



**Reconstituted Joint Monitoring and Evaluation Commission
(RJMEC)**

EVALUATION REPORT

ON

**THE STATUS OF IMPLEMENTATION OF THE REVITALISED AGREEMENT ON THE
RESOLUTION OF THE CONFLICT IN THE REPUBLIC OF SOUTH SUDAN (R-ARCSS)
DURING THE TRANSITIONAL PERIOD**

OF

22 FEBRUARY 2020 - 22 JUNE 2022

BY

**H.E. AMB. MAJ GEN (rtd) CHARLES TAI GITUAI
INTERIM CHAIRPERSON**

RECONSTITUTED JOINT MONITORING AND EVALUATION COMMISSION
PLOT 133, BLOCK B-XV, HAI MOTOR 1ST CLASS
JUBA, South Sudan

JUNE 23, 2022

Table of Contents

| | |
|---|-----|
| ACRONYMS..... | ii |
| EXECUTIVE SUMMARY | iii |
| I. INTRODUCTION | 7 |
| II. STATUS OF IMPLEMENTATION OF THE R-ARCSS | 7 |
| CHAPTER 1: REVITALIZED TRANSITIONAL GOVERNMENT OF NATIONAL UNITY | 7 |
| a. Introduction | 7 |
| b. Status of the Implementation..... | 7 |
| c. Recommendations..... | 10 |
| CHAPTER 2: PERMANENT CEASEFIRE AND TRANSITIONAL SECURITY ARRANGEMENTS ... | 11 |
| a. Introduction | 11 |
| b. Status of the Implementation of the Permanent Ceasefire..... | 11 |
| c. Recommendations..... | 12 |
| CHAPTER 3: HUMANITARIAN ASSISTANCE AND RECONSTRUCTION | 13 |
| a. Introduction | 13 |
| b. Status of the Implementation..... | 13 |
| c. Recommendations..... | 14 |
| CHAPTER 4: RESOURCE, ECONOMIC AND FINANCIAL MANAGEMENT | 15 |
| a. Introduction | 15 |
| b. Status of the Implementation..... | 15 |
| c. Recommendations..... | 18 |
| CHAPTER 5: TRANSITIONAL JUSTICE, ACCOUNTABILITY, RECONCILIATION AND HEALING | 20 |
| a. Introduction | 20 |
| b. Status of the Implementation..... | 20 |
| c. Recommendations..... | 23 |
| CHAPTER 6: LEGAL AND CONSTITUTIONAL AFFAIRS | 24 |
| a. Introduction | 24 |
| b. Status of the Implementation..... | 24 |
| c. Recommendations..... | 26 |
| III. CONCLUSION..... | 26 |
| IV. RECOMMENDATIONS..... | 27 |

ACRONYMS

| | |
|---------|--|
| AUC | African Union Commission |
| CoHA | Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access |
| COS | Council of States |
| CTRH | Commission for Truth, Reconciliation and Healing |
| CTSAMVM | Ceasefire and Transitional Security Arrangement Monitoring and Verification Mechanism |
| DDR | Disarmament Demobilization and Reintegration |
| IGAD | Intergovernmental Authority on Development |
| JDB | Joint Defence Board |
| JMCC | Joint Military Ceasefire Commission |
| JSTC | Joint Transitional Security Committee |
| JRC | Judicial Reform Committee |
| MVTs | Monitoring and Verification Teams |
| MoJCA | Ministry of Justice and Constitutional Affairs |
| NCAC | National Constitutional Amendment Committee |
| NTC | National Transitional Committee |
| NUF | Necessary Unified Forces |
| R-ARCSS | Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan |
| RJMEC | Reconstituted Joint Monitoring and Evaluation Commission |
| RTGoNU | Revitalised Transitional Government of National Unity |
| SGBV | Sexual and Gender Based Violence |
| SDSR | Strategic Defense and Security Review |
| SRF | Special Reconstruction Fund |
| SSPDF | South Sudan Peoples Defense Forces |
| TNLA | Transitional National Legislative Assembly |
| TSA | Transitional Security Arrangements |
| UNMISS | United Nations Mission in South Sudan |
| UNODC | United Nations Office on Drugs and Crime |

EXECUTIVE SUMMARY

This Reconstituted Joint Monitoring and Evaluation Commission (RJMEC) report provides a detailed evaluation of the status of implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) covering the period 22 February 2020 to 22 June 2022. It provides details of the activities which have been implemented since the Revitalized Transitional Government of National Unity (RTGoNU) was established in February 2020, tasks undergoing implementation and those which are yet to be implemented. The report also highlights impediments to the implementation of the R-ARCSS and concludes with recommendations to the RTGoNU and the regional and international guarantors.

The evaluation report draws on the inputs of the various thematic Working Committees of RJMEC since they were reconstituted, including that on *‘Two Years of the Transitional Period of the R-ARCSS 22nd February 2020 to 22nd February 2022’*,¹ which RJMEC had earlier produced. This report therefore provides a chapter-by-chapter analysis of the status of progress in the implementation of the R-ARCSS over the 27 months of the Transitional Period.

Status of Implementation

a. Revitalized Transitional Government of National Unity (Governance)

Progress has been made in the implementation of Chapter I of the R-ARCSS in resolving the number of states and their boundaries; incorporating the R-ARCSS into the Transitional Constitution of the Republic of South Sudan (TCRSS) 2011, as amended; review and amendment of legislation; establishment of government structures (executive and legislature) at the national and local government levels; resumption of the mandate of the National Constitutional Amendment Committee (NCAC); and establishment of an *ad hoc* Judicial Reform Committee (JRC) which commenced work in June 2022.

The following tasks in chapter I of the R-ARCSS are being implemented: (a) operationalisation of the JRC whose mandate is to study and make recommendations for judicial reforms to the RTGoNU for its consideration; (b) the process of reconstitution of the Institutions and Commissions at the national level; (c) enactment of bills such as the Constitutional Amendment Bills (Nos. 6, 7, 8, 9 and 10); and the Political Parties Bill 2019; and (d) presentation of the approved bills by the Council of States before the Transitional National Legislature (TNL) for enactment.

The pending tasks include: (a) reforms of the judiciary, including the review of the Judiciary Act; (b) establishment of an independent, impartial and credible Constitutional Court, which is linked to the judicial reform process; (c) completion of the review and amendment of legislation which the NCAC is mandated to review and amend to conform to the provisions of the R-ARCSS; (d) reconstitution of the National Elections Commission and the Political Parties Council; (e) amendment of the National Elections Act 2012 to conform to the provisions of the R-ARCSS as well as to conform to the provisions of the permanent constitution once it has been adopted; (f) commencement of the necessary preparations for holding free, fair and credible national elections.

¹ <https://jmecsouthsudan.org/index.php/reports/r-arcss-evaluation-reports/202-progress-report-by-he-maj-gen-charles-tai-gituai-rtd-cbs-interim-chairperson-of-rjmec-on-two-years-of-the-transitional-period-of-the-r-arcss-covering-the-period-22nd-february-2020-to-22nd-february-2022/file>

b. Permanent Ceasefire and Transitional Security Arrangements

Among the key tasks implemented in Chapter 2 of the R-ARCSS is the cessation of hostilities and the signing of the Permanent Ceasefire amongst the signatories to the Agreement. In addition, more than 80 000 of the Necessary Unified Forces (NUF) have been trained and agreement reached on the unified command structure and appointments of its members.

Ongoing tasks relate to preparation for the graduation of at least 50,000 Phase I of the NUF; demilitarization of civilian centres; monitoring and verification of adherence to the Permanent Ceasefire by the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM); and cessation of hostilities and the observance of the Permanent Ceasefire amongst the signatories to the Agreement.

With regards to the outstanding tasks these are the completion of the unification of command structure at all levels of rank and file; graduation and redeployment of Phase I of the NUF and commencement of Phase II cantonment and training; operationalization and funding of the Disarmament Demobilisation and Reintegration (DDR) programmes as a critical component of unification of forces and long-term security; logistics support for cantonment sites and training centres; and complete demilitarization of the occupied civilian centres.

c. Humanitarian Assistance and Reconstruction

Implemented tasks under Chapter 3 of the R-ARCSS include opening of some humanitarian corridors; and the establishment of mechanisms such as the State and National Level Taskforces on Solutions and Local Government structures to enable the smooth management of voluntary returns. Among the tasks still ongoing are the gradual voluntary and spontaneous return of some Internally Displaced Persons (IDPs) and refugees; efforts to create an enabling political, administrative, operational and legal environment for delivery of humanitarian assistance and operations; and instituting programmes for relief, protection, repatriation, resettlement, reintegration and rehabilitation of IDPs and returnees.

Among the key outstanding tasks are the creation by the RTGoNU of an enabling environment for voluntary and dignified return of IDPs and refugees; establishment of the Special Reconstruction Fund (SRF); convening of the South Sudan donor pledging conference; and review by the NCAC of the NGO Act 2016.

d. Resource Economic and Financial Management

Among the key tasks implemented within Chapter 4 of the R-ARCSS are the following: (i) establishment of a competent and effective mechanism that oversees revenue collection, budgeting, revenue allocation and expenditure; (ii) review of all current employment in the oil sector; (iii) review, vetting and taking of corrective measures on all contracts awarded to oil service companies; (iv) review and auditing of the previous allocation and transfer of the 2% and 3% made to oil producing States and counties since 2011; and (v) establishment of the Social Security Fund.

Ongoing tasks include review of the Anti-Corruption Commission Act 2009 and the Audit Chamber Act 2011; implementation of the provisions of the Petroleum Revenue Management Act (PRMA), 2012; identifying, checking and recording all loans and contracts collateralised against oil; adhering to the provisions of the revised Petroleum legislation in awarding oil

concessions; review of the Petroleum Act, 2012; and establishment of an independent registry of lands at all levels of government for issuance of Title Deeds.

A number of tasks however remain outstanding such as: (i) the review and reinvigoration of the independent Fiscal and Financial Allocation Monitoring Commission (FFAMC); publishing and submitting to TNLA all revenues, expenditures, deficits, and debts of the RTGoNU; (iii) developing MSMEs among rural populations and the urban poor; (iv) establishing a Women Enterprise Development Fund and other micro-finance institutions; and (v) establishment of the Economic and Financial Management Authority (EFMA).

e. Transitional Justice

The following tasks have been undertaken in Chapter 5 of the R-ARCSS: (i) approval of a roadmap for the implementation of chapter 5; (ii) appointment of a ministerial taskforce to coordinate implementation of Chapter 5; (iii) establishment of a Technical Committee which have launched and completed the first phase of public consultations that will inform the legislation establishing the Commission for Truth Reconciliation and Healing (CTRH); and (iv) the African Union Commission has drafted requisite instruments towards establishment of the Hybrid Court for South Sudan (HCSS), which are not yet submitted to the RTGoNU.

Ongoing tasks include public consultations by the Technical Committee on the establishment of the CTRH. Still outstanding is the establishment of the three Transitional Justice mechanisms, namely the CTRH, the Hybrid Court for South Sudan (HCSS) and the Compensation and Reparation Authority (CRA).

f. Parameters of the Permanent Constitution

The Permanent Constitution making process was initiated by the RTGoNU in January 2021 with the adoption of a roadmap developed by the Minister of Justice and Constitutional Affairs to implement it. The RJMEC successfully convened a workshop for the Parties and Stakeholders who agreed on the details for conducting the constitution-making process in May 2021, and handed over the resolutions of the workshop to the Ministry of Justice and Constitutional Affairs who drafted the Constitution Making Process Bill 2022, which has since been endorsed by the Council of Ministers and presented to the TNL. The Constitution Making Process Bill is currently before the TNL.

Still outstanding is enactment of the Constitution-Making Process Bill 2022; making of the new constitution to guide the conduct of elections at the end of the Transitional Period; reconstitution of the National Constitutional Review Commission (NCRC); and transformation of the TNL into a Constituent Assembly on the first day of the 27th month to adopt the permanent constitution.

Challenges

The challenges which have persistently caused delays in the implementation of the provisions of the R-ARCSS range from insufficient political will from the leadership of the parties; delayed Unification of Forces; military defections; the cumulative effects of prolonged subnational conflicts; trust deficit amongst the Parties to the Agreement; intraparty disputes and rivalries; capacity gaps; lack of funding; and the dire humanitarian situation contributed to by natural calamities such as floods.

Recommendations

5.0. Against the backdrop of the critical outstanding tasks at the time when the Agreement is nearing its end, it is critical that some remedial measures are urgently considered. In that regard, highlighted below are some recommendations to the RTGoNU and the regional guarantors.

a. To the RTGoNU

- prepare a roadmap and strategy for implementation of the outstanding tasks of the R-ARCSS;
- together with partners, avail sufficient resources for the convening and operation of both the NCAC and JRC;
- urgently expedite implementation of public financial management reforms;
- ensure there is transparency about its oil revenues and publish timely marketing and sales reports as well as all audit reports of the sector;
- devolve more power and resources to the State and Local Government levels;
- expeditiously establish the Special Reconstruction Fund and Board;
- complete the process of unification of forces expeditiously to prevent further defections;
- reconvene the Rome peace process to facilitate dialogue between the RTGoNU and the two factions of the South Sudan Opposition Movements Alliance (SSOMA);
- provide funding for the graduation and redeployment of the NUF Phase I, as well as screening, training, graduation and redeployment of NUF Phase II;
- fast track completion of the consultation process and immediately embark on drafting of the CTRH legislation and its establishment informed by the outcomes of the public consultations; and
- meet at the earliest with the Africa Union Commission to discuss the broad guidelines (including the draft instruments already prepared by the AUC) on the terms of establishing the HCSS.

b. To the Regional Guarantors and International Partners

- IGAD leadership to initiate the IGAD Partner's Forum, which is a very essential mechanism for regional and international coordination in support of the implementation of the South Sudan peace process;
- IGAD to consider taking leadership in mobilizing regional and international partners to provide the requisite resources for the implementation of the R-ARCSS;
- assist the party leadership in all ways possible to rebuild trust, good relationships, confidence and enhance the spirit of collegiality; and
- the Africa Union Commission and the MoJC of the RTGoNU to meet and dialogue on the guidelines, including the draft instruments, already prepared by the AUC, on establishment of the Hybrid Court for South Sudan.

I. INTRODUCTION

This evaluation report covers the status of implementation of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) during the Transitional Period from 22 February 2020 to 22 June 2022. It provides a detailed chapter by chapter analysis of the provisions of the R-ARCSS, which have been implemented, the tasks whose implementation has not yet been completed and those which remain outstanding. The report uses the phrase *implemented tasks* to refer to activities which have been implemented as provided for in the letter and spirit of the R-ARCSS. *Ongoing tasks* refer to activities of the R-ARCSS whose implementation commenced and have not yet been completed, and *outstanding tasks* are the provisions of the R-ARCSS, which have not been implemented or their implementation stalled.

The report relied on information from different sources, including from the work of the Reconstituted Joint Monitoring and Evaluation Commission (RJMEC) thematic working committees on governance, security, humanitarian, economic, transitional justice and constitutional affairs, including building on the report which RJMEC had earlier produced on the two years of the transition.

The report is therefore structured as follows. It provides chapter-by-chapter analysis of the status of implementation, including tasks implemented, ongoing and outstanding; and chapter specific recommendations. It concludes with cross-cutting challenges and recommendations.

II. STATUS OF IMPLEMENTATION OF THE R-ARCSS

The section which follows details the status of implementation of the six thematic chapters of the R-ARCSS, starting with chapter I on the Revitalised Transitional Government of National Unity (RTGoNU). It highlights the tasks implemented during the transitional periods, structured in thematic blocks, tasks which have been implemented, and those which are still being implemented, and others which are outstanding; and conclude with recommendations.

CHAPTER 1: REVITALIZED TRANSITIONAL GOVERNMENT OF NATIONAL UNITY

a. Introduction

- 1.0. The chapter provides for the establishment of the RTGoNU; details the duration of the R-ARCSS; defines the parties to the R-ARCSS; outlines responsibility sharing frameworks at various levels of government; provides for an institutional framework for the resolution of the question of the number of States and their boundaries; provides for judicial reforms, legal and institutional reforms and elections to be held at the end of the transition.

b. Status of the Implementation

Establishment of the RTGoNU (Article 1)

- 1.1. On 22 February 2020, the Pre-Transitional Period of the R-ARCSS ended after 17 months² with the swearing in of the members of the Presidency, namely the First Vice President (FVP) and three Vice Presidents. The fourth Vice President was sworn in on 23 February 2020. The appointments of the Vice Presidents were in accordance with the provisions of the R-ARCSS. The FVP and the four Vice Presidents are heads of five Ministerial clusters, namely Governance, Economic, Services Delivery, Infrastructure, and Gender and Youth.
- 1.2. The Council of Ministers were appointed³ on 12 March 2020 following agreement on the allocation of the various portfolios among the parties to the R-ARCSS. This appointment did not adhere to the 35% women's participation in the Executive, as only nine women (26%) were appointed to the ministerial portfolios and only one woman (10%) as a deputy minister.

The Transitional National Legislative Assembly and the Council of States (Article 1.14)

- 1.3. Despite the call for the expeditious appointment of the members of the Transitional National Legislature (TNL), there were delays owing to various factors, including internal disagreements within the Other Political Parties (OPP), and failure by the Parties to submit their nominations in a timely manner to the National Constitutional Amendment Committee (NCAC) for vetting with the exception of the SPLM/A-IO and the FDs which complied. The list of the OPP nominees were incomplete and contested. When the mandate of the NCAC lapsed after 12 months into the Transitional Period, the Parties submitted the names of their reconstituted TNLA nominees to the President for appointments. Consequently, H.E. Salva Kiir Mayardit dissolved the TNL (TNLA and the Council of States (CoS)) on 8 May 2021 and the TNLA was reconstituted on 10 May 2021.
- 1.4. With its reconstitution, the TNLA was expanded to 550 members and the Council of States to 100 members. Both the Speaker of the reconstituted TNLA and a Deputy Speaker of the Council of States, who were nominated by the Incumbent Transitional Government of National Unity (ITGoNU), are women. Notably, the reconstituted TNL held its inaugural meeting on 30 August 2021. In January 2022, 44 members of the Specialised Committees of the reconstituted TNLA were named, 21 of whom are female (48%).
- 1.5. In December 2021, the TNL ratified the Constitutional Amendment Bills Nos. 8 and 9. The Constitutional Amendment Bill No. 9 covers amendments made to some of the security bills. On 6 January 2022, the Constitutional Amendment Bills No. 8 and No. 9 were assented to by the President.

Number and Boundaries of States (Article 1.15)

- 1.6. The disputes over the number of states and their boundaries were resolved on 15 February 2020 by the President by dissolving the former 32 states and reverting the country to 10 states and naming of the three Administrative Areas of Abyei, Ruweng and Greater Pibor.⁴

² The Pre-Transitional Period of the R-ARCSS was extended twice: for 6 months and an additional 100 days, totaling to 17 months.

³ ITGoNU – 20; SPLM/A-IO – 09; SSOA – 03; FDs – 01 and OPP – 01.

⁴ The ten states are Northern Bahr El Ghazal, Western Bahr El Ghazal, Unity, Western Equatoria, Eastern Equatoria, Central Equatoria, Jonglei, Upper Nile, Lakes, and Warrap.

States and Local Governments (Article 1.16)

- 1.7. An inter-party *High-Level Committee for the Establishment of State and Local Government Structures and Responsibility Sharing* reached consensus on modalities of allocation of various portfolios at the State and Local Government structures on 10 August 2020, 20 October 2020 and 26 February 2021. The consensus informed the allocation of members of the Council of States, State Governors and their deputies, State Advisors, State Ministers, State Legislative Assemblies, State Chairpersons of Commissions, State Deputy Chairpersons of Commissions, Speakers and Deputy Speakers of State Assemblies, Chief Whips, County Commissioners, and County Councils.
- 1.8. All the State Governors and their Deputies, including three Chief Administrators of the Administrative areas were appointed, albeit at different times during the first year of the Transitional Period. Nine (09) Governors and three (03) Chief Administrators of the Administrative Areas were appointed through Presidential Decrees No. 51/2020 and 53/2020 respectively. The 9th Governor was appointed in July 2020. On 30 December 2020, six Deputy Governors were appointed and three more Deputy Governors were appointed on 22 January 2021. On 29 January 2021, the 10th Governor was appointed (Upper Nile State). 90% of the appointed Governors are male whereas 10% (01) of the Deputy Governors is a woman, nominated by the Sudan Peoples Liberation Movement/Army - In Opposition (SPLM/A-IO). 30% (03) of the Deputy Governors are women. The 10 States governorship positions are allocated as follows: the ITGoNU - 6; the SPLM/A-IO - 3 and the South Sudan Opposition Alliance (SSOA) - 01. In addition, all the State Legislative Assemblies have been inaugurated, although the OPP internal disagreements persisted over the authenticity of the nominees.

The Judiciary (Article 1.17)

- 1.9. All the Parties to the R-ARCSS nominated their respective representatives to the *ad hoc* Judicial Reform Committee (JRC) and the Intergovernmental Authority on Development (IGAD) completed the selection of the Chairperson and Deputy Chairperson of the JRC as provided for in the R-ARCSS. Subsequently, the IGAD Special Envoy for South Sudan submitted the full list of the members to the Ministry of Justice and Constitutional Affairs (MoJCA) on 20 May 2022. The JRC was expected to be established within the first three months of the Transitional Period. However, the leadership of the JRC conducted an orientation and familiarisation visit to Juba in June 2022 to meet with the authorities and key stakeholders in the justice sector in preparation for commencement of their work scheduled for July 2022. The delays in the establishment of the JRC has impacted the timing of the outstanding judicial reforms, including establishment of an independent, impartial and credible Constitutional Court in the Republic of South Sudan.

National Constitutional Amendment Committee (Article 1.18)

- 1.10. During the pre-Transitional Period, the NCAC completed the tasks of incorporating the R-ARCSS into the Transitional Constitution of the Republic of South Sudan (TCRSS) 2011, as amended, reviewed and amended six security related laws and the Political Parties Act 2012. The Constitutional Amendment Bill (CAB) No. 6 was enacted and assented to by the President and yet it contained some discrepancies with the Bill which was submitted to the MoJCA. The detected discrepancies were corrected. Subsequently, four more Constitutional Amendment bills were submitted to the TNL i.e., CAB Nos. 7, 8, 9 & 10. The Constitutional Amendment Bills and the Political Parties Bill have been enacted

whereas the bills related to security are before the TNL awaiting enactment, except the National Security Services Bill 2011 that requires consensus on some contested provisions.

- 1.11. After the first 12 months of the Transitional Period, the mandate of the NCAC had lapsed and yet some of its critical tasks remained pending. As a result, the Parties agreed to extend the working period of the NCAC to complete review and amendments of the pending laws assigned to it such as the National Elections Act and the NGO Act. With support from IGAD and peace partners, the NCAC has been able to resume its work with effect from 17 May 2022 for the next eight months to complete its pending tasks.

Transitional Institutions and Mechanisms (Article 1.19)

- 1.12. The high-level committee of the parties on responsibility sharing are making some progress towards the restructuring and reconstitution of Commissions and Institutions at the national level.

National Elections (Article 1.20)

- 1.13. The Political Parties Bill 2019, which is aligned to the provisions of the R-ARCSS was enacted by the TNL on 30 May 2022. The SPLM IO and OPP objected to the enactment of the bill citing alterations of some of its critical provisions, including the minimum threshold required for the registration of political parties. Also, the National Elections Act 2012 is yet to be reviewed by the NCAC. The reconstitution of the Political Parties Council to enable it to register political parties for elections, and the reconstitution of the National Elections Commission are dependent on the processing of the two bills highlighted above. Any delays in their enactment will directly impact the elections roadmap.

c. Recommendations

- 1.14. The following recommendations are provided to remedy the situation.
 - 1.14.1. There is need for the regional and international guarantors to assist the party leadership to rebuild trust, good relationships, confidence and enhance the spirit of collegiality in the unity government.
 - 1.14.2. The TNL needs to expedite the enactment of the bills before them so as to unlock the necessary reforms provided for in the R-ARCSS.
 - 1.14.3. The JRC must expedite the implementation of the tasks within its mandates to ensure judicial reforms are undertaken;
 - 1.14.4. The NCAC to prioritize review and amendment of legislation, including electoral and economic laws.
 - 1.14.5. The RTGoNU needs to provide a roadmap and strategy for implementation of the outstanding tasks of the R-ARCSS to cover for the time lost.

CHAPTER 2: PERMANENT CEASEFIRE AND TRANSITIONAL SECURITY ARRANGEMENTS

a. Introduction

2.0. Chapter II of the R-ARCSS has four major sections: (a) The Permanent Ceasefire; (b) Transitional Security Arrangements; (c) Mechanisms for Security Arrangements; and (d) Strategic Defence and Security Review process.

b. Status of the Implementation of the Permanent Ceasefire

2.1. During the Transitional period and despite the slow start, the JDB improved the implementation of the Ceasefire through its direct intervention to prevent potential violations, deescalate tensions in hot spots, as well as holding their field commanders accountable for violations. The Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM) also improved its monitoring and verification operations by adding Sector HQs to their structure, increasing the number of Monitoring and Verification Teams (MVTs) and the active inclusion of women monitors in the MVTs.

2.2. To date, the Ceasefire has held without major clashes among the signatory groups, except for localized skirmishes mostly between former SPLA-IO defectors, including the Kit Gwang forces under Lt. Gen. Simon Gatwech and the SPLA-IO forces, or armed local youth groups associated with the two signatory Parties. However, the Ceasefire is threatened by the following challenges: a) defections of some senior SPLA-IO commanders and their troops to the SSPDF who in turn attack the SPLA-IO following their defection; b) the existence of the National Salvation Front, a non-signatory group fighting the RTGoNU in the Equatoria Region, with increased incidents in Central Equatoria State; and c) the continuing intense intercommunal violence especially in the areas of Maiwut, and Maban counties of Upper Nile State, Koch, Mayendit and Leer Counties in Unity State, and Magwi in Eastern Equatoria State.

2.3. On the demilitarization of Civilian Centers, out of the 42 centres recorded and reported by CTSAMVM as occupied by armed forces at the beginning of January 2019, only 11 remain occupied, with the SSPDF occupying 9 and the SPLA-IO 2 respectively. On child soldiers, the Parties released the children soon after entering Cantonment Sites in 2019, and there have been very few reports of child soldiers within the ranks of the SSPDF or SPLA-IO during the Transitional Period. One notable exception being General Nando's forces that reported to the Maridi Training Center from Tambura, Western Equatoria in late 2021. The children were later released to humanitarian organizations in the area.

2.4. On Sexual and Gender Based Violence (SGBV), although there were high numbers of reported rape cases in the early part of the implementation of the Ceasefire, rape cases by elements of the Signatory Parties have decreased significantly. Where SGBV cases are reported, the SSPDF, have been arresting and prosecuting the perpetrators through field courts martial and through the civilian courts. SGBV remains a very significant feature of inter-communal violence, often perpetrated by youth groups on targeted civilian populations.

Status of the Implementation of Transitional Security Arrangements

- 2.5. The preparatory phase for the implementation of Transitional Security Arrangements (TSAs) was marked by the re-establishment and formation of Security Mechanisms.⁵ This was followed by the establishment of 25 Cantonment Sites for the SPLA-IO and SSOA forces, and 18 Training Centers for all the forces. On training of the 83 000 Phase I Necessary Unified Forces (NUF) that were expected to graduate, approximately 50 000 received rudimentary military training, were screened and organized into unified sub-units. Training, graduation and redeployment of the NUF was however delayed due to lack of funding, food, medicine, shelter, and other necessities; and disagreements over the Unified Command and force ratios.
- 2.6. On the collection and storage of weapons, the Joint Military Ceasefire Commission (JMCC) did not manage to register and store weapons as envisaged by the Agreement. No Signatory Party has declared its weapons to CTSAMVM including the heavy and long-range weapons. Most Opposition forces arrived in Training Centers without weapons.

Strategy Defence and Security Review (SDSR)

- 2.7. The SDSR process could not be completed within the stipulated timeframe mainly due to the lack of expertise and funding. The Board has completed drafts of the Strategic Security Assessment, Security Policy Framework, and the Revised Defence Policy.

Disarmament, Demobilization and Reintegration (DDR)

- 2.8. Due to its late reestablishment and the lack of funding, the DDR Commission has not managed to operationalize any programmes to date. As a result, soldiers who have been screened and recommended for DDR have nowhere to go once those qualified for the NUF Phase I have graduated and redeployed. It is therefore critical that the RTGoNU funds the DDR Commission to avoid a morale and even security crisis.

c. Recommendations

- 2.9. For full and effective implementation of the Ceasefire, the following actions are recommended: a) the unification of forces must be completed expeditiously to prevent further defections; b) the Rome Peace process should be reconvened to facilitate dialogue between the RTGoNU and the South Sudan Opposition Movements Alliance (SSOMA); c) the Joint Defence Board (JDB) should increase field visits to build confidence among their forces, and engage with local leaders on communal violence; and d) the armed forces should continue to hold accountable perpetrators of SGBV from within their rank and file.
- 2.10. In order to fully implement the TSAs, the RTGoNU should: (a) provide funding for the graduation and redeployment of the NUF Phase I, as well as screening, training, graduation and redeployment of NUF Phase II; (b) improve the management of Cantonment Sites and Training Centers by providing adequate logistical resources; and (c) provide the JDB and the JMCC with technical resources needed for the registration of weapons, munitions and equipment.

⁵ These are the CTSAMVM, JDB, JMCC, SDSR, DDR Commission, and the Joint Transitional Security Committee (JTSC).

CHAPTER 3: HUMANITARIAN ASSISTANCE AND RECONSTRUCTION

a. Introduction

- 3.0. The chapter focuses on the creation of an enabling political, administrative, operational and legal environment for the delivery of humanitarian assistance and protection. This involves the establishment of safe humanitarian corridors, the right of refugees and Internally Displaced Persons (IDPs) to return in safety and dignity, and the right of refugees to citizenship among others.

b. Status of the Implementation

- 3.1. Progress has been made in the opening of some humanitarian corridors, which have facilitated the movement of goods and services across borders and between states in the country. In addition, there is gradual voluntary and spontaneous return of some IDPs and refugees to the country. According to the United Nations High Commission for Refugees (UNHCR), over 500,000 returnees have been recorded since the R-ARCSS came into force in 2018. Disaster Risk Management policy was submitted to the Council of Ministers of the RTGoNU for approval, and the National Strategy on finding durable solutions for IDPs, Refugees and Returnees has been validated. The RTGoNU also established mechanisms such as the *State and National Level Taskforces on Solutions and Local Government Structures* to enable the smooth management of voluntary returns.
- 3.2. In spite of the progress being made towards the implementation of the provisions of the chapter on humanitarian assistance and reconstruction, implementation of the following tasks is still outstanding: (a) creation by the RTGoNU of an enabling environment for voluntary and dignified return of IDPs and refugees and a conducive environment for the provision of humanitarian services to communities in need; (b) provision of public service delivery; (c) establishment of the Special Reconstruction Fund (SRF) and Board (SRFB), and the convening of the South Sudan donor pledging conference; (d) provision by the RTGoNU of funding of USD 100 million per annum during the Transitional Period; (e) repatriation, resettlement, reintegration and rehabilitation of IDPs and refugees; (f) review by the NCAC of the NGO Act 2016; and (g) fast tracking procedures and institutions for the import and customs clearance of relief materials, and granting of and renewal of visas required by humanitarian workers.
- 3.3. The implementation of chapter III continues to be hampered by a number of challenges key among which are dwindling funding for humanitarian assistance, the dire humanitarian situation due to the cumulative effects of prolonged conflict, flooding, high levels of food insecurity; increasing numbers and severity of access incidents, and threats to the safety and security of humanitarian workers.
- 3.4. In addition, the return and reintegration of IDPs and refugees is hampered by floods, insecurity, incursion of cattle herders, lack of food and basic services in the areas of return; community and subnational violence, which threaten the safety and protection of humanitarian workers and civilians; and the policy frameworks and systems needed to provide a conducive political, administrative, operational and legal environment for the delivery of humanitarian and social services are not fully developed. The Special Reconstruction Fund (SRF) and Board is yet to be established and resourced with US \$100 million per year by the RTGoNU.

c. Recommendations

- 3.5. With regard to the Special Reconstruction Fund (SRF) and Board (SRFB), the RTGoNU should expedite the ongoing efforts to establish the board, which will pave way for the convening of a donor pledging conference and setting up of the much-needed SRF to support ongoing humanitarian and reconstruction efforts.
- 3.6. RTGoNU should expeditiously avail budgeted funds to support implementation of service delivery to the citizens of South Sudan in order to achieve the desired state of improved food security, economic growth and sustainable livelihoods.
- 3.7. The RTGoNU and other development actors should offer support to and operationalize mechanisms like the *State and National Level Task Forces on Solutions and Local Governance Structures* to ensure security and the enforcement of all relevant laws and regulations regarding returns, resettlement and reintegration.
- 3.8. Humanitarian and trade corridors should be opened to allow the free movement of goods and people across borders, ease voluntary returns and stimulate the economy.
- 3.9. Durable solutions for the recurrent and escalating challenge of cattle herders into agricultural areas need to be found to reduce the impact on food security and livelihoods as well as to avert violence.
- 3.10. RTGoNU to protect civilians including humanitarian workers, and humanitarian assets and goods in order to ensure continued service delivery to the people in need.
- 3.11. RTGoNU and the local authorities should hold perpetrators of conflict and SGBV accountable to curb impunity.
- 3.12. RTGoNU to provide the conducive environment for refugees and IDPs to return in safety and dignity.

CHAPTER 4: RESOURCE, ECONOMIC AND FINANCIAL MANAGEMENT

a. Introduction

- 4.0. The Resource Economic and Financial Management chapter in the Agreement addresses the management of South Sudan's financial and natural resources. Mismanagement of these resources leads to poverty and underdevelopment, which drives conflict and conflict in turn weakens the economic situation of the country leading to further poverty. Implementation of this chapter sets to move the country from that vicious circle to a path of inclusive growth and sustainable development through accountable and transparent management of its resources.

b. Status of the Implementation

- 4.1. The Ministry of Finance and Planning (MoFP) adopted a public financial management policy known as Public Financial Management Reform Strategy (PFMRS) in April 2020. Following its adoption, the then Minister of Finance and Planning issued a Ministerial Order on 17 April 2020, for the formulation of a body known as the Public Financial Management-Governance Structure (PFM-GS). This structure consists of three main bodies known as the PFM-Oversight Committee (PFM-OC), PFM-Technical Committee (PFM-TC) and PFM-Secretariat. This structure supervises the ongoing PFM reforms, which have been slow to progress. The Oversight Committee was presented with the World Bank's five-year proposed PFM and Institutional Strengthening Project for South Sudan valued at \$34 million. This process is also referred to as the Medium-term Economic and Financial reform programme. Currently, the Committee has prioritised the operationalization of the Anti-Corruption Commission (ACC).
- 4.2. The priorities of the Oversight Committee include strengthening the budget process and budget credibility, revenue management, strengthening the ACC and the Audit Chamber, setting up a Treasury Single Account, Cash Management, the establishment of a Public Procurement and Asset Disposal Authority (PPADA), rollout electronic payroll using biometric system and review, and verify and clear all government arrears. Since the establishment of this committee out of its eleven priority actions, only one has seen some progress: the relocation of the loans committee to the MoFP - of which, only about 65% has been achieved. With regards to the other 10, not much has happened. The Cash Management Committee (CMC) has held only one meeting since the Ministerial Order to establish it was issued. This reform should involve cash rationing and cash forecasting and is potentially one of the most impactful reforms.
- 4.3. The issues relating to the government's fight against corruption and its commitment to transparency, equitable distribution of the wealth of South Sudan and the devolution of powers and resources under the General Principles are found in detail in the reforms prescribed in the chapter. The Code of Ethics and integrity for public officials has been drafted in the Public Service Regulations and is currently with the Ministry of Justice. This code of conduct requires that civil servants work in conformity with dictates of the Civil Service Act 2021 and specificities of the bill. The Commission is constrained in the implementation of the Agreement due to the insufficiency of resources both human and financial to undertake the reforms and the absence of political will to transform the institution. The creation of competing structures to deliver on the Commission's mandate as reported by the Commission is a major constraint.

- 4.4. The Bank of South Sudan (BoSS) through the IMF Staff Monitored Programme has maintained monetary stability and exchange rate unification as part of its institutional reforms undertaken since the formation of the RTGoNU. Chapter IV requires that the Bank should be independent, and formulate monetary policy, promote price stability, issue currency, and regulate the financial sector with a board of nine members, with at least three been women. Further, the appointment of the governor shall be done by the President in consensus with the First Vice President and the four Vice Presidents. Steps to ensure statutory and supervisory independence of the Bank have been stalled pending the amendment of the Banking Laws. The existing laws restrict the banks mandate to execute these reforms. The revised laws are currently with the MoJCA.
- 4.5. The PFM-GS has prioritised the establishment of PFM working groups in all ministries and agencies, which will be required to report regularly to the Technical Committee on their activities, financial transactions, and performance, to be in turn reported to the PFM-OC. They would review and recommend work plan budgets, and risk management strategies, and ensure transparency and accountability of public finances. Payroll cleansing is being done with support from the World Bank and also to extend biometric technology to enhance payroll management.
- 4.6. Review of the Southern Sudan Audit Chamber Act, 2011, commenced with the drafting and validation of the Amendment Bill by the NCAC. However, it has not been presented to the Minister of Justice and Constitutional Affairs. The Act has five provisions that guarantee its independence and boost public confidence that needs to be enforced through its revision. Among these are budget control of revenue and expenditure, and management of its human resources. Another issue is the reporting and dissemination of Audit reports. The law does not oblige the President or the lawmakers to take any action on the findings of the Audit reports. Moreover, the public does not have access to these reports.
- 4.7. None of the institutions expected to be set up under Article 4.6 including the Public Procurement and Asset Disposal Authority (PPADA) and the Environmental Management Authority (EMA) have been established so far. The EU has pledged support to establish the PPADA and the World Bank has committed to supporting policy development, procedures, and capacity development in this institution as well as across other government institutions involved in the PFM reforms.
- 4.8. Article 4.7.1 of the R-ARCSS requires the review of several key pieces of legislation to ensure their conformity with the R-ARCSS.⁶ To date the *National Revenue Authority Act 2017* has been completed and the Authority established. In addition, the NCAC has amended the *Public Financial Management and Accountability Act, 2011* and the *Southern Sudan Audit Chamber Act, 2011*. Review of the *Petroleum Act, 2012*, the *Petroleum Revenue Management Act, 2013*, and the *Bank of South Sudan Act, 2011* are in progress.

⁶ The bills are: Investment Promotion Act, 2009, Banking Act, 2010, Telecommunications and Postal Services Act, 2010, The Transport Act, 2008, The National Audit Chamber Act 2011, Anti-Corruption Commission Act 2009, Public Finance Management and Accountability Act 2011, Petroleum Revenue Act 2012, The Mining Act 2012, Petroleum Revenue Management Act 2012, National Pensions Fund Act, 2012; and National Revenue Authority Act 2017.

- 4.9. On the critical issue of resource management the RTGoNU have frozen some illegal petroleum revenue accounts and ensured that oil revenue is paid into the oil account in the BoSS and managed under the applicable legislation. A review of employment in the sector has been done and a unified employment policy was developed that regulates the employer, employee relationship and provides employment guidelines and procedures. One of the objectives of this manual is to eliminate the large salary disparities between what the international oil companies participating in the joint ventures pay their international staff and South Sudanese staff.
- 4.10. In addition, loans and advances collateralised by oil have been identified and outstanding loans were factored in the draft 2021/22 FY budget. The Technical Loans Committee is now operational and is located at the MoFP. This Ministry has a stated commitment to ensuring that all such agreements are now recorded as Sale and Purchase Agreements (SPA) prepared by the Ministry of Petroleum (MoP). The loans and advances identified need to be audited for verification purposes.
- 4.11. The MoP states that a review of all contracts was conducted, and that non-performance is addressed. The Minister issued a ministerial order on 30 October 2020 captioned *'Limitation and Moratorium on Contracts Extension and Amendments'* which instructed all Joint Operating Companies to stop the continuous cycle of contract extensions. Competitive bidding must be done on the expiration of contracts and new contracts must go through the legal tender process, which includes a tender plan approved by the MoP, creating the bidders' list, providing technical and commercial bids etc. The Petroleum Local Content Regulations, 2019, which was launched on 22 December 2020, mandates that a bid for a license, permit or interest in the sector should include a local content plan that demonstrates compliance with the local content requirements. This ensures that priority is given to qualified nationals.
- 4.12. An environmental audit is in progress to assess the impact of breaches of environmental safeguards on pollution, health risks, and destruction of ecosystems, and those owning licenses would be asked to pay compensation based on the findings. A cost recovery or financial audit was conducted for the period 2011 to 2018. The findings revealed that companies operating in the sector need to reimburse the government amounts due to non-recovery costs. Companies have been requested to produce justifications for these transactions within a given period or they would have cause to refund these amounts. The Ministry has also recommended that Export Production and Sharing Agreement (EPSA) also requires an annual audit of activities in the sector. The Audit of the 2% and 3% to states and counties has been conducted and its findings discussed by the State legislators and recommendations made.
- 4.13. To expedite the process of joining Extractives Industry Transparency Initiative (EITI), the Ministry of Foreign Affairs and International Corporation organised a one-day conference on 28 April 2021 to sensitize South Sudanese stakeholders on the benefits of joining Extractives Industries Transparency Initiative. The EITI Office in Oslo presented the steps required for becoming a member, as well as the benefits, and offered to provide technical support to assist the government.
- 4.14. With regards to wealth sharing and resource management, the PFM-OC has prioritised the creation of the Fiscal and Financial Allocation Monitoring Commission (FFAMC). The devolution of the 2% and 3% resources to the states and counties respectively was

partly implemented during 2021, but the money flow from the central government continues to be inconsistent and unpredictable.

- 4.15. Concerning the Youth Enterprise Development Fund, a bill has been drafted and tabled with the MoJCA. The creation of this institution aims to stabilize what are often volatile economic conditions and then to promote economic growth in ways that equitably benefit people at all levels of income, living in both urban and rural areas. The government has mobilised resources for the implementation of the Youth Enterprise Development and Capacity Building (YEDCB) project. It is aimed at enhancing employability and job creation for young women and men aged 18-35 years in South Sudan through strengthening the private sector, building entrepreneurship skills, and improving the enabling environment. The Ministry of Gender is currently working on drafting a bill for the Women Enterprise Development Fund.
- 4.16. The establishment of the Social Security Fund has been implemented by the Ministry of Labour. This is the South Sudan Pension Fund (SSPF) that was launched in 2019 in adherence to the SSPF Act 2012 in accordance with Article 4.15.1.8. of the R-ARCSS if fully operational. This body serves as management trustee for the Pensions Scheme of the Government, public institutions, and other pension schemes. Currently it only serves the public sector civil servants. It is also constrained by incomplete employees' data and details rigidity of the Act on investment. Furthermore, both employers and employees have little knowledge of the scheme, and this has created apprehension amongst stakeholders especially in the states.
- 4.17. There has been no action to establish the Economic and Financial Management Authority (EFMA). The institution is mandated to provide effective oversight of economic and public financial management and to ensure transparency and accountability, particularly in the petroleum sector. Meanwhile, the PFM reform process is being implemented through a governance structure established by the MoFP.
- 4.18. The provisions of the R-ARCSS are presented as outcome statements more or less, and for each provision or article to be fully implemented it will involve several planned activities to be implemented. Some are mutually dependent on the others. This has resulted in a large number of provisions being reported as pending. Financial constraints and weak technical capacity have been reported as the main challenge by all institutions that have lagged in the implementation.

c. Recommendations

- 4.19. The RTGoNU must urgently speed up implementation of PFM reforms. These should include operationalisation of the Cash Management Committee and Unit to ensure that spending is in line with budget; review, verification and clearing of arrears; publication of quarterly budget execution reports; loans and contracts collateralized and guaranteed against crude oil must be reviewed and verified; the ACC and the National Audit Chamber must be properly staffed and resourced, and the draft bills submitted to Parliament; and information about oil revenue must be published regularly on a government website.
- 4.20. The RTGoNU should be more dedicated to driving the implementation process. The display of a more visible sense of commitment at the political level is required. This can best be done through budgetary allocations to the sectors. Also, the RTGoNU needs to

be transparent about its oil revenues and should publish timely marketing and sales reports.

- 4.21. The Government's priorities have been outlined in the Renewed National Development Strategy (R-NDS) which has been aligned to the R-ARCSS, therefore, there is a need for the budgets to be aligned with the R-NDS to ensure implementation. This must be displayed in the 2022/23 FY budget.
- 4.22. There needs to be enhanced technical capacity development in the Civil Service to better manage the reforms. In addition, the RTGoNU should ensure that the appointments of executive positions in the public financial management sphere follows due process, and where the peace agreement requires it, appointments must be done by the President in consultation with the 1st Vice Presidents and other Vice Presidents.
- 4.23. All audits need to be published especially the Cost Recovery Audits for the period 2011 to 2018 carried out as per 4.8.1.14.11. Also, the audit of the Petroleum sector as audit as contained in 4.8.1.14.5 and as directed by the Presidential Decree of 18 February 2021 needs to be completed and published; and the devolution of resources to the oil producing states and counties needs to be implemented and verified.

CHAPTER 5: TRANSITIONAL JUSTICE ACCOUNTABILITY RECONCILIATION AND HEALING

a. Introduction

- 5.0. Chapter 5 of the R-ARCSS focuses on Transitional Justice Accountability Reconciliation and Healing. The rationale for Chapter 5 flows from the South Sudanese experience and legacy of violent conflict and historical grievances that remain unaddressed. It seeks to support South Sudan in dealing with the legacies of conflict and massive violations that hinder its path towards reconciliation and nationhood. It proposes to enable the attainment of this objective through the establishment of three complementary mechanisms to be established and to operate during the Transitional Period.

b. Status of the Implementation

- 5.1. Chapter 5 of the R-ARCSS proposes the establishment of 3 transitional justice mechanisms. These are the Commission on Truth Reconciliation and Healing (CTRH), the Hybrid Court for South Sudan (HCSS) and the Compensation and Reparation Authority (CRA). The establishment of these three mechanisms were envisaged during the Transitional Period.
- 5.2. Critical milestones that ought to have been achieved within these 28 months of the Transitional Period of the R-ARCSS under Chapter 5 include the: (a) completion of public consultations by MoJCA that would inform the drafting of the CTRH legislation; (b) initiation and promulgation of CTRH legislation; (c) full establishment of the CTRH and its operationalization; (d) initiation and promulgation of HCSS legislation based on broad guidelines agreed upon between AUC and RTGoNU; (e) full establishment of the HCSS and its operationalization; (f) the initiation and promulgation of CRA legislation; and (g) the full establishment of the CRA and its operationalization.
- 5.3. Overall and as per the R-ARCSS, the RTGoNU was expected to fully cooperate and seek the assistance of the African Union and the United Nations to design, implement and facilitate the work of the agreed transitional justice mechanisms. The RTGoNU has been reaching out in various ways to these bodies and seeking assistance.
- 5.4. On 29 January 2021, the RTGoNU Council of Ministers endorsed a road map towards implementation of Chapter V. This road map as presented by the Minister of Justice and Constitutional Affairs, to the Council also included an endorsement of implementing Chapter 6 on Parameters on Permanent Constitution and Article 1.17 of the R-ARCSS on Judicial Reforms. The roadmap was expected to guide the implementation of Chapter 5 including the establishment of the three transitional justice mechanisms.
- 5.5. The MoJCA was designated the line ministry within RTGoNU to coordinate implementation of Chapter 5 while the Governance Cluster was directed to provide political oversight in its implementation. By way of Ministerial Order No. 01/2021, a Taskforce within the MoJCA was established to coordinate the day-to-day implementation. With the assistance of the UNDP the Taskforce of the MoJCA is set to undertake a

benchmarking tour of South Africa and Gambia to understand experiences of those countries so far as transitional justice is concerned.

- 5.6. The Africa Union Commission (AUC) and the RTGoNU/MoJCA were expected to reinitiate discussions with each other and chart a path towards the establishment around the HCSS. No progress on these issues has been witnessed thus far beyond development of draft instruments on the HCSS.
- 5.7. In the end, none of the mechanisms have been established. However, some progress has been observed towards the establishment of the CTRH given the ongoing public consultations process. Some progress has also been observed towards the establishment of the HCSS given the development of draft instruments on the HCSS. No progress has been witnessed on matters relating to the CRA.
- 5.8. On various occasions H.E. President Salva Kiir has openly supported the CTRH. On 1 January 2022 the President in his new year message to the country indicated that the CTRH was a key goal for the RTGoNU in the year 2022 and would aspire for its quick establishment. On 5 April 2022, at the launch of the public consultations on the CTRH President Kiir once more supported prioritising establishment of the CTRH to enable reconciliation and healing of the country.
- 5.9. On 8 April 2022, the Minister for Cabinet Affairs Elia Lomuro, presented to the Council of Ministers of the RTGoNU, a report on the capacity building seminar that was held in Kigali, Rwanda during 26 November to 03 December 2021. The report had 19 recommendations, which were all endorsed by the Presidency and the Cabinet. Key among the 19 recommendations were that there should be immediate establishment of the CTRH.
- 5.10. By way of Ministerial Order No. 02/2021 signed on 10 May 2021, Hon Justice Ruben M. Arol, Minister of Justice and Constitutional Affairs established a 'Technical Committee for the National Consultative Process on the Establishment of the Commission for Truth, Reconciliation and Healing' (the Technical Committee). This committee was established in order to assist in the implementation of Article 5.2.1.3 of the R-ARCSS. Article 5.2.1.3 of the R-ARCSS requires the Ministry together with stakeholders to undertake public consultations that inform the design of the CTRH legislation. The Technical Committee is thus meant to spearhead public consultations efforts whose outcome will inform the design of the CTRH.
- 5.11. The 33-member Technical Committee operates under the guidance of the Taskforce in the MoJCA. In summary the Technical Committee is mandated to:
 - 5.11.1. carry out nationwide sensitization on truth, healing and reconciliation in order to create a conducive environment for people to engage actively in the consultations,
 - 5.11.2. assist the MoJCA in leading efforts to increase understanding on transitional justice concepts of truth, healing and reconciliation,

- 5.11.3. in collaboration with the MoJCA Taskforce develop media messages for dissemination,
 - 5.11.4. consult communities at the grassroots level,
 - 5.11.5. visit all the identified locations to consult South Sudanese in the areas most affected by conflict, and
 - 5.11.6. record all discussions and use it to prepare consultations reports to inform drafting of CTRH legislation.
- 5.12. The Technical Committee prepared a 6 months workplan and budget to spearhead public consultations. It faced challenges in undertaking public consultations due to lack of sufficient funding. This prompted the MoJCA to hold a donor round table meeting on the 4 November 2021 where the Minister of Justice and Constitutional Affairs appealed for funding and technical support. The Technical Committee in the intervening period of fund raising undertook preparations by amongst other actions: drafting its Terms of Reference, workplan and strategy; electing officials to the Committee; preparing of information gathering tools; and preparing messaging to the community and media.⁷
- 5.13. The Technical Committee identified locations to undertake consultations which are the state capitals of Bentiu, Malakal, Bor, Juba, Wau, Rumbek, Aweil, Torit, Yambio and Kuajok; the 3 Administrative Areas (Abyei, Pibor and Rweng); Refugee camps in Uganda, Kenya, Ethiopia, DRC and Sudan; and additional areas of interest i.e., Yei, Leer, Kajo Keji, Mayendit, Mapel, Panyigar, Nassir, Ayod, Fangak, Jebel Boma, Tumbura, Tonja and Raja. The Committee also identified proposed stakeholder groups for targeting i.e., traditional & community leaders, religious leaders, women groups, the Diaspora, youth, IDPs, Refugees, identified vulnerable groups, RTGoNU, state governments, political actors, security sector, media, academia, professional associations and civil society organizations. On 5 April 2022, President Salva Kiir launched the public consultations process and the teams began consultations on 9 May 2022.
- 5.14. The Technical Committee embarked on a public consultations process and visited all the counties in the Ten States and Three Administrative Areas. It is yet to undertake consultations in the various refugee camps in the neighbouring countries of Kenya, Uganda, Sudan, Ethiopia and the Democratic Republic of Congo. The Committee is required to embark on report writing which report will inform the legislation on the CTRH.
- 5.15. No progress has been witnessed during the Transitional period on the establishment of the HCSS. The AUC and RTGoNU are yet to meet to discuss and agree on the terms towards the establishment of the HCSS in this period of the R-ARCSS 2018. The AUC position on the HCSS is that it has submitted draft instruments to the Government of South Sudan when it was TGoNU. Moreover, the AUC has in furtherance to this submission of documents issued a letter to the government requesting to meet with it to discuss a path towards the HCSS being established. In the alternative, the AUC current position on the

⁷ The Technical Committee drew up a budget of \$ 970,700.

HCSS establishment is that the RTGoNU should now initiate legislation before the AUC can issue guidelines on the establishment of the HCSS.

- 5.16. The AUC therefore maintains that it discharged its mandate and submitted the MoU and draft instruments to the TGoNU and by extension RTGoNU. Further the AUC is privy to information that the Council of Ministers in 2017 had deliberated upon the MoU and draft instruments and adopted them. The AUC is therefore awaiting signed copies of the MoU to be dispatched to them from Juba. The MoJCA on the other hand, maintains that it awaits the AUC to submit to it guidelines on establishment of the HCSS. It maintains that the documents submitted were outdated and required review and alignment to the R-ARCSS 2018.
- 5.17. RJMEC has observed a conflict of positions regarding the setting up of the HCSS, within RTGoNU, with one side of the government arguing for its establishment while another is arguing against it.
- 5.18. On CRA establishment, the MoJCA indicated limited capacity to implement this section of the Agreement and therefore requested partners to lend it technical assistance and other relevant support to enable it to draft the legislation. The MoJCA has further indicated that such technical assistance from partners would be critical in enabling it to improve its capabilities to draft suitable legislation on the CRA.

c. Recommendations

- 5.19. At this time of the Transitional Period that specifically, on the CTRH, the MoJCA and the Technical Committee should urgently complete the process of public consultations and initiate legislation on the CTRH informed from a people's perspective. It should then validate the said legislation before presentation to the Council of Ministers and the TNLA.
- 5.20. On the HCSS, progress is noted in the drafting of the legal instruments that would enable establishment of the HCSS. It therefore urges the AUC and the MoJCA to explore ways of heightening their engagement with a view of bolstering their partnership and dialogue on the broad guidelines (including the draft instruments already prepared by the AUC) on HCSS establishment.

CHAPTER 6: LEGAL AND CONSTITUTIONAL AFFAIRS

a. Introduction

6.0. In this section focus is placed on the implementation of legal, judicial and constitutional reforms, which combines Chapter 6 with Article 1.17 and 1.18 on judicial and constitutional reforms respectively. The key focus, however, remains on the making of a Permanent Constitution Making Process.

b. Status of the Implementation

6.1. In terms of the Judicial Reforms process under Article 1.17 of the R-ARCSS, out of the five tasks under the Agreement, only one task has been completed, one is ongoing and three are still pending. The only completed task is the nomination by the Parties and IGAD of their respective representatives to the ad-hoc JRC.

6.2. The ongoing tasks include preparation towards the establishment of the JRC. This started with the endorsement by the RTGoNU Council of Ministers of a roadmap developed by the MoJCA. It was followed by the development of the JRC Terms of Reference by RJMEC, IGAD and the MoJCA, as well as nominations of its members by the Parties and IGAD. The leadership of the JRC conducted an orientation and familiarisation visit to Juba to meet with its members, the authorities and key actors in the justice sector from 18 – 24 June 2022 and all is set for the launch of the JRC in July 2022.

6.3. The pending tasks include the review of the Judiciary Act and capacity building, implementation of appropriate judicial reforms by the Judicial Service Commission and the establishment of the Constitutional Court, all of which are to be guided by the report of the ad-hoc JRC.

6.4. In terms of legal reforms and constitutional amendments under Article 1.18 of the R-ARCSS, out of the thirteen tasks, five has been completed, three are ongoing and five are still pending.

6.5. The completed tasks are: (a) NCAC drafting of amendments to incorporate the R-ARCSS into the TCRSS 2011; (b) NCAC review and amendments of the relevant national security laws; (c) NCAC receiving lists of parties' nominees for appointment to the reconstituted TNLA; and (d) ratification by TNLA of the Constitution Amendment Bill incorporating R-ARCSS into TCRSS 2011 as amended, and Presidential assent to the amended TCRSS 2011. The Constitution Amendment Act No 8 and No 9 were tabled before the TNLA by the Minister of Justice and Constitutional Affairs on the 9 December 2021 and passed by the TNLA on 17 December 2021.⁸ Both were signed into law by the President on 6 January 2021.

⁸ The Constitution Amendment Act No. 8 was drafted by the NCAC to correct a few inconsistencies in Amendment Act No 6, enacted earlier in February 2020, was enacted in January 2022, as well as the Constitution Amendment

- 6.6. The ongoing tasks are presentation by the Minister of Justice and Constitutional Affairs of the revised bills received from the NCAC to the TNLA for adoption, and enactment of all the proposed amendments into law. The Minister of Justice has already presented a number of bills to both Cabinet and TNLA but these are ongoing tasks and await more bills from the NCAC. The National Security Services Act for example has already been reviewed and amended by the NCAC, presented to the Cabinet but pending adoption and presentation to TNLA.
- 6.7. The pending tasks are for the NCAC to complete amendments to other legislations to incorporate relevant provisions of the Agreement, the reconstitution of the Political Parties Council, amendment of the National Elections Act, reconstitution of the National Elections Commission and review of the NGO Act. The NCAC has just recently reconvened its meetings and is expected to process the remaining legislations.
- 6.8. With regard to Chapter 6 on the permanent constitution-making process, out of the eleven tasks of the Agreement under this Chapter, three have been completed; two are ongoing and six are pending.
- 6.9. The completed tasks are: (a) the identification and engagement of a renowned institute to moderate the constitution process workshop to which RJMEC engaged the Max Planck Foundation; (b) the convening of the workshop of the parties by RJMEC to agree on the details of the constitution making process which took place from 25 to 28 May 2021; and (c) preparation by the MoJCA of a draft legislation, based on the outcome of the workshop to govern the permanent constitution making process.
- 6.10. The Resolution of the Workshop was handed over by RJMEC to the Minister of Justice on 10 June 2021. The MoJC completed drafting of the Constitution Making Process Bill 2021 in August 2021. This draft Bill was endorsed by the RTGoNU Council of Ministers in November 2021 and is now awaiting enactment by the Reconstituted TNLA.
- 6.11. The ongoing tasks are: (a) the RTGoNU oversight on the making of the permanent constitution during the Transitional Period; and (b) budgeting of adequate funding for the conduct of the constitution-making process, which is currently underway in the TNLA.
- 6.12. The pending tasks include: (a) the enactment of the law to govern the constitution-making process; (b) reconstitution of the National Constitutional Review Commission (NCRC) and establishment of the relevant institutions and mechanisms envisaged under the draft bill; (c) the RTGoNU and NCRC seeking of assistance from regional and international experts for the process; (d) completion of the constitution-making process; (e) adoption of the constitutional text by the National Constitutional Conference (NCC); and (f) transformation of the TNLA into a Constituent Assembly to adopt the permanent constitution.

Act No 9 changed the names of the South Sudan Police Services (SSPS) to National Police Service, Prisons Services to National Prisons Services and Fire Brigade Service to National Civic Défense Service Bill.

c. Recommendations

6.13. The Committee makes the following recommendations:

- 6.13.1. RTGoNU and partners to avail sufficient resources for the convening and operation of both the NCAC and JRC;
- 6.13.2. The RTNLA to speed up enactment of the pending amended security and political parties' bills, and the Constitution Making Process Bill 2022;
- 6.13.3. Parties and Stakeholders to kickstart preparation for the nomination of their representatives to the different constitution-making mechanisms provided under the bill even before its enactment to avoid delay;
- 6.13.4. RTGoNU to allocate adequate funding for the making of the permanent constitution.

III. CONCLUSION

- 7. When the Transitional Period commenced in February 2020, there were a number of pre-Transitional tasks of the R-ARCSS which were not yet implemented in spite of the extension of the Pre-Transitional Period from 8 to 17 months. These tasks included the unification of forces, reconstitution of the Transitional National Legislature, and completion of reviews of legislation by the NCAC. Inevitably, the outstanding tasks of the Pre-Transitional Period were carried over to the Transitional Period.
- 8. Overall, the implementation of the tasks of the Transitional Period and some of those carried over have been generally slow. The persistent cause of the delays in the implementation of the provisions of the R-ARCSS range from insufficient political will from the leadership of the parties; delayed unification of forces; military defections; threats posed by holdout groups; the cumulative effects of prolonged subnational conflicts; trust deficit among the Parties to the Agreement; intraparty disputes and rivalries; capacity gaps; lack of sufficient funding, including from international partners; and the dire humanitarian situation caused by natural calamities such as floods.
- 9. Although some progress has been made in the implementation of the R-ARCSS over the Transitional Period, there are several tasks whose implementation remain outstanding. The critical ones include the unification of forces and the making of the permanent constitution to pave the way for the holding of free, fair and credible elections. With barely 8 months left to the end of the current transition, the R-ARCSS is at a critical juncture. The future of the R-ARCSS shall hang in balance unless the RTGoNU acts swiftly and develops a clear roadmap and strategy with timelines on how it intends to implement the outstanding tasks of the R-ARCSS.

IV. RECOMMENDATIONS

10. Against the backdrop of the critical outstanding tasks at the time when the Agreement is nearing its end, it is critical that some remedial measures are urgently considered. In that regard, the report provides the following recommendations to the RTGoNU and the regional guarantors and international partners.

c. To the RTGoNU

- prepare a roadmap and strategy for implementation of the outstanding tasks of the R-ARCSS;
- initiate the process of nomination of the representatives of the Parties and stakeholders to the different constitution-making mechanisms provided under the bill even before its enactment to avoid delays;
- together with partners, avail sufficient resources for the convening and operation of both the NCAC and JRC;
- urgently expedite implementation of public financial management reforms;
- ensure there is transparency about its oil revenues and publish timely marketing and sales reports;
- align the national budgets with the revised National Development Strategy to ensure funding for the implementation of the R-ARCSS;
- consider enhancing technical capacity development in the Civil Service to better manage reforms;
- ensure that appointments of executive positions in the public financial management sphere follows due process, and where the peace agreement requires it, appointments must be done by the President in consultation with the First Vice Presidents and other Vice Presidents;
- publish all audits relevant to the oil sector especially for the Cost Recovery Audits for the period 2011 to 2018;
- devolve more power and resources to the State and Local Government levels;
- expeditiously establish the Special Reconstruction Fund and Board;
- take the lead to expeditiously establish and operationalize mechanisms like the State and national level task forces on solutions and local governance structures;
- complete the process of unification of forces expeditiously to prevent further defections;
- urge for reconvening of the Rome peace process to facilitate dialogue between the RTGoNU and the two factions of the South Sudan Opposition Movements Alliance (SSOMA);
- urge the JBD to conduct more field visits to build confidence among their forces, as well as engage with local government authorities on communal violence;
- ensure that all armed forces continue to hold accountable perpetrators of rape from within their rank and file;
- provide funding for the graduation and redeployment of the NUF Phase I, as well as screening, training, graduation and redeployment of NUF Phase II;
- support the JDB to improve on the management of Cantonment Sites and Training Centers by providing adequate logistical resources;

- provide the JDB and the JMCC with technical resources needed for the registration of weapons, munitions and equipment;
- provide technical and financial resources to the SDSR Board in order to complete their work;
- fast track completion of the consultation process and immediately embark on drafting of the CTRH legislation and its establishment informed by the outcomes of the public consultations; and
- initiate legislation on CRA for public consultations and validation before its establishment.

d. To the Regional Guarantors and International Partners

- IGAD leadership to initiate the IGAD Partner's Forum which is a very essential mechanism for regional and international coordination in support of the implementation of the South Sudan peace process;
- IGAD to consider taking leadership and more visibility in mobilizing regional and international partners to provide the requisite resources for the implementation of the R-ARCSS;
- IGAD to assist the party leadership in all ways possible to rebuild trust, political will, relationship, confidence and enhance the spirit of collegiality;
- International partners to fully support the implementation of the Agreement and build on the gained already achieved so far, considering the history of South Sudan; and
- the Africa Union Commission and the Ministry of Justice and Constitutional Affairs of the RTGoNU to explore ways of heightening their engagement with a view of bolstering their partnership and dialogue on the broad guidelines on establishment of the Hybrid Court for South Sudan.

–End–