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RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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South Sudan's National Security Bill: Merits and Public Reactions

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South Sudan's National Security Bill has been under parliamentary vetting in the last few weeks, and the law-making body has just passed it on October 6, 2014. The Bill now awaits the president's endorsement into law. Being a brand new country, this is South Sudan's first attempt to put together a regulatory framework for its security sector. This enterprise, a venture per se, is good start for a country that has virtually lacked security laws so far. Upon presentation of this Bill to the parliament, many South Sudanese, other concerned people, and organizations from around the world were hoping for the lawmakers to reflect very seriously on the need of the country for a good law that tackles the security challenges facing all its citizens and the nation as a whole. As a country wrecked by political violence, consequently facing a rebellion in a third of its territory, creation of a national security law is unavoidable. Generally, the Bill has noble contributions toward mainstreaming South Sudan's national security reforms. When its proceeding was adjourned[1] last week owing perhaps to the ongoing disapproving discourse in the public, as well as among some members of the national parliament, towards the Bill, this move was applauded, signaling that the lawmakers were going to take time and study the merits, value, and implications of such law. Passed during its fourth reading, with some substantial yet minor amendments made to the original draft, the law continues to have seriously flawed clauses.

More specifically, the Bill's three original Articles, 12 on Powers and Functions of the Service, 50 on Service members' Powers to Arrest, and 51 on Rights of Person under Arrest, Detention or Confinement, have raised a significant alarm, causing what seems to be a vehement objection to the new legal framework in a number of settings. Article 12(d, now 12(e)) recommends seizure of private property provided it is connected to an offense. Article 50(1), now 51(1), mandates Service members to arrest anyone without a warrant

[1] Sudan Tribune reports: October 2, 2014 (JUBA) – South Sudan lawmakers cancelled a scheduled debate on a National Security Service (NSS) Bill at the last minute on Thursday, and further delaying the adoption of the document. Web link: http://sudantribune.com/spip.php?article52617.

from a judicial authority, while Article 51(d)[2], now 52(d), rids the state of the function to materially cater to those it arrests or detains, stipulating that "a person under detention shall have the right to obtain reasonable amount of foodstuff, reading materials and clothes at his or her own expenses" (sic). Thankfully, Article 52(d) has been deleted, the most substantial change being made to the law so far. However, there seems to be a general consensus in a number of diverse quarters that these provisions appear rather draconian, with the remaining two potentially requiring careful revisions or amendments. Another appealing modification to the law is the deletion of a clause that grants service members immunity. The modifications effected on Articles 12 and 51 seem unsatisfactory since, for instance, in the case of 51, being 'reasonably suspected' makes the law essentially ambiguous, lending potential for abuse by rogue security elements.

This review provides an in-depth analysis into this new law, focusing primarily on resultant public opinion and what the new law constitutes for the South Sudanese general constituency as it complements and cements the existing operational culture of the National Security Service (NSS). The review ends with some policy directions.

This security Bill comes at a time when South Sudan is embroiled in a deadly conflict—a situation that has now endured for nearly a year and continues to plague much of the society. Granting the NSS absolutely unfettered powers to arrest, detain, or seize private property, the Bill is not only viewed as compromising on private liberties, it also appears as a deliberate project by Juba authorities to divert attention from the current crisis, which demands an immediate, comprehensive solution. The present public discourse on the Bill expressively suggests that a sober public authority as in the national parliament would have demonstrated leadership by prioritizing on ending the current skirmish before embarking on policy endeavors that are not of immediate significance. "The regime's policy makers seem oblivious of the ongoing civil war and want to add salt to the wounds by enacting such oppressive law. I now understand that power can sometimes render blind its wielder", remarks a prominent South Sudanese politician. Perhaps put another way, the regime's policy makers seem bent on taking advantage of the general insecurity in the country to heap state powers in a handful of institutions without actually doing much to address the sources of insecurity. Seen as a mere attempt to wield power, the Bill features as one of GoSS' typical brinkmanship policies aimed at pointlessly consolidating

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[2]Article 50. Powers to Arrest (51 in the fourth reading).

(1) An officer or member authorized by the Minister or Director General concerned may, without warrant, arrest any person if such officer or member reasonably suspects that the person to be arrested has committed or is about to commit an offence punishable by law.

Change(s) according to the fourth reading: Any person who is found committing any one of the offences against the state as provided under section 5 of this Bill or who is reasonably suspected of having committed or having attempted to commit or being about to commit such an offence may be arrested without a warrant by any service officer and detained.

executive powers in the hand of an incoherent, delicate security institution.

The Bill[3] also comes at a time when the public remains skeptical and strongly critical of the role and reputation of the National Security System. To many citizens, South Sudan's National Security has a reputation of ruthlessly harassing private citizens, at times violently hurting them without a just call. The institution regularly gets labeled as being above the law because some of its members seem to command liberty to beat up, arrest, issue death threats to, and incarcerate any citizen as they so wish—behaviors that often go unpunished. The ubiquitous reluctance by the same system to rein its members in for misbehaving places the NSS' credibility in jeopardy before the general public. The powers that are now given to this institution, should the president sign this Bill into law, would simply sanction the already existing and ghastly behavior by security agencies. Perhaps those who will attempt to expose or challenge these behaviors would be subject to this new law and the citizens' basic right to seek redress for the abuses will be trampled upon as usual. To the concerned citizens, the new regulations further endorse this unflattering reputation, giving a worrying signal to the general public. That is, a law that mandates the NSS to arrest, detain, and seize property as it wishes, seems to ultimately make for a worrying state for those citizens who now question it. In fact, so many citizens question the very need for such a law when the NSS is already engaged in things that are now being coded into a law. In other words, the law is feared to not be adding anything by way of improving people's security, but is instead seen as a project whose long-term implications will be dire.

That the NSS is legally mandated to harm as opposed to protecting the public appears like an appropriate sentiment being currently communicated in various forums. In the words of a South Sudanese commentator, "The law would basically legalize what everyone has been complaining about all along, yet I naively hoped that legislation would clarify the role of national security to ensure that they can work in service of the country and the people, rather than being a source of fear for ordinary people."

The premise of an arrest without a warrant is reasonable suspicion. Clearly, this is concerning as another citizen remarks: "It doesn't say who gets to define "reasonable". Notably there's no explanation about what happens after a subject is arrested. In the section on rights of detained people there's no right to be brought before

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[3]Article 51. Rights of Person under Arrest, Detention or Confinement

(d) Subject to circumstances related to security and order at custody, a person under detention shall have the right to obtain reasonable amount of foodstuff, reading materials and clothes at his or her own expenses.

Change(s) according to the fourth reading: This clause has been deleted.

12. Powers and Functions of the Service
(d) seize property connected with an offence in accordance with the law. With minor modifications to the wording, the clause changed to (e) in the fourth reading.

a court or any other authority to review one's detention."

Despite its other good provisions, the articles in question make the Bill[4] a draconian piece of legislation, seemingly putting South Sudan in conflict with its liberation values, especially those concerned with liberty, freedom, justice, peace, and security for all. The Bill seems to renovate Khartoum's repressive style of governance, which helped South Sudan secede. In fact, a former SPLM representative in the government of national unity suspects the current Bill might have been copied from Khartoum. "It seems the draft Bill is the same bill presented by the NCP in 2010 and which the SPLM rejected and I recall the situation in the Council of Ministers when President Bashir barked at me because of my negative attitude to the provisions of arresting, detaining and attaching property. I am surprised that Kiir's government wants to replicate the NCP in everything including oppressive laws it was fighting against in the long war of liberation.." (Sic).

Apparently, in 2010 the NCP led central government presented a similar, if not the same, security Bill, which the SPLM vehemently protested against, citing the repressive nature of the proposed law. Indeed, further examination of the scanned copy of the original Bill partly confirms this suspicion: the present Bill was drafted on 19th May 2011, two months prior to South Sudan's independence. We suspect that the Bill might have been simultaneously drafted along with the national transitional constitution as the country prepared to gain statehood. However, a former national security chief told the Sudd Institute that such bill was never initiated in May 2011, for the mandating document, the national constitution, was still undergoing various reviews and vetting processes at the parliament. Alternatively, a bill drafted during this time would have been illegal.

The Bill certainly presents fears in the realm of civil liberties and personal safety, however it is not entirely worthless. The emerging concerns could be addressed through careful review and improvements of relevant provisions. But the legislature has already rushed it, apparently without even reflecting on its long-term implications, not just for the safety of citizens, including the very lawmakers themselves, but also in terms of the current endeavors to end the ongoing conflict. The current provisions, therefore, deserve critical reviews to cohere with national as well as universal rights and values. First, we recommend that the president returns the Bill to the parliament and asks the lawmakers to subject the document to increased clarity of provisions. It is important for the president to avoid what has become a popular belief that the parliament has become subordinate to the presidency. He should not allow this Bill to go through in a climate where he will be the victim of blame, and not the parliament, for yet again another shoddy and dangerous law. For instance, it is not obvious who exactly determines if a property is indeed

[4] "The Bill grants the National Security Service virtually unrestricted powers of arrest, search and seizure and is at odds with South Sudan's Transitional Constitution and with regional and international human rights law and standards. It should not be passed in its current form," said Elizabeth Deng, South Sudan researcher with Amnesty International. Excerpts from Sudan Tribune.

connected to an offense and under which conditions the property is retrievable under false charges. If the president does indeed find the law lacking and manage to return it to the parliament or withhold it until the country has achieved a peace agreement and the parliament is once again composed of all the constituency representatives, the law will have a chance of being improved for the welfare of the whole country. A Bill passed under the current circumstances, where some members have boycotted the proceedings, with a large number of those members representing the regions in conflict, is simply going to be a divisive one, something that the country cannot afford when it is already so divided on other issues.

Secondly, we recommend that all law enforcement agencies/agents should be required to seek arrest warrants from judicial authorities before undertaking them. This allows a judicial process to determine if a particular case requires this measure. Regardless of the wording changes made, Article 12(e) remains problematic in that the security agents can easily abuse it. Removing this clause is recommended, or fitting cases would need to be properly defined. Overall, the Bill should clearly delineate these provisions for an improved national security law of the land.

Finally, instead of boycotting the proceedings, the members of parliament should continue a sober discussion on how to improve this law. We advise that lawmakers who feel dissatisfied with the Bill better serve the interest of their constituencies by voting it down. Disagreements should be allowed as this national debate continues, for an acceptable solution to all may be drawn out of many yet diverse voices.

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.

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