

## THE IMPLICATION OF STATE FORMATION ON STATE INSTITUTIONS IN INDEPENDENT SOUTH SUDAN

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<https://doi.org/10.37602/IJSSMR.2022.5318>

### ABSTRACT

State formation as a process at the international level has aroused interest and controversy among scholars of the African state and states elsewhere. While the states outside Africa have been shown as having gone through a different course of formation many still believe that the state in Africa especially Sub-Saharan Africa had not experienced the process which the state in Europe and elsewhere had gone through. What is interesting is that many scholars from outside Africa want to study the African state from the time of colonialism as if Africa had no past before European colonialism. This therefore many times leads to concern for many who want to study the state in Africa before colonialism where some authors depict pre-colonial Africa as having no form of polity but quasi or decentralized societies with no form of statehood. This part of history is ignored and therefore it becomes hard to explain the consequences of the way the state was formed in form of institutions formed, conflict and security. The people of South Sudan have historically known more war than peace because of the institutions that were formed during colonial times and later bequeathed to post-colonial leaders. South Sudanese believe now that they are their own nation; it's time to teach people how to build strong institutions which can protect the citizens and their state through indigenous institutions and constitution. Currently, the institutions in South Sudan are weak, wrecked by corruption and Nepotism. The people in these institutions do not see themselves as belonging to one state where everyone should have equal rights and most importantly, these institutions are a threat to human and national security of the state of South Sudan. This scenario cannot be explained minus the history of the colonial impact over Sudan where South Sudan was a part. The colonialists could not build indigenous institutions, they were not concerned with democracy and a constitution, but built a ruthless army against the indigenous Sudanese including those in southern Sudan who later seceded to form the new state of South Sudan. The breakaway of South Sudan is an interesting area of how states in Africa were formed and the institutions that have become a liability to South Sudan which can be explained by the state formation process which needs to be investigated.

**Keywords:** State Formation, South Sudan, institutions, state, African states

### INTRODUCTION

The emergence of states in the international system has been one of the less studied areas of study among scholars in disciplines like international relations, sociology, anthropology and others. The way states have been formed across the international system from Europe, Asia, America and Africa has not drawn a lot of debate until the increase of failed states mainly in

Africa. These states have been characterized by insecurity, weakness, conflict and the failure of institutions<sup>1</sup>. Since 1648, when the Westphalia treaty was signed, nation states in Europe were the focus of attention and therefore became the model of explanation about state formation. The study of the formation of States where the State had never existed before focused mainly on the processes that create institutions that form structures and make the State function. However, it is important to look at the African State which went or which has been in between the two processes.

On one side, there is a practice of referring to States in Africa as Stateless societies which meant that they can be put in the early state formation processes and because their constant process of state formation was disrupted by the European States. It was and has also often been put in the modern state formation process through decolonization<sup>2</sup>. It is very important that one should recognize the fact that, Africa has found itself between the two processes; one, the early State and primary state formation on one side and the modern state formation on the other side. This, therefore, implies that the modern States in other parts of the international system like those where colonialism occurred, these geographical areas had States and institutions but colonialism replaced them<sup>3</sup>.

The problems that are faced in the definition of the State and the term state formation in relation to the African States has far-reaching effects on institution building and functioning of the State. It is this confusion which also affects the institutions of the African state. State formation dynamics in Europe and in Africa are distinct and have unique and different institutional implications<sup>4</sup>. The threats that have compromised the State in Africa have often tended to be internal reflecting the state formation process where the structures that were formed before colonialism were replaced by colonialism where even the institutions that were meant to support the State were replaced to support the colonialists thus making them weak after decolonization<sup>5</sup>. This is thought to be like that because the social, economic, political and justice institutions were not purely indigenous.

The African continent continues to decline politically, socially and economically, its security, stability, social exclusion, and peaceful environment also continues to be marked by a plethora of catastrophes ranging from civil wars, ethnic tensions or conflict and under development in spite of being the richest continent in terms of natural resources in the world. Africa has been rocked by a series of natural and man-made disasters, including civil wars in Rwanda, South Sudan, Congo, Liberia, Sierra Leone, Chad, Libya, and Somalia. Such tragedies have created enormous numbers of refugees, accounting for 7.5 of 9.2 million world-wide in 2005, and unsettled situations that can lead to intra-African tensions and foment hotbeds of terrorism and other forms of violence as security threats<sup>6</sup>.

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<sup>1</sup> Southall, A. (1974). State formation in Africa. *Annual Review of Anthropology*, 3(1), 153-165.

<sup>2</sup> Southall, A. (1974). State formation in Africa. *Annual Review of Anthropology*, 3(1), 153-165.

<sup>3</sup> Blanton, R., & Fargher, L. (2007). *Collective action in the formation of pre-modern states*. Springer Science & Business Media.

<sup>4</sup> Wendt, A., & Barnett, M. (1993). Dependent state formation and Third World militarization. *Review of International Studies*, 19(4), 321-347.

<sup>5</sup> Blanton, R., & Fargher, L. (2007). *Collective action in the formation of pre-modern states*. Springer Science & Business Media.

<sup>6</sup> Abbey, R. (2005). Is liberalism now an essentially contested concept? *New Political Science*, 27(4), 461-480.

South Sudan is the newest state to be formed in the international system after seceding from Sudan in 2011. In the period of its independence, South Sudan has been characterized by problems similar to those in failed and collapsed states. The problems of insecurity, poor governance, and lack of service delivery in this new state have been attributed to poor neighborliness, recurring civil wars, detachment of the country, lack of national integration, age-old racial divide between tribes and constructed inequalities which have been mirrored in the national army (SPLA)<sup>7</sup>.

South Sudan like all other states which exist in the international system is like living organisms which get born, grow up and eventually die<sup>8</sup>. In their lifetime they need space to survive and therefore there are at times when they need space to expand and get resources for their survival. The survival of the State which must have a population as a feature requires that the people are the end of whatever the state needs because a state is an abstract political phenomenon. It is therefore important to note that it is the citizen that becomes the principle of protection by the state.

It is the need to protect the citizens in South Sudan territory that the State needs to have institutions that must be built to protect every other aspect that can be a threat towards the people in South Sudan as put forward by the Copenhagen school<sup>9</sup>. One can be tempted to say that South Sudan has been faced with some other unique threats which may not necessarily be threats to the European States. To some authors like<sup>10</sup>, the security mess in African States like South Sudan in which they find themselves may be a result of their "lateness" in the state formation process. When one critically looks at this 'lateness', it can make one argue that state formation is a linear process when in the real fact the word that could best be used is 'interruption by invasion' by the already established States of Europe, this is one of the threats against which South Sudan needs national security institutions.

The idea of protecting citizens in South Sudan shows what<sup>11</sup> referred to as 'traditional security' which considers the necessity of the military as an institution to deal with threats posed by external military threats. The national security perspective is known to be central in all the other security needs. For example,<sup>12</sup> has tried to use the national security perspective that emphasizes the military threat from external forces as the defining stance for other security aspects like economic security. The army in South Sudan has been the symbol of ethnic division that was cultivated long before South Sudan was independent. It can also be argued that Sudan under Bashir knew that the easiest way to fight the new South Sudan was to use that weakness.

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<sup>7</sup> Johnason, D. H. (2003). *The Root Causes of Sudan's Civil Wars*. Kenya: Uganda Press.

<sup>8</sup> Fredrich, R. (1969). *The structure of political geography*. New York: Routledge.

<sup>9</sup> Buzan, B., Etc, Ole, W., Waever, O., & Wilde, J. d. (1998). *Security: A new Framework for Analysis*. Boulder: Lynne Rienner Publishers.

<sup>10</sup> Ayoob Mohamed, A. (1995). *The Third World Security Predicament: State Making, Regional Conflict, and the International System*. Cambridge: Lynne Rienner Publishers

<sup>11</sup> Baldwin, D. A. (1997). The Concept of Security. In D. A. Baldwin, *Review of International Studies* (p. 22). Washington DC: British International Studies Association.

<sup>12</sup> Nesadurai Helen, E. (2005). Conceptualising economic security in an era of globalisation: what does the East Asian experience. In H. E. Nesadurai, *Globalisation and Economic Security in East Asia: Governance and Institutions* (p. 20). London: Taylor & Francis Group.

The breakdown of the military institution, considered as one of the most important institutions of the State made independent South Sudan weak. The division of the institution into SPLM and SPLM/IO along the lines of ethnicities became a threat to the state and human security. The divisions that were common in Sudan before secession had once again resurfaced in the independent South Sudan. The incoherence between the army and the presidency as an institution is thought to have led to the outbreak of the 2013-armed conflict in 2013, which was as a result of the uncompromising president and his vice (institution of presidency).

While many may think that South Sudan was not affected by the process of state formation, there is need to have a clear view of the fact that South Sudan was part of Sudan first of all. The formation of the state of Sudan affected Southern Sudan which part later seceded and became the newly created State of South Sudan in 2011<sup>13</sup>. The Interruption of the state formation in Sudan greatly affected southern Sudan and it can be argued that the period of the rule of the Turks, Egyptians and the British greatly shaped the events leading to secession and the nature and character of institutions in South Sudan<sup>14</sup>.

Through clear analysis of how the social, political, economic, environmental, and military institutions have been organized in protecting the interests of South Sudanese, it is critical to mention that the diversity of ethnic groups in South Sudan<sup>15</sup>, institutional building and weakness explain a lot about the nature and character of African institutions<sup>16</sup>. This state of institutions can be argued to be emanating from the history of Sudan from where South Sudan was part as southern Sudan.

It can be showed that indeed institutions were not well constructed or had issues which made them become weak and therefore could not function well to protect the new State and the citizens in the state. When one looks at the "national army" the SPLA which is torn between SPLM/IO and SPLM/IG<sup>17</sup> one can get the true picture of why the institutions in South Sudan need to be studied very well by looking at the history of Southern Sudan in Sudan.

Like in many African states whose state formation process was interrupted by colonialists who built institutions that were to serve their colonial government interests and their agents<sup>18</sup>. It was revealed that the mechanisms that were used by the colonialists in all the areas where they interrupted the state formation process the colonialists made sure that the institutions that were built were either constructed on divide and rule, violence and targeted development which made them get the raw materials or resources tools that could benefit them but not the indigenous people who could become powerful and fight the colonialists<sup>19</sup>.

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<sup>13</sup> Idris, A. H. (2005). Slavery, Colonialism, and State Formation in the Sudan. In *Conflict and Politics of Identity in Sudan* (pp. 23-41). Palgrave Macmillan, New York.

<sup>14</sup> Deng, F. M., & al Bashir, A. A. R. (2004). GREEN IS THE COLOR OF THE MASTERS. *The Legacy of*.

<sup>15</sup> Jok, J. M. (2011). *Diversity, unity, and nation building in South Sudan*. Washington, DC: US Institute of Peace.

<sup>16</sup> Bellucci, B. (2010). O Estado na África. *Revista tempo do mundo*, 2(3), 9-43.

<sup>17</sup> Young, J. (2015). *A fractious rebellion: Inside the SPLM-IO*. Geneva: Small Arms Survey.

<sup>18</sup> Ayittey, G. B. N. (2006). The Indigenous Institutions Under Colonialism. In *Indigenous African Institutions* (pp. 415-458). Brill Nijhoff.

<sup>19</sup> Austin, G. (2010). *African economic development and colonial legacies* (No. 1, pp. 11-32). Institut de hautes études internationales et du développement.

The foundation therefore on which these institutions were built were foreign and could not in any way be useful to those who got them after independence and were uniquely built with the expertise of the colonialists and their agents and they could not be useful in protecting the citizens.

South Sudan is experiencing a scenario which so many African states have faced. One can imagine a state that has gone through colonial domination with no indigenous institutions and after getting independence it is put under a period of marginalization under North Sudanese and when South Sudanese got independence<sup>2021</sup>, those that colonized the same areas come back to help create, or reform the institutions that they could not build when they were dominating the Sudan.

In what was called traditional or indigenous administration in Sudan, and specifically in Southern Sudan, the concept of ethnic groups was as is highly politicized due to its institutionalization in the structure of British colonial rule as exemplified in the Native Administration, which was created by the British based on ethnicity<sup>2223</sup>. Most of the regimes created after independence kept this arrangement. The moment that was done and passed on to the new states like South Sudan, one can see what we have in South Sudan. No institutions that have a national character and consequently corruption, nepotism, impunity are everywhere and institutions cannot work. Look at our army.

It is important to argue that the institutions in South Sudan suffered historical and transitional problems as the institutions were not built on ethnic or tribal lines, from what has been documented in the congressional Research Service<sup>24</sup>, One can see that the statements are in conformity with the idea that the institutions were not built on ethnic or tribal lines.

Political institutions are often built on the foundation of social institutions. What is in South Sudan means that the weak social institutions that were built on what the colonial master left in Sudan explains what is in the relations between the different ethnicities in South Sudan. The social institutions are an important part in the protection against threats and this is not different from what Ellett (2015) argued on the institutions that he considered important as primary institutions that are believed to arrange and control political and economic actions which Kitler (2011) mentioned as important but are commonly fragile or in other circumstances that feature in conflict like that in Abyei is a condition of not being able to function.

In addition to the above, it can possibly be explained by the way the institutions were structured to serve the colonial master<sup>2526</sup> and then the state of Sudan and this is how they

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<sup>20</sup> Sørbo, G. M. (2010). Local violence and international intervention in Sudan. *Review of African Political Economy*, 37(124), 173-186.

<sup>21</sup> De Waal, A. (2007). Sudan: What kind of state? What kind of crisis. *Occasional paper*, 2.

<sup>22</sup> Abdulbari, N. (2013). Identities and citizenship in Sudan: Governing constitutional principles. *African Human Rights Law Journal*, 13(2), 383-414.

<sup>23</sup> Vale, R. J. (2011). Is the Sudan conflict best understood in terms of race, religion, or regionalism?

<sup>24</sup> Blanchard, L. P. (2016). Conflict in South Sudan and the challenges ahead.

<sup>25</sup> Matasci, D., Jerónimo, M. B., & Dore, H. G. (2020). *Education and Development in Colonial and Postcolonial Africa: Policies, Paradigms, and Entanglements, 1890s–1980s* (p. 321). Springer Nature.

<sup>26</sup> Ocheni, S., & Nwankwo, B. C. (2012). Analysis of colonialism and its impact in Africa. *Cross-Cultural Communication*, 8(3), 46-54.



were handed over to the South Sudanese independence leaders. The leaders of the new state of South Sudan in 2011 were to face a challenge of forging national integration<sup>27</sup> and national identity that was destroyed when the people of Southern Sudan were still in Sudan<sup>28</sup> especially under the practice of divide and rule and this is not different from what Lancaster<sup>29</sup> asserted when he was debating the problem of national integration and how it is connected to national security of states like that of South Sudan.

The historical instances of cultural destruction and the use of impunity as was the case against the people of southern Sudan are hard to fight even after the new state of South Sudan came to be recognized<sup>30</sup>. These injustices have become the sources of insecurity when some people feel unjustly treated most especially when the case is seen as favoring a given ethnic group. This is not so different from what was further expounded by Lancaster<sup>31</sup> when he argued that it is usual for several judicial officers to be politically biased in African countries states. The impact that the acceptance of the court system as institutions of authority and the rule of law has been affected<sup>32</sup> and are now so fragile is synonymous with South Sudan.

It is not strange that South Sudan is experiencing discrimination on tribal level as it was with racial discrimination in Sudan<sup>33</sup>, this shows the sentiments, fear, recollection of what happened in Sudan and this entire exhibit those aspects of how social institutions were affected by the colonial policies in Sudan. By the way, all these could be identified in Sudan as some people could be discriminated against and sent into areas which may not be inhabitable by those who were in power and the discriminated can be forced to attack the others thought to be privileged for example the case of the Misseriya and the Dinka Ngok and the question of water and grazing land<sup>34</sup>. It is again here that one can see that the institutional problems that threaten South Sudan can be traced from Sudan where the state formation which was interrupted led to the failure to build institutions which could deal with such problems. Even when the people in Southern Sudan seceded, their values on unity with people who were linked to the leaders in Sudan was already shaped. This was therefore going to be reflected in the institutions that were to be built in the new state of South Sudan.

The people of Southern Sudan were divided and discriminated on the basis of their ethnicity, skin and religion<sup>35</sup> with the coming of the Turks and the British. The people in this area

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<sup>27</sup> Jok, J. M. (2011). *Diversity, unity, and nation building in South Sudan*. Washington, DC: US Institute of Peace.

<sup>28</sup> Vhumbunu, C. H., & Rudigi, J. R. (2019). Sustainability and Implications of the Sudan-South Sudan Secession. *Journal of African Foreign Affairs*, 6(3), 23-42.

<sup>29</sup> Lancaster, Andy. (2012) The Divisive nature of Ethnicity in Ugandan Politics, Before and After Independence. E-International Relations <http://www.e-ir.info/2012/05/25/the-divisive-nature-of-ethnicity-inugandan-politics-before-and-after-independence/>

<sup>30</sup> Vhumbunu, C. H., & Rudigi, J. R. (2019). Sustainability and Implications of the Sudan-South Sudan Secession. *Journal of African Foreign Affairs*, 6(3), 23-42.

<sup>31</sup> Lancaster, Andy. (2012) The Divisive nature of Ethnicity in Ugandan Politics, Before and After Independence. E-International Relations <http://www.e-ir.info/2012/05/25/the-divisive-nature-of-ethnicity-inugandan-politics-before-and-after-independence/>

<sup>32</sup> Mihr, A., & Sriram, C. L. (2015). Rule of law, security and transitional justice in fragile and conflict-affected societies. *Just Security in an Undergoverned World*, 118-40.

<sup>33</sup> Vale, R. J. (2011). Is the Sudan conflict best understood in terms of race, religion, or regionalism?

<sup>34</sup> Relief web (2018) Dinka-Ngok, Misseriya sign peace accord in Abyei 10 March News and Press Release <https://reliefweb.int/report/sudan/dinka-ngok-misseriya-sign-peace-accord-abyei>

<sup>35</sup> Jok, J. M. (2015). *Sudan: Race, religion, and violence*. Simon and Schuster.

would have built indigenous institutions built on their values and identity which were destroyed by the colonialists. The education for the Southern Sudanese who later seceded into the state of South Sudan was forced to learn Arabic and the English which was meant to help the British to exploit the people by having clerics<sup>3637</sup>. What was done in southern Sudan is not different from what Anders Breidlid, Avelino Androga, Said and Astrid Kristine Breidlid<sup>38</sup> observed when they argued that the government did very little to educate the people in southern Sudan and the policy after 1920 was structured in order to differentiate between the north and south. It is not surprising that after the language conference in Rejaf in 1928 only six indigenous languages were to be used as a medium of instruction and all text books were to follow this decision<sup>39</sup>. The people in the independent South Sudan even today do not have a national language<sup>40</sup> and this makes the people see themselves as different.

This situation was not different from what was revealed by Okello et al<sup>41</sup>, who argued that by the introduction of foreign languages the generation of many children in Africa, the identity, values and cultures were destroyed and could not be used to protect institutions that could protect the citizens in states like South Sudan which became independent in 2011 with expectation that what was happening in Sudan was not going to happen in the new state.

That the army in South Sudan is divided brings out the aspect of having two or more armies in the same polity of South Sudan<sup>42</sup>. This in every way exposes the fact that the state has a multiplicity of institutions which have different rules since the army under one leader could not have the same command as that under the commander in chief who is the president of the republic of South Sudan. This has weakened the not only the institution of the presidency<sup>4344</sup> but also the other state institutions like the police<sup>4546</sup> and judiciary<sup>47</sup> and subsequently threatens the national security of the state. This further means that the security of individuals and the state is threatened since there is no well-built institution which reflects the values and aspirations and interest of the state. This concern is in line with what was raised by Johnson Di John<sup>48</sup> who argues that institutional multiplicity refers to a circumstance where distinct sets of rules of the game, a lot of times contradictory, co-occur in a similar country or region putting individuals or specifically citizens and economic agents in an intricate often

<sup>36</sup> Seri-Hersch, I. (2017). Education in colonial Sudan, 1900–1957.

<sup>37</sup> Duany, J., Lorins, R., & Thomas, E. (2021). Education, conflict and civiness in South Sudan: an introduction.

<sup>38</sup> Breidlid, A. (Ed.). (2014). *A concise history of South Sudan: New and revised edition*. Fountain publishers.

<sup>39</sup> Ibid

<sup>40</sup> Momo, E. Y. (2021). The language policy in South Sudan: implications for educational development.

<sup>41</sup> James O, Nakimuli-Mpungu E, Klasen F, Musisi S, Broekaert E, Derluyn AI (2015). The impact of attachment and depression symptoms on multiple risk behaviors in post-war adolescents in northern Uganda. *Journal of Affective Disorders*

<sup>42</sup> **Sudan Tribune** (2014). S. Sudan Admits Mass Defection of Army Troops to Machar Rebels. Sudan Tribune, February 17 2014 Available at <http://www.sudantribune.com/spip.php?article50004> last accessed 2<sup>nd</sup> June 2022

<sup>43</sup> **John Mukum Mbaku** (2014) South Sudan: The Failure of Leadership. Brookings.edu/blog/Africa April 21<sup>st</sup> 2022 Available at <https://www.brookings.edu/blog/africa-in-focus/2014/04/21/south-sudan-the-failure-of-leadership/> Accessed 3<sup>rd</sup> June 2022

<sup>44</sup> Raphael Obonyo (2014) Peace in South Sudan critical to regional stability; Continued fighting worries regional leaders, August UN.org Africa Renewal. Available at <https://www.un.org/africarenewal/magazine/august-2014/peace-south-sudan-critical-regional-stability> Accessed 2<sup>nd</sup> June 2022

<sup>45</sup> Abatneh, A. S., & Lubang, S. M. (2011). Police Reform and state formation in Southern Sudan. *Canadian Journal of Development Studies/Revue canadienne d'études du développement*, 32(1), 94-108.

<sup>46</sup> Lokuji, A. S., Abatneh, A. S., & Wani, C. K. (2009). *Police Reform in Southern Sudan*. North-South Institute.

<sup>47</sup> Diehl, K., Arol, R. M., & Malz, S. (2015). South Sudan: Linking the Chiefs' Judicial Authority and the Statutory Court System. In *Non-State Justice Institutions and the Law* (pp. 55-79). Palgrave Macmillan, London.

<sup>48</sup> DiJohn, J. (2008). *Conceptualising the causes and consequences of failed states: a critical review of the literature*. London: Crisis States Research Centre.

impossible conditions although giving them the possibility of interchanging from one institutional universe to another.

Di Johnson<sup>49</sup> further argued that failing states have a collection of institutional structures that move away from a modern Weberian bureaucracy where there is a centralized system which is followed but in the case of South Sudan, the command and control which is an indicator of a bureaucracy was missing in the army and it was imminent that the security of the state was going to be threatened either from within or from without and the army was just a reflection of what was in society. The army which is supposed to defend the borders and the citizens was divided<sup>50</sup> and it was not serving the interests of the citizens as it was in the case of Sudan before South Sudan seceded showing the effects of an interrupted state formation process. The same happened during the time of the Anglo-Egyptian rule when the army was not serving the interest of the citizens.

It is important to express the fact that the divisions that were encouraged by the colonialists<sup>51</sup> did not spare any institution including the army as it is seen by what happened in South Sudan. This, in effect meant that it was unlikely for different ethnic groups that were made to fight one another to develop cross ethnic coalitions that would prevent the development of horizontal inequalities which could contribute to violence<sup>52</sup>. This is peculiar in other states which did not face colonialism except in Africa where the threats from within can easily become threats from outside where insurgents can easily get support from across the border. This may not even be State versus state military threats as put down by the traditional security studies but by national armies which are divided along ethnic lines which were deepened by colonialists. While not common through Africa, because bundling Africa together would be a mistake, however the view that Africa has ethnically divided armies is not different from what Kristen A. Harkness<sup>53</sup> argues in his "The Ethnic Army and the State: Explaining Coup Traps and the difficulties of Democratization in Africa" which discusses the problems of having armies which are loyal to groups of people or ethnicity like what is in South Sudan between Machar and Kiir instead of the state. Such scenarios were common when colonialists-built institution of the army to serve their interests and not the indigenous people where the colonialists were.

The failure to have a clear and uninterrupted state formation process in Sudan led to the failure to have institutions in Sudan and South Sudan which was formerly a part of Sudan. This implies that the problems that come with interrupted state formation like failure to have strong institutions and the consequences of that could not be avoided. Such a feeling was not different from what Johnson di John<sup>54</sup> observed when he argued that the course of state

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<sup>49</sup> Ibid

<sup>50</sup> Young, J. (2015). *A fractious rebellion: Inside the SPLM-IO*. Geneva: Small Arms Survey.

<sup>51</sup> Chuei Mareng, D. (2009). SUDAN: ETHNIC'S VS. RELIGION'S RELATIONSHIP. In C. D. Mareng, *The Sudan's dimensions: A country divided by ethnicity and religion* (pp. 532 -538). Edmonton: African Journal of Political Science and International Relations.

<sup>52</sup> DiJohn, J. (2008). *Conceptualising the causes and consequences of failed states: a critical review of the literature*. London: Crisis States Research Centre.

<sup>53</sup> Harkness, K. A. (2016). The ethnic army and the state: Explaining coup traps and the difficulties of democratization in Africa. *Journal of Conflict Resolution*, 60(4), 587-616.

<sup>54</sup> Ibid



formation overlaps with the course of primitive accumulation and patrimonial rent positioning or deployment. The numerousness of non-formal illegal mechanisms of influencing the state as it is in South Sudan where corruption and impunity<sup>55</sup> and the decorating of men in Uniform with unofficial ranks which made the army thousands of generals<sup>57</sup> who would not be paid accordingly and they were associated with warlords is common.

There have been growing fears over ethnic problems in the institutions in South Sudan and this seems to be the topic which could not disappear from the media in South Sudan as complaints and instances of marginalization and discrimination continued to fill spaces of print media over what was going to happen to the new nation which had more than sixty 60 ethnic groups<sup>58</sup> but at least only about four or three ethnic groups are visible in the institutions in South Sudan<sup>59</sup>. This indicates that the other smaller ethnic groups in South Sudan were left out of the participation in their government as citizens. When some groups feel they are not receiving what they are supposed to get it is often possible that they will fight for their rights, economic, social, and political as it was in Sudan. It is therefore important to argue that the state formation process which was interrupted prepared the circumstances where ethnic division was a value in areas where colonialists did not want ethnic harmony in colonized areas like Sudan where South Sudan was a part.

What was done by the British defied the force theory and social contract explanations of state formation since the two theories did not discuss slavery of some groups of people as it was the case with South Sudan. The economic institution inequality started from such activities of slavery, this is related to what Johnson<sup>61</sup> revealed when he argued that there was underrepresentation with economic abandonment and the British government policy of Islamization in the South. The British interrupted the state formation of Sudan where South Sudan was a part. This can be well explained when one looks at the regional self-government in the south in 1972 until when Nimeiry introduced Sharia law which again sparked conflict<sup>62</sup>. All these explain why the institutions that were built could not reflect ethnic diversity in South Sudan and they laid ground for societal threats which were characteristic of the 2013-armed conflict within the government of SPLM<sup>63</sup>.

What one reads from all that is that many states in Africa has become insecure because their national integration was undermined by the connections; they have had with the colonial

<sup>55</sup> IRIN, *Fuelled by corruption, South Sudan war enters third year*, 17 December 2015, available at: <https://www.refworld.org/docid/56940f372e90.html> [accessed 3 June 2022]

<sup>56</sup> Karin Zeitvogel (2016) How South Sudan's leaders robbed their country and nearly got away with it, September 13<sup>th</sup> *thenewhumanitarian.org*. Available at <https://www.thenewhumanitarian.org/analysis/2016/09/13/how-south-sudan-s-leaders-robbd-their-country-and-nearly-got-away-it> Accessed 3rd June 2022

<sup>57</sup> Radio Tamazuj (2018) Kiir promotes over 120 generals, including army spokesman 29<sup>th</sup> August, Radio Tamazuj Available at <https://radiotamazuj.org/en/news/article/kiir-promotes-over-120-generals-including-army-spokesman> Accessed on 3<sup>rd</sup> June 2022

<sup>58</sup> Gebremichael, M., Kifle, A. A., & Kidane, A. (2018). South Sudan Conflict Insight.

<sup>59</sup> Omoleye, A. U., & Joshua, S. (2018). The South Sudan War: Causes and Implications for National Integration. *AKSU Journal of Social And Management Sciences*, 1(8), 79-96.

<sup>60</sup> Jok, J. M. (2011). *Diversity, unity, and nation building in South Sudan*. Washington, DC: US Institute of Peace.

<sup>61</sup> Ibid

<sup>62</sup> Frahm, O. (2012). Defining the nation: National identity in South Sudanese media discourse. *Africa Spectrum*, 47(1), 21-49.

<sup>63</sup> Githigaro, J. M. (2016). What went wrong in South Sudan in December 2013. *African Conflict and Peacebuilding Review*, 6(2), 112-122.

powers which interrupted their state formation process. Africa's state formation process suffered ruthless, abusive and cruel interruption through colonialism. It is additionally clear that colonialism left negative creations legacy on the African continent<sup>64</sup>. This did not only direct to the conclusion that the trials of creating practical institutions in Africa can be understood at the conceptual and operational level but also at the historical dynamics in how the evolution was stopped by the different eras of slavery, and colonialism<sup>65</sup>. The origin, the functioning and transformations of institutions in African states cannot be fully separated from the way the colonial powers interfered with what Africa had before their coming even in the Sudan where South Sudan was a part.

It is further important to observe that the cause of poverty in several states in Africa is not because of cultural or geographic dynamics, but it is the presence of awful institutions in Africa and in states like South Sudan. While this is an important point, authors like Acemoglu et al<sup>66</sup>, did not explain in detail the historical aspect of colonialism which stopped the evolution of institutions which are very vital in the creation of situations which can guarantee economic security.

From the state formation perspective of looking at institution building in South Sudan, one cannot forget to state that the constitution of the republic of South Sudan which does not stipulate well how institutions should protect the state<sup>67,68</sup> may have implications when it comes to the aspect of protecting the institutions of the State of South Sudan and the people of South Sudan. This further implies that the distribution of power among the institutions is also not clear and there could be clashes between the arms of government and the dispensation of justice where there may be some wrong actions which may be committed by individuals or on how to respond to external threats. This also suggests that the constitution could be one which is not made with the participation of the citizens of South Sudan<sup>69</sup> since some people have shared opinions on the poor reflection of ethnic diversity in the national institutions and the lack of unity and integration in the new state of South Sudan<sup>70</sup>.

The fact that the leaders in South Sudan were not well groomed in serving the people as it was in Sudan<sup>71,72</sup> is one line of thinking which may explain why they are not dealing with the issue of constitution writing seriously in South Sudan. If the question is answered by experience, then again one would say that their stay in Sudan did not help them much in terms of education and experience even when the regional self-government could have provided the background<sup>73</sup>. Therefore, one can say that the state formation process that was

<sup>64</sup> Bayeh, E. (2015). The political and economic legacy of colonialism in the post-independence African states. *International Journal in Commerce, IT & Social Sciences*, 2(2), 90.

<sup>65</sup> Nganje, F. (2015). Moving beyond Africa's crisis of institutions.

<sup>66</sup> Acemoglu, D., Johnson, S., & Robinson, J. A. (2001). The colonial origins of comparative development: An empirical investigation. *American economic review*, 91(5), 1369-1401.

<sup>67</sup> Akol, Z. D. (2016). Understanding the Imperative of A People-Centered Constitution in South Sudan.

<sup>68</sup> Katrin Seidel & Timm Sureau (2015) Introduction: Peace and constitution making in emerging South Sudan on and beyond the negotiation tables, *Journal of Eastern African Studies*, 9:4, 612-633, DOI: [10.1080/17531055.2015.1105438](https://doi.org/10.1080/17531055.2015.1105438)

<sup>69</sup> Okuk, J. (2021). Revitalizing the Government for Peacebuilding in South Sudan. *African Conflict & Peacebuilding Review*, 11(2), 64-84.

<sup>71</sup> Lin, D. (2018). The Role of British Colonial Policy in the South Sudanese Civil War: A Postcolonial Conflict Analysis.

<sup>72</sup> Teny-Dhurgon, R. M. (1995). South Sudan: A History of Political Domination-A Case of Self-Determination. *Africa Studies Center*, 19.

<sup>73</sup> Breidlid, A. (Ed.). (2014). *A concise history of South Sudan: New and revised edition*. Fountain publishers.

interrupted in Sudan laid the ground for the poor process in the constitution process since there were no values and ideas that would make the people come together in the constitution making process which would legitimize the state and citizen relation in South Sudan. The constitution making process that would galvanize the social contract theory therefore seemed a fraud process which threatens the national security of the state and citizens.

South Sudan had a unique process given the fact it was part of Sudan whose state formation had been interrupted through the Turks to Egyptians to the British. It is therefore important to analyze what Nugent<sup>74</sup>, argued when he stipulated that there are three categories of contract, to him; he looks at the colonial period as his starting point to the current situation and he puts forward the coercive, productive and permissive categories of contract. In his argument a coercive social contract, represents one where the right to dominate or rule is grounded on the ability of the sovereigns to make unbearable the survival of their subordinates but this is not the one being used by the sovereign in South Sudan. This argument reveals how some authors did not look at African states as having historical and anthropological background<sup>75</sup>.

The course of state formation in South Sudan cannot be done satisfactorily without consideration of what happened in Sudan before secession of South Sudan. It can only be traced back to Sudan before and after the coming of the Turks, Egyptian influence and the British and then analyze how the state formation process was interrupted by these aliens who never thought of a constitution that would consider the values of the indigenous people which would subsequently promote national identity, integration and protection of the people and the state. It, at the same time reveals that the dominant rulers trick citizens the same way the colonialists did over the subordinates in Africa as seen from what the leaders did in the selection of members to sit on the NCRC in South Sudan but the outcome would be the threats out of their actions on the national security of the state and the citizens. This is not different from what Nugent<sup>76</sup> realized when he argued that in the protection of the people in so many colonized areas the indigenous people gave up their political voice in exchange for being secure from "destructive undertakings. This is what is happening in South Sudan where the participation in the constitution making process is taking place, but the voices of the citizens are almost non-existent and therefore it cannot stipulate how institutions are going to be protected.

In the circumstances described above in relation to the constitution and whether it stipulates well how institutions should protect the state, the answer can be found in the assertions by Hobbes who argued that the actions of movement by men were determined by self-interest but at the same time ignored the securities of others. Further still, Hobbes argues that in the course of the time where men lived minus ordinary power to regulate them, they live in that state where industry is absent, culture is no more, there is absence of commodities and navigation, no society, and therefore man lives in solitary, poor nasty short and brutish environment Hobbes,; cited in Manzoor<sup>77</sup>. One can easily find examples of such a situation in South Sudan where people do not see a culture among them and people are being pushed into

<sup>74</sup> Nugent, N. (2010). *The Government and Politics of the European Union*. Red Globe Press.

<sup>75</sup> Osafo-Kwaako, P., & Robinson, J. A. (2013). Political centralization in pre-colonial Africa. *Journal of Comparative Economics*, 41(1), 6-21.

<sup>76</sup> Nugent, N. (2010). *The Government and Politics of the European Union*. Red Globe Press.

<sup>77</sup> Laskar, M. (2013). Summary of social contract theory by Hobbes, Locke and Rousseau. *Locke and Rousseau (April 4, 2013)*.

Protection of Civilian sites and even their vulnerable people have been attacked like in Malakal<sup>78</sup>. This, however, has caused confusion where the state which has a contract with the citizens to them but fails and, in some circumstances, becomes an actor in the armed conflict where the civilians need protection. This is evident in what CIVIC<sup>79</sup> argued when they observed that government soldiers were part of the group that attacked the PoC in Malakal, and the civilians were not protected before they fled to the site.

The failure of the South Sudan constitution to stipulate how and what institutions are responsible for the protection of the citizens is a reflection of the institutions in South Sudan. For example, the United Nations was giving protection to civilians and yet the soldiers attacked the citizens who were harbored in the PoC sites like those in Malakal<sup>80</sup>, this explains the nature and character of institutions in South Sudan. The situation that is exhibited is that the weak constitution and institutions as they are in South Sudan exposes states and citizens to threats which may not come from across borders but within. Further still it is not hard to look at the history of Sudan where South Sudan was part and see that the state formation process that was interrupted created ground for the problems that can be traced to the newly created state of South Sudan. It is no wonder that authors like Young<sup>81,82</sup> echoed concerns over tribal conflicts as the main threat to the independent South Sudan "Nation".

If one looked at South Sudan from the state formation perspective it would not be surprising that southern Sudan which later became the state of South Sudan is threatened by ethnic hegemony and armed conflict not only seen from what was happening after South Sudan got independence but also from the historical trends which were very clear from what the colonialists had sowed in terms of ethnic difference and therefore making the constitution was going to be tricky because of ethnic differences and also by how the colonialists had put a wedge between the people in Sudan where South Sudan was part. This resonates with what Willis<sup>83</sup> argued when he observed that the fact that southern Sudan was created by Anglo-Egyptians colonialists from unequal and dissimilar collection of tribes its integration and collectivizing ability after seceding became a future challenge.

That the institutions of the State of South Sudan are very weak confirm the critical aspect of institutions as an important part of offering national integration when everyone feels that they are taking part and have confidence in the institutions that are constructed that they can protect them and offer justice fairly, because ethnic groups alone may not be a problem but when some ethnic groups face injustice, conflict and insecurity occur. In their occurrence, threats towards national security surface because of the absence of the weakness of institutions and inequality. These often arise into internal strife which can subsequently lead to national threats. This is in line with the analysis made by Rotberg<sup>84</sup>, when he observes that the State ought to have the authority to enforce its protection fairly by the sovereign as

<sup>78</sup> Arensen, M. J. (2016). If we leave we are killed: lessons learned from South Sudan protection of civilian sites 2013-2016.

<sup>79</sup> Center for Civilians in Conflict. (2016). A Refuge in Flames: The February 17–18 Violence in Malakal POC.

<sup>80</sup> *ibid*

<sup>81</sup> Young, John. 2005. "John Garang's Legacy to the Peace Process, the SPLM/A and the South." *Review of African Political Economy* 32(106): 535–548. DOI: 10.1080/03056240500467039

<sup>82</sup> Young, J., 2007. The white army: an introduction and overview. Working Paper No. 5. Geneva: the Small Arms Survey, Graduate Institute of International and Studies

<sup>83</sup> Willis, J. (2005). *Hukm: the creolization of authority in Condominium Sudan*. *The Journal of African History*, 46(1), 29-50.

<sup>84</sup> Rotberg, R. (2011). *Failed States, Collapsed States, Weak States: Causes and Indicators*. Pennsylvania Ave: Wilson Center.

depicted in the social contract theory in all the corners of the territory and all the other institutions like the army.

The absence of strong institutions and the building of personalities can be said to be one of the problems that were bequeathed to South Sudan from Sudan and the processes that led to the secession of South Sudan. This situation cannot be very far from what Young<sup>85</sup> argued when he stated that Garang had mistrust in the civilian branch of government<sup>86,87</sup> and he preferred the military hierarchy and therefore tried very much to keep his movement in a condition of under institutionalization and he further argued that Garang took interest in doing away with competent individuals who were considered a threat to him and this did not matter whether it was government or the civilian administration. This can explain partly the weak institutions in South Sudan. It is no wonder the weaknesses have a historical dimension that is not easily analyzed as one of the reasons why threats which are not traditional are compromising the national institutions and consequently the national security of South Sudan.

While one can understand how South Sudan had managed to put up structures and institutions in its early stages of becoming a state in 2011, one cannot forget to acknowledge the old fault lines that arose with ethnically based tones which still exist in the army and social institutions like education. Combined with impunity, corruption and absence of a clear judicial system, there are loopholes in institutions which threaten the governance and national security of the new state of South Sudan. The problems revealed in the analysis above echo what de waal<sup>88</sup> uncovered when he argued that merged with indiscipline and informal chains of command, the structure has permitted past militia leaders in the army to mobilize their old power bases in crisis times. It is further argued by de waal<sup>89</sup> that it is these power bases that penetrate down wards to the local levels with substantial militarization of civilians and connections to local power arrangements and plans. This has made it easy for local officials to run action plans independently from the centre thus undermining the institutions that remain weak and fail to protect the citizens.

The marginalization of the South by the north in the legislative and political arena which continued into the period of post-independent Sudan partly explains the weak legislature institution in South Sudan. It can be argued that the divide between the north and south was open and because of the inequality between the north and the south coupled with the slave trade carried out in the south, it is with no doubt that the weakness in the institutions in the south is very clear because of the history of the interrupted state formation in Sudan where South Sudan was a part as suspicion grew between the people from the different geographical areas. This continued to be recognized in the subsequent violent conflict areas that were featuring the Sudanese People's Liberation Army (SPLA). This is not different from what

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<sup>85 85</sup> Young, J., 2007. The white army: an introduction and overview. Working Paper No. 5. Geneva: the Small Arms Survey, Graduate Institute of International and Studies

<sup>86</sup> Young, John. 2005. "John Garang's Legacy to the Peace Process, the SPLM/A and the South." *Review of African Political Economy* 32(106): 535–548. DOI: 10.1080/03056240500467039

<sup>87</sup> Young, J. 2008. "Sudan: The Incomplete Transition from the SPLA to the SPLM." In *From Soldiers to Politicians Transforming Rebel Movements after Civil War*, edited by J. de Zeeuw, 160–5. Boulder, CO: Rienner.

<sup>88</sup> Alex de, W. (2007). *Sudan: What Kind of State? What Kind of Crisis?* London: crisis states research centre.

<sup>89</sup> Alex de, W. (2007). *Sudan: What Kind of State? What Kind of Crisis?* London: crisis states research centre.



chuei<sup>90</sup> writes when he argued that, as a result of this mutual distrust, political detention of people who were non-Arabs began. They had been attacked by people whom they believed deserve no rights at all. Arabs from the northern Nile Valley controlled the central government since independence in 1956. The government was suspicious that the locals will dislocate the Arabs in most areas if they do not do more to protect the Arabs. This meant that such people could not be put into institutions thereby denying the experience of running institutions.

The nature and character of the institutions in South Sudan imply that the history of institutions from where South Sudan was part was not a history of strong institutions, if one analyzes the social institution and the army institution in Sudan. It is no wonder that the state of Sudan suffered secession because of such weak institution. This state of institutions can lead one to state that having big armies as an institution means strength but this could not be the case where an army is from a society which does not have shared identity and values. This can also be explained by how SPLM was a strong force but it lacked strong efficient wartime administration structures and it depended on non-governmental organization as spelled out by [Lovise Aalen](#)<sup>91</sup> in his "The paradox of federalism and decentralization in South Sudan; an instrument and an obstacle for peace" where he argued that the main providers of services in SPLA controlled territory were NGOs, neighboring states and UNHCR.

This state of affairs can also be explained from the aspect of external institutional building which meant that civilian administration did not develop and further still this explains why external forces in institutional building does not help in building institutions which serve people in a given area. This is exactly the scenario which happened when the Turks, Egyptians and the British got involved in the state formation process in Sudan where South Sudan was shaped and inherited poorly grounded state formation which was interrupted and therefore could not build institutions which would be indigenous, strong and shared values and cultures of the indigenous people<sup>92</sup>.

Many of the institutions in in South Sudan were affected by the alien rule in Sudan and subsequently affected the breakaway state of South Sudan. The experience of slavery in the social sector in southern Sudan is not a hidden fact and this continued even when many authors in the social contract theory talked about protection<sup>93</sup>. In terms of education, the colonialists that interrupted state formation in Sudan designed different education for the north and south and this divided the country very much. Education, as a social institution was historically designed to make the South Sudanese stay below the people in the north and when the secession occurred there was very little chance to have a strong education. This is in line with what Anders Breidlid, Avellino Androga Said, Astrid Kristine Breidlid<sup>94</sup> who argued

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<sup>90</sup> Chuei Mareng, D. (2009). SUDAN: ETHNIC'S VS. RELIGION'S RELATIONSHIP. In C. D. Mareng, *The Sudan's dimensions: A country divided by ethnicity and religion* (pp. 532 -538). Edmonton: African Journal of Political Science and International Relations.

<sup>91</sup> Aalen, L. (2019). » The Paradox of Federalism and Decentralisation in South Sudan: An Instrument and an Obstacle for Peace «. *Chr. Michelsen Institute Briefing Paper. Oslo: CMI.*

<sup>92</sup> Kitler, W. (2011). *National security of the Republic of Poland. Basic categories, conditions, system.* Warszawa: Basic categories, conditions, system.

<sup>93</sup> *ibid*

<sup>94</sup> Breidlid, A. (Ed.). (2014). *A concise history of South Sudan: New and revised edition.* Fountain publishers.

that the language, religion and education system between the north and south were different in Sudan<sup>95</sup>

The reasoning above cannot be different from what authors like Daron & Robinson James<sup>96</sup> who argued that the colonial impact on institutions like that of economic was far reaching in the post-colonial period. This is what has featured in the theoretical and ideological debate regarding the past on economic advancement in Africa. It is worth interrogating the reasons why the colonialists came to Africa and constructing instructions to protect the indigenous people could not be one of the reasons since in the south of Sudan slavery and slave trade in these areas<sup>9798</sup>; did not only destroy the social institution in this area but it also dealt a big blow to the economic institution as the powerful youthful southerners were the ones that were traded in. it would therefore be a very big mistake to ignore this history when one is talking about institutions in South Sudan since the interrupted state formation in Sudan where South Sudan was influenced the construction of institutions in the new South Sudan. These institutions have been weak to protect the people and the state of South Sudan<sup>99100</sup>. The aliens, who interrupted state formation in Sudan where South Sudan was part, were interested in the extraction of resources and the institutions that were set up were to assist in that endeavor were the ones bequeathed to the people that came after them at the time of independence. These were to be a threat to the national security of the State of Sudan and South Sudan which carried with it the features of the exploitation of the colonial institutional set up.

A constitution is a central institution or the supreme law of the land which guides and directs all the activities in a given state stipulating the functions of the rest of the institution. This constitution mirrors the social contract or agreement between the citizens and the state in regards to the protection of the citizens and the contribution of the citizens to the state for the protection from the army in a polity. This is well brought about by Alonso José Antonio<sup>101</sup> who argued that political communities begin as social communities and then make over into States and that communities are guided by their culture and do whatever they do given the norms and values of their cultures<sup>102</sup>. It is from these values, norms and customs that are transformed into laws which are written in constitutions. This does not dispute what Kofi<sup>103</sup> argued when he asserted that the constitutions that are made in African States like that of South Sudan are aware of and endorse or encourage the traditions and customary habits and

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<sup>95</sup> Ibid

<sup>96</sup> Daron, A., & Robinson James, A. (2012). *Why Nations Fail*. New York: Crown

<sup>97</sup> Kusimba, C. M. (2004). Archaeology of slavery in East Africa. *African Archaeological Review*, 21(2), 59-88.

<sup>98</sup> Chuei, D., & Mareng. (2009). SUDAN: ETHNIC'S VS. RELIGION'S RELATIONSHIP. In C. D. Mareng, *The Sudan's dimensions: A country divided by ethnicity and religion* (pp. 532 -538). Edmonton: African Journal of Political Science and International Relations.

<sup>99</sup> Nunn, N. (2008). The long-term effects of Africa's slave trades. *The Quarterly Journal of Economics*, 123(1), 139-176.

<sup>100</sup> Nunn, N. (2009). The importance of history for economic development. *Annu. Rev. Econ.*, 1(1), 65-92.

<sup>101</sup> Alonso, J. A. (2012). *From aid to global development policy*. New York: United Nations- Department of Economic and Social Affairs.

<sup>102</sup> Alonso, J. A. (2012). *From aid to global development policy*. New York: United Nations- Department of Economic and Social Affairs.

<sup>103</sup> Kofi, Q. (2016). *Justice in the Traditional African Society within the Modern Constitutional Set-up*. Jurisprudence: International Journal of Legal and Political Thought.

systems. However, these constitutions are made in foreign languages and the constitution making process is influenced by the international actors<sup>104</sup> like it is the case in South Sudan.

It is not surprising that the introduction of English in southern Sudan cannot be easily separated from the English used in the constitution making process. This reflects the influence of Britain in Southern Sudan and its interruption of state formation in Sudan which laid the ground for the weak institutions in the new state. This implies that constitutions that are made are not a true reflection of the norms, custom, values and the traditions of people in South Sudan. In these circumstances, the constitutions that are made in a foreign language depict a misnomer like it has been in many African countries where so many people cannot read and understand their own constitutions. This can partly explain why people in such States are not connected and aligned to the values of their countries. This lays ground for the threats that often make the states fail to protect people and the state thereby undermining the national security of the state of South Sudan.

While constitutions have numerous functions according to Bulmer<sup>105106</sup> which comprise of the declaration and the definition of political community, differentiates between those in and outside the boundaries of the state, citizenship, institutions, the boundaries of the state, the process of constitution making in South Sudan is facing never-ending delays at every stage of the execution process and this has made the process to be far behind schedule and the citizens are becoming doubtful of the elections scheduled for 2023<sup>107</sup>. The importance of this is the guarantee for the protection of the state and the citizens as stipulated in the constitution after an agreement between those who are ruled and the rulers. This is what was envisaged in the social contract by Hobbes, Rousseau and Locke but seems to be jeopardized by the incessant delays in the process in South Sudan. The fact that even the form of political governance is still challenged by territorial decisions, the federal system of governance and the ethnic problems in the state are major indicators that the institutions and institutional building in Sudan was interrupted when the state formation in Sudan was impacted by colonialism of the Turks and the Anglo-Egyptians in Sudan. What is going on in South Sudan in relation to institution building can be traced back to the period of colonialism and dominance by aliens who corrupted the indigenous people's values and customs which form the basis of constitutions.

The divisiveness that are making problems in South Sudan constitutional making process is not unique to South Sudan and inherent in the tribal systems in Africa. There are as many significant scenarios in which the colonialists like those that were in Sudan worsened these tribal divisions (Taiwo, 2014). It is no wonder that the colonialists in Sudan felt that using tribal facilitated administrative control could be used to their advantage but in the process worsened the ethnic divisions and an example of using the no-man's land between the Jieeng and the Nuer in South Sudan<sup>108109</sup> cannot be a useful aspect in the processes of institutional

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<sup>104</sup> Seidel, K., & Sureau, T. (2015). Introduction: Peace and constitution making in emerging South Sudan on and beyond the negotiation tables. *Journal of Eastern African Studies*, 9(4), 612-633.

<sup>105</sup> Bulmer, E. (2017). What is a Constitution. *Principles and concepts*.

<sup>106</sup> Bulmer, E. (2017). Federalism: International IDEA constitution-building primer 12. *Stockholm: International IDEA*.

<sup>107</sup> Okuk J. (2022). PEOPLE-CENTERED CONSTITUTION-MAKING IN SOUTH SUDAN; DISCUSSION PAPER | FES SOUTH SUDAN Friedrich Ebert Stiftung

<sup>108</sup> & Garang, K. (2022). Birth of a State: Rethinking South Sudanese Collective Identity through Identity Anchors. *Modern Africa: Politics, History and Society*, 9(2), 5-37.

building through the constitutional making process and therefore leads to weak institutions which cannot protect the state and citizens from the different types of threats<sup>110</sup>

While it is true that constitutions stipulate the rights and duties of the citizens, ascertain and control the political institutions of the community, it is important to talk about the fact that constitutions describe the several institutions of government, counsel the composition, powers and functions. It is here that this study also recognizes that constitutions ascertain or determine the legislature, executive and judicial institutions of the State. Important also for this study is the fact that constitutions stipulate how heads of State are brought into office for example the electoral process and its integrity. One will realize that in such a case of South Sudan, all this seems to be in jeopardy and the land question is becoming a hot issue on ethnic ground and people will often refer to colonial markings to support their cases<sup>111</sup>. Without a permanent constitution it is imperative to say that the poor nature and character and the building of the institutions in South Sudan is real and can be traced back to the interrupted state formation process in Sudan where South Sudan fought to break away but it did not break away from the history of Sudan thereby making weak institutions given the history from where South Sudan was.

It is not by coincidence that the colonial powers were not attracted to building democratic institutions in Africa nor were they ready to train the new African leaders in what they deemed important for the type of Westphalian state they had in Europe, this confirms the fact that there was a historical link to the weakness of the institutions in South Sudan. On the other hand, they used the Africans for their own interests and the post-independence era became a period of trying to forge national integration<sup>112</sup> which is very vital for building strong and sustained institutions. According to Copson<sup>113</sup> the colonial polity in Africa was characterized by totalitarianism and it was an inflexible device of domination and was never an institution of democracy as planned by the colonialists. The colonialists, while trying to get their interests used several methods and some of them were not far from corruption which is experienced in the post independent South Sudan and an important indicator of the weakness of institutions.

It is of essence to observe that Africa had its type of governance culture in the period before the coming of the colonialists, which, with the contact with the aliens was destroyed by the effects of slavery in South Sudan, colonialism and the new wave of the latest from of colonialism<sup>114</sup>. While debating the same<sup>115</sup> appealingly noted that the modern African State

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<sup>109</sup> Pendle, Noami. 2017. "Contesting the Militarization of the Places Where They Met: The Landscapes of the Western Nuer and Dinka (South Sudan)." *Journal of Eastern African Studies* 11(1): 64–85

<sup>110</sup> Buzan, B., Etc, Ole, W., Waever, O., & Wilde, J. d. (1998). *Security: A new Framework for Analysis*. Boulder: Lynne Rienner Publishers.

<sup>111</sup> Seidel, K., & Sureau, T. (2015). Introduction: Peace and constitution making in emerging South Sudan on and beyond the negotiation tables. *Journal of Eastern African Studies*, 9(4), 612-633.

<sup>112</sup> Lancaster, Andy. (2012) The Divisive nature of Ethnicity in Ugandan Politics, Before and After Independence. E-International Relations <http://www.e-ir.info/2012/05/25/the-divisive-nature-of-ethnicity-inugandan-politics-before-and-after-independence/>

<sup>113</sup> Copson, R. W. (2001). *frica Backgrounder: History, U.S. Policy, Principal Congressional Actions*. Washington: CRS Report for Congress.

<sup>114</sup> Farah, Ibrahim, Kiamba, Sylvia and Mazongo, Kesegofetse (2011) "Major challenges facing Africa in the 21st century: A few provocative remarks At the International Symposium on Cultural Diplomacy in Africa - Strategies to confront the

like South Sudan is a leftover of the past colonial state of Sudan with a system and institutions forced on the Africans. Consequently, in the disorder that was created by the colonial interruption of the process of state formation in Sudan, the South Sudan leaders picked on a colonial-built system which led to tribal and cultural divisions and totalitarian grounded values<sup>116</sup>.

The question of weak institutions can be viewed to be in conformity with what Tharoor<sup>117</sup>, argued when he stated that because of the way they came and what they needed, one can see why the colonialists could not construct institutions that would fight them when they were exploiting the indigenous people. In such circumstances they put more importance on divide and rule which intensified or sharpened ethnic divisions which were there in the process of state formation before the coming of the colonialists. Therefore, this history can easily be traced into the weak institutions like those in South Sudan where they cannot easily protect the national security of South Sudan.

The existence of weak institutions and corruption in South Sudan, one cannot leave out the fact that corruption indicates a societal occurrence exceedingly entrenched in the past course of colonization<sup>118</sup>. The values of the Africans were falsified and therefore one can argue that, that corruption is a consequence of fabricated anti-social conduct that was got from the British, French and other colonial powers. This is not different from what Nabudere<sup>119</sup> stated when he argued that corruption was introduced by the colonialists in the time when they controlled Africans and it was inherited by the post-colonial leaders including those in Sudan where South Sudan was a part.

This indicator of institutional weakness became beneficial to the colonialists in the era of the expansion of the latest economic order of the time and its associated challenges which arose because of the industrial revolution. This argument is further made relevant to the analysis of the weakness in South Sudan and colonized areas when Nabudere (1981) discusses the pursuit of economic profits or free imperialism including the desire for new areas for markets like Africa and raw materials for the colonial power industries escorted the industrial revolution and subsequently stimulated the scramble and the dividing up of Africa into areas of influence in the course of the Berlin conference which occurred in 1884-1886. This forced the ultimate colonization of the biggest areas of the African region<sup>120121</sup>.

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Challenges of the 21st Century: Does Africa have what is required?", International Symposium on Cultural Diplomacy in Africa 14th – 17th July, 2011, Berlin.

<sup>115</sup> Wyk, J.-A. V. (2007). *Political Leaders in Africa: Presidents, Patrons or Profiteers*. Durban, South Africa: The African Centre for the Constructive Resolution of Disputes.

<sup>116</sup> Ibid

<sup>117</sup> Tharoor, S. (2017, August 10). The Partition: The British game of 'divide and rule'. *The Partition: The British game of 'divide and rule'*.

<sup>118</sup> Osoba, S. (1996). *Corruption in Nigeria: Historical Perspectives" in Review of African Political Economy*. <https://doi.org/10.1080/03056249608704203>: Review of African Political Economy.

<sup>119</sup> Nabudere, D. W. (1981). Imperialism and the Struggle for New Democracy Under Proletarian Leadership. Ikhwezi Number 18.

<sup>120</sup> Freund, B. (1984). Labor and labor history in Africa: A review of the literature. *African Studies Review*, 27(2), 1-58.

<sup>121</sup> Ibid



The corruption and rot in South Sudan institutions resonates with what [Alex de Waal](#)<sup>122</sup> argued when he was commenting on the situation and the conflict which broke out in South Sudan and divided the country. He argued that the "big tent" policy which in the real sense meant the use of state money to buy off loyalty by licensing corruption, necessitated having huge amounts of money which could not be accessed in the state by that time. This coupled with the political competition in the ruling party deepened not only between the two top most leaders but even with those in the lower ranks of the political class in the new state. It is no wonder that several reports about governance in South Sudan bring out instances of corruption among the leaders of the new state<sup>123</sup>. This follows in the steps of the trade that ensued in the aftermath of getting markets and raw materials which made Africans to be seen as goods (Slavery) in southern Sudan and the economic institutions that were built by the aliens in Africa could not maintain the values of society when state formation was interrupted and therefore the result is the weak institutions that cannot protect citizens and national security.

It is important to argue that since laws in a given state or polity emerge from the values, norms beliefs, principles and culture of a given people in a specific community or society, these rules are formulated to support institutions of a given society, one can argue that these important aspects of the societies in Southern Sudan were destroyed when the Turks, Egyptians and the British interrupted the state formation in Sudan. Once the values, norms, principles were disrupted, the laws that were developed by aliens, and the institutions developed there on could not be strong and the evolution of social-economic institutions which would have ensured strong and sustainable institutions were undermined, thereby making a weak foundation on which the post –independence South Sudan institutions were to be built, the citizens were exposed to the institutions that were meant to exploit Africans whose values were destroyed by the colonial masters who divided up the indigenous people for easy rule<sup>124</sup>.

The protection of values, norms and institutions in a society is supported by what Rajapaksa<sup>125</sup>, put forward when he argued that the meaning of security as a concept of security incorporates the preservation of values, norms and institutions of a given society. It is further argued that there is often the need to protect all the components of a culture from threats which are associated with the traditional security<sup>126</sup>. Therefore, once the colonial powers interfered with the foundations of the African peoples' culture, the core of the social institutions was broken. The effect of this was the destruction of the economic and political institutions since societies build from the social, economic and to political.

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<sup>122</sup> De Waal, A. (2016). Introduction: making sense of South Sudan. *African Affairs*, 1-9.

<sup>123</sup> The sentry (2019) The Taking of South Sudan; The Tycoons, Brokers, and Multinational Corporations Complicit in Hijacking the World's Newest State September. The SENTRY. Available at <https://cdn.thesentry.org/wp-content/uploads/2019/09/TakingOfSouthSudan-Sept2019-TheSentry.pdf> Accessed on 3<sup>rd</sup> June 2022

<sup>124</sup> Lancaster, Andy. (2012) The Divisive nature of Ethnicity in Ugandan Politics, Before and After Independence. E-International Relations <http://www.e-ir.info/2012/05/25/the-divisive-nature-of-ethnicity-inugandan-politics-before-and-after-independence/>

<sup>125</sup> Rajapaksa, M. (2011). Sri Lanka Statement. *General Debate of the 66th Session of the United Nations General Assembly* (p. 6). New York: Permanent Mission of Sri Lanka to the United Nations.

<sup>126</sup> Buzan, B., Etc, Ole, W., Waever, O., & Wilde, J. d. (1998). *Security: A new Framework for Analysis*. Boulder: Lynne Rienner Publishers.

## CONCLUSION

This paper examined the impact of the disrupted state formation process on institutions building, their nature and character in South Sudan from the time when the southern part of Sudan had been given partial autonomy from Sudan. South Sudan has been listed as one of the states that are categorized as failed states. A good number of authors have not considered the history of South Sudan when examining institutions in South Sudan. The colonial state in Sudan has had far reaching impact not only on Sudan but also in South Sudan. The area which was covered by Sudan before the secession of Southern Sudan to form the state of South Sudan had polities but many who study state formation in Africa prefer to examine the African state from the colonial times as if there was no nation, or emerging states in the same area. This has led to the partial explanation of the impact of colonialism on the institutions built in many states in Africa including South Sudan which was shaped under Sudan. The colonialists did not in any way try to build institutions which would protect the citizens and states in post-colonial times. The colonialists built brutal forces, agents who served their interests, they used divide and rule, the economic infrastructure that were built were not meant to advantage the indigenous people. There was no form of democracy, they introduced their languages, education system and the administration structure built on dominance of some tribes over others. The remains of such institutions was what was given to leaders at independence. In Sudan, there was no chance that southern Sudan would be any better as it was enslaved and denied any foundation of institutions. This explains the secession of the South, but the new state of South Sudan could not escape the colonial history of institutions in Sudan where it was a part.