

LEGALITY OF UGANDA PEOPLE’S DEFENCE IN SOUTH SUDAN, A TOOL FOR PEACE IN THE EAST AFRICA

Dr. Shadat Ssemakula Mutyab Mohmeded

Head of LLM, Islamic University, Uganda

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ABSTRACT

Starting in mid December 2013, violence erupted almost simultaneous across various fronts in south Sudan with infighting among several army divisions. In Unity state, in fighting broke out within SPLA forth division between forces loyal to commander. James Koang Chol, a Nuer tribe from Upper Niles State, and forces loyal to President Salva Kiir, including the tank division commander, also from the Dinka ethnic community. The paper looks into the illegality and legality of Uganda's Involvement in South Sudan under Constitutional of Uganda; the invitation of Ugandan Forces by President Kiir; and, the rescue of the Ugandans in South Sudan as a basis of intervention. The paper

interrogates whether Uganda's request by the Secretary General of the United Nations adduces the ground for intervention and whether Uganda's intervention was based on the Grounds of IGAD. The paper concludes that the intervention of Uganda in South Sudan's advantages outweighs the disadvantages. The situation in Rwanda Genocide, warranties the intervention of Uganda, otherwise the events would lead to another Rwanda Genocide. Moreover, there is enough evidence before parliament that adduces that Uganda was invited by South Sudan.

Key Words: *Uganda People's Defence, South Sudan, peace, East Africa*

INTRODUCTION

Starting in mid December 2013, violence erupted almost simultaneous across various fronts in south Sudan with infighting among several army divisions. The sharp and immediate break down of the national army along ethnic lines suggests advance planning among Nuer groups that supports that supports the opposition it also suggest that the presidential pardons from past failed to appropriately integrate South Sudan's militias into a single entity.¹ The SPLA remains a loose structure composed of fiefdoms rather than a cohesive army.² The SPLA divisions in unity, namely; the Jongel, and Upper Nile sates all split among ethnic backgrounds after the fighting began in Juba. The Nuer fighters, the defecators were in response to the targeting of Nuer civilians by security forces in Juba and the perceived complicity of the government of South Sudan.³

In Unity state, in fighting broke out within SPLA forth division between forces loyal to commander. James Koang Chol, a Nuer tribe from Upper Niles State, and forces loyal to President Salva Kiir, including the tank division commander, also from the Dinka ethnic community. Koang defected days later along with the majority of his men. In Jongel, SPLA 8th division under command of General Peter Gadet, a Nuer with a long history as a militia

¹ See the Enough Project, The Military Dynamics of South Sudan's Civil War available at www.enoughproject.org, accessed on 10th March 2015.

² See Agence France-Press, South Sudan fighting resumes as ceasefire hopes dashed, *The Guardian*, May 12, 2014 available at <http://www.theguardian.com/world/2014/may/12/south-sudan-fighting-ceasefire-kiir-marchar>.

³ See Public Speech at Juba International Airport on May 2011, President Kiir shutting back at Machar, available at <http://radiotamazuj.org/en/article/ethiopian-leader-%E2%80%98%98%threatened-jairiekandkiir%E2%80%99-secure-south-sudan-ceasefire>.

leader, quickly seized control of the state of Bor, along with significant stockpiles of weapons and ammunition.⁴

During the night of 15 December, 2013, fighting broke out between factions of the Sudan people's Liberation Army (SPLA) in Juba, the capital of the Republic of South Sudan. The fighting pitted forces of royal to President Salva Kiir against those royal to the former president Riek Machar.⁵

Five days later, Uganda sent troops into South Sudan,⁶ under the command of Col. Kayanja Muhanga, although its active participation was alongside SPLA was only known publicly acknowledged in January 2014, in a speech by Ugandan President Yoweri Museveni⁷ advancing a number of reasons for intervention, including that it had been invited by legitimate government to ensure order; it needed to evacuate Ugandan citizens caught up in the fighting; it had been asked by United Nations Secretary General to intervene; and that the regional organisation, the Intergovernmental Authority on Development had sanctioned the intervention.⁸ The Sudan Minister for defence Hon Kuol Manyang said that the UPDF is at battalion to six battalions.⁹ However, the UPDF spokes person Paddy Ankunda has said that the UPDF has deployed two battalions, approximately 1,600 soldiers.¹⁰ The UPDF military headquarters is located on the Bor-pibor road. A status agreement signed between the Ugandan and South Sudan does not specify the duration of deployment,¹¹ the scope of UPDF operations or their rules of engagement. Involvement of Ugandan forces and proxy militia operating in South Sudan shows the extent to which south Sudan's civil war has taken a regional dimension.

In Upper Nile, the SPLA 7th division split between the Nuer, Dinka and Shilluk ethnic groups, with significant elements of the opposition remaining in and around the Doleib garrison outside the state capital of Malakal. The firepower provided by UPDF in the early days of the conflict provided a lifeline for the SPLA as the government sought to regroup from massive defections of the Nuer fighters across the great Upper Nile region.¹² As time

⁴ See

⁵ See Kasaijja Phillip Apul, Explaining the Illegality of Ugandan's Intervention in the Current South Sudan Conflict, available at <http://www.tandfonline.com/loi/rasr20>, published on 27 September 2014, accessed on 10 March 2015.

⁶⁶ See Nicholas Bariyo, "Uganda Calls for Urgent Deployment of Troops in South Sudan," The Wall Street Journal, May 20, 2014, available at <http://www.online.wsj.com/news/articles/SB1000142405270230419850457349421255228>.

⁷⁷ See Elias Biryabarema, Uganda Leader says helping South Sudan fight rebels," Reuters, January 15 2014, available at <http://www.reuters/article/2014/01/15/southsudan-unrest-idus15NOKP34B20140115>.

⁸ Ibid.

⁹ Ibid.

¹⁰ See BBCNews, Yoweri Museveni: Uganda troops fighting in South Sudan rebels, January 16, 2014, available at <http://www.bbc.com/news/world-africa-25759650>.

¹¹ See Christine Wanjala, "we will not leave South Sudan-UPDF, Sunday Monitor, April 10, 2014 available at <http://www.monitor.co.ug/News/National?we-will>.

¹² See a fighter on the ground echoed the sentiment of others when he said " we are fighting the government for killing our people," Jacey Fortin, " at Quiet Rebel Base, Plotting an assault on South Sudan's oil fields, The International Academic Journals

passed, each side remained committed to military victory if it could manage to inflict enough costs in the form of casualties and lost territory upon its opponents in order to prompt surrender.¹³ Both sides have advanced their offensives on grounds of revenge, control of natural resources and to attain political power.¹⁴ The strategy has internally displaced 1.1 million people and driven almost 400,000 people from South Sudan into neighbouring countries. It should be noted that revenge has been a key feature of the conflict, with military leaders from both sides, their foot soldiers and civilian having regularly expressed a desire to punish their opponents. In Nassir, Upper Nile State, a woman who lost three children as a result of the conflict said that she was determined to let violence continue saying that “ *the war will not be stopped until we kill all the Dinka, including the children.*”¹⁵ Hundreds have been massacred after rebels used radio to broadcast hate speech, war songs and stories to glorify conflict.¹⁶ Both sides have used hate speech, for example State Governor Major General Clement Wani Kong said that “*what we are doing today is eye for eye, you pinch me I do pinch you too, no forgiveness.*”¹⁷ Civilians in South Sudan have been killed like chicken and there has been excessive shelling, house to house searches, organised slaughters, sweep operations razing entire villages and towns to the ground using tanks, forced disappearances of entire communities, wanton violence within the barracks and within civilian populated areas, and appalling levels of brutality. Despite the multiple ceasefire agreements since December both sides remained committed to a military action for solution in order to achieve their political objectives.

THE ILLEGALITY AND LEGALITY OF UGANDA’S INVOLVEMENT IN SOUTH SUDAN UNDER CONSTITUTIONAL OF UGANDA

The constitution of Uganda under S. 210 (d), 209 (d), provides the procedures for deployment of the UPDF, for one to examine the legality, it of great importance to examine these sections in order to find out whether the intervention was legally binding or illegal. International law on intervention will also be examined, under UN Charter, self defence, Humanitarian law, Geneva Convention, and use of force. S. 210 (d) provides that “*Parliament shall make laws regulating the Uganda People’s Defence Forces in the deployment of forces.*”

Parliament in a special sitting passed a motion for a resolution of parliament to support the deployment of the Ugandan Peoples Defence Forces (UPDF) in the Republic of South Sudan. This motion was seconded by Hon Ruth Nankabirwa, Hon Simon Mulongo, Dr. Okuonzi

New York Times, april 3, 2014, available at <http://www.nytimes.com/2014/04/04/world/africa/from-a-quiet-rebelbase-plotting-an-assault-n-south-sudans-oil-fields.html>.

¹³ See Un office for the coordination of Humanitarian affairs, South Sudan Crisis: Situation Report No. 44, July 10 2014, available at <http://www.reliefweb.int/sites/relief/resources/ea99fe03-8805-46ab-858f89d0dd516ffo.pdf>. the figures do not include deaths.

¹⁴ The Enough Project, www.enoughproject.org.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

Agatre and Ayoo Tonny. In the sitting on Tuesday 14 January 2014, a cross section of the members of Parliament said that the intervention was timely and justified.

The mover of the motion was Defence Minister Chrispus Kiyonga, who informed the full House chaired by RT.Hon Rebecca Kadaga that Uganda's involvement was followed a request from His Excellency the President of South Sudan Salva Kiir.¹⁸ The president of Republic of Uganda Yoweri Museveni took a decision to have the UPDF in south Sudan under S.40 of the UPDF Act, and that status agreement was executed on 10th January 2014 by Chrispus Kiyonga for and behalf of the Republic of Uganda the Minister for Sudan on behalf of the Republic of south Sudan, and a copy of the agreement was provided to the Speaker of Parliament.¹⁹

Furthermore the president as the commander in chief of the UPDF said that, " *his action was to prevent genocide, like that of Sudan and South Sudan, and Rwanda, to avert negative development in the national and regional security, to protect the constitutionalism and respond to the dangers to a fraternal neighbour.*"²⁰

It should however, be noted that the motion which moved in accordance with Article 210 (d) of the Constitution,²¹ and S.40 of the UPDF Act 2005, was chastised by some members of the opposition as seeking to secure a blank cheque from parliament. The opposition demanded that Uganda's involvement in south Sudan should be widened to involve other actors both in the region and international community. The author argues that the government would have done better if they had applied the procedure of Somali under S.39 of UPDF Act 2005,²² were the government requested for UPDF troops in Somalia under the African Union Mission in Somalia (AMISOM).²³ The government failed also on S.39, 40 and 41, provide for a frame work within which such deployment can be made.²⁴ In the above case of South Sudan the deployment is very ambiguous as per UPDF Act 2005 as there no stipulated timeframe to pull out UPDF presence in Sudan. According to the ministry of Defence, since the outbreak of the conflict on 15 December 2013, nearly 4,000 Ugandans and other nationals have been safely evacuated while over 48,000 South Sudanese have sought refuge in Uganda.

¹⁸ See Parliament backs deployment of UPDF in South Sudan, available at <http://www.parliament.go.ug/new/index.php/about-parliament>, accessed 16 March 2015.

¹⁹ See Status of Forces Agreement between the Government of Republic of Uganda and the Government of the Republic of South Sudan 10 January 2014.

²⁰ Ibid.

²¹ See Constitution of the Republic of Uganda 1995.

^{22,23} See Republic of Uganda Parliament of the Eighth Parliament, Report of Defence and Internal Affairs Committee on the Motion for Deployment of Troops in Somalia, office of the Clerk of Parliament 12 February 2007.

²³ See Extract from Hansard of the Republic of Uganda Tuesday, 13 February 2007.

²⁴ See Mari Tripp, Museveni's Paradoxes of Power in a hybrid regime; London, Lynne Rienner 2010 at 158.

INVITATION OF UGANDAN FORCES BY PRESIDENT KIIR (INTERVENTION ON INVITATION)

The president of Uganda, in a letter to the Speaker of parliament of the Republic of Uganda, state that, that he deployed a small force to guard Juba airport.²⁵ The legal frame work under which the Uganda deployed its troops is not very clear and is unknown. However, the president of the Republic of Uganda His Excellency Major General Yoweri Museveni state that he had been invited by the government of President Kiir of Sudan and that there was an agreement.²⁶ When Members of parliament prominently the leader of Conservative party, questioned the legal frame work under which Ugandan troops were operating in south Sudan. The government of Uganda concluded that a status of Forces Agreement (SoFA) with the government of South Sudan, allowing the UPDF to operate on South Sudan territory.²⁷

In order to justify the legality of the intervention, it is of great importance to note that there two types of phases of deployment of the UPDF's intervention in the conflict. The first phase entailed the deployment of UPDF to protect the vital infrastructure of Juba in order to enable the evacuation of foreigners including Ugandans working in South Sudan. The second phase entailed the UPDF fighting on the side of the Kiir government. Indeed these two phases raise different conclusions regarding the legality of the intervention. Many states have attempted to deploy troops under pretext of consent for example the republic of *Uganda v Congo*, where Uganda was found by ICC guilty of its actions in Congo. It should be noted that any consent should be stipulated in order to have legal effect, this precludes merely presumed consent. Where a government is elected like South Sudan,²⁸ and controls the political apparatus of the state, it may request for assistance as the case in this case.²⁹ This fact was supported by ICJ in the case concerning military and para-military action in and against Nicaragua [*Nicaragua v USA*] 1986,³⁰ where it was held that intervention is allowed at the request of the legitimate government.³¹ The most recent case was that of France invitation in Mali to halt the advance of Islamic jihadist, threatening to take over Bamako,³² Uganda to halt advancement of Al-shabab jihadist.

²⁵ See dissenting opinion of Judge Kateka in Congo v Uganda Case 19 December 2005., where he said insurgent activities amounts to intervention.

²⁶ See Yasin Mugerwa, Museven wants Mps to bless South Sudan deployment, Daily Monitor, 11 January 2014, <http://www.monitor.co.ug/News/National/Museven-Wants-Mps-to-bless-South-Sudan-deployment/-/688334/2141488/-/y8thrh/-/index.html>, accessed 8 March 2015.

²⁷ See Status Agreement between the Government of the Republic of Uganda and the Government of the Republic of South Sudan, 10 January 2014, http://www.sudantribune.com/IMG/pdf/status_of_forces_agreement-2.pdf (accessed December 2014).

²⁸ See Malcom Shaw, International Law, 5th Edition, Cambridge University Press 2003 at 1042.

²⁹ See David Wipman, Military Intervention, Regional Organization, and host states consent, Duke Journal of Comparative and International Law 7 (1996) p209-240 and 214.

³⁰³⁰ See Judgement 26 June 1986.

³¹ See A Coco, Kabore and Mailart, The Malian Conflict and International Law, Global: The Global Journal, 13 february 2013, <http://the.globaljournal.net/article/996>. Accessed 16 March 2015.

³²³² See Christakis; Under Un Security Council's Watchful Eyes: Military intervention by Invitation in the Malian Conflict, Leiden Journal of International Law 26 (2013), at 855-874.

Uganda was right to intervene in civil war in South Sudan based Doyle and Sambanians criteria,³³ where a civil war causes 1000 battle deaths, the war represents a challenge to the sovereignty of an internationally recognised government; the war occurs within the recognised boundaries of the state, the war involves the government as one of the principle combatants; are able to mount an and the rebels are able to mount to an organised military opposition to the government and to inflict significant casualties on it. It must be emphasised that based on the political definition, it can be adduced that the conflict in South Sudan is a civil one.

It should however, be noted that under Un General Assembly of Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among states in accordance with the charter of the Un states” No state.... has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any state.³⁴ This would presuppose that a state’s intervention in a civil war in another state is prohibited. However in practice this assertion has not been given support internationally.³⁵ Practice only prohibits intervention on the side of those opposing the government. Since Uganda intervened on the side of the government, its intervention was legal.

THE RESCUE OF THE UGANDANS IN SOUTH SUDAN AS A BASIS OF INTERVENTION

In the letter addressed to the Speaker of Uganda, the President of Uganda General Museveni state that “*the deployment was to rescue trapped Ugandans.*”³⁶ Indeed much coverage on all Ugandan televisions, radio and BBC showed how the Ugandans were treated in South Sudan. This was supported by some Mps and also the minister of Defence, while addressing the parliament, when he said that “*we are in South Sudan to evacuate our citizens.*”³⁷ This was further seconded by the State Minister for Defence Major General Abubaker Jeje Odong’s presentation to the Parliamentary Committee on Defence.³⁸ General Wamala Katumba Chief of Defence Forces on 14 January 2014 said that at least 30,000 Ugandans had been rescued from South Sudan since the deployment of UPDF. The issue of protecting nationals is more political than legal. Since the Un Charter, the legal basis of the right of the state to protect the nationals abroad where their lives is threatened has been a contentious issue of debate and no clarity has been provided when this matter was referred to the UN and ICJ, as a remedy up to the current situation in regard to intervention to rescue nationals.. The action of Uganda to rescue its nationals is adduced on internal examples of Italy, Great Britain, and Netherlands,

³³ Legally, the term “Civil” does not have any meaning but rather such kinds of conflicts in International law are called non- international armed conflicts.

³⁴ See Un General Assembly, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among state in accordance with the Charter of Un A/8082. GA Res 2625.

³⁵ See Chatham House, The Principle of non-intervention in contemporary International Law; non- interference in a state’s internal affairs used to be a rule of International law; Is it still? London Chatham House 2007.

³⁶ See Mugerwa, Museveni Wants the MPS to Bless South Sudan Deployment.

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³⁸ See Deo Wamala, Gen Jeje Odong, Faces MPs, on South Sudan, The Observer 13-14 January 2014.

when they deployed their forces to secure evacuation of their nationals from the country.³⁹ The Gadafi government of the time did not oppose the deployment of such forces in Libyan crisis.⁴⁰ The issue of rescuing the nationals should not be a point of debate since when France went to rescue its national fought on the side of the government. It should be noted that such deployment should be proportionate to achieve a legitimate aim and purpose, in order to avoid abuse of power by deployed forces. The UPDF fighting on behalf of Salva Kiir may be seen as an abuse of power of state practice.⁴¹

UGANDA'S REQUEST BY THE SECRETARY GENERAL OF THE UNITED NATIONS ADDUCES THE GROUND FOR INTERVENTION

It has been adduced by the government spokesman Ofwono Opondo and Fred Opolot that Ugandan intervened in South Sudan because the UN Secretary General⁴² telephoned the President and asked him to intervene in the finding a political solution to the problem. It's the role of the Security Council to maintain international Peace, not the Secretary General. The Secretary General is to bring to attention of the United Nations Security Council (UNSC) any matter of eminent danger but has no mandate to authorise military action or military intervention. Since international work together, any lack of coordination would bring a deadlock in the operation of United Nations.⁴³ Since clear procedures regards intervention by ICC neither the UN, The author does not see any impediment stopping the president of Uganda, intervening in South Sudan, since he has applied the same in Somalia. This would only be contrary if the UPDF were found in exploitation of minerals or oils in south Sudan. In this case it does not apply hence the occupation is legitimate.⁴⁴ Indeed Uganda has a right of reparation since its nationals suffered a lot of damage due Rebel forces in South Sudan. If Uganda was in violation of International law, the UN or the ICC would commence proceedings against Uganda as in the case of *Uganda v Congo*, there is no any adduced evidence to the contrary.⁴⁵

UGANDA'S INTERVENTION WAS BASED ON THE GROUNDS OF IGAD

The Intergovernmental Authority on Development (IGAD), established in 1986 is composed of Uganda, Sudan, Ethiopia, Djibout, Somalia, South Sudan, Eritrea and Kenya. UPDF presence in South Sudan was sanctioned by IGAD. South Sudan Ambassador to Uganda, Samuel Lomnisuk, has stated that Uganda's intervention in South Sudan is justified under

³⁹ See Allegra Stratton and Tom Kingston, Libya Protests: UK deploys warships to help evacuate British Nationals, The Guardian, 22 February 2011.

⁴⁰ See Libya Stranded foreign Workers need urgent evacuation, Human Rights Watch, 3 March 2011 <http://www.hrw.org/news/2011/03/2014libya-stranded-foreignworkers-need-urgent-evacuation>, accessed 10 March 2015.

⁴¹ See Gill Rescue of Nationals 217, Gill argues that there exists no rights of states to rescue Nationals caught up in a conflict mainly because of because the right is subject to abuse.

⁴² See Julius Barigaba, Uganda now steps in, sends troops in South Sudan, The East African 21 December 2013, see Kakaire Sulaiman, Uganda: South Sudan war-UN Appeals to Museveni. The Observer 19 December 2013.

⁴³ See UN Charter Article 39.

⁴⁴ See UN Charter Article 39 and 99.

⁴⁵ See UN Charter Article 12.

IGAD. IGADD members have the power to promote peace and stability in the region or mechanism for peace through negotiations or dialogues in order to avoid conflict.⁴⁶ The engagement of IGAAD is also mandated by OAU, for example the role of Uganda forces in Somalis was mandated by OAU, under IGADD mission. Hence IGADD posed authority for peace keeping in Sudan. The role of Uganda was adduced and supported by the meeting which at Nairobi-Kenya, after two weeks of the outbreak of the civil war, the heads agreed with Uganda's intervention. In other words, as partners Uganda presented other members who did not send troops in urgency. Uganda intervention further supported by other regional organisations, for example the role played by ECOWAS in peace process in the civil war in Liberia in December 1986 and also Sirerra Leone.⁴⁷ Since the United Nation Security Council has been silent on this matter, it would be disproportionate for one to argue that the intervention is illegal.

CONCLUSION

Uganda's military intervention in the current fighting in South Sudan has drawn mixed reaction nationally and internationally. With views of many government officials, international bodies like UNSR, UN Charter, The OAU, the Parliament of Uganda, the evidence of invitation from Sudan. The intervention of Uganda in South Sudan's advantages outweighs the disadvantages. The situation in Rwanda Genocide, warranties the intervention of Uganda, otherwise the events would lead to another Rwanda Genocide. The president of Uganda was very pedant to deploy troops in South Sudan. There is enough evidence before parliament that adduces that Uganda was invited by South Sudan. Further it should be noted the economic factor, of Uganda Sudan relationship, were by Uganda exports 100% goods to Sudan according to bilateral trade. Uganda gets 220 million per month. It has the biggest number of South Sudan refugees. Uganda earns 1.3 billion from exports. These economic reasons add further explanation of the intervention, of Uganda to protect its market. The Government of Uganda can further commence proceedings under Vienna convention,⁴⁸ for failure of the Sudan rebels or government to protect its nationals.⁴⁹ The government of Uganda as an occupying force owed a duty of care to safe guard the people.⁵⁰ Under General Assembly 3314, the ICJ has the mandate to find aggression has been committed there is no evidence to Uganda's case.

⁴⁶ See Abraham Awolich, The Question of Uganda Troops in South Sudan, Weekly Review March 4, 2014.

⁴⁷ See UNSC Article 53,54.

⁴⁸ See ICJ case *Congo v Uganda* par106-147.

⁴⁹ See Geneva Convention 1961

⁵⁰ See Article 43 of the Hague Regulation.