

Special EDITION

South Sudan Power-Sharing Agreement and Intricate Realities: Conceptual and Critical Reflections

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Abstract

Power sharing agreements has been a tool for peace-making in Africa for many years. In recent times, such settlements ended the post-election violence in Kenya (2007/2008) and Zimbabwe (2008/2009). This article examines the theoretical underpinnings of power sharing in divided societies and democracies, and will critically examine the recent power sharing agreement signed on September 12, 2018 to end civil war in South Sudan considering the inherent limitations of the strategy in conflict management, and its past failures elsewhere in Africa.

Introduction

A number of power-sharing agreements have been employed as a conflict management strategy in various countries in Africa. Such include Côte d'Ivoire (2002-2007), Liberia (1994-2003), and Central African Republic (1996-2007), Angola (1994 -1998), the Democratic Republic of Congo (2003-2006), Kenya (2008 - 2013), Zimbabwe (2009 - 2017), Rwanda (1994 - 2003), Burundi (since 2005 but slightly tinkered with), Sierra Leone (1996 and 1997), and Nigeria (since 1999), among other cases.

On August 15, 2015, after almost two years of civil war, a power sharing agreement for transitory purposes, was signed. However, this agreement broke down and has been revitalized through 'the Revitalized Agreement for Resolution of Conflict in South Sudan'- R-ARCSS signed on September 12, 2018. However, this being the second such agreement employed to end the conflict in South Sudan, and the new realities in terms of the conflict map, the new agreement needs critical examination with the view of stabilizing peace in South Sudan.

This article explores theoretical underpinnings of power sharing in divided societies, and as a conflict management strategy. Its inherent limitations will similarly be examined.

The totality of these sections will help in the critical analysis of the South Sudan peace agreement.



Theoretical Underpinnings of Power-Sharing Agreements


Power sharing, as a method of conflict management and resolution, has been employed mostly in (ethnically or religiously) divided democracies or societies (Lijphart, 1977). It is conceptually designed to safeguard adequate group representation and foster democratic participation in such societies, through practical equations of power distribution across existing socio-political groupings.

Lijphart (1997) proposed the concept of consociational democracy, a group-based form of democracy, which addresses the exclusion of minorities. He put forth a power-sharing model built on four pillars:

- A grand coalition government which accommodates political leaders of all significant segments of the plural society.
- The mutual veto (or minority veto) or concurrent majority rule which serves as an additional protection of vital minority interests.

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- c. Proportionality as the principal standard of political representation, civil service appointments, and allocation of public funds, among other aspects of power-sharing.
- d. Group autonomy of each segment to run its own internal affairs which might include adoption of federal governance.

Minority exclusion, which power-sharing arrangements seek to remedy, may arise from the fact that majority rule, a liberal democratic principle, might in consequence, be majority dictatorship. This is simply because in societies where people vote along ethnic lines, political parties representing ethnic minorities have little chance of forming a majority, hence shifting majorities in parliament might be unlikely (Jarstad, 2008).

Power Sharing for Conflict Management

As regards conflict management, power sharing is used to end violence in civil or armed conflict scenarios, especially where military victory for either side to the dispute, is unlikely. The unfeasibility of violent means to conflict resolution and the stalemate, yields to non-violent conflict resolution mechanisms through third parties – mediation and negotiation mechanisms (Koko, 2013).

Power sharing therefore, as a conflict management method, is out of appreciation of the fact that dividing power among rival groups during the transition, reduces the danger that one party will become dominant and threaten the security of others (Koko, 2013). It also addresses the problem of exclusion, which is a prime factor behind conflicts in Africa as Koko (2013) observes. This method, particularly emphasizes the inclusion of non-state stakeholders such as rebel groups, political parties, and civil society groups in transitional mechanisms, as a peace equation, hinged on mutual accommodation.

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and transitory. As such, Koko (2013) argues that power sharing seeks to address the problem of power illegitimacy through accommodative transitional mechanisms capable of popular consultations and elections for institutional renewal in post-conflict societies. He further adds that provisions of power sharing such an approach, are generally derived from peace (or political) agreements signed by parties. Such agreements guarantee the representation and participation of representatives of consequential groups in political decision-making in the executive, legislature, judiciary, police, army and the civil service, among other sectors.

Hoddie and Hartzell (2005) in their study of power-sharing agreements, identify four models of power sharing: Central (political); Territorial (federalism/decentralization), Military; and Economic.

The Problem

Power sharing as a conflict management strategy has had chequered results in Africa, with those in Kenya, Nigeria, and Tanzania, registering positive results. However, most of such peace agreements in Africa have largely been characterized by failures. Some of the power-sharing agreements on the continent have instead reproduced insurgent violence; collapsed and opened a relapse into civil wars; or failed to provide a bulwark against revisions as variably witnessed in *inter alia*, Angola, Liberia, Sierra Leone, and South Sudan. It begs the question, what in the Lijphart (1977), and Hoddie and Hartzell (2005) models, makes power sharing as a tool of conflict prevention, management, and resolution, a flawed mechanism. What gaps exist in the current peace agreement of South Sudan that might be potentially prejudicial to long-term conflict resolution in the country? How best can the South Sudan peace agreement be improved for long-term peace?

Findings

In an attempt to answer the question as to what makes power sharing a flawed peace-making approach, Jastard (2008) notes that, power sharing does not necessarily end violence. It, by excluding the public, turns elitist and undermines democratic processes. He implies the legitimacy of transitory structures and power is forgone, for a compromise arrangement to end the 'war of the roses', in which, the public or citizens are alienated despite being affected by the conflict and by the factors creating the conflict. Further, Jastard (2008) adds that in some cases where power sharing happens in the economic sector, economic recovery is undermined.

From a military-political perspective, Lyons (2002) states that “pacts are more likely among elites with relatively clear and loyal constituencies, such as traditional political parties, labour unions, or other institutions in a corporatist setting. In the aftermath of a civil war, political and social organizations generally are absent and the ability of militia leaders to deliver the compliance of their own fighters is often questionable” (p. 220).

On the other hand, Mehler and Degenhardt (2008) advance that by allowing non-state groups or rebels a share of state power, power sharing creates an incentive structure for would-be leaders to embark on insurgent pathways to power, thereby reproducing insurgent violence.

On his part, Spears (1999) observes that the tendency toward decentralization in the name of conflict prevention or power sharing, has gained currency in the recent years. This guarantees “group autonomy” pillar of power sharing. However, Mehler (2003) argues that decentralization can equally have adverse effects on conflicts. He adds that transferring competences from the central to the local level may create new conflicts at a local level since local elites are not necessarily more peace-loving or less corrupt than those at the central level.

Federalism can also be in the form of what Bunce and Watts (2005) refer to as ethno-federalism, in which federal units are ethnically based. From ethno-federal perspective, Bunce and Watts (2005) maintain an ambivalence on its effectiveness in conflict prevention, resolution and long-term peace building. They argue that ethno-federalism may counter two typical temptations in multi-ethnic contexts (of minorities to defect and of majorities to dominate) by legitimizing difference and empowering minorities to create mutual trust for stability. However, they warn that such a set up might also undermine commonality, and crystallize differences and identities, which might undermine cooperation and accord minorities the institutional pre-requisites for later secession.

Far from the foregoing considerations, Koko (2013) observes that the most important consideration of power sharing as an instrument of peace making, is its relationship with justice and human rights, and peace and reconciliation. He finds that protection of human rights is central to a justice-based society, especially one emerging from conflict. Koko (2013) adds that the pursuit of justice and the protection and promotion of human rights raise are safeguards for the feasibility of peace and reconciliation and the avoidance of relapse into violence. This

peace, human rights and justice complex creates a dilemma since justice and protection of human rights have to be secured short of upsetting the peace, given previous crimes and human rights abuses have to be prosecuted. It is more intricate considering that former combatants could be accommodated in the transitory peace arrangements, and punishment of certain crimes and violations of human rights might reignite pre-conflict sensibilities along ethnic or political lines.

Koko (2013) suggests that transitional justice is the best remedy as regards human rights, justice and peace in post-conflict environments. Annan (2004) defines transitional justice as the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice employs judicial (trials) and non-judicial mechanisms – truth and reconciliation commissions, amnesties, parliamentary or other inquiries, lustrations, and reparations. Koko (2013) sees the combination of judicial and non-judicial mechanisms, as less antithetical to peace and reconciliation in post-conflict societies as opposed to strictly judicial approaches to justice, which are in the main, retributive.

Lastly, since power sharing is mainly a transitory mechanism, long-term peace building is delicately approached through such a mechanism. Roeder and Rothchild (2005) hold that power sharing arrangements have inherent dilemma between the immediate inclusionary strategy in a first phase of getting a peace agreement and the long-term institutional arrangements in a later phase. Mehler (2008) agrees that it is difficult to transition from phase one (transition) to phase two (consolidation) with the same institutional and group set up of phase one who carry along their interests to maintain status and privileges. Walter (2002) prescriptively concludes that power-sharing pacts are likely to be unstable over time hence “a second transition” is required for lasting peace. Walter implies transformation of institutional and structural elements of the pre-conflict society, and this can be, in part, through constitutional review to guarantee stable peace in the post-transition period.

In his study of power sharing pacts as a conflict management mechanism in Africa, Mehler (2008) observes that the practice is preventive diplomacy *stricto sensu* rather than tailor-made. As such, he notes that the choice of mediation partner on the rebel side is a challenge. This is because, in his view, there is no clear command of loyalty and legitimacy among specific groups, the process is premised on the assumption that self-

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declared leaders and representatives of a neglected group are rather politico-military entrepreneurs devoid of altruistic devotion. He adds that, such negotiating partners are selected for their spoiling capabilities, and the groups to be represented are mostly perceived to be ethnic and the outer limits of such groups are disputed, whereas, internal homogeneity often lacks. The consequence is the difficulty of determining institutions to guarantee group interests.

The South Sudan Power Sharing Deal

The peace deal (R-ARCSS) signed on September 12, 2018, established a transitional government for the Republic of South Sudan and brought a long civil war to a halt. The agreement cemented the ceasefire and cessation of hostilities (CoH) agreements, and humanitarian access established in December 2017. The agreement was signed between the government side, the Transitional Government of National Unity (TGoNU), the main opposition (South Sudanese People's Liberation Movement/Army-In Opposition – SPLM/A-IO), the South Sudan Opposition Alliance (SSOA), Former Detainees (FD), and Other Opposition Parties (OPP).

R-ARCSS provides for the formation of a Revitalized Transition Government of National Unity (TGoNU) composed of the signatory parties under a power sharing arrangement, guaranteed by the Transitional Constitution of South Sudan 2011 (TCSS). It is important to note that TGoNU was the transitional government under ARCSS before its collapse in 2016.

R-ARCSS provides for the unification and professionalization of the army and the police, secures the oil fields and ensured petroleum operations resume, and allows for government provision of basic services. It further establishes timelines for pre-transitional and transitional periods and the general elections, outlines a power sharing arrangement among the signatory parties, and creates a detailed schedule of its implementation.

Accordingly, the unification, training and redeployment of forces is to be done within the first eight months (pre-transition), upon which the tenure of the transitional government would start for a period of 36 months, and the next elections would follow at least 60 days before the end of tenure of the transitional government.

The power sharing equation for the contracting parties in the National Legislative Assembly (legislature) provides for a total of 550 members of National Legislative Assembly. This is to be shared 60 per cent for the Transitional Government of National Unity (SPLM/A-IG) (332 members), 23 per cent for the SPLM/A-IO (128 members), 9 per cent for the South Sudan Opposition Alliance (50 members), 6 per cent for Other Political Parties (30 members), and 2 per cent for the group of Former Detainees (10 members).

Further, in the Ministerial Council, the parties would share a total of 35 positions as follows: 20 positions for the TGoNU, nine positions for the SPLM/A-IO, three for the SSOA, two for the FD, and one for the OPP. The deputy ministerial positions (totalling 10) are to be shared with five going to TGoNU, three to SPLM/A-IO, one to the SSOA, and one for the OPP. At the level of state and local councils, power sharing power sharing across state governors, speakers of state legislatures, state councils of ministers, state legislatures, county commissioners, and county councils will allocate 55 per cent for TGoNU, 27 per cent for SPLM/A-IO, 10 per cent for SSOA, and 8 per cent for OPP, while the FDs will choose three ministers from states of their choice, to deducted from the opposition.

The Inherent Intricacies

a. The Top-Heavy Problem

The R-ARCSS accommodates five political groupings in a joint government, the R-TGoNU, across all levels of political, military, and administration levels. This might lead to top-heavy problems in the political, military and bureaucratic spheres in South Sudan due to the large number of representatives of all the signatory groupings in high ranks, especially at the higher levels of decision-making and the size of the bureaucracy. For instance, President Salva Kiir, in August 2018, promoted over 120 generals to the rank of major general, which might provoke similar promotions on the opposite side as a form of reward and maintaining the loyalty structure ("Kiir promotes over 120", 2018).

Further, Engel, Boeckler, and Müller-Mahn (2018) note that military inclusion (power sharing) does not necessarily lead to a newly ordered and functioning army, as it may lead to top-heavy

armies difficult to function (in terms of structure and command). It can also lead to mutiny or further factionalisation as parallel hierarchies might be established and loyalty retained for former rebel commanders. This scenario can possibly be replicated in the national legislative assembly, executive and ministerial council, down to state legislatures and executive councils, thus undermining efficiency and effectiveness in governance and service delivery.

b. Territorial Trap

R-ARCSS proposes a federal system of governance in the post-conflict era subject to further constitutional review and territorial demarcation. However, as Engel et al. (2018) warn, territorial power sharing risks creating the 'territorial trap' through decentralization and federalism, in which political agents might adapt power sharing schemes to their advantage through personal claim to specific spaces. This might entrench competing territorial claims even after the settlement of the conflict and proceed to alter the socio-political relations in the society. Engel et al. (2018) further caution that territorial power sharing might accentuate majority-minority struggle in an ethnic majority territory, provoked by representation by a minority individual, especially at the national level, and the minority remain feeling marginalized in such a given territory.

c. Ethno-Nationalism

Provided that R-ARCSS only provides legislative and executive power sharing on transitional basis, the reality of ethnic minorities being outnumbered in subsequent dispensations, and not being able to flip ethnic majorities, might lead to minorities resorting to ethnic nationalism to effect a balance of power. However, R-ARCSS attempts to solve this problem through ethnic federalism subject to states' boundaries review. Article 1.15.18.1 of the R-ARCSS requires IGAD to constitute a Technical Boundaries Committee, without prejudice to the Independent Boundaries Commission (IBC) and the Referendum Commission on the Number and Boundaries of States, to demarcate the tribal areas of South Sudan as they stood as of January 01, 1956 and the tribal areas in dispute in the country. This exercise is tantamount to tribal territorialization upon which federalism, as will be proposed by the IBC or declared by the RCNBS subject to referendum, is likely to be based. However, ethno-federalism, might not also guarantee social stability, as evidenced by Ethiopia's ethno-federal system (a federal parliamentary democracy), where it has led to ethno-nationalism and various ethnic groupings have ethnically-based political movements and military wings to contest for power, if not separation.

To carry out transitional justice, considering the atrocities and human rights violations during the civil war, the R-ARCSS provides for a commission for truth, justice and healing, and a hybrid court

d. The Legacy of Mistrust and Protracted Social Conflict

Psaltis, Carretero, and Cehajic-Clancy (2017) observe that the cultivation of historical thinking in post-conflict societies faces the challenges of adherence to master narratives of the conflict. This leads to feelings of being threatened by and of distrust towards the opposite (ethnic) group, making it difficult for conflict transformation in the context of inter-communal or inter-group conflicts. Introducing the concept of protracted conflict, Azar (1990) explains that inter-group conflict remains entrenched when a set of conflict parties interact in self-reinforcing spirals of distrustful, coercive gestures against each other over a sustained period of time, leads to protracted social conflict.

e. Slow Economic Recovery or Economic Price of Peace

In his criticism of the Versailles Treaty, Keynes (2010) writes "...and they settled it as a problem of theology, of politics, of electoral chicanery, from every point of view except that of the economic future of the states whose destiny they were handling" (p. 2).

Similarly, despite the creation of the Special Reconstruction Fund under Article 3.2 of the R-ARCSS, other structural factors are likely to undermine the country's economic recovery and stability for some time during and after the transition. Due to power sharing, the TGoNU will now bear a bloated public service whose wage bill is bound to significantly increase the country wage bill and other elements of recurrent expenditure, especially on operational issues. This is against the backdrop of the fact that the country has had a great economic dip during the civil war and attendant global oil crisis, whereas the South Sudanese economy is oil-dependent, with oil contributing 60 per cent of the GDP and 95 per cent of government revenue. The economy has also contracted over the years of the civil war, recording GDP growth of -13.8 per cent in 2016, with a further contraction of 6.1 per cent in 2017.

At the same time, corruption and neo-patrimonialism are rife in the country, and as Mehler (2008) notes, decentralization or federalism might just percolate corruption and power struggles down to the lowest level of governance. In fact, a report by the Sentry in October 2018, analyses money laundering schemes involving South Sudan's political and military elites with interests in Kenya, Sudan, Ethiopia, and Uganda (The Sentry, 2018). This might be just a tip of the iceberg about grand corruption in the country. If such a scenario plays out in the post-conflict Sudan (including during the transition), compounded with the large wage bill and operational expenditure, economic recovery and fiscal stability of the country might be in jeopardy already.

f. Justice and Human Rights

To carry out transitional justice, considering the atrocities and human rights violations during the civil war, the R-ARCSS provides for a commission for truth, justice and healing, and a hybrid court. However, the likelihood of prosecuting human rights violations and the quality of justice might not meet wider expectations because of lack of political goodwill from the main sides of the conflict. For instance, President Salva Kiir, has been appointing UN-sanctioned military leaders to senior positions.

Further, in December 2017, he appointed Marial Chanuong as the new head of army operations, training and intelligence, and Santino Deng Wol as the head of ground forces, and Gabriel Jok Riak as the deputy chief of defence. The three were sanctioned by the UN Security Council in 2015 over human rights violations during the civil war in the country (Patinkin, 2017). In September 2018, appointed UN-sanctioned army commander Reuben Malek as new deputy Defence minister. Malek is under sanctions for alleged war crimes and crimes against humanity committed in 2015 under his command in the Upper Nile State. He is also accused of corruption for alleged role in the loss of nearly USD three million during his tenure as the army deputy chief of staff for logistics (Oduha, 2018).

g. Factionalization or Splintering

Mehler (2008) warns that by allowing non-state groups or rebels a share of state power, power sharing creates an incentive structure for would-be leaders to embark on insurgent pathways to power, thereby reproducing insurgent violence. This is observably true in South Sudan especially with respect to the ARCSS power sharing agreement. ARCSS was signed by four parties: the Government of the Republic of South Sudan, South Sudan Armed Opposition (then SPLM/A-IO), Former Detainees and Other Political Parties. However, formations changed towards and after the collapse of

ARCSS leading to more political groups or parties and armed groups. These groups staked claim to power and complicated the subsequent power sharing equation and finally, R-ARCSS has been signed by five categories of parties: the TGoNU, SPLM/A-IO, SSOA, OPP, and FDs.

SSOA has already experienced splintering as the initial alliance of nine political parties, has been reduced to seven. The alliance now consists seven political parties and their armed wings led by Gabriel Chang Changson. These are the Federal Democratic Party/South Sudan Armed Front of Gabriel Chang Changson, the National Democratic Movement of Lam Akol, the South Sudan National Movement for Change led by Bangasi Joseph Bakosoro, the South Sudan Patriotic Movement/Army of Hussein Abdel Bagi, the South Sudan Liberation Movement/Army of Bapiny Montuil Wegjang, the South Sudan United Movement/Army of Peter Gadet Yak, and the People's Democratic Movement led by Josephine Lagu. This faction of SSOA is a signatory to the peace agreement. With a fallout over the November 30, 2018 SSOA elections, the alliance is divided between the Gabriel Chang-led faction which includes Khalid Butros (NAS), Josephine Lagu Yanga (PDM), Joseph Bangasi Bakasoro (SSNMC), Hussein Abdelbagi Akol (SSPM) and Bapiny Monytil (SSLM), and one led by Gen. Peter Gatdet Yak, who supposedly won the disputed elections. Gatdet's faction includes Lam Akol (NDM), Henry Oyay (NAS), Thomas Peter Okac (FDP), Anas Richard Zanga (PDM), Thomas Ali Bilal (SSNMC), and Jacob Nyier Gatkuoth (SSLM).

Another SSOA faction led by General Thomas Cirilo Swaka, rejected R-ARCSS, though claim to be committed to the ceasefire agreement. This faction consists of the National Salvation Front (NAS) of General Thomas Cirilo Swaka, the People's Democratic Movement (PDM) chaired by Hakim Dario, the National Democratic Movement (NDM) led by Emanuel Aban and the United Democratic Republic Alliance (UDRA) of Gatwech K. Thich, and the South Sudan National Movement for Change (SSNMC) of Vakindi L. Unvu.

Other Opposition Parties (OPP), a signatory to the peace agreement, is a group of six political parties including the Umbrella of Political Parties, the National Alliance of Political Parties, the United Sudan African Party, the United Democratic Salvation Front, the United Democratic Party, and the African National Congress.

Clearly, the first power-sharing agreement might have incentivized more insurgent violence and produced more power-seeking groups that are now accommodated in the current peace

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agreement. With General Thomas Cirilo's faction and allied armed groups staying out of the deal, and some factionalization already cracking into signatory parties, Mehler's admonition might hold true.

Conclusion

ARCSS is a promising peace settlement and has progressive conflict transformation elements which if faithfully implemented, South Sudan might acquire stable peace and embark stably on economic recovery and development. However, challenging intricacies of power sharing agreements considered against the socio-political and economic circumstances in South Sudan, casts a little censure upon its prospects in long-term. To beat some of these challenges, South Sudan should:

- Adopt a permanent consociational parliamentary democracy to stabilize the country politically. The new constitution should thus establish the positions of the president, the deputy president, the prime minister and the speaker of the national assembly, to be shared permanently to ethnic groups on the basis of proportionality.
- Fully carry out institutional reforms to establish institutional independence necessary for democratic consolidation, and entrenchment of the rule of law.
- Fully overhaul economic management frameworks, set up effective anti-corruption mechanisms, and establish strong public ethics, as provided for in the R-ARCSS, as necessary as it will be for sustainable and optimal utilization of national resources.
- Accord adequate political good will to implementation of the peace agreement, and to conflict transformation process (especially to transitional justice) for long-term peace and stability.
- Reduce the number of legislative positions and state boundaries, as proportionately as not to disadvantage any group, to help deal with over-representation and its financial implications on the country's budget.
- Review the formula of power sharing at state and local levels as provided in the R-ARCSS, and base it on the principle of proportionality rather.
- Establish a permanent ethnic power sharing equation in the security sector, with clear command and structure, after the regularization process.

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