



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

P. O. Box 34, Juba, South Sudan • Tel: +211 (0)956 305 780
Email: thesudd.institute@gmail.com • www.suddinstitute.org

Weekly Review

February 20, 2020

The Return to Ten States in South Sudan: Does it Restore Peace?

Augustino T. Mayai
Nhial Tütmamer

Summary

In this review, we analyze the recent decision by President Salva Kiir Mayardit to reinstitute the ten states system of governance in South Sudan. We focus our attention on reactions from the stakeholders of the Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCSS), the public, the region, and international community, surveying the moods of those involved. We also examine the repercussions of, and implications associated with the decision. The main question we examine is whether the decision could potentially restore peace or latently produce additional troubles than is intended, extending instability. The president's subsequent speech lends hopes for peace, suggesting that the decision could restore peace in the country, depending on how the underlying grievances are handled during the tenure of the Revitalized Transitional Government of National Unity (RTGONU). That is, the value of this decision is predicated upon the extent to which the RTGONU handles the fundamental matters of security, governance, service delivery, and justice, an achievement of which could not be attained absent of measured reforms.

1 The Decision

On February 15, 2020, exactly four years and four months since the establishment of the 28 states in October 2015,¹ President Salva Kiir Mayardit issued a landmark decision that returned the country back to the 10 states arrangement.² In the decision, dubbed as the Final Resolution of the Meeting of the Presidency on the Number of States and their

¹ See The Establishment Order Number 36/2015 for the Creation of 28 States in the Decentralized Governance System in the Republic of South Sudan.

² See Final Resolution of the Meeting of the Presidency on the Number of States and their Boundaries dated 14 February 2020

Boundaries, the Presidency³ (1) appreciates the citizens for standing firm with the government, (2) resolves to return the country to ten states with their previous counties plus three administrative areas of Abyei, Pibor and Ruweng, (3) underscores that the decision is not the best option for the government supporters but one that is necessary for the sake of peace, (4) recognizes the views of many who want more states and refers the matter to the referendum, and (5) takes note of those who may be affected by the decision, affirming that an appropriate mechanism will be instituted.

This decision followed years of mounting pressure from the opposition, which has challenged the government for unconstitutionally creating more states. While the opposition was not pleased with the initial decision to increase the number of states, the general public, based on views from the National Dialogue process and the prevailing public opinion, welcomed it. The 28 states were initially prompted by many factors, some of which arose from the August 2015 Agreement.⁴ When the war was on the verge of being concluded, some communities in the Upper Nile region struggled with fresh memories of the ethnically-motivated violence experienced during the 2013 war. This led to a call for separate constituencies. Pibor had already been given a special arrangement through an agreement that ended one of the deadliest rebellions in the country. Akobo demanded a similar arrangement, but it was not granted. The Ruweng community, which was a battleground for much of the early days of the conflict, appealed to the government to exit Unity State either as a state or as an autonomous administration.

All these demands were motivated by fear as emotions were still raw by the time the Agreement on the Resolution of the Conflict in the Republic of South Sudan, now R-ARCSS, was signed. The underlying idea for separate administrative units was that they “could provide some sort of cushion for the communities to heal independently since the wounds [were still] so fresh that the communities [were] not yet ready to trust each other.”⁵ However, this arrangement has been good only as a transitory measure to “keep communities separate until a true reconciliation and healing processes and the new constitution making process provide a new direction for the country.” Subsequent popular consultations, including by the National Dialogue Committee, indicate a popular desire for more administrative units across the country. However, the creation of new states, widely deemed as economically inviable, also resulted in the proliferation of more administrative units at local levels, inflaming intra-communal conflicts via a demand for self-governance and boundary disputes.

³ The Presidency, composed of President Salva Kiir, 1st Vice President Taban Deng Gai and Vice President James Wani Igga, made the decision to return to 10 states plus three areas in a meeting held on Friday, 14 February 2020 in the State House.

⁴ See The Creation of 28 South Sudanese States: Is It Economically and Legally Viable? <https://www.suddinstitute.org/publications/show/the-creation-of-28-south-sudanese-states-is-it-economically-and-legally-viable>

⁵ See The Creation of 28 South Sudanese States: Is It Economically and Legally Viable? https://www.suddinstitute.org/assets/Publications/572b7eb30f42b_TheCreationOfSouthSudaneseStatesIsIt_Full.pdf

The reversion came a week before the formation of a unity government enabled by R-ARCSS. The formation of the unity government has been postponed at least twice partly due to the lack of consensus between the government and opposition over the number and boundaries of states. Attempts to resolve these issues using a mechanism provided for in the Revitalized Agreement have repeatedly failed. For instance, a consultation conducted by the Independent Boundaries Commission (IBC), an instrument created by the R-ARCSS, produced a verdict that the government rejected. The consultation, which attracted 2,261 public submissions, showed that at least 70 percent of the South Sudanese supported a reversion to the ten states⁶. But this process was largely conducted online, giving rise to reservations over the representativeness of the reported views, forthrightly grounding government's opposition to the IBC's conclusion.

While the opposition sustained its advocacy to return to the 10 states system largely on legal grounds, the government unceasingly rejected this call, agreeing instead to a referendum to settle this disagreement after the transitional period. This deadlock attracted mediation efforts from around the continent, with the Government of South Africa, IGAD, and AU calling for President Salva Kiir Mayardit and Dr. Riek Machar, both principal signatories to the R-ARCSS, to show leadership via a compromise, consequently restoring peace in the country. The mediators offered various options, including a return to the 10 states, plus Abyei Administrative Area, 23 states based on former districts plus Abyei, among others.

Nonetheless, President Salva Kiir Mayardit surprised his supporters and the opposition alike by returning the country back to the 10 states, even as the consultations a day before rejected this move. In addition to the 10 states, the president also granted Ruweng, previously a state, an administrative status. This increases the number of South Sudan's administrative areas to three, the other two being Abyei and Pibor.

As part of implementation of the resolution of the Presidency, the President on 15 February also issued a Republican Decree Number 14/2020 relieving the state governors.⁷ The Decree also relieved all of the other constitutional post holders in the respective thirty-two (32) states with immediate effect, except members of state assemblies. The President, through the Minister of Justice, also initiated a constitutional amendment bill which the National Legislature debated and passed. The President signed it into law on 20 February 2020.

⁶ See <https://www.theeastafrikan.co.ke/news/ea/South-Sudan-states/4552908-5386580-wt743nz/index.html>

⁷ See The Republican Decree Number 14/2020 for the Relieve of the Thirty Two (32) Governors of Thirty Two (32) States of the Republic of South Sudan, 2020 A.D

2 The Reactions

This decision has attracted a range of reactions. To many, particularly government supporters, the decision is seen as a compromise to save the country from yet another war, since the opposition has threatened⁸ to resume violence if the government was formed without them. To these folks, President Salva Kiir Mayardit has done well by placing the country above his personal pride and his government's policies. The decision is likened to the biblical story of two women contesting a child before King Solomon and in which the real mother saved the child from being cut in half as a resolution to the custody conflict⁹.

Nevertheless, there are voices in the government camp who are disappointed by the decision. They believe that the president has betrayed them by scrapping his signature policy, which gained popular support in the citizenry. Reported protests in Renk partly demonstrate the citizenry's disappointment in the decision. Others think that the president unnecessarily gave in to external interference in internal matters. These voices could be amplified if the results for which the decision was made are not achieved.

Major political actors have also responded. Dr. Lam Akol's NDM "believes that the decision of the government has made the prospects of forming the Revitalized Transitional Government of National Unity on time very much closer than any time before." The SPLM-IO, the lead signatory to the R-ARCSS, responded by appreciating and applauding 'the decision of the Presidency to revert to the ten states and their respective counties.' Although the opposition groups, especially NDM and SPLM-IO under Dr. Lam Akol and Dr. Riek Machar, applauded the President's bold decision, they questioned the inclusion of three administrative areas. The NDM sees the creation of new administrative areas as demonstrative of the government's continued intention to nag the agreement, recommending that this matter be immediately addressed. The SPLM-IO expresses similar concerns. It's opposed to the creation of Abyei, Ruweng and Pibor administrative units on the basis that the decision unnecessarily separates these administrative units from the original states. This is because, in a way, administrative areas are ordinarily considered provisional states, empowered to operate autonomously.

Some analysts claim that the fight over the number of states and boundaries has been about Ruweng, an oil rich territory. Ruweng is home to much of the oil wealth produced in Unity State. Dr. Riek Machar, the Leader of the SPLM/SPLA IO, hails from Unity State and based on political economy calculations, carving out Ruweng denies Riek access to resources which he could use to gain political influence.¹⁰ Nevertheless, latest updates following talks among R-ARCSS signatories show that the opposition has dropped its concerns over the three administrative areas.

⁸ http://www.xinhuanet.com/english/2019-10/21/c_138488482.htm

⁹ 1 Kings 3:16-28 Contemporary English Version (CEV)

¹⁰ Oil issue was at the heart of the creation of 28 states. Dr Riek's creation of 21 states is attributed to political economy calculations and so was President Kiir's creation of 28 states.

Some quarters in the opposition, though recognize the decision as a step in the right direction, think that President Salva Kiir Mayardit had limited choices. A return to the previous 10 states was apparently a consequence of pressure, claiming that the government faced immense threats, both regionally and internationally. To be safe, this response had to be made. Some in this camp see little merit in appreciating the president for making this decision. The combination of threats and the guilt of having created a mess by instituting new administrative units in contravention of the constitution and the 2015 peace agreement are tabled as the basis for withholding this recognition. Not all the opposition groups are oblivious to the need to recognize and appreciate President Salva Kiir Mayardit's decision. The United People's Democratic Party, led by Hon. Wol Deng Atak, a former Member of Parliament from Warrap State, has this to say:

The United People's Democratic Party (UPDP) welcomes the decision made by President Salva Kiir Mayardit to revert to 10 states and upholding Administrative statuses for Abyei, Boma, and Ruweng. The revert sets in motion a peaceful South Sudan. More so, we believe there is a justifiable ground for the statuses of the three Administrative Areas cited under the revert thereof.

The SPLM Leaders (FDs) and Other Political Parties (OPP) groups also welcome the decision. Several other voices in the citizenry express reservations about the establishment of Ruweng and Pibor as administrative areas. Dr. Peter Adwok Nyaba, a renown South Sudanese analyst, remarks:

There was reason for curbing out Ruweng as an administrative area, but I thought there was need to train our people to toleration, unity, peaceful coexistence and social harmony than opting for physical and administrative separation.

IGAD also welcomes the government's decision. The IGAD Envoy, Ambassador Ismail Wais, states: "This is pivotal for the formation of the Revitalized Transitional Government of National Unity (R-TGoNU) and our quest for lasting peace in the Republic of South Sudan. I congratulate the leadership of President Salva Kiir Mayardit and the Government of South Sudan for taking a bold decision for the sake of the country." In addition, IGAD urges regional and international partners to provide sustained support for the peace process. Norwegian Minister of Foreign Affairs whose country has been one of the key supporters of the people of South Sudan, has this to say on twitter: 'We recognise President Kiir's compromise on the issue of states in [#SouthSudan](#). Important step towards peace & inclusive unity gov. Parties share the responsibility to use momentum & take more brave decisions to resolve challenges ahead. Norway then ready to step up.'

3 Repercussions

While the decision raises prospects for peace, it does not come without repercussions. For it to restore peace, those who see themselves as victims of it should be persuaded not to become spoilers. The victims include citizens in support of 32 states and government officials who have lost their jobs. Some of the government officials, include 32 governors who subsequently lost their jobs. During the consultation on 14 February 2020, the governors were among the many stakeholders who wanted the 32 states maintained. Other state officials have equally lost their jobs following this decision.

Managing the aftermaths of this decision is crucial to ensure more troubles are avoided. In fact, many of those who objected to the 10 states initially cited the fact that it would create many spoilers. It is a known fact that this war has been about positions. David Yau Yau from Pibor rebelled after losing a parliamentary election in 2010. George Athor (RIP) also rebelled after losing a gubernatorial election in Jonglei State, and Gatluak Gai (RIP) rebelled in Unity State following a disputed election. There was also an election dispute in Northern Bhar al Ghazal that pushed General Dau Aturjong to rebellion in 2013. All these incidents are fresh in people's minds, making them fear that those who have lost their positions through the dissolution of 32 states may cause security troubles if their fears are not adequately assuaged.

The President has already set up a High-Level Committee led by Vice President Dr James Wani Igga to address the concerns of lost employment. However, what is not clear is how to address grievances of the citizens of the dissolved states. As we cited early, citizens demanded more states for various reasons. One of these is the fact that some were marginalized in the ten states. Residents of places like Renk, Gok, Twic, and Amadi, among others, feel they are being returned to oppressions. In the last few days, residents of Renk have been demonstrating against the decision to return to Upper Nile State. Others do not want to return to the ten states because of the 2013 conflict, which weakened social fabrics, culminating in ethnic targeting. For example, the Nuer were targeted in Juba, explaining why a Nuer-dominated SPLM/A IO refused to form the government before Juba is demilitarized. The Dinka were targeted in Bentiu, Bor, Akobo, Nasir, and Malakal, prompting security fears under the 10 states system. In fact, the 2013 war massacres in Bentiu compelled the Ruweng people to lobby for a special administrative status. Some people from Jonglei have requested the relocation of the capital out of Bor in an attempt to avoid the 2013 catastrophe. The creation of 28 states helped minimize atrocities along ethnic lines following the second phase of the conflict in July 2016. For example, there were fewer ethnically motivated killings in 2016 in major towns. Although segregation is unsustainable, ethnic isolation seems to have reduced hostilities. With return to 10 states, citizens are reminded of what could happen should the leaders disagree and take them back to war. These potential repercussions could be addressed by instituting the rule of law, providing law and order, and protecting life and property regardless of ethnicity. This could restore social bonds and confidence in the government.

4 Legal and economic implications

Violation of constitution and the ARCSS was the main argument against the former 32 states, as they were created through an executive order by the president. Similar legal

implications may apply to the reversion to 10 states, plus three administrative areas. The executive order Number 36 that created 28 states, later expanded to 32 states, stipulates that the order could not be amended unless by another executive order. Therefore, the return to 10 states would need another order by the president but that alone would not make it legal. The Final Resolution of the Presidency provides a policy direction to return to ten states, plus three administrative areas. The President is mandated to use article 101(f) of the Transitional Constitution to initiate a constitutional amendment to reinstitute the 10 states.

While this legal procedure appears to be followed at the moment, with the Minister of Justice given the directive to legally effect the policy changes, the time frame for amending the constitution is about one month. Article 199 of the Transitional Constitution in particular states that “this constitution shall not be amended unless the proposed amendment is approved by two-thirds of all members of each House of the National Legislature sitting separately and only after introduction of the draft amendment at least one month prior to the deliberations.” As we mentioned early, the new changes in the number of states have already been incorporated into the constitution through a constitutional amendment bill presented to the Parliament, passed and signed by the President. Technically and procedurally, the amendment cannot be introduced and passed the same day or before a month as this violates the constitution itself as we cited early. Some argue that since the parliament was already in the process of constitutional amendment and since the proposed amendment was also in regards to the peace agreement whose incorporation amendment bill had already started, there is no violation as the process had already began a month early. Others argue that since the bill was a stand alone proposal, it needed the normal amendment procedures. The bottom-line is that the law should be followed regardless of the matter at hand.

Some people have questioned the legal basis of the three administrative areas. While the Ruweng did not exist as an administrative area before the creation of the 28 states, the two other administrative areas of Abyei and Pibor did. Described as the land of nine Ngok Chiefdoms annexed in 1905 from Bahr el Ghazal Province to Kordofan Province, Abyei is a disputed area between South Sudan and Sudan. Based on the Comprehensive Peace Agreement (CPA), which ended the war between the North and South in 2005, Abyei was granted the right of self-determination through a referendum, whether to join South Sudan or remain in Sudan. The referendum was supposed to be held in 2011 together with the Southern Sudan referendum, but it did not happen because the Sudanese government thwarted the process. In 2013, the people of Abyei unilaterally conducted their own referendum, overwhelmingly voting to join South Sudan. Sudan, however, did not recognize these results.

Abyei is accorded a special administration status by the South Sudan’s Transitional Constitution 2011 (as amended) and by the Republican Order Number 03/2015 that implements the Constitutional mandate. Article 97 (4) particularly states that awaiting a final resolution on the status of Abyei, the area “is accorded a special administrative status under the Office of the President of the Republic of South Sudan.” The constitution also accords Abyei’s inhabitants “an inalienable right to enjoy South Sudanese citizenship and nationality and all rights and freedoms guaranteed by” the constitution.

Ruweng is a Dinka constituency located in a predominantly Nuer State of Unity, also known as Western Upper Nile. According to sources from the area, persistent social injustice and ethnically motivated violence dating as far back as 1990s have prompted the Ruweng people to seek a special status, with the first proposal submitted to the government in 2014¹¹. Pibor as an administrative area, on the other hand, was established in 2013 through an agreement with a Pibor based rebel group led by David Yau Yau.

The return to the ten states does not only restore peace. It also presents an opportunity to restore economic viability at the subnational levels, as fewer states could be sustained with available, limited resources. As state governments shrink, more resources will be freed up for development, increasing economic viability. In addition, the return to ten states also creates regional population centers in states capital which the previous 32 state arrangement had prevented. Large concentrations of people increase economic productivity.

5 Conclusions

The President has made a bold decision that could build confidence in the peace process. The decision has received mixed reactions. Many people have positively received the decision while others have been disappointed. In principle, people appear to accept the decision provided that it will bring lasting peace. But the government and the opposition should not rely on this general acceptance. The views on both sides should be weighed and given the attention they deserve as part of providing a durable solution to the number of states and boundaries and, by extension, to the conflict. Indeed, the decision raises high hopes for peace.

Restoring peace in South Sudan depends on a host of factors, including managing the potential spoilers that may be created by these changes, implementing other crucial parts of the agreement, including security, governance, economy, and truth, justice and reconciliation.

It is important to note that while the President has made a decision to return the country to 10 states plus three administrative areas, the issue of the number of states and boundaries remains unresolved. This is now deferred to the transitional period. Finally, the crisis in South Sudan has little to do with the number of states and boundaries. The problem is deeply rooted in the style of governance and militarized mindsets and

¹¹ James Mayik, a citizen of Ruweng argues: “This quest for an independent administrative area was motivated by a pattern of horrific insecurity which traces as far back as 1991. By declaring Ruweng an Administrative Area (RAA) on the 14th of February 2020, it is critically important to acknowledge that the Presidency of South Sudan has positively responded to the popular demand of the Ruweng people which was launched since 2014.”

practices. Building strong governance institutions and reforming the mindsets and practices will go a long way in achieving durable peace in South Sudan.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

Author's Biography

Augustino Ting Mayai is the Director of Research at the Sudd Institute. He holds a PhD in Sociology, with concentrations on demography and development from the University of Wisconsin-Madison. He currently studies how state effectiveness affects child health outcomes in South Sudan and Ethiopia. Dr. Mayai has written extensively on South Sudan's current affairs.

Nhial Tiitmamer is Director of Environmental and Natural Resources Program at The Sudd Institute and a part time lecturer at the University of Juba. Before joining The Sudd Institute in 2013, Nhial spent research and consulting stints at Arletta Environmental Consulting in Calgary and at the University of Alberta's Augustana Campus in Camrose, Canada. Nhial holds a B.A. in Environmental Studies with a minor in English Literature from the University of Alberta's Augustana Campus, where he was editor of The Daglightale, a student newspaper and an M.Sc. in Sustainable Energy Development from the University of Calgary in Alberta, Canada. Nhial is the co-founder of the NewSudanVision.com and has extensively commented and written on issues about South Sudan and Sudan.