



Peacekeeping Status Report from the World's Newest Country – South Sudan, Africa

BY JUDGE LARRY SAGE

Salaam Aleikum!

South Sudan is in the middle of a transition from being a de facto military state to a nation governed by the rule of law. During 2018 and 2019, I worked in South Sudan as an international observer, responsible for monitoring the compliance of various conflicting parties with the peace agreements that govern the country's transition. This process has been both inspiring and fraught. While there, I observed the often-improbable resolution of seemingly irresolvable conflicts. The lessons I learned from this experience can be applied to disputes that judges, arbitrators and lawyers deal with every day.



Judge Larry Sage serving as a peace monitor in 2019.

The Situation in South Sudan

South Sudan is the world's youngest country and one of its poorest. In 2011, South Sudan fought and seceded from Sudan, a Muslim

majority country, becoming a new, predominately Christian country with a large Muslim population. Less than two years later, the South Sudanese Army that won the independence war with Sudan broke into numerous opposing armies, each of differing tribes. One is led by the current president, Salva Kiir; two others are led by each of South Sudan's original two vice presidents.

Fighting between these forces has produced mass war crimes, including killings, rapes and forced child soldiering. There are an estimated 400,000 dead and 2.5 million refugees within South Sudan and numerous other countries, including the U.S.

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The parties to this conflict entered two peace agreements in 2014 and 2015. The peace agreements are enforced by the Ceasefire & Transitional Security Arrangements Monitoring & Verification Mechanism, an arm of the Intergovernmental Authority on Development (IGAD), an African Union trade bloc.

Despite the peace agreements, South Sudan has never had an election and remains politically unstable, due in part to the fact that any given province is under the control of as many as three separate, and potentially conflicting, groups. First, there is a Revitalized Transitional Government of National Unity working under the two peace agreements. Within each of South Sudan's provinces, there may be a presidentially appointed provincial governor associated with the transitional government. Second, there is a shadow "party" government in each province. Third, many provinces have a uniformed army under the command of a party army general.

The Peace Process

The peace agreements first mandate entry into a "Pre-Transitional Phase," which provides for several transitional steps toward civilian rule of law. These include military disarmament activities, cantonment camp activities and initial joint training. During the Pre-Transitional Phase, demilitarization actions have priority, followed by the establishment of government and justice organizations (with membership from all tribes and parties). Once carried out, this phase should lead to South Sudan's first public election.

Compliance with, and violations of, the peace agreement are monitored and investigated by IGAD's International Peace Observers. The observers are provided and partially funded by the seven other African nations that comprise IGAD. Once trained, the observers are assigned to work on various Transitional

etc.). Cantonment also requires the assembly of all military personnel in designated areas, where the assembled soldiers go through medical screening, testing and military occupation assignments. Because these conditions have not been met, commencement of the transitional phase has been continued several times.

Reaching these goals has been slow for many reasons. Due to a "lack of funds and restrictions on movement, the programme for training and unification of armed groups is now running behind schedule."¹ Also, "... there are various challenges reported at cantonment sites, such as insufficient food supply, lack of medicines, poor sanitary conditions and lack of separate facilities and dignity kits for female trainees and dependents at the centres."²

In addition, the new police and military training camps are not adequately supported. Food, logistical and pay processes are fraught with corruption. My team also observed and reported squalid living conditions, including female safety and support issues, which have caused poor soldiers to leave the unified camps and return home or become involved with illegal activities to support themselves and for personal safety.

However, much progress has been made. For example, in November 2019, we presented gender-based training (led by female veterans) to more than 500 instructor trainees at a cantonment training site. The trainees came from all parties and the National Police. After one presentation, two warring generals hugged each other and told the audience that there would be no attacks that night. Dozens of attendees cried openly, sending chills down my back. It was exciting to have soldiers from different, and recently fighting, armies all clapping for a peace monitor!

South Sudan Going Forward

Rule of law efforts are ongoing and focus on the monitoring and verification



Judge Sage (right) and his shooting team leader (left).

Monitoring & Verification Mechanism teams throughout South Sudan.

During 2018-19, I served as an international observer for IGAD. In that role, I trained other observers on the peace agreements and international humanitarian law and served as legal advisor to the Transitional Monitoring & Verification Mechanism.

The Pre-Transitional Phase was supposed to have been completed by May 12, 2019, with a "transitional" phase to follow. However, the Pre-Transitional requirements were not met by the original deadline. Among other things, the parties have not achieved cantonment, which consists of turning in and securing all crew-served and heavy weapons (i.e., machine guns, rocket launchers, tanks,

of the peace agreement requirements. This activity consists of monitoring for numerous things including attacks and other military activities and recruitment, occupation or damage to community property and infrastructure, unlawful entry into displaced persons' camps, prohibited acts against humanitarian personnel and others, and any other failure to comply with peace agreement terms.

Observers also monitor for progress toward rule of law, such as the provision of protection of vulnerable persons, facilitation of the reunion of families, free movement of persons and merchandise, protection of civilians, demobilization of child soldiers and the release of all POWs.

There have been too many instances of non-compliance with the peace agreements in the last year to fully discuss here. However, in July, South Sudan's President Kiir promised to get peace-building back on track. He pledged a full-scale disarmament campaign to end tribal violence. This commitment is a promising sign, though there is some concern that Kiir is making empty promises to finish a step that should already have been completed last year per the original peace agreement deadlines in order to encourage international aid.

My first, thrilling, teary meeting between warring generals, with their public hugs before hundreds of cheering former victims, was, hopefully, only just the start to a glorious finish ... *inshalla!*

Lessons Learned

Few international conflicts are more intractable than the one in South Sudan. Though there is much work to be done, the entry into, and partial compliance with, the peace agreements is a significant achievement. I came away from my time as a peacekeeper in South Sudan with several observations about conflict resolution which are relevant to lawyers, judges and/or arbitrators who are dealing with parties with seemingly insurmountable differences.

Understanding the other side's point of view, even if seemingly unusual, is critical. My sector team's familiarity with different legal systems, as compared to other teams' knowledge, was a significant advantage. Many of our team members had taken courses in comparative law and were familiar with civil law systems, which are

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more common internationally than our common-law system. Some team members had even previously served in a country with a civil law system. Civil law concepts are more familiar to the parties we advised, and this understanding gave us some common language and allowed us to better communicate with each other and with the parties. In any conflict, parties will come to the table from different contexts and with different backgrounds and points of view. Taking the time to understand those differences can bridge divides.

Culture matters. South Sudan is predominately Christian, and we were happy to learn that utilizing local religious leaders in our mediation sessions was very effective. A quick study of the local tribes, and their interactions since independence from Sudan, was also extremely useful. For example, we learned that the parties' culture was one in which older people of both genders have leadership roles. With this knowledge, we found it useful to consistently utilize our older personnel for reporting about the parties' actions and addressing the parties directly. Whether it is religion, or some other aspect of a party's culture, understanding a person's values can lead to a host of tools that can assist with reaching an agreeable resolution.

Negotiation yields better results than confrontation. My peace-monitoring and investigation efforts were extremely enhanced due to my background in mediation, arbitration, negotiation and litigation settlement conferencing. My team generally reached combat disengagement and disarmament

agreements much sooner than the teams without such legal negotiating training. Often litigants focus their efforts on proving who is right and wrong, losing sight of the fact that most matters end up settling. Dispute resolution that focuses on resolution rather than confrontation is often the most effective means of reaching a mutually agreeable outcome.

Document interpretation should start with ground rules. To reach agreement or compromise on both compliance and violations, the parties had to first agree upon the ground rules for document interpretation. This may mean the designation of an agreed-upon interpretation reference, a neutral interpreting authority or a legal moderator. Taking this step was an invaluable aid to dispute resolution. Whether in the course of drafting an agreement, or when agreeing on rules for a mediation or arbitration, establishing interpretive principles in advance can pay off by making dispute resolution easier down the road.

ENDNOTES

1. <https://africacenter.org/daily-media-review/africa-media-review-for-april-28-2020/>
2. <https://www.theeastafrican.co.ke/tea/news/east-africa/south-sudan-security-targets-stall-as-oil-funds-diverted-to-fight-covid-19-1440496>

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was involuntarily inducted into the U.S. Army from the University of California Hastings College of the Law. He served more three years on active duty and, after transferring to the National Guard and returning to law school, served 25 more years. He retired as an infantry colonel from the U.S. Army Reserves. After Nevada judicial retirement, he supported Operation Enduring Freedom as an International Security Assistance Force Civilian Rule of Advisor for three years in Afghanistan, and recently returned from a year as an Intergovernmental Authority on Development (IGAD) peace monitor/legal advisor in South Sudan.

