
State, Law, and Insecurity in South Sudan

JOK MADUT JOK

Between 2005 and 2011, when South Sudan was preparing for separation, foreign analysts, journalists, and human rights groups had various predictions about what was about to become the world's newest country: that it was going to be a "pre-failed state," in the words of *The Economist*; that it was going to exemplify the classic definition of what political scientists call a weak state; or that it would simply become another oil kleptocracy, incapable of transforming itself into the democratic state for which its citizens had yearned and died. Others pointed to the history of militancy and ethnic violence that had engulfed the country throughout the 1990s, speculating that if these conflicts were not addressed properly and quickly, South Sudan would most likely implode. There was indeed no shortage of challenges that could derail every promise the idea of independence represented for the people of this young nation. But violence, ethnic-based or militia-inspired, was the issue many commentators cited as the single most important concern for the citizens. It was also the greatest consideration for those who predicted the demise of the state, especially because ethnic fault lines often lead to the disintegration of states, even though causes of disintegration may be rooted in the many political, economic, and historical complexities of colonialism, wars of liberation, local competitions, or disregard for the rule of law by some institutions, including the security organs and the nation's army.

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These predictions outraged many of South Sudan's leaders, who dismissed them as nothing more than the wishes of the country's enemies or of doomsayers who probably knew very little about the resilience of the South Sudanese and their determination to build a country. The leaders shared a vision of taking their people to the promised land, in spite of the destruction of a fifty-year war, tribal conflicts, and ill intentions of the rump state, the Republic of Sudan. Indeed, the leaders of South Sudan were admittedly aware of, and had gone on record to say that, the biggest challenge they would face would be the efforts of the Sudanese government to undermine South Sudan, so long as the governing National Congress Party of Sudan remained in power. The rest of the issues—such as local ethnic violence, armed militias, concerns about development, and basic social service delivery—were surely gigantic but not insurmountable.

Today, still less than three full years from independence, it is fair to ask whether the predictions of “doomsayers” and optimistic leaders have held true. This paper attempts to present a nuanced answer, weighing the

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arguments on each side. By alerting the country's leadership and civil society to the possibility of anarchy given the combination of weakness of institutions, corruption, history of violence, and political disunity, the critics could have saved the country. By taking the criticism as a useful basis for reform, the leaders could have shown the political maturity that it takes to build an inclusive and open democratic system, which is, in turn, a recipe for prosperity. Instead, the recent months have revealed a crumbling security apparatus,

slow security sector reform, a weak judiciary, and skyrocketing crime rates, particularly in urban centers, due to economic problems.

The following sections of the paper will review what has been said, written, and contested about the state of physical safety, access to justice, and the role of the state as provider of protection, or, alternatively a source of insecurity and impunity. Based on interviews with many citizens' groups, this paper will describe the sources, dynamics, and impact of insecurity on the state, on the social order, and on the whole society and nation. It will also highlight some major policy actions that can rectify this situation. It will consider both urban and rural insecurity, as well as that caused by

civilians and the armed forces. The paper recommends that violence can only be quelled through fundamental restructuring of the security forces and a reduction in the size of the army, to make it more efficient and easy to control.²

**VIOLENCE IN SOCIAL HISTORICAL CONTEXTS:
IMPLICATIONS FOR STATE LEGITIMACY**

Though violence and general insecurity have always been a major concern for the people and government of South Sudan, this has increased in recent months. Since the country's independence in 2011, it has been common to hear many people and institutions—whether law enforcement agencies, judiciary, opposition political parties, individual citizens, human rights groups, or organized local civil rights activists—decriing the seemingly escalating insecurity across the country. At independence, personal safety and general security were among the most anticipated benefits of the political transition. Soon after casting his vote in the South Sudan referendum, a man remarked: “That we will not have to keep running away from our homes, that our children can be safe and our communities will no longer be constantly in fear that Khartoum might drop bombs on them, that is the biggest relief that independence will bring us ... even if we do not have enough to eat.” In opinion surveys on peoples' perceptions about the government of their new nation, including the surveys conducted by the National Democratic Institute (NDI), security has always been selected as the most important service the government is expected to provide. Everything else—from development to food security to stability of the nation—hinges upon the country's capacity to protect life and property.

But in the last three months of 2012, people increasingly lived in fear as political, ethnic, and criminal violence rocked large urban centers across the nation. The absence of a sense of personal safety has now become

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ubiquitous, with robberies becoming more brazen, evening muggings of aid workers on the rise, and the behavior of security services personnel becoming a source of insecurity. Recent events involving political murders, the abduction of civil rights activists, and, above all, the inability of victims or their families to access justice, have shocked Juba. Insecurity has risen to a level where fear has started to hold people hostage in their neighborhoods at night. Foreign migrant laborers have been targeted both by elements in the security agencies and by local unemployed youth, who only see growing economic and lifestyle disparities between themselves and the few young people who are relatives of the political class. There is also increasing xenophobia against migrant youth from East African countries, as they are seen by the local youth as having stolen their jobs and living better lives than the citizens. These are only a few examples of how insecurity, rather than the promise of opportunity, now characterizes everyday life in post-independence South Sudan and will probably do so for the foreseeable future.

Rural Violence

Rural violence is largely ethnic in nature and a remnant of the two-decade civil war between the north and south of the old Sudan. Since 2008, some of the most shocking and widely reported incidents of insecurity in rural areas have emerged from Jonglei state.³ These stories and reports describe ethnic conflict between the three main nationalities in the state: the Nuer, Dinka, and Murle. Although this has been widely reported by journalists and analyzed by academics and policy researchers from local institutions as well as foreign organizations,⁴ such analysis has largely focused on the shocking level of brutality of these conflicts over the past five years, and less on presenting a nuanced study of the social order and the complex historical context of the region.

These analysts, however, agree that the extreme forms of violence and destruction witnessed in Jonglei and many other states since the end of the north-south war have threatened the livelihoods and lives of everyday people. If it continues unmitigated, this violence could jeopardize the viability of the whole country. What many researchers and analysts have not been able to agree on are the causes and dynamics of these forms of brutal violence. Some have reported rivalry over grazing lands, others attribute the violence to rising bride wealth that forces young men into raiding the cattle of opposing ethnic groups, and yet others have blamed it on armed civilian youth that acquired guns left over from the two-decade civil war mentioned above.⁵

Urban Violence

Many foreign workers from Uganda, Kenya, Ethiopia, Somalia, and Eritrea—some conducting business in the hospitality industry, real estate, construction materials, or food commodities, others involved in some of the more menial occupations that the South Sudanese refuse to carry out—have been constantly harassed and killed, sometimes in cold blood by uniformed forces.⁶ Civil society activists and critics of the government have been threatened, kidnapped, or killed. Robberies have become more brazen over the past year, especially in major urban centers like Juba. Physical assaults by ordinary citizens on other citizens have become so common that the entire society seems to live in fear, held hostage to a climate of uncertainty about who or what should protect them against this generalized insecurity. These episodes of violence have one thing in common: they never get successfully investigated with the culprits brought to book. As far as one is able to verify, not a single

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case of murder, armed robbery, or assault on a citizen has been investigated or settled. Victims or affected families have not been able to receive justice because there have been no sufficient investigations by the police, or because they have been threatened with violence if they seek legal action or talk about their experience in public. This makes the state—the party with the responsibility to protect—suspect in the eyes of many citizens, either because it is overwhelmed by this constant upsurge of violence, complacent, or involved in the perpetration of crime.

This has also left many people in South Sudanese towns wondering whether this is the kind of crime usually associated with the rapid growth of urban centers in developing countries, or if it is also politically motivated. Many of the cases of violence involving killing or gun-related injuries and armed robberies are reported by victims and their families as having been carried out by people in uniform or by people riding in vehicles that do not bear license plates, so the government and its security agents are suspect. It is worth noting that the only vehicles officially permitted to operate without identification plates are those used by the national intelligence and security services, leaving many ordinary citizens and some public figures to wonder about the reason for such a practice. But senior government officials flatly deny the accusations of government involvement in this growing

urban violence. For example, Isaiah Diing Abraham, a prolific opinion writer in the local press and critic of certain government practices, was killed execution-style in his own home in December 2012. The president of the Republic condemned his death in the strongest terms possible and urged the security forces to conduct a thorough investigation so as to clear their own name, stating, “I am sure that it is not you, the police or army, that are doing these things.”⁷

Violent Crime and the Security Services

One of the most obvious explanations for the frequent implication of South Sudan’s uniformed forces in violence against civilians is the history of the military institution, the Sudan People’s Liberation Army. This institution was put together haphazardly when the north-south war ended in 2005, with the lead liberation force, the SPLA, having to absorb former militias that had previously been aligned with northern Sudan’s authorities against the SPLA. There were many of these militias that had to be incorporated into the institution. The SPLA also absorbed former Sudan Armed Forces personnel who were of South Sudanese origin. The arrangements to unify former warring forces into a single national army were made through intense meetings and mediation.⁸ The absorption was done as a reconciliation process to enable South Sudanese, who had often bitterly disagreed among themselves during the war against the north, to find a way to move

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beyond those very deadly and painful periods in their struggle for freedom. The process of absorbing these disparate armed groups resulted in grossly inflated ranks; the SPLA currently has a similar number of generals as the United States military.⁹ This has led to the lack of a unified institutional culture. It has also meant the absence of a single chain of command, inadequate training in military discipline, and no clear message about the responsibilities of men and women in uniform—especially the rules that govern their interactions with civilians. Above all, the military is wracked by the enormous amount of money it has received in oil proceeds. It has received a bigger chunk of the national budget than

any other institution—more than education, health, agriculture, and infrastructure combined. A mentality of entitlement for the officer corps as “liberators” kicked in and the image of the nation’s army, of “our hero,” was irrevocably tarnished. The ordinary soldier, the disabled veteran, and civilians fell by the wayside in the officers’ scramble to “get-rich-quick” and to “make-up-for-the-years-in-the-bush.”

It is not surprising that when the members of such an important national institution conduct themselves in ways that so flagrantly depart from their mandate, a culture of impunity sets in throughout the country. In South Sudan, soldiers act outside their legal confines, while ordinary civilians bear the brunt of the institutional failure of the country’s defense forces. Indeed, many tribal fights are not quelled, but rather are exacerbated by, the SPLA’s response to them. The excesses meted out against civilians in these situations are often quite shocking, with the SPLA looting property, engaging in physical abuse, and taking sides in the tribal conflicts they are expected to break up.¹⁰ Furthermore, without a good system to track all the weapons and to account for them when they go missing, the SPLA has become a source of weapons for these tribal feuds, as some personnel sell their firearms to warring factions. As it stands, this system is wide open for personal abuse of power. Many SPLA generals surround themselves with armies of up to fifteen bodyguards, who pledge their allegiance and services to an individual rather than the institution. At times, the generals use them to attack opponents within the same institution.

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In Juba, many assassination attempts involving armed attacks by the personal armies of one man against other senior officers have occurred. The presence of such a large number of soldiers, constantly armed, riding in public transport with their guns, going to bars and entering night clubs with their weapons, makes them more of a security risk than a force protecting the safety of the nation. Actions such as random shootings at night, breaking into homes, stripping vehicles of their license plates, and teaming up with criminals to terrorize entire neighborhoods have all created a negative public image of law enforcement. “Instead of running to the police or the army for protection when one’s safety is in danger, people actually run away from them,” one Juba resident remarked in an interview.

When Sudan was still one country, some of the most common complaints by South Sudanese about the behavior of the Khartoum government were related to the actions of the national security and intelligence services, which involved arbitrary arrests, the disappearance of suspected anti-government individuals, suppression of opinion, harassment of members of opposition political parties, the arrest of journalists, and other such actions against citizens' basic constitutional rights. So it was only natural that the independence of South Sudan promised a transformation in the way the local government related to its citizens. But the government has surely not lived up to these expectations, at least insofar as the actions of national security agents are concerned. Whether these actions are sanctioned by national policy are the actions of a few rogue elements, the entire government gets blamed.

Gender and Impunity: The Failure of the Justice System

In addition to violence related to common crime, security force misconduct, political targeting, militia activity, and ethnic conflict, there are also security issues related to gender. There are many examples to support the report that South Sudan's justice system, whether customary or statutory law, leaves a lot to be desired in the area of equitable access to security, justice, and any form of recompense.¹¹ The benefits of the new post-war transitional constitution, the national policies on security, and the nation's responsibility to protect its citizens are all subject to many biases, particularly gendered cultural definitions of justice. While there are many factors that define who receives security and legal protection, women are particularly excluded from access to the justice system. This is often due to the war-related weakness of that protection system itself, which has been eroded by many years of conflict between what is now the Republic of South Sudan and the government of the old Sudan. It is also related to certain cultural practices that are inherently unfavorable to women. For example, ideas about a woman's station in society make it difficult for the justice system to sufficiently and evenhandedly address violence against women, whether in the domestic setting in the case of rape, or in any other form of violence against women.

We have documented that most women, whether rural or urban, do not seek justice after experiencing any of these types of violence, especially cases of sexual violence. This is largely related to the readily applied perceptions that a woman who reports rape, for example, brings shame to herself and her family. Many women have explained that this may also be

due to male biases in patriarchal societies that either automatically dismiss the cases as women's lies or blame them for possibly provoking the acts of violence. "You can't win," said one women's rights activist in Yei in an interview some years ago. "If you report sexual assault to your relatives, husband, or to the police, they will most likely try to shut you up, not to bring disgrace to them, and if you do not report it and the husband finds out by chance at a later date, you might be accused of adultery."¹²

Many women who may have the courage to report such violations of their very basic rights are often taunted, laughed at, and sometimes dismissed by the police, as the police institutions are often without specialized training to deal with such cases. But as the practice goes in South Sudan, if a woman seeks medical attention for injuries sustained in an assault, doctors might turn her away until she gets a police report. And when she has been examined by a clinician—a process that can

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document the attack, and can be used as evidence in court if the woman pursues a legal case against her attackers—it turns out that many women cannot get proper medical examination either, because the same cultural biases possessed by the police are also common with medical officers—all that the doctors are sometimes willing to conclude from the examination is "alleged rape," evidence that can hardly support her case in court.¹³

This biased attitude to justice, whether it is based on cultural and social influences or emanates from the institutional weakness of the various components of government that make up the justice system, has created a culture of impunity. In addition to failing to ensure restitution, South Sudan's justice system is so distorted that it actually goes after women. For example, a woman can be injured by her family for refusing to marry a man chosen for her by others. Because such actions usually go unpunished, it makes them seem that they are legally condoned. Another can be arrested because her young daughter has eloped. Others are forced to live in unworkable marriages with little opportunity to seek divorce, all in the name of upholding culture and the society's supposed moral fabric.

The State and an Integrated Security Regime

The fact that life has become so difficult for most citizens so early into South Sudan's independence—with human life being taken without consequence and citizens having limited opportunity to seek justice—belies most of the things that independence had promised. While the predictions of collapse or state failure by international commentators and analysts may not have all come true, the slide in that direction cannot be ignored. Even

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justice system, from the police, to the judges, to the prison wardens. Are those taking human life worse than those who do not take action to stop such atrocities?

more shocking is the fact that insecurity and violence are occurring from within South Sudan, at the hands of a people who want to project unity, and at the hands of the state and its security apparatus—not by Khartoum authorities, as had been expected. The most highly anticipated independence dividend, peace and security, has become the most difficult to achieve, all under the watch of a government that had promised so much. So what went wrong?

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CONCLUSION

South Sudan has inherited a serious historical burden of war and destruction, wrecked ethnic relations, and a massive challenge of reconstruction. That experience needs to be correctly understood if the people of this young nation are going to be able to offload that past in a peaceful manner. Researchers and policymakers have to seek correct chronicling and analyses of that historical experience. It is extremely important that

top level policy-making be conscious of this in the design of reconciliation processes between ethnic groups, in the allocation of resources, and in the search for political unity between the various parties once united by a common purpose to liberate the country. Furthermore, policymakers, along with their advisors, the research community, the media, and civic associations, need to agree on new goals and on a roadmap to achieve them. Such a unity of purpose requires dialogue, a strong communication system beyond just a Ministry of Information, and an open political space that in turn requires a strong legislative process with basic rights ensured.

These are aspects in which South Sudanese communities have historically thrived. Local traditional societies were very open, with ordinary people given the ability to stand in front of a chief and criticize him to his face and tell him that he had misgoverned or been unjust. There was nothing the chief could do to a critic. Instead, leaders of the past had the humility to take what sounded like criticism as a form of advice, turning it to their advantage by using it as the basis for their next decisions. Current political leaders might be able to take a page from that history and start building open societies, which would be the basis for conflict resolution.

The current government faces a serious dilemma in its response to the ongoing violence. On one hand, its police force is too weak to stop criminals and militias. On the other, it cannot give this task to the military without risking the remilitarization of society. In short, without an effective guarantor of security, South Sudan is in trouble. Without this ability to guarantee security, what does the state have that could enable it to assert itself as the only entity with a monopoly on the use of violence? It has a haphazard system that attempts to disarm civilians but does so by means of a military institution that has no unified culture, and does not reign in the excesses of the security forces. Adding into the mix the economic crisis of the oil shutdown, political disputes between governors and county commissioners, the many armed men who roam neighborhoods at night, and the security guards of the generals and ministers who often overstep their boundaries and abuse citizens, South Sudan is staring history in the face. The only way to avert a disaster rooted in history is by reckoning with the past, designing a reconciliation process, training the security forces in ethics that uniformed men and women are supposed to abide by, and undertaking a concerted effort to return to an open democratic society. Leadership that is based on suspicion, fear, and gender discrimination is leadership looking into an abyss. ■

ENDNOTES

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