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About this Paper

This paper looks at how organized criminality and state of insecurity in South Sudan has affected the vulnerable population particularly in remote areas. This in turn has implications for the responsibility to protect (R2P) policy and actions by the custodians of peace and order. Towards this end, the paper identifies the South Sudanese government capabilities, state of affairs and options towards performing its duty in order to protect the population. The paper further argues that the R2P policy can only work in a comprehensive framework that views and treats society in a holistic manner. It is argued that there should be a multi-pronged, long-term action whereby peace and security dividends are provided to the South Sudan polity through harmonization of political and economic development efforts.



International Peace Support training Centre

P.O. Box 24232-00505, Karen, Kenya
Tel No. 00254 (0) 20 883164/58
Fax: 00254 (0) 83159
Email: info@ipstc.org
www.ipstc.org



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Organized Crime and Vulnerable Population: Implementing the Responsibility to Protect (R2P) in the Remote Areas of South Sudan



Phillip Arthur Njuguna Mwanika

Enhancing Capacity for Peace & Security through Peace Operations Training

*Organized Crime and Vulnerable
Population: Implementing the
Responsibility to Protect (R2P) in the
Remote Areas of South Sudan*

Phillip Arthur Njuguna Mwanika

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Foreword

This publication is one of IPSTC's contributions to understanding the conflict situation in South Sudan. The role of the International Peace Support Training Center (IPSTC) as a regional center of excellence is to contribute to the preparedness of the Eastern Africa region in addressing peace and security challenges. This demanding and extensive task comprises two essential aspects; namely the ability to raise awareness about problems that may affect the region, and the identification of possible ways to address them.

The complex conflict situation in the Great Lakes region and the Horn of Africa calls for knowledge based policy making on pertinent issues of peace and security. Specifically the post conflict situation in South Sudan calls for profound research and analysis of the current conflict dynamics. Given the fragility of the new nation and the immense challenges of providing security and basic services to the entire country and initiating development amidst scarce resources; South Sudan requires reliable knowledge of conflict prevention, management and resolution.

Organized Crime and Vulnerable Population: Implementing the Responsibility to Protect (R2P) in the Remote Areas of South Sudan; presents how organized criminality and state of insecurity in South Sudan has affected the vulnerable population particularly in remote areas. The paper discusses the implications of the Responsibility-To-Protect (R2P) and identifies the South Sudanese government options to perform its duty in order to protect the population.

The International Peace Support Training Center has made considerable contribution in research and training on peace support issues in the Great Lakes region and the Horn of Africa. The research products inform the design of our training modules.

I would like to thank the Government of Japan and the United Nations Development Programme (UNDP) for supporting the research and publication of this booklet.

IPSTC will continue to collaborate with development partners to publish high quality research products on topical issues of peace and security in the region.

Brigadier R. G. Kabage

Director

IPSTC

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Abbreviations-

GOSS	Government of South Sudan
ICG	International Crisis Group
ICISS	International Commission on Intervention and Sovereignty
IPSTC	International Peace Support Training Centre
LRA	Lord's Resistance Army
NGO	Non-Governmental Organization
NUPI	Norsk Utenrikspolitisk Institutt (Norwegian Institute of International Affairs)
POC	Protection of Civilians
R2P	Responsibility to Protect
SAF	Sudan Armed Forces
SPLM	Sudan People's Liberation Movement
SPLM-DC	Sudan People's Liberation Movement-Democratic Change
SSDM/A	South Sudan Democratic Movement/Army
SSLA	Southern Sudan Liberation Army
UN	United Nations
UPDF	Uganda People's Defence Force

1 Introduction

The Republic of South Sudan is the newest State in the family of Nations. Its creation, early development and existence, have been shaped by historical legacies of struggle, protracted contestation over the space that is now recognized as ‘South Sudan’ and a stream of challenges that have impacted negatively on the State of human security. In post-war economies, and especially in societies that are in their transitional phase, incidences and the culture of disorder, social tussles and violence are always accompaniments of the reconstruction process. Constructing a national identity in a country that just came out of half a century of war, with underlying inter-factional conflicts, and facing considerable economic and social challenges, confidence-building through good governance and providing a sense of security is a key issue. The establishment of the rule of law goes hand-in-hand with the ability to protect citizens from spoilers, with particular attention devoted to human security. Human security especially at the post-independence period has been challenged by the resurgence and escalation of conflicts and social tussles of a ‘third kind’.

The occurrence of new wars, social tussles or conflicts has had an immediate bearing on human security by challenging the legitimacy of the state. Holsti¹ and Kaldor² assert that these conflicts and social tussles of a “third kind” are conflicts within which communities have invoked the mystique of statehood as the ultimate and final mode of gaining political or security advantage for survival. Kaldor³ conducted an analysis of wars or conflicts of a third kind and she found out that these new conflicts can be contrasted with earlier wars in terms of their goals, methods of contestation or fighting and also how they are financed. The goals of the new wars fall within identity politics in contrast to the geo-political or ideological goals of other conflicts. By identity politics she means the claim to power on the basis of a particular identity or following, be it national, clan, religious or linguistic. In contrast to the vertically organized hierarchical units that were typical of old wars, among the units that fight these wars is a disparate range of groups, for example paramilitary units, local warlords, criminal gangs, police forces,

¹HolstiKalevi, *The State, war and the state of war*. (Cambridge: Cambridge Studies in International Relations, Cambridge University Press, 1996), pp. 16-18.

²Kaldor Mary and VasheeBasker. Eds. *New Wars*.(London: Pinter, 1998).

³Kaldor Mary, *New and Old Wars: organized violence in a global era*. 2nd ed. (Stanford, CA: Stanford University Press, 2007)

mercenary groups, and also regular armies, including breakaway units from regular armies⁴. In organizational terms, these new conflicts are highly decentralized and operate through a mixture of confrontation and cooperation, even on opposing sides. In this case, the contours of legitimate actors and issue interests become blurred, thus making any state-oriented action or reaction extremely difficult. This aspect of the new wars alters the domestic environment and challenges both the protection of civilians and the government's weak actions to remedy the situation.

Violence tends to take a brutal and endemic character. These social tussles, conflicts and crimes are perpetrated especially in remote areas organized criminal gangs, thereby challenging the government's ability to contain insecurity. On the other hand are acts of omission or commission by state functionaries and/or law enforcement services. This puts into question the state's obligation to protect its own citizens. On the other hand, the new State has had to contend with inherited problems, challenges and states of affairs. The legacy of a long period of war left the country awash with un-controlled small arms and light weapons that have bred a culture of violence which greatly slow down demobilization, disarmament and reintegration efforts. In terms of infrastructure, the penetration of remote areas by government is still a challenge with poor road networks, communication problems and a myriad development challenges. With a complicated security sector reform process on one hand, a struggling government in terms of bureaucratic priorities in its public administration, and growing internal security challenges, the responsibility to protect citizens is called into question and becomes one of the many 'governance' issues on the table. At the core of a new State's obligations to its citizenry is their protection. The new government must strike a balance between the normal social contract obligations and the responsibility to protect its citizens. This brief intends to begin by providing conceptual clarity on the concept of 'responsibility to protect' and its provisions before examining the challenges of organized crime and their implications for vulnerable groups in the remote areas of the country.

1.2 Objectives of the Study

First, the study seeks to analyse how organized criminality and state of insecurity in South Sudan have affected the vulnerable populations especially in the remote areas of the country. Second, it intends to simplify (for easier understanding) the implications of the Responsibility-To-Protect (R2P) and

⁴Kaldor Ibid, pp. 7-11.

identify the options available to the government in its responsibility to protect the population in non-urban areas.

2.0 Statement of the Problem

The long war with Khartoum bequeathed South Sudan with un-controlled small arms and a persistent culture of violence which strongly challenges demobilization, disarmament and reintegration efforts. The poor road networks, communication and other infrastructures limit the ability of the security forces to effectively access and protect its citizens in the remote areas and/or deliver or facilitate development by way of provision of health services, food security and sanitation management. These inter-connected development concerns cannot be realized without security and this puts the responsibility to protect top of the agenda for the new nation. This paper therefore examines the implementation of the provisions of the responsibility to protect as they apply to South Sudan against a background of organized crime and vulnerable populations.

2.1 Scope of the Study

The study addresses the dynamics, challenges and state of affairs of the protection of civilians in remote areas in the South. Towards this end, the study attempts to juxtapose the theory and practice of the responsibility to protect principle within the context of post-CPA South Sudan. The dynamics involved in the protection of civilians in rural areas are analyzed against the inter-linkages of violence, social conflict and criminality. The complexities of implementing the R2P in South Sudan are analyzed against the challenges facing the new state.

Research Questions

The research questions were four-fold:

- What kind of vulnerabilities and risks are the civilians exposed to in the rural settings?
- Are there official or community-based mechanisms for averting these risks?
- What role do the various security forces play in responding to the various risks posed by organized criminality?

- How should the security forces be organized for an effective national responsibility to protect the population?

3.0 Understanding the Responsibility Protect (R2P) Principle

The United Nations (UN) World Summit of 2005 is remembered as a diplomatic event where the ambitious plan of reforming the world body by the then Secretary General, Kofi Annan, failed. However, even though divisions around the restructuring of the Security Council could not be overcome because of international power politics, some notable positive results were realized: establishment of the Human Rights Council; establishment of the Peacekeeping Commission; and adoption and approval of the principle of the “Responsibility To Protect” (R2P or RTP). A closer look at its principles and procedures reveals its novelty and essence. Of importance is the text of the International Commission on Intervention and Sovereignty (ICIS) that officially established the principle in 2001. It reveals a “highly developed, controversial and highly necessary concept”.⁵ The essence of the ‘responsibility to protect’ stems from a fundamental tenet of statehood, that among other services, the State provides collective security in the observance of the rule of law. However, the concept tends also to imply that when a government does not fulfil its basic function of providing protection to its citizens, the international community must assume this responsibility. As such, the Westphalian principle of non-interference in the internal affairs of independent and sovereign states that was the norm of international relations for hundreds of years and served as a “carte blanche” for the behaviour of governments at domestic level, were no longer to continue being sacred. Sovereignty at this point becomes a conditional right. If a State does not fulfil its obligation of guaranteeing the security of its citizens, especially if it does so consciously, it loses its right to invoke sovereignty as the basis for preventing international intervention which intends to exercise this responsibility⁶.

In essence therefore, the responsibility to protect is a principle which seeks to ensure that the international community never again fails to act in the face of genocide and other gross forms of human rights abuse. These situations have littered different historical developments in the international arena with

⁵ See International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*. (Ottawa: International Development Research Centre. December 2001).

⁶ See Global Centre for the Responsibility to Protect, *Paper on the ‘Responsibility to Protect’ presented at the 2008 Parliamentary hearing at the United Nations*. 20-21 November 2008. Accessible through, <http://www.ipu.org/splz-e/unga08/s1.pdf>, p. 2 as accessed on 18th September 2012.

experiences like Bosnia, Rwanda, Sudan and Somalia. R2P stipulates, first, that States have an obligation to protect their citizens from mass atrocities. Second, that the international community should assist them in doing so, and third, that, if the State in question fails to act appropriately, the responsibility to do so falls on the larger community of States.⁷ The principle has however been controversial in practice. The question of how actors justify or determine situations worth of intervention has been an intricate and contentious aspect of the principle and its practicalities. Towards this end, principles (courtesy of the UN and international community) have been set up as a means and justification for intervention. Six principles have been established to justify military intervention. There must be a just cause threshold; the right intentions must exist; it should be a last resort means; there must be proportional means where the scale, duration and intensity of intervention should be only as much as is needed to avert the particular crisis; there should exist reasonable prospects of success in halting the loss of life or ethnic cleansing; and the right authority (i.e. the UN Security Council) should be the first place from where to seek authority for humanitarian intervention⁸.

⁷Ibid., p. 1.

⁸ See Gareth Evans and Sahnoun, Mohamed, The Responsibility to Protect, *Foreign Affairs* 81, 2002, pp. 99-110.

4.0 Human Security and its Challenges in South Sudan

It must be stressed here that despite the involvement in and scrutiny by the international community of the conflict in Sudan, the real impact of the conflict on the population remains largely unknown. As for the Darfur conflict, the government of Sudan has been implicated in mass crimes that are hard, if not impossible, to document. An example of this is the alleged support of the government of Sudan to the Lord's resistance Army (LRA). There is little doubt about the support provided to the LRA or the Uganda government's support for the SPLM/A until 1997. In 2002, the governments of Sudan and Uganda signed an agreement allowing Ugandan forces to operate in South Sudan to fight the LRA. The agreement's period was prolonged in May 2005 for one year. Yet, in 2006, the government of South Sudan did not formally renew the agreement, leaving two brigades of the Uganda People's Defence Force (UPDF) to operate in South Sudan. Eventually, in 2008, the Government of South Sudan decided to put a stop to this cooperation and asked Uganda to withdraw its forces from South Sudan. In any case, the agreement between Sudan and Uganda challenged state sovereignty and underlined the concern of the Khartoum authorities regarding the influence and impact of the LRA in the region. It was also an opportunity for Khartoum to show its commitment to the so-called "Naivasha Process" that was starting at that time.

The human security environment in South Sudan has changed since the entry into force of the Comprehensive Peace Agreement of 2005. Of importance as noted earlier are changing dynamics in the domestic or internal environment of the new State. These immediate internal challenges are immense and the new government has to handle them with the urgency that they demand. There is persistent insecurity and a precarious humanitarian situation in South Sudan. It is important to note that once the peace agreement came into existence, the war-fatigued South Sudanese peoples expected the new Government of South Sudan (GOSS) and in essence the ruling Sudan People's Liberation Movement (SPLM) to provide the basic human development services that a state is conventionally supposed to deliver. These human security demands came with the new peace in South Sudan. However, to this day, peace-dividends are few, State presence is also imperceptible and there is actually a gap between the relatively young

“established” institutions and their actual “functionality”.⁹ Nowhere is this gap more apparent than in the governance structures that are supposed to enhance the responsibility to protect like rule of law institutions and security services. CPA and Post-CPA Human Security Manifestation

It is apparent that although the CPA formally came to an end with the secession of the South, many critical issues remain unresolved. An aspect which has to this day challenged peace and security and has a bearing on protection of civilians (POC) in South Sudan is the failure by the CPA process parties to reach agreements over the so-called transitional areas (namely, South Kordofan, Abyei, and part of the Blue Nile State). The absence of solutions for northern SPLA units in Southern Kordofan and Blue Nile States not only triggered internal discontent within the SPLM/A but also created a situation whereby the war did not really stop north of the demarcation line, thus affecting the already fragile relationships between the two Sudans. For South Sudan, it is a question of whether they should be redeployed to the South or integrated into the Sudan Armed Forces (SAF).¹⁰ This is also in consideration of the fact that parts of the population in these states which are located in the north have strong historical, ethnic and political ties with the South.

The CPA stipulates that popular consultations are supposed to be held in both states to ascertain the ‘will of the people’ through a democratically elected legislature, on shortcomings in the legal and political arrangements of the CPA. The SPLM however decided that the consultations would not be a referendum¹¹. Tensions between the SPLM-North and the National Congress Party (NCP) at the State level are on the rise, and popular consultations are yet to be completed. The on-going fighting between the Sudan Armed Forces (SAF) and northern SPLA soldiers in South Kordofan illustrate the need for urgent solutions to these outstanding concerns which are having a negative bearing on human security. The recent escalation of insecurity in Abyei and Southern Kordofan, including reports of mass atrocities by government forces and aligned militia against the civilian population, provide for serious

⁹ See International Crisis Group (ICG) Africa Report No 172, *Politics and Transition in the new South Sudan*, 4 April 2011, pp. 1-2.

¹⁰ See Breidlid Marie Ingrid & Lie SandeHarald Jon, Security in Practice 8 (NUPI report). *Challenges to protection of civilians in South Sudan*. (Oslo: Norwegian Institute of International Affairs, 2011), pp. 8-9.

¹¹ See United Nations, *Special Report of the Secretary General on Sudan (S/2011/314)*. (New York: United Nations. 2011), p. 2.; and as cited and explained in Breidlid Marie Ingrid & Lie SandeHarald Jon. (2011). Op Cit, p.9.

human protection concerns. There is also militarization on both sides of the North-South border line which is a major human security challenge.

Critical in the internal challenges to the protection of civilians in South Sudan is the spiral and nature of violence and escalation of the same in the immediate Post CPA period. Mc Envoy and Le Brun (2010) argue that security in the South deteriorated markedly in 2009¹² and was understood by the Government of South Sudan (GOSS) as an extension of the second civil war (the first civil war was from 1956-1972 and the second from 1983-2005). The post-2009 phase saw an array of armed ethnic or tribal groups with numerous grievances against the GOSS. This also was mired with manipulation by power protagonists seeking influence, control and also wealth¹³. However, it is important to note that the upsurge of violence in the post-CPA period was directly linked to the conduct of the civil war and history of Southern fragmentation. The marked rise in armed violence in 2009 caused over 2,500 deaths and displacement of some 350,000 South Sudanese nationals¹⁴. In a report by the UN Secretary General on the United Nations Mission in the Sudan in 2009¹⁵, it was noted that this was a situation which provided a higher number of atrocities and toll than was at the time reported in Darfur, where the humanitarian situation was and still is of serious concern.

4.1 Protection of Civilian in Rural Areas

A closer analysis of events from the escalation of intra-state violence shows that much of this has been taking place in remote rural areas, where communities are often poor and difficult to reach. For example, in one attack in a village in Jonglei State in August 2009, some 161 people were killed, most of them women and children¹⁶. Oxfam asserts that this violence stemmed from a myriad of inter-connected sources¹⁷. Of essence are tensions between northern and southern Sudan, especially over implementation of the

¹²Mc Envoy Claire and Le Brun, *Uncertain future: armed violence in Southern Sudan*. (Geneva: Small Arms Survey, Graduate Institute of International and Development Studies. 2010), p. 11.

¹³ Ibid, pp. 11-12.

¹⁴ See Oxfam, *Rescuing the peace in Southern Sudan*. Joint NGO briefing paper. (Oxford: Oxfam International. January 2010), p. 1

¹⁵ See United Nations, *Report of the Secretary General on the United Nations Mission (UNMIS) in the Sudan*. 21 October 2009, p. 1

¹⁶ This is further analysed in the UN Secretary General's report on UNMIS 2009, op. cit., p. 1.

¹⁷ See Oxfam, op. cit., pp.2-3

CPA which often result in clashes between north and south military units. Natural resource contestations combined with widespread presence of small arms and light weapons have fuelled violence between the South's multiple tribes. Another source of insecurity that challenges the protection of civilians consists of sporadic attacks from Uganda's renegade Lord's Resistance Army (LRA) rebel group. From time to time, the government has taken action to address this problem through disarmament of civilians and establishment of a police force but the presence of the latter is not well felt in the rural areas. Despite these government actions and the presence of the United Nations Mission in South-Sudan, with a mandate to protect civilians, the South Sudanese peoples continue to face daily threats and actual violence. The United Nations noted that a general reduction of violence throughout South Sudan was experienced in the early parts of the year. The situation however rapidly deteriorated following the referendum, mainly attributed to protracted struggles over power and resources, as well as the re-surfacing of ethically-based political rivalry¹⁸. The year 2011 saw a series of deadly tribal clashes and armed rebellions by discontented militia and SPLA defectors which further escalated the violence. The armed uprisings in various locations in the South since the beginning of 2011 could be the result of political discontent generally as well as grievances within the security sector including the incomplete integration of former militias into the regular forces¹⁹.

In the period from 2010 to 2012, a number of militia commanders whose forces operate in Unity State formed what they called the "Southern Sudan Liberation Army (SSLA)", which proved to be a loose constellation of forces that operated more often as independent units than a unified movement. Some defected after being integrated (or slated for integration) into the SPLA; others remained as officers in Khartoum's Sudan Armed Forces (SAF) throughout the CPA period. Each of these groups has clashed with the SPLA units in Unity State and each has enjoyed some degree of support from Khartoum or other northern groups²⁰. A broader, more encompassing arrangement that integrates all these rebel groups has so far not been realized and the continued insecurity created by this situation has affected the protection of civilians who have been used as buffers or 'collaterals' of

¹⁸ See Amanda Hsiao and Fick Maggie, *South Sudan clashes in 2010 so far rival violence in 2009, 2010*, in <http://www.enoughproject.org/blogs/south-sudan-clashes-2010-so-far-rivals-violence-2009>, as accessed on 6th November 2012.

¹⁹ See International Crisis Group (ICG). Africa Report No 179, *South Sudan: compounding instability in Unity State.*, 2011, pp. 10-11.

²⁰Ibid., p. 11.

skirmishes between different groups. Another clear absence of the responsibility to protect vanguards has been seen in Jonglei state. Jonglei State has also experienced the “new wars” or “wars of a third kind” mentioned earlier in this paper. This state, which is located in the central part of South Sudan, has since the signing of the CPA been marred with violence perpetrated by inter-communal contestations. These inter-ethnic conflicts have been common among the Dinka, Murle and Lou Nuer. Owing to the modes of livelihood security that include seasonal transhumance, it is inevitable that during the dry seasons, there are cross-border raids and clashes especially between the Jikany Nuer of Upper Nile and the Lou Nuer of Jonglei, and between the Dinka Bor and Mundari of Central Equatoria. Inter-tribal clashes have also taken place along the border with Ethiopia²¹.

4.2 Inter-linked Causes of Violence

Several of these conflicts erupted and still do to this day as a result of cattle raiding which was a tribal practice. However, competition over resources notably land, water and livestock, has taken a more modern and commercialized form. Some of the interlinked causes of violence include socio-economic grievances and legacies of the civil war; ethnically-based political tensions; contested administrative and tribal boundaries; high youth unemployment levels; and erosion of traditional conflict resolution mechanisms. Others are crimes committed against citizens; manipulation of genuine grievances; and politicization of the same by politicians at all levels of government²². According to the Jonglei State government, 1,262 people were killed in 2009 and 380 children abducted in Jonglei State as a result of violent conflicts.²³ It should be noted that in the post-CPA period particularly after the year 2009, atrocities were meted out to civilians in many parts of Jonglei State. However, pockets of protracted violent activity were and is still are experienced in Central and Western Equatoria, Lakes, Unity, and Warrap States, but the combined number of reported deaths in these States was less than that of Jonglei²⁴. It is after the general elections that the State of Jonglei became a theatre of war and skirmishes with tribal leanings and armed insurgencies. A good example was General George Athor’s activities in the State. After his defeat in the elections in April 2010, this former SPLA

²¹ See International Crisis Group (ICG). Africa Report No 154, *Jonglei’s tribal conflicts: countering insecurity in South Sudan*. 23 December 2009, pp. 2-7.

²² See Breidlid Marie Ingrid and Lie SandeHarald Jon, *Challenges to Protection of Civilians in South Sudan*, 2011, op. cit., p. 10

²³ Ibid., 10.

²⁴ See ICG, Africa Report No 154, 2009, op. cit., p. 1.

commander defected from the army and launched an armed insurgency in the Khorfulus area of Jonglei State. Subsequently, he formed an umbrella rebel movement called the South Sudan Democratic Movement (SSDM).²⁵ A notable negative consequence of this is the June 2011 killing of 1,400 civilians in South Sudan as reported by the United Nations²⁶.

4.3 R2P: Complex in Nature, Comprehensive in Essence

Protection against criminality is a prerogative of the police while more robust situations involving armed groups might be a responsibility of the armed forces. In other words, the responsibility to protect works through the use of a wide spectrum of measures that involve all components of the security establishment. Although R2P is essentially a national responsibility, it may be argued that the national approach should not be unlike the Strategic Framework proposed by the United Nations for the protection of civilians. However, in a national context, roles and responsibilities of the various components of the security system must be clearly defined. Thus, although the role of the armed forces against external threats is explicitly clear, their role against internal threats remains unclear. The legal regime governing intervention of the armed forces in domestic law enforcement must clearly be defined. The mode of integration of former SPLA soldiers into the South Sudan Police Force has been counter-productive with the same ‘liberation’ rank and file taking up arms once again, this time as law enforcers,²⁷ without adequate police training. The nature and power of armed groups in South Sudan has shown that the ill-equipped, untrained police force cannot effectively manage such situations²⁸ and its ability to protect civilians reaches an end. The regularly outmanned and outgunned police often flee incidents that might require them to engage local communities and this was observed in several incidents in Jonglei State in 2009 and 2012. As these new modes of violence escalate as seen in the 2009/2010 security

²⁵ See Wudu Simon Waakhe, *Former rebel leader defects from the SPLA*, in <http://www.gurtong.net/.../Former-Rebel-Leader-Defects-From-SPLA.aspx>. 10 April 2012, as accessed on 18 June 2012.

²⁶ See Sentiments of the United Nations Deputy High Commissioner for Human Rights Kyung-wha Kang on the number of civilian casualties in South Sudan’s new wars, In. Reuters. (2011). *Some 1400 killed in South Sudan violence*. 29 June, accessed in, <http://www.reuters.com/article/2011/06/29/us-sudan-south-killings-idUSTRE75S3QJ20110629> as accessed on 17th August 2012.

²⁷ These are views noted by senior officials of the South Sudan Bureau of Community Safety and Arms Control during an interview with the author in Juba on August 2012.

²⁸ This has been noted by the Director in charge of the Prisons component in the SSPS during interviews between the author and him in August 2012.

predicaments, inadequacy of the police response prompted the armed forces to assume a law enforcement role. In essence, a national army should principally be reserved to respond to external threats but, because of the mentioned challenges faced by the SSPS in enforcement, the SPLA has by default been called upon to respond to significant security complexities. While this was originally a noble, automatic and practical move by the Government of South Sudan, it has however not served as a deterrent to the protection of civilians. This intervention by the army has had its challenges.²⁹.

²⁹ See ICG, Jonglei's Tribal Conflict, 2009, op. cit., p. 20.

5.0 Contemporary State of Human Security and Challenges to Protection of Civilians (POC)

The RSS has signalled its intentions to ratify major human rights treaties in order to help reverse the worsening state of non-protection of civilians. Domestic security issues in 2011 and 2012 have continued to challenge the government's status in terms of its obligations and responsibility to protect its citizenry. The Human Rights Watch reported that between January and August 2012, political, inter-communal, and resource-driven clashes killed over 2,600 people. This has also been corroborated by the United Nations. The government has in effect failed to fulfil its responsibility to protect civilians from this violence. The security forces fighting against armed militias committed serious human rights abuses against civilians during this period. Across the country, lack of capacity and inadequate training of police, prosecutors and judges have resulted in numerous human rights violations in law enforcement and the administration of justice.³⁰

In terms of policy and political development, President Salva Kiir established a Constitutional Review Committee to review and adjust the transitional constitution. However, opposition parties complained that the committee's work being usurped by the ruling Sudan People's Liberation Movement (SPLM) and several members withdrew in protest. The consequent Transitional Constitution entered into force on July 9 for a period of four years, to be followed by national elections and the adoption of a permanent constitution. To a large extent, it expanded presidential powers and created a new and enlarged bicameral legislative body which incorporated the South Sudanese who left legislative positions in Sudan's former Government of National Unity. It also did provide for the transformation of the SPLA into the South Sudan Armed Forces (SSAF).³¹

5.1 The Ghosts of the North-South Border Tensions

The period 2011/2012 witnessed an escalation of the North-South border tussles. Throughout 2011 in particular, these security challenges increased.

³⁰ See Human Rights Watch. *World Report 2012: South Sudan*, 2012, Accessible in. <http://www.hrw.org/world-report-2012/world-report-2012-south-sudan>, as accessed on 21 September 2012.

³¹ Ibid.

Negotiations between the SPLM and Sudan's ruling party, the National Congress Party (NCP), regarding post-secession issues namely oil revenue sharing; border management; and the status of the contested area of Abyei, stalled on several occasions. To this day (2012), many of these issues still remain unresolved. In the border areas, cyclical conflicts have had a significant impact on the economy. In the month of May, Sudan's violent occupation of Abyei displaced an estimated 110,000 people who found refuge Warrap State. Fighting between the Sudan Armed Forces (SAF) and elements of the SPLA in Southern Kordofan displaced some 20,000 people to the Unity State. It is further estimated that approximately 4,000 people arrived in Upper Nile State following the September clashes between Sudanese government forces and the SPLM-North in Southern Kordofan. Other human security concerns are health, food and physical security of the displaced persons.

Independence did not solve all the domestic conflicts in South Sudan. In the period between 2011 and 2012, there has been a cycle of clashes between the South's government forces and Other Armed Groups (OAGs). As of August 2012, the main armed groups were:

- Sudan People's Liberation Movement – Democratic Change (SPLM-DC), led by Robert Gwang
- South Sudan Liberation Movement/Army (SSLM/A), led by Peter Gadet
- South Sudan Liberation Army- Gatluak Gai Faction (SSLA-GG), led by Marko ChuolRuei (after the killing of Gatluak Gai)
- Gabriel Tang Forces, led by Gabriel Tang Chan ('Tang-Ginye')
- South Sudan Democratic Movement/Army (SSDM/A), led by Johnson Olony
- David Yauyau Rebellion, led by David Yauyau

Armed insurgencies by OAGs against the South Sudan government, originally triggered by discontent on the outcomes of the April 2010 general elections continued in 2011, causing hundreds of victims, among whom were the most vulnerable of the population namely women and children. Tens and thousands of people were displaced primarily in the Upper Nile, Unity and Jonglei States. It is also apparent that both opposition groups and government troops have failed to abide by International Humanitarian Law to protect civilians. The NGO Human Rights Watch did document grave human rights abuses and violations of humanitarian law by SPLA soldiers in the course of fighting in Upper Nile which included unlawful killings of

civilians and the destruction of homes and civilian property.³² According to the reports presented by the United Nations, SPLA soldiers allegedly indiscriminately opened fire on civilians killing a good number of them during an altercation with a militia group in Jonglei. To arrest this situation, President Salva Kiir offered general amnesty for armed militias in exchange for their concession to lay down arms and integrate their forces into the national military. Indeed, some militia leaders have entered into ceasefire agreements with the government but others continue to clash with government forces³³.

5.2 Continued Community Violence and Negative Ethnicity

In the post-independence period, inter-communal violence still continues to be a major driver of insecurity in South Sudan. Cyclical fighting between ethnic communities caused by cattle raiding, competition over land resources, and kidnapping of women and children continues to put civilians at risk of injury and death. The most intense clashes occurred between 23rd December 2011 and 4th February 2012 in Jonglei State. In this period alone, over 888 people were killed during the attacks which also resulted to the displacement of over 170,000 people. This also involved the abduction of women and children, the destruction and looting of property and the theft of large numbers of cattle. The raid did also prompt a spate of revenge attacks, with the Murle ethnic community launching reprisals on 9th January, 13th January and 16th January of 2012.³⁴

The government has however taken some steps to promote reconciliation between the warring communities. For example, the government, with support from the United Nations Mission in South Sudan (UNMISS) and other members of the international community has launched a multi-pronged approach to address insecurity in Jonglei State. In March 2012, President Kiir established an investigation committee into the Jonglei State crisis with a mandate to investigate those responsible for the inter-communal violence

³² See Human Rights Watch, op. cit.

³³ See Rands, R.B. and Le Riche M., *Security responses in Jonglei State in the aftermath of the inter-ethnic violence*. London, SaferWorld. February 2012. Available at, <http://www.saferworld.org.uk/resources/view-resource/624as> accessed on August 2012.

³⁴ See OCHA (Office for the Coordination of Humanitarian Affairs), *South Sudan Humanitarian Update*. January-April 2012, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3978.pdf as accessed on August 2012.

that occurred between December 2011 and early 2012. However, from a strategic prospective, the challenge for the government is to shift from conflict resolution mechanisms to violence reduction processes, even if the two are sometimes intimately connected. The committee members have not been sworn in and systems have not been put in place to enable it to operate. In general, both the government and the UN have been unable to protect civilians against the often predictable outbreak of violence.³⁵ In early April 2012, Vice President Riek Machar, re-launched the Jonglei peace process led by Archbishop Daniel Deng, with the mandate to monitor the peace process³⁶. The Vice President also led a sensitization process ahead of disarmament, where community leaders reportedly consented to the disarmament on the premise that security from attacks by other communities would be provided to them through the SPLA and SSPS³⁷. The failure by government to conduct public investigations into atrocities against civilians and ensure accountability is quite worrying and challenges South Sudan's dedication to the principles of the responsibility to protect.³⁸ Another continuing security challenge is the persistent violence attributed to the Lord's Resistance Army (LRA) in the southern part of the country. Although the intention of the perpetrators is not entirely clear, 25 separate attacks were reported by the UN in 2011, mostly in the western parts of the country bordering the Democratic Republic of Congo and the Central African Republic. Despite the fact that attacks were generally small in scope, the terrorizing effect prompted displacements of civilians.”

³⁵ See Amnesty International, *South Sudan-lethal disarmament: abuses related to civilian disarmament in Pibor county, Jonglei State*. (London: Amnesty International Publications, 2012) p.6.; this is also corroborated by Human Rights Watch. 2012, op. cit.

³⁶ See Republic of South Sudan. *Report of the Presidential Committee for Community Peace, Reconciliation and Tolerance in Jonglei State*. May 2012.

³⁷ This was noted by one of the community and state church leader, the Acting Head of the South Sudan Council of Churches in an interview with the authors in August 2012. This was an insider perspective since the Reverend was involved in the Jonglei Peace process and talks.

³⁸ See Human Rights Watch, op. cit.

6.0 Responsibility to Protect and Confidence Building

Lack of confidence in the ability of the government of South Sudan and of the SPLA in particular to provide non-partisan and unbiased protection to all citizens regardless of their ethnicity remains a dodgy issue. A mind-set of insecurity dissuades the people from giving their personal weapons, leading to clashes with the security forces. It was recently reported by Amnesty International that a disarmament campaign in Pibor County in Jonglei State from 30 August to 4 September 2012 led to heavy confrontation between the population, SPLA and SSPS. From interviews with civilians, community leaders and local government officials, it was apparent that men, women and children were subjected to extra-judicial executions, torture and other cruel, inhuman or degrading treatment and un-necessary or excessive use of force by the SPLA and SSPS auxiliary forces. Most of these incidents challenged the government's status and obligation to protect its civilians. It should be noted that this occurred during the first phase of the disarmament which was supposed to be voluntary.³⁹

As argued elsewhere in this brief, numerous structural factors underpinned and exacerbated the immediate post-CPA violence and still continue to do so. Seven years after the signing of the CPA, the GOSS is still struggling to develop accountable, transparent and democratic institutions and to provide basic services such as health and education. The reasons for this include a profound lack of capacity by an exploitative, corrupt, and ill-performing Juba government. This sentiment is widespread and growing.⁴⁰ In response, communities have resorted to other avenues such as parallel economies for sustenance. From a political perspective, the post-CPA violence and criminality could be largely attributed to the inability of the government to enhance law and order. The SSPS which has the primary mandate of managing internal security and protecting civilians at the domestic level, has personnel who lack adequate training, are irregularly paid, are poorly equipped, and lack effective command and control systems. There is the perception in South Sudan that government functionaries especially in the law enforcement and national defence services are recruited on the basis of ethnicity. On this account, the government is widely accused of being

³⁹ See Amnesty International, *South Sudan-lethal disarmament*, 2012, p. 8.

⁴⁰ See Mc Envoy Claire and Le Braun, *Uncertain future: armed violence in Southern Sudan*, 2010, p. 17.

dominated by the Dinka and of favouring clansmen and other loyalists through discriminatory patronage. As a matter of fact, since the signature of the CPA and the integration of OAGs, efforts to give the SPLA a more “national” image as opposed to its “Dinka” one have not been successful. Despite the official establishment of the South Sudan Armed Forces (SSAF), troops still retain their SPLA uniforms and insignia thus making the change hardly visible to the population.

South Sudan faces problems that are inherent in the context in which the country was created. Lack of diversified sources of income and the “mirage” of oil-based prosperity made the new State vulnerable to market fluctuations and unstable relationships with its northern neighbour. The austerity measures put in place by the government did not create incentives for the development of the local economy but tended to increase dependency on neighbouring economies notably essentially Kenya, Eritrea and Uganda. This perceived dependence tends to create some xenophobic resentment among the population who interpret foreign presence as domination and economic exploitation. The killing of Kenyan and Eritrean business persons in South Sudan’s urban centres has raised concerns from the respective countries. During the war and after, the South Sudanese economy did not develop in substance to be able to provide employment.”

7.0 Conclusions and Recommendations

This paper has argued that the protection of civilians is a wider human security concern. It is also apparent that the government has been challenged in terms of its obligations towards protection of its own citizens within an environment of under-development, inter-twined human security challenges and a fluid regional security situation. Southern Sudan might as well need conflict resolution frameworks that re-order inter-communal relations that are deep rooted. In fact, the main idea in the establishment of the “Responsibility to Protect” was more the “obligation not to harm” than the “obligation to protect”. In other words, it was more about refraining from oppressing a population, than putting in place a system that would effectively protect citizens. The R2P in a country the size of South Sudan with limited infrastructure and a divided population has significant ramifications.

The implementation of a R2P policy can only work in a comprehensive framework that takes the society in a systemic way. In the post-CPA context, and especially after independence, the focus was put on *National* security rather than on *Human* security. In other words, it was and still is more about suppressing threats than protecting potential victims. Although the two may be ultimately complementary, the second may probably provide more durable effects as it bases efforts towards a more holistic and realistic approach. Considering the multi-faceted nature of South Sudan’s domestic challenges, a human security approach within the R2P policies would provide the necessary conditions for the Southern polity to return to normalcy. Efforts by both the government of South Sudan and the international community should be multi-pronged and long-term whereby peace and security dividends translate into economic development for the population. The presence of the government needs to be felt throughout the country and more so in the remote areas.

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