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Exacerbated inequalities: Implications of COVID-19 for the socio-economic rights of women and children in South Sudan

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Summary: This article critically examines measures adopted by the Revitalised Transitional Government of National Unity (TGoNU) in South Sudan to fight the COVID-19 pandemic. It analyses the implications of such measures on constitutionalism and socio-economic rights of women and children. In so doing, it reveals that policy decisions adopted by the RTGoNU exclusively focused on fighting the Coronavirus at the expense of the socio-economic rights of zol meskin (common person). In particular, the decisions lack supportive social protection packages to cushion the low-income households that depend on daily hustling, impacted by the measures adopted. This led to a disproportionate impact on women and children whose rights to livelihoods and education are more adversely affected. Such policy decisions could deepen poverty margins that already exist in South Sudanese society. As schools remain closed, with the exception of primary eight and senior four candidates,¹ the hope of more than 2.2 million children who are already out of the education

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¹ The Ministry of General Education and Instruction announced on 28 September during a press briefing that candidate classes will resume their studies on 5 October with certain standard operating procedures to be adhered to.

system hangs in the balance.² In sum, the article demonstrates that the fight against COVID-19 appears to have been won but at a cost of losing the fight against already-rampant socio-economic inequalities. This in part is due to the fact that, on the one hand, measures adopted to fight the pandemic appear to be successful at flattening the curve as revealed by the cumulative numbers of patients and deaths but, on the other, such policies have arguably exacerbated the socio-economic conditions of the poor who already live on the brink of famine as warned by the United Nations agencies in keeping with the Integrated Food Security Phase Classification reports.³ The article thus recommends that the government and policy makers should consider three critical lessons for the future: (a) strengthening social welfare sector to protect vulnerable households from sudden onsets; (b) enhance disaster risk and preparedness capacities to effectively deal with pandemics in a way that protects the most vulnerable people; and (c) strengthen democratic governance and rule of law as catalysts for well-managed emergency responses.

Key words: COVID-19; South Sudan; exacerbated inequalities; zol meskin; women and children

1 Introduction

When the World Health Organisation (WHO) announced COVID-19 as a global public health emergency, countries invariably responded. A common denominator among measures adopted include the declaration of a state of emergency, effectively limiting certain human rights and fundamental freedoms as well as restricting socio-economic activities. In the case of South Sudan, the government ordered a partial lockdown on 20 March 2020 as part of several panic measures, in particular, the closure of institutions of learning, markets, the imposition of a night curfew, the banning of social gatherings (churches, funerals, clubs and weddings) and a restriction of movement by air, sea and land – both internally and with neighbouring countries – in order to prevent the spread of COVID-19.⁴ As of 7 August 2020, the country's cumulative caseload

2 UNICEF 'Education in South Sudan briefing note' (2020), https://www.unicef.org/southsudan/media/5101/file/Education_Briefing_Note_June_Final.pdf (accessed 19 September 2020).

3 See latest IPC reports <http://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1152422/?iso3=SSD> (accessed 20 September 2020).

4 These measures were announced in the presidential address published on 16 March 2020, https://www.youtube.com/watch?v=Wm_x0scA4KI (accessed 18 August 2020).

stood at 2 470 positive patients, 47 deaths and 1 252 recoveries.⁵ However, health experts doubt that the figures represent a true picture for South Sudan given its limited testing and surveillance capabilities.⁶

This notwithstanding, the measures adopted have arguably succeeded in halting the much-feared spread of the virus in the form by uncontrollable community transmission, and the enormity and burden with which the country's poor public healthcare system would not have coped. Suffice to note that although the measures adopted were later eased, they have inflicted harm in terms of loss of livelihoods of poor households and the so-called 'population at risk'.⁷ However, there is more to that: The measures adopted have exposed democratic deficits and socio-economic inequalities affecting poor households, in general, and women and children, in particular.

To critically analyse these dynamics, this article examines the extent to which the socio-economic rights of women and children can be guaranteed and protected during public health emergencies. It evaluates measures adopted by the Revitalised Transitional Government of National Unity (RTGoNU) in relation to their implications on women's livelihoods and children's rights. This is because children's rights to education and women's livelihoods are disproportionately impacted by COVID-19 measures adopted, resulting in exacerbated inequalities on *zol meskin*.⁸ The article focuses on women and children as they constitute the vulnerable and marginalised groups in South Sudan. Although women constitute a significant numerical majority in South Sudan,⁹ their inclusion in governance, economic spheres and social affairs is unjustifiably limited.¹⁰ Even prior to COVID-19, women and children were among the most vulnerable in South Sudan in relation to equal access to political and economic opportunities. The conflict, which sparked

⁵ High Level Task Force's daily COVID-19 situation update (on file with author).

⁶ T Mayai 'The nature and magnitude of the COVID-19 outbreak in South Sudan' (2020) 2, https://www.suddinstitute.org/assets/Publications/5ece18a4baed3_TheNatureAndMagnitudeOfTheCOVIDOutbreak_Full.pdf (accessed 30 May 2020).

⁷ These are persons living in protection of civilians sites (PoCs) managed by the UN Mission in South Sudan (UNMISS), internally-displaced persons, refugees and the elderly, including those with pre-existing health conditions.

⁸ The phrase *zol meskin* is a Juba Arabic term referring to less fortunate persons or common people. This article characterises women and children as common people in relation to their economic and political position in society.

⁹ Care International 'South Sudan gender in brief' (2020), <https://www.care.org/wp-content/uploads/2020/05/Gender20in20Brief20South20Sudan20.pdf> (accessed 25 September 2020).

¹⁰ Initiatives such as 35% affirmative action in governance by the Sudan Peoples' Liberation Movement (SPLM) is not always respected as witnessed in the recent formation of the Revitalised Transitional Government of National Unity where only one governor was appointed in a 10-seat gubernatorial state government.

in December 2013 and continues to-date, albeit in diminished intensity, combined with the economic collapse, have affected women and children. Women in particular suffered sexual violence and many children were forced into armed forces and groups and dozens dropped out of school.¹¹

In revealing how COVID-19 policies impacted women and children, the article demonstrates that policy making devoid of realities for all peoples – rich and poor – risks offsetting any gains made in narrowing the gaps in inequalities and in advancing the socio-economic rights of women and children. Furthermore, the article examines legal and policy measures taken by the government of South Sudan as recommended by the COVID-19 High-Level Taskforce (HLTF) and how they exacerbate pre-existing inequalities and governance deficits, including the possibility of jeopardising the nation-building and democratisation agenda. The article engages with secondary literature, laws, policies, guidelines and civil society reports in analysing how measures adopted to fight COVID-19 exacerbate inequalities, leading to losing the fight against socio-economic inequalities in South Sudan. I suggest that whenever I use the terms 'poor', 'rich' and 'vulnerable' in the article, these refer to cultural, economic and political limitations faced by women and children in the enjoyment of socio-economic rights and opportunities.

The article commences with a background analysis to provide impetus to the discussions that follow (part 1). It then discusses political and legal frameworks underpinning measures adopted by the government of the Republic of South Sudan in part 2. It does this to expose pre-existing inequalities and vulnerabilities which COVID-19 measures have exacerbated as well as how such measures disproportionately impact *zol meskin* – children and women, in particular. It proceeds to analyse safeguards for ensuring compliance with the rule of law and constitutionalism and challenges experienced in ensuring compliance (part 3). Building on that, part 4 analyses how measures adopted aggravate socio-economic vulnerabilities of women and children in terms of the impact on children's rights to education and loss of livelihoods of women who depend on commerce performed within the informal economy that had been badly impacted. In drawing on the lessons for the future (part 5) the

¹¹ For a more detailed account of human rights violations committed during the conflict in South Sudan, see the African Union Commission's human rights report on South Sudan, <https://www.peaceau.org/uploads/auciss.final.report.pdf> (accessed 27 September 2020). See also J Akech 'Prosecution or reconciliation? Perspectives on the Commission for Truth, Reconciliation and Healing and the independent Hybrid Court for South Sudan' unpublished thesis, University of Pretoria, 2018 18.

article highlights corrective measures and proposals to ensure that the meagre gains made with respect to socio-economic inequalities are not regressed by measures adopted to fight COVID-19. It highlights key policy recommendations for donors, government and civil society organisations. In the last part the article recalls major strands and key issues that may require further research.

2 Contextualising South Sudan's government's COVID-19 response

2.1 Legal and policy frameworks for emergency powers

The exercise of public emergency powers vests in the President of the Republic of South Sudan and the presidency – in light of collegial consociational power sharing introduced by the Revitalised Agreement on the Resolution of Conflict in the Republic of South Sudan (R-ARCSS).¹² Similarly, the Transitional Constitution 2011 (as amended) expressly empowers the President to declare a state of emergency.¹³ However, such constitutional emergency powers may only be exercised in two instances: (a) as a general function of a president under article 101(e) where he or she may 'declare and terminate a state of emergency in accordance with the provisions of [the] Constitution and the law',¹⁴ or (b) as a special constitutional power on declaration of war and public emergency only upon occurrence of stated events. The relevant provision states:¹⁵

The President upon the occurrence of an *imminent danger*, whether it is war, invasion, blockade, natural disaster or *epidemics*, as may threaten the country, or any part thereof or the safety or economy of the same, declare a state of emergency in the country, or in any part thereof, in accordance with [the] Constitution and the law.

It is important to note that the President did not declare a state of emergency, but instead he issued a Republican Order classifying COVID-19 as a public health emergency in South Sudan consequent upon which he imposed certain measures in order to prevent, manage and contain its spread.¹⁶ These measures include the establishment of a High-Level Task Force committee (HLTF) to oversee efforts to

¹² Art 1.9.1 R-ARCSS (providing that the Revitalised Transitional Government of National Unity (RTGoNU) is founded on the premise that there shall be collegiality in exercising certain powers among the President and his five Vices in decision making).

¹³ Arts 101(e), 189 & 106A(2)(c) Transitional Constitution 2011 (as amended).

¹⁴ As above.

¹⁵ Art 189(1) Transitional Constitution (my emphasis).

¹⁶ See Republican Order 8/2020.

fight the novel Coronavirus disease. Although measures adopted were not announced under a state of emergency, such is implied considering the operative implication of such measures on certain human rights and fundamental freedoms.

The Republican Order established ‘a High-Level Task Force Committee – composed of government hierarchy – to take extra precautionary measures in combating the spread of Coronavirus diseases’.¹⁷ Having been empowered to take ‘extra precautionary measures’ the HLTF passed several resolutions meant to flatten the curve of the viral infection. In taking these measures, the HLTF first adopted the 16 March 2020 presidential statement on COVID-19 which imposed certain measures to fight COVID-19. Although the statement did not make reference to any legal provision, the formation of the HLTF was done pursuant to article 106A(2)(c) of the Transitional Constitutional Constitution 2011, as amended, which stipulates that ‘the President shall, in consultation with the First Vice President and the Four Vice Presidents ... exercise the powers of the nomination and appointment of the members of independent Commissions, interim and *ad hoc* Commissions and Committees’.

Aside from the Constitution, policy makers may make reference to relevant policies such as the National Social Protection Policy Framework (NSPPF) and the National Health Policy (NHP) which would aid and permit the government to effectively address social protection concerns arising from the measures adopted. The policy frameworks on social protection and health safety, therefore, are indispensable if the implementation of public health emergency measures is to be effective. Accordingly, they are instructive to policy choices during a state of emergency.

Adherence to the constitutional and policy framework before, during and after a state of emergency is paramount. So, what measures have been put in place to ensure such compliance? The next part discusses safeguards put in place by the Constitution and other mechanisms for ensuring compliance with due process of law and as a protection for rights and freedoms that may be limited or restrained under preventative public health measures.

¹⁷ As above. The HLTF initially comprised the President, as Chairperson, deputised by First Vice-President, Dr Riek Machar, who was tasked with managing the day-to-day operations with membership from Ministers of Health, Cabinet Affairs, Defence and Veterans’ Affairs, Interior, National Security, Finance and Economic Planning, Trade and Industry, Higher Education, General Education, Transport, Governor of the Central Bank, CEO of Civil Aviation and Directors of General Intelligence Bureau and Internal Security Bureau respectively.

2.2 Socio-political landscape influencing COVID-19 policy choices

South Sudan is a country recovering from a self-inflicted conflict that has ravaged its economy and ruined democratic dreams of a prosperous society. The war that sparked in 2013 was paused through a peace agreement, the 2016 Agreement on the Resolution of Conflict in the Republic of South Sudan (ARCSS), which soon collapsed in 2015 and was revitalised in 2018. That Agreement establishes a broad-based government and provides parameters for building institutions and a new permanent Constitution. Underlying the fragile peace pact is the trust deficit that characterises the manner in which democratic decisions would be made. In particular, the tenuous consociational power sharing among and between political coalitions that formed the national unity government implicated decision making on COVID-19.¹⁸ For instance, while the First Vice-President was designated to oversee the day-to-day operation of the HLTF, he was soon removed by the President, who was the Chairperson, in a bid to restructure and streamline the COVID-19 response mechanism. Others claim that the move was politically motivated.

The streamlining of the HLTF was in response to public criticism that the pandemic is best managed by technocrats. Although the new team was substantially enhanced with technocrats and chaired by one of the Vice-Presidents, Hussein Abdalbaagi, who oversees the service cluster, it is reportedly plagued by mismanagement of funds and infighting. Aside from capacity, alleged corruption and politicisation of the HLTF, the principal concern is the lack of consultation with the national legislature in ensuring transparent mechanisms to inform the public of measures being taken by their government. Clearly, South Sudan's COVID-19 response reveal interesting intersections between constitutionalism and peace building, thus influencing policy choices adopted to fight the Coronavirus pandemic.

¹⁸ The R-ARCSS shares power among five political coalitions: South Sudan Opposition Alliance (SSOA); Other Political Parties (OPP); Incumbent Transitional Government of National Unity (ITGNU); Sudan Peoples' Liberation Movement/Army in Opposition (SPLM/A-iO); and Former Detainees (FDs) which are further composed of smaller factions of politico-military formations.

3 Legal and constitutional guarantees and challenges to compliance

3.1 State obligations on socio-economic rights

Socio-economic rights are guaranteed under the Transitional Constitution 2011, as amended, and applicable international law. It is worth noting that South Sudan has not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁹ However, the adoption of the ICESCR by South Sudan's Transitional Legislative Assembly obliges South Sudan not to roll back such intention demonstrated by its national legislature in adopting ICESCR. This negative obligation means that South Sudan is required to ensure that policy decisions on COVID-19 do not negate the obligation of non-regression inadvertently or otherwise. In fact, ICESCR obliges state parties to²⁰

undertake steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights by all appropriate means, including particularly the adoption of *legislative measures*.

As stated above, non-ratification does not absolve South Sudan from obligations arising out of a treaty adopted by its national legislature but awaiting presidential assent and deposition of the instrument of ratification with the United Nations (UN). It is argued that the parliamentary adoption of ICESCR is sufficient to require positive policy actions that promote its spirit and object. In fact, although non-justiciable, the Transitional Constitution stipulates, under economic objectives, that economic policies should 'eradicate poverty, address wealth disparities and promote equitable access to income and national wealth'.²¹ Clearly, policy decisions on COVID-19 ought to have been inspired by the need to achieve this constitutional policy directive. In terms of the applicability of international human rights instruments, the Transitional Constitution stipulates that '[a]ll rights enshrined in international human rights treaties, covenants and instruments ratified or acceded to by South Sudan are to be

¹⁹ OHCHR 'Status of ratification' (2020), <https://indicators.ohchr.org/> (accessed 16 September 2020). See also UNMISS Press release 'UNMISS welcomes ratification of international human rights covenants in South Sudan' (2019), https://unmiss.unmissions.org/sites/default/files/unmiss_welcomes_ratification_of_international_human_rights_covenants_in_south_sudan.pdf (accessed 16 September 2020).

²⁰ Art 2(1) ICESCR (my emphasis).

²¹ Art 37(1) Transitional Constitution (n 13).

considered an integral part of the [country's] Bill of Rights'.²² I now turn to examine the extent to which these legal and constitutional guarantees have been complied or not complied with.

3.2 Safeguards for compliance with the Constitution and the rule of law

The Transitional Constitution puts in place several safeguards that must be followed before, during and after the declaration of a state of emergency to ensure compliance with the rule of law. First, public emergency powers impacting on human rights and fundamental freedoms must be derived from the Constitution and the law as stipulated under articles 101(e) and 189(1). The exercise of such emergency powers may only be triggered upon the occurrence of an 'imminent danger' which must be an identifiable threat to national security or public health safety. The delineation of events that must trigger the declaration of a state of emergency is to ensure that such power is not abused.

Second, once the state of emergency is declared, the Constitution commands that the declaration be 'submitted to the national legislature within 15 days'²³ for parliamentary oversight. This directive is to give legislators an opportunity to scrutinise the validity of the state of emergency and the government's plans on how to mitigate its impact on the enjoyment of rights. As an oversight arm of government, the national legislature must approve legislative and policy measures impacting on fundamental rights and freedoms as well as peoples' livelihoods.

The third safeguard is that the Constitution prohibits the derogation of rights and freedoms unless in accordance with the law. It enjoins the courts and the national Human Rights Commission to monitor and protect human rights abuses during a public emergency.²⁴ This means that anyone whose right has been infringed can either approach the courts or lodge a complaint with the human rights watchdog to investigate such claims. Inherent in the requirement for an oversight role by the legislature, the courts and the Human Rights Commission are to ensure that measures adopted is proportionate to the legitimate objective of managing the public health emergency. This is in recognition of the fact that the executive branch of

22 Art 9(3) Transitional Constitution.

23 Arts 189(2) &101(e) Transitional Constitution.

24 Art 9(10) Transitional Constitution.

government tends to hide behind states of emergency to abuse human rights and roll back democratic reforms.

However, this role is complementary to the oversight function of the national legislature in ensuring that public decisions respect the Constitution and comply with the rule of law. Other safeguards lie in international law applicable to South Sudan. For instance, both the Committee on Economic, Social and Cultural Rights (ESCR Committee) which monitors compliance with ICESCR, and the African Commission on Human and Peoples' Rights (African Commission) which monitors compliance with the African Charter on Human and Peoples' Rights (African Charter) issued guidance to member states to ensure that the measures adopted to fight COVID-19 respect human rights.²⁵ Despite these constitutional and international safeguards, the manner in which measures were adopted and enforced reveals challenges with compliance with the Constitution and the rule of law.

3.3 Challenges experienced in compliance with the rule of law

Preventative public health measures adopted have exposed both legal and policy implications to socio-economic rights and fundamental freedoms. First, despite the constitutional command requiring the President to seek legislative debate, deliberation and endorsement after the lapse of 15 days, the national legislature did not debate any public health emergency adopted by the executive branch of government.²⁶ This left the legislature in darkness as regards the nature and impact of a public health emergency. The government claims that it is acting in the public interest to flatten the curve of the spread of COVID-19. In the absence of legislative oversight, the measures adopted did not undergo democratic scrutiny and approval despite their far-reaching impact on democracy, generally, and on the lives of ordinary people, in particular.

It is argued that the national legislature should have been engaged to debate and approve measures to fight COVID-19 owing to the impact of the measures on socio-economic rights and constitutionalism. Seen from that perspective, the oversight function of the national legislature cannot be muted even in times of emergency as it is a constitutional command that it be consulted

25 See the statement of the ESCR Committee on the Coronavirus disease and economic social and cultural rights, E/Ct12/2020/1 6 April 2020 and press statement by the African Commission on Human and Peoples' Rights, <https://www.sachpr.org/pressrelease/detailid=483> (accessed 6 August 2020).

26 Arts189(2) & 101(e) Transitional Constitution.

whenever a public emergency is triggered. Such consultation would be a trust-building measure among peace partners and an assurance to the peoples of South Sudan that institutions are beginning to be rebuilt. Evidently, COVID-19 not only is a threat to the country's crippling public health system, but also to the fragile peace and weak governance system.

Similarly, the COVID-19 response has been highly securitised, in particular the enforcement of the curfew, border control and the enforcement of compliance for testing and contact tracing. This is evident not only by the presence of security forces on the borders and streets, but also the representation of national security services, the Ministry of Interior and the defence forces in the HLTF – the national body that directs COVID-19 policies. In the initial stages of the declaration of the measures, the government established the HLTF with a huge presence of security personnel, leading others to appeal to the government to end securitising the fight against COVID-19.²⁷ In that period, 'instances of beating, arbitrary arrest and detention including extortion of money were reported'.²⁸ Although the enforcement of emergency laws expectedly ousts certain rights, it is important to state that the Constitution prohibits the derogation of rights and freedoms enshrined in the Bill of Rights and enjoins the 'Supreme Court and other competent courts including Human Rights Commission to monitor compliance in accordance with the Constitution and the law'.²⁹ Having considered challenges to the rule of law and constitutionalism, what follows is a detailed analysis of the impact of Coronavirus measures on the livelihoods and democratic rights of women and children.

4 Exacerbated inequalities: Impacted socio-economic rights

The COVID-19 measures imposed by the government of the Republic of South Sudan negatively impacted and continue to affect small-scale women entrepreneurs and children. In specific terms, they have impacted their socio-economic rights and right to education, respectively. This category of people had been made vulnerable by a vortex of plagues – 'conflict, continuing political instability, weak economy and chronic under-resourcing of public

²⁷ J Akech 'COVID-19 response: Implications on peacebuilding and constitutionalism in South Sudan' (2020), <https://ancl-radc.org.za/node/644> (accessed 4 July 2020).

²⁸ As above.

²⁹ Art 9(10) Transitional Constitution.

health institutions'.³⁰ This also is at the backdrop of an 'economic slowdown – all in the face of widespread threat of hunger, especially as the COVID-19 problem arrived on the heels of the locust attacks'.³¹ These factors arguably heightened pre-existing vulnerabilities and inequalities among South Sudanese peoples of which women and children risk being left further behind in the hierarchy of society's economic and political set-up.³² The measures have impacted women and vulnerable people in several ways; robbed them of income from their economic activities, rendered poor people jobless and exposed them to health risks as they attempt to look for food by all other means – which most probably are unsafe. The next parts discuss the socio-economic rights of women and children that are being impacted by the COVID-19 measures.

4.1 Loss of women's livelihoods

The COVID-19 measures adopted – restrictions on the movement of people, goods and services as well as the absence of an economic package for small-scale businesses (roadside and open-air tea stalls, food sale, hawking and agriculture) – impacted women entrepreneurs most of whom operate in the informal economies. This situation deprived women of much-needed financial capital and livelihoods for their families. The loss of livelihoods by women could further worsen pre-existing vulnerabilities women already face, as the late John Garang once said, that 'women are amongst the marginalised of the marginalised'.³³ Even worse, women continue to bear the brunt of the conflict and its worsening effects on the economy, security and livelihoods. Admittedly, one can hardly guess what COVID-19 has done to women: shattered their hopes and pushed them to the brink of devastation. This image is captured by one Lilian, a South Sudanese woman entrepreneur:³⁴

COVID-19 is like a death sentence to us vulnerable women who depend on farming to feed our children. At a time when we hope to

30 J Akech 'The 7 plagues devastating South Sudan's health system' (2020), <https://www.savethechildren.org.uk/blogs/2020/7-plagues-devastating-south-sudan-health-system> (accessed 5 July 2020). See also A Mayai 'War and schooling in South Sudan 2013-2016' (2020) *Journal on Education in Emergencies*.

31 As above.

32 N Tiitmamer & A Awolich 'The COVID-19 pandemic vulnerability factors in South Sudan' (2020) 9, https://www.suddinstitute.org/assets/Publications/5ec35cdc23465-TheCOVIDPandemicVulnerabilityFactorsInSouthSudan_Full.pdf (accessed 7 July 2020).

33 Quoted from oral speech of the late Dr John Garang, the then leader of the Sudan Peoples' Liberation Movement/Army (SPLM/A).

34 See <https://www.wvi.org/stories/coronavirus-health-crisis/covid-19-death-sentence-women-south-sudan-after-years-conflict-it> (accessed 6 August 2020).

give our children the best life after several years of conflict, COVID-19 takes away our good plans. Why?

A report by the University of Juba in collaboration with the United Nations Development Programme (UNDP) reveal the devastating socio-economic impact of COVID-19 on the formal and informal economy with women being the hardest hit. The report reveal that most women-led 'households are under significant strain due to loss of income'.³⁵ Similarly, a report by UN Women in South Sudan declares that 'small business owners in South Sudan bear the brunt of COVID-19 as livelihoods shrink'.³⁶ It is important to note that the easing of Coronavirus measures is a *de facto* authorisation for businesses to open. However, adaptation to the market after a sudden shock will be difficult for most women whose businesses are largely in the informal sector. Owing to the already worsening humanitarian and economic situation – soaring inflation and acute food security levels³⁷ – the RTGoNU should have activated the national social protection policies to provide for grants to women as social welfare packages for loss of income, including financial assistance to their struggling businesses.

Women in the farming sector are also badly affected because the government imposed certain restrictions such as social distancing and limitation on movement so that farmers who rely on farm workers were unable to get the labour they needed. As one woman farmer narrates, 'with lockdowns, mobilising farm labour has been difficult, yet, the large acreage of land we cultivate need people for planting'.³⁸ Other than the loss of livelihoods, women's democratic rights have also been impacted. For instance, the 15-member HLTF reveals women's underrepresentation over male dominance. Yet, this is the body that makes policies on COVID-19 in South Sudan. Accordingly, COVID-19 has also exposed democratic deficits and inequalities where women and gender inequalities are heightened, and their civic voices trumped.³⁹

35 University of Juba 'Gender and socio-economic impact assessments of COVID-19 pandemic in Juba municipality, South Sudan' (2020) 40-41.

36 UN Women 'Small business owners in South Sudan bear the brunt of COVID-19 as livelihoods shrink' (2020), <https://www.unwomen.org/en/news/stories/2020/7/feature-south-sudan-small-businesses-face-covid-19> (accessed 7 August 2020).

37 IPC reports <https://reliefweb.int/report/south-sudan/south-sudan-integrated-food-security-phase-classification-snapshot-january-july-0> (accessed 25 September 2020).

38 UN Women (n 36).

39 F Bringi 'The impact of COVID-19 on women and girls in South Sudan' (2020), <https://www.csrf-southsudan.org/blog/the-impact-of-covid-19-on-women-and-girls-in-south-sudan/> (accessed 5 August 2020).

4.2 Children's rights to access education and social protection

Although the clinical impact of COVID-19 on children's health remains negligible, rights agencies warn that 'they risk being among its biggest victims'⁴⁰ as the crisis unfolds. However, children's well-being, rights to education, leisure and freedom of movement remain severely impacted with schools remaining closed and play prohibited even for out-of-school children.⁴¹ Due to high poverty levels among poor households in urban areas, the upsurge of children living and working on the streets is disturbing. With lockdown measures denying most families the essential income they need, more children are now on the streets doing hawking business to feed themselves and their families. This phenomenon is likely to impact on children's rights to education when schools reopen as they will have become used to other activities rather than learning. Despite the adoption of a social protection policy by the government, 'access to safety net remains clearly stated in the policies but unsatisfactorily absent due to budgetary underfunding'.⁴² Due to the COVID-19 measures, an estimated '1,9 million children (43% girls) will have lost learning opportunities with 35 000 teachers and volunteers at risk of losing their jobs'.⁴³ This is in addition to the 2,2 million children already out of school,⁴⁴ out of 6 million schoolgoing children across South Sudan.⁴⁵

To minimise the impact of school closures, the government and development partners are pushing for innovative approaches to continue learning amidst the Coronavirus pandemic. Some of the measures piloted by development partners and the MoGEI include distance learning through radio, online and home-based learning, but serious challenges abound. First, this approach presupposes that children will have access to these gadgets and learning platforms

- 40 UN 'The impact of COVID-19 on children' (2020) 2, https://unsdg.un.org/sites/default/files/2020-04/160420_Covid_Children_Policy_Brief.pdf (accessed 4 July 2020).
- 41 J Madut 'The impact of COVID-19 school shutdowns in East Africa' (2020), <https://www.nation.co.ke/kenya/blogs-opinion/blogs/dot9/madut/the-impact-of-covid-19-school-closedowns-in-east-africa-1919258> (accessed 14 August 2020).
- 42 African Child Policy Forum (ACPF) 'Baseline assessment for the implementation of the East Africa Community Child Policy in the Republic of South Sudan' (2020) 44.
- 43 World Vision '1,9 million South Sudanese children despair over closure of schools due to COVID-19; mothers worried of the future' (2020), <https://reliefweb.int/report/south-sudan/19-million-south-sudanese-children-despair-over-closure-schools-due-covid-19> (accessed 16 July 2020).
- 44 Ministry of General Education and Instruction et al 'Global initiative on out-of-school children' (2018) 12, <http://uis.unesco.org/sites/default/files/documents/global-initiative-out-of-school-children-south-sudan-country-study.pdf> (accessed 16 July 2020).
- 45 UNICEF (n 2).

and that they are able to effectively use them with limited or no supervision. Overall, these alternative methods of learning are ineffective and non-inclusive given that a vast majority of children live in rural areas where the infrastructure is poor or non-existent.

Second, children with disabilities and those in hard-to-reach places are more likely to be excluded from the education programme if they cannot access these means and platforms. Children with disabilities and marginalised children who were already unable to access education could be further left behind. For these reasons, the Ministry of General Education and Instruction (MoGEI) and its partners who have innovated this idea are cautious to officially declare this programme although it is already being implemented. If officially adopted as a policy decision on continuing education during the COVID-19 pandemic, it could push more children out of the education system as it is likely to legitimise the academic calendar for those children who would have access to these learning platforms. Furthermore, the emphasis under Sustainable Development Goal 4 (SDG 4) to ensure that no child is left behind by 2030 means that any policy that excludes them is counterproductive to that aim.⁴⁶

In a recent consultative meeting with children from across South Sudan organised by Save the Children and the MoGEI, children expressed a number of concerns.⁴⁷ First, they are not being informed on when the school might re-open, and the indefinite closure means that children who depended on a day meal at school can no longer benefit from this arrangement. Second, the capitation grant girls used to receive from Girls Education South Sudan is no longer available as such payment can only be made to children in schools. Third and last, girls have expressed concerns of rising sexual violence, generally, and child marriage, in particular, due to their being at home and out of school. These concerns have all arisen because schools have remained shut due to COVID-19. The Deputy Minister of the MoGEI, for instance, reported that an estimated 50 school girls were impregnated in Eastern Equatoria and the number could be higher as no assessment has been conducted.⁴⁸

While attending the webinar, the Minister acknowledged the lack of a clear plan on the part of his Ministry and the government whether or not schools were to open, but acknowledged that coordination with other stakeholders, such as the Ministry of Gender, Child and Social

46 See generally SDG 4 <https://sdgs.un.org/goals/goal4> (accessed 18 September 2020).

47 The webinar was held in July 2020. The story is cited from memory.

48 As above.

Welfare (MGCSW), international non-governmental organisations (NGOs), UN agencies and civil society actors to tackle concerns raised by children was paramount. In addressing issues raised by children, Save the Children and the United Nations Children's Fund (UNICEF), among other humanitarian and development actors, have been advocating for safe re-opening of schools which the government recently endorsed.⁴⁹ It however directed respective ministries to work with partners to put in place necessary measures to protect children and teachers against COVID-19. This is in recognition of the fact that 'schools are not the drivers of the pandemic'⁵⁰ given the lack of evidence that children are actually susceptible to the Coronavirus. The actors lay claim to this call due to 'overwhelming evidence on the negative impact of schools' closures on children's wellbeing'.⁵¹ In particular, incidences of sexual violence against girls, the risk of child marriage and the potential for regression in academic skills by children if they stay out of school for long periods could potentially create another pandemic for South Sudan.⁵² However, they warned that decisions to re-open schools must be guided by the best interests of the child as well as their safety and wellbeing.

5 Lessons for the future

If life's lessons are hard to forget, the lessons learnt from the COVID-19 response in South Sudan are the hardest to escape the memories of women and children who continue to bear the brunt of the ripple effects of the COVID-19 pandemic. Lessons learnt span from panic response mechanisms to democratic deficits that are influencing South Sudan's response to the COVID-19 pandemic. This article suggests key takeaways to inform the policy choices for the South Sudanese policy makers to mitigate their implications for the poor and most marginalised.

⁴⁹ Eye Radio 'Cabinet okays reopening of schools' (2020), <https://eyeradio.org/cabinet-okays-reopening-of-schools/> (accessed 19 September 2020). See also Save the Children 'Save the Children Commends Government's Decision to Reopen Schools in South Sudan' (2020) <https://reliefweb.int/report/south-sudan/save-children-commends-government-s-decision-reopen-schools-south-sudan> (accessed 17 September 2020).

⁵⁰ J Ludvigsson 'Children are unlikely to be the main drivers of the COVID-19 pandemic – A systematic review' (2020) *Acta Paediatrica*.

⁵¹ UNICEF's back to school advocacy plan (on file with author). See also UNESCO and UNICEF press release calling on the government of South Sudan to reopen schools, <https://www.unicef.org/southsudan/press-releases/time-has-come-reopen-schools-south-sudan> (accessed 22 July 2020).

⁵² L Crawfurd et al 'Back to school? Tracking COVID cases as schools reopen' (2020), <https://www.cgdev.org/blog/back-school-tracking-covid-cases-schools-reopen> (accessed 19 July 2020).

5.1 The fight against COVID-19 could trigger another pandemic

If the adage ‘there can be no excuse for putting out a fire to start another’ is in any way true, one finds abundant evidence in South Sudan’s COVID-19 response framework which reveals two policy contradictions: a relative success in halting widespread community transmission, but at the cost of hurtful socio-economic policy choices. For the former, the country’s cumulative deaths are fewer taking into account its ill-equipped public health system. However, many of the efforts in averting what would have been the world’s worst and most uncontrollable community transmission is attributed to generous financial and technical support from international actors: WHO, the Centre for Disease Control (CDC), international NGOs, the World Bank, the US government and other well-wishers. As the analysis in part 4 reveals, this is a false win as it has come at a cost of deepening socio-economic inequalities. As regards the latter, measures adopted have added fuel to the fire by exacerbating inequalities for poor households and depriving women of their livelihoods and children of their rights to education. The question arises as to what policy considerations South Sudan should have taken, given her precarious situation – acute humanitarian crises, economic collapse, civil war and a poor healthcare system.

South Sudan’s fight against COVID-19 may have made some gains but such a win is a false victory as it could trigger another pandemic in the form of widespread poverty among women as well as the possibility of a generational loss to education, as argued in part 4. It thus is contended that while measures adopted to fight COVID-19 may have been successful, this could trigger another pandemic in the form of deepening socio-economic inequalities.

It is important to note that vulnerable people in South Sudan were already struggling to make ends meet through small-scale informal commerce and other engagements. With lockdown and the restrictions on movement of goods and services, families living on a daily income face the threat of starvation, risking a further fall into abject poverty. Despite this, the government did not initiate programmes to protect the most vulnerable from the impact of the COVID-19 measures, even if it was palpable that such measures would have a negative impact on low-income households. In such cases, the government should have been guided by its social protection policies in taking decisions on lockdowns as well as how

to support the most vulnerable.⁵³ The country's social protection policies provide 'a range of social protection programmes for the most vulnerable'⁵⁴ through a committed one per cent of the national budget to finance implementation. However, nothing substantial has so far been done in the implementation of social protection to help the poor, as a consequence of which the policy choices adopted by the government of South Sudan to shut down informal businesses negatively impacted the most marginalised and least fortunate in society. In particular, women who depend on the sale of fruit, used clothes, cosmetics and food stuffs for subsistence risk being pushed to the brink of starvation and further below poverty line.

As a landlocked country, South Sudan's economy depends on imports from neighbouring countries, mainly Uganda, Sudan and Kenya, but with the restriction on the movement of goods and services following the border closure, the country's commodity prices skyrocketed, and small-scale businesses are stressed amidst the lack of government intervention to stabilise the economy and support poor households with financial assistance to cover the sudden disruptions in their livelihoods. This has impacted the livelihoods of poor households and has interrupted small and informal enterprises operated by women. Coupled with the economic decline, the prices of 'basic commodities have since risen by at least 30%, with a 50kg bag of maize flour in Konyokonyo market selling at about 50% more than usual'.⁵⁵ The hiked commodity prices would affect the least fortunate families since they would not be able to afford basic food items and would therefore be threatened by starvation. Moreover, the measures led to small-scale informal businesses shutting down or operating improperly, while supermarkets – owned by the middle class – were allowed to operate. The argument in favour of this selective policy is that supermarkets are well organised and can reasonably implement COVID-19 safety measures, such as hand sanitising and social distancing, whereas the informal businesses, such as tea stalls and other open-air businesses, would not effectively adhere preventive measures.

Owing to the poor state of development, analysts warned that 'many people are at risk of dying from hunger than Coronavirus

⁵³ The NSPPF defines social protection as 'a set of private and public mechanisms that ensure individuals' and households' access to essential goods and services to protect them from adverse effects of shocks and stresses, while building their resilience and capacity to effectively manage any future hazardous occurrences'.

⁵⁴ ACPF (n 42) 44.

⁵⁵ A Mayai et al 'The economic effects of the COVID-19 pandemic in South Sudan' (2020) 4, https://www.suddinstitute.org/assets/Publications/5ea90d311d87b_TheEconomicEffectsOfTheCOVIDPandemicIn_Full.p (accessed 8 July 2020).

infection if total lockdowns were imposed without economic cushion⁵⁶ to the poor and vulnerable households. In particular, out of the staggering 82 per cent of South Sudanese living in poverty, women account for a majority already 'occupying the lowest ranks of social and political hierarchy' in society.⁵⁷ With the negative impact of the COVID-19 measures affecting their livelihoods, the situation could only worsen for poor rural and urban women.⁵⁸ In a recent analysis of inequalities and social stratification in Africa, obEngodoom warns of a 'rising inequality and social stratification risk' as a result of the COVID-19 pandemic, and that in some countries it was already pre-existing but 'hidden by a thick debris of shock and panic both in terms of access to and control of income and wealth'.⁵⁹ This is true for South Sudan where COVID-19 acts as adding fuel to the fire, because the country's economy was already in tatters, typified by a soaring inflation of more than 300 per cent,⁶⁰ the absence of local production and a protracted conflict. This is coupled with the stark estimate of '63 per cent of the population living below the national poverty line of which 70 per cent are under 30 years of age and around 85 per cent engage in subsistence agriculture'.⁶¹ This article warns that if nothing is done, inequalities could become endemic considering the ever-widening gap between the rich and the poor.⁶² The analysis in part 4 details the deepening socio-economic inequalities.

5.2 Strengthened social welfare sector can protect the less fortunate

In adopting policy decisions, the Constitution encourages policy makers to ensure that policy decisions promote 'eradication of poverty, attainment of development goals, guaranteeing the equitable distribution of wealth, redressing imbalances of income, and achieving a decent standard of life for the people of South Sudan'.⁶³ It is important to note that the COVID-19 measures adopted by the

56 Tiitnamer & Awolich (n 32) 9.

57 As above.

58 U Pape & A Finn 'How conflict and economic crises exacerbate poverty in South Sudan' (2019), <https://blogs.worldbank.org/africacan/how-conflict-and-economic-crises-exacerbate-poverty-in-south-sudan> (accessed 11 July 2020).

59 F ObEngodoom 'COVID-19, inequality, and social stratification in Africa' (2020) 12 *African Review of Economics and Finance* 4.

60 C Ballantine et al 'South Sudan: The economic and social impact of violence against women and girls' (2017) 7, <https://www.whatworks.co.za/documents/publications/167-south-sudan-working-paper-final/file> (accessed 14 July 2020).

61 UNICEF 'South Sudan social protection overview' (2019), <https://www.unicef.org/southsudan/sites/unicef.org.southsudan/files/2019-12/UNICEF-South-Sudan-Social-Protection-Briefing-Note-Dec-2019.pdf> (accessed 16 July 2020).

62 ObEngodoom (n 59) 4.

63 Art 37(1) Transitional Constitution.

government fell below this threshold as they were taken without 'any social protection plans to ensure money in people's hands so that they could feed their families and look after loved ones'.⁶⁴ This is why they were soon relaxed by the government in acknowledgment of the fact that the country's weak economic and dire humanitarian situation could not cope with a complete shutdown.

In the intermediate phase, there is a need to turn around an economic collapse and rebuild families distressed by the economic decline in order to reduce the impact of the COVID-19 measures on middle-income families and informal business owners. This can be realised by ensuring significant public investment in social services to ensure that vulnerable people have a sufficient buffer in times of crises. In what he calls 'wrong economic medicine', ObEng-odoom argues that monetary, fiscal and health policies must be radically reconstructed to ensure that the poor are not further left behind and that the narrative of recovery is inclusive of all voices.⁶⁵ To effectively support poor households, the government needs to undertake several measures, including the provision of face masks and micro-finances to small businesses, install handwashing stalls to allow the continuation of women's businesses. These policy interventions must prioritise small start-ups (vegetable stalls, tea places, the sale of second-hand clothes and goods stores/stalls) owned and operated by women and poor people.⁶⁶

5.3 Disaster risk preparedness can help contextualise pandemic response

Even though almost every country – rich and poor, new and old – was caught off guard by the novel Coronavirus, South Sudan arguably is at the bottom of the unpreparedness ranking. Emergency preparedness is a key ingredient of any successful emergency response. As noted, the country's public health system was already weak or non-functional, to say the least, and struggling to cope with the effects of conflict when COVID-19 was first registered in South Sudan. Even testing equipment, isolation and treatment facilities, personal protective equipment (PPEs) and oxygen masks or ventilators could only be provided with donor funding. Because of this, most people were already not going to hospital in South Sudan. It would therefore follow that responses to COVID-19 needed to envisage the fact that most people would have to be treated at

⁶⁴ Akech (n 30).

⁶⁵ ObEng-odoom (n 59) 17.

⁶⁶ Mayai et al (n 55) 4.

home. Recognising the panic attitude associated with the measures imposed, the government must ensure that disaster risk reduction plans are in place with sufficient technical experts. In considering measures to be taken, small-scale businesses should be exempt from closure, and where such is inevitable, micro-finance should be provided to jump-start their shattered ventures. It thus is evident that managing similar or worse pandemics requires strategic far-sighted preparedness and plans.

5.4 The rule of law and constitutionalism cannot wait

When a pandemic encounters efforts aimed at consolidating peace and stability, constitutionalism takes a back seat. This is evident in the way COVID-19 measures were adopted by the South Sudanese government. There was neither legislative scrutiny nor social protection measures to buffer women's loss of livelihoods and reduce the impact of COVID-19 on children. However, political governance in South Sudan was already undermined by the conflict characterised by the absence of constitutionalism and democracy. As observed elsewhere,⁶⁷ the fragile transitional government was already handicapped by a lack of resources and a trust deficit among political forces comprising the RTGoNU. This has led to critical decisions on the effective management of COVID-19 being delayed, not taken or taken in a non-inclusive way.

A lack of consultation with relevant institutions of government in the declaration of major policy decisions undercuts efforts to build democracy and peace building in South Sudan. This disturbing tendency was emphasised by the outgoing US ambassador to South Sudan who cautioned:⁶⁸

The aspirations of the South Sudanese people for a country at peace, for development and for a democratic society should not be delayed or derailed by COVID19. The key to success is strong political will from a reform-minded leadership engaged with an active and unfettered civil society. No virus can stop that kind of peace.

Accordingly, the consolidation of peace and socio-economic gains is paramount as part of the emergency response, more especially for countries in transition. The intersection between effective COVID-19 management and constitutionalism is palpable. Democratic oversight processes should not be ignored even under the pressure of a pandemic as these processes are catalysts for a well-managed

⁶⁷ See generally Akech (n 27).

⁶⁸ <https://ss.usembassy.gov/ambassador-hushek-july-fourth-greeting/> (accessed 8 July 2020).

pandemic. It may be observed that democratic governance and the rule of law shape the fight against the Coronavirus when government adopts participatory governance resulting in inclusive policies that do not further alienate the poor and leave them at the edge of poverty and further away from prosperity and equality.

6 Conclusion

This article discusses measures adopted by the government of South Sudan and their implications for the socio-economic and democratic rights of children and women – the *masaskin*.⁶⁹ The analysis reveals that while measures adopted forestalled the much-feared uncontrollable community transmission of the disease, South Sudan still risks entering into another pandemic: a deepening lack of socio-economic rights among women and children. This is a result of insufficient social protection policies to cushion poor families who lost income due to COVID-19. Similarly, the prolonged school closure jeopardises children's rights to education and could result in a generation lost to the pandemic. It has been shown that women's small-scale businesses and children's rights to education are negatively affected in comparison to the other groups of vulnerable people in South Sudanese society. The restrictions on the movement of goods and services and the ban on informal businesses, which was deemed to be incapable of effectively implementing COVID-19 measures, led to the closure and eventual collapse of small-scale businesses. These businesses will not be able to recover properly without financial assistance from the government. The livelihoods of those business owners will be negatively impacted unless they access funding to support their sudden loss of income. In addition to this, the school closure has led to increased sexual violence, child marriage and a risk of more children being likely to abandon school once they reopen.

In sum, the article argues that the consequences of the COVID-19 measures on livelihoods (food shortages and income loss) are likely to cause much more damage than the disease itself. As it now appears from the above COVID-19 cumulative figures, it may be argued that the disease did not affect most people as it reportedly endangers old people and persons with certain pre-existing conditions. To ensure greater preparedness in the future, the article suggests four critical lessons as key to be learnt from the COVID response: First, there is the risk that the way in which South Sudan has dealt with COVID-19 may

⁶⁹ Plural word of *meskin* or common person.

start another pandemic in the form of deepening social inequalities; women's loss of income and livelihoods is a recipe for a rise in poverty and the prolonged closure of schools risks a generation lost. Second, there is a need to strengthen the social welfare sector to protect vulnerable households from sudden onsets. Third, the disaster risk and preparedness capacity should be strengthened to effectively deal with pandemics in a way that protects the *zol meskin*; and, fourth, democratic governance and the rule of law are catalysts for a well-managed response and should therefore always be prioritised.