Decision-making and Governance Performance in the Republic of South Sudan:
A Political Economy Analysis of Institutions and Incentives

Zachariah Mampilly, Ph.D.
Assistant Professor of Political Science & Africana Studies
Vassar College

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**Acronyms**

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<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACC</td>
<td>Anti-Corruption Commission</td>
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<td>CANS</td>
<td>Civil Authority of New Sudan</td>
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<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
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<td>GBV</td>
<td>Gender Based Violence</td>
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<td>GNPOC</td>
<td>Greater Nile Petroleum Operating Company</td>
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<td>GoS</td>
<td>Government of Sudan</td>
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<td>GoSS</td>
<td>Government of South Sudan</td>
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<td>EPLF</td>
<td>Eritrean People’s Liberation Front</td>
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<td>LC</td>
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<td>NGO</td>
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<td>NRM/A</td>
<td>National Resistance Movement / Army</td>
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<td>OVL</td>
<td>ONGC Videsh Limited</td>
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<td>PFDJ</td>
<td>People’s Forum for Democracy and Justice</td>
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<td>RC</td>
<td>Resistance Council</td>
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<td>RCD</td>
<td>Rassemblement Congolais pour la Démocratie.</td>
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<td>RoSS</td>
<td>Republic of South Sudan</td>
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<td>RPF</td>
<td>Rwandan Patriotic Front</td>
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<td>RUF</td>
<td>Revolutionary United Front</td>
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<td>SPLM/A</td>
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<td>SRRAC</td>
<td>Sudan Relief and Rehabilitation Authority/ Commission</td>
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Executive Summary

Since achieving independence in July 2011, the Sudan People’s Liberation Movement (SPLM), the dominant political party within the Government of South Sudan (GoSS), has been beset by a seemingly never-ending list of crises. The majority of these are related to the poor state of the country that GoSS inherited. Marginalized by a regime in Khartoum that consistently failed to devote adequate resources to the development of the south combined with the debilitating damage of the war itself, the situation for the SPLM upon assuming power was inevitably overwhelming. Though the party deserves credit for effectively dealing with the numerous internal security challenges that threatened to derail the country and for beginning the difficult process of transitioning from an armed group to a ruling party, the country continues to suffer a crisis of governance.

The January 2012 shut down of oil production only revealed and exacerbated the depth of the governance crisis faced by Africa’s newest nation. Considering the devastating economic impact of the decision, the issue of decision-making within GoSS has rightly come to the fore. The purpose of this report is to assess the prospects for GoSS to address critical service delivery objectives of development. Towards this end, the report examines GoSS decision-making focusing on key individuals, the structure of the government, the role of the Sudan People’s Liberation Movement / Army (SPLM/A), and the effects of the broader political and economic environment. The report situates the experience of the SPLM/A’s transition from armed group to ruling party within the broader category of such transitions, drawing on similar transitions in Uganda, Rwanda and Eritrea. It finds that there is no single path towards making a successful transition and that transition experiences are often characterized by movement both towards better governance as well as away from it.

In assessing the SPLM’s transition, it is essential to appreciate the distinct political philosophy that continues to influence the development and performance of GoSS. Initially reliant on the notion of “New Sudan” outlined by the SPLM founder and former leader, the late John Garang, the party has consistently moved away from his vision without articulating a clear replacement. The SPLM lacks a coherent governance philosophy focusing instead on responding to numerous and continuous security crises that shape its governance agenda.

The origins and structure of GoSS continue to be influenced by the design of institutions established by the SPLM/A during the war in Sudan. Specifically, the SPLM created the Civil Authority of New Sudan (CANS) to respond to demands for ethnic inclusion, an approach that continues to shape the government’s approach to devolution in the current period. Rather than embracing a decentralized approach with high degrees of autonomy for the state and county levels, the party incorporates state and county level actors into a hierarchical system of patronage allowing key ethnic elites to distribute positions within government as spoils. This approach, encapsulated in the idea of a “natural state” focused on monopolizing the allocation of rents in order to ensure the survival of the state, has proven successful in preventing a collapse of the South Sudanese state. But it does not allow for the development and improved governance that the population deserves.
Ethnicity is also central to the country’s nascent judicial system and traditional leaders have become a key building block of the evolving GoSS judiciary. During the war, they served a number of functions for the insurgent governors allowing the rebellion to devote fewer resources to establishing its own judicial capacity. In the independence period, GoSS is trying to formally incorporate chiefs into the judicial system, but keeps running up against the limitations inherent in relying on traditional justice systems.

Similarly, it was during the war that the SPLM became dependent on external donors and international NGOs to complement and often supplant GoSS service delivery. Though many in the party continue to harbor concerns about dependency on external actors, the fiscal crisis has left the citizenry even more dependent on the international community for their basic needs.

In the independence period, GoSS has become overly reliant on revenues from the oil sector and has not devoted adequate attention to developing non-oil sources of revenue. This has allowed GoSS to remain aloof from the South Sudan population. With the shutdown of the oil sector, the shortsightedness of this policy has become evident as the government struggles to meet deep fiscal shortfalls. Attempts to improve the taxation system and develop other sectors of the economy remain premature.

The net effect of the SPLM governance approach has been inadequate service delivery and deepening of citizen disillusionment with government performance. This has been exacerbated since the oil shutdown. Though the SPLM continues to retain a huge amount of goodwill for its role in fulfilling the promise of independence, it cannot continue to assume the unwavering support of the population. The South Sudanese public are increasingly skeptical of GoSS’s capacity to meet the huge expectations generated by independence.

The structure of the SPLM as a big tent movement that seeks to incorporate a constantly shifting array of oppositional forces within its ambit means that it is from within the party itself that potential challengers are likely to emerge. The report also demonstrates that rather than occupying a hegemonic position within South Sudanese society, the SPLM’s control of the country is generally more precarious than acknowledged. Still, as opposition parties and civil society actors remain weak, the party is likely to retain its dominant position for the foreseeable future.
1. **Introduction**

1. On July 9, 2011, South Sudan attained independence after a devastating and prolonged war between the government in Khartoum and the Sudan People’s Liberation Movement / Army (SPLM/A), the dominant rebel movement. The official end of the conflict arrived after the announcement of a ceasefire in 2002 that led to a three-year peace process culminating in the signing of the Comprehensive Peace Agreement (CPA) in 2005. This began a six-year period of transition referred to as the Interim Period during which the Government of South Sudan (GoSS) officially came into being to govern the semi-autonomous southern region. In January 2011, South Sudanese participated in a referendum on independence during which almost 99% of eligible voters chose to cast their votes in support of the creation of an independent state, the Republic of South Sudan (RoSS).

2. Despite the overwhelming support for independence among both the South Sudanese public and the international community, South Sudan is facing a severe crisis of governance less than a year into its existence. Considering the devastating condition of the country after the war and the challenges faced by the ex-rebels to build an effective state apparatus, this is not a surprise. To its credit, good governance is and has been a central aspiration for the SPLM, the political wing of the ex-rebel army now transformed into the dominant Southern political party (see for example, SPLM 2000). Yet, few would credit GoSS with meeting even minimal standards for good governance, even when compared to other ex-rebel movements at similar points along their own transitions (see SWP 2012; NDI 2012; LSE 2010).

3. This report provides a political economy analysis of the performance of GoSS. Adopting a problem driven approach, the report explains why GoSS and the SPLM leadership have not been able to improve public service delivery and development outcomes despite the heightened expectations of the long-suffering South Sudanese public. The central question that this paper asks is the following: What are the prospects for GoSS to address critical service delivery objectives of development in South Sudan?

4. The primary focus of the analysis is to explain why the SPLM leadership adopted and continues to hold on to its current governance strategy, despite its inability to improve service delivery. Specifically, the party continues to view its primary task as incorporating potential challengers into the regime by allocating oil rents through ethnic patronage networks, despite the negative effects on governance performance of such a strategy. This report analyzes the institutional context that shapes the decision-making process, both formal and informal, of SPLM leaders. The goal is to understand the incentive structure at work and how it affects the behavior of relevant actors, especially the SPLM elite.

5. Towards this end, the report examines the interplay between the ruling party and a variety of key stakeholders, specifically, traditional authorities, religious leaders, the media and other civil society actors as well as international actors like NGOs and donor agencies, foreign

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1 SPLM/A refers to the combined political and military wings of the rebellion during the war. SPLA refers solely to its military force, both during and after the signing of the Comprehensive Peace Agreement. SPLM prior to the signing of the peace agreement refers to the political wing of the rebellion, but more commonly in this report, refers to the political party that came into being after the signing of the CPA.
governments and private businesses to understand their impact on decision-making. By outlining the political and economic environment that GoSS leaders operate within, the report assesses the governance challenges they face regarding service delivery, the rule of law, and the management of natural resources, especially in regards to the use or misuse of oil revenues. An analysis of resource management and its effect on decision-making by GoSS with a focus on the relationship between service delivery, corruption and the citizen state interface provides insights into why SPLM elites continue to emphasize regime survival over service delivery.

6. Several factors are examined focusing on the following three thematic issues. The first concerns the ways in which the SPLM decision-making process continues to be influenced by the legacy of the war, particularly as it pertains to questions of civilian governance. The second is concerned with the specific institutional context in which the SPLM leadership operates focusing on the various challengers to the movement, both inside and outside the party. And the third relates to how the fiscal strategy shapes relations with international actors and their influence over SPLM decision-making.

7. South Sudan faces a number of internal challenges that threaten the credibility of the novice government. Among the most pressing internal issues are the government’s inability to assert full territorial control, a failure to generate a compelling national identity, endemic corruption, and anemic service delivery, all of which are undermining the citizen-government compact. In addition, its relationship to Sudan remains volatile. Still, most successful secessionist movements face similar challenges and struggle to escape having the legacy of wartime behaviors affect the contours of the post-conflict citizen / government compact. This is evidenced in the militaristic tendencies that often characterize the behavior of former rebel leaders who find themselves overwhelmed by the seemingly insuperable task of developing effective governing practices and institutions (DeZeeuw 2008). Yet every situation is distinct and the outcome is never predetermined.

8. A central concern of the report is to determine if the equilibrium between social forces currently prevailing in South Sudan is durable; and in what ways it can be influenced to improve accountability and governance performance by GoSS. Of particular concern is the ability of the government to withstand the current economic crisis produced by the January 2012 shutdown in oil production. A clear understanding of the driving motivations of key figures involved in the transition process and the structural environment they operate within can provide insights into how best the international community can help strengthen the governance performance of GoSS.

9. In section two, I examine the challenges of transitioning from a rebel movement to a ruling party and provide an assessment of the future trajectory of the SPLM and GoSS drawing parallels from other insurgent movements. In section three, I provide a brief background of the institutional origins of GoSS. In section four, I outline the current institutional setting. Section five assesses the performance of the government in regards to the provision of basic services. Section six examines three specific political and economic challenges to improving GoSS performance including an analysis of the impact of 2012 oil shutdown. Section seven looks outside the party focusing on the relationship between the party and several key societal
actors. I conclude by outlining the contributions of the report and providing an analysis of the steps necessary for the SPLM/A to transition fully from a rebel movement into an effective and accountable ruling party.

2. Rebel to ruling party transitions in comparative perspective

10. While GoSS’s governance performance has been lacking, it is important to assess the nascent government against comparable instances of post-civil war transitions. I begin by outlining an analytical framework that draws on other transitions from rebel movements to ruling parties similar to the situation of South Sudan. Specifically, I analyze what accounts for rebel to ruling party transitions in which the party is able to improve governance performance and service delivery?

11. Politics in post-conflict environments tend to be characterized by high levels of volatility fueled by insecurity and the lack of strong state institutions. It is a particularly challenging environment for improving the performance of governance institutions or entrenching democracy and the rule of law by establishing a competitive party system. As a result, political parties operating in post-conflict environs tend to exhibit a lack of a clear ideological orientation, a strong urban and elite bias, highly personalized decision-making, weak party institutions and a strong attachment to state institutions for their redistributive capacity. In addition, due to their weakness, parties are often susceptible to cooptation by narrow ethnic or economic interests leading to high levels of corruption and public disillusionment. Poor infrastructure and state institutions that do not extend throughout the territory also limit the capacity of parties to operate in all parts of the country. The manner in which the war ends also has important implications for the behavior of parties. In cases where fighting stops due to a military victory of the rebels, it is common for the political parties born of the rebellion to monopolize power, viewing control of state institutions as the spoils of their often hard earned military victories (Curtis and DeZeeuw 2010). Unsurprisingly, many post-conflict ruling parties struggle with the survival of the regime itself, often resorting to violence while demonstrating little concern for governance performance or government accountability.

12. State survival, as compared to regime survival, is predicated upon three different dimensions of concern related to governance. Unlike regime survival, deploying violence alone is rarely a sufficient basis for ensuring the survival of the state in the long run. First, the capacity of government which refers to the empirical ability of the government to control its territory and provide basic services including upholding the rule of law across its entire territory and population. Capacity is almost always low in a post-conflict environment.

13. Second, the authority of the government which relates to the matrix of actors involved in governance decisions and the relationship between them. Authority refers to a mutual relationship between two actors in which the subordinate actor willingly consents\(^2\) to a command by the dominant actor, without the overt use of force (Lake 2008). In post-conflict cases, the authority structure in place can vary widely ranging between a deeply hierarchical

\(^2\) By consent, I am referring to normative consent, i.e. consent derived from the coincident preferences of the ruler and the ruled. This contrasts with consent derived from material incentives (remunerative) or that produced solely through force (coercive) (Etzioni 1975: 4-6).
authority position in which the government sits clearly above every other social or political actor to situations in which authority is dispersed between the government and other political actors. A dispersed example is the situation in the Democratic Republic of Congo where the government continues to struggle to assert its authority over a variety of political actors (militias, religious institutions and traditional leaders) that constantly engage in actions that undermine its authority, either intentionally or unconsciously.

14. The most important dimension is the legitimacy of the government itself. Legitimacy refers to an authority relationship characterized by an acceptable combination of coercion and consent between the political regime and the population (Mampilly 2011: 52). Consent maybe derived from coercion, remuneration, through an alignment of normative priorities or some combination of all three, though a purely coercive relationship would not qualify as an authority relationship (Lake 2008). Thus, the only two ways available for a regime to achieve legitimacy are by providing some material incentives through service delivery or by ensuring that it embodies the political preferences of the population. In short, achieving legitimacy encompasses the technical capacity of the government, the authority profile of the regime, or some combination of both.

15. Legitimacy ensures the survival of the state as potential challengers are likely to be co-opted by the regime rather than trying to overthrow it. Inversely, regimes that lack legitimacy are susceptible to challenges to their authority position that can lead to the collapse of the state altogether. Thus, for rebel to ruling party transitions, the biggest concern is how to bolster the legitimacy of the regime to ensure state survival in the difficult post-conflict period.

2.1 Lessons from three rebel to ruling party transitions

16. There are many different trajectories armed groups may embark on post-conflict. Among the more successful former rebel movements that transformed into ruling parties are the National Resistance Movement (NRM) in Uganda, the Frente Farabundo Martí para la Liberación Nacional (FMLN) in El Salvador, the South West Africa People’s Organization (SWAPO) in Namibia and the Rwandan Patriotic Front (RPF) in Rwanda. But not all rebel movements are as successful in making the transition to post-conflict politics as the examples of the Rassemblement Congolais pour la Démocratie (RCD) in the Democratic Republic of Congo or the Revolutionary United Front (RUF) in Sierra Leone, both of which did poorly in post-conflict elections, illustrate. In this section, I assess three different governance strategies pursued by African rebel groups, specifically, the NRM in Uganda, the RPF in Rwanda and the Eritrean People’s Liberation Front (EPLF) in Eritrea, to entrench the legitimacy of the regime.

17. Looking at these examples we can discern three possible trajectories for the SPLM in the independence period. Each of the groups adopted distinct strategies in the post-conflict period related to their historical origins, economic opportunities, and relationship to key societal stakeholders to enhance their legitimacy. Faced with low capacity and weak authority over the population, both the NRM and the RPF embraced different strategies to bolster their legitimacy with the NRM seeking to improve its authority position through political reforms and the RPF working to improve its technical capacity through economic reforms. In contrast,
the EPLF which possessed the highest degree of legitimacy of the three, squandered much of this goodwill by failing to improve its governance capacity while undermining its own authority position in pursuit of nationalist military agendas.

18. These brief comparisons provide an opportunity to highlight certain common dynamics that they share with the case of South Sudan. Specifically, like the NRM, the SPLM is interested in pursuing a decentralized participatory approach to reforming its broken or absent governance institutions. The NRM’s political reforms decentralized governance decisions to the local level helping shore up the authority of the government by ensuring that the new regime was able to synchronize its behavior with the aspirations of the Ugandan public. Like the RPF, the SPLM has indicated a desire to pursue a strategy of rapid economic development in order to bolster its governance and development activities. Though the Rwandan regime is defined by a minority led government facing a hostile ethnic environment, a focus on fiscal growth has improved the capacity of the state to provide services, thereby improving its legitimacy through material inducements. More negatively, like the EPLF, the SPLM leans heavily on the legitimacy gleaned from the independence struggle to retain public support. The EPLF’s approach allowed it to downplay or dismiss demands for better governance in favor of a narrower strategy designed to keep the nationalist coalition together.

19. Like the SPLM/A, all three groups came into power in the immediate aftermath of devastating conflicts that destroyed physical infrastructure, government institutions, and economic capacity. All three faced questions about their ability to manage the transition and rebuild a viable citizen / government compact. In addition, all three began with a special transition period during which the parties justified certain autocratic practices by claiming that they were necessary in order to rebuild the country. The ex-rebel leaders argued that non-democratic practices were necessary during the transition period in order to create an environment for competitive politics in the future, an outcome that none have achieved thus far. They vary in regards to their wartime motivation and structure as well as in relation to the nature of the conflict settlement, the domestic and regional context as well as the role of international actors, dimensions I will return to when assessing the SPLM in the final section.

20. **The National Resistance Movement / Army: The political reformers**
Uganda’s NRM remains a key influence on the SPLM. A reformist movement that fought a five-year war to overthrow the regime of Milton Obote, the NRM is often credited for its serious attempts to improve governance accountability, at least during the first decade of its transition. Upon achieving power, Yoweri Museveni, the leader of the movement, signaled his clear intention to move the country away from the unimpressive performance of his predecessors. The NRM/A’s strategy in the post-conflict period was driven by the fact that unlike the SPLM/A, the Ugandan rebellion and Museveni in particular did not have widespread popular support prior to coming to power. The movement could not claim broad support across the country and hence required careful attention to governance issues in order to build the authority of its fledgling government (Muhumuza 2009).

21. Once in power, the NRM engaged in a number of populist reforms that had been outlined in 1981 in the “Ten-Point Programme,” a policy manifesto produced by the rebels to guide them after they took power. Several of these policies were introduced into the areas of NRM/A
control during the war, most importantly the establishment of Resistance Councils (RCs) (later renamed Local Councils in 1993). The point of the RCs was to address the lack of capacity of the collapsed central government by introducing a new administrative structure at the local level. The RCs provided an opportunity for citizens to influence decision-making, thereby increasing the legitimacy of the nascent NRM government. In addition, the new regime engaged in a number of other populist reforms during its first decade in power including decentralizing power to local governments, holding elections for the national legislature, affirmative action to ensure representation of women and other marginalized groups, allowing civil society and the media to reemerge as a force in Ugandan society, establishing a human rights commission, pacification of the army, and writing a new constitution. Museveni also sought to incorporate non-NRM members into the regime, bringing into his cabinet members of opposition parties, as well representatives from Uganda’s diverse religious, regional and ethnic communities (Muhumuza 2009).

22. These reforms helped engender the new regime to much of the often skeptical Ugandan populace (with the significant exception of the North) as well as to the international community which hailed the efforts of Museveni’s government. The populist reforms enacted by the regime generated massive support for the government, especially among the rural populations, which allowed it to engage in a number of successful development and nation-building initiatives during its first decade in power that stabilized political and economic life in the country.

23. The Rwandan Patriotic Front: The developmentalists
The Rwandan case shares with South Sudan a situation in which the rebellion faced an unfavorable ethnic context that fundamentally shaped their governance approach during the transition period and after. The RPF’s leadership was comprised almost entirely of Tutsi officers who retained their standing in the Government of National Unity established in 1994 in accordance with the Arusha Accords the ended the war. Initially, Paul Kagame, the RPF commander, attempted to stay true to the logic of ethnic power sharing that the accords outlined for the transition by appointing Hutus to a number of prominent positions within the government including the Presidency. However, recognizing the precarious position of a Tutsi-dominated regime in Rwanda, the leadership modified its governance approach introducing a number of amendments that introduced a strong executive presidency and redraw the composition of parliament to assert the dominance of the RPF (Reyntjens 2006: 1105). In 1999 the initial five-year transition period was extended and the regime continued to consolidate its control over the government prohibiting opposition parties any opportunity to participate beyond affirming the RPF’s position. Civil society was similarly curtailed.

24. At the same time, the regime recognized that repression alone would not be a sufficient basis for legitimizing its rule. It sought redemption in the so called “Singapore model,” seeking to bring about rapid growth with the assumption that a more wealthy society was less likely to breakdown in to ethnic violence. By this standard, the regime has been remarkably successful in improving the capacity of the government to meet basic needs. By focusing on ensuring food, health and education, the regime gambled that development could offset lingering ethnic tensions in the country. As a result of these policies, social conditions for Rwandans have risen dramatically since the end of the war. Life expectancy has grown rising to 52 today from
less than 25 during the transition period. Housing and household incomes have similarly appreciated and primary school enrollment is nearly universal. In terms of health care, medical insurance has been extended to almost the entire population, HIV rates have fallen to under 3 percent of the population from over 10% during the transition period, and infant and maternal mortality have dropped consistently (Mwenda 2010). In addition, the regime is hailed for its low-levels of corruption, its infrastructural development, its welcoming business climate and its success in ensuring female representation in Parliament.

25. Yet, despite the RPF’s considerable success in building the capacity of the state, its hold over Rwanda remains precarious. The regime remains unwilling to open the political space and Kagame himself has not outlined any plans to leave office. Reconciliation between the Hutu and Tutsi communities remains incomplete, and challenges, both violent and non-violent, continue to threaten the clear economic success of the regime, threatening to undo any progress thus far.

26. The Eritrean People’s Liberation Front: The ethno-nationalists
Of the three cases discussed, the EPLF is the only other successful secessionist movement. During the war, the EPLF, like the SPLM, drew widespread support across ethnic, religious and class lines. And like the SPLM, the country achieved independence as a result of a negotiated settlement in 1991. In addition, the Eritrean war for independence produced a large and educated diaspora that played an important role both during the war and in the immediate post-war transition, much like South Sudan. Initially, the EPLF was hailed by many international observers as a disciplined and well structured organization with a clear ideology and broad public support (Pool 1993, Connell 2011). Upon assuming power, the movement, renamed the People's Front for Democracy and Justice (PFDJ), declared its commitment to political pluralism and embarked on a three-year constitution making process with participation from broad swathes of the newly liberated Eritrean public. Under the leadership of the independence hero, Isaias Aferwerki, the regime achieved notable developmental progress with per capita growth increasing steadily between 1993 and 1997. Support for the new regime was so high in the immediate post-conflict environment that crime remained remarkably low and corruption was thought to be largely non-existent due to a strong sense of unity and common purpose focused on actualizing the dream of building a new and functional Eritrean nation.

27. However, despite the considerable advantages possessed by the movement, the EPLF has struggled to transition into an effective ruling party and has been characterized by a steady movement towards autocracy and anemic economic performance. The primary source of this dysfunction has been the inability of the party to shake its militaristic origins. Instead, much like the SPLM, the party became embroiled in a struggle with Ethiopia that culminated in a devastating border war from 1998-2000 that pushed the government towards a negative cycle of military mobilization and political repression (Connell 2011). Though this did produce an initial spike in nationalist support for the regime, the overall effect has been to slow development dramatically while also stifling government accountability. Indeed, as a result of the border war, per capita incomes fell below pre-independence levels.
28. The experiences described above illustrate two points about the likely transition process of the SPLM. First, transitions from armed group to effective ruling party can follow a number of trajectories based on the specific strategies embraced by political leadership. Elites have the power to offset specific disadvantages such as a lack of popular support by embracing good governance practices as the Rwandan and Ugandan cases demonstrate. They similarly have the capacity to squander presumed advantages as the EPLF did despite the widespread popular support the movement possessed. Second, the transition process is never unilinear. Rather the evolution of ex-rebel groups into effective ruling parties is often convoluted, going back and forth in response to shifting political and economic circumstances.

29. The above discussion is helpful for understanding the multiple pathways available to the SPLM as it seeks to transition into a non-violent and effective ruling political party. SPLM elites have embraced elements of all three governance strategies discussed above, but due to the fiscal arrangement in place, the ethnic balance of the country, and the security threats perceived by the regime, the nationalist option continues to be the dominant strategy for ensuring the legitimacy of the regime. Politically this means that the regime constantly seeks to incorporate rivals into its coalition without any concern for its effect on governance performance. South Sudan is functioning similarly to a “natural state” in which elites attempt to monopolize control over rents in order to ensure the survival of the state itself. This draws on an institutionalist framework that posits state survival as the foremost task of any political regime. In order to ensure the continued existence of the state and social order, economic rents derived from oil sales are deployed by elites to create incentives for potential rivals to support the stability of the ruling coalition (North et al 2009).

30. Towards this end, the party has focused on establishing a patronage system that can assuage the various ethnic factions but produces a variety of negative externalities when it comes to issues of good governance (corruption, militarization, lack of accountability). Such an approach (over improving service delivery) has the advantage of being targeted towards the actual threats to the regime (i.e. regional strongmen), producing results in the short term, and was especially viable with the influx of rents from oil production. At the same time, service delivery has been impeded by a governance strategy that focuses on dealing with the primary challenge to GoSS’s survival—ethnic rivalry—at least from the SPLM perspective and as revealed by their decision making thus far. The remainder of this report explains this governance approach in detail.

3. Background

3.1 The origins of the Government of South Sudan

31. Successful rebel movements often struggle to break free from the patterns of political behavior developed during wartime. In the case of South Sudan, there are several specific legacies that continue to affect the decision-making process of SPLM leaders. Beyond the ‘military mentality’ (addressed below) that inevitably affects most rebellions turned ruling parties, there are specific political behaviors and institutional path dependencies developed during wartime that continue to exert significant influence over SPLM decision-making. This section will explore how patterns of governance established during the war continue to
influence the civilian / government relationship in the contemporary period, especially as they relate to the ethnic makeup of the country.

32. Governance in the minds of key SPLM leaders has never been primarily concerned with improving daily conditions for South Sudanese, but rather with resolving more immediate political crises related to ethnic or regional divisions. The SPLM has a history of utilizing governance and decentralization initiatives strategically to remedy internal tensions within the movement (Branch and Mampilly 2005). This pattern was established during the war, continued during the Interim Period, and appears to be continuing in the independence period as well as I discuss in greater detail in section 3.

33. GoSS has its origins in two wartime structures established by the SPLM to deal with civilians living in insurgent territory during the war, specifically, the Civil Authority of New Sudan (CANS), the civilian administration established by the SPLM/A, and the Sudan Relief and Rehabilitation Commission (SRRC), a quasi independent relief organization that also engaged in limited service delivery on behalf of the insurgency and which had a convoluted relationship with CANS (Mampilly 2011).

34. The tendency of the SPLM to define governance minimally as ensuring security while abandoning service provision to international aid agencies or ethnic leaders was first established by CANS. Unlike other insurgent movements that draw initial support by wooing civilians to participate in the rebellion, the SPLA originated in a series of defections from the national army. This meant that the nascent rebel army had little need to devote resources to generating popular support by offering public goods or paying attention to civilian preferences. Instead, during the initial phases of the war, the movement encouraged civilians to flee across the border to camps in neighboring Ethiopia, the primary sponsor of the young insurgency. But in 1991 with the defeat of the Marxist Ethiopian regime known as the Dergue, several hundred thousand Sudanese refugees were expelled and forced to reenter the South, requiring the SPLM to develop a capacity to provide basic services to this population.

35. The Sudan Relief and Rehabilitation Authority, the predecessor to the SRRC, was a quasi-SPLA non-governmental organization established in 1986 to provide basic relief to the Southern population. It primarily worked to coordinate and support the vast number of international NGOs that had begun to enter the region in response to a devastating famine that killed 250,000 people in 1988. During this period, the SRRC functioned largely in an ad hoc fashion operating with few resources with which it provided minimal public goods.

36. The early 1990s witnessed the establishment of a distinct civilian administration, essentially a proto-government, separate from the SRRC (Rolandsen 2005). Initially, the focus of the civil authority was to mobilize human and material resources for the war effort. But in 1991, a major split in the movement led by Riek Machar and Lam Akol Ajawin, leaders from the Nuer and Shilluk communities respectively, forced the SPLM leadership under its Dinka founder, John Garang, to develop strategies for containing the debilitating internal ethnic tensions. This process began in late 1991 and was outlined in documents now referred to as the Torit Resolutions.
In 1994, while war raged with the faction led by Machar and Akol (alternately referred to as the SPLA-Nasir or the South Sudan Independence Movement) the SPLA held a national convention during which the SPLM high command decided that a restructuring of the movement was necessary. SPLM leaders came to embrace the notion that a decentralized governmental apparatus could help in reducing inter-ethnic tensions by empowering regional commanders and traditional leaders to take responsibility for civilian governance. Out of this process, CANS was founded in 1995 as a distinct non-military entity to be run by civilians and through which it was hoped the movement would achieve “participatory democracy and good governance” through “the establishment of a broad-based civil authority” (SPLM 2000: 10; Rolandsen 2005).

However, despite the desire that CANS be autonomous from the SPLM/A, the fact that most of its personnel were drawn from among the ranks of ex-fighters meant that a military ethos pervaded the budding government. Most observers at the time viewed CANS as an important step towards devolving authority towards a civilian government while also recognizing its subservient relationship to the military command (Branch and Mampilly 2005).

CANS established two tendencies that continue to shape SPLM governance practices into the current period. First, CANS began the SPLM practice of treating devolution as a strategy of ethnic management rather than an initiative undertaken to improve governance performance. SPLM leaders under the direction of Garang, who was the primary force in developing the movement’s governance philosophy, established CANS to serve as a decentralized and autonomous civil administration that would address the ethnicized grievances of the southern population. In essence, the focus of this initial SPLM government was not to improve service delivery, but rather to promote political inclusion.

The basic objective of the 1994 reforms was to devolve power to a hierarchy of local authorities, delegating the provision of services away from the central command. CANS was designed as a multi-level governance system beginning at the village (“boma”) level and moving up through towns (“payam” which was an agglomeration of 4-6 villages) and at the highest level, counties. CANS was never able to achieve autonomy from the SPLM, a dynamic that continues to characterize the nature of GoSS’s relationship to the party into the current period. But it did play an important role in coordinating service delivery during the latter part of the war, especially after the signing of the ceasefire in 2002.

Second, reflecting the military priorities of the SPLA, CANS was never provided adequate resources to meet the basic needs of Southern population. Instead, it morphed into a coordinating mechanism through which the SPLM sought to control the activities of a wide variety of international aid organizations that had proliferated throughout the region by this point. The basic mechanism involved was a “Memorandum of Understanding” that all NGOs were required to sign and which defined specific activities NGOs could engage in and ascribed specific areas of operation (Branch and Mampilly 2005). NGOs that refused to be subordinated to CANS were forced to leave. For example, using a provision that stipulated that foreign organizations must not endanger the security of the area, the rebellion expelled the French aid organization Action Contre le Faim for a perceived security breach. CANS had more success in establishing a modicum of stability within SPLA territories through the
establishment of a bifurcated legal system which relied heavily on traditional authorities to resolve intra-communal disputes, thereby empowering customary chiefs as an important element of SPLM authority (Mampilly 2011).

42. CANS remained the official government of the SPLA until the signing of the CPA in 2005 when it was replaced by GoSS, though many of the structures and personnel established during the war remained in place. Signed with much fanfare on January 9th, 2005, the CPA sowed the seeds of much of the current tensions between Sudan and South Sudan by failing to resolve many of the key issues that continue to bedevil relations between the two countries. Specifically, the CPA did not resolve the competing border claims of both sides; it failed to arrive at a satisfactory division of oil revenues; and it did not develop an adequate approach for resolving citizenship issues in the two countries. Critics of the SPLM have also accused the CPA of entrenching the party as the sole representative of South Sudan to the exclusion of other voices thereby raising the likelihood of one-party rule (ICG 2011: 2). As will be discussed in section 7, understanding the dominant position of the SPLM within GoSS and South Sudanese life more generally requires an assessment of the effect of the CPA on endowing the movement with such a status despite the lack of unity during the war itself.

4. The institutional setting

4.1 The constitutional process and legislative framework

43. In this section, I examine the evolving institutional setting that has come into being since the signing of the CPA. The primary fault of the constitutional process has been to ignore the historical experiences of governance in South Sudan in favor of a “blank slate” approach. The SPLM’s reliance on international experts and its desire to appease the international community has left the constitutional design process detached from the actual social and political context of South Sudan in favor of a document designed to appeal to the preferences of international donors. As a result, though all constitutions are aspirational, many of the rights enshrined within the Transitional Constitution remain rights on paper alone, beyond the

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3 The CPA called for the final border demarcation to be resolved within six months, though this has yet to happen. The border remains combustible as it is the area where the bulk of oil production in both countries takes place. Determining possession of several key oil producing towns including Abyei and Heglig remains difficult to find an acceptable resolution. Abyei is especially thorny as it is home to a large Dinka Ngok community, most of whom are loyal to the South. But it is also home to a significant Misseriya population, many of whom sided with the North during the war, and who settle in Abyei for regular stretches during their nomadic journeys.

4 The agreement called for Sudan to receive 50% of the revenues from oil produced in the South in addition to receiving fees for the usage of pipelines running through the country. Though GoSS agreed to the division, it was not a unanimous decision and some leaders called for rejecting the agreement in favor of building a pipeline running to the east African coast.

5 Among these are the fate of large populations of southerners who moved to Sudan during the war as well as the citizenship status of spouses and offspring of mixed Sudan/South Sudan marriages.

6 The most dramatic division was that between the SPLA and the splinter faction led by Riek Machar and Lam Akol referred to as either the SPLA-Nasir or the South Sudan Independence Movement. This splinter militia also factionalized partially due to disagreements about receiving support from Khartoum leading to the creation of even more groups including the SPLA-United controlled by Akol and the South Sudan Liberation Movement (Jok and Hutchinson 1999). In 2002 due to the mediation of the churches, Machar’s faction was officially re incorporated back into the SPLA.
reach of the majority of the South Sudanese public and without a clear agenda for how they may be realized.

44. The SPLM’s savvy in espousing rhetoric that appeals to the international community in order to secure support has old roots. During the war, Garang frequently sent off missives to international newspapers framing the movement in the best possible light while at the same time downplaying evidence of SPLM misbehavior from the international community (for examples, see Garang 1992). Riek Machar, the current South Sudanese Vice President, was similarly renowned for his manipulation of the international community while in control of the SPLA-Nasir (Scroggins 2004).

45. During a confidential interview with a GoSS Undersecretary in 2011, I asked whether GoSS truly felt obliged to listen to the international community. He explained that during the war SPLM/A leaders felt it necessary to gather support from whomever was willing to highlight their struggle, including missionary leaders who frequently espoused desires to transform the country into a Christian theocracy, something he assured me most of the leadership found absurd. Towards this end, he explained, movement leaders have learned to distinguish between what they say to international audiences and what they believe should be done domestically, even when these are in direct contradiction.

46. The constitutional process began with the passing of the Interim Constitution in 2005 shortly after the signing of the CPA. It was replaced by the Transitional Constitution of the Republic of South Sudan of 2011 that is designed to remain in force till 2014 during which time a permanent constitution will come into being drafted by a National Constitutional Review Commission. Despite the government’s claim that all issues will be on the table during the ongoing constitutional process, there is a widespread sense among various social constituencies that many key issues of concern have not been adequately addressed. For example, women’s groups have complained that the Transitional Constitution does not respond to their needs, nor does it allow civil society actors and opposition parties a sufficient voice in the review process (Wudu 2012; Sudan Tribune 2011; ICG 2011: 10). Furthermore, it is perceived that major changes to the existing draft will be difficult to negotiate and that the final version of the constitution is unlikely to depart significantly from the flawed version that already exists.

47. The Interim Constitution called for the creation of a South Sudan Legislative Assembly with seats apportioned to different political parties—70% for members of the SPLM, 15% for members of the National Congress Party, and 15% for other parties. In April 2010 (during the Interim Period), an election was held. Prior to the election in 2009, the SPLM politburo decided on an official slate of candidates for parliamentary seats and governorships. But as a testament to the divided nature of the party, over 300 SPLM members contested seats against the official SPLM nominees, including seven independent candidates for state governor positions (SWP 2012: 18). Though only a fraction of the independent candidates actually defeated the official nominees and despite accusations of vote rigging, the presence of such candidates demonstrates the big tent nature of the party and illustrates the reality that not all members march in sync with the directives issued by party leaders. Still, the elections were dominated by official SPLM candidates who won 160 of the 170 seats contested. To the credit...
of SPLM leaders, the non-official candidates were allowed to remain in the party. The presidential election proved even less competitive with Salva Kiir Mayardit, who replaced Garang as the head of the movement, officially elected to the position of President of South Sudan defeating Lam Akol Ajawin by earning 93% of the vote.

48. In July of 2011, shortly before South Sudan became an independent state, the Assembly passed the Transitional Constitution. The new constitution established a mixed presidential system with a president formally presiding as head of state, head of government and commander-in-chief of the national army. President Kiir, as permitted under Article 94 of the Constitution, reconstituted the assembly, renaming it the National Legislative Assembly (NLA). Elected members were seated alongside a portion of the membership of the now defunct South Sudan Legislative Assembly bringing the total number of seats within the NLA to 332. A distinct fifty member South Sudan “Council of States” was established comprised of appointed members from each of the country’s ten states. Brought together with the NLA, the two bodies constitute the bicameral National Legislature. Members are elected or appointed to four-year terms with the next elections tentatively scheduled for 2015.

49. The NLA is constitutionally empowered to oversee the performance of the national government. It has the power to approve the national budget and to ratify international treaties. It also has a limited capacity to regulate the executive branch by calling ministers to account for the performance of their ministries and to hold a vote of no-confidence against cabinet members including the Vice-President, though not the President himself. Finally, it has the capacity to regulate the Judiciary through enacting legislation to regulate the conditions and terms of service of judicial branch members.

50. Despite the large size and formal decision making power granted the Assembly by the constitution, most observers agree that political decisions continue to be made at the presidential level and generally involving only a few key members of the SPLM (SWP 2012). Assembly members with the influence to affect decision-making have that power on the basis of their position within the SPLM, and not derived from their official seat. As over 90% of Assembly members are tied to the ruling party, it is not surprising that power within the SPLM is a precondition for relevance within the body. For example, James Wani Igga, the Speaker of the Assembly since 2005, is a former long time SPLA commander from Central Equatoria with ties to the movement going back to the middle of the 1980s. He is also a former Secretary General of the party, a current member of the SPLM Political Bureau, the party’s highest political organ, and the current election committee chairman of the party.

51. President Kiir remains the central decision-making figure within GoSS. Kiir has a long history within the SPLA, having joined the rebel army at its inception after serving in the Sudanese army alongside Garang. A rival of Garang, especially following the signing of the ceasefire in 2002, the two co-existed uneasily within the movement, at times coming into open conflict (The East African 2005). During Garang’s reign at the top of the Political Military High Command, the SPLM/A’s highest organ, Kiir rose to the position of head of the military wing. And upon Garang’s death in 2005, Kiir was quickly able to claim the highest

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7 Not all the defeated candidates accepted their loss so gracefully. George Athor, an ex-SPLA commander took up arms after being defeated for the position of Governor of Jonglei state, a result he claimed was rigged.
position within the movement due to his strong support among the military ranks, emerging as the consensus leader within three weeks of Garang’s passing (BBC 2011).

52. During the war, Kiir became associated with an overtly pro-secession position popular among some SPLM/A leaders and widely supported in the general population, though in direct contravention to the vision of a united and reformed “New Sudan” that Garang had long advocated (ICG 2011: 2). Kiir’s rejection of New Sudan after Garang’s death created a division within the top ranks of the movement between Kiir and the so-called “Garang Boys” comprising other key leaders such as Lam Akol Ajawin, Pagan Amum, Deng Alor Kuol and Garang’s wife Rebecca. Though this division is no longer central to South Sudanese politics, many consider the pro-Garang camp to be more closely associated with the governance agenda outlined by Garang prior to his death. It also has meant that since his ascension Kiir has had to find ways to accommodate these powerful dissenters within the SPLM.

53. Due to his military background and orientation, Kiir is generally agreed to not have thought about good governance nor be in possession of a clear governance philosophy that guides his decision-making to the same extent as his predecessor. Instead, many believe that Kiir remains shaped by his military experience and has less interest in representative politics, ignoring the constitutional governance system in favor of advice from a small coterie of SPLM members and other influential figures (SWP 2012: 15). Rumors abound of a shadow cabinet comprised of ex-military comrades and family members and including key business figures who influence his policymaking choices. Some of my informants in South Sudan go as far as suggesting that appointments to positions within GoSS or even the ability to remain in a position requires dealing with these extra-constitutional presidential advisers who are accused of actively discouraging the President from engaging with his critics.

54. The net effect of the informal, ad hoc and overlapping nature of institutions in South Sudan means that decision-making is rarely the result of informed and rigorous debate, but rather reflects a more opportunistic process in which decisions are made outside of the formal institutions and implemented through presidential decree. The result is to paralyze the technical and professional work of government bodies, which too often must respond to the whims of the ruling elites instead. Most of these elites are given positions based on the need of the party to incorporate potential rivals transforming formal government structures into patronage distribution systems, as I discuss in greater detail in the next section.

4.2 Decentralization / Devolution

55. As discussed in section 3, decentralization has long been viewed as an effective strategy for dealing with intra-ethnic tensions within South Sudan. The country has over 50 recognized ethnic groups and over 600 sub-groups. The two largest communities, the Dinka and the Nuer constitute almost 50% of the entire population. More than an organized ethnopolitical identity, the Dinka community is a conglomeration of distinct subgroups possessing multiple internal divisions. But the sheer size of the community (which comprises almost a third of the population) combined with its historic dominance of the SPLM/A means that many in the South have long been concerned about “Dinka Domination” with several groups going as far
as accusing the Dinka of having imperial designs on the South not too different from those of the Khartoum regime (Johnson 2003; Branch and Mampilly 2005).

56. As a result, the SPLM has long suffered from numerous internal schisms, many related to questions of governance. To resolve these divisions, the SPLM has historically been a ‘big tent’ coalition movement bringing together a diversity of Southern and Northern ethnic communities around a common anti-Khartoum platform (ICG 2011). During the war and in the Interim Period this fragile coalition violently came undone multiple times resulting in dramatic suffering among the Southern population (Jok and Hutchinson 1999). Similar concerns have dogged the movement in the independence period as well and GoSS has devoted considerable resources seeking to ameliorate and appease factional leaders by awarding positions within the civilian administration on an ethnic basis and incorporating splinter militias into the national army. This concern for ethnic management over governance performance is exemplified by President Kiir’s cabinet, which in its latest iteration draws equally from the country’s three major regions—Greater Equatoria, Greater Bahr el Ghazal, and Greater Upper Nile. As a result, within the SPLM elite, there are multiple competing clientelist networks aligned with specific leaders along ethnic or tribal lines (SWP 2012: 12).

57. For example, Riek Machar, the current First Vice President, is a leader of the Nuer, the second largest Southern ethnicity, and has long cultivated his own networks in the region. He was a long-time rival of Garang and is still deeply resented by many Dinka for actions committed during the brutal internecine war between the two SPLA factions in the early 1990s (Jok and Hutchinson 1999). An ambitious figure, he is widely seen as aspiring for the presidency, yet is savvy enough to understand the ethnic realities that will likely never allow him to fulfill his ambitions. He is also viewed as Kiir’s only true rival within the SPLM and the only person able to check the power of the president. By all accounts, Kiir and Machar have a functional working relationship with the latter enjoying his contrarian position within the SPLM leadership and confident of his broad support among the Nuer. Still, Kiir does occasionally seek to undermine Machar’s base of support. For example, in Unity State, Kiir continues to support Tabang Deng Gai for the governorship in order to counterbalance Machar’s influence among the Nuer, as he has since the signing of the CPA. This despite the fact that Machar and his wife Angelina Teny continue to maintain that she was victorious in the election for governor in 2010 (ICG 2011: 15).

58. Thus, despite the reality that South Sudan is largely a one party state (opposition parties and civil society will be addressed in section 7), the SPLM’s complete dominance of the state apparatus does not imply that it is a hegemonic force within South Sudanese society. Instead, now that the goal of independence has been achieved, there is little that unites the different factions around a single political agenda. Instead, SPLM leaders have utilized the party as a mechanism through which a wide variety of interests can be absorbed by granting would-be competitors political representation and access to state resources. As the SPLM has expanded to incorporate more and more rival groups, its capacity to implement consistent governance policies and make difficult decisions has been hindered, rendering the formal party apparatus a largely incoherent entity (SWP 2012; ICG 2011: 13).
59. While some citizens express a degree of cynicism regarding such blatant use of institutional positions to deal with ethnic tensions, according to a recent National Democratic Institute (NDI) report, the majority of respondents understood and supported the descriptive representation logic that underlies GoSS’s approach to managing diversity agreeing with the statement that it “reduces tribal tensions, unites the country, reassures citizens they are included in government, and demonstrates fairness and equality” (NDI 2012: 16-17). Yet, most also recognize that the diversity of the cabinet does not translate into actual decision-making power. As one longtime observer of the movement explained, “it is pretty much the same people before independence and after independence. The makeup of the cabinet has changed, but there has not been a shift in the decision-making process.”

60. The SPLM’s central strategy to manage ethnic differences has been to emphasize devolution in its governance institutions. This allows for positions within the lower levels of government to be distributed by key ethnic brokers in exchange for their continued loyalty to the regime. The Transitional Constitution outlines a tripartite division of government into three hierarchically arranged levels: the national level, the state level, and the local level. Despite aspirations that South Sudan adopt a federal system of governance, in theory and practice this remains a unitary system. States and local governments have few meaningful reserved powers and are instead thought of as mechanisms through which to improve service provision and ensure political participation among the country’s diverse communities (See Schedule B of the Transitional Constitution). Instead, issues of core significance are listed as concurrent national / state powers in Schedule C of the Transitional Constitution. And in cases where there is a contradiction between the two, National Law is deemed within the Constitution as automatically prevailing.

61. The weakness of the lower levels of government is also born out by the budgetary figures. GoSS has been characterized by a highly centralized structure as evidenced by the fact that 67 per cent of public sector salaries and 73 per cent of total expenditures were intended for the central government in 2011 according to the International Crisis Group (2011). More recently, estimates put the share of the national budget going to state and local authorities at 16% while the national government claims 84% according to the Sudd Research Institute (2011).

62. These numbers do not take into consideration that GoSS continues to pay a large share of state salaries in order to bolster the political accommodation process. As a recent report (SWP 2012: 28) explains, “State parliamentarians serve above all to accommodate influential politicians and potential rivals—in short, as patronage instruments.” Many of these employees are poorly qualified for their positions. As a draft World Bank report (2011: 56) makes clear, “around 42 percent of state employees are semi-skilled or unskilled.” Furthermore, the

Among the more significant concurrent powers listed in Schedule C are the following: Economic and social development; Health policy; Trade, commerce, industry and industrial development; Delivery of public services; Banking and insurance; Electricity generation and water and waste management; Information, publications, media and broadcasting; Financial and economic policies and planning; Gender policy; Water resources other than interstate waters; Matters relating to taxation, royalties and economic planning; Regulation of land tenure, usage and exercise of rights in land; Matters relating to businesses, trade licenses and conditions of operation; Natural resources and forestry; Prisons and reformatories; and Firearms control.

Schedule E reads as follows: “If there is a contradiction between the provisions of National law and a state law on the matters that are concurrent, the National law shall prevail to the extent of the contradiction.”
amount of money provided by the central government often covers less than 50% of wages for state employees, requiring state governments to use transfers earmarked for operating expenses to cover the shortfall, further reducing resources available for service delivery.

63. Until recently, budgetary allocations to the states were made according to a one-size-fits-all approach regardless of the state size, total population, or other demographic indicators, not taking into consideration the differential needs of the ten states (Sudan Tribune 2012a). Save for a few oil producing states, states have few opportunities to supplement central government allocations by raising revenues themselves due to poor institutional capacity (World Bank 2011: 56). Furthermore, though figures on each of the ten states’ budgetary allocations are hard to come by, there is a similar resistance to devolution evident in state allocation processes and little money actually trickles down to the local / county level.

64. The Local Government Act enacted in April 2009 sought to rectify this centralizing tendency by proposing a framework to devolve power from the National government to the State, County, Boma and Payam levels. It was also intended to reconcile the overlapping authority structures of traditional authorities and state administrators. However, three years later, it has yet to be implemented fully. There remains an acute lack of government revenue filtering downwards rendering decentralization more a paper strategy than an actual redistribution of resources.

65. Still, the SPLM leadership remains committed to a decentralization approach viewing it as essential for governing a multi-ethnic country like South Sudan, a position it embraced as early as the 1994 establishment of CANS. But the approach to decentralization has never been accompanied by a genuine transfer of power away from the center to the states and below. Instead, decentralization has been treated as a mechanism to bring in powerful regional powerbrokers by rewarding them with a share of the central pie. As such, it does serve an important function in bolstering GoSS’s authority though without improving governance outcomes as decentralization schemes are optimistically intended to do.11

4.3 The rule of law

66. Establishing the rule of law is an essential task for any government. A functional judiciary that can adjudicate disputes and ensure contracts between citizens, and critically, between citizens and government employees, provides a basis for commerce and is important for employment creation. Ensuring that the legal system is impartial, predictable and transparent in its decision-making process is critical (World Bank 2011: 93).

67. The legal system in South Sudan incorporates both a formal statutory court system at the higher levels alongside informal traditional courts at the local level. The formal judicial

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10 On June 18th, 2012, the Finance Minister announced a change in this formula in response to pressures from the states for a more equitable allocation of resources. Sixty percent of the block transfer will continue to be allocated equally to the states, but henceforth, forty percent will be allocated on a per capita basis. In addition, grants to counties will be allocated on a per capita basis as well.

11 This is not to suggest that GoSS is unique in this regard. Many countries use decentralization to deal with recurrent ethnic or regional divisions in the national body as the case of India, to name one prominent example, demonstrates.
system is federal in character with a Supreme Court and three regionally based Courts of Appeal. Each state also possesses its own High Court and multiple county courts. This system suffers from severe under capacity with a 2011 World Bank report suggesting that sixty percent of the positions for judges are vacant and 64 percent of support staff positions similarly unfilled.

68. Customary courts are primarily concerned with issues of personal law within a specific tribal community. Appeals from the customary courts are meant to go to the formal system, though the system is still evolving. There is an ongoing process to formalize the relationship between the two driven largely by two concerns. First, as during the war, GoSS seeks to economize on its resources by incorporating traditional authorities into its judicial structure. And second, GoSS hopes to imbue the nascent judicial system with a degree of legitimacy by empowering traditional authorities (USIP 2010). Both motivations further reveal the SPLM’s dependency on ethnicity at the core of its governance strategy.

69. During the war, CANS relied heavily on chiefs’ courts and customary law to fill in where the rebel government could not. As a result, traditional authorities continue to have legitimacy among the civilian population and engage in dispute resolution even without formal sanction of GoSS. Thus, the key challenge for the government is how to stitch together the patchwork of overlapping formal (GoSS) and informal (customary) authorities that constitute the emerging South Sudan legal apparatus. From the perspective of the citizenry, there is a single judicial system in which traditional courts make judgments on both civil and criminal issues. However, traditional courts are not fully incorporated into the official South Sudan judiciary reflecting the ad hoc nature of the nascent legal system.

70. Recognizing the credibility of the traditional courts, GoSS has begun a process of legal ascertainment through which traditional courts can be formally incorporated into the official legal system. Ascertainment refers to the process by which customary laws of a community are identified and recorded in written form with the intention that they become the basis for the application and harmonization of customary legal practices within the formal judicial system. But many challenges remain in establishing a unitary legal apparatus for South Sudan (USIP 2010). Many are related to the complex role that traditional authorities continue to play in the country. Among the most important challenges identified with the attempts to establish legal pluralism in South Sudan are the following:

1. The complexity and overlapping nature of customary and statutory legal practices and the blurry line between the two.
2. The shifting nature of customary legal practices which are often contextually defined and require “flexibility, negotiation, and reinterpretation of a dynamic body of knowledge to reflect what is considered reasonable under the circumstances” (USIP 2010: 5).
3. The tendency to politicize ethnicity by encouraging citizens to look to their own traditional systems instead of a single national judiciary.
4. The privileging of certain informants within a community (generally older men) as the source of customary practices, often ignoring the voice of women and youth who may be disadvantaged due to entrenched cultural biases.
71. These weaknesses of relying on customary law can be witnessed in the treatment of victims of Gender-Based Violence (GBV). According to a 2008 United Nations Population Fund (UNFPA) report, GBV continues to plague the country “at an alarming rate.” Most of these cases continue to be dealt with exclusively at the customary court level, many with less than satisfactory results. The report blames harmful cultural practices, a lack of professionalism and jurisdictional uncertainty as “barriers to the administration of justice for GBV cases” (UNFPA 2008:2). At the same time, the report also highlights the centrality of customary courts and the continued faith placed in them by the South Sudanese population meaning that rather than eradicating them altogether, a meaningful reform process is necessary.

72. Even with the formal legal system, widespread concerns about its legitimacy, independence, consistency and lack of resources have undermined faith that the system has the power to resolve disputes autonomously of the direction of SPLM leaders. There is a critical shortage of trained professionals within both the common and customary legal system. Of particular concern is the sense among many that GoSS has not been able to hold soldiers and other current or ex-SPLA members accountable under the rule of law. For example, recent disputes between soldiers and landowners over control of land commonly remain unresolved despite multiple court decrees ensuring the rights of the landowner (Lupai 2012). Inadequate land title registration procedures also contribute to this uncertainty (World Bank 2011).

73. President Kiir has had to wade into the debate offering stern speeches reminding the population that none is above the law. Yet, a widespread perception that as a result of cronyism, ignorance of the law, or simply incompetence on behalf of the legal authorities, criminals are not held accountable remains (USIP 2010: 39; NDI 2012).

5. Governance performance

5.1 Public service management / Service delivery

74. Good governance is characterized by the use of state power for the public good. Of specific concern is to what degree political power is exercised to ensure basic development standards for the citizenry. According to a recent NDI report on public opinion based on focus groups conducted in November 2011, “A large majority of participants in this study say South Sudan is headed in the wrong direction” (2012: 5). Participants indicated increasing dissatisfaction with the performance of GoSS, particularly as it relates to development, the cost of living, and managing insecurity. A majority of participants also responded that improving basic services and development was the key to fixing the citizen / government relationship. Though still appreciative and loyal to the SPLM, there is an increasing sense among the population that the state of development has been too slow, that living costs are rising with little support from the state to ameliorate the negative effects, and that the security situation remains precarious. It is important to note that this negative mood prevailed even prior to the shut down of the oil sector that has exacerbated these conditions dramatically.

75. These results are especially striking considering that civilians have historically had very low governance expectations having been habituated to expect little by multiple political
authorities throughout South Sudanese history. This was true even before independence when the British abandoned the south to Christian missionaries as well as through multiple regimes in Khartoum which treated the region with gross negligence when not engaged in all out war. As a result, the population has no experience of demanding better governance performance by holding elites accountable for their behavior (Mampilly 2011).

76. GoSS institutions have largely failed to meet the basic needs of the Southern population thus far. Whether security, infrastructure development, or health and education services, insufficient progress has been made since the signing of the CPA in 2005. This despite the fact that GoSS is comprised of 29 distinct ministries allowing the government to absorb a huge number of personnel within its ambit. The number of ministries is twice as many as the United States, which has a population more than twenty times as large as that of South Sudan.

77. Negative public opinion is borne out by development indicators in the country that remain among the lowest in the world. According to recent estimates, in 2012, fully 51% of the population is living in poverty, under-five child mortality is at 10% of live births and school enrollment barely reaches 50%. In a recent study (Mayai et al 2011), the authors provide some stark indicators that demonstrate the fragile condition of the country’s health and education sectors. Based on a health mapping assessment by the Ministry of Health, the authors conclude that the country has approximately 1330 health facilities (hospitals, clinics, community health centers and units) of which slightly over 1000 were operational. In terms of hospitals, the report found 52 hospitals spread across the entire polity for a ratio of approximately 160,000 persons per hospital. Among those health facilities that are operational, many continue to lack adequate infrastructure including blood banks, laboratories, medical supply stores and basic pharmaceutical equipment. In addition, there is a shortage of qualified medical personnel including doctors, specialists, nurses and midwives.

78. Similarly, despite a rapid increase in the number of students entering the formal education system over the past five years, the number of qualified teachers has declined. The report points to a falling student / teacher ratio that went from one teacher for every 43 students in 2007 to one teacher for every 53 students by 2010. The authors suggest a doubly negative dynamic in that the Ministry of Education has not put sufficient resources towards increasing the number of teachers in the labor force combined with the fact that teachers are leaving the education sector to pursue better opportunities in other fields (Mayai et al 2011: 12-13). The weakness of the education system also reinforces substantive gender inequalities. Overall, less than 30% of the population is considered literate according to GoSS, though this figure masks vast differences between the genders (Wudu 2011). Depending on the source, estimates put to the total female literacy rate at between 8% and 12%.

79. The NDI report affirms a widespread sense among civilians that GoSS has not done enough to improve governance performance in South Sudan. Education and health services in particular are frequently mentioned as deeply inadequate. In addition to the general shortages of health clinics and schools detailed above, participants in the NDI focus groups were equally incensed by the poor management of existing facilities. In regards to education, the failure to develop a uniform curriculum more than five years after the CPA was a particular concern.
And in health care, the chronic shortage of basic drugs and the lack of qualified health care professionals also came in for criticism.

80. Since 2007, the Ministry of Finance has sought to improve the overall governance approach by coordinating budgetary sectoral working groups to bring together all relevant partners both within and outside government including international donors. The goal is to improve the capacity of different sectors to develop multi-year budgetary plans. Still informants working within the system continue to decry the short-term mentality still present in each sector planning process:

When I was the acting medical director in the hospital, I asked the Undersecretary of the Ministry of Health if they had a developmental plan for career development in health. In short if they have targets to train consultants in pediatrics, obstetricians and gynaecologists, etc. He flatly said, “We do not have such plans!” I think he spoke for the whole government because since 2005 if such plans were there, we should have trained many staff and we would be having the qualified staff to run the system now.

81. The planning process is top heavy and focused more on controlling inputs than improving outputs. As one observer explained, “There has been an assertion of GoSS in terms of being accountable of what resources are available and who is providing them. But when it comes to actually providing services, we are still following the model used during the war.” Specifically, by failing to incorporate local service providers in the planning process combined with the complete lack of a feedback mechanism tying schools or hospitals back to the relevant Ministry in Juba, GoSS decisions have little relevance for the actual delivery of services on the ground. In addition, there is a sense that ministries are too compartmentalized and GoSS itself has yet to develop an integrated service delivery approach. Importantly, while the government rhetorically emphasizes the importance of empowering the local level to improve service delivery, few actual resources have been provided.

82. In addition, the human resources base is comprised of untrained and unqualified civil servants, many of who received their position due to family or tribal ties (African Development Bank 200: 36). A major challenge to reforming the cronism of government employment is the overall lack of qualified professionals available in South Sudan to manage service delivery institutions. The Ministry of Human Resources Development has sought to rectify these shortcomings since 2010, but shortages in qualified personnel have deep roots and will require a broad and sustained initiative to improve educational resources to train personnel for public administration positions.

83. Equally problematically, GoSS’s incapacity to offer competitive salaries means that many qualified personnel leave to take positions within international NGOs. As one health department personnel who has now left his government job behind explained:

Since I joined the Ministry of Health in 2006, my grade has been the same. I did my masters, but nothing was done to reflect my added qualifications. I was appointed to a higher grade in the hospital, but that was not reflected in
my salary. I was getting the same old pay, but with a lot more work. Worst of all, the ministry does not give the hospital supplies in time and it always blames us, especially when shortages are there. They have failed to realize that the town has grown and the hospital cannot cope with the population, in addition to the shortage of staff!

84. Indeed, GoSS continues to rely heavily on international donors working with NGOs or churches to make up for inadequate funding levels. International aid organizations remain key providers of services to the South Sudanese population, continuing a pattern established during the war. According to a recent analysis, in 2010, planned donor spending equaled 40% of the South Sudanese budget for education, 60% for infrastructure and 214% of state health spending (SWP 2012: 29). Outside of security and justice issues, they remain key players in almost every sector of South Sudanese life. In essence, they have become quasi-statebuilders though without a legal or popular mandate to do so. According to an LSE report, the prevalence of NGO’s in service provision is so prominent that “Numerous respondents indicated a tendency to hold the international or the NGO-community more accountable for their welfare, which deflects accountability away from GoSS” (2010: 72).

85. However, despite the fact that many South Sudanese consider NGOs more effective at meeting their basic needs than GoSS, the short term nature of NGO funding means that they are unlikely to supplant government actions in the long term. They also lack the ability to help develop GoSS’s governance capacity. Instead, their effect is often to undercut the role of government in the eyes of constituents while simultaneously relieving GoSS of their obligation to meet the needs of the population.

86. Continued reliance on aid from international donors also furthers the rentier mentality among SPLM leaders, many of who have benefitted from their control of aid resources. Opposition leaders have complained that there is no clear line between the SPLM and GoSS leading to a blending of financial resources between the two. Indeed, it is widely perceived that Western donors prefer to deal directly with SPLM leaders rendering participation in the movement the key criterion for asserting any influence over the aid distribution process. This has led to increased concern about continued SPLM dominance of GoSS and raises the question of whether international donors are foisting a single party upon South Sudan at the expense of opposition parties and other domestic constituencies, a subject I will discuss in greater detail in section 7.

87. To rectify these tendencies, GoSS released the South Sudan Development Plan (SSDP) in July of 2011. Supported by the African Development Bank and other international partners, the report was put together by the Ministry of Finance and Economic Planning and involved an extensive feedback process that solicited input from all of the relevant ministries as well as representatives of each of the ten state governments. The goal was to lay out a specific agenda for the first three years of independence regarding how GoSS will manage revenues from oil sales and articulate the expenditure priorities of the government. Towards this end, specific development targets along with an operational framework for achieving them were laid out in a related document, the “Medium Term Capacity Development Strategy.” However, while impressive in scope the SSDP has been undercut by the decision to shut down oil in January
2012 that has upended the state building process in the country (see the discussion on the oil shutdown in section 6.2).

6. Challenges to improving governance outcomes

88. There are three interrelated challenges that SPLM leaders must address if they are to improve governance performance and fix the citizen / government compact. First, they must reduce the government’s dependency on oil revenues, or at least mitigate the rentier tendencies commonly associated with vast resource wealth. Second, they must correct the sense among the public that the government is ridden with corruption and cronyism. And third, they must reduce the consistent militarization of government resources in the name of dealing with security challenges.

6.1 Dependence on oil revenues

89. The SPLM is able to consolidate its control over GoSS by controlling the substantial revenues produced by oil production. Revenues from the oil sector provide the rents that allow the party to coopt potential rivals by rewarding them for their loyalty to the regime. Under the CPA, GoSS received 50 percent of the revenues from oil produced in the south, which accounts for over 2/3rds of the total output of the undivided Sudan. But due to its landlocked position, the country can only export its oil through the pipelines that run through Sudan’s territory ending at the Red Sea. Oil revenues have made up the vast majority of GoSS resources since its creation in 2005 accounting for 98% of total revenue with donor aid providing a small additional source. Though several other sectors including rare earth minerals, water resources, agriculture and tourism have been identified as promising for development, GoSS has made little effort to do so. The government’s ability to diversify the economy is especially important not only due to the troubles the oil revenues have produced with Sudan, but also since analysts estimate that many South Sudanese oil fields have already peaked (World Bank 2011: 27).

90. The macroeconomic problems posed by dependence on oil revenues are well understood conceptually, though not easy to avoid in practice. For a heavily resource dependent, underdeveloped country with a small non-oil economy the main challenge lies in effectively using revenues that can be volatile from year-to-year. For example, turbulent oil prices meant that GoSS revenues have fluctuated greatly most notably when they soared in 2008, then dropped back sharply in 2009. As a result, in 2009, GoSS had to operate on a budget reduced by one-third from the previous year. This encourages government spending on fixed costs of administration (e.g. salaries, rents), while investment in development of infrastructure (e.g. hospitals, schools, roads, power) stops or starts inefficiently based on annual revenues.

91. Over dependence on oil revenues has important implications for the citizen / government relationship. Though taxation is often treated as solely an economic concern, it also affects the nature of the decision-making process in South Sudan. Specifically, the lack of a taxation regime has allowed elites within the SPLM to govern with few constraints due to the lack of a fiscal relationship (through taxation) with the population. Natural resource wealth has led to an increased sense of detachment between the government and the citizenry, a common effect
of a rentier fiscal arrangement in a low-income country, as it has not needed to develop a sustainable fiscal-social contract with the population. As a result, the general public has little capacity to hold ruling elites accountable by punishing them for poor performance (Benson 2011). In addition, oil revenues are perceived as creating a new elite in South Sudan “captured” by the oil industry thereby introducing dramatic class divisions within a society that historically had few, and furthering the gap between the new elite class and the masses of South Sudanese who remain among the poorest in the world.

92. Reforming the fiscal compact will require GoSS to establish a meaningful tax base, a challenge as the country has only recently begun to develop a formal economy. The African Development Bank (2011: 29) estimates that only 10% of the population is employed within the formal workforce, most by the government itself. GoSS is the single largest employer in the formal sector with approximately 400,000 employees on its payroll. In short, the tax base is extremely small and unlikely to provide meaningful revenues to GoSS in the near future.

93. Furthermore, many South Sudanese lack the basic skills necessary to function within the formal economy leading to the in-migration of large numbers of minimally skilled workers from throughout the region. Many of these are South Sudanese who were displaced by the war and may now carry the passport of a neighboring country. But many others without any prior ties to the country are drawn by the economic opportunities, with about half arriving from four neighboring countries: Kenya, Ethiopia, Eritrea, and Uganda. This population rarely pays taxes and is increasingly resented by the South Sudanese public for taking jobs away from locals. Due to the historically porous nature of South Sudan’s borders and the emphasis on security over economic concerns, GoSS has demonstrated little capacity to control and monitor the influx and behavior of these growing migrant populations (Mayai 2011: 23).

94. Finally, a dependence on oil resources has oriented SPLM elites outwards towards global investors who are the primary source of investment in the oil sector. Oil revenues have created opportunities for GoSS / SPLM leaders to further entrench their control by building alliances internationally. Despite receiving substantial financial and material support from the United States and European countries during the conflict and Interim Period, SPLM leaders are seeking to broaden their international relationships by wooing investors and donors in Asia. Asian countries’ interest in South Sudan is driven by their investments in the oil sector and other emerging sectors. Most significantly, SPLM leaders have successfully built close ties with Asian powers like China, India and Malaysia, all of which are joint investors in the Greater Nile Petroleum Operating Company (GNPOC) linking South Sudanese oil fields with pipelines running through Sudan.

95. China and India, in particular, have recently sought to assert their influence by leveraging their investments in the oil sector in both countries to force the two sides to resolve their differences. China, historically viewed as a key partner of the regime in Khartoum as well as the dominant purchaser of Sudan’s oil, has recently sought to bolster its relationship with Juba by providing aid to promote development including a recent grant for $31.5 million aimed at development projects such as improving the water supply, education, healthcare and agriculture (ICG 2012). President Kiir visited China in May during which he secured agreement on an $8 billion loan aimed at infrastructure development such as roads, bridges,
hydropower, agriculture, and telecommunications projects. During the visit, Chinese president Hu Jintao, called on both sides to “act in concert with international mediation efforts and stop military conflict along the border area” (Xiaokun 2012).

96. India established a consulate in Juba in 2007 and was the first Asian country to fully recognize South Sudan as an independent country. In 2010, India’s investments along with loans amounted to $3 billion. Of this amount, $2.4 billion was made by the government controlled oil company, ONGC Videsh Limited (OVL), and was devoted to acquiring oil exploration and production assets. India imports around 100,000 barrels per day from South Sudan and OVL has a 25% stake in the GNPOC. India is also engaged in other areas, such as humanitarian assistance, contributing 10,000 uniformed personnel to the United Nations Mission in Sudan set up to support the CPA. India has also pledged $5 million towards development assistance, capacity building, and training including 75 seats earmarked exclusively for South Sudan under the Indian Technical and Economic Cooperation, a bilateral assistance program launched in 1964. In addition, about 30,000 Sudanese students have graduated from Indian centers of education and about 5,000 enroll for higher studies in India every year.

97. Still, the US remains the key partnership for GoSS both in terms of defense expenditures and aid and continues to view South Sudan as a key regional partner. Some US government officials have even hinted that they would openly support South Sudan in the case of all out war with Sudan, viewing the country as a key regional partner in the global war on terror, though this position has not been openly embraced by the Obama administration. The effect of this strategic maneuvering between various international partners has been to allow South Sudanese political elites a high degree of autonomy from domestic political constraints rendering them less concerned with improving their relationship with domestic constituencies.

6.2 The Oil Shutdown and the 2012 Austerity Budget

98. Since the CPA, Sudan and South Sudan have been locked in an intense dispute over how to manage the two countries’ oil wealth. Though initially both sides agreed on a 50/50 split of the oil revenues, the agreement came undone over how much the South would pay to transport its oil through Sudan’s pipelines. Reports suggest that Sudan was commanding a hefty $30 per barrel in transit fees, while the international average is closer to $0.40-1.00 per barrel. Conflict between the two countries escalated in January 2012 when South Sudan decided to halt its oil production in retaliation to Sudan’s confiscation of large amounts of crude oil, according to GoSS worth close to $1 billion. Khartoum’s justification for the confiscation was that Juba did not pay $1 billion on shipments of oil released and transferred through its oil installations since July 2011. Roughly 350,000 barrels of oil per day are offline due to the shutdown of oil production. During this period oil prices have fluctuated between $85 and $118 per barrel amounting to a per day loss of between $30 to 41 million of which 50% would accrue to GoSS under the terms of the previous arrangement.

99. The loss of oil revenues has led to austerity measures that further undercut service delivery. In March of 2012, an austerity budget was passed by Parliament for government expenditures

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12 After independence, the mission was renamed the United Nations Mission in South Sudan.
from April 2012 to June 2012 before the passing of the 2012/2013 fiscal year budget in July. The austerity budget reduces operational and capital expenditures by 50% from the 2011/2012 budget. In addition, it cut down 10% of the revenue States’ received through central governments transfers. Specific cuts were made to the budgets of the Ministry of Defense (10%) though it remains the largest recipient of government expenditures. The Ministries of Health, Education, Agriculture, Petroleum and Mining were cut by 20%. And a massive cut of 85% was made to the budgets of the South Sudan Reconstruction and Development Fund, Local Government Board, Employees Justice and Public Grievance Chambers. Importantly, the budget does not make cuts to the salaries of public servants.

100. Even with these efforts, the fiscal situation in South Sudan remains precipitous at best. In a widely discussed briefing that reflected the shock many in the international community felt when assessing the decision to shut down oil production, the World Bank warned that the social impact of the shutdown would be painful as the percentage of the population living in poverty would rise from 51% in 2012 to 83% in 2013. In addition, it suggested 3.6 million more people will fall below the poverty line, that the under-five child mortality rate will double from 10% of live births in 2012 to 20% in 2013, and that school enrollment will likely drop from 50% to 20% over the same period (Sudan Tribune 2012d).

101. Though World Bank officials claimed that several of the assertions were misrepresented or misunderstood, the assessment is dire in its warnings on the impacts of the shutdown on the economy suggesting that South Sudan is facing a Zimbabwe-style economic crash triggered by the rapid devaluation of the South Sudanese Pound (SSP) combined with a spike in inflation. In addition, even if South Sudan takes the drastic measure of cutting monthly spending by 77% (the actual austerity budget makes cuts closer to 50%), the assessment suggests that its currency reserves can only last until December 2013.

102. Accusing GoSS officials with failing to comprehend the severity of their decision, the briefing suggests that the only protection against an economic crash is the low levels of economic literacy in the country and the fact that few people realize the potential ramifications of the shutdown. The full effects of the shutdown will likely not be felt immediately but over the next few months and years as farmers are unable to procure the necessary inputs for a successful planting and harvest season leading to deepening food insecurity in the country.

103. Compounding the situation, donor nations have insisted that they will not step in to rescue the South Sudanese economy due to a perception that the country is partly responsible for the military showdown with Sudan, and to ensure that both countries have incentives to follow through with the ongoing peace process in Addis Ababa, Ethiopia. To offset the effects of the shutdown, GoSS has been considering a number of alternatives including looking for loans guaranteed against future oil revenues and finding alternative means of transporting the oil either via road or water routes. Longer term, some in GoSS believe they can hold out until a new pipeline is built to the East African coast—a project that officials suggest could take at least three years. However, there are serious doubts about whether GoSS can find capable partners to build an alternate pipeline. As few new discoveries are made in the country’s oil fields, it becomes more difficult to justify the investment, especially considering the poor security conditions. In addition, Asian countries are already heavily invested in the GNPOC consortium and are unlikely to risk their investments by angering Khartoum (Wuoi 2012).
104. There is a sense among officials that South Sudanese are a resilient people who have demonstrated their ability to live through hardships and that the current economic struggles are nothing compared to the devastation of the war years. Thus far, their calculations seem to be correct. Though there is widespread discontent with the austerity budgets, interviews with people in Juba suggest that support for the oil shut down remains high and that public opinion supports the position that GoSS had no choice but to respond to Sudan’s provocations as a matter of national pride. Thus, the oil shutdown has not, by and large, translated into resentment against the ruling party.

105. Indeed, the decision to shut down the oil seems to have produced a “rally around the flag” effect among the population offsetting any loss of support due to the austerity budget. According to one observer who witnessed the decision to shut down the oil resources, there was near unanimity among the various factional leaders within the SPLM in support of the decision. Relatedly, there have been few voices questioning the wisdom of the decision among the public. Instead, there is a strong sense that Khartoum essentially stole the legitimate oil revenues of the South, and that a robust response was warranted.

106. Still, the depth of popular support for the decision is hard to gauge in the longer term. Already, there are reports about the direct impact of the shutdown especially in relation to a shortage of hard currency. Stories of undercover security agents deployed across Juba to circumvent the black market trade in dollars, which pays a hefty 50% premium over the rates offered by the Central bank (4.5 SSP vs. 3.1 SPP per dollar), abound in the local press.

107. GoSS officials are not downplaying the difficulties the oil shutdown is producing. Though the official 2012/13 budget was not available at the time of this report, Finance Minister Kosti Manibe Ngai outlined in a speech on June 18th, 2012 the basic outlook of GoSS regarding the financial picture. Calling the oil shutdown “a massive and unprecedented shock to our economy,” Ngai acknowledged that “severe macroeconomic consequences are unavoidable.” In particular, he highlighted the rapid depreciation of the South Sudanese Pound (40% against the US dollar since February) while pointing out that annual inflation in May 2012 had reached nearly 80%. He also suggested that the “average family in South Sudan has faced nearly a doubling of its costs over the last year.”

108. The 2012/2013 budget cuts monthly spending further from SSP 730 million to SSP 530 million for a total annual budget of SSP 6.4 billion, or approximately $1.3 billion at black market rates. The largest segment of the budget remains salaries which comprise 46% of expenditures. There will be no mass layoffs in the government sector reflecting GoSS’s awareness of the key role that government employment continues to play both in ensuring South Sudanese livelihoods as well as maintaining the SPLM patronage networks.

6.3 Corruption

109. Corruption is widely considered to be a key issue affecting governance performance that undermines the authority of the regime. A recent NDI (2012) report showed substantial concerns among the population about the degree of corruption and nepotism engaged in by
SPLM and GoSS leaders. Similarly, a Transparency International report (2012: 29) found that 67% of South Sudanese said that the level of corruption has increased over the past three years. More tellingly, the survey found that 66% of respondents have paid a bribe in order to receive a service in the past twelve months. During my visit to South Sudan in 2011, there were widespread accusations of corruption by members of the SPLM including rumors of leaders providing vehicles and building houses for members of their families, or more discreetly, appointing family members to reserved women’s seats in the legislature.

110. The most common and likely most costly form of corruption has to do with the process of awarding government contracts. Many are awarded without a competitive bidding process to businessmen with close ties to the SPLM elite. Advocates have called for a restructuring of the finance ministry allocation process to include greater transparency, clearer auditing procedures, regular employee transfers and a more independent procurement system (ICG 2011: 14).

111. Corruption is also prevalent in the taxation system. According to a recent report (Benson 2011), approximately $38 million was lost in 2010 due to questionable tax exemptions in Central Equatoria alone. The report suggests that the bulk of these exemptions were taken illegally by elected officials on their purchase or construction of homes and vehicles for personal use. In addition, the author suggests that construction firms implementing lucrative infrastructure projects have failed to pay taxes. Considering the small size of the South Sudanese tax base, these are major losses that forced President Kiir to announce several accountability measures to stanch the bleeding of tax revenues. The government is also making a number of moves to centralize and improve the tax collection process by establishing a National Revenue Authority (Ngai 2012).

112. Concerns about corruption have also hindered the judiciary. Judgments within the formal (government) and informal (customary) court systems are often viewed as being biased by bribes. As a USIP study notes (2010: 72), “Public confidence in the local justice system is undermined by perceived corruption, including bribery, favoritism, and deliberate delay or hindrance, particularly in town branch and government courts.” The Transparency International survey provides additional evidence, with almost 45% of South Sudanese who reported interacting with the Judiciary claiming they had to pay a bribe to receive a service.

113. A South Sudan Anti-Corruption Commission (ACC) has existed since 2006 and has offices in all ten states. But it was considered a non-effective entity until the recent appointment of a former Supreme Court judge, John Gawech Lul, in November of 2011. Under the direction of the former Chairman, Pauline Riak, no GoSS official had been prosecuted for corruption since the region gained self-rule in 2005. In my own interviews, and as reflected in multiple reports, despite members of the ACC possessing incriminating information of corruption by leading GoSS officials, no action was taken by the commission (ICG 2011).

114. Part of this has to do with the structural weakness of the ACC. Anti-corruption investigators acknowledge that they have few resources to initiate corruption investigations and lacked authorization to bring charges independently against GoSS officials. Instead, investigators
work with the Ministry of Justice—which has the power to overrule any decision made by the commission—to bring charges against officials thereby undermining its effectiveness.

115. More damningly, some have accused the ACC as choosing not to go after powerful figures within the SPLM out of recognition that corruption plays an important role in the patronage networks that are central to the functioning of the party. By this logic, GoSS “tolerates such practices for the sake of stability” (SWP 2012: 21). Riak, the ex-ACC head, was considered to be a key figure in this scheme. Reports in Sudanese newspapers based on interviews with ACC members accuse Riak of running the commission single-handedly, appointing relatives without following public service rules and recruitment regulations (Sudan Tribune 2012c).

116. President Kiir does seem to understand the costs of corruption to GoSS’s legitimacy both domestically and internationally. As a result of pressure from international donors, he has sought to rejuvenate the ACC and it has recently announced several high profile initiatives. Soon after being appointed Chairman in November 2011, John Gawech Lul, traveled to Europe to track down stolen money stashed abroad by government officials and to close off the money transfer routes. He recently reported that as a result of his efforts, the ACC has referred five cases to the Ministry of Justice for prosecution (Sudan Tribune 2012b).

117. In early May, based on information provided by the ACC, President Kiir wrote a letter to 75 former and current senior GoSS officials suggesting that up to $4 billion has gone missing due to government graft and offering an amnesty to anyone who returns the money. Thus far about $60 million has been recovered. Calls for the disclosure and punishment of all 75 ministers have been circulating in the press, though only a few have been identified yet.

6.4 Security challenges / Militarization of government resources

118. In addition to the tensions with Khartoum, GoSS has consistently faced numerous security challenges from a wide variety of different violent militias throughout the Interim Period. The effect of both has been to reinforce a military mentality among GoSS elites, most of whom have not yet fully transformed from the rebel leaders they once were (ICG 2011: 12). According to one close observer, despite the arrival of independence, “the pre-occupation of the government has been security and everything else has been secondary.” There are few voices among the SPLM elite who challenge the security focus of GoSS and the bulk of government revenues continue to be directed towards the national army, even under the austerity budget.

119. The militarization of government resources naturally has a direct effect on service provision. The budget for “SPLA & Veteran Affairs” in the 2011 budget, for example, comprises 28% of the total budget while the Ministry of Internal Affairs (charged with ensuring domestic security) constitutes an additional 8% of the total. In contrast, spending on education, health and infrastructure combined comprise barely 22% of total government expenditures. The corresponding figures in the three-month austerity budget are 15% for education, health and infrastructure combined, a drop of 7%. In contrast, the renamed “Ministry of Defense & Veteran Affairs” accounts for 37% of total spending, an increase of 10% in its relative share.
of the total budget. Both in absolute terms and as a share of the total budget, defence expenditures have risen every year since 2006.

120. Donors, recognizing the importance of helping build a professional military and police force to allow GoSS to establish full territorial control over South Sudan, have provided substantial resources towards this end. According to USAID (2011), the United States has already given more than $300 million towards reforming the security sector since 2008, a number supplemented by millions more from various other international partners. Most of this support is not reflected in the official budget numbers meaning that security commands an even larger share of government expenditures than the brief sketch provided above.

121. There is little need to recount in detail the legitimate domestic security challenges faced by GoSS. The most threatening have been militias founded by ex-SPLA members such as George Athor and Gatluak Gai, both of whom were brought back into the movement through the initiatives of President Kiir ahead of the independence referendum. In addition, South Sudan has long faced outbreaks of violence related to the historical practice of cattle rustling. These conflicts have become more violent due both to the widespread availability of small arms and the relative weakness of the national army. Yet few doubt that GoSS possesses both the military capacity and the political knowhow to deal with such violent challenges.

122. Far more central to the militarization process, of course, has been the perceived need to mitigate any strategic advantages still possessed by Khartoum. In addition to the dispute over oil, there are three major flashpoints that could trigger a larger war with Sudan. First, both sides have provided weapons, sanctuary and other types of material support to proxy militias operating within each other’s territory. Second, there has been a history of border clashes with the Sudanese military, often without an explicit agenda. And third, there is still tension over the unresolved status of several key territories including Abyei and Heglig that straddle the border between the two countries.

123. It was South Sudan’s decision to occupy Heglig in April that brought the countries to the brink of war. The international community has pushed both sides to resolve the current standoff diplomatically. Soon after the crisis, the African Union outlined a seven-point roadmap towards resolving all remaining issues between the two sides that was quickly endorsed by the United Nations Security Council (UNSC) (Sudan Tribune 2012b). If progress is not made within three months of the May 8th start date for negotiations, the resolution authorizes the council to “take appropriate additional measures” in accordance with Article 41 of Chapter VII of the UN Charter. This would allow the Council to place sanctions on both sides including, “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” According to the most recent reports from the UN peacekeeping mission, both sides have pulled out of the disputed regions while talks continue in Addis Ababa. The United States and China, and to a lesser degree Russia, have been working to ensure that these negotiations produce results.

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13 This figure does not include covert US support for the South Sudan army estimated to be in the tens of millions of dollars, though no official figure exists.
14 See Small Arms Survey (2011) for a detailed discussion of the integration of militias into the SPLA.
124. Despite some diplomatic progress, the conviction that the army needs to undercut Sudan’s military advantages remains. To improve the security capabilities of GoSS, the US has been providing direct military support throughout the Interim Period and after. But the US leadership, though divided, has recently chafed at the demands of SPLM leaders for greater military support, preferring instead that GoSS remain committed to the ongoing peace process. Hawkish elements within the administration (as well as outsiders such Andrew Natsios and Nicholas Kristof, two influential voices on Sudan, for example) have called for the Obama administration to provide increased military support to GoSS in order to overthrow the regime in Khartoum (Rice 2007). According to knowledgeable observers, however, the Obama administration has not made any long-term decisions about how to address the situation preferring instead to wait out the three-month peace process.

125. The US reticence on providing additional military support has led GoSS to look elsewhere to procure weapons to mitigate the military advantages of Sudan. Specifically, SPLM leaders have sought to undercut Khartoum’s ability to deploy aerial bombardment (Small Arms Survey 2010: 24). Recently, army leaders announced that they will soon acquire anti-aircraft missiles, though they did not specify from where they would seek to purchase them or what kind they would be. In an interview with Reuters, the South Sudanese army spokesman Philip Aguer demonstrated the country’s resolve to procure arms on the open market despite the severity of the economic and political crisis: “It depends on the market and the political will to sell to us” (Holland 2012).

7. Domestic stakeholders and SPLM accountability

126. The general assumption regarding the South Sudanese political space is that the SPLM faces no challenges to its dominance due both to the overwhelming military capacity it has at its disposal as well as its capacity to absorb oppositional elements within its ambit. Though the coalition of forces that comprise the SPLM does appear durable even in the face of the economic crisis, they are more in flux than generally acknowledged and often have complex relationships with actors and institutions outside of the party. In this section, I examine the position of domestic stakeholders and their ability to affect GoSS decision-making.

7.1 Traditional authorities

127. Ethnicity remains a powerful force within South Sudanese life and is the basis for the SPLM patronage system. As a result, traditional authorities have considerable political sway, though their relationship to GoSS and the SPLM is as likely to be combative as it is to be complementary. Chiefs are viewed as embodying specific tribal interests and are perceived as enjoying a degree of ingrained legitimacy as a result. As discussed briefly in the section on the rule of law, the party has a convoluted relationship with traditional authorities in South Sudan. During the war, the SPLM/A occasionally came into conflict with chiefs but also sought to incorporate them into the wider war effort. This uneasy tension continues to define the party’s relationship to traditional authorities in the independence period and chiefs continue to play a variety of roles within governance institutions, especially at the local levels.
128. The notion that modern governments can be strengthened by integrating traditional structures is one that has increasingly become popular within the donor community. The idea is that traditional authorities can lend their legitimacy to the budding state apparatus. In South Sudan, the SPLM due to its own resource constraints and with the support of the donor community has sought to incorporate traditional leaders into local government. However, this has proceeded in an ad hoc fashion leading to considerable overlap in responsibilities between chiefly authorities and their formal government counterparts. As a study on the effects of this “dual structure” puts it, “While theoretically, traditional and state authorities are joined in government, in reality they often play out as various versions of governance” (LSE 2010: 27).

129. Furthermore there is little evidence that chiefs are always held in high esteem by the very communities they are meant to represent. In South Sudan in particular, the war weakened the authority of chiefs as both Khartoum and the SPLM/A frequently intervened within chiefly succession disputes towards their own narrow ends. The inability of traditional authorities to stand up against both sides during the war meant that many lost confidence in the chiefly structures with only 20% saying that they would turn to the chiefs if they felt unsafe according to a recent survey (LSE 2010: 82).

130. Nonetheless, GoSS has bolstered the power of traditional authorities through a number of specific initiatives. Most prominently, since the CPA was signed, the government has created new administrative structures including creating new counties based on pre-existing tribal boundaries. The effect has been to reinforce the power of the chiefs who are increasingly viewed as a key advocates for the community in the struggle for resources. Indeed, GoSS’s reliance on traditional authorities has led to chiefs possessing some capacity to compete with local politicians, though not always with intention of improving governance performance. Instead, chiefs often undermine government authority over the areas the chiefs consider to be under their own domain.

131. In addition, the government has sought to distribute appointments within the bureaucracy to ensure tribal representation, further strengthening the role of the chiefs. There is a perception that service delivery has remained unequal along ethnic lines and that descriptive representation on an ethnic basis is the only way to ensure access to public goods and government appointments. However, according to the NDI report, most South Sudanese would prefer that ethnic membership not be the basis of appointments to government (while also expressing concern about the domination of the government bureaucracy by a single ethnic community).

132. Furthermore, though GoSS and many international donors perceive traditional authorities as legitimate, a reliance on customary authorities for governance may mask internal tensions. Specifically, critics have pointed out that empowering chiefs often works against the interests of women or youth. For example, women’s rights are often circumvented due to the entrenched patriarchy of traditional authorities and the failure of customary law to provide adequate protections for women (HSBA 2012). Women’s organizations have complained that victims of sexual violence are often encouraged to work through traditional courts that favor negotiated settlements over punitive action for the perpetrator.
133. Such a reliance on traditional authorities hinders nation-building efforts by conditioning individuals to look towards their own ethnic communities to meet their basic needs. It also has the effect of making political elites reliant on support from ethnic constituencies rather than wooing support across ethnic lines. No member of Parliament in South Sudan has won a seat outside his or her tribal constituency (Ajawin 2011). At worst, an overreliance on traditional authorities may undercut efforts at consolidating statehood by permanently establishing ethnicity as the basis of access to government resources, thereby undermining efforts to promote a national identity alongside more technical aspects of statebuilding (USIP 2011a).

134. Historically, the SPLM has relied on an anti-Khartoum position to unify the ethnically divided Southern population. The ambiguity by which the SPLM approached secessionism—referring to it to obliquely while rhetorically claiming to be working towards the reform of a united Sudan—means that the common identity of contemporary Southern Sudanese has long been limited to opposition to Khartoum. Such a reductionist vision of South Sudanese identity that extended membership in the ‘nation’ to all those opposed to the Khartoum regime while failing to articulate a distinct vision of South Sudan has not proven durable in the current period. GoSS officials have openly discussed their attempts to develop a new post-war national identity emphasizing the importance of nation-building proceeding alongside statebuilding (USIP 2011a). But political and economic realities mean that most Southern Sudanese continue to look towards their ethnic community over their national identity. Some have suggested that GoSS’s recent saber rattling with Khartoum is intended to reunite an increasingly divided South Sudanese populace, hence deflecting attention from the governance failures of the regime.

135. Despite the very real power that chiefs continue to possess, it is unlikely that they could congeal into an effective challenge to SPLM authority, or even pressure the government to improve service delivery. Since they by definition pursue narrow ethnic interests, there is little chance of the chiefs working across ethnic lines to pressure GoSS, except for perhaps those issues that seek to limit the power of the traditional authorities themselves.

7.2 Opposition parties

136. Opposition parties are very weak and have little influence over governance decisions in South Sudan. According to a 2011 ICG study, SPLM members not only occupy the presidency and vice presidency, but also control 88 per cent of ministerial posts, and 94 percent of the legislative assembly seats including the speakership, as well commanding the loyalty of the army leadership. The effect of this dominance is that most political actors continue to prefer to jockey for influence within the SPLM rather than establishing separate opposition parties (SWP 2012).

137. The SPLM has almost no real challengers within GoSS leading to a disconcerting intermeshing of the party with the government. Opposition leaders blame the CPA for elevating the SPLM into the sole representative of South Sudan and find fault with the post
CPA power-sharing formula that granted the party 70% of the Assembly seats, providing it with an unfair advantage and allowing it to consolidate its control over the country.\footnote{The CPA also granted the National Congress Party (NCP), the ruling party in Sudan, a fixed number of seats in parliament. But following the election of 2010, the party only has one remaining seat.}

138. The Sudan People's Liberation Movement-Democratic Change (SPLM-DC), a splinter party founded in 2009 by the ex-SPLA leader Lam Akol Ajawin, continues to be the only viable opposition party in South Sudan largely due to the standing of its founder. Ajawin is from the Shilluk community, South Sudan’s third largest ethnicity, and earned a Ph.D. in London before joining the SPLM/A in 1986. In 1991, he joined with Riek Machar, the current Vice President and a leader of the Nuer community, to break away from the SPLM/A forming a violent faction that was only reincorporated into the movement more than a decade later. During the interim period, he was the highest SPLM/A member to serve in Khartoum occupying the position of Foreign Minister in the unity government. He remains a harsh critic of the SPLM, frequently referring to the party as a “totalitarian” movement and criticizing what he perceives as the SPLM’s capture of the state apparatus (Ajawin 2012)

139. The SPLM-DC won only two seats, both in Shilluk areas, in the 2010 election, and Ajawin managed to earn 7% of the vote in the presidential election. Despite being criticized as a tool for Shilluk interests, the party operates offices in all ten states and touts its multi-ethnic leadership structure including leaders from the Dinka, Nuer and Acholi communities among its highest ranks. Perhaps the most important contribution of the party has been Ajawin’s consistent attempts to ensure that South Sudan does not transform into a single party state. In 2009, during the run up to the elections, President Kiir issued a memo to all ten state governors encouraging them to cooperate with other political parties except the SPLM-DC. Ajawin took the case to Sudan’s Constitutional Court, which ultimately decided in his favor allowing the party to campaign for the elections. But Ajawin’s perceived pro-Union position and clear ties to the Shilluk community renders him and the SPLM-DC unlikely to transform into a viable counter-balance to SPLM dominance of GoSS.

7.3 Domestic NGOs

140. Domestic NGOs have proliferated since the CPA espousing a variety of causes and agendas. But as a sector, NGOs remains weak and underdeveloped, and lack the capacity to hold the government accountable. As a result, citizens have few opportunities to express their opinions about governance failures through domestic channels. To their credit, women’s, youth and human rights organizations have all sought to highlight issues of pressing concern regarding governance issues, but have not demonstrated any ability to influence GoSS decision-making as yet. GoSS has failed to provide support to civil society organizations and has not sought to educate the population on the role such actors must play in the democratization process.

141. International donors, citing the weak capacity of domestic NGOs, have not provided direct support to local organizations instead preferring to work through their non-South Sudanese counterparts. As a result, domestic NGOs face a double conundrum, lacking credibility to affect decision-making at home while also being forced to tailor their agendas to appeal to external donors for basic support. In addition, much of the burgeoning NGO sector is located
in Juba or other large cities and has demonstrated little ability to expand into smaller towns and rural areas. Overall, while the emergence of a domestic NGO sector should be cheered, it remains too new and fragile to have much effect on governance outcomes at this point.

7.4 Religious institutions

142. The leaders of the Catholic and Protestant churches have long sought to carve out an independent voice in South Sudan. Religious leaders have widespread credibility as an alternate authority to the SPLM and have deep ties to rural and marginalized communities in particular. During the war, they frequently provided whatever minimal services were available to the war-affected populations often establishing elaborate parish structures that provided education, health and even dispute resolution services to the population. During the war, churches also served as the largest employer across the country, often serving as the only available employer for the educated (Mampilly 2011). As a result, church leaders have greater legitimacy among the population when compared with the leaders of the SPLM, a source of constant tension between the two (The Economist 2011).

143. The churches serve as a rare multi-ethnic space within South Sudanese society often bringing together devotees with diverse ethnic backgrounds into a single parish community. Church leaders also retain strong ties with their counterparts in Sudan and have pledged their support to their co-religionists who often face severe discrimination.

144. Several church leaders, including Archbishop Daniel Deng Bul of the Episcopal (Anglican) Church of Sudan and Archbishop Paulino Lukudu Loro of the Catholic Church have wide credibility and have publicly taken stands on various political issues including vocally advocating for separation. Church leaders perceive their mission as protecting the interests of their parishioners and often come into conflict with GoSS officials at the local level over a wide variety of governance issues. At the same time religious leaders are cognizant of overstepping their boundaries and have been reluctant to openly criticize the national leadership of the party, except on issues of dire national import.

145. For example, at a recent meeting in Yei, 14 bishops from the Anglican and Catholic churches offered support for the ongoing peace process and encouraged the SPLM leadership “to continue to exercise restraint and to avoid doing anything that might be construed as military aggression,” while also noting their concern at “the build-up of arms in both nations.” In addition, while acknowledging that the oil shutdown was popular among the population, they called on GoSS officials to not lose focus and “ensure that basic services and good governance are delivered” (Dachs 2012).

7.5 Media

146. Over the past five years there has been a substantial transformation of the media environment. Most prominently, a number of radio stations supported by both religious institutions and international donors have come into being. Radio distribution programs have ensured that the majority of South Sudanese for the first time have access to media reports. While the dispersion of radios has not been universal, an LSE study (2010: 90) suggests that more than
75% of the population can access radio broadcasts. Similarly, there has been a proliferation of independent newspapers, though due to the low literacy rate, these naturally reach a far smaller audience.

147. Although Article 24 of the Transitional Constitution guarantees the freedom of expression and media, GoSS has yet to pass a long promised media law, leaving many editors and journalists unclear of their rights. Without a media law in place, reporters work in a legal vacuum and have little capacity to defend their reporting from charges of slander or worse. The relationship between the independent media and the SPLM can be described as tense at best and hostile at worst. GoSS officials, including the Information Minister Barnaba Benjamin Marial, have openly and repeatedly criticized media coverage of political elites, despite professing a commitment to free expression. Still, the proliferation of media options in South Sudan over the past seven years is impressive and has helped foster a culture of public debate regarding GoSS performance.

148. More disturbingly, journalists who have investigated accusations of corruption among top SPLM leaders have faced criminal prosecution or worse. In one recent high profile case, two independent newspapers, The Citizen and Al Masir, were ordered by a court in Juba to pay Pagan Amum, a cabinet minister and the SPLM Secretary General, 100,000 SSP in damages for defamation (Rhodes 2012). In addition, the journalists were ordered to publish an apology within 15 days or face a ten-times increase in their fines to 1 million SSP. The reporters had published an accusation from a Ministry of Finance official that Amum had illegally ordered him to transfer $30 million of public money to Amum’s personal account. Although Amum was never convicted of the crime, the money was never recovered. The newspapers claim that they were simply quoting a former finance official and not intentionally slandering Amum.

149. Other reporters have been harassed by government officials for investigating sensitive security issues. A reporter for the Sudan Tribune was detained and questioned multiple times for reporting on the treatment of civilians by the SPLA during a 2011 counterinsurgency campaign in Mayom county. According to an analysis by the Committee to Protect Journalists, “local journalists fear that the former rebels turned government officials still harbor a war mentality that is unaccustomed to criticism, and that they are not prepared to extend the freedoms they fought hard to attain” (Rhodes 2012).

8. Conclusion / Understanding the SPLM’s partial transition

150. As this report emphasizes, the SPLM remains a popular ex-rebel movement in the early stages of a hoped for transition in to an accountable and effective ruling party. The SPLM came into power in a country faced with overwhelming challenges related to the historical legacy of marginalization by the Sudanese state and the debilitating effects of over two decades of war. In addition, GoSS is afflicted by overall weak human and institutional capacity due to the war-induced emigration of its small professional class. In its efforts to establish a legitimate and effective government, the SPLM has a decidedly mixed record thus far, one that has been negatively affected by the decision to cut off its primary financial lifeline. Though in possession of high-levels of authority among the population at large, the citizen / government compact is under threat driven by high levels of corruption, inadequate service delivery, and a
decision-making process that is still the preserve of a narrow group of SPLM leaders, almost all of who achieved their standing due to their history as leaders of the Southern insurgency.

151. Can the international community influence the trajectory of the SPLM going forward? This is a challenging question, but returning to the comparative framework outlined at the start of the report, we can make some initial assessments of party’s performance thus far. Despite being seven years removed from the creation of GoSS, the SPLM has not been transformed in to an effective ruling party operating within the confines of the constitution. Instead, it continues to operate as a militarized coalition concerned first with ensuring the survival of the regime. Towards this end, there is almost no separation between the party and the government, which instead functions as a mechanism through which the SPLM distributes private benefits (rents) to keep its coalition together. As long as the regime remains focused on its own survival over improving governance performance, it is unlikely that GoSS will be able to achieve—or even address—critical service delivery objectives.

152. In order to evolve into a legitimate ruling party concerned with improving governance performance, the SPLM should transition away from its current emphasis on regime survival and embrace a more constitutional arrangement in which it exists as a dominant party bound by the rule of law and focused on improving its technical capacity to provide meaningful services. The two biggest challenges are first transforming the mindset of SPLM leaders away from a military focus towards an appreciation of political struggles, and secondly, transforming an organization established to wage war into a dialogue based political party. In other words, a successful transition will require both attitudinal and structural changes.

153. Based on a study of eight similar cases, a 2008 report by the Clingendael Institute provides the most systematic study of rebel to ruling party transitions (DeZeeuw 2008). In the study, the authors define attitudinal changes in two ways. First, has there been a democratization of the decision-making process within the party? As an armed movement, many groups are deeply hierarchical with a narrow coterie of leaders or even a single decision-maker that calls the shots. In contrast, a successful political party is expected to have a much less concentrated and more representative decision-making process that incorporates feedback from the bottom-up. Second, has there been a shift in the adaptation of strategies and goals of the party? Whereas during the conflict rebel leaders often have a narrow worldview focused specifically on the military challenges, in the post-conflict period ex-rebels turned politicians must learn to design political campaigns, build relationships with civil society and other social forces, as well as work with opposition parties and the media in non-combative ways.

154. The structural changes required to transition from armed group to non-violent political party are equally challenging. First, has there been a demilitarization of the organizational structure? In particular, is there a clear separation of the political party from the military elements it may have once controlled? While disarmament, demobilization and reintegration (DDR) of fighters is an important step towards this goal, it is not sufficient if the party leadership does not forego control over the armed wing (which may be formally incorporated into a new national army). Second, has there been a sufficient development of the party organization? Specifically, is the party capable of representing popular interests, fielding candidates for elections, organizing campaigns, and taking on governance responsibilities
once ensconced in power? Structurally, this entails the formulation and adoption of a formal party constitution and political program, the establishment of an official structure suited to pursue the party program, the maintenance of physical offices with the capacity to reach out to the entire population, and the recruitment of qualified party cadre to staff the organization.

155. By these standards, how successful has the SPLM’s transition been thus far? Structurally, the party has made substantive progress in developing the party organization. The SPLM has a clear constitution promulgated in May of 2008. The party also has a broad political structure with multiple offices spread throughout the territory of South Sudan. In addition, it claims a wide membership representing a cross section of South Sudanese society. More negatively, the overlaps between the SPLM, GoSS and the SPLA remain disturbing. As this and other reports make clear, it is difficult to understand the boundaries between the party and the national government, especially in regards to the national army (ICG 2011). Salva Kiir’s position as both President (who is commander in chief of the military) and the former chief of the rebel army also means that such a transition is unlikely to occur during his time in office.

156. In attitudinal terms, decision-making within the party remains the preserve of a narrow group of elites who came into their positions as a result of their status within the rebel army. Though there has been some progress in bringing in a wide variety of South Sudanese into the party, they do not yet have the capacity to influence decision-making. In regard to the SPLM relationship with other social actors, the record for the party is similarly dismaying. As the discussion of the situation of opposition parties and civil society leaders makes apparent, the SPLM has yet to develop functional working relationships with the other relevant social forces within South Sudanese society.

157. By the standards of the ideal types laid out in the Clingendael report, the SPLM falls somewhere between a “partial transformation” and a “façade transformation.” The difference between the two is that the former has begun to make the structural and attitudinal changes necessary for a successful transition while the latter demonstrates little interest in making a full transition to an unarmed political party, at least in the short term. The fact that despite the evolution of the SPLM party structure there has not been a corresponding shift in the decision-making process is especially worrying.

158. The question remains to what degree have the changes that the SPLM has made thus far been merely cosmetic, designed to receive money and support from the international community while deflecting criticism from its military focus? It is important to keep in mind that the process of transitioning from armed group to an effective governing party is often non-linear and multidimensional, and hence seven years after the signing of the CPA and one year after the declaration of independence may simply not be enough time to gauge the transformation thus far. A more useful question taken up in this report is what accounts for the SPLM’s incomplete transition thus far?

159. Scholars engaged in comparative analysis of rebel to party transitions have pointed to a number of internal and external factors that are useful for understanding the trajectory of the SPLM in the post-conflict period. Internally, is it the motivation, organizational structure or the leadership of an armed group that determines its behavior in the post-conflict period?
Motivation refers to the underlying purpose of the movement regarding its ultimate objective. Specifically, was the movement fighting for independence (secession), reform of the central state (reformist), freedom from colonial rule (liberationist), or more narrow economic objectives (warlords), to borrow Clapham’s (1996) influential typology. According to this schema, the SPLM/A is something between a secessionist and reformist movement. Reformist movements are often considered the most likely to make the transition successfully as they commonly possess a clear governance agenda. In the case of the SPLM/A, John Garang’s notion of a democratic and inclusive “New Sudan” would certainly fit the standard, though his death in 2005 left the party unmoored from this or any other specific governance philosophy.

160. Though the motivation of the armed group does provide some useful information, it is not determinative of the actual behavior of ex-armed groups once in power. Others have emphasized the organizational structure of the rebellion itself. Movements vary according to the degree of command and control they exhibit ranging from deeply hierarchical organizations to more decentralized entities that encompass a variety of distinct factions. Similarly, the nature of the leadership, specifically whether the movement is united behind a single charismatic figure or whether multiple leaders jockey for influence at the top of the hierarchy, is thought to have an effect on the post-conflict transition (DeZeeuw 2008). By these criteria, the leadership of the SPLM/A was always coalitional in nature bringing together a wide variety of Southern political actors behind a common anti-Khartoum agenda. Such groups are generally thought to struggle in making the post-conflict transition compared to groups with clear command and control structures.

161. In addition, successful rebel to government transitions are also related to the broader context of the rebellion, specifically the type of conflict settlement, the domestic and regional context, and the role of international actors. Conflicts end in a variety of ways either through outright military victories by the government or the rebel movement, or they may end as the result of a negotiated settlement. Wars that end with the rebels becoming one of several political parties competing for power naturally create an incentive for such movements to transform into effective political parties. In contrast, the CPA essentially anointed the SPLM as the sole representative of the Southern population, much to the chagrin of other parties, and thereby reducing the need for the party to prove its governance capacity over rivals.

162. The domestic context refers to the initial conditions that prevailed prior to the outbreak of rebellion as well as to the post-conflict situation. It can range from societies with deep pre-existing cleavages that are further divided due to the violence to more homogenous societies where the end of the conflict brings the population closer together. Although during the war the SPLM was frequently divided, its success in achieving independence means that it continues to enjoy deep wellsprings of support from the population (NDI 2012). Unfortunately, this support actually undermines the transition process as the party is able to rely on its popularity to make decisions in a non-consultative manner. For example, the decision to cut off oil revenues was made with almost no consultation with the public despite its profound effect on daily life in the country. Yet, rather than creating a negative backlash, it seems to have bolstered support for the party perhaps due to a “rally around the flag” effect, at least in the short run.
163. Regionally, the factors affecting the rebel to party transition are often related to the relationship between the armed movement and neighboring countries during the war. Many rebel groups rely on political, financial and material support from neighboring countries to survive, and hence may receive continued support for their transitions. Others may have contentious relationship with countries in the region and find themselves faced with hostile neighbors upon assuming power.

164. South Sudan shares borders with six other countries (Ethiopia, Kenya, Uganda, Democratic Republic of the Congo, Central African Republic, and Sudan). Though most of these countries have been supportive of the SPLM both during and after the war, the relationship with Sudan, of course, remains central and has encouraged the party to retain a strongly militaristic orientation. The relationship with Uganda, the key SPLM/A supporter after the fall of the Marxist regime in Ethiopia, exerts a similarly negative influence. Yoweri Museveni, a former rebel leader turned autocrat, was a close ally and influence on John Garang who modeled his own insurgent army on the NRM/A. But despite his initial reforms, Museveni has never fully given up the rebel mentality, positioning his movement as the only political option, restricting opposition parties and cracking down on civil society.

165. Finally, the international community can play both a positive and negative role in fostering successful rebel to government transitions. As discussed above, international NGOs and peacebuilders often step in where weak post-conflict governments are unable to, often working to supplement the capacity of ex-rebel movements transformed into ruling parties, not always with positive impacts. More negatively, private actors may ‘capture’ state elites through their investments in natural resources, hence undermining the citizen/government compact. All of these actors are present in South Sudan, yet it is difficult to disaggregate their individual effects on the transition, at least at this point.

166. Overall, the current structural environment in which the SPLM operates does not provide adequate incentives for the former rebel army to transition into an effective and democratically oriented ruling party. Instead, the economic base of the country, its international partnerships, the security situation and the weakness of domestic oppositional forces continue to allow the party to control the country with few restraints on its power. As a result, SPLM leaders continue to underemphasize the importance of improving service delivery or even developing an appropriate governance philosophy in favor of a narrow-minded focus on regime survival.

167. Furthermore, though certain leaders have recently demonstrated an increased concern for good governance largely motivated by the severity of the fiscal situation, too many in the top leadership view the party’s mission through a military lens. The internal and external security situation continues to dictate budgetary priorities, often towards expanding the country’s military apparatus. As a result, SPLM elites continue to focus primarily on maintaining national cohesion, with direct costs to service delivery. The ruling elite’s approach to managing the ethnic diversity of the country also poses a threat as citizens are conditioned to look towards their ethnic identity to ensure access to government institutions and services.
Still, despite the severity of the fiscal and political challenges facing the government, the SPLM deserves credit for advancing the statebuilding process in a variety of ways. First, despite the negative externalities, the SPLM has been successful in promoting domestic security and reducing internal disorder. Second, GoSS has sought to formalize the constitutional and legislative structure of the country and has demonstrated a capacity to evolve in response to domestic and international pressures. Third, GoSS has worked to improve its institutional capacity by initiating a series of reforms to improve its personnel and to reincorporate members of the diaspora into governance institutions. And finally, elements of GoSS have worked with international partners to revive the moribund health and education systems in order to remedy the deep poverty that continues to afflict the majority of the population, with limited success.
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