*. (Khartoum: Graduate College, University of Khartoum, 1984), p. 85

Copson observes that the Addis Ababa accord failed to provide the South with the means of catching up with the North in economic development. The development differences between the North and South combined with the North/South religious and cultural divide meant the strains between the two regions persisted.<sup>211</sup> On the other hand, the central government failed to wholly honour the special development budgets for the South. The South's situation was further aggravated by Western countries who poured money directly into Khartoum and indirectly to the South using international development organizations as proxies.<sup>212</sup>

In 1980, attempts were made to redraw the North-South boundaries to rob the South its oil-rich areas of Bentiu and fertile agricultural lands of the Northern Upper Nile and have them attached to the North of Sudan, (the Kordofan and White Nile respectively).<sup>213</sup> This was followed by the government's policy to forcefully displace indigenous people in the oil regions.<sup>214</sup> The act of displacement led to human suffering as civilians did not leave their habitat in style.

The Addis Ababa Agreement made provisions for the regional government to levy corporate tax on any non-government-owned factory in the South's region, plus tax the profits from the export of products from its region. If this could have been followed, South Sudan would have sourced revenues from any oil refinery sites within its territory and from the profits of the export of petroleum products. Unfortunately, the refineries were not located in the South, yet oil was produced in the South. Instead of locating the

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<sup>211</sup> Raymond W. Copson, *op. cit.* p. 30

<sup>212</sup> Øystein H. Rolandsen, Guerrilla Government: Political Changes in the Southern Sudan During the 1990s (Nordiska:Afrikainstitutet, 2005 Uppsala), p. 25

<sup>213</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, *op. cit.* p. 125

oil refinery in the South to boost development to benefit the locals, Nimerri ordered it to be constructed in the North.<sup>215</sup> This deprived Southerners the right to development and robbed them locally available jobs.

One is left to wonder as to why the SPLA did not deter the Sudan government from locating the oil refinery in the North? Factually, this was necessitated by SPLA's split. The split of SPLA enabled the government to revive its pre-war plans to construct a massive oil pipeline between Bentiu (Western upper Nile) and Red Sea port, far north, with an initial carrying capacity of 150,000 barrels per day.<sup>216</sup>

Gray<sup>217</sup> is of the idea that not much attention has been given to the Sudan government's decision to join hands with China and other countries to extract oil in the Nuer and Dinka areas in the South where there is spiral violence within which thousands of innocent civilians are being killed or forcefully displaced. The oil revenues instead of being used to engineer peaceful development, they are used to fuel the means of mass destruction like automatic guns, bombs and tanks.<sup>218</sup>

Governments and Multinational Corporations are the main beneficiaries of oil. The foreign investors involved in mining oil include OMV Aktiengesellschaft of Australia, Lundin Oil of Sweden, Gulf Petroleum of Qatar, Slavneft of Russia, Talisman Energy of Canada, Petronas Carigali of Malaysia and Petrochina of China, with which

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<sup>214</sup> International Crisis Group, op. cit. pp. 99-100 See also: Francis M. Deng, "Sudan's Turbulent Road to Nationhood", in Ricardo R. Laremont, Borders, Nationalism and the African State. (Boulder: Lynne Rienner Publishers 2005), p. 55

<sup>215</sup> Jor Madut Jok, op. cit. p. 135

<sup>216</sup> Sharon E. Hutchison, E. Sharon, "A Curse From God? Religious and Political Dimension of Post 1991 Rise of Ethnic Violence" in The Journal of Modern African Studies. Vol. 39. No 2, June 2001. (Cambridge University Press), pp. 321-323

<sup>217</sup> Richard Gray, "Epilogue" in Yusuf F. Hassan and R. Gray (eds), Religion and conflict in Sudan (Nairobi: Paulines Publications Africa, 2002), p. 195

<sup>218</sup> Ibid., p. 195



the government formed the Greater Nile Petroleum Operating Company in 1997.<sup>219</sup> The above beneficiaries, motivated by profits, seem not to see the suffering civilians. The International Crisis Group observes that "Governments and Multinational companies are lining up to invest, many willing to run political interference for Sudan's efforts to end its political isolation."<sup>220</sup>

The U.S stands against investment in Sudan's oil. The 1997 U.S. Congress legislation discouraged investment in Sudan's oil industry by U.S. persons or companies.<sup>221</sup> The U.S. Congress legislation has it that any company, which goes against this, would be denied a chance to participate in the U.S. capital markets. This leaves China as a Superior controller of Sudan's oil industry.

### **The challenge of self-determination**

Self determination as a human right is collective in character for it belongs to a group rather than to the individual.<sup>222</sup> Umozurike notes that "in general, the UN has treated self-determination as an essential of human right which all states should observe in relation to depended peoples."<sup>223</sup> At the international level, in the late 1980s and early 1990s, there were aspirations for self-determination after the fall of the Soviet Union, Socialism and the end of the Cold War.<sup>224</sup> These calls were too in Sudan. The Addis Ababa Agreement saw the establishment of the Southern Sudan as an autonomous region with its own parliament and a High Executive Council but this could not hold because of

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<sup>219</sup> International Crisis Group, op. cit. pp. 99-100

<sup>220</sup> Ibid., pp. 99-101

<sup>221</sup> Ibid., p. 20

<sup>222</sup> Umozurike Oji Umozurike, Self-Determination in International Law. (Hamden: The Shoe String Press, Inc, 1972), p. 52

<sup>223</sup> Ibid., p. 52

the manipulation by Southern politicians and interference from the North, which made the regional government to lose legitimacy.<sup>225</sup>

Secession of the South could not be realized during the 1983 period because there was conflict of interest involving three parties: the government, the SPLM/A and the Anyanya. Whereas the government and the SPLM/A were fighting a centralist conflict over the control of the state, the Anyanya 2 was fighting a regionalist conflict for the South's autonomy.<sup>226</sup>

Regionally, in early 1980, many Sub-Saharan countries did not support secession for Southerners fearing the dangerous precedents it would have set for their own countries. This made Garang to cherish socialist transformation to come up with a United Socialist Sudan.<sup>227</sup> However, in 1993 Eritrea seceded from Ethiopia making Southern Sudanese to demand for secession or self-determination referendum. On the other hand, the government agitated for a federal system that guarantees equal rights for all. This would also enable the North to access oil in the South.<sup>228</sup> Egypt strongly opposes self-determination, a stand, which the Khartoum government cannot go against. Egypt is more interested in the Nile waters rather than the people of Sudan.<sup>229</sup> Egypt perceives Sudan as an Arab-Muslim country whose territorial integrity should be protected by the Arab-Muslim World. Egypt stands firm in preservation of the present borders of the Sudan.<sup>230</sup>

Ahmed points out that secession movement may be solved through recognition of self-identification like regional autonomy or federation based on an agreement between

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<sup>224</sup> Mohammed O. Maundi, *op. cit.* p. 144

<sup>225</sup> Øystein H. Rolandsen, *op. cit.* p. 25

<sup>226</sup> Mohammed O. Maundi, *op. cit.* p. 127

<sup>227</sup> International Crisis Group, pp. 109-113

<sup>228</sup> *Ibid.*, pp. 109-113

secessionist movement leaders and state authorities.<sup>231</sup> However, the South's problem was right from 1989 coup treated as a security problem and as a mutiny that needed a military solution. The Bashir regime stated that it came to power to defeat the rebellion and to establish peace as soon as possible. The Islamic Front, which planned the coup, had always opposed the plan to achieve peace through negotiation and suspension of the application of Islamic Sharia Laws.<sup>232</sup> The new regime announced "EL Jihad" (Holy war) against the atheists, the infidels in the South of Sudan, the enemies of faith and country. It ignored the struggle of Southerners for their basic freedoms and rights.<sup>233</sup> Southerners revolted because their feelings of being the most neglected group in terms of political, social and economical development.<sup>234</sup>

### **Foreign influence in the South Sudan problem**

A number of countries involved in the Sudan conflict are in a way "responsible" for the protraction of human rights violations in South Sudan. The more parties are involved in a conflict, the more difficult it becomes for intervention to alleviate human suffering. With each country pursuing its interests, there seems to be little interest of eliminating structural conditions within which South Sudanese suffer. With regard to foreign influence, Lesch observes that "Sudan's geostrategic location and complex

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<sup>229</sup> John Prendergast John Prendergast, The Struggle for Sudan's Soul: Political and Agrarian Roots of War and Famine. (Washington: Center of Concern, September, 1990), p. 20

<sup>230</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood," op. cit. p. 64

<sup>231</sup> Rafia H. Ahmed "Regionalism, Ethnic and Social-cultural Pluralism: The Case of Southern Sudan" in Mohamed O. Bashir (ed), Southern Sudan: Regionalism and Religion. (Khartoum: Graduate College, University of Khartoum, 1984), p. 9

<sup>232</sup> Amin Mekki Medani, op. cit. p. 159

<sup>233</sup> *Ibid.*, p. 160

<sup>234</sup> Kamal El Din O. Salih "Conflict Resolution: The Case of Nigeria and Sudan" in Mohamed O. Bashir (ed), Southern Sudan: Regionalism and Religion. (Khartoum: Graduate College, University of Khartoum, 1984), p. 85

socioeconomic composition promote foreign interference and exacerbate inherent political tensions.”<sup>235</sup> Lesch adds that in the event of civil strife, governments opt for foreign assistance that will help them beef up their military and diplomatic efforts. Rebels too seek both international and regional backup. Such strategy increases internal differences instead of promoting conflict resolution.<sup>236</sup> For instance, when Jafaar al-Nimeri rose to power in 1969 through a coup d’etat, he established strong ties with the Soviet Union and other Communist countries plus he supported Arab cause against Israel, a move which made Israel to respond by increasing its support for Anya-Nya, deeming prospects for peace.<sup>237</sup>

Regional states have sufficient influence with the warring parties to undermine any agreement about which they have not been consulted or that they feel runs contrary to their core interests.<sup>238</sup> According to the International Crisis Group, the nine Sudan’s neighbour countries have frequently supported Sudanese factions either with the hopes of destabilizing Sudan or eradication of perceived threats to their own governments.<sup>239</sup> At the international level, various countries have various interests in the Sudan. France’s oil interests have made it sympathetic to Khartoum’s arms purchases.<sup>240</sup> France of the EU is interested in oil while Scandinavian countries are concerned with human rights. Hence, there is need of reconciling these interests for the good of South Sudanese.

A number of countries were involved in the Sudan conflict in various capacities. Rebels from Congo (DRC) supplied the Anya-Nya with arms in 1965. Israel followed

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<sup>235</sup> Ibid., p. 18

<sup>236</sup> Ibid., p. 18

<sup>237</sup> International Crisis Group, *op. cit.* pp. 9-10

<sup>238</sup> Ibid., p. 177

<sup>239</sup> Ibid., p. 6

suit in 1967 and it as well engaged itself in training the Anya-Nya in Uganda. Meanwhile Ethiopia offered the rebels sanctuary.<sup>241</sup> Prendergast<sup>242</sup> observes that, the main Iranian financiers are semi-autonomous wealthy 'voluntary agencies' devoted to proselytisation. Syria has been assisting Sudan with small arms while Zimbabwe and Namibia gave SPLA military support. Uganda replaced Kenya (who replaced Ethiopia) as the most important supplier and transit for outside supplies to the SPLA. Moreover, Kenya makes huge amounts of money hosting OLS (Operation Lifeline Sudan) by benefiting from areas of transport, materials, and foreign exchange visas.<sup>243</sup>

In 1991, the SPLA was weakened due to the fall of Mengistu of Ethiopia. This was aggravated by its split necessitating Intra-Southern fighting between Dinka and Nuer throughout much of 1990's. This further brought human suffering of Southerners and weakened SPLA's bargaining position.<sup>244</sup> This then left the Southerners without a mouthpiece to cherish positive peace.

Prendergast has it that foreign parties involved in the Sudan conflict take advantage of Sudanese vulnerability to promote their own interests.<sup>245</sup> For instance according to The Independent of March 19, 1994. Egypt, Saudi Arabia and Israel opposed to Islamic fundamentalists in Khartoum, have an interest in keeping the war to enable them drain Sudan's resources. War drove away skilled human material and

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<sup>240</sup> Ann Mosley Lesch, "The Sudan: Militancy and Isolation" in Robert O. Freedman (ed), The Middle East and the Peace Process: The impact of Oslo Accords, (Gainesville, 1998), p.333 See also: International Crisis Group, op. cit. p. 179

<sup>241</sup> International Crisis Group, op. cit. pp. 9-10

<sup>242</sup> John Prendergast, op. cit. p. 18

<sup>243</sup> Ibid, p. 18

<sup>244</sup> International Crisis Group, op. cit. p. 15

<sup>245</sup> John Prendergast, op. cit. pp. 18-20

financial resources making it difficult to sustain intervention efforts by international agencies.<sup>246</sup>

From the Conflict System point of view of Conflict Management, every conflict is connected with other conflicts in the region.<sup>247</sup> This is unlike Ideographism belief that a given conflict has nothing to do with other conflicts.<sup>248</sup> The Conflict System approach takes into account external causes of conflict, besides the internal ones. The events in one state have an effect in another state. Events in the Sudan trigger events in the neighbouring counties, and vice versa. Sudan is perceived to be the epicentre. The epicentre of the conflict system is the area around which conflict resolves.<sup>249</sup> For instance there is a connection between the Sudan, North Uganda conflict and Ethiopia conflict.

Ethiopia supports SPLM because of Sudan's support of insurgency in Ethiopia and Eritrea. Uganda has as from 1986, when Museveni came to power, been supporting SPLM on suspicion that the Khartoum government aided the Lord Resistance Army of Uganda.<sup>250</sup> SPLM began receiving support from Yuweri Museveni after breaking diplomatic relations with Sudan following Sudan's bombing of the Ugandan territory. Whereas Uganda served as the primary highway for SPLA's arms, Khartoum armed and trained Ugandan rebel army in Juba plus gave arms to the Lord's Resistance Army in northern Uganda in an attempt to disrupt SPLA's use of northern Uganda as a cross-

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<sup>246</sup> Ibid., p. 29

<sup>247</sup> M. Mwangi, Conflict: Theory, Processes and Institutions of Management, (Nairobi: Watermark, 2000), pp. 73-74.

<sup>248</sup> Ibid., p. 72

<sup>249</sup> F. Deng and I.W. Zartman, "Introduction" in F. Deng and I.W. Zartman (eds) Conflict Resolution in Africa, (Washington: The Brookings Institution, 1991), pp. 4-5

<sup>250</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood," op. cit. p. 18

border base and supply base. Uganda facilitates U.S. and Israel interests in Southern Sudan.<sup>251</sup>

NIF and the Lord Resistance Army are different in religious orientation, but they have been allies. Their alliance, according to Woodward accounts for a significant part of the external dimension of conflict in South Sudan. He adds that an external dimension of this kind contributes to the longevity of many conflicts in Africa.<sup>252</sup> Woodward observes that any peace on one side of a border will be more fragile if there is no peace on the other side of the border. But this does not mean that there must be peace on both sides for peace to be. South Sudan and Northern Uganda represent a classic situation of Peripheral Conflict and Neighbour Relations. Peace on both sides of the border whatever the religious and enthusiasms of the moment will guarantee peace on either side.<sup>253</sup> Absence of peace on either side brings about human suffering.

Why couldn't the African countries intervene? Maundi, Zartman, Khadiagala and Nuamah<sup>254</sup> note that however sympathetic some African countries were to SPLM/A's cause, they were constrained by the OAU's principles of non-interference in the internal affairs of its sovereign members and respect for international borders. Moreover any mediation attempt from an African country would have been interpreted as recognition of a "rebel" movement against Sudan. The irony of not intervening in the internal affairs of Sudan as per the OAU's (now AU) Non-interference Principle is that, some of its members were involved in fuelling the conflict. For instance, Ethiopia openly supported

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<sup>251</sup> John Prendergast, *op. cit.* p. 19

<sup>252</sup> P. Woodward, "Religion and Politics in the Southern Sudan: The Uganda Dimension" in Yusuf F. Hassan and R. Gray (eds), Religion and conflict in Sudan. (Nairobi: Paulines Publications Africa, 2002), pp. 176-177

<sup>253</sup> *Ibid.*, p. 178

<sup>254</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, *op. cit.* p. 134

SPLM/A on the basis of the hostile bilateral relations between Sudan and Ethiopia due to Numayri's support to Eritrean secessionists and anti-regime forces of Tigray and Oromo. Libya too briefly supported SPLM/A to curb pro-Western ideas of Egypt and Sudan but after the fall of Numayri, in 1985, it began supporting the government.

One may wonder as to where the Western Countries were in the 1980s when the South was suffering. Maundi notes that, the new generation of fresh conflicts in Africa were more attractive than the old Sudan conflict in Africa.<sup>255</sup> Newer and fresher conflicts diverted the attention of countries that could have offered to intervene in the Sudan crisis. Secondly, since SPLM/A, in early 1980s was pro-socialism, Western Countries chose to support the Sudan government regardless of its embarrassing policies.<sup>256</sup> For instance, the USA continued military and financial assistance to Numayri's regime even when he abrogated the Addis Ababa Agreement and introduced Islamic Sharia laws. However, later the USA provided moral and political support to SPLA.<sup>257</sup>

The lack of matching assistance to the SPLM/A enhanced the conflicts asymmetry in favour of the state. On the other hand, Socialist countries could not have mediated because they were perceived by the state as the major source of conflict.<sup>258</sup> The only strategy would have ushered in entry was an initiative by the Sudan government to extend an invitation for such a role. But it rather chose to use the approach of direct interparty negotiations as opposed to mediated negotiations. The 1986 Koka Dam

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<sup>255</sup> *Ibid.*, p. 136

<sup>256</sup> *Ibid.*, p. 134

<sup>257</sup> International Crisis Group, *op. cit.* p. 18

<sup>258</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, *op. cit.* p. 135



Declaration was a result of a direct approach, which called for abrogation of Sharia laws and the holding of a national constitutional conference.<sup>259</sup>

It is worth noting that Western countries have not, in the past, totally abandoned the cry of South Sudan. Sudan faced isolation both from USA in the form of a ban on bilateral trade and assistance and the Arab States denied it financial and logistical support. This was worsened by IMF's suspension of Sudan's membership in August 1993 for failing to service debt obligations.<sup>260</sup> The U.S. companies are barred from investing in Sudan, leaving the field to the Chinese, the Malays and the Indians.<sup>261</sup> On 8 March 1994, The European Union's foreign ministers imposed a total embargo on the sale of arms to Sudan.<sup>262</sup> In 1996, the UN Security Council imposed non-economic sanctions which Washington backed.

In an attempt to fill the gap, in 1995, Bashir visited China to increase arms supply and trade relations.<sup>263</sup> In the same year, Bashir made a step to salvage the situation through the 1996 elections which he won by 75.7 percent but the election were boycotted by the National Democratic Alliance.<sup>264</sup> On the other hand, Bashir declared that, Islam would remain as the corner stone of Sudan's policy.

As a coping mechanism, the Khartoum regime imposes dual exchange rate on international organizations wishing to work in the North. Such organizations receive artificially low rates for their hard currency, which the government uses to fuel war in the

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<sup>259</sup> *Ibid.*, p. 135

<sup>260</sup> *Ibid.*, p. 148

<sup>261</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood", *op. cit.* p. 55

<sup>262</sup> John Prendergast, *op. cit.* p. 39

<sup>263</sup> Ann Mosley Lesch, "The Sudan: Militancy and Isolation" in Robert O. Freedman (ed), The Middle East and the Peace Process: The impact of Oslo Accords (Gainesville, 1998), p. 333

<sup>264</sup> International Crisis Group, *op. cit.* pp. 18-19

South.<sup>265</sup> For instance in early 1990, the official exchange rate in the North was approximately 400 Sudanese pounds to the dollar. but UN/NGO rate was roughly 215 pounds to the dollar. How can the Bashir regime then be mesmerised? Prendergast is of the idea that there should be multilateral sanctions against Sudanese exports. For example the sugar exports to Kuwait, cotton to Britain, camels to Egypt, cattle to Libya and Jordan Sheep and cattle to Saudi Arabia. Boycotting such exports will drain Sudan.<sup>266</sup> The UN Security of Council should sanction imports to Sudan and enact an arms embargo.<sup>267</sup> Unfortunately, China is known to veto any sanctions against the Sudan.

While the country appeared headed toward peace in early 2000, Darfur exploded in 2003.<sup>268</sup> Since then, the Janja Weed, a local Arab Militia sponsored by the government has terrorised non-Arab tribes of Darfur. Two rebel movements counter this: Sudan Liberation Movement and the Justice and Equality Movement. This has had a significant effect of diverting attention from the South's prolonged troubles.

From the reviewed literature, it has emerged that the ongoing human rights violations in South Sudan is a history of the North's political domination backed with economic ambitions of both regions, racial, religious and cultural superiority held in the North manifested in cultural religious intolerance. Other factors include, direct and indirect involvement of foreign countries in the Sudan conflict, the need to attract foreign aid, the need of labourers in the North and the South's determination to retain its identity against North's ambitions of assimilation. The multiple foreign counties which are involved in the Sudan conflict have intervention efforts difficult. This is because each of

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<sup>265</sup> John Prendergast, *op. cit.* p. 40

<sup>266</sup> *Ibid.*, p. 40

<sup>267</sup> *Ibid.*, p. 39

<sup>268</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood," *op. cit.* p. 62

them has got perceived self-interests to pursue, which could be in one way or another be a mismatch of other states' interests.

## **Chapter Four: Critical analysis of the persistence of human rights violations in South Sudan**

This part will critically analyse the issues raised in the research study with regard to the persistence of human rights violations in South Sudan. Critical issues will be noted and analyzed within the Peace Research Paradigm within which human rights are perceived to be violated in South Sudan. The concept of Positive Peace which entails the removal of structural violence beyond the absence of direct violence<sup>269</sup> is key to this study. Positive Peace would be obtained with the development of just and equitable conditions and elimination of various forms of discrimination.

### **The critical issues**

The study reveals that the current South Sudanese find themselves in a colonially laid historical structure which has taken a life of its own, within which they are prevented from realising their full potential.<sup>270</sup> In the Sudan, there exists a North-South incompatibility of goals between the predominantly Islamic and Arabic speaking and ethnolinguistic groups of South Sudan.<sup>271</sup> The base line of human rights violations is the colonialists who delinked the South from North Sudan in the 1920s, making the South and North highly differentiated at independence in 1956 and even up to date. The South, which is predominantly African, was handed over to the North's ruling Arab-Muslim

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<sup>269</sup> Ho-Won Jeong, *Peace and Conflict Studies: An Introduction*. Aldershot: Ashgate, 2000). p. 25

<sup>270</sup> Chapter three

<sup>271</sup> Rafiq H. Ahmed "Regionalism, Ethnic and Social-cultural Pluralism: The Case of Southern Sudan" in Mohamed O. Bashir (ed), *Southern Sudan: Regionalism and Religion*. (Khartoum: Graduate College, University of Khartoum, 1984), p. 26

elite. As time went by, this created structural conditions of empowerment and disempowerment within which Southerners suffer.

Any agitations against unfairness by Southerners were and continue to be treated as a rebellion, in need of a military solution. The solutions that came from successive regimes were at the level of settlement in which case the military were used in imposing stability instead of addressing the kernel incompatible issues. Detrimental structural conditions left unaddressed, persistence ensued through regimes up to the current times. Moreover both the Khartoum government and the SPLM deny responsibility of any degrading human treatment against South Sudanese. Above all, since no body has in the past been held responsible, the culture of impunity prevailed thus “encouraging” leaders to commit atrocities.

As noted above, the Sudan government seems to be aided by Settlement mentality of dealing with incompatibility of goals. Settlement holds that conflict is innate in human nature and the only way to manage it is using force.<sup>272</sup> This goes against Peace Research Paradigm which informs this study. Addressing structural conditions which bring about human rights violations is paramount than imposing stability by the use of force. Peace Researchers look for causes of war and conditions for achieving peace rather than studying military strategies to win the war.<sup>273</sup> Jihad seems to be used as a settlement strategy: when Southerners clamour for their rights, they are regarded as rebels to be handled militarily by a Holy War. Sidahmed observes that in the Sudan, it is “argued that jihad is not directed against Sudanese non-Muslims or Southerners per se but against

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<sup>272</sup> A. J. R. Groom, “Paradigms in Conflict: The Strategist, the Conflict Researcher” in J. Burton and F. Dukes (eds), *Conflict: Readings in Management and Resolution*. (London: Macmillan, 1990), pp. 83-85

<sup>273</sup> Ho-Won Jeong, *op. cit.* p. 46

those who have carried arms and are obstructing the government's peace efforts."<sup>274</sup> Islamic jurisprudence holds that jihad is a collective obligation of Muslims in defence of the lives of Muslims, their land, preservation of the faith or expansion of religion.<sup>275</sup> However, Shaltut argues that the Islamic mission and legislation does not accept compulsion and force as a means to propagate the message of Islam.<sup>276</sup>

The South Sudan's problem was further entrenched by lack of intervention due to among other things, the OAU's Principle of Non-interference and Respect for International Borders. This denied "willing" states ground to intervene. Ironically, some AU member countries and other foreign countries are involved in the South Sudan's structural conflict and therefore directly or indirectly contribute to human suffering.

The North is empowered at the loss of the South. Oil deposits in the South, are refined in the North, the sugar and paper factory which were to be in the South, are located in the North and work priority is given to Northerners, among other issues. This denies Southerners the right to development and other rights adhered to development. Moreover, States which are interested in Sudan's oil are determined to maintain the status quo so as to continue benefiting.

The North-South religious differences are fundamental in the generation and escalation of human rights violations in South Sudan. The Khartoum government is backed by Islamic Fundamentalism. The North embraces the policy of Islamisation and arabization at the disadvantage of Southerners who are non-Muslims majority. This deprives Southerners the right to religion and the right to the exercise of culture and

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<sup>274</sup> Abdel S. Sidahmed, "The Unholy War: Jihad and the Conflict in Sudan" in Yusuf F. Hassan and R. Gray (eds), Religion and Conflict in Sudan: Papers from an International Conference at Yale, May 1999. (Nairobi: Paulines Publications Africa, 2002), p. 83

<sup>275</sup> *Ibid.*, p. 84

other rights attached to religion and culture. Since 1989, the Sudan government has been an Islamic fundamentalist state whose main enforcing party is the National Islamic Front, leaving the South opposed for it is either Christian or animist.<sup>277</sup> Since 1989, NIF has built a police state, dismantled the civil service and dismissed professional soldiers substituting them with NIF loyalists. This makes it difficult to overthrow NIF by popular movement.<sup>278</sup> This government carries ideals through the Ministry of Social Planning, which has always been headed by leaders of the Fundamentalist Front.<sup>279</sup>

In 1998, the government adopted a new constitution which promised three things for Southern Sudan: freedom of religion, freedom of association and self-determination but they were implemented in very limited, manipulative and politically controlled fashion.<sup>280</sup>

The SPLA is too engaged in violating civil and political rights. The SPLA Code has no limit on the time any accused person may be held for investigation and no requirement to bring him to trial within a certain time period. This explains why the SPLA engages itself in prolonged detention.<sup>281</sup> The SPLA Code does not have any rule of law to guarantee a fair trial since there are no procedural guidelines, this gives discretion to military officers and others untrained in law.<sup>282</sup> The SPLA code provides for People's District Courts Martial for civil suits, People's summary Court Martial for less serious

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<sup>276</sup> Ibid., p. 85

<sup>277</sup> Jemera Rone and John Prendergast, Civilian Devastation: Abuse by All Parties in the War in Southern Sudan. Edited by Karen Sorensen. (New York: Human Rights Watch, 1994), p. 8

<sup>278</sup> Ibid. pp. 8-9. See also Mohammed I. Khalil, "Human Rights and Islamization of the Sudan Legal System" in Yusuf Fadl Hasan and Richard Gray (eds), Religion and Conflict in Sudan: Papers from an International Conference at Yale, May 1999 (Nairobi: Paulines Publications Africa, 2002), pp. 60-61 and Raymond W. Copson, Africa's Wars and Prospects for Peace. (Armonk: M.E. Sharpe, Inc. 1994), p. 31

<sup>279</sup> Amin Mekki Medani, Crimes Against International Humanitarian Law in Sudan 1989-2000. First edition (Cairo: Dar EL Mostaqbal EL Arabi, 2001), p. 11

<sup>280</sup> International Crisis Group, God, Oil and Country: Changing the Logic of War in Sudan. ICG Africa Report No. 39. (Brussels: ICG Press 2002), p. 20

offences and People's Regional Courts. But all these courts lack independence from the military. Advanced education is not as highly regarded as military rank.<sup>283</sup>

Human rights violations will continue to exist as long as there is in place the policy of Islamization, imbalanced resource distribution, unmet foreign countries' interests, refusal to accept responsibility, failure to take into account the interests of other actors like SPLM, NGOs, INGOs and the Special Rapporteur.

### **Empowerment of parties**

Within the Sudan, there is a structural condition of empowerment of Northerners and disempowerment of Southerners. The problem of empowerment and disempowerment is that its end result is not determined.<sup>284</sup> Deng argues that the crisis of statehood and national identity in Sudan is rooted in the British move to co-exist diverse peoples with a history of hostility in one state, while at the same time keeping them apart and entrenching inequities by giving certain regions more access to state power, resources, services and development opportunities than other regions.<sup>285</sup>

Chapter three of this study reveals that right from Colonial times, Northerners have had an upper hand in accessing the resources, power, services and development opportunities of the country than Southerners. Southerners were academically disempowered, making them inadequate to administer or look after themselves when

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<sup>281</sup> Jemera Rone and John Prendergast, *op. cit.* p. 243

<sup>282</sup> *Ibid.*, p. 244

<sup>283</sup> *Ibid.*, p. 246

<sup>284</sup> Makunni Mwangiru., Conflict: Theory, Processes and Institutions of Management. Nairobi: Watermark, 2000), pp. 30-31

<sup>285</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood", in Ricardo R. Laremont, Borders, Nationalism and the African State. (Boulder: Lynne Rienner Publishers 2005), p. 41 See also: Edgar O'Balance, The Secret War in the Sudan 1955-1972 (London: Faber and Faber Limited 1977), p. 151



Sudanese independence was declared. For instance, very few vacancies to university and colleges were spared for Southerners.<sup>286</sup> This made the North to have educated people to serve as administrators and military officers. This explains why institutions of administration are dominated by Northerners. Even if Southerners are increasingly getting educated, it will take them time to be at the same academic altitude with the Northerners.

The colonial concentration of economic, political and administrative development in the North at the expense of the South, continues to affect the Socio-economic and political gap between the North and the South.<sup>287</sup> Besides political repression and violence, economic disparities serve as unfavourable conditions for human rights.<sup>288</sup> While Christian proselytization brought into being docile servants, the Northerners garnered good political skills in organization, agitation and action.<sup>289</sup> Political awareness grew faster in the North than in the South because of its proximity to Egypt and to other Arabic countries. This was worsened by the fact that Southerners were discouraged in engaging themselves in politics.<sup>290</sup> The empowered Northerners regard the Southerners as *abeed*, meaning slaves or even filthy person.<sup>291</sup> This perception informs why Southerners are right to be enslaved, displaced and uncounted for in leadership.

The Khartoum government exercises obstructionist policies with regard to food relief; this makes some Southerners to move to the North in search of food. Once in the North, they are socialised into Islamic faith and to perceive the SPLM as an entity which

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<sup>286</sup> B. Yongo-Bure, "The Underdevelopment of the Southern Sudan Since Independence" in M.W. Daly and Ahmad A. Sikainga (eds), *Civil War in the Sudan* (London: British Academic Press, 1993), p. 73

<sup>287</sup> Peter A. Nyaba, *Politics of Liberation in South Sudan: An Insider's View* (Kampala: Fountain Publishers, 1997), 14

<sup>288</sup> Ho-Won Jeong, op. cit. p. 206

<sup>289</sup> Peter A. Nyaba, op. cit. p. 14

<sup>290</sup> *Ibid.*, p. 15

is not capable of providing food to its populations. It is worth noting that the SPLA soldiers are also responsible for South-North flee of South Sudanese due to their brutality.<sup>292</sup> One can predict that if the majority of South Sudanese end up in the North, this will affect the referendum outcome to decide on cession; they might vote for a united Sudan against the long cherished desire for the South's independence.

The Sudan government in guarding its interests, discourages researchers from carrying investigations. The displaced Southerners can only be met by expatriate relief workers with the permission of government intelligence.<sup>293</sup> The government further complicates research attempts by requiring that International Nongovernmental Organizations recruit local staffs recommended by the government who happen to be security agents to monitor the movement of expatriate and accompany them while visiting camps for relief supply.<sup>294</sup>

### **The interests of actors**

The South Sudan case has attracted many foreign actors. The more the actors, the more complex the resolution becomes. Whereas some actors are interested in achieving peace and alleviating human suffering, some seemingly love to have disorder so as to continue benefiting from Sudan's resources. Each state or MNC that is involved in the Sudan seems to pursue individual perceived self-interests and not that of the civilians of South Sudan. In as much as interests of such actors of South Sudan are ignored, structural conditions unfavourable to human rights realization persists.

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<sup>291</sup> Jor Madut Jok, *War and Slavery in Sudan*. (Philadelphia: University of Pennsylvania Press, 2001), p. 9

<sup>292</sup> Peter A. Nyaba, *op. cit.* p. 52

<sup>293</sup> Jor Madut Jok, *op. cit.* pp. 39-40

<sup>294</sup> *ibid.*, pp. 39-40

After 1991, a number of organizations moved into Sudan with an interest of alleviating human suffering in the South but this was hampered by the interest of diverting aid to the military. Warlords were involved in taking aid indirectly by taxing Southerners who were already suffering.<sup>295</sup> Operation Life-line Sudan's humanitarian effort has been of great help to civilians but it has been criticized that its relief discourages productive activity by pulling people away from their home areas; it offers people an easy alternative to hard work and local coping techniques; it serves as a magnet for displaced Southerners in Darfur and Kordofan and that its relief efforts do not address the root causes of Sudan problem.<sup>296</sup>

The US in trying to salvage South Sudan's troubles, the US Congress in 1991 passed a law that would allow the president of the United States to send food to the SPLA directly.<sup>297</sup> However Southerners were opposed to the US direct assistance to SPLM as they thought that NGOs do not want peace to come to Sudan, for that would mean losing the huge funding.

The European Economic Community member states are interested in "Constructive engagement" with Sudan.<sup>298</sup> Which they argue will see them engage the government and provide incentives that might persuade it to abandon human rights violations. Unfortunately, the engaged Sudan government has in practice violated International Laws and Conventions on the issue of slavery.

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<sup>295</sup> Øystein H. Rolandsen, Guerrilla Government: Political Changes in the Southern Sudan During the 1990s (Nordiska Afrikainstitutet, 2005 Uppsala), pp. 48-50

<sup>296</sup> Jor Madut Jok, op. cit. p. 155

<sup>297</sup> Ibid., p. 154

<sup>298</sup> Ibid., p. 170

In 1993, there was a change of international perception of Sudan.<sup>299</sup> For instance, the United States and European countries perceived the Bashir regime as a harbour of international terrorism and consequently Sudan was perceived as a “Rogue State.” On the other hand, Ethiopia, Eritrea and Uganda considered Sudan a pariah state because of its unacceptable discriminatory domestic policies that contributed to the continuation of the war affecting them directly.<sup>300</sup> Even though the US, perceives Sudan as a sponsor of terrorism and placed trade embargo on Sudan, American Companies are involved in purchasing Gum Arabic from Sudan to make soft drinks of Pepsi and Coca-Cola.<sup>301</sup>

Countries that are major human violators in their own rights such as China and Iran, find it in their interest to side with Sudan on United Nations Platforms.<sup>302</sup> China and Malaysia have since 1999 moved into Sudan to have a share of oil against pleas from human rights organizations and at the expense of the human security of South Sudanese.<sup>303</sup> For instance since 1999, the Western Upper Nile, rich in oil, had to be cleared of its civilian population to eliminate Southern threats to oil production. This policy was practiced in the name of suppressing the rebellion in the South.<sup>304</sup>

Egypt guards its interests of the Nile waters at the expense of suffering Southerners by standing behind the concept of a unified Sudan. This goes against the South’s group right of self-determination. Egypt is against seeing the South autonomous because of its share of the Nile waters and the extensive agricultural resources in the

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<sup>299</sup> Oystein H. Rolandsen, *op. cit.* p. 125

<sup>300</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, Getting In: Mediators’ Entry into the Settlement of African Conflicts. (Washington, D.C: United States Institute of Peace Press, 2006), p. 133

<sup>301</sup> Jor Madut Jok, *op. cit.* p. 170

<sup>302</sup> *Ibid.*, p. 171

<sup>303</sup> *Ibid.*, p. 47

<sup>304</sup> *Ibid.*, p. 52

South. Moreover, as a regional power it has not given up its colonial claims of the Sudan besides the fact that it has stakes in the Islamisation and Arabisation of black African.<sup>305</sup>

### **The culture of impunity in the Sudan**

Failure to bring villains behind governments into account creates a culture of impunity. It is within this structural element that South Sudanese continue to suffer under President Omar al-Bashir. Medani observes that violations of human rights and International Humanitarian Law run through different regimes since independence. Since the perpetrators were never questioned through the various regimes, repetition of violations was made very ordinary occurrence.<sup>306</sup> Fein contends that, "unlike the Holocaust and the Cambodian genocide, little international attention has focused on genocide in Sudan and no attempt has been made to bring this government to account."<sup>307</sup> It is worth breaking this culture and legally take to task the leaders so as to set precedents for the respect of human rights. For instance, Commanders should be investigated and punished for any cover-ups after the fact.<sup>308</sup>

Memom observes that Persons who may be guilty of crimes against the peace and security of mankind can shelter behind the abstract concept of the state.<sup>309</sup> But according to the 1946 Nuremberg tribunal, "Crimes against International Law are committed by men, not by abstract entities, and only by pushing individuals who commit such crimes

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<sup>305</sup> Peter A. Nyaba, *op. cit.* p. 62

<sup>306</sup> Amin Mekki Medani, *op. cit.* p. 243

<sup>307</sup> Helen Fein, "Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia and Sudan: Links Between Human Rights, Health and Mass Death, in *Health and Human Rights*, vol. 2, No. 2 (1997), p. 22

<sup>308</sup> Jemera Rone and John Prendergast, *op. cit.* p. 104

<sup>309</sup> Abdul Majeed Memon, Principles and Problems of International Politics and International Relations. (Golden Publications: Hyderabad), p. 62

can the provisions of International Law get enforced.”<sup>310</sup> Article IV of the 1948 Genocide Convention, emphasizes on the aspect of individual responsibility by providing that persons committing acts of genocide should be punished ‘whether they are constitutionally responsible rulers, public officials or private individuals’<sup>311</sup>

Key to coming up with a genuine solution, truth and reconciliation can be contemplated. Should Truth and Reconciliation be used as a *modus operandi*,<sup>312</sup> there is need to investigate all the violations and crimes against citizens in any part of the country since independence in order to unravel truth and set a new base for the future. Its applicability may however not be easy because of the longevity of the period, and due to the fact that a lot of evidence and documents would have been lost plus victims and witnesses are dead.

### **Dealing with cessation**

There has been a debate as to whether Southern Sudan should secede or get solidified to the North as a criterion of arriving at lasting peace. There is no place in the Sudan for a centralized unitary form of government because the centralized system has in the past been noted not address the political wishes of the peoples of South Sudan.<sup>313</sup> Since the centralised system of Sudan hardly balances resource allocation between North and South Sudan, regional authorities should manage local affairs for they have a better understanding of its needs. An alternative could be cessation. Alibino observes that factually, in the Sudan today, we have two countries: the African South which is being

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<sup>310</sup> *Ibid.*, p. 62

<sup>311</sup> *Ibid.*, p. 63

<sup>312</sup> Amin Mekki Medani, *op. cit.* p. 244

<sup>313</sup> Suverino Fuli Boki and Tombe Gale, Shaping a Free Southern Sudan: Memoirs of Our Struggle 1934-1985. ( Limuru: LOA Catholic Mission Council, 2002), p. 457.

administered by the Arab North.<sup>314</sup> It is then necessary to have cessation as a remedial solution. Southerners are convinced that independence referendum will enable them get rid of injustices.<sup>315</sup> But the Khartoum government opposes this.

The tendency in favour of unity and against secession is not only found in Africa but also globally. The International Community has been generally antagonistic to partitioning countries.<sup>316</sup> The attitude toward the de facto division of Somali, the anomalous position of Kosovo, the brutal suppression of Chechnya separatist movement in the Russia Federation are outstanding examples<sup>317</sup> of anti-cessation attitudes elsewhere. Nigeria is opposed to secession of South Sudan from the North understandably because of similar feelings for secession in its eastern regions.<sup>318</sup>

Whereas the Khartoum government is against cessation of the South and emphasises that Sudan is One, Southerners lack political status in the North<sup>319</sup> because of three reasons: elite politics increasingly getting Islamized and secularism is declining; secondly they are excluded from public services due to racial prejudice and thirdly, Southerners lack legal redress against the gross exploitation since they are readily stigmatized as supporters of the rebellion in the South, thus not deserving legal protection.

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<sup>314</sup> Oliver Albino, The Sudan: A Southern ViewPoint. (London: Institute of Race Relations, 1970), p. 122

<sup>315</sup> International Crisis Group, God, Oil and Country: Changing the Logic of War in Sudan. ICG Africa Report No. 39. (Brussels: ICG Press 2002), p. 5

<sup>316</sup> Francis M. Deng, "Sudan's Turbulent Road to Nationhood", in Ricardo R. Laremont, Borders, Nationalism and the African State. (Boulder: Lynne Rienner Publishers 2005), pp. 64-65

<sup>317</sup> Ibid., p. 65

<sup>318</sup> Peter A. Nyaba, op. cit. p. 63

<sup>319</sup> Jor Madut Jok, op. cit. pp. 44-45

## The legalism of slavery in the Sudan

*In the Sudan, traditional interpretation of Islamic law is inconsistent with human rights and betrays co-existence in the multi-religious/cultural setup. According to the municipal law of the Sudan, a country that is also party to International Covenants, slavery is a crime. However Sharia law provides for enslavement by taking of hostages in a war between Muslims and non-Muslims.<sup>320</sup> This law stands challenged because the government forces are not pure Muslims for they have minority Christians, while the SPLA too has a minority of Muslims. Moreover, according to classical Islamic Law, enslavement does not apply to persons taken as hostages in a war between government forces and rebel forces.<sup>321</sup>*

Whenever the government is accused of participating in slavery, it repudiates such allegations by terming slavery as “usual tribal abduction” and yet the Murahileen who participate in slavery are seen carrying radio communication systems and heavy artillery, which is an indication that they are not ordinary traditional cattle rustlers.<sup>322</sup> True it is that the Sudanese law prohibits slavery, but there is a gap between the constitution prohibiting slavery and all forms of exploitation and the daily application of the constitution.<sup>323</sup> The conditions that allowed slavery to flourish in the 19<sup>th</sup> century can be found today in Sudan. For instance, the Dinka areas where slavery takes place since early 1980s were the same areas that experienced slavery in historical times. The Arab groups currently

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<sup>320</sup> Mohammed I. Khalil, “Human Rights and Islamization of the Sudan Legal System” in Yusuf Fadl Hasan and Richard Gray (eds), Religion and Conflict in Sudan: Papers from an International Conference at Yale, May 1999. (Nairobi: Paulines Publications Africa, 2002), p. 65

<sup>321</sup> *Ibid.*, p. 65

<sup>322</sup> Jor Madut Jok, *op. cit.* pp. 32-33

<sup>323</sup> *Ibid.*, p. 33



engaged in slavery were involved in slavery in early years.<sup>324</sup> This could be aided by the Arab mentality of calling Southerners *abeed*, meaning slave or a low social class person, or a person without moral stature and even a filthy person.<sup>325</sup>

The Sudan complains that other governments like Egypt and Israel abuse human rights but they are not taken serious.<sup>326</sup> Burton argues that conflict should be accepted as a reality than to be avoided. Such an acceptance will in turn create the willingness to manage conflict and not to suppress it.<sup>327</sup> It has emerged that both the Khartoum government and the SPLA are guilty of human rights violations.<sup>328</sup> The two should accept it as a reality; this will in turn aid them with the willingness to come up with a resolution.

### **The efficacy of International Human Rights Law**

Under International law, individuals have certain inalienable rights.<sup>329</sup> Such rights are detailed in the following International Instruments that Sudan has ratified or acceded, which it is obliged to respect: International Covenant on Civil and Political Rights (1966) (18/3/1986), The 1949 Four Geneva Conventions (23/9/1957), International Convention on the Elimination of all Forms of Racial Discrimination (21/3/1977), Slavery Convention and Supplementary Convention on the Abolition of Slavery and the Slave Trade (9/9/1957), International Convention on the Suppression and Punishment of the Crime of Apartheid (21/3/1977) and the African Charter on Human and Peoples' Rights

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<sup>324</sup> *Ibid.*, p. 21

<sup>325</sup> *Ibid.*, p. 9

<sup>326</sup> Donald Petterson, Inside Sudan: Political Islam, Conflict and Catastrophe. (Boulder: Westview Press, 1999), pp. 135 & 161

<sup>327</sup> J. W. Burton, World Society. (Cambridge: Cambridge University Press, 1972), pp. 137-138.

<sup>328</sup> John Prendergast, Sudanese Refugees at Crossroads: Opportunities for Building Peace in a Shattered Land. Horn of Africa Project (Washington: Center of Concern, May 1994) pp. 5-7 & 11 See also: Donald Petterson, *op. cit.* p. 136

(11/3/1986).<sup>330</sup> One is left to wonder as whether these treaties do make a difference in Sudan's administration of human rights!

Viljoen and Louw<sup>331</sup> observe that recent times have witnessed growing academic concern on the efficacy of International Human Rights Treaties on the de jure and de facto legal position in state parties. What is the nature of state obligations under international law? According to *Erga Omnes*, every state owes the International Community obligations identified by the International Court of Justice. These obligations derive from outlawing acts of aggression and genocide and from rules of basic rights of the human person.<sup>332</sup> Articles 55 and 56 of the UN Charter, charge the United Nations and its members with the responsibility of universal respect for and observance of human rights and fundamental freedoms without distinction. Moreover, Article 3(2) of the UN Charter requires that nations develop friendly relations based on the principles of equal rights and self-determination of peoples.<sup>333</sup>

However, according to the neo-realists, the International System is anarchic.<sup>334</sup> However, being anarchic does not mean that it is chaotic rather that it does not have a central authority capable of controlling the states' behaviours. Moreover, the International System lacks an effective legislative or law-making body, an effective law enforcement agency, leaving states with the freedom to break the law.<sup>335</sup> Law by itself

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<sup>329</sup> J.G. Starke, Introduction to International Law. Tenth Edition. London: Butterworths, 1989), pp. 68-69

<sup>330</sup> Amin Mekki Medani, op. cit. p. 85

<sup>331</sup> Frans Viljoen and Lirette Louw, "State Compliance with the Recommendations of the African Commission on Human and Peoples Rights, 1994- 2004" in the American Journal of International Law, Vol. 101, No.1 (Jan; 2007), p. 1

<sup>332</sup> F.X. Njenga, International Law and World Order Problems. (Eldoret: Moi University Press, 2001), p. 41

<sup>333</sup> *Ibid.*, p. 162

<sup>334</sup> John Baylis and Steve Smith (eds), The Globalization of the World: An Introduction to International Relations. (New York:Oxford University Press,2005), p. 302

<sup>335</sup> Marc William (Ed), International Relations in the Twentieth Century: A Reader. (Houndmills: Macmillan Education, 1989), p. 183

cannot coerce states in matters which are political neither can it dictate policies of a state.<sup>336</sup> This calls for the good will of leaders to implement and enforce International Human Rights Law.

Although states have ratified the international covenants on human rights, the question of interpretation and the very implementation of these rights rest with the individual states.<sup>337</sup> It emerged in Chapter two of this study that whenever the UN Special Rapporteur condemns Sudan of violating human rights, the NIF officials calls him an enemy of Islam. It seems that the provisions of human rights in the international instruments is interpreted by the Sudan administrators to be against the provisions of Islam; this then questions the universality of human rights.

Even though the UN General Assembly adopted the Universal Declaration of Human Rights as a step towards regulation of human rights, it is not legally binding in itself<sup>338</sup> and the United Nations cannot compel the states with regard to the fundamental rights and freedoms. The contents of the Universal Declaration of Human Rights have been further articulated in two binding Conventions: The Covenant on Civil and Political Rights (1966) and the Covenant on Economic, Social and Cultural Rights (1966).<sup>339</sup> While it is required that the Covenant on Civil and Political rights be implemented *immediately upon ratification*, the Covenant on Economic, Social and Cultural Rights requires, (as per Article 2), that States implement them progressively as they may depend

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<sup>336</sup> Rebecca M.M. Wallace, *International Law*, Fourth Edition. (London: Thomson Sweet and Maxwell Limited, 2002), P. 3

<sup>337</sup> Abdul Majeed Memon, *op. cit.* p. 277

<sup>338</sup> *Ibid.*, p227 see also F.X. Njenga, *op. cit.* p. 165

<sup>339</sup> F.X. Njenga, *op. cit.* pp. 165-166

on the State's economic development.<sup>340</sup> Rogue states can use this gap to ignore human rights.

While it is true that the African Charter, which Sudan is a signatory, called for the establishment of the African Commission on Human and Peoples' Rights to ensure compliance with the Charter's norms, its findings are not legally binding as such for the commission does not issues orders to state parties.<sup>341</sup> With regard to communications, the commission neither has a follow-up mechanism nor a policy in place to monitor state compliance with its recommendations. This makes states to easily ignore the commission's recommendations.<sup>342</sup> According to the May 2, 2004 report, the Sudan had not implemented any of the recommendations forwarded in the three Sudanese cases, *Supra* note 22.<sup>343</sup>

Since the OAU Charter did not provide sanctions against state parties under any circumstances, perpetrators of authoritarian governments participated in meetings of the Assembly without fear of exclusion or confrontation based on their human rights records. Moreover, the OAU's Central Organ of the Mechanism for Conflict Prevention, Management and Resolution existed only on paper.<sup>344</sup> As earlier noted, the OAU's principle of non-interference and respect of international borders restrained states from foreign intervention.

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<sup>340</sup> *Ibid.*, pp. 166-167

<sup>341</sup> Frans Viljoen and Lirette Louw, *op. cit.* p. 2

<sup>342</sup> *Ibid.*, p. 3

<sup>343</sup> *Ibid.*, p. 5

## Chapter Five: The Conclusion of the study

This research was geared towards creating an in-depth understanding of the complexities of the seemingly unending practice of human rights violations in South Sudan, which threatens human and economic development. Human rights are essential for achieving Positive Peace and development<sup>345</sup> within and without a state. The human rights violations experience in South Sudan has had great dysfunctional impact: human lives lost; people displaced; contorted human and economic development; children orphaned; women raped; people deformed due to bombardments; loss of religious identity; and immeasurable psychological torture. Unless the driving forces behind these atrocities are genuinely addressed by the involved parties, human dignity will continue to be tainted, thus perpetuity of structural conflict.

As proposed in Chapter one, this study was projected to be achievable through testing three hypotheses. The first hypothesis was to test the role of the Islamization process in the generation and protraction of human rights violations in South Sudan. The second hypothesis was to test how the involvement of foreign countries in the Sudan conflict prevents human rights intervention. The third hypothesis was to test how resource distribution between South and North Sudan exacerbates human rights violations in South Sudan. From the reviewed literature, it is vivid that there is no single factor which can comprehensively explain the persistence of human rights violations in South Sudan. The forces operating in each factor interact with forces in other factors to form a persistent trend of human rights violations in South Sudan.

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<sup>344</sup> Ibid., pp. 22-26

<sup>345</sup> Ho-Won Jeong, *Peace and Conflict Studies: An Introduction*. Aldershot: Ashgate, 200), p. 207

Chapter two of this study reveals the various atrocities committed against the people of South Sudan in the context of the North-South disharmony. At independence, the colonialists transferred administration of the entire Sudan to the Arab-Moslems of the North at the disadvantage of South Sudanese. Due to the fact that Northerners were more educated and exposed, they moved to the South to: convert Southerners to Islam, fill the institutions of the South, make Arabic the official language, control resources among other things. Some aspects of this trend remain intact under the current regime which is driven by Islamic fundamentalism.<sup>346</sup>

Way back in 1975, guarantees for human rights were eliminated. This was followed by the 1983 laws of September with Islam as its guiding soul behind the Laws of Sudan. Come 1989, Omar al-Bashir overthrew a democratically elected government of al-Sadik al-Mahdi. This ushered in Fundamentalist Muslim dictatorship which is dedicated to turning the entire Sudan into a homogenous Islamic theocratic state, thus oppressive to the overwhelming majority of non-Muslim South Sudanese.<sup>347</sup> True it is that South Sudan is currently having some degree of autonomy but it is not detached from the North which perceives itself as the real Sudan to be conformed to.

As found out in Chapter two of this study, the US Commission on International Religious Freedom identified Sudan as the most violent abuser of the right to the freedom of religion and belief. Jok points out that Sudan has been struggling to become the nation that it never was and never will be. He adds that the Sudan is a nation built on the image of one racial and cultural group and suppresses others due to the fact that there has never

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<sup>346</sup> Mathew Humana, *The Long Road to Peace: Encounters With the People of Southern Sudan* (Herefordshire: Gracewing, 2000), pp. 136-137

<sup>347</sup> Chapter two

been a will to create a nation beyond Arabism and Islam on the basis of diversity.<sup>348</sup> The State of Sudan believes that its national identity would be realized and sustained only if the other various nationalities and religious groups are assimilated within the Arab-Islamic culture.<sup>349</sup> This belief is used to justify otherwise controversial statements such as "Sudan is an Arab country, and whoever doesn't feel Arab should quit"<sup>350</sup> on the basis that the Arab-Muslim Sudanese are the majority. In an ideal sense, the rights of the minorities should not be submerged by majority rights: both the majority and the minority should coexist in such a way that whoever admires the culture of the other, should freely embrace it as long as the embraced culture does not go against the universal standards of human rights.

The second broad finding in Chapter two is that Southerners were deprived the degree of financial autonomy and the right to benefit from collecting taxes on industrial activities by their regional government as provided for by the Addis Ababa Agreement. Moreover the resources in the South for instance oil among others are extracted to empower the Khartoum government at the expense of Southerners who lack basic needs and education. The South's situation was further aggravated by Western countries who poured money directly into Khartoum and indirectly to the South using international development organizations as proxies.<sup>351</sup> Much of this money was used in empowering the army of both sides instead of empowering civilians to live a dignified life.

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<sup>348</sup> Jor Madut Jok, War and Slavery in Sudan. (Philadelphia: University of Pennsylvania Press, 2001), p. 88

<sup>349</sup> Mohammed O. Maundi, I. W. Zartman, G. M. Khadiagala and K. Nuamah, Getting In: Mediators' Entry into the Settlement of African Conflicts. (Washington, D.C: United States Institute of Peace Press, 2006), p. 132

<sup>350</sup> *Ibid.*, p. 132

<sup>351</sup> Øystein H. Rolandsen, Guerrilla Government: Political Changes in the Southern Sudan During the 1990s (Nordiska Afrikainstitutet, 2005 Uppsala), p. 25

A number of human rights were violated within the North-South conflict; however, it is worth noting that human rights violations in South Sudan associated with the North-South war no longer are since the signing of the Comprehensive Peace Agreement: they do exist currently in Darfur which is not in the scope of this study. During the North-South war, the government forcefully displaced the natives from the neighbourhood of oil regions. The displaced South Sudanese live in neighbouring countries. In the process of displacement, killings, enslavement, abduction, starving and rape took place. Both the government and the SPLM are guilty of the atrocities.<sup>352</sup> For instance in 1989 while the Khartoum government obstructed international efforts to deliver food and stated that food should reach people through Islamic Charities, SPLA diverted civilian foodstuffs for military use.

It is ironical that while the government termed slavery as mere abduction in areas of military operations and as an act of tribes settling scores, it did not arrest and prosecute those behind the practice thus further entrenching impunity. The halted war alone could not have enabled slavery had there been no racial, religious and cultural superiority held in the North. Other aiding factors include the need to use slaves in Peace Villages in Khartoum to attract foreign aid and the need for labourers in the North. Moreover, Madani observes that seemingly the Law of National Security gives Security officials impunity for all the violations and crimes they commit against human rights, in disregard of all International Covenants and Conventions ratified by Sudan.<sup>353</sup>

Chapter three reveals that the foundation of marginalizing South Sudanese was the British Colonialism. At that time, economic and political power of the Sudan was

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<sup>352</sup> Chapter two



bestowed in the hands of Northerners. At independence, Southerners unsuccessfully rejected the step of having one Independent Sudan in fear of socio-economic exploitation. The 1972 Addis Ababa Agreement granted the South regional autonomy but this agreement was abrogated in 1983 by the government while the Southern political elite in the 1980s and early 1990s were trapped in their tribal rivalries, thus human suffering ensued. The above colonial foundation is aided by racial and cultural superiority held by Northerners against Southerners. This is worsened by the treatment of the South' cry against unfairness as a rebellion against the Bashir regime.

The current Bashir regime is fuelled by Islamic Fundamentalism; this then follows that religion and race continue to be the basis of organising the Sudan, and generating oppressive and discriminatory policies against Southerners.<sup>354</sup> Any attempt by Southerners to go against such religious and race constructed oppression is perceived as an anti-Islam and anti-Arabic move or as a rebellion which should be given a military address. It is on this ground that the Khartoum government in the past encouraged the Baggara to attack the Southerners, especially the Dinkas who form the majority of the SPLM.<sup>355</sup> The seemingly possible way Southerners can do away with this is through regional autonomy or voting en masse for cessation. Besides the military strategy of addressing problems instead of resolving them through the elimination unfair structural conditions, the racial superiority of the Arabs which makes them to regard Southerners as *abeed*, slaves, seemingly makes them perceive Southerners as a people who should not pursue the group right of Self-determination.

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<sup>353</sup> Amin Mekki Medani. *Crimes Against International Humanitarian Law in Sudan 1989-2000*. First edition. Cairo: Dar EL Mostaqbal EL Arabi, 2001), pp. 60

<sup>354</sup> Chapter three

<sup>355</sup> Ibid

As found out in Chapter three of this study, regionally even though in 1993, Eritrea seceded from Ethiopia, many Sub-Saharan countries are not in support of secession of South Sudan as was projected by the Comprehensive Peace Agreement. This is in fear of the dangerous precedents it will set for their own countries. Egypt, in case, in trying to guard its interest of controlling the Nile waters, advocates for a united Sudan contrary to the South Sudanese long cherished group right of Secession. Nigeria is too opposed because it faces cessationistic aspirations.

The Sudan's socio-economic development is characterised by regional disparities. For instance the Sugar factory, paper factory and oil refinery meant to be located in South Sudan were relocated in the North. This deprived the regional government corporate tax plus tax on profits and in turn deprived Southerners their right to development. Oil and other revenues of such diverted projects are used in fuelling the means of remaining in power instead of promoting human development in South Sudan. There is need to remedy the situation by allowing alternative Direct Foreign Investment in South Sudan. It is possible to develop South Sudan "without" oil; for instance Kenya is relatively developed without oil endowment. However, since South Sudan has been endowed with oil, there is need to ensure that the revenue gotten from it is used in alleviating human misery.

With regard to foreign interests in the Sudan, regional governments and governments from outside Africa undermine any agreement that runs contrary to their interests. There is also conflict of interests with regard to resolving South Sudan's cause: for instance, while Scandinavian countries are concerned with promoting and protecting human rights, France's interest in the Sudan is Oil. Russia and China's oil interests goes against any sanctioning of the Sudan by the UN Security Council. Each time Bashir is

sanctioned, he finds refuge in China. Such was the case for example in 1994 when the European Union imposed a total embargo on the sale of arms to Sudan and when the UN Security Council passed non-economic sanctions against the Sudan.<sup>356</sup> The cost of giving up oil interests in the Sudan is high but the cost of pursuing such interests is costly to the civilians of South Sudan, hence there is need for MNCs involved to reconsider their motives in favour of the plight of the civilians. The lucrative nature of oil should not eclipse the alleviation of human rights standards in South Sudan.

In the 1980s and early 1990s, the OAU (now AU) members could not intervene due to its then acclaimed Principle of Non-interference and respect for international borders. While this is "true", ironically some OAU members take sides with the involved Sudanese parties. This is worsened by the fact that "African countries are too embroiled in their own economic and political problems to even have an understanding about Sudan's problems."<sup>357</sup> In memory of the cross-border effects of the violations of human rights in South Sudan, neighbouring countries should manage the relative peace that is prevailing in South Sudan since the signing of the CPA in 2005. This will help in gradual elimination of structural conditions within which Southerners suffer.

South Sudan cannot be re-organised within a short time, since it has undergone decades of misery in such a way that people got "used" to degrading human practices. When people get used to degrading treatment, they need to be sensitised on their rights by an outsider or an organisation that is not party to the conflict. This then calls for installation of a number of secular media stations to aid churches and INGOs/NGOs, in sensitising the populace in remaining focused on the respect for human rights. It is also

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<sup>356</sup> Chapter three

imperative that NGOs that are involved in the conflict get ejected or people behind them get prosecuted by the international community.

It is worth acknowledging that foreign intervention in the 1990s was diverted by the generation of fresh conflicts in Africa. These conflicts like the Rwanda genocide were more attractive to western countries than the old Sudan conflict. And as for now, the explosion of the Darfur region has had a significant effect of diverting attention from the South's prolonged struggle against structural conditions within which human rights are violated. Aware of this, the reshaping of South Sudan should not be allowed by policy makers to get submerged by the ongoing Darfur Conflict which has drawn much local and international attention.

Part of new developments in South Sudan, is the Civil Authority of the New Sudan which calls for popular participation and separation of powers.<sup>357</sup> SPLA's vision of participating democracy is about involving the civilians in making vital decisions affecting their lives, ensuring accountable leaders and governance system accessible to civilians.<sup>359</sup> However, there are challenges facing the New Sudan such as; acute shortage of trained and experienced professional and support staff to run it, lack of houses for the judiciary and transport facilities to run mobile courts, poor conditions of the police, prisons and wildlife services.<sup>360</sup> There is also absence of effective mass media.<sup>361</sup>

An attempt to solve human rights violations in South Sudan has to start with providing security for the Southerners. This entails structural changes in the governing

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<sup>357</sup> Jor Madut Jok, War and Slavery in Sudan (Philadelphia: University of Pennsylvania Press, 2001), p. 169

<sup>358</sup> Peace Through Development: Perspectives and Prospects in the Sudan, February 2000. Published by the SPLM. Signed by James Wani Iga, chairman SPLM Political Affairs Commission. p. 14

<sup>359</sup> *Ibid.*, p. 15

<sup>360</sup> *Ibid.*, pp. 19-20

<sup>361</sup> *Ibid.*, p. 27

system of the Sudan. Significant to those changes will be granting citizens the freedom of expression and equal participation of all Sudanese in the Sudan. But equal participation calls for empowering the Southerners with education and other needed skills and having development policies emphasising on the improvement of food production techniques and these can only be realised if there is political stability involving grassroots process.

The Peace Research Paradigm, within which this study was conceived, is concerned with international cooperation to promote the well being of individuals and groups.<sup>362</sup> Countries from within the region and those from outside Africa must have the will to cooperate in a manner likely to promote the wellbeing of South Sudanese. This can only be possible through suppressing their individual appetites for Sudan's resources.

Since when one party benefits from unequal relations, the structure will always be maintained hence perpetuity of human rights violations, there is need for gradual empowerment of South Sudan or have it exist separately. It is necessary to aid the marginalised by changing the structures which are responsible for human suffering. In such a long case of oppression, Self-determination is necessary, manifested in the aspiration of individuals to fashion and rule themselves and not to be dominated and moulded by others.<sup>363</sup> Self-determination befits those who are victims of oppression and have a sense of their distinctiveness like ethno-cultural commonality<sup>364</sup> like the South Sudanese. South Sudanese deserve secession in light of Remedial Right Only Theory.<sup>365</sup> The theory holds that cessation is a right that accrues to a group within a state which has

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<sup>362</sup> Ho-Won Jeong, *op. cit.* p. 49

<sup>363</sup> *Ibid.*, p. 223

<sup>364</sup> *Ibid.*, p. 227

<sup>365</sup> J. Angelo Corlett, Terrorism: A Philosophical Analysis. Philosophical Study Series Vol. 101. (Dordrecht: Kluwer Academic Publishers, 2003), p. 76

experienced significant violations of human rights by the state. Such a group can have cessation as the appropriate remedy of the last resort.

The culture of impunity must be wrecked by bringing to judgement the perpetrators. Gutto<sup>366</sup> holds that the lack of punishment of local, foreign and other legal persons responsible for violations and denials of human and peoples' rights in Africa is one of the worst in the world. Impunity is compounded by non-accountability and non-responsibility of violators and deniers of rights. This is further aggravated by lack of effective and adequate reparation, compensation and restitution for the victims.

The North-South war within which human rights were violated came to an end with the signing of the Comprehensive Peace Agreement in 2005, but that does not mean that the structural conditions, which degrade human dignity, have been eradicated. According to Sindole, peace is not only the absence of violence but also the correction of the structural sources of conflicts.<sup>367</sup> This then requires that effort be put in place for gradual elimination of the structural conditions which enables human suffering. Unless all actors are involved in finding a solution, conflict will persist<sup>368</sup> so will human rights violations. There is therefore need to involve all actors in the process of guaranteeing human rights to the South Sudanese so as to avoid a sabotage of strategies and outcome of the process.

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<sup>366</sup> Shadrack B.O. Gutto, Human and Peoples' Rights for the Oppressed: Critical Essays on Theory and Practice from Sociology of Law Perspectives, (Lund: Lund University Press, 1993), pp. 56-60

<sup>367</sup> J.D. Sindole, "Conflict Resolution: A Unique U.S. Role for the 21<sup>st</sup> Century" in US Foreign Policy Agenda, Preventive Diplomacy Vol. 1 No. 19 December 1996, pp. (12-18)

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<sup>368</sup> P. Wallensteen, Understanding Conflict Resolution. (London: Sage Publishers, 2002, p. 133

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### **International instruments**

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African (Banjul) Charter on Human and Peoples' Rights, 1986

Universal Declaration of Human Rights, 1948

Protocol; II of 1977 Additional to the 1949 Geneva Conventions

The Second Additional Protocol (which compliments the Fourth Geneva Convention)