



THE JUBA PEACE AGREEMENT AND THE SUDANESE TRANSITION: POWER SHARING OR DEMOCRACY BUILDING?

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The Juba Peace Agreement (JPA), signed on 3 October 2020 by the Government of Sudan and the Sudan Revolutionary Front (SRF) coalition of armed movement factions and political groups, partially succeeded in halting hostilities between the two sides. It also opened the door to confidence building and conditions conducive to political consensus and dialogue. These conditions were recognized as necessary before a sustainable peace could be achieved in Sudan following the fall in 2019 of the dictatorship of the National Congress Party (NCP) under ousted President Omar al-Bashir.

The JPA was signed as part of the democratic and peace building arrangements put in place for the transitional period. The JPA emphasized many democratic principles, including equality, non-discrimination, a civil and democratic federal state, affirmative action in conflict-affected areas, and transitional justice. The agreement gave special attention to issues of 'Hawakeer' (land-use concessions), grazing rights and camp residents' rights, as well as the interests of dam claimants and people affected by unjust mining.

However, the power-sharing approach adopted in the JPA was contrary to the approach set forth in the Constitutional Declaration of 2019, which identified peace building as a main priority of the transitional government. The Constitutional Declaration aimed to address the root causes of the civil war and human rights violations in Sudan. This goal required an understanding of the country's political and social context as well as the creation of a methodology that could achieve the goals of the Sudanese state at this stage and help in the peaceful transition to democracy, development and political stability. Therefore, the approach of the Constitutional Declaration was to link peace building to the processes of building and sustaining democracy. In other words, building peace and transitioning to democracy were integrated, with each process working to establish and sustain the other.

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After more than 30 years of dictatorship, the people of Sudan looked forward to peace and a democratic future. But today, despite the importance of achieving democracy, it is clear that the political elite paid too little attention to the challenge of bridging the gap between peacebuilding and a successful democratic transition. This deficiency was due mainly to their lack of understanding of an appropriate methodology for sustainable peacebuilding—one which could, at the same time, promote Sudan's democratic transition.

THE IMPORTANCE OF PEACE TO BUILDING DEMOCRACY IN SUDAN

Sudan's democratic transformations have relapsed for many reasons, including the absence of genuine peace and the continuation of wars. Military dictatorships have fuelled conditions for the outbreak and continuation of wars and armed conflict, which then pose obstacles to transitional governments, causing democracy-building processes to stall and laying waste to the chances of democratic development in Sudan.

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To work hard to achieve a just and comprehensive peace and to end the war by addressing the roots of the Sudanese problem, and to address its effects, taking into account the provisional preferential measures for war-affected areas, the less developed regions, and the most affected groups.

(International IDEA 2019: Chapter 15, article 68)

Chapter 15 describes 'issues of comprehensive peace' that state agencies are to work on during the transitional period, therefore emphasizing the importance of peace to the process of forging a democratic transition. In fact, many institutional and legislative activities and political meetings were launched to achieve sustainable peace. The Juba peace talks were among those efforts, and they sought to complete a comprehensive peace agreement as a priority of the transitional government.

But just as peace is important for democracy, democracy is important for sustainable peace. Today, the stalled democratic transition is clearly undermining the successful achievement of peace in Sudan. In his briefing to the United Nations Security Council in September 2022, Volker Perthes, the UN special representative of the Secretary-General in Sudan, stressed that 'The lack of implementation of the Juba Peace Agreement continues to contribute to instability. Protocols to address the drivers of the conflict in Darfur, including wealth sharing, justice, land issues, and the return of IDPs, remain unfulfilled.'

In the absence of a political agreement, it will be difficult to advance these issues' (Perthes 2022). Agreed steps to address the drivers of conflict, including the division of wealth, justice, the resolution of land issues and the return of internally displaced persons, remain unimplemented despite overdue deadlines. In the absence of a political agreement, it will be difficult to move forward on these issues.

POWER SHARING AND DEMOCRATIC TRANSITION

An approach to peacebuilding in Sudan was the preliminary issue that stakeholders had to agree on from the outset. Whereas in the Constitutional Declaration the transitional government established a methodology for addressing the root causes of the civil war and human rights violations in Sudan while engaging in peacebuilding, the Juba peace negotiators adopted the different approach of power sharing. The main difference between the two approaches in the context of democratization is that, in peacebuilding, democracy-building actions operate clearly and comprehensively at the state level, while power sharing occurs between the central government and one or more competitors (Bormann and Elbadawi 2021: 17).

Indeed, the Constitutional Declaration highlights the importance of prioritizing democracy building within a sustainable and inclusive peacebuilding process. The theory of peacebuilding applied to Sudan's democratic political transition in the Constitutional Declaration is clearly stated in article 68, paragraph a, which stipulates during the transitional period, state agencies shall work on 'achieving a just and comprehensive peace, ending the war by addressing the roots of the Sudanese problem and handling its effects, taking into account the provisional preferential measures for regions affected by war and underdeveloped regions, and remedying issues of marginalization as well as vulnerable and most harmed groups'. This text summarizes the peacebuilding approach (addressing the root causes of the Sudanese problem and its effects) and considerations (temporary preferential measures) for war-affected and less-developed areas. The declaration avoids a notion contained in previous peace agreements (an equitable division of power and wealth), which tried and failed to build sustainable peace in Sudan.

But while the Constitutional Declaration set forth standards and methods for building sustainable peace, the JPA was based mainly on a theory of power sharing. Given the outcome of the JPA, it is clear that the signatories did not make democracy a condition for sustained peace. Rather, power sharing and a quota of power was isolated from measures to promote democratization. This occurred at a time when significant voices in Sudan were demanding that a group of political parties not monopolize the public political landscape and that others not be excluded under the pretext of reform or protection of the democratic transition. But the peace agreement introduced a power-sharing approach based on a discriminatory policy favouring the signatories to the

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agreement rather than adopting a democratic approach to establishing the transitional authority.

And here the question arises whether peace built within an integrated theoretical framework supports democratization. In his book *Patterns of Democracy*, Arend Lijphart invented the term 'unanimous democracy', in which everyone is supposed to find a place in the institutions of democratic governance (Lijphart 2012). According to the Sudanese context, it is more appropriate to call for a 'consensual democracy', in which all forces that believe in the democratic transition of consensus come to establish democracy by ensuring that all those forces are involved in transitional democracy. In her working paper 'Stable Democracy and Good Governance in Divided Societies: Do Power-Sharing Institutions Work?' Pippa Norris (2005) raised reasonable doubts about the usefulness of power-sharing approaches in post-war societies.¹ It is those who propose to build a new democracy and to meet post-war and dictatorship challenges by adopting consensual theory, since consensual authority is most likely to facilitate cooperation among leading elites.

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More explicitly focused on the JPA, Nils-Christian Bormann and Ibrahim El-Badawi, in their article 'The Juba Power-Sharing Peace Agreement: Will It Promote Peace and Democratic Transition in Sudan?', analyse the habitats of power-sharing agreements in post-civil-war societies in a number of countries since the end of World War II. They conclude that many power-sharing agreements provided opportunities for effectively integrating marginalized ethnic groups, thereby increasing opportunities for peacebuilding. Sharing power can also lead to governments with broad representation in societies that are emotionally and regionally divided, thereby improving the chances of democratic transition. The authors emphasize, however, that there is weak evidence to support the benefits of power-splitting to ensure the long-term sustainability of democracy, which requires many elements other than power-splitting. For this reason, they question the JPA's ability to achieve comprehensive and sustainable peace in Sudan (Bormann and El-Badawi 2021: 7).

According to Jean Arnault, an appropriate approach to peace agreement discussions leads to a 'good' agreement, which in turn leads to lasting peace, while an inappropriate approach leads to a 'bad' agreement, which leads to delays, setbacks, and even the breakdown of the peace process. It should be noted that the provisions of a good agreement emphasize, among other things, strict criteria and requirements that must be met, such as drafting accuracy, objectivity, legitimacy, and a detailed implementation schedule (Arnault 2006).

Therefore, a peace agreement based on the power-sharing theory does not necessarily produce a democratic transformation. And indeed, in the Sudanese

¹ See Norris's comment: 'Consociational theory suggests that power-sharing institutions have many important consequences, not least that they are most likely to facilitate accommodation and cooperation among leadership elites, making them most suitable for states struggling to achieve stable democracy and good governance in divided societies' (2005: 2).

experience, peace agreements founded on power sharing have not produced democracies. And if a power-sharing agreement does not establish democracy, it is difficult to predict that such a pact will lead to a comprehensive and sustainable peace. It is conceivable that the JPA will continue to be, in effect, independent of Sudan's process of democratic transition, even if the democratic transition fails and ends in a deaf dictatorship.

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THE PEACE AGREEMENT REDRAWS THE COURSE OF DEMOCRATIC TRANSFORMATION

A peace agreement is a contract between conflicting parties to end a conflict through a ceasefire. It seeks to transform the course of competition by designing new political and legal structures and paving the way to a constitution-building process, sometimes even taking on the role of interim constitution itself. Rwanda in 1993 and Sudan in 2005 are examples of peace agreements that eventually became interim constitutions (Zulueta-Fülscher 2015).

Therefore, a transitional period is often based on a political or peace agreement. Such agreements always provide for a general legal framework under which the state will operate in the transitional period. In recognition of this criterion, the JPA contains provisions affecting democratization that result from bilateral negotiations, not a national consensus, and transcend the transitional constitution. Therefore, the social contract agreed upon by the influential forces during the transitional period was amended.

As amended in October 2020, article 79 of the Constitutional Declaration stipulates that the JPA—signed two weeks earlier by the government of Sudan and the parties to the peace process—is considered to be an integral part of the Constitutional Declaration. In the event of a conflict between the provisions of the two documents, the conflict shall be resolved in accordance with the provisions of the JPA. Likewise, the Political Agreement signed on 17 July 2019, by the Transitional Military Council and the Forces of Freedom and Change established the provisions and rules on which it was based. Therefore, the making of the Constitutional Declaration was a purely technical process that could not exceed the provisions of the political agreements. The same condition was established by the Declaration of Principles (DoP) agreed by the government of Sudan and the Sudanese People's Liberation Army–North under the leadership of Abdel Aziz al-Hilu (SPLA–North–al-Hilu), which stipulates that its provisions acquire constitutional status and that it is to be included in the Constitutional Declaration.²

The DoP states that both sides agree to 'the establishment of a civil, democratic federal state in Sudan, wherein, the freedom of religion, the

² The Sudanese Transitional Government represented by Sovereign Council Chief General Abdel Fattah al-Burhan and the SPLA–North led by Abdul Aziz al-Hilu signed the Declaration of Principles on 28 March 2021 in Juba.

freedom of belief and religious practices and worship shall be guaranteed to all Sudanese people by separating the identities of culture, religion, ethnicity and religion from the state. (Declaration of Principles 2021).

Therefore, it is evident that the JPA completely reformulated the processes of democratic transition in Sudan by means of a bilateral agreement. The constitutional document regulating the transitional period was amended to comply with the agreement, which tightly regulates governance and defines the form of executive authority and the division of power along with many security, economic and political arrangements.³ It was important that the process of building a comprehensive and sustainable peace be integrated into the process of building democracy and not stay isolated from the arrangements for democratic transition.

WHICH WAS IMPLEMENTED: POWER SHARING OR DEMOCRACY BUILDING?

After the signing of the JPA, the principle of power sharing enjoyed a direct and smooth application with the amendment of article 11 (on the formation of the Sovereign Council) and article 15 (on the formation of the Transitional Council of Ministers) of the Constitutional Declaration. According to these amendments, the parties to the peace process were included in the transitional government bodies. Thus, a comprehensive, more representative political process began for regions that continued to live with armed conflict and included, remarkably, SRF forces whose factions had opposed the central government for about 20 years.

In contrast to the measures that were quickly put into place to implement the principle of power sharing, effective measures to implement the principles and provisions of democratic transition in the JPA were not introduced. Issues related to transitional justice, as well as the convening of governmental conferences, regional conferences, the constitutional conference and independent commissions, were not linked to effective arrangements for implementation to ensure that they could assist in the democratic transition and the sustainability of peace.

CONSEQUENCES OF NON-IMPLEMENTATION OF THE AGREEMENT

For a number of reasons, the JPA has faced many challenges in the implementation of some of its most important provisions. A look at the provisions that were not implemented reveals that they were important to the sustainability of peace and the success of the democratic transition.

³ Article 9 of the Constitutional Declaration [Amendment of 2020].

The turmoil of the democratization process, among other factors, may have contributed to the disruption of some of the agreement's provisions and measures. But the failure to implement certain provisions of the agreement occurred not only for political reasons, but also for reasons related to the weak structure of the agreement itself, as well as the failure to base the agreement on a scientific analysis of the circumstances that followed its signing. In this regard, the most significant weakness of the JPA was an overestimation of the parties' abilities to implement the commitments they undertook in terms of both the scope of those commitments and the timing of their implementation (Arnault 2006: 4).

The matrix attached to the JPA, which sets out a timeline for the implementation of its measures and provisions, is no longer enforceable as envisioned at the time of signing. All of the deadlines specified in the agreement have already passed without implementation or the establishment of procedures to facilitate implementation. Most of the matrix has not been implemented, and effective measures and procedures have not been taken to ensure that implementation takes place.

The parties' inability to fulfil the JPA's obligations presents serious challenges to the peace process, including the possibility that the relationship between the parties will be affected by one party's perception that another party is unwilling or lacks political will. Insofar as the signing of a peace agreement typically increases citizens' expectations of a rapid improvement in their daily lives, the peace process will also lose popular support in Sudan, and public confidence in the parties' ability to achieve sustainable peace will erode as expectations fail to be met. Eventually, the loss of public confidence in the agreement will increase people's discontent with the government and other signatories.

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MODIFYING THE JPA AND THE ROLE OF THE UN

With reference to best practices, rescheduling of implementation timelines and the revision of actionable work within an agreement's timeframe (i.e. prioritization) are classic ways to ensure that the objectives of an agreement continue to be achieved (Arnault 2006). For the JPA, amending the matrix timeline and rearranging its priorities will require a thorough reanimation of the political, security and socio-economic situation and the positions of regional and international communities on measures for a peaceful transition in Sudan. In addition, a careful scientific analysis is required to ensure that the new measures are more realistic and thus more amenable to implementation than those in the original agreement.

Modifications of the JPA matrix and a redrawing of its priorities will require highly efficient technical efforts by a highly verbatim and credible mechanism. Preliminary agreement on an acceptable, internationally accepted and supported mechanism is needed to ensure that negotiations about new measures to further implement the JPA are both feasible and enforceable.

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In Sudan, the UN has played a key role in the implementation of the Constitutional Declaration of 2019 and the JPA. On 3 June 2020, before the JPA was signed, the UN Security Council adopted Resolution 2524 (2020) establishing the UN Integrated Transition Assistance Mission in Sudan (UNITAMS), a special political mission to support Sudan's political transition to democratic governance. Among its duties, UNITAMS was to help the country achieve the objectives of the Constitutional Declaration by 'supporting peace processes and the implementation of future peace agreements'.⁴

If implementation of the agreement is now stalled, UNITAMS must step up and adopt a strategy to ensure that the parties do not return to war and armed conflict. The UN's ability to help resolve the crisis over implementation of the peace agreement is rooted in its impartiality and deep expertise in designing appropriate alternatives. Its strategy should be to exercise its good offices in such a way as to make the parties, despite their stumbling and the disadvantages and weaknesses of the agreement, choose to maintain cooperation and formulate solutions—in other words, to make continuation of the peace process the most attractive option for both sides.

The UN's 'good offices' should include providing all parties with a thorough, realistic analysis of the nature of the problem and submitting proposals, scenarios and alternatives to help the parties adopt more realistic standards of implementation. Although this strategy may face some resistance owing to a lack of capacity to accommodate the situation that may result from the agreement's failure to be implemented, such an approach will help maintain the parties' will to continue the peace process.

CONCLUSION

Throughout Sudan's modern history, peace agreements have not been established in the framework of building a democratic transition. They have therefore succeeded neither at creating an environment for political stability nor at building a sustainable peace. The reason that peace agreements failed to establish either a lasting peace or a democratic transition is that they adopted a power-sharing approach and sought to resolve a crisis by involving fighters opposed to the central authority in the process of governance. The peace agreements were not based on an approach in which the roots of the problem in Sudan could be addressed.

⁴ Resolution 2524 (2020), adopted by the Security Council on 3 June 2020, establishes the UN Integrated Transition Assistance Mission in Sudan (UNITAMS), a special political mission to provide support to Sudan during its political transition to democratic rule, including assisting the nation to achieve the goals of the Constitutional Declaration of August 2019, and 'supporting peace processes and implementation of future peace agreements'. *Reports of the Secretary-General on the Sudan and South Sudan. Reports of the Secretary-General on the Sudan and South Sudan. Letter from the President of the Council on the voting outcome S/RES/2524 (2020)*, <<http://unscr.com/en/resolutions/2524>>.

Despite the signing of the JPA on 3 October 2020, political and security conditions are no longer conducive to completing the peace process with the involvement of the SPLA–North (al-Hilu) and the Sudan Liberation Movement under Abdel Wahid Nur. The situation became more complicated after the signatories to the JPA allied themselves with the army generals and Rapid Support Forces on 25 October 2021 and proceeded to isolate the transitional prime minister and suspend some provisions of the constitution. Acts of violence continued in Darfur, Blue Nile and other places, undermining the gains of the JPA and impeding efforts to achieve sustainable peace.⁵ As the deadlines indicated on the JPA matrix passed without implementation, it became obvious that implementation of the agreement requires more effective arrangements, perhaps including the deployment of security forces in conflict areas, reform of the security system, and the development of effective international mechanisms to monitor implementation and the parties' commitment to agreement provisions. In addition, a transparent system for transitional justice is needed, which includes accountability for human rights violations.

In short, in the framework of measures to return to the path of democratic transition and ensure the success of the JPA, it is necessary to make (the process of building sustainable peace) and (the process of transitioning to democracy) complementary, so that they are successful, and not separate, undertakings.

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⁵ See the statement of Ambassador Richard Mills, Deputy US Representative to the United Nations, on 13 September 2022, at a UN Security Council briefing: 'We condemn recent violence in Darfur, Blue Nile, and elsewhere, which only deepens the dire humanitarian situation on the ground, erodes the gains of the Juba Peace Agreement (JPA), and hinders efforts to achieve sustainable peace. Ongoing violence demonstrates the urgent need for the Juba Peace Agreement to be implemented, including the full deployment of the Security Keeping Forces in Darfur, inclusive security sector reform, robust international monitoring and reporting mechanisms, and comprehensive, inclusive, and transparent transitional justice processes, including accountability for violence against civilians and other human rights abuses and violations'.

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