

SINGLE NEGOTIATING TEXT ARISING FROM DRAFT II
FRAMEWORK FOR POLITICAL AND SECURITY
NEGOTIATIONS TOWARDS RESOLUTION OF THE CRISIS
IN SOUTH SUDAN

PREAMBLE

Concerned about the grave crisis facing South Sudan that has continued since 15th December 2013, consuming the country and the region as a whole and resulting in senseless loss of life, mass displacement of populations and wanton destruction of property;

Mindful that the crisis in South Sudan cannot be permitted to continue amid the looming threat of full scale war and subsequent nationwide war-induced famine;

Cognizant that the crisis in South Sudan must be addressed expeditiously to stop the killings, end the war and restore peace and stability in the country;

Recognizing that there are African solutions for African problems drawn from a rich African experience of resolving crises of this nature;

Acknowledging the ongoing concerted efforts led by the political leadership of the IGAD Region who have thus far convened four Extraordinary Summits between December 2013 and June 2014, and initiated the South Sudan Dialogue for National Reconciliation and Healing mediated by the three IGAD Special Envoys;

Further acknowledging the extensive consultations carried out by the Special Envoys throughout the region and beyond;

Recalling the achievements made thus far by the Parties to the conflict, the signing of the Cessation of Hostilities Agreement on 23rd January 2014, the establishment of the Monitoring and Verification Mechanism and its operationalization, the deployment of the Protection Force for the IGAD Monitors under the mandate of UNMISS, and the inclusive participation of other South Sudan stakeholders in the political dialogue;

Applauding the critical support provided by IGAD Partners and friends of South Sudan to the peace process in its entirety and in efforts towards the resolution of the conflict;

Now, therefore, the **Stakeholders Agree** that it is time to resolve the crisis in South Sudan without further delay as follows:

1. AGREED PRINCIPLES

To find a comprehensive solution that will address the political, security economic and social deterioration of South Sudan and replace war not just with peace, but also with human security, social, political and economic justice, which respects the fundamental human, political and civil rights of all the South Sudanese people.

1.1 The following Documents shall form the basis of the Terms of Reference (TOR) for the Political Negotiations:

- a) IGAD Agenda Phase II Session III of 28th April 2014; Agenda of 30th July 2014 adopted by the stakeholders on 9th August 2014;
- b) Agreement to Resolve the Crisis in South Sudan, Addis Ababa, 9th May 2014 endorsed and further elaborated by the 26th Extraordinary Session of the IGAD Assembly of Heads of State and Government on the Situation in South Sudan on 10th June 2014 [deleted by SPLM/A-IO];
- c) Agreement on Recommitment to Humanitarian Matters in the Cessation of Hostilities Agreement between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (In Opposition) (SPLM/A-IO) on 6th May 2014.

1.2 Establish a Transitional Government of National Unity (TGoNU) that will offer the best chance for the people of South Sudan to take the country forward;

1.3 Negotiate a transitional agenda, mandate and powers of a TGoNU that will oversee government functions during the Transitional Period and implement critical reforms that will be negotiated through the peace process;

1.4 Ensure the inclusion of all South Sudanese Stakeholders in the peace process, and the negotiation of a/the TGoNU, in order to ensure broad ownership of the agreed outcomes; Stakeholders include: the two direct negotiators (the GRSS and SPLM/A (In Opposition)), and others such as the SPLM leaders (former detainees), political stakeholders/parties/parties/parties civil society, and faith-based leaders;

1.5 Agree on participation of all South Sudanese Stakeholders, in the negotiations on transitional governance, the permanent constitution, and any other items/issues that concern the political future of the country and reconciliation of South Sudanese communities/people;

- 1.6 Agree that the TGoNU shall oversee a/the permanent/national constitution process, and guide the country to new elections.
- 1.7 Notwithstanding the provisions of 1.4 and 1.5 above, the negotiations and the signing of the final agreement shall be done by the two direct negotiators (the GRSS and the SPLM/A In Opposition)
- 1.8 Agree to establish a federal system of governance in South Sudan in response to the now popular demand.
- 1.9 The Republic of South Sudan shall henceforth be known as "The Federal Republic of South Sudan" herein abbreviated as "FRSS".
 - a) The Federal State shall be a multi-party democratic state consisting of twenty one (21) states (former districts) and federal territory;
 - b) The federal, state and local government levels are distinct and interdependent;
 - c) They conduct their mutual relations on the basis of consultation and cooperation;
- 1.10 Sovereignty of South Sudan
 - a) The political power in South Sudan is collectively vested in its citizens;
 - b) The people exercise this power either directly in referendum or through their democratically elected representatives;
 - c) People delegate their powers to State organs.

2. TRANSITIONAL PROCESS

In order to end the war, reconcile and reunite the people of South Sudan and to secure a peaceful and prosperous future for South Sudan and in order to collaborate in restructuring the state and in the task of governing the country, the Stakeholders/Parties** [to be defined by IGAD] hereby agree to:**

2.1. TRANSITIONAL GOVERNANCE ARRANGEMENTS

Establishment of the Transitional Government of National Unity (TGoNU)

- a) Pursuant to the May 9th Agreement of 2014 and the June 10th Communique of the IGAD Summit of the Heads of State and Government, there shall be established a transitional government of national unity at national, state and local levels, the key functions of which shall be to restore security, stability, law and order, work to

regain the confidence of the people, especially those most affected by the conflict, and ensure the wellbeing of all citizens.

- b) The establishment of the Transitional Government of National Unity shall be preceded by a pre-transitional period of [3] months, which shall come into effect upon the signing of the Peace Agreement, to undertake the following tasks;
 - i) Adoption and ratification of the Peace Agreement by the SPLMA-IO National Leadership Council and The National Legislature.
 - ii) Drafting a legal and Constitutional framework to incorporate the Peace Agreement into the Transitional Constitution
 - iii) Amendment of the Transitional Constitution, 2011, to incorporate the Peace Agreement
 - iv) The formation of the Transitional Government of National Unity
- c) The Peace Agreement and the necessary amendments to the Transitional Constitution shall be presented to the National Legislature for adoption within the first 4 weeks from the conclusion of the Agreement. The National Legislature shall not introduce any amendments to the text;
- d) Upon the conclusion of the Peace Agreement, a representative National Constitutional Amendment Committee (NCAC) shall be established by the Stakeholders/Parties the task of which shall be the drafting of a Legal and Constitutional Framework for the incorporation of the Peace Agreement into the current Transitional Constitution of the Republic of South Sudan, 2011.
- e) The NCAC shall accomplish its task within four (4) weeks from the date of its formation and after which the Minister of Justice shall table the Constitutional amendment bill before National Legislature for adoption
- f) The National Legislature shall after one (1) month from the date of presentation, deliberate on the amended constitutional bill and adopt it thereafter.
- g) The National Legislature shall within seven (7) days from the date of adoption present the amended constitution to the President for assent and signature.
- h) Upon the adoption of the amended Constitution, the President shall prorogue the current national legislature, and a new Transitional National Legislature shall be constituted in accordance with the Peace Agreement.

- i) The amended Transitional Constitution shall not be amended or repealed during the Transitional Period except by way of special procedure by three quarters of all the members of the Transitional National Legislature in order that the provisions of the Peace Agreement are protected, as provided for in the Transitional Constitution, and shall form the basis upon which South Sudan shall be governed during the Transitional Period;
- j) The Stakeholders/Parties shall refrain from any form of unilateral revocation or abrogation of the Peace Agreement;
- k) The amended Transitional Constitution shall be the supreme law of the land. It shall regulate the relations and allocate the powers and functions between the different levels and organs of government;

Guiding Principles:

1. The people of South Sudan, in their social and political diversity, shall be entitled to participate in the institutions of the TGoNU at all levels, which shall respect the need for representation and inclusiveness in the staffing and management of its agencies, organs, departments and ministries without prejudice to merit;
2. The nature and the structure of the TGoNU shall be equitably constituted with their mandates (as shall be) defined by this Agreement;
3. The different branches of government (Executive, Legislature and Judiciary) as reformulated for the Transitional Period, shall operate independently to ensure that the principle of checks and balances is upheld.
4. The Stakeholders/Parties acknowledge that a federal system of governance is a popular demand of a large section of the population of South Sudan and therefore have agreed to reflect by way of effective devolution of more powers to the states during the transitional period.
5. Other aspects of federalism that require detailed study shall be handled by the Transitional Government of National Unity through the permanent constitutional-making process.

2.1.1. Mandate of TGoNU

The mandate of the transitional government is to establish and consolidate peace, instill confidence of the people in their government and lead the country to a genuine multi-party

democracy. In particular, the TGoNU shall exercise the following functions:

- a) Implementation of the Peace Agreement and restore peace, security and order in the country;
- b) Expediting the relief, repatriation, rehabilitation and resettlement of IDPs and returnees;
- c) To rebuild the destroyed physical infrastructure in the conflict affected States and give special attention to prioritizing the rebuilding of livelihoods of those affected by the conflict;
- d) Establishment of a Special Fund for Reconstruction of War affected states and compensation of persons whose property has been destroyed;
- e) Facilitating and overseeing the process of national reconciliation and healing through an independent mechanism;
- f) Implementation of critical reforms in governance;
- g) Overseeing the permanent Constitution-making Process;
- h) The conduct of population census during the transitional period, provided that failure to conduct a census for any unforeseen reasons shall not affect the conduct of general elections;
- i) The conduct of general elections towards the end of the transitional period;
- j) Work closely with the African Union, particularly with the IGAD sub-region and the international community, to consolidate peace and stability in the country during the Transitional Period;
- k) To facilitate the work of the AU Commission of Inquiry into the Human Rights Violations committed since 15th December 2013, as well as any investigation by the UN Human Rights Commission and other human rights bodies, in order to ensure justice and accountability and deter impunity;
- l) Ensure prudent, transparent and accountable management of national wealth and resources for building the nation and promoting the welfare of the people;
- m) Carrying out routine functions of government.

2.1.2. Structure and Composition of the TGoNU

The TGoNU shall consist of three branches, namely;

- I. The Executive;
- II. The Legislature;
- III. The Judiciary;

a) Members of the Transitional National Legislature (TNL) shall not serve in the Cabinet and vice-versa.

b) The structure of the TGONU shall be as follows:

i. The structure of TGONU/TFGONU Executive shall be as follows:

Option One

- (a) President,
- (b) Prime Minister
- (c) Two Deputy Prime Ministers
- (d) Presidential Advisors
- (e) Cabinet and Deputy Ministers

Option Two

- (f) President,
- (g) Vice President
- (h) Presidential Advisors
- (i) Cabinet and Deputy Ministers

ii. The National Legislature

- (a) National Legislative Assembly
- (b) Council of State/Senate

iii. The Judiciary

The Structure of State TGONU

- (a) The Executive
- (b) The Legislative Assembly
- (c) The Judiciary

The Structure of the Local Government

- (a) Local Government Council
- (b) Local Government Executive
- (c) Local Government Courts

A. The Executive

In addition to the applicable competencies already provided for in The Transitional Constitution of the Republic of South Sudan, 2011, The Executive Shall undertake the following functions during the Transitional Period;

6.2 Functions and Powers of the Transitional National Executive

Definition of the Powers of the President and the Prime Minister during the Transitional Period

President	Prime Minister
<ul style="list-style-type: none"> i. Preserving the sovereignty of the republic of South Sudan and protects its territorial integrity; ii. Carrying out the functions and duties of the Commander-in-Chief of the armed forces (SPLA); iii. Exercising command authority over the armed forces which shall flow from President to the Prime Minister, the Minister of Defence and the Chief of General Staff in accordance with the Peace Agreement; iv. Appointing the Prime Minister in accordance with this Peace Agreement; v. Appointing the two Deputies of the Prime Minister on recommendation of the Prime Minister in accordance with this Peace Agreement; vi. Appointing presidential advisors in consultation/concurrence/consent with the Prime Minister; vii. Appointing the Chief Justice, Justices of the Supreme Court, Courts of Appeal and Constitutional Court on the recommendation of the Judicial Service Commission and approval of National Legislature in accordance with the amended Constitution (consultation with the Prime Minister); viii. Declaration and termination of 	<ul style="list-style-type: none"> i. Is the Chief Executive and Head of Government; ii. Chairs the meetings of the National Council of Ministers; iii. Directs the daily business/operations of the Government; iv. Appoints members of the National Council of Ministers after consultation with the President in accordance with this Peace Agreement; v. Appoints heads of Independent Institutions, Commissions and Parastatals in consultation with the President; vi. Chairs the National Security Council and be a member of the National Defence Council; vii. Oversees the implementation of laws and policies passed by the National Legislature; viii. Initiates legislation on all matters of national development in accordance with the Transitional Constitution and

<p>state of emergency in consultation with the Prime Minister and in accordance with the Constitution;</p> <p>ix. Initiating constitutional amendments in consultation with the Prime Minister, assents to bills passed by the National Legislature and signs them into law;</p> <p>x. Convening the National Legislature during emergencies in accordance with the Constitution and the law;</p> <p>xi. Declaring war in consultation with the Prime Minister and in accordance with the Constitution;</p> <p>xii. The President shall chair meetings of the National Defence Council (NDC);</p> <p>xiii. Appointing ambassadors and diplomatic representatives to foreign countries on recommendation of the Prime Minister based on the initiation of the Minister of Foreign Affairs;</p> <p>xiv. Appointing Governors of the states as per the Peace Agreement;</p> <p>xv. Commissioning, appointing and dismissing officers of the military and other organized forces in consultation with the Prime Minister and with approval of the National Defence Council;</p> <p>xvi. Signing letters of accreditation of diplomatic and consular representatives of the Republic of South Sudan to foreign countries, regional and</p>	<p>presents such bills to the National Legislature;</p> <p>ix. Negotiates international agreements, treaties and conventions with approval of the Council of Ministers and approval of the National Legislative Assembly;</p> <p>x. Causes the preparation of the annual budget of the country and its presentation to the National Legislature;</p> <p>xi. Consults with the President and the Council of Ministers on issues of public policy and functioning of government;</p> <p>xii. Appoints Undersecretaries and other senior civil servants with approval of the Council of Ministers;</p> <p>xiii. Directs, coordinates and oversees the work of the ministries and other public institutions and agencies;</p> <p>xiv. In the event of absence, one of the Deputies shall act on his/her behalf;</p> <p>xv. Any other function as</p>
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<p>international organizations, and accepting the credentials of diplomatic and consular representatives of foreign countries and receiving their letters of credence;</p> <p>xvii. Overseeing the implementation of laws of the country, exercising the prerogative of pardon, commuting or approving death sentences, in accordance with the provisions of the Constitution and the law;</p> <p>xviii. Conferring decorations and Medals of Honour, both civil and military; in accordance with the laws governing such decorations and medals;</p> <p>xix. Addressing the opening sessions of the National Legislature; and special sitting once a year on the state of the nation;</p> <p>xx. Addressing the National Legislature any time as the situation may require;</p> <p>xxi. Any other function vested in him/her in conformity with the Constitution and the law;</p> <p>xxii. In the event of absence, the Prime Minister shall act on his/her behalf.</p>	<p>may be prescribed by law.</p>
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Composition of the Cabinet

- i. The cabinet shall comprise of at least 24 cabinet ministers; and about five (5) deputy ministers where appropriate;
- ii. The composition of the Council of Ministers shall reflect competence, gender parity and diversity of the country;

- iii. *The heads of Independent Commissions, Public Corporations and state-owned enterprises, shall reflect competence, gender parity and diversity of South Sudan;*
- iv. *Similar arrangements shall apply on the State level. The State Council of Ministers shall comprise the Governor, Deputy Governor (who shall also hold a ministerial docket) and six Ministers, two of whom shall be women.*
- v. *The allocation of positions above shall be in accordance with the agreed power sharing ratio as per the*

The national Council of Ministers shall comprise of the following portfolios:

No	Line Ministry	Ministerial Sector
1	<i>Cabinet Affairs (including Inter-state Coordination) / (Decentralization and Coordination?)</i>	<i>Governance</i>
2	<i>Foreign Affairs</i>	
3	<i>Defence</i>	
4	<i>Interior</i>	
5	<i>Justice and (Constitutional Affairs)</i>	
6	<i>National Security</i>	
7	<i>Information and Communication</i>	
8	<i>Parliamentary Affairs</i>	
9	<i>Finance and National Economy</i>	<i>Economy</i>
10	<i>Energy and Mining</i>	
11	<i>Commerce and Industry</i>	
12	<i>Investment</i>	
13	<i>Agriculture</i>	
14	<i>Animal Resources and Fisheries</i>	
15	<i>Transport and Roads (including bridges)</i>	
16	<i>Water Resources and Irrigation</i>	
17	<i>Environment and Forestry</i>	
18	<i>Land, Housing and Physical Planning</i>	
19	<i>Labour, Civil Service and Administrative reform</i>	<i>Services</i>
20	<i>Education, Science and Technology</i>	
21	<i>Health</i>	
22	<i>Culture, Youth and Sports</i>	
23	<i>Humanitarian Affairs</i>	
24	<i>Women, Child and Social Welfare</i>	

B. The Legislature

(i) Principles

- (a) Upon the adoption of the amended Constitution, the President shall prorogue the current national legislature, and a new Transitional National Legislature shall be constituted in accordance with the Peace Agreement;
- (b) The offices of the Speaker and Deputy Speakers of the National Legislative Assembly and the Speaker and Deputy Speaker of the Council of States/Senate shall be subject to power sharing among the Stakeholders/Parties **[IGAD to define]** to this Peace Agreement;
- (c) The National Legislative Assembly shall be composed of 170 [One Hundred and Seventy] members and a Council of States/Senate shall comprise 3 [Three] representatives from each State;
- (d) Membership of the National Legislature shall reflect the broad spectrum of South Sudanese society to ensure fair representation.

(ii) Functions of the Council of States/Senate

In addition to the applicable competencies already provided for in The Transitional Constitution of the Republic of South Sudan, 2011, The Council of States Shall perform the following functions during the Transitional Period;

- a) The Senate shall elect a Speaker and Deputy Speaker;
- b) Oversee national reconstruction, development and equitable service delivery in the states;
- c) Perform any other function as determined by the **Transitional Federal Constitution or the law.**

(iii) Functions of the National Legislative Assembly

In addition to the applicable competencies already provided for in The Transitional Constitution of the Republic of South Sudan, 2011, The National Legislative Assembly Shall perform the following functions during the Transitional Period:

- (a) Shall elect Speaker and Deputy Speaker;
- (b) Shall exercise oversight function on organs of government including the office of the President and Vice President;
- (c) Shall scrutinize, amend, and approve the policies and programs of the TGoNU;

- (d) Shall encourage and support the emergence of a new democratic political culture particularly in the areas of freedoms, civil liberties, human rights and the rule of law;
- (e) Vet and confirm Presidential nominees for constitutional and other executive positions.

C. The Judiciary

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2.1.3.

2.2. TRANSITIONAL PERIOD

- a) The duration of the Transitional Period shall be three calendar years beginning from the day the Agreement is adopted by the National Legislature;
- b) The TGoNU and its institutions as provided for in the Peace Agreement shall be established and come into existence at the end of the Pre-Transitional Period;
- c) During the Transitional Period, critical institutional reforms in the Security Sector (Army, Police, Prisons, Wild life, Fire Brigade Service, National Security Service, etc.,) Civil Service, Judiciary, Economic and Financial Sector, Service Delivery, Media, Natural Resource Sector, Foreign Policy, and all Independent Commissions and Institutions, shall be carried out as stipulated in the Agreement;
- d) In implementation of the Peace Agreement the following Commissions and Institutions shall be established:
 - (i) Commission for Implementation of the Peace Agreement;
 - (ii) National Truth, Reconciliation and Healing Commission;
 - (iii) Joint Ceasefire Commission;
 - (iv) Civil Service Reintegration Committee;
 - (v) The Public Procurement Authority;
 - (vi) National Constitutional Review Committee;
 - (vii) Joint Security Sector Reform and Transformation Commission;
 - (viii) Strategic Defence and Security Review Committee.
 - (ix) Commission for the Reconstruction and Rehabilitation of the War-affected areas
 - (x) Any other Institution/Commission as may be deemed necessary