

THE REPUBLIC OF SOUTH SUDAN

The Government of the Republic of South Sudan

TOTAL
20/8/15

**The Reservations of the Government of the Republic of South Sudan,
on the "Compromise Peace Agreement on the Resolution of the
Conflict in South Sudan", Juba, 26th August 2015.**

The Preamble

- 1.1 Cognizant of the agreement reached between the parties to the conflict in Bahir Dar, Ethiopia, in which the two parties agreed on many issues related to the conflict, which issues were unfortunately left out from the proposed Compromise Agreement by the IGAD Mediation Team;
- 1.2 Recalling the letter of H.E. President Salva Kiir Mayardit of 3rd August, 2015, addressed to H.E. Prime Minister Hailemariam Dessalegn copied to all the IGAD Heads of State and Government conveying the Reservations of H.E on the Compromise Agreement on the conflict in the Republic of South Sudan;
- 1.3 Remembering that the decisions of IGAD Heads of State and Government recently taken in Kampala, Uganda, with a view to incorporating them into the Compromise Agreement were deliberately ignored and excluded by the IGAD Mediators;
- 1.4 Mindful of the note of the Government of South Sudan, signed by its Chief Negotiator, to the IGAD Mediators on 17th August, 2015, on the intention of the Government of the Republic of South Sudan to consult and return to the IGAD Mediators for further negotiations prior to the eventual finalization of the Agreement within fifteen days;
- 1.5 Aware that the SPLM/A-IO rebel Movement sustained a major split in which senior officers denounced and disowned the leadership of Dr. Riek Machar on 11th August, 2015, supported by a group of politicians previously loyal to the rebel leader;
- 1.6 Fully informed of the determination of the splinter rebel group to fight both the government of the Republic of South Sudan and small faction under the ousted rebel leader as well as their desire to partake in the IGAD-led peace talks;
- 1.7 Now present sixteen (16) preliminary reservations (Tables 1-9) of the Government of the Republic of South Sudan, based on the positions taken by the Government of the Republic of South Sudan, the governors of the ten states, the political parties, the general public and the civil society organizations. In this regard, the government is yet to consult and solicit the views of the Army, the National Security and the other Organized Forces, members of the National Legislature and the traditional leaders.

2. The Government of the Republic of South Sudan, *a priori*, makes the following observations:

- 2.1 The Title of President Salva Kiir Mayardit has been wrongly written as 'President of the Republic of South Sudan and Commander in Chief of the NDFSS instead of Commander in Chief of the Sudan People's Liberation Army (SPLA). The NDFSS is hitherto unknown to the government and people of the Republic of South Sudan.
- 2.2 The Compromise Peace Agreement makes reference to 'South Sudan Armed Opposition', an organization which is unrelated to the *failed Coup* of 15th December, 2013. The government, therefore, underlines that the conflict in South Sudan is between the government of South Sudan and the SPLM/A-IO and not what the IGAD Mediators call South Sudan Armed Opposition;
- 2.3 The Compromise Agreement document was unilaterally amended by some individuals and signed unceremoniously behind doors. Signing agreement is normally conducted in public and before the media.
- 2.4 The guarantors and witnesses to the Compromise Agreement are supposed to sign after the parties to the conflict and not before.
- 2.5 Most of the stakeholders were made to sign the document without reading the details and on realizing their mistake, declined to append their initials on the remainder of the document.
- 2.6 The guarantors, the IGAD-led Mediation and the International Partners as witnesses initially declined to sign the document during the ceremony but signed thereafter without the signature of the parties. This practice is abnormal under the norms and procedures of signing agreements and a matter of concern as to the intentions behind this practice.

The Reservations of the Government 'on the IGAD-Plus Compromise Agreement on the Resolution of the Conflict in the Republic of South Sudan'.

Table 1

Chapter II: Permanent Ceasefire and Transitional Security Arrangements (PCTSAs).			
S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
1	Article 5.5: ' All military forces within Juba shall be redeployed outside at a radius of 25 Kms from the center of the National Capital beginning 30 days after the signing of this agreement and completed after 90 days.	This is a matter of sovereignty. This article provides for the demilitarization of Juba, albeit unstated. The army has the responsibility to protect the nation, its people and its leadership. The army protected the capital during the <i>failed Coup</i> . Regardless of any military logic, the fact that they are being relocated because of the rebels is provocative and may cause instability within the forces across the country.	The National Army remains in their headquarters since Juba is not part of the cantonment. The fear of the rebels can be addressed as per article 5.4 'regarding external forces for personnel protection in collaboration with the national security forces'.
2	Article 4.1: After entering into Ceasefire, the Monitoring and Verification Mechanism (MVM) shall transition to become the Ceasefire and Transitional Security Arrangement Monitoring Mechanism (CTSAMM) responsible for reporting on the progress of the implementation of the Permanent Ceasefire and Transitional Security Arrangements (PCTSA)	The performance of the current MVM is not satisfactory because its reports are based on unofficial information and usually biased against the government of South Sudan.	There is need to reconstitute the MVM with the consent of the government before its transition to CTSAMM.

The Reservations of the Government 'on the IGAD-Plus Compromise Agreement on the Resolution of the Conflict in the Republic of South Sudan' (Cont).
Table 2

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
3	Item 2.2: 'The warring parties agree the forces to be cantoned are those forces previously in combat in Juba, Jonglei, Unity, Upper Nile and any other forces related to the conflict in other areas...';	Juba is not a theater of operations although the <i>failed Coup</i> started in Juba.	Delete Juba from the list of the cantonment areas.
4	Article 7: '...shared Unified Command of the National Defense Forces of South Sudan (NDFSS) immediately and to be completed within 18 months...'	NDFSS is an unknown organization. Eighteen months suggest that there will be two separate armies contrary to the agreed provisions of the pre-transitional period. The two should continue only during the pre-transition. The transitional period should start with one national army, not two armies.	Delete reference to NDFSS throughout the document and replace with the Sudan People's Liberation Army (SPLA).
5	Item 1.6: '...Sudansese Revolutionary Forces (SPLM-North, JEM, SLA-Minawi and SLA-Abdulwahid) shall be disarmed, demobilized and repatriated by the state actors with whom they have been supporting within the Pre-Transitional Period'.	This provision is intended to incriminate the government of South Sudan even though it is not supporting the rebels of Sudan and that is what the rebels previously alleged to. The Sudan revolutionary forces have no presence in South Sudan, we have no control over them and therefore could neither disarm nor demobilize them.	Delete this provision.

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Table 3

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
Chapter VII: Joint Monitoring and Evaluation Commission (JMEC)			
6	Article 2.5: '...Shall be chaired by a prominent African personality appointed by the IGAD Assembly of Heads of State and Government in consultation with IGAD-Plus....'.	1. The provisions of Chapter VII; (Articles 2.5, 3, 4, 5 and 6) makes the JMEC the governing authority of the Republic of South Sudan. Neither the government nor the National Legislature will have a role to play.	Limit the function of the JMEC to monitoring, evaluation and reporting to the TGoNU on the implementation of the agreement. Delete 'oversee' wherever it appears in this Chapter.
	Article 4: '...The JMEC shall also oversee the CTSAMM, the MVM, the EFMA and all the institutions created by the Agreement...'	2. The JMEC does not only oversee the function of the TGoNU, but it also undertakes some functions of the same. It has taken over the oversight role of the National Legislative Assembly.	As above
	Article 3: 'JMEC shall be responsible for monitoring and overseeing the implementation of the agreement and the mandate and tasks of the TGoNU...'	-	As above
	Article 6: '....The JMEC shall, within one month of the establishment of the TGoNU, negotiate and define functions the TGoNU may cede to the JMEC...'	-	As above

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Table 4

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
	<p>Article 5: ...Shall report regularly in writing to the TGoNU Council of Ministers, Transitional National Assembly, the Chairperson of the Council of Ministers (Ethiopia), Chairperson of the African Union Commission, the Peace and Security Council of the African Union and to the Secretary General and Security Council of the United Nations on the Status of the implementation of this Agreement every three months.</p>	<p>For South Sudanese, this simply means taking over the sovereignty and the hard won independence of their country. Again that confirms that JMEC is the actual ruling body in South Sudan.</p>	<p align="center">As above</p>
Ch. VIII; On the Supremacy of the Agreement and the Procedure for Amendment of the Agreement.			
7	<p>Article 4: This Agreement may be amended by the parties by at least two-thirds of the members of the Council of Ministers and at least two-thirds of the voting members of the Joint Monitoring and Evaluation Commission as per Chapter 7, article 8 of this Agreement consenting to the amendment followed by ratification by the transitional national legislature according to the constitutional amendment procedures set out in the TCRSS, 2015.</p>	<p>This provision confirms the supremacy of the JMEC over the TGoNU and National Legislature. It is effectively neo-colonialism and strongly rejected by the people of South Sudan.</p>	<p>The part of this provision, which subjects the decision of the Council of Ministers of the TGoNU to voting and consent of JMEC needs to be deleted.</p>

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Table 5

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
	Ch. V: Transitional Justice, Accountability, Reconciliation and Healing.		
8	Article 1.1.3 and article 4 on 'Reparation and Compensation Authority.	1. Reparation and Compensation was never considered during the Addis Ababa Agreement of 1972 and the CPA of 2005 where South Sudanese suffered immensely. It was also not considered in the aftermath of the SPLM/A split in 1991 which resulted in the Bor massacre. This provision is inappropriate, unprecedented and susceptible to abuse because the whole country would qualify.	Remove this article from the Compromise Agreement. Priority will be given to the reconstruction of the infrastructure and rebuilding of livelihoods of communities in the states most affected by the conflict. The establishment of the Special Reconstruction Fund (SRF) recommended in Chapter III-2 Article 2.1 together with the inclusion of the Enterprise Development Fund (EDF) in Chapter IV-7 will also contribute to the expeditious recovery of the people of South Sudan.
	-	2. This proposal fails to recognize that the crisis in South Sudan was a result of a <i>failed Coup</i> involving military confrontation between government forces and rebelling forces.	-
	-	3. Experience of such proposal in Rwanda, Sierra Leone, Liberia and South Africa has shown that it is impractical.	-

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Table 6

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
Ch.I: Transitional Government of National Unity (TGoNU)			
9	Article 1.4: That the Executive of the TGoNU shall comprise the President, the First Vice President and the Vice President and the Council of Ministers and the Deputy Ministers.	This is a reward for rebellion. The wider South Sudanese Community rejects this provision. It is a humiliation to the Vice President and his constituency and has the potential to cause more problems in the entire South Sudan.	Two Vice Presidents with equal status. Functions and Duties as shall be determined by the President. The President appoints his Cabinet Ministers as per the constitution of the Republic of South Sudan, and not by a gambling process as per the provisions of the Agreement.
	Article 15: Structure and Composition of the state governments Article 15.1; Not later than one month from the commencement of the transitional period, transitional governors of Jonglei, Unity and Upper Nile States shall be appointed for the duration of the Transition.	The Communities in the three states suffered destruction and massacre in the 1991 split and for the second time in the 2013-2014 <i>failed Coup</i> in the hands of the same Dr. RiekMachar. Why would they fight the rebels in defense of the country and lose lives if they were to know that these states are to be handed over to reward the rebels? All the communities, including their governors totally reject this provision.	The rebels should only share in the Executive but not to hold the position of governorship. There is already tension and real threat arising from this proposal and hence putting the entire peace agreement in jeopardy.

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Table 7

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
	For two of the governors position in Upper Nile and Unity State, the South Sudan Armed Opposition shall nominate candidates, which the President shall appoint respectively. The GRSS will nominate the governor of Jonglei.	Handing over the two states to the rebels is a reward that will provoke rebellions and divisions in South Sudan. These states are currently under the control of the government. Already there is serious resentment and anger against this proposal with potential for mutiny.	The governors of the three states shall be nominees of the government because it is in control.
	Article 5.2: The State Council of Minister in the states of Jonglei, Unity and Upper Nile shall be reconstituted and appointed at the beginning of the transition and not later than a month as per the following power sharing ratio (GRSS 46%, SSAP 40%, FDs 7% and other political parties 7%).	There is no convincing rationale for the proposed ratios since the rebels do not control these states.	The rebels shall be accommodated in the Executive in a power-sharing ratio of 70%, 20% and 10% to the GRSS, SPLM/A-IO and the other political parties respectively.
13	Article 5.3: In the remaining seven states the GRSS will have 85% of the Executive while the South Sudan Armed Opposition have a representation of 15% in the Executive of the respective States.	The rebels have no presence in the seven states.	The 15% should be allocated to the other political parties.

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Table 8

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
Ch.III: Humanitarian Assistance and Reconstruction			
14	Article 2:TheSpecial Reconstruction Fund (SRF): Sub article 2.3 that the BSRF shall be chaired by an International member and Deputized by the Ministry of Finance and Planning.	The Foreign Chairperson of the Board will have no competence to report to the national legislature.	The Minister of Finance and Economic Planning shall chair the Board and may be deputized by a foreigner.
	Article 2.4 the International members of the BSRF shall select the chair	This is redundant.	Delete
	Article 2.8: Report on the income, expenditure and the projects supported by the Fund shall be placed by the Board before the National Assembly and the Council of States, which shall exercise oversight over the Fund.	As state above.	As state above.
Chapter VI: Resource, Economic and Financial Management			
15	Article 8:Economic and Financial Management Authority (EFMA). Sub-article 8.1 '...the mandate of the authority shall be to provide an effective oversight of economic and public financial management, and to ensure transparency and accountability particularly in the oil/petroleum sector/concessions and construct award/budgetary and public expenditure/revenue collection.	Oversight on Financial and fiscal matters is the prerogative of National Legislative Assembly under the Committee of Public Accounts. The proposal suggests the members of parliament shall be appointed to a body whichthey are mandated to oversee.	There is no requirement for this body and should be deleted.

The Reservations of the Government 'on the IGAD-Plus Compromise Agreement on the Resolution of the Conflict in the Republic of South Sudan' (Cont).

Table 9

S/N	Area(s) of Reservations	Reasons for Reservations	Comments/Alternative Proposal
Chapter VI: Parameters of the Permanent Constitution			
16	Article 5.5: That the parties agree that the Transitional National Legislature shall be transformed into a Constituent Assembly on the first date of the 27 th Month of the Transition for purposes of adopting the constitution after which it shall be dissolved after the election	This provision does not provide the Constituent Assembly enough time to deliberate and adopt the permanent constitution before its dissolution at the end of the twenty seventh(27 th) Month of the transition.	The National Legislature should be reconstituted into Constituent Assembly six Monthsbefore the end of the Transition to adopt the permanent constitution at the end of the twenty seventh Month after which it shall be dissolved preceding the elections.