SUDAN – GOVERNMENT FISCAL YEAR
January 1 – December 31

CURRENCY EQUIVALENTS (FEBRUARY 2010)
Currency Unit: Sudanese Pounds (SDG): 2.32 = US$1.00

ABBREVIATIONS AND ACRONYMS

AG  Ausline General
CAIHRD  Capacity Building, Institutional and Human Resource Development Project
CANS  Civil Authority of New Sudan
CBTF  Capacity Building Trust Funds
CCSS  Coordinating Council of Southern States
CFSSP  Core Fiduciary Systems Support Project
CMA  Civil-Military Administrators
CoM  Council of Ministers
CPA  Comprehensive Peace Agreement
DFID  U.K. Department for International Development
EC  European Commission
EJC  Employee’s Justice Chamber
GoNU  Government of National Unity
GoS  Government of Sudan
GoSS  Government of Southern Sudan
ICSS  Interim Constitution of Southern Sudan
IGAD  Intergovernmental Authority on Development
INC  Interim National Constitution
JAM  Joint Assessment Mission
KPA  Khartoum Peace Agreement
LC  Leadership Council
LG  Local Government
LGA  Local Government Act
LGB  Local Government Board
MDTF  Multi-donor Trust Fund
MLPS&HRD  Ministry of Labor Public Service and Human Resource Development
MoFEP  Ministries of Finance and Economic Planning
MoLACD  Ministry of Legal Affairs and Constitutional Development
MoPA  Ministry of Presidential Affairs
MoU  Memorandum of Understanding
NC  National Convention
NEC  National Executive Council
Sudan

Strengthening Good Governance for Development Outcomes in Southern Sudan: Issues and Options

April 2010

Public Sector Reform and Capacity Building Unit (AFTPR)
Africa Region

Document of the World Bank
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Vice President : Obiageli Katryn Ezekwesili  
Country Director : Kenichi Ohashi 
Sector Director : Sudhir Shetty 
Sector Manager : Anand Rajaram 
Task Team Leader : Vivek Srivastava
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Task Team
PART I

INTRODUCTION:
GENESIS AND STRUCTURE OF THE STATE-BUILDING PROJECT IN SOUTHERN SUDAN

1. This report is the product of a joint Government of Southern Sudan (GoSS) and World Bank initiative aimed at facilitating informed policy making in key areas of public service management. The objective was to facilitate a process in which a Bank-supported team would provide technical inputs and would support appropriate consultation leading to informed and pragmatic policy making and implementation. Coordination, in particular on policy formulation, is difficult and a key constraint in young governments and more so in post-conflict situations such as that of Southern Sudan. Available analytical and executive capacity is already stretched. The number of issues that need to be addressed is large and prioritization is difficult. There are sharp political divisions that are not easily reconciled.

2. As in other post-conflict situations the Southern Sudanese state faces two sets of challenges. The first includes the provision of security and establishing legitimacy—fundamental requirements for state building and for sustaining the peace. The second set of challenges is about making the state function effectively and efficiently. Failure to do so raises the risk of reverting back to conflict.¹

3. The Bank engaged in discussions with the Sudan People’s Liberation Movement (SPLM) in 2003. Formal analytical work was undertaken by the World Bank-UNDP Joint Assessment Mission (―Sudan JAM‖) in 2004 and 2005, culminating in a donor conference in Oslo. The earliest support was provided through a grant from the Bank’s LICUS trust fund. The JAM provided the framework for the first round of project support from the Southern Sudan multi-donor trust fund (MDTF-SS).

4. In the course of the engagement during the first couple of years after the CPA several questions and issues arose, many of which were unique to the Southern Sudanese situation and for which there are no easy answers. Some examples²:

- Decentralization: implementing the constitutional vision. How should the provisions of the interim constitution assigning responsibility for service delivery to the states and counties be implemented, when there is limited capacity and experience of effective service delivery not only at the state level but even at the level of the GoSS and human and financial resources are limited?

¹ Evidence presented by Collier and others (2006) suggests that more than a third of conflict countries revert back to conflict within the first decade. The characteristics of Sudan, including high reliance on natural resources, may make this risk higher. Critical contributing factors include processes to enhance the quality of public spending, the quality of the civil service, and public service delivery (including ensuring tangible access and outcomes for citizens).

² These questions represent sequencing decisions rather than absolute policy choices: what should be the focus in the first year or two, then what in the medium and long term? In some cases, policy choices are implicitly associated with the sequencing decisions.
How should the political pressures for power and resource sharing be balanced with service delivery and efficiency considerations? How should the balance between GoSS and state/local responsibility for service delivery be managed in the transition? Should all the tiers of government and all the institutions envisaged in the Interim Constitution of Southern Sudan (ICSS) and other framework documents be established at the earliest or should their establishment be in stages so as to reduce the pressures on human and financial resources?

- **Capacity choices.** How should the very severe human resources capacity problems be addressed at a time when citizens are expecting a peace dividend in the form of better access to basic public services? Is the decision to rely entirely on core government capacity for service delivery and project implementation the right one or should this be balanced with a strategic use of project implementation units? Is it possible to simultaneously buy technical resources and still build capacity?

- **Meritocracy.** How can the need to have an efficient and effective public administration, with hiring and promotion based on merit be best balanced with the need to accommodate various tribal and other constituencies within the administration? How, in fact, can a meritocratic public administration best be fostered as a medium- to long-term objective and what might be interim arrangements consistent with this?

- **Size of the public service.** How best to balance the need to limit the size of the public service and the wage bill so as not to crowd out investment and the other expenditures needed to provide public services with imperative to accommodate demobilized soldiers, and other constituencies to build coalitions necessary to consolidate the peace and as (albeit crude) measures of social protection? In the interest of binding together the new nation, should a relatively high wage bill be tolerated for some years or do the associated limitations on services, low investment and growth pose higher risks?

- **Tackling corruption.** As the structures of the new state are being put in place, as well as staffing, how best can corruption be curbed? How can the risks associated with perceived nepotism and tribalism be balanced with the need to build coalitions that might be critical for sustaining peace? How best can the envisaged architecture for fighting corruption be used? Should the attack be on a broad front or, given capacity and competence problems remain more narrowly focused?

- **Oil revenues.** Does the access to oil revenue provide Southern Sudan with opportunities not typically available in other post-conflict states? Or does the oil wealth itself present challenges for public administration because it may weaken the connection between the people and its government that is maintained through a greater reliance on taxation as a source of revenue and in this way reduce the demand for accountability?

- **Unique circumstances.** Can Southern Sudan learn from the reconstruction of public administration and governance in other post-conflict states? Do the tribal diversity and the political instability in some parts of Southern Sudan, and beyond its borders, generate unique challenges?
5. These issues are even more critical in the face of the inherent volatility and uncertainty in oil prices and revenues, as evidenced most recently by Southern Sudan’s experience during the global crisis. The high and increasing wage bill and the high cost of establishing and maintaining the elaborate administrative structures envisaged in the Interim Constitution of Southern Sudan (ICSS) and other framework documents leaves virtually nothing for providing the services for which they are ostensibly established. Expenditure on the SPLA is unlikely to reduce any time soon.

6. Several issues that discussed in this report are the subject of the proposed —Compact” between the GoSS and its development partners that is planned to be signed on June 30, 2009 in Juba (hereafter the —Juba Compact”)

A. OBJECTIVES OF THE INITIATIVE

7. There has been substantial donor support for the administration’s transition from war to peace. Following the Oslo conference, the initial support was provided through the JAM framework. The donor contributions through the Southern Sudan MDTF were quite large and exceed $526 million since 2005. Total donor support to Southern Sudan has averaged about $ 200 million per year. Early support to the GoSS capacity-building effort was provided by the World Bank through the Sudan LICUS project— —Capacity Building for Development in Post-conflict Sudan”—with a focus on the Ministries of Finance and Economic Planning (MoFEP) and Labor Public Service and Human Resource Development (MLPS&HRD). This was followed by the MDTF-funded Core Fiduciary Systems Support Project (CFSSP) directed at supplementing the PFM capacity of the MoFEP and the Capacity Building, Institutional and Human Resource Development Project (CABIHRD) which targeted the public service and vocational training. In addition, DFID, EC, USAID and the UNDP are key supporters of governance initiatives. These early interventions supported the development of basic governance infrastructure, legislative frameworks, contracting out of essential functions, technical assistance and training.

8. A review at the Second Sudan Consortium in March 2007 underlined the importance of good governance as one of the cornerstones of the reconstruction and peace-building in Southern Sudan. Low public administration capacity, weak public financial management, inadequately organized civil service, and slow progress in decentralization were highlighted as systematic governance constraints in accelerating the progress in implementation of the CPA and JAM framework. As noted earlier, these issues have a renewed significance in the face of the fiscal management challenges due to extreme commodity dependence coupled with the elections due in 2010 and the referendum in 2011.

9. The purpose of the joint GoSS–World Bank initiative that produced this report was to initiate discussions for a second phase of reforms that mark a shift from the early support for establishing basic governance structures, fiduciary controls and legal frameworks and would support policies leading to a

3 Through the —Compact between the Government of Southern Sudan and Donors Partners” the GoSS and it partners commit to higher level of commitment and cooperation to work closely together to deliver on the peace dividends and improve the lives of the people of Southern Sudan. The agreement which is around the three pillars of fiscal responsibility, better public financial management and private sector led development, growth and poverty reduction is to be signed on June 30, 2009.
more effective use of existing resources and improved delivery of services. These issues are at the heart of two of the pillars of the Juba Compact.

10. In view of the fact that there are no ready answers in the traditional public sector management and reform toolkit for such a situation, the objective of this initiative was to reveal politically feasible and technically sensible sequencing and policy choices through a joint effort between the Bank and GoSS teams. The idea was that the Bank team would, in consultation with GoSS, provide technical inputs and that political feasibility would be revealed through a consultation process within the GoSS. In this context, the GoSS and the World Bank jointly identified priority areas that need attention. These include the implementation of decentralization, civil service reform, the efficient management of public finances and the prevention of corruption, with the ultimate objective of effective service provision. The work was guided by political analysis that provided some background on the constraints arising from the legacy of the conflict and from political, security and other considerations.

11. Such a process for discovering and identifying practicable and feasible next steps is critical in an environment fraught with numerous constraints and could provide a pragmatic approach to identifying priorities for governance that works, if not perfectly, then well enough to produce better results for people and to offer the potential for gradual improvement.

B. IMPLEMENTATION EXPERIENCE

12. As a start, a set of strategic options papers, one in each of three identified thematic areas, was prepared. The issues and options presented in these papers prepared the ground for discussions within technical working groups composed of government officials from different ministries and agencies. The original idea of having three distinct groups—one for each of the thematic areas—could not be implemented due to capacity limitations and varying degrees of interest across different stakeholders. In fact the very coordination failures that were expected to be addressed through this effort come in the way of its effective implementation.

13. A technical working group on Decentralization was established that focused on political, fiscal, and administrative decentralization and, due to the cross-cutting nature of the subject, ended up covering ground from some of the other thematic areas. For example, discussions on administrative decentralization covered issues of public service reforms; similarly, the issue of managing corruption came up in the discussion on fiscal decentralization and public financial management capacity. The deliberations of the group further highlighted the inter-relations across the three selected thematic areas.

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5 The three papers were; (i) Strategic Options Paper No 1: Making Decentralization Work; (ii) Strategic Options Paper Number 2: Public Service Reforms; and (iii) Strategic Options Paper No 3: The Architecture of Anti-corruption. In addition, Stevens (2008) and Hoehne (2008) were also prepared as background papers.

6 See Annex 1.
However, separate discussions on public service reform and corruption were not held as originally envisaged.

14. The findings of the working group on Decentralization were presented in a two-day workshop in Juba on June 17-18, 2008. Inter-ministerial, interagency coordination and consultation were taken to the next level through this first of its kind consultative forum which involved, the vice-president, GoSS cabinet ministers and officials, state government ministers and officials, county commissioners and officials and representatives of the chieftaincy (—traditional authorities”). The momentum created through this process was carried through to the Governor's Forum in October during which the issues of decentralization and public service reform were central to the discussion and the president declared these as pillars of the national vision. Subsequently, the president declared 2009 as the —Year of Decentralization” and the —Year of Public Service Reform.” A public sector reform program was launched by the Ministry of Labor Public Service Reform and Human Resource Development (MoLPS&HRD) in August 2008 (GoSS 2008). Annex 1 provides details of the process as well as a report on the outcomes and recommendations of the June 2008 workshop. More recently, a Local Government Act was enacted in April 2009 which clarifies some issues.

15. Although there are several lessons that can be drawn from an evaluation of what worked and what did not work during the implementation of this initiative, these are not documented in this report. Such an evaluation could usefully be part of the continuing engagement between GoSS and it development partners.

16. The report is presented in two parts. Part I provides the background as well as a summary of findings and recommendations. Chapter 1 provides a brief historical background and lessons from this experience but may be skipped without loss of continuity. Chapter 2 presents an overview of the issues and options facing the GoSS in managing the public service, implementing the decentralization vision and tackling corruption and summarizes the findings presented in detail in the second part of the report. Part II covers the three thematic areas that are the subject of this initiative in greater detail: chapter 3 on public service reform, chapter 4 on decentralization and chapter 5 on corruption. Part I can be read on a standalone basis. Those interested in a more detailed discussion on the thematic areas should read chapters 3, 4 and 5. Two annexes document key aspects of the process. A third annex summarizes a paper on traditional authorities prepared as part of this exercise.
CHAPTER 1: A TROUBLED REGION

17. This chapter provides a summary of the historical context since independence in 1956 with a focus on governance and service delivery. The experience of governance in Southern Sudan during this period has important lessons for the present.\(^7\)

18. The present Government of Southern Sudan (GoSS) emerged in 2005 after a half-century of strife. With the exception of an 11-year period (1972–83), the southern half of Africa’s largest country was at war from 1955 to the time of the signing of the Comprehensive Peace Agreement (CPA) in 2005.

19. Discontent in the south in the early 1950s together with emerging economic discontent led to the first signs of unrest. The mutiny of 1955 that broke out in Torit hastened the withdrawal of the British colonial government and left a quickly drafted constitution that omitted to address southern demands for a federal structure. This incident also provided an opportunity for differences between residents of the provinces of Equatoria and Upper Nile to surface, with the former taking credit for leading the southern nationalist movement (Johnson 2003).

20. After independence, the north’s rejection of federalism, combined with the Abbud government’s policy of Islamization and Arabization, inflamed southern nationalism. Some of the leadership took to the bush and, with the establishment of the Southern African Nationalist Union (SANU) with its slogan of “self determination,” and the emergence of Anyanya guerillas, the first civil war started in the early 1960s.

21. Early political initiatives to quell the rebellion achieved little, and the intensity of the war picked up during 1965–69. In the south, the split between the “insiders” (those who continued to work with the Khartoum government) and the “outsiders” (those who took to the bush) also developed during this period. This divide and its variants have been a feature of southern politics since then and have constrained and influenced choices facing past governments and the GoSS since 2005 and is an important feature of the conflict context in the south.


22. After an unstable period, Jafaar Nimeiri became president of Sudan in 1969. Weak, unpopular, and in need of an ally, Nimeiri was open to negotiations with the south, resulting in the Regional Self Government Act of 1972 and establishment of the Southern Regional Government in the same year under what is known as the Addis Ababa agreement.

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\(^7\) This chapter can be skipped without any lack of continuity with respect to the main findings and recommendations of this report.
Ethnic Tensions

23. Nimeiri used his power and authority to establish a government led by Abel Alier (an ethnic Dinka), which had a balance in favor of insiders. In establishing government, Alier was faced with balancing insiders and outsiders, Nilotics and Equatorians, and with absorbing Anyanya fighters into government (Alier 2003). Other cleavages persisted as well: (i) former political affiliations; (ii) provincial groupings based on differential levels of development across different parts of the south; (iii) ethnic identity and the importance of ethnic balance in governance structures (Kesfir 1977). These fault lines and their variants continue to be relevant in the south and have an influence on governance in the south including the size and composition of the public service, corruption and the approach to decentralization.

24. Prior to independence, reflecting the differential development across the south as well as the divide between sedentary and pastoralist populations, the lower echelons of the civil service were dominated by the more educated (sedentary) Equatorians. Although during the period of the Southern Regional Government the absolute numbers of Equatorians in the civil service remained larger, the Dinka representation grew and the increasing —Dinka dominance” was viewed with suspicion and seen as a threat. In addition, and not unlike what the GoSS has had to face recently in respect of the absorption of —deter armed groups,” 15,000 Anyanya soldiers were absorbed into various ministries regardless of merit and qualifications and their wage bill accounted for 80 percent of the development budget at the time (Kesfir 1977). Efforts to hire so-called —deter” Anyanya fighters through a public works program were unsuccessful due to resource limitations. This led to further tensions.

25. Tvedt 1996 notes that appointments were based on patronage and politics and that there was no opportunity for a rule-oriented and efficient public administration to develop. Staffing shortfalls were met through —speedy promotions” and the appointment of less qualified. Tvedt 1996 concludes:

—in Southern Sudan, where ethnic groups as social categories have been more important than social class, one of the paramount problems in building up the administration has been one of ‘ethnic arithmetic.’ The difficulties in implementing universalistic bureaucratic principle in a context of ethnic rivalry and conflict were demonstrated again and again.” (pp 27)

Division of the South

26. When Abel Alier replaced Joseph Lagu and became the president of the Higher Executive Committee for a second time in 1981, he included more Dinkas in government in an effort to quell opposition. This led to a further hardening of positions and tensions between the hard line outsiders and the more moderate insiders and anti-Nilotic sentiments grew further during the period.

27. This provided an opportunity for Lagu to press for a separate Equatoria region and to launch a campaign for —decentralization for development” on the grounds that the south was too large and unwieldy to be managed as one region. Southern reformers (Nilotic and Equatorial) who believed in decentralization for non-political reasons (equity and efficiency) nevertheless supported Lagu, playing into the hands of Nimeiri, who was under pressure in Khartoum to curb southern autonomy. In 1981 Nimeiri dissolved the Regional Assembly and replaced the Southern Regional Government with an
interim body (led by a northerner) that was to conduct a referendum on the creation of regions in the south.

28. There was no referendum. Instead, Nimeiri carved the south into three regions in 1983. While the —diisionists” in the south supported the dissolution of the Southern Regional Government, others saw it as a part of northern strategy to fragments the south (Tvedt 1996). From the northern perspective a divided south posed less of a threat.

29. The establishment of three regional governments in 1983 exacerbated existing financial and human resource constraints. Local councils depended on central grants intermediated by the regional governments, which were allocated on an ad hoc basis without any transparent allocation formula or rule. As local tax and revenue collection was weak and local governments relied largely on grants, an accountability relation between government and people did not develop. The councils depended on the regional ministries to second staff to them; and the ministries used this as an opportunity to offload their less competent staff.

30. Appointments were based on patronage (usually ethnically rooted) and politics, precluding the development of a rule-oriented and efficient public administration to develop (Tvedt 1996).

31. By 1985 resources were severely stretched, and the capacity of the public service was extremely weak. The Government was weak and development activities and service delivery almost entirely in the hands of international NGOs that were in principle contracted by the state. In time the state was unable to pay them and the NGOs started to substitute for the state and collect fees for their services, leading to further weakening of the state. The NGOs while substituting for government, made little effort to develop government capacity and thus contributed unintentionally to the further erosion of the state. Service provision by NGOs also exacerbated the general problem of accountability.

32. During this period the Sudanese People’s Liberation Army (SPLA) began to take control of large areas in the south, beginning with rural areas.


33. Fairly soon after the collapse of the Addis Ababa Agreement of 1972, the SPLA took over the leadership of the movement for a southern identity. The SPLA had access to external resources from the Marxist Derg rulers in Ethiopia and it found it expedient to adopt the strategy of a —NewSudan”—the idea of revolution from within for a united Sudan—rather than of secession. Possibly influenced by the ideology of the Derg, the rhetoric involved an important ideological shift from discussions about the sharing of government jobs among the elite to a focus on southern development.

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8 Although threats and challenges from other armed groups/militia in the south remained and are present to this day, the SPLA dominated the military landscape.
34. However, the SPLA was a top-down military organization with a central objective of challenging the north militarily and thus not focused on the development needs of the south. The administration was dominated by SPLA commanders and the SPLA established —Civil-Military Administrators” (CMA) (Deng 2003) with the objective of maintaining law and order and resource mobilization for supporting the war effort. Although, as Rolandsen 2005 explains, there is some disagreement on the effectiveness of the administrative arrangements, the administrative structures established during the initial period (1983—1991) were rudimentary. To a large extent the SPLA civil administration relied on traditional authorities or chieftaincies in what was in effect a revival of the colonial system of indirect rule. The SPLA co-opted the chiefs and their native courts for maintaining law and order and raising revenues. According to Johnson 2003 Chief’s courts and customary law were incorporated into SPLA legal structures.

35. As noted earlier, civil administration in the south was never strong and, in view of failures of 1972–83, SPLA did not have much to build on. Thus, the reversion to the colonial system of indirect rule was not surprising. NGOs continued to be responsible for the limited service delivery that was taking place.

C. REORIENTING THE MOVEMENT

36. By the early 1990s there were both internal (the Nasir rebellion of 1991 is an example) and external pressures for reform and a civilian orientation. The SPLM was pushed to convene the 1994 National Convention (NC) in Chukudum and focus on governance issues. The convention led to the establishment of a National Liberation Council and a National Executive Council which could be viewed as legislative and executive branches separate from the military. The executive with jurisdiction over a largely rural civil hierarchy was conceived as a broad based civil authority that came to be known as the Civil Authority of the New Sudan (CANS). At around this time the SPLM also established the Sudan Rehabilitation and Relief Agency/Commission (SRRA/C) as its humanitarian arm with the responsibility for coordinating the activities of NGOs.

37. The nascent CANS was also in competition with the SRRA and the SPLA/CMA which were by this time well established. The CANS was expected to take over internal security, policing and food mobilization from the CMA/SPLA and service provision and governance of the local population from the SRRA. According to Rolandsen 2005 the CANS never really got off the ground, at least at the central level, and the separation from the military structures was not achieved. The central structures had capacity and resource constraints and remained weak. The Ministry of Finance for example had no powers of taxation. The informal taxation arrangements were largely local. The ministries of Education and Health with some access to external funds were an exception. This is reflected in the capacity of these ministries in the current GoSS. The —national”/central structures had no ability due to regional interference to communicate with and regulate the local structures which functioned largely independently.

9 See Rolandsen 2005 for a detailed discussion of the factors leading to the NC.

10 In 1998 Arthur Akuien Chol (Secretary of Finance and Economic Planning) noted that although the NEC had decided that 70 percent of the tax collected at the county level should be remitted to the central level, “but so far very little has reached us” (Rolandsen 2005: 157).
38. By 2000 the NLC and the NEC were abandoned and replaced with a Leadership Council (LC) that was synonymous with the SPLA high command (Deng 2002).

39. The economy was a war economy and was characterized by unregulated trade as in any collapsed state. The SPLA controlled trade with neighbors and the informal trade and other taxes were used for financing the war effort.

40. In parallel, the breakaway process that followed the Nasir uprising led to the Khartoum Peace Agreement (KPA) of 1997, which has several similarities with what followed in the CPA (a united Sudan, a federal structure with Coordinating Council of Southern States (CCSS), and a referendum in four years), but the powers of president of the CCSS, the historical analogue of the GoSS, and the agreed extent of autonomy were reduced in implementation. Due to lack of credible leadership, the agreement was a virtual nonstarter and the “peace from within” initiative was ineffective. What remained were the CCSS and a set of “state governments” that were controlled by Khartoum and remained in the progressively small areas in its control.¹¹

D. THE RUN-UP TO THE COMPREHENSIVE PEACE AGREEMENT

41. By 2001 it was clear that the KPA was a non-starter and the Naivasha process that ended with the CPA in January started in earnest. The negotiations between the SPLM led by chairman John Garang and the Government of Sudan (GoS) represented by vice-president Ali Osman Taha, were supported by the Intergovernmental Authority on Development (IGAD) and its international partners led by the US, the UK and Norway. The Machakos protocol (July 2002) provided the framework for the final agreement—asymmetric federalism, wealth and power sharing, democratic governance and the idea of an “interim period.” Following this, a security protocol was signed in September 2003, the wealth sharing and power sharing protocols signed in January and May 2004 respectively, and agreements on the “three Areas”-Abyei, Nuba Mountains and Blue Nile - reached in May 2004.

42. The CPA including the Implementations Modalities was signed on January 9, 2005 and Chairman Garang was sworn in as president/vice-president in July that year. On his death just three weeks later, he was succeeded by Salva Kiir Maryadit.

E. LESSONS

Public Administration

43. According to Johnson (2003), unlike in the north, civil administration in the south was always weak even at its most intrusive during the late colonial period. The brief review suggests that it has also never been effective in regulating and managing the delivery of services which were either non-existent or largely managed by NGOs.

¹¹ The 10 states had been established by national legislation in 1994. In effect, the ten state governments were restricted to the three garrison towns of Juba, Wau and Malakal.
Recruitment and appointments were based on patronage and even when this was not the case the lack of available skills coupled with the elaborate structures established ensured that un/under-qualified people had to be recruited. The public service was characterized by tensions between various groups and it would be fair to conclude that the public service that the GoSS inherited in 2005 lacked cohesion and was devoid of bureaucratic culture or tradition. On the other hand it was fraught with cleavages similar to those in 1972 between “insiders” and “outsiders” and between different regional and ethnic groups.

The public servants inherited by the GoSS came from the diverse traditions of the CCSS and SSRA and the CANS making integration a huge challenge. As in the past, the GoSS needed to balance ethnic and tribal considerations with consequences for size and quality. The GoSS also needed to absorb large number of ex-militia that needed to be disarmed. Recall in this context the lessons from the SRG of 1972—1983. Consequently, though in terms of capacity the new public service was to be built from scratch this was not a tabula rasa.

**PFM and Corruption**

Available evidence (Alier 2003, Johnson 2003, Deng 2003) suggests that the GoSS also inherited an environment of corruption or, at least, poor public financial management. The issue of improper procurement of the Tecma contract was brought before the Regional Assembly in the first year of the southern Regional Government in 1972. Tvedt 1996 notes the lack of accounting and bookkeeping capacity in the 1980s. During the war years of the late 1980s and the 1990s the private and public domains were not clearly distinguished particularly in the areas of taxation and trade which were conducted under the auspices of the military leadership. Some of these practices continue.

**Decentralization**

Although the south had fought for autonomy within Sudan, the approach to decentralization and devolution to sub-GoSS levels (in particular the states) is likely to be cautious in view of the history of 1983 and the general experience with the northern efforts to divide and fragment the south. This history of Balkanization or the “redivision” for political reasons has led many in the south to view decentralization with suspicion. Many in the SPLM leadership today are familiar with this history and may not, for this reason, view decentralization of power to states favorably. Clearly, large states with significant political and financial autonomy open up the possibility of external manipulation. Note that the southern Sudanese situation is exceptional in that it is a region within a country and faces an internal threat to its hard-earned autonomy.

**F. Today’s Challenges**

Even though a historic peace deal has been signed, and there have been major successes in dealing with militia that were initially inimical to southern interests, many in the south believe that the security threats to the south both internal from various armed groups in the south and from the north persist. This has both direct and indirect fiscal implications and often diverts the attention of the senior leadership.
49. In the past, security problems in Southern Sudan have made it difficult for development to take place; it was even difficult to deliver relief to the large proportion of the population living below the poverty line. In several countries weak security is one of the reasons why few services are delivered by any part of the public administration to the people and this is true for many parts of Southern Sudan.

50. But the very basic conditions for security and legitimacy have been established. Most people in Southern Sudan are living in reasonably secure day-to-day environments; they are not engaged in current conflicts. And, in constitutional and legal terms, the GoSS is the legitimate government, and recognized as such by most people in Southern Sudan. As a result of it success in delivering the CPA, the SPLM/A currently enjoys unchallenged legitimacy in the south and it will likely continue to do so at least until the referendum in 2011.

51. The unique position of Southern Sudan during the interim period (2005—2011) presents an additional set of challenges for the following reasons:

- Southern Sudan is not a state, but a newly created autonomous government within a large, conflict-prone state.
- Within Southern Sudan, there are at least two competing visions—one emphasizes an independent and separate political space in the South; the other seeks a united New Sudan, in which Southern Sudan’s leaders gain representation and influence over the entire nation through democratic processes.
- The political context is in transition, with two watershed events anticipated in the 2010 elections (delayed from the 2009 date agreed in the CPA) and a 2011 referendum on full independence, both clouded by the continuing crisis in Darfur, the additional uncertainty imposed by the indictment of President Bashir by the International Criminal Court, the unresolved situation in Abyei and continuing security concerns.
- The underlying CPA is not fully implemented and is increasingly viewed as precarious. Willis et al 2009 caution that a flawed election in 2010 could put the CPA further at risk.

52. There is a clear pattern of growing international engagement in Sudanese conflicts over the past quarter-century. This began with the Derg dictating key elements of the early program of the SPLM, various international efforts to end the North-South war, and the major role of Operation Lifeline Sudan in the war. The US with its allies working through IGAD laid the basis for the CPA, but that engagement also reflected its broader interests in the Horn and pursuit of the war on terror. The UN has a large contingent in Southern Sudan and a hybrid force with the AU in Darfur. Eritrea engineered a peace agreement in eastern Sudan and is critical to its success and is also deeply involved in Darfur. With the involvement of the ICC in Darfur, Sudan’s conflicts have become even more internationalized. While this growing engagement is not surprising in view of the extent of the humanitarian crises and the failure of the Sudanese to end the conflicts which are producing these crises, it complicates the issues, makes them more unpredictable, and has to date a poor record of success.
53. Even the outcome of greatest achievement of international engagement, the CPA, remains in some doubt. The deep distrust between the SPLM/A and the NCP has not been overcome, which bodes poorly for overcoming difficult outstanding problems, such as Abyei, the growing crisis in the Nuba Mountains, border demarcation, the 2010 national election, the 2011 referendum, and the ICC indictments against President Bashir. Peace agreements ending civil wars do not have a high rate of success internationally, and even less in the Horn where conflicts in Eritrea, Ethiopia, and Uganda were settled militarily, while agreements in Darfur, Somalia, and with the Lord’s Resistance Army have all broken down. Whether the North-South peace process will be the exception that establishes a new pattern for resolving conflicts in the Horn remains to be seen.

54. This chapter provides a context for the environment in which reforms in public sector management are to be implemented in Southern Sudan. There are also important questions about the extent of institutional change that can be carried out in a situation of transition and uncertainty.
CHAPTER 2: ESTABLISHING THE FRAMEWORK FOR THE DELIVERY OF PUBLIC SERVICES IN SOUTHERN SUDAN

55. The scope and challenges of the state building project in Southern Sudan after the 2005 signing of the Comprehensive Peace Agreement (CPA) were unprecedented. Although the idea of southern nationhood took shape during the years of struggle culminating with the CPA, the Sudanese People's Liberation Movement (SPLM) was faced, after the agreement, with a different and somewhat unfamiliar set of challenges in building the apparatus of the state virtually from scratch and delivering on the promise of peace and development. The transformation from a military organization to a political party that leads a civilian government present significant challenges compounded by the pressure of delivering on the promise of the peace.

56. The SPLM/A had been essentially a military enterprise, with centralized decision making, focused on its struggle with the north for southern autonomy. When it became the dominant partner within the new Government of Southern Sudan (GoSS) that emerged from the CPA, it had to adapt to civilian administration. In addition to administrative capacity and systems, policy-making and coordination capacity was also very limited and intra-government systems of communications virtually nonexistent.

57. This chapter begins with a short description of the expectations from the SPLM and the GoSS after the signing of the CPA and the establishment of the latter later in the year. It then summarizes the challenges facing the new government and the evolution of administrative structures and institutional arrangements both planned and unplanned in the years the followed. The third sub-section identifies options going forward and the chapter concludes with a summary of recommendations for reform. The discussion draws heavily on chapters 3, 4 and 5 and although not intended as an executive summary summarizes the material from these chapters.

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12 In an email (September 29, 2007) Kenichi Ohashi who had recently taken over as the World Bank’s country director for Sudan wrote: “...the challenges of Southern Sudan are pretty much unparalleled in modern human history. I cannot think of a country that had to build a state and an integrated economic system from such a low base and under such time pressure....”

13 As noted in chapter 1, in the 1990s the SPLM/A had recognized the need for a civilian administration and established the Southern Sudan Relief and Rehabilitation Committee (SRRC) as its humanitarian wing and the Civil Administration of the New Sudan (CANS), but it continued to have a military outlook and focus (Rolandsen 2005). In several African countries that had achieved independence in the 1950s and 1960s the nation-statist experiment had been successful at least during the process of obtaining independence but in several states the social/development projects had subsequently failed (Davidson 1992). In several countries it was because the independence struggles had been led by Western educated elites disconnected with the social realities of poverty and neglect and because the post-colonial state in many ways mimicked the ways of the colonial state. Although the SPLM was not an elite movement, its antecedents are in the military; and though it enjoys legitimacy as a harbinger of the peace and the only leadership capable of taking the south to a peaceful referendum in 2011, it needs to establish credibility as a leadership capable of delivering on development in the post-2011 period. This has been further highlighted during the period of fiscal stress since late 2008 and the leadership’s recognition of this is reflected in the commitment reflected in the Juba Compact.
A. DELIVERING ON THE PROMISE OF PEACE

58. The long awaited CPA raised expectations of a peace dividend that would be delivered quickly. The limited services available during the war years had been provided by international NGOs and community and church-based organizations. The GoSS wanted to establish its presence by taking over these responsibilities.

59. As a result of the long years of neglect and marginalization during the colonial period and the virtually continuous absence of peace since then, the development needs of the south in 2005 were large and continue to be immense. Southern Sudanese remain among the poorest people in the world, ranked 147 out of 177 countries by the UNDP in 2005 in its human development report. Hunger is endemic among about one-quarter of the populace. Ninety per cent of the people of Southern Sudan earn less than $1 per day, the standard international poverty line. In 2002 the adult literacy rate was 24 percent, one of the lowest in the world, with about 25 percent of newborns dying before age 5. The maternal mortality rate estimated at over 2000 per 100,000 births is among the highest in the world. The JAM had estimated the recovery needs for the south for Phase I (2005—2007) at $ 3.6 billion and $ 4.5 billion for the second phase (2008—2011).

60. For reasons that are easily understood, many of those who are now running the government in Southern Sudan have limited experience of managing a relatively well-resourced government, of collecting taxes or user charges or of providing public services such as education, health, roads, water and sanitation. As noted in chapter 1, with the weakening of the Southern Regional Government in the early 1980s, service delivery was largely handled by NGOs that were in theory contracted by the state (Tvedt 1996). When the state was unable to pay them, the NGOs began to directly collect fees for their services, leading to further weakening of the state. The SPLM/A ran a patchy administration through the CANS and the SSRC/A. In some areas, traditional authorities acted as intermediaries between the people and the SPLA and provided local law and order and conflict resolution and customary justice.

61. Under the CANS structures six “commissions” with attached secretariats had been created to oversee political, economic and social spheres of activity in the SPLM-controlled areas of the south. These were scattered across various town in the south and in Nairobi and had very little connection with the local level (Rolandsen 2005). Service delivery during the war years was at very low levels and managed almost entirely by international NGOs, church and community-based organizations. Humanitarian needs were being addressed through United Nations’ Operational Lifeline Sudan. The GoS-funded CCSS and state governments were restricted to the garrison towns and did little more than

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14 Note that this is based on an assessment is for all of Sudan including some prosperous areas in the north.


16 Most ministers, governors, members of GoSS and state legislative assemblies, chairpersons and members of commissions and incumbents in other leadership positions in the GoSS, states and counties are from the SPLA.

17 Established in 1989 as a consortium of UNICEF, WFP and a number of NGOs.
pay out salaries\textsuperscript{18}. Overall, the foundation for civilian administration was very weak and certainly not equipped to address the development challenges facing Southern Sudan (JAM 2005, World Bank 2004a, and b).

62. Although the GoSS was not being established on a \textit{tabula rasa}, a development-oriented public service had to be established virtually from scratch, arrangements for managing oil revenues and other resources (including donor resources) had to be put in place and a decentralized system of governance was to be rolled out across the states and counties\textsuperscript{19}.

63. Establishing a public service and systems for public sector management virtually from scratch would be difficult under the best of circumstances. But in the presence of the weak traditions of governance, low levels of human capacity, the high demand for government jobs, the relatively high levels of oil revenue, and the need to build coalitions, the risk of failure (accompanied by corruption) is high.

64. Unlike other governments in similar situations, the GoSS is relatively well resourced as a result of the wealth sharing provisions of the CPA. The GoSS is entitled to 50 percent of the oil revenues derived from the south as well as 50 percent of national revenues derived from the south\textsuperscript{20}. In no other similar circumstance has a new government emerging from over 20 years of war had the responsibility for such a significant amount of resources. In comparison, the volume of resources handled by the Southern Regional Government during 1971—1983 was insignificant.

65. While these resources give the GoSS a high degree of financial independence and a sense of confidence, this comes with the responsibility of managing these resources effectively and efficiently and the risks associated with mismanagement. Humanitarian and donor-supported non-government agencies continue to play a large part in the provision of public services. In addition, the GoSS faces the challenges associated with dependence on natural resource revenues/rents. Of particular significance in this case are revenue volatility due to extreme commodity dependence and the absence of a taxpayer-government relationship with the citizens. This reduces the demand for accountability and oil-revenues are viewed as a windfall. Fiscal pressures felt during the recent oil revenue volatilities associated with the global crisis provide evidence of the challenges GoSS will continue to face as a highly oil-dependent government. The Juba Compact reflects the GoSS’ commitments to better governance and economic management.

66. Probably as a result of the euphoria associated with the CPA and the rhetoric of GoSS being among the richest governments in sub-Saharan Africa the magnitude of the challenge that faced this

\footnote{18}{There were four state governments in Malakal and three each in Juba and Wau; with the CCSS also located in Juba.}
\footnote{19}{Pre-CPA administrative structures in the south are described in chapter 1.}
\footnote{20}{The GoSS received $822 million, $1222 million, $1394 million and $1506 million (increased to $3251 million) in 2005, 2006, 2007 and 2008 respectively and was expecting to receive $1701 in 2009. With an estimated population of just over 8 million this is about $188 per capita in 2006, among the highest for any government in Sub-Saharan Africa. Even with the recent sharp decline in oil prices in 2009, the GoSS is relatively well resourced compared to its neighbors. Its problem is to balance the large number of competing priorities. As late as 2004, the SPLM Ministry of Finance was managing no more than a few hundred thousand dollars.}
young government was underestimated in the build up to the CPA and for some time after. Experience has shown that the competing demands on the budget for various non-productive though arguably critical needs leaves very little space for investment and service delivery.

**B. CHALLENGES IN PUBLIC SECTOR MANAGEMENT AND SERVICE DELIVERY IN SOUTHERN SUDAN**

67. This section describes some of the challenges of establishing efficient arrangements for public sector management and service delivery in Southern Sudan: (i) the overarching goal of creating a government that is able to provide public services; (ii) the challenge of devising structures that make sense in Southern Sudan and that will work in a land beset by recent conflict, that has lost many capable citizens to war or emigration, that has little history of government as a service provider (instead of as a source of jobs and patronage), and that lacks the luxury of a long enough time to gradually build a culture of professional public service; (iii) balancing the political, economic and efficiency trade-offs and finding a workable transition path towards the final institutional structures envisaged in the framework documents.

68. While its development partners focus on efficiency in resource use, professionalism in the public services and the importance of service delivery, investment and growth, the GoSS faces important constraints that arise from the political-economy of the post-conflict environment, internal and external security considerations and limited capacity. The challenge of finding politically feasible ways forward in the face of these constraints that are also palatable to its development partners is quite daunting.

69. In addition to capacity constraints, other constraints emerge from the conflict context. These include the security concerns that divert attention and resources, the need to balance ethnic and tribal interests in appointments at all levels, and the need to manage factionalism. These constraints further limit policy choices and reduce the room for maneuver. In these circumstances establishing arrangements for effective public sector management is even more difficult and prioritizing policy actions and interventions is a complex task.

**Addressing Capacity Gaps**

**Demands on Capacity**

70. The CPA, the Interim Constitution of Southern Sudan (ICSS 2005), the various state constitutions and, most recently, the Local Government Act (LGA) 2009 lay out the requirement for a large and elaborate set of administrative arrangements. In the asymmetric federal architecture that emerged from the peace agreement, the Government of Southern Sudan (GoSS) with some exceptions has responsibilities similar to those of a national government. In addition, 10 state governments, 78 counties\(^1\), and 19 constitutional commissions and agencies have been established. Many of the GoSS level agencies have their analogues in the states. The SPLM also participates as a partner in the Government of National

\(^1\) The LGA 2009 provides criteria for the establishment of local government. This may lead in time to a change in this number.
Unity (GNU) in Khartoum with close to 30 ministerial positions and representatives in the National Assembly.

71. Human capacity in Southern Sudan was considerably eroded during the war years, and whatever systems and institutions that might have existed in 1983 had all but disappeared. Governance structures of the Coordinating Council of Southern States (CCSS), established under the Khartoum Peace Agreement of 1997 and controlled by the Government of Sudan (GoS) were largely restricted to the garrison towns of Juba, Wau, and Malakal; vestiges of the administrative structures of 1972–83 existed in pockets and together with the CANS and the SPLM/A controlled traditional authorities provided a heterogeneous patchwork of administrative arrangements that the GoSS had as a starting point in 2005.\(^\text{22}\)

**Making Choices**

72. In planning for the peace, the GoSS and its international partners recognized that there was an urgent need for the GoSS and state government to start functioning effectively. They were faced with the classic trade-off between the development of sustainable capacity within government and the pressure for early delivery of services and the peace dividend. This very young government had the enormous task of establishing control over the south, maintaining legitimacy as it adopted a peacetime role, deal with external security threats, manage divisive forces in the south through coalition building and accommodation and manage its own and donor resources to deliver a peace dividend. Although the SPLM has earned substantial goodwill through the struggle and by delivering the CPA and though it does not face any immediate political challenge in the south, this cannot last forever and there is a pressure to deliver.

73. The approach that was chosen addressed the capacity issue by making some provisions for immediate needs by contracting out certain functions in critical areas (see Box 1) and with the support of donor provided advisors and consultants, while emphasizing the development of long term capacity within government. An important reason for this was the fact that the GoSS had significant resources of its own and there was little point in ring-fencing donor resources.

74. In the build up to the CPA, after extensive discussion it was agreed that the bulk of donor resources would flow through a multi-donor trust fund managed by the World Bank\(^\text{23}\). This chosen development modality implies that project resources are provided through grants to government and that projects are implemented by the government. In the course of discussions with the SPLM leadership in 2004-05, the idea of establishing an autonomous GoSS project implementation/management agency—a "SuperPIU" in the manner of the Palestine Council for Development and Reconstruction—was discussed and dropped. It was agreed that all MDTF-financed projects would be implemented by government. In fact the GoSS was even averse to the idea of project-level implementation entities.

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\(^\text{22}\) See Rolandsen 2005, Deng 2003 and Johnson 2003 for a discussion of governance structures during the period preceding the CPA summarized in chapter 1.

\(^\text{23}\) This came to be known as the MDTF-SS. In addition, a separate MDTF was established at the national level — MDTF-N.
75. Although there are good arguments on both sides of this debate, the chosen approach has the benefit of not causing difficult-to-reverse distortions in the public service as in the case of the Sierra Leone. On the other hand, unless the chosen modality is supplemented with alternative approaches, it may have adverse short-medium-term implications for service delivery, given severe limitations in the government’s capacity to provide services directly or to manage provision by contracted entities.

    **Historical Legacies**

76. After the signing of the CPA, it was recognized that the southern public service would inherit personnel from diverse sources. A workshop for the SPLM at the World Bank in Washington in April 2004 identified four possible sources of staff: (i) current civilian employees of the SPLM; (ii) current southern Sudanese civilian employees of the CCSS and southern states; (iii) new regular employees to be recruited; and (iv) specialized temporary employees to be recruited.

77. The thinking within the SPLM was that employees of the CCSS and southern states (―CCSS employees‖) would be selectively recruited into the new administration. However, as this issue was not specifically discussed in the run-up to the CPA, it was not included in the implementation modalities and, as it turned out, all the CCSS employees became part of the southern public service by default to this day they form the bulk of the southern public service.

78. In 2005, Southern Sudan inherited at least two separate systems of administration. That inherited from the Coordinating Council of Southern States (CCSS) is rooted in a style of governance quite different from that of the SPLM-managed Civilian Authority of New Sudan (CANS), which, during the wars years, ran a rudimentary administration described in chapter 1. The CCSS administration was largely restricted to the three garrison towns of Juba, Malakal, and Wau. Meanwhile, the SPLM/CANS administration was dominant in rural areas and counties. In addition, remnants of the southern regional government of 1971–83 are to be found in some areas overlapping with the CANS. Southern Sudan consequently does not have a historical legacy of unified governance and is today characterized by a loose adherence to commonly accepted administrative principles, implemented under widely different patterns of management, systems, and processes.

79. Although the erstwhile employees of the CCSS and states had some experience of government, this was based on fairly outdated and centralized systems and not consistent with the needs of a development-oriented government.

80. The uniformed branches of the public service (the police and fire services, as well as the environment and forests services) have been used to absorb personnel from other armed groups who

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24 A recent study shows that 65 percent of key staff in line ministries in the MoFED in Sierra Leone are funded through donor projects and are paid on average four times what the core government staff at equivalent levels are paid. This has repercussions for sustainability incentives and performance.

25 Collier (2007) argues that government capacity building should be given top priority in the first few years and that service delivery should be left to Independent Service Agencies during this time.

26 In 2004 World Bank staff had estimated their numbers to be 40,000–50,000. At the time Bahr El Jabal (now Central Equatoria) had 10,089 and Western Equatoria had 4,445 staff. It is now clear that these were underestimates.
have been disarmed over time, in particular after the Juba Declaration of February 2006. This has led to a large increase of the numbers in these cadres. In addition, several individuals who had at some point in time been in the public service but had left during the war returned to claim their jobs. At least those among them who were SPLM loyalists had to be accommodated. Thus the public service has grown for various other reasons than originally envisaged.\footnote{In a workshop — “Decentralization & Government Structures For South Sudan” — conducted by the World Bank in November 2004 senior representatives from the SPLM has envisaged a total number of about 40,000. The April 2004 workshop had suggested an upper limit of 100,000 over time. The numbers are estimated to be over 165,000 in 2009 (chapter 3).}

81. Finally, since available staff are largely untrained, often unsuited for the positions they occupy, and have limited incentives to perform, in spite of the large numbers, some new recruitment has also taken place as people are needed to do the job.

82. There are several problems that have emerged as a result: (i) the growth and evolution of the public service has been unplanned and has no basis in actual needs and functions; (ii) the numbers have grown much larger than anticipated and generated significant fiscal pressures; (iii) in spite of the large numbers, quality is poor and capacity remains weak; (iv) integration of the various strands that form the current public service is problematic; (v) ethnic and tribal considerations dominate and nepotism is seen as an important form of corruption.

83. In addition, Southern Sudan’s public service, at the time of the CPA and even some years later, has many of the characteristics of most other post-conflict countries, although in some cases in extreme form. There are tensions between making the best use of the most experienced civil servants and making sure that the civil service is diverse and large enough to satisfy tribal constituencies and accommodate loyalist, former military leaders and ex-combatants. The high wage bill and expenditures on security crowd out development spending without contributing to service delivery capacity.

Decentralization, Devolution, or Deconcentration?

84. Politically, decentralization in Southern Sudan has a set of potentially conflicting implications. In the quasi-federal structure that is mandated, decentralization is potentially a tool for accommodating differences and allocating resources more equitably. On the other hand, there is a risk that decentralization particularly through devolution of political authority and resources to states could be potentially divisive. The devolution of substantial responsibilities from the GoSS to the states may make it more difficult for the GoSS to achieve legitimacy and maintain security—in effect, a unified Southern Sudan against outside threats. This is particularly important because of the perceived possibility of manipulation of existing differences by the north.\footnote{Counties are small and unlikely to emerge as strong political entities. Since the states in the south have not been created on tribal and ethnic lines this risk is somewhat mitigated. However, there are two states that receive their own share of oil revenues, which gives them significant financial independence.} Significant devolution in the early stages could also undermine the imperative to consolidate power at the level of the GoSS.
85. Historically the south has consistently negotiated with the government in Khartoum for political autonomy and authority within Sudan. On the other hand, the Balkanization of the south has always been perceived as a threat to southern unity, which takes precedence over the benefits of decentralization. An important cautionary example is the creation of the three regions in the south by Nimeiri in 1983 which led, among other factors, to the collapse of the Addis Ababa agreement and was seen as an effort to divide the south. Further the idea of the 10 southern states did not originate with, and was never embraced by, the SPLM, which was always committed to development of and through counties.

The Vision

86. The CPA and ICSS lay out the requirements for a fully decentralized government with three tiers—GoSS, states and a three tier arrangement for local governments (county, payam, and boma)—with significant devolution and elaborate administrative arrangements. For example, each state has its own constitution, public service, civil service office/commission and audit arrangements. Although the revenue and functional domains of the GoSS and states are described in some detail in the ICSS further clarity is needed.

87. There is persisting lack of clarity about exactly which services states are responsible for and how their provision is to be funded. The same applies to the relations between localities and the states. The existing grant arrangements do not explicitly address this issue. Although an effort has been made to clarify some of the remaining confusion through the LGA 2009, lack of clarity in important areas remains.

88. In principle, service delivery responsibility for key services such as education, health and water supply in this framework lies with the states and counties. However, as described in detail in chapter 4, in practice the system looks like deconcentration: salaries of front-line workers and staff of several ministries continue to be paid from the GoSS budget and all political appointments are made by the president of GoSS.

Comparing Structure Options

89. The GoSS has a number of structural options for the future, as laid out in detail in chapter 4:

- A fully decentralized system in which most decisions would be made at both the State and local government level would be independent of the higher level of government. To the extent required, the higher levels of government could influence activities below them through management legislation and the fiscal transfer system.

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29 This was the central theme through the Juba Conference (1945), Round Table Conference (1965), Twelve Man Committee (1965-66), Addis Ababa Agreement (1972), Fashoda and Khartoum Peace Agreements (1997) and, finally and most successfully, the CPA (2005).

30 The CPA is clear: “decentralization and empowerment at all levels of government are cardinal principles of effective and fair administration” (CPA, Power Sharing Agreement, Preamble). A literal reading of the ICSS indicates that the states are truly decentralized and have a high level of autonomy from the GoSS. The ICSS states that the local governments are the “responsibility” of the states and thus less independent. Overall, this has been understood to mean that the states and localities are responsible for the delivery of basic social and economic services. In principle, this would leave that the GoSS with very little (if any) service delivery responsibility.
• **2. The system proposed in the ICSS** under which States would be *decentralized* from the GoSS but local governments would be part of the State administration. There are two alternatives for the level of authority that might be given to local government under this option.
  
  o Local government could exist under *delegations* of power and operate within those delegations.
  
  o Local government could be a *deconcentrated* arm of the State and have no decision making power at all. This, however, seems contrary to the ICSS provision for local governments to be made up of elected members.

• **The States and local government would both become arms of the GoSS** and operate under *delegated* authorities. This would mean they could make decisions on how to implement the responsibilities they were given, but would do so as arms of the GoSS, not as autonomous governments.

• **The States and local government would not act independently** at all but would be branches of the GoSS and operate as *deconcentrated* units of that government. This would mean they could make only very minor decisions on how to implement the tasks given to them, and would do so as part of the GoSS administration. All major decisions would be made either in Juba or according to rules set by the GoSS Ministries in Juba.

90. Acceptance of options 1, 3 or 4 would mean that the constitution that replaces the ICSS would need to have different provisions on the structure of the government in Southern Sudan or else transition arrangements would need to be distinguished from the final vision through a policy document.

91. The formulation in the LG Act 2009 appears to come out somewhere between 1 and 2 with local governments as an independent sphere of government in principle but subservient to the states in important dimensions. (See chapters II and XIII of the LGA 2009).

**Interim Arrangements**

92. In the meantime, interim arrangements are in place. Some of these arrangements are provided for in the ICSS for the interim period while others are ad hoc arrangements for what is essentially seen as a period of transition. The interim arrangements can be characterized as follows:

• States are operating with appointed members of the legislature and councils of ministers and, as such, could be seen as outposts of the GoSS.

• While the basis of their selection is not clear,31 traditional authorities are represented to present “community” views. Going forward, the LGA 2009 provides some clarity on the role of traditional authorities it is to be seen when and how this will be implemented in practice.

• Both the State and local government levels are acting under authorities and instructions (informal delegations) from the GoSS.

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31 Going forward some clarification is provided in the LG Act 2009.
Local governments currently have no elected councils/assemblies and are operating under a system of appointed executive committees that are said to be representative of the community and were organised through traditional authorities. Commissioners, who will be elected under the LGA 2009, are currently appointed.

93. In addition to distributing power and resources and providing political space, decentralization is expected to create efficient and accountable mechanisms for service delivery. This requires adequate financial and human resources in the states and counties and provisions and systems for fiscal and political accountability. Currently, as noted earlier, governors and state ministers, state legislators and county commissioners are all appointed and there are no elected local councils in the counties.

94. Clearly, in this transition situation while own revenues (with some exceptions) are negligible, human resource capacity is limited and systems are weak; it is not realistic to expect that decentralization can be immediately implemented as envisaged. On technical and fiscal grounds phasing the implementation of decentralization would be advisable with an agreed implementation and roll out plan that is understood and accepted by all important stakeholders. The current approach where primacy is given to the establishment of the administrative machinery is counter-productive from the service delivery perspective as is it takes up scarce resources.

Service Delivery

95. Politically, the literature suggests that although decentralization and power sharing might offer immediate palliatives for preventing conflict, longer term solutions must rely on equitable provision of services. Most post-conflict countries have moved only very slowly towards the more devolved forms of decentralization, favoring keeping provision by NGOs in place as long as possible, providing basic infrastructure through social funds, and deconcentrated forms of administration before handing over substantial responsibilities to elected local authorities.

96. One of the principles of post-conflict service delivery is “to use what’s there” in the interests of winning support, and legitimacy, for the new government. What has been there is NGO and CBO provision of relief and basic services. Whatever degree of devolution is actually implemented, the GoSS and the States should continue to use functioning systems to deliver services. Although this may tend to

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32. There is great disparity in the own source revenue potential of the various states. Unity and Upper Nile receive a share of oil revenues and Central Equatoria and Northern Bahr el Ghazal have a relatively high share of own source revenues. A World Bank (forthcoming) study of three states is analyzing the potential for own source revenues.

33. See for example, Lake and Rothchild (2005) and Siegel and O’Mahoney (2007).

34. Uniquely, Sierra Leone has made decentralization the cornerstone of its post-conflict public administration reform, and it now has elected local authorities once again (they were disempowered in the early 1970s). Yet, even four years after their reinstatement and eight years after the conflict ended, most grants are tied and the local councils have limited effective discretionary authority over the delivery of public services, even if the law gives them clear responsibility. Sixteen years after Mozambique’s peace accords, only 43 municipalities have elected councils, and only small amounts of revenue over which to exercise their responsibilities; none in rural areas (the very areas where the legitimacy of the government is most challenged) have elected local government. And it should be noted that even in countries noted for their decentralization, such as Uganda, the central government can continue to exercise a substantial amount of control by having most of the flows to local authorities in the form of contingent grants (a certain amount for health, a certain amount for primary education, and so on).
work against establishing the legitimacy of the GoSS and states in the short-run, the risk of replacing these without working alternatives is not an option. The focus on the establishment of administrative structures increases operating costs without necessarily improving services. A gradual transition is needed. The transition will only be secure when the states and localities have secure sources of revenue and have built upon their own service delivery capacity. In any event, robust sub-national accountability arrangements—one of the key prerequisites for sub-national service delivery—are not likely to be in place till the elections.

Traditional Authorities

97. Chiefs\(^35\) have been responsible for political stability in their communities and arbitrating land and other disputes, though not for systematically raising funds to provide public services. Many of the Chieftaincies were created by the colonial rulers as instruments of indirect rule and as a result of political manipulations they have lost some of their credibility and authority. However, the ICSS and the LGA 2009 require traditional authorities to be incorporated into local government and to be represented at other levels of government. The LGA 2009 distinguishes Kingdoms from Chieftaincies with the latter deriving legitimacy from the Act while the former have traditional hereditary legitimacy. Currently, traditional authorities are represented in the interim executive authorities at all levels of local government and have some influence at the state level.

98. While they are constitutionally recognized and have been assigned a role in local governance in the LGA 2009, there has been limited discussion about the implications of this hybrid model for the modern structures of the state that are being established in the local sphere. Historically, the SPLM had rejected the idea that traditional authorities have a role to play in modern (local) government arrangements on the grounds that these institutions were anachronistic. There was also a history of manipulation of traditional authorities in the south by the government in Khartoum that had served to deepen the mistrust. As Hoehne’s 2009 review shows there is evidence from other African countries (including an important example from Darfur within Sudan) which suggest that even though traditional authorities may have an important role to play in some spheres, integrating them into modern local government structures can be problematic and can undermine the evolution of modern democratic systems of local government. Darfur also provides an example of the politicization of traditional authorities (known as “native administration” in Darfur) by the central state and the risk associated with legitimizing traditional authorities in this way\(^36\).

99. The balance of this section summarizes the challenges in Southern Sudan of establishing an affordable public service capable of delivering development, sufficiently robust arrangements for managing public finances, implementing decentralization as envisioned in the framework documents and managing corruption.

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\(^35\) Typically there are five levels of chiefs: (i) Paramount Chief; (ii) Executive Chief; (iii) Chief; (iv) Sub chief; (v) Head man. This is similar to the model for indirect rule in other Anglophone colonial countries.

\(^36\) Annex 3 summarizes Hoehne 2009 and provides a discussion of the regional experience with traditional authorities in particular the interface with modern (local) governance structures.
C. Getting the New Structures to Deliver

100. Whatever structures are established, they will work only if properly staffed and funded. The GoSS and the states today face a fiscally unsustainable wage bill coupled with an ineffective public service. These problems are attenuated by extreme dependency on oil revenue and its inherent volatility that will continue to present a fundamental challenge to effective and sustainable fiscal policy. With no possibility for any significant increase in non-oil revenues in the short run and limited scope for improving the quality and efficiency of public spending, the only other option for increasing fiscal space is through aid which is already quite high. In these circumstances what are the short run options for improvements at the margin?

Resources for Service Delivery

101. Meaningful decentralization requires that governments at each level have real and independent authority to raise revenue and provide services as they see fit. In Southern Sudan, this means that states should be able to raise the revenue they need to provide social and economic services in line with the CPA and ICSS. The inability of states and/or local government units to raise the revenue needed to fulfill their constitutional and legal service delivery responsibilities together with capacity constraints are the main reasons why decentralization will be invariably partial.

Non-Oil Revenues

102. There is lack of clarity about what revenues can be collected, where they can be collected, and by what level of government. Currently the amount of non-oil revenue being collected is negligible. The GoSS, which has responsibility under the ICSS for taxation and revenue raising in Southern Sudan as a whole, has yet to make decisions on the following:

- The principles to be applied when distributing revenue capacities between the GoSS, the States and local government.
- What level or levels of government can set the rate of tax to be applied to each tax base?
- Whether a government can vary tax rates set by another (it has been proposed that concurrency of authority would allow a State to vary the rate of a GoSS tax to be applied in its area).
- What authority is to be given to governments at each level so as to maximise the efficiency of revenue collections.
- Where two or more governments are sharing a revenue base: (i) how that base is to be defined (can the two have different definitions; are governments to set a combined rate and issue a combined assessment, or are they to act separately, including on collection?); and (ii) how the governments are to agree on the sharing of revenues.

37 From negligible levels (less than 1 percent) in 2005, 2006 and 2007, the share of non-oil revenue in total GoSS revenues rose to about 1.8 percent in 2008. The budget estimates for 2009 place this at 6.7 percent. In view of the very low levels, there is considerable scope for increasing these revenues in spite of the low level of GDP in the south.
• What arrangements are to be established to cover costs of revenue collection by authorities collecting revenue on an “agency” basis?

• What overall agreements are to be exist between governments to implement the arrangements, including such things as the frequency of redistributions from collectors and the auditing of joint collection procedures?

103. If the decentralization objectives of the ICSS are to be followed, an underlying principle should be that each level of government should have its own-source revenue in relation to the cost of its service delivery responsibilities. This would make the sub-national governments more obviously answerable for their expenditure policies and levels of efficiency. There are two ways in which own-source revenue could be provided to the States: (i) by giving the States rights to levy “piggy-back” tax rates on GoSS sources, and (ii) through a sharing arrangement with only one tax imposed on behalf of both governments. The latter option is administratively simpler and might be best for Southern Sudan. It would involve GoSS defining the revenue base, setting the tax rates and collecting the revenue, knowing that under a pre-existing agreement, it would be providing each State with a set percentage of the revenue that was derived from taxpayers or taxable activities in their State.38

Grants

104. The CPA established the Fiscal Financial Allocation and Monitoring Commission (FFAMC) in Khartoum, and the ICSS established a similar body in Southern Sudan (SSFFAMC) to ensure fairness in the distribution of the oil and other national sources of revenue. However, thus far the SSFFAMC has had almost no role in the actual allocation decisions that have been made. There were two types of grants in the 2007 and 2008 budgets:

*Block grants*  
(1) to cover the cost of each state’s council of ministers  
(2) to cover the cost of each state’s legislative assembly  
(3) to provide special development opportunities in five states  
(4) other block grants39

*Tied grants*  
(5) to cover education workers’ salaries  
(6) to cover veterinary officers’ salaries  
(7) to cover health workers’ salaries.

105. The current basis of distribution of the grants is that categories 1, 2, 4 and 7 are an equal amount to each State, irrespective of the expenditure needs and revenue capacities of the States. Equal amounts are supposed to be given to the states for category 3, while categories 5 and 6 are based upon the numbers of staff. Thus both block and tied grants are tied to specific areas of state expenditure. There are four other ways in which states receive assistance: from the Presidency; by “cash checks” from GoSS ministries; direct payments by GoSS to cover state expenses; and GoSS provision of capital assets for the states. In addition there are some special ad hoc transfers to the “Three Areas”- Blue Nile, Southern

38 Support is being provided through a World Bank (forthcoming) study op cit.

39 These were over 75 percent of the total Block Grants in 2008.
Kordofan and Abyei – that were added in 2008. As noted in chapter 4, it is difficult to match the actual flows with the supposed flows, and there is an urgent need that the correct data be readily available.

106. The 2009 budget has some notable changes in the grant arrangements. Block grants are now made by GoSS to the state assemblies, the state governments, and a separate block grant for use by the counties. The grants to counties pass through the state governments and the horizontal distribution across counties is left to the state.\textsuperscript{40} Conditional grants are made by nineteen GoSS entities to their counterpart entities at the state level. These conditional transfers are defined by economic use and by function.

107. Between 2008 and the 2009 (budget estimates) there is a significant decline in the share of block grants from 63 percent of the total in 2008 to only 39 percent in 2009. This is largely due to an increase in the overall volume of transfers. No implications for state autonomy should, however, be read into this trend since it is a result of better assignment of costs that were hitherto being reflected on the GoSS budget (see table 3.5). Overall transfers have increased from around 7 percent of total budgeted expenditure in 2006 to 11.4 percent in 2008 (including the supplementary grant proposals).

108. The form the grants take has a bearing on the issue of decentralization versus deconcentration and the extent to which the service delivery objective is served (if it is agreed that service delivery needs are best served through relatively more devolution) versus the legitimacy objectives (if it is agreed that these objectives are best achieved through giving the GoSS relatively more authority over service provision). As argued in chapter 4, to have only tied grants, as is effectively the case at present, gives States less fiscal autonomy than if they received some of their grants as untied. It also limits the government providing the funds from implementing equalization of service provision as an objective. Untied grants give recipients a greater capacity to decide their own budgetary priorities and satisfy the differing expectations of their people. They also allow greater ability to adjust for the influence of differences in revenue capacity on service levels. Tied grants give a central government more capacity to influence the States’ planning and budgetary decisions and are favoured by central financial planning agencies as better means of managing the overall public sector.

109. Decisions also have to be made on the principles underlying distribution of the grants. If equalization is a key principle its philosophy will need to be articulated. Whatever is decided, the SSFFAMC will need to have adequate capacity to propose allocations and to monitor the implementation of the equalization principle.

110. Under the current grant arrangements equalization is an unlikely outcome; in fact inequities are most likely being exacerbated. For instance, Unity which is one of the least populous states gets the same level of GoSS block grants as the others in addition to two percent of oil revenues; Upper Nile has a population similar to that of Warrap and Eastern Equatoria but gets its two percent share of oil revenues; Western Bahr el Ghazal with one fourth the population of Jonglei gets the same volume of block grants; and Central Equatoria with a population somewhat higher than that Warrap has significantly higher own revenues but gets the same volume of block grants. It is possible that the increase in tied grants in 2009.

\textsuperscript{40} It is expected that the existing pattern of “equal” block grants followed by the GoSS to the states would be replicated by states to the counties.
may have an equalizing effect but in the absence of good data on expenditure needs and revenue potential and of an articulated equalization —philosophy” the actual outcome is uncertain. However, some adjustments can easily be made with respect to the transfers to the two oil-producing states.

111. The GoSS should review the grant arrangements and prepare a second-generation grant design with a view to achieving vertical balance, regional equity, providing incentives for efficiency in the use of resources and for raising own revenues.

Staffing for Service Delivery

Balancing Objectives

112. The objective of quickly delivering public services and extending access building on existing delivery mechanisms needs to be balanced with the with the desire to establish the administrative machinery envisaged in the ICSS. As noted earlier, while the latter may be driven at least in part by short-term political considerations the literature suggests that failures on service delivery could also have important adverse implications. Ideally, governments at all levels should continue to work with and through NGOs and community organizations and be prepared to channel their own funds and those of donors as directly as possible to communities through community driven development initiatives (CDD) without worrying too much initially about establishing the full complement of structures and capacity, although that should be a medium term objective.

113. Second, it might also be possible to link the security and legitimacy objectives to the service delivery objectives more directly. Consideration should be given to possibility of utilizing military personnel to improve the delivery of services. Although there are currently no examples of this in Southern Sudan, soldiers could be used to organize improvements to roads, building classrooms and health units, even providing very basic health services. As well as improving access to services, this would help to win the support of the local population for the GoSS.

114. Once government structures are in place and resources available, the capacity” of the public service to deliver, or manage the delivery of, public services has to be established. Capacity is defined to include putting in place the most effective and efficient structures and processes of government, and creating the incentives necessary for staff to perform well, as well as raising the skill levels of staff.

115. These components of capacity are often referred to as —public/civil service reform,” which is more complicated in fragile and post-conflict countries (IEG-World Bank 2007 and IEG-World Bank 2008). Traditional approaches to civil service reform attempt to align the interests of principal and agent through transparency and monitoring and by reducing discretion while increasing the services provided (the —Weberian imperative”).41 However, it is now widely accepted that traditional Weberian reforms are hard enough in the best of circumstances and that instead of striving for —first-best” solutions

41 In the language of Woolcock and Pritchett 2002 or the variant presented in Fukuyama 2004, this is hardest when transaction intensity/volume is high and discretion is high (or specificity is low). The problem is exacerbated fragile in states where capacity is weak and adequate monitoring is not feasible and where patronage and corruption compromise other accountability mechanisms. See Blair 2007 for a detailed discussion.
development partners should take a more pragmatic view in such circumstances and work with their
government counterparts to establish "good enough governance” (Grindle 2004, 2007).

116. Establishing a merit-based civil service in fragile and conflict affected settings may not be
feasible or even well advised. For example, Esman (1999) argues that in ethnically divided societies,
depoliticization, political neutrality and merit are not fundamental values in the public service.
Meritocracy does not necessarily lead to a competent and effective public service because merit-based
recruitment and promotion, by favoring better educated groups, create inequitable ethnic representation in
the government and public service. And, there are the pragmatic considerations of accommodating
different constituencies and groups. Thus the value of the public service cannot be viewed purely through
the lens of service delivery. There is a need to balance longer term objectives with short term imperatives
and to ensure that actions taken in the short term are not inconsistent with longer term objectives.

117. The issues and options facing the GoSS in this context were discussed in some detail in Strategic
Options Paper No. 2: Public Service Reform and are summarized in chapter 3: how to make best use of
existing capacity and ensure that future expansion is more merit-based?

Recruitment

118. The highly decentralized way in which recruitment is handled while politically expedient makes
it difficult to control the numbers and quality of personnel. The basic building block of effective human
resources management is lacking: a database of demographics, skills and experience. There are more than
230 appointing authorities: the president, vice president and 23 GoSS ministers, the 10 governors and ten
deputy governors and 80 state ministers, 19 chairpersons of commissions, the SSLA and the 10 state
legislative assemblies and the 78 County Commissioners. Each "appointing authority" can recruit on its
own, though more recently there is pressure to follow a standardized recruitment procedure.

119. The Southern Sudan Civil Service Commission (SSCSC) has been established with a mandate to
promote public service principles and values, encourage efficiency and effectiveness, review civil service
terms and conditions, issue directives to ensure personnel procedures are in compliance, provide advice to
all levels of government, and hear and determine grievances. Experience from other countries in Africa
and other regions, indicates that the Commission will face considerable challenge in balancing
meritocracy and diversity roles and fending off political and patrimonial influences on appointments and
promotions. In any event, it will take several years for the Commission and its counterpart in the states to
have a significant impact on the quality of staff in the public service. The enabling legislation for the
SSCSC is yet to be enacted.

120. The recruitment process will also have to take account of diversity needs, while balancing merit
and representation. Legal options include affirmative action requiring agencies to make a reasonable
effort to hire and promote people from under-represented groups. A mandatory quota system is another
legal option. Perhaps less intrusive would be to implement diversity managerially based upon the belief
that organizations that manage diversity are stronger and more effective than insular organizations. In any
event, the political imperatives will be in conflict with efficiency objectives.
121. A balance would need to be struck between the goal of creating a public service that reflects the diverse ethnic composition of the population and also achieves gender balance and the principle of recruitment and promotion on merit. A particular problem in Southern Sudan is the tension between the ethnic groups that led the SPLA and southern Sudanese from other ethnic groups with arguably greater experience of public administration.\textsuperscript{42}

122. It is expected that future staffing will be linked to the planned functional review process.\textsuperscript{43} Under the functional reviews the various agencies of government will clarify their objectives and strategies, prepare restructuring plans, and staffing plans and job descriptions linked to the new structures. Although the re-selection of staff for the new structures could be carried out under open competition, this would create high levels of staff anxiety at the very time when there is a need to bring staff together around common objectives. In view of this, jobs could initially be given to the incumbent, for posts that have not changed significantly under the restructuring, and opened up to competition only if that person proves to be unsatisfactory.

\textit{Size and Wage Bill}

123. Staffing and pay issues illustrate the policy tensions faced in abnormally extreme form by post-conflict governments: between fiscal sustainability, paying high enough salaries to attract, motivate and retain key staff, accommodating former combatants and keeping a balance among the various tribal and regional interests.

124. The general experience in post-conflict countries is that the lower grade staff tend to remain during the conflict but the better qualified leave the country. As a result of civil servants leaving the country, some post-conflict civil services are smaller than average for low income countries. However in all cases the numbers are swelled by large numbers of former combatants being given civil service positions, or at least pay. Without exception, post-conflict civil services lack the professionals they need to provide leadership and provide services: doctors, teachers and nurses as well as an adequate number of permanent secretary and director grade civil servants.

125. With the possible exception of the problem of the “missing middle,” all of these general experiences apply to Southern Sudan. The number of public service employees is large. There were an estimated 94,000 public service employees on the GoSS payroll in 2008 and about 42,000 exclusively on the payroll of the States\textsuperscript{44}. Some of the growth, for instance in education and health sectors, may be justified. On the other hand, although lower than originally budgeted, the strongest growth of all for GoSS staff has been in Internal Affairs and Wildlife Services and this is expected to continue through 2009.

\textsuperscript{42} See Alier 2003 for a discussion of similar issues during the period of the Southern Regional Government of 1972–1983.

\textsuperscript{43} Functional reviews of selected GoSS ministries and in three states are being conducted under the MDTF-funded CABIHRD project.

\textsuperscript{44} The estimated numbers on the GoSS payroll are budgeted to increase to 126,000 in 2009 making the total an estimated 165,000. Note that the figures for the state payroll are not very reliable and the actual numbers may well be higher. (See chapter 3 for further details).
While, in principle, these are important services the increase is largely a result of accommodating ex-combatants from the SPLA and other armed groups.

126. More important, increases in pay levels and numbers have had an adverse fiscal impact. GoSS inherited the very low GOS pay scales, starting at $55 a month at the lowest level and rising to $300 at the top plus a long list of about 39 allowances (levels not dissimilar to other African countries that have not reformed their pay scales). The range was raised in the 2007 budget from $104 (plus $12.50 in allowances) to $1050 (plus $200 in allowances). Salaries were increased by a further 25 per cent in April 2007. There is as yet no pension scheme for Southern Sudan. In principle the pension scheme of the Government of Sudan (GoS) - a very generous pay-as-you-go scheme (up to 80 percent of last pay drawn), with 17 per cent from Government and 8 per cent from the employee - is applicable.

127. If grants to the states for the payment of salaries are included, the wage bill was a 64 per cent of expenditure in 2007 and estimated at 57 per cent and 63 percent in 2008 and 2009 respectively. If expenditures on the SPLA are included, an estimated 85 percent of total expenditure is accounted for.

128. In the interests of security, peace and even legitimacy, it may be necessary to tolerate a high wage bill in the short term while steps are taken to retrain the excess staff for other employment. Initially it was felt that Southern Sudan would be better able to tolerate the high wage bill in the short term than many other post-conflict countries. For example, Burundi, which has only just signed a peace accord with the last rebel group, has a very high wage bill close to 12 per cent of GDP (civil servants plus military and police) - but does not have robust and rising revenue sources). However, it will be important for a plan to be prepared to bring the wage bill down as a proportion of total recurrent expenditure. This is especially important given the need for a more conservative and medium-term outlook on oil revenues, to foster more effective volatility management within a fiscally sustainable framework.

129. It will be important, as in more stable as well as post-conflict countries, to make sure that salaries for key technical and professional staff are high enough to attract, motivate and retain them. Most of all Southern Sudan’s public service right now needs well qualified professionals to provide health, educational and other services and experiences public service management to provide leadership. In all post-conflict countries there is a heavy initial reliance on nationals from the diaspora and international staff to fill these positions.

Pay Policy and Wage Bill Management

130. Controlling the wage bill, and at the same time improving pay levels and structures where needed, is a challenge facing all tiers of government, though in different ways. At the GoSS level, the options of freezing employment at the existing level and of finding an alternative to the integration of demobilized soldiers or the assimilation of the “other armed groups” through absorbing them into the public service need to be considered.

131. At the state level, wage bill pressures have become even more critical. The states could usefully distinguish between “public employment” and “employment in the public service.” The former is employment, including as a measure of social protection, paid for by the government but with limited
long term implications. The latter involves a far smaller number of employees who are members of a professional cadre of the public service for whom government takes on long term liability.

132. Three options are suggested in chapter 3: each level of government to manage its own human resources and wage bill; GoSS to provide financial incentives for states to manage their human resources and wage bills in a way that encouraged reform; and direct management of human resources and the wage bill for at least the GoSS and the states by the GoSS.

133. Whichever option is chosen, a compensation policy will have to be put in place. Salaries have grown in the past two years without any linkage to improved productivity. It would be wise to freeze all salaries pending a comprehensive review of competitive salary levels for the public services. The problem with this in a low income post-conflict country is that there are no comparators in the private sector for the lower paid and the comparators for senior and professional staff are in the donor and NGO sectors, where staff are typically paid 5 to 10 times as much as in the public service. By competing with each other for a very scarce pool of local professionals, donors and NGOs push up salaries well out of the reach of the public sector.

Managing Numbers

134. Any serious rightsizing or downsizing such as recommended by ASI 2008 may have to wait till the situation stabilizes and the political climate and economic circumstances are more conducive. Strong establishment controls, completion of management and functional reviews and a clear understanding of the functional assignments across tiers of government as well as decision on the three options listed above are also prerequisites. In the interim, exercises to clean up the pay roll by removing —hosts” and others who should not be there at all, is the best way forward in the short run. The GoSS, under the leadership of the Ministry of Public Service Labor and HRD, has already begun this exercise at the GoSS level and in some of the states. Although the results of this have not been made public, it is understood that this has led to a reduction in numbers in GoSS and in some states though no significant impact on the wage bill is apparent. While these numbers are not very large this sends an important message about the government’s commitment to reform.

135. Second, immediate retirement of those who are over the official age of retirement is an option. This can be done on the basis of an acceptable interim pension policy that could be designed to be revenue neutral even in the short run. Third, appropriate (re)grading of staff based on qualification and job descriptions would also provide cost saving.

Legal Framework

136. In January 2006 Interim Regulations for recruitment and selection were issued by the Minister of Labor, Public Service and HRD which prescribed, for GoSS, who the Appointing Authorities would be and the procedure to be followed. These were followed in January 2007 by more detailed principles for governance and public service regulations issued as an executive order by the Minister of Labor, Public

45 Although the reports are not yet public, it is reported that the GoSS payroll was reduced by about 3000 persons and that this has led to an estimated saving of an annual $18.0 million.
Service and HRD. By August 2007 the Ministry, with assistance from USAID/Bearing Point, had framed a draft Public Service Bill and Regulations which is under consideration of the government. The government has also completed a review of the approved posts (―nominal roll‖) in each ministry and commission during 2007.

137. Traditionally, all government employees in Sudan are treated as public service employees. However, in the current context it is appropriate to distinguish between three types of government employees: (i) Political appointees to non-constitutional posts with possible executive functions; (ii) Workers (typically unskilled) benefiting from ―public employment‖ financed by the government as a measure of social protection; and (iii) Public service employees with defined, minimum levels of competence who productively fulfill a defined function/role within a defined organizational structure.

138. It is useful to make this distinction for three reasons: (a) the terms and conditions of employment of these three sets of employees can be differentiated, (b) the management structures for the three sets can vary, and (c) the cost to the public account of employment can vary significantly. One approach could be to create a small, reasonably paid civil service core on which training can be focused, and to hire the remainder of government employees on a contract basis. A major advantage of this approach would be to avoid locking into a structure of tenured positions from which the government might find it difficult to disengage should it decide that fewer staff are needed.

139. While significant downsizing will not be feasible in the short run, the GoSS should consider the option of not providing tenure protection to all those who are in the public service today. With this distinction, applying the law selectively to ―public service employees‖ would be an option. This would reduce the burden of implementation considerably and focus management attention on the core set of employees who are vital to keep the government functional. The second and much larger set of employees could be managed under the current labor laws for workmen, with far lower levels of management attention and effort. This would also enable the government to make political appointments, but at differentiated terms and only on time-bound contracts. Similarly, the level of legal protection (on tenures and so on) for unskilled workers would be much lower and could be equated to ―casual‖ need-based employment, which can be terminated at any time. Simultaneously, sifting out these two sets of employees from the mass of public employees would enable a more formal and rigid application of eligibility and qualification conditions as a precondition for continuing in public service employment.

Training

140. Training is critical for meeting the enormous capacity development needs within the public service in Southern Sudan. Training at scale should be preceded by skill and needs assessment.

141. A first step would be to map public service human resources in terms of skills and qualifications. Following this, develop a strategic management plan, based on functional and management reviews which can provide direction to future development of the public service by recommending a rational allocation of roles and functions across the three levels of government, prescribe organizational structures, staffing and skill levels, improved management systems and processes and a dynamic monitoring and evaluation system to track progress against the work plan.
142. Rightsizing of government would be one such medium term intervention in line with the functional distribution across the three levels of government; GoSS aiming for a small group of high quality professional employees for policy making, federal level development planning and the federal management of human, financial and material resources; States providing for regional development planning, supply chain management for basic services and regional resource management; Local Government managing the actual delivery of basic services and local area development.

143. The next step would be to prepare a capacity development plan with an initial focus on core professional skills.

144. The training itself should include both formal and on-the-job training, perhaps with an emphasis on the latter at first. Some of the training should focus on individuals, but some on teams. Team based training can also be a useful integration mechanism to assimilate individuals of ethnic and regional diversity drawn from different organizational cultures and are useful for making the organizational culture sensitive to gender and ethnic diversity.\(^{46}\)

**Tackling Corruption**

145. Perception surveys, including those conducted by the Southern Sudan Anti-corruption Commission (SSAC) rank corruption as the foremost problem for the nascent government identifying nepotism and tribalism as the most important issues. There is a literature that has relevance in the Southern Sudan context which suggests that some corruption may need to be tolerated in the early years after conflict to buy the peace.\(^ {47}\) However, the President of GoSS declared Southern Sudan to be an area of “zero tolerance for corruption” in 2006.\(^ {48}\) The risks are especially high in Southern Sudan due to relatively high revenues from oil. Another set of risks is associated with nepotism and tribalism in recruitment to and employment in the public service.

**Public Financial Management**

146. Although the institutions of good governance are being put in place, they are weak. The Government has taken steps to build financial management and procurement capacity in the GoSS through training of staff and by contracting out key functions such as accounting, procurement and audit (Box 1). Plans to extend this to the state and local level are being prepared and implemented with donor support.

**Law Enforcement**

147. The law enforcement functions of the Southern Sudan are split between the Ministry of Legal Affairs and Constitutional Development which is in charge of the prosecution service and the Ministry of

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\(^{46}\) An initial round of training is being carried out under the MDTf-funded CABIHRD project.

\(^{47}\) See for example, Rose Ackerman 2008 and Le Billon 2003.

\(^{48}\) The Finance Minister and both his Under Secretaries were removed from their posts in April 2007 on charges of corruption. Subsequently, in February 2008 the Auditor General was similarly charged with corruption and removed along with all other members of the Audit Chamber; all this within just around two years of the Government being formed in October 2005.
the Interior which is in charge of the Police and Prisons Services. The Ministry of Legal Affairs has 250 attorneys who are currently not functionally separated into civil and criminal departments. Both ministries suffer from lack of trained professional and support staff. Some of the attorneys need re-training since they got their legal education in the North. The police are largely drawn from the ranks of the SPLA and are thus not sufficiently civilian in their outlook and attitudes.

**Judiciary**

148. The judiciary, which is in principle constitutionally independent under the ICSS, is not so in practice and is not yet fully functional, again because of capacity problems, although the government plans to set up a National Legal Training and Resource Center. Issues of customary versus formal law have yet to be addressed. Understaffing and training in common law are important issues.

**Watchdog Institutions**

149. The ICSS created a range of watchdog institutions to provide oversight. Those most closely connected with the anti-corruption mandate and financial matters are the SSACC and the Southern Sudan Audit Chamber. The SSACC is an independent commission appointed by the President. Its mandate includes protection of public property, investigation of corruption cases, prevention of administrative malpractices, and administration of assets declaration. Prosecution is the mandate of the Ministry of Legal Affairs and Constitutional Development. The “Audit Chamber” performs functions normally vested in the Controller and Auditor General.49

150. The enabling legislation for the SSACC was enacted in 2009 and the SSACC will now be in a position to take up the large number of pending complaints. The SSACC has also framed a code of conduct and a wealth declaration system that are to be implemented. The Auditor General was removed from office by presidential decree in February 2008 following a vote of no confidence by the SSLA in December 2007 and this key post continued to remain vacant till very recently.50. In the absence of a fully functioning AG, the efficacy of anticorruption efforts is bound to be compromised. An international firm audit form (see Box 1) that has been contracted at a high cost to support the AG could not function as envisaged in the absence of an AG.

**SSLA**

151. The Southern Sudan Legislative Assembly (SSLA) and the State Assemblies are supported by very few administrative and research staff. The nomination of most members by the ruling parties reduces their effectiveness as oversight bodies.

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49 The choice to name reflects the fact that Southern Sudan is not a separate country

50 An Auditor General was appointed in February 2010 after a gap of over two years as the previous incumbent had stopped functioning in December 2007.
Box 1: Financial management

Once peace arrived, the issue of public financial management needed to be addressed most urgently. In 2004 the SPLM Ministry of Finance in Yei was managing annual revenues of approximately $120,000. After 2005, it would be expected to receive and manage over $1 billion annually (JAM 2005). The CCSS had maintained a Ministry of Finance in Juba but very little was known about this and its capacity. Further, the SPLM was not likely to trust these persons at least not in positions of responsibility.

Based on the approach adopted in Afghanistan, the World Bank advised that treasury management, internal audit, procurement and external audit be contracted out while GoSS capacity was developed to manage these functions. The GoSS accepted the proposal of contracting firms for procurement and external audit but did not accept the other proposals. The idea of contracting the treasury out to foreigners was seen as politically unsustainable.

To provide fiduciary comfort for MDTF resources the GoSS agreed to contract a firm for managing project finances. (KPMG was contracted as an “interim” Project Accounting Agent in 2006.) GoSS counterpart funds for projects were pooled with MDTF funds and thus subject to the same fiduciary standards. GoSS also appointed KPMG to perform accounting functions for its other expenditures. Though the terms of this contract have not been made public, it is understood that the firm performs book-keeping functions but does not have fiduciary responsibility.

Capacity building was not entrusted to the contracted firms on the assumption that this strategy would be inherently ineffective because the firms did not have the appropriate incentives. The MoFEP has several “advisors” provided by various donors who are not in line positions but support line staff to establish systems and perform their functions. Although good progress has been made in budget formulation it is too early to have confidence in the budget executions systems and the controls and accounting capability of the MoFEP.

An external audit firm was contracted in late 2007 and started functioning was handicapped by the fact that the auditor general was dismissed in March 2008 and not replaced till February 2010.

Further, on account of the importance of the oil revenues, the focus so far has been on budget and expenditure management and revenue administration and collection has been neglected. Own revenues of the GoSS and states are low and consistently below estimates. This is the next priority and is critical for establishing accountability.

Finally, the most urgent need is to create public financial management capacity in the states and counties, where the situation is dire. Very limited systematic information is available on the PFM capacity in states, but states were not able to prepare budgets until 2007. On the other hand, there is increasing pressure to devolve more resources to the sub-GoSS levels and devolutions in 2009 are expected to increase from current levels and grants are to be provided to counties.

Media and Civil Society

Civil society institutions and the media are both weak in Southern Sudan and cannot be expected at this stage to provide effective oversight to hold government accountable. Both radio and television are government owned and television does not have a reach beyond Juba. All the major newspapers from the

51 As a way to address this problem, the new MOFEP had two Under Secretaries — one each from the CCSS and the SPLM. As it turned out, both lost their positions on corruption charges.

52 The procurement processes took longer than anticipated. Crown Agents was contracted in 2007 as the Procurement Agent; PKF was contracted as the External Audit firm in 2008 to support the Auditor General.

53 The share of non-oil revenues to total revenues was under 1 percent between 2005 and 2007 and rose to about 2.0 percent in 2008.
north along with southern newspapers are available in the south but circulation is limited to Juba and the state capitals. The Right to Information Law is yet to be enacted and information regarding government is hard to come by.

**Priorities**

153. Where collaboration across the various institutions is underdeveloped or weak, as in Kenya and Malawi, the anticorruption effort can lose focus and fail, as cases fall through the interstices created by arguments about mandate and overreach. More important, the responsibility and leadership for the anticorruption effort has to be at the center of government. This poses a risk for Southern Sudan. By passing on the responsibility of leading the anticorruption effort to the SSACC, there is a risk that what is largely a political problem that needs to be addressed as such might end up being treated as a technical problem—making the effort ineffective.

154. Where capacity is weak it is particularly important to focus on the more important corruption issues. These include: government procurement, particularly on large public works; and conflicts of interest, most notably through an ownership interest by public officials in private firms seeking to do business in Southern Sudan.

155. The SSACC had identified procurement as a priority and was looking for ways to train staff on combating procurement fraud. On procurement, the steps would be: ensure there is an open and transparent public procurement law with appropriate sanctions for bid rigging and for collusion between procurement officials and bidders; and train procurement agency, SSACC and audit staff and prosecutors on procurement issues. This would include training on how to conduct an honest procurement and what the signs of a tainted one might be. The creation of an interagency task force on corruption in procurement led by a senior prosecutor has been suggested.

**D. SEQUENCING THE REFORMS AND MAKING STRATEGIC CHOICES**

156. Although the SPLM and the GoSS enjoy legitimacy this is largely as a result of the confidence in the former as an architect of the CPA and as the only credible leadership for leading the south to the referendum in 2011. This will see the leadership through to the referendum. However, the GoSS needs to establish its credentials for good governance and efficient service delivery and for providing the leadership and environment for equitable growth as this is where the attention will turn after the referendum.

157. The discussion in this report shows that the GoSS is faced with considerable challenges in delivering on the promise of the peace and that these challenges are compounded by the various constraints it faces: weak capacity, political obligations, the risk of corruption, security considerations and

54 All the southern newspapers are printed either in Khartoum or east Africa.
55 The findings of a procurement audit jointly conducted by the SSAC and the Auditor General in 2007 are yet to be made public.
56 Although interim regulations were framed and adopted in 2006, a procurement law is yet to be enacted.
large number of competing demands on its resources. The wage bill is large and growing; the public service is unwieldy and inefficient and does not have a development orientation. The elaborate administrative structures that have been established consistent with the CPA and ICSS are a further drain on resources without necessarily contributing to better governance and service outcomes. The SPLA remains a necessity in the face of continuing security threats. In the circumstances there are limited options for increasing fiscal space and efficiency for higher investment and better service outcomes: (i) an increase in foreign aid which is not entirely exogenous and may be influenced the quality of governance; (ii) a reduction in the size of the wage bill; (iii) a reduction in other operating expenses; (iv) and improvements in performance efficiency.

158. The immediate, medium and longer term options and priorities identified in this report to address these are summarized below:

**Immediate (1–2 years)**

*Service Delivery*

- Continue to work with NGOs, communities and donors to improve the provision of basic service throughout the country through whichever delivery mechanisms work best and quickly.

- Improve performance on the execution of the budget including on procurement both in the GoSS and in the states through contracting out/in, attracting professionals from the diaspora and selectively using the services of consultants.

*Public Service: Quality*

- Establish the proposed reform secretariat and train reform cadres in ministries and states; and support them with international/national consultants as needed.

- Enact the public sector law (and regulations) and initiate implementation in particular with respect to quality control on recruitment but consider a phased application with respect to tenure protection (see below).

- Complete functional reviews and job evaluations in five ministries and two states.

- Enact the enabling legislation for the SSCSC.

*Public Service: Size and Wage Bill*

- Be prepared to tolerate a relatively high wage bill during the period and prepare a long term plan to bring the wage bill down. However,
  - Put in place a simple HRMIS linked with a payroll database that will provide the basis for controlling the numbers and wage bill in the future.

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57 These recommendations should be possible to implement in advance of the referendum 2011. Note that this period includes the elections in 2010 and no major reforms are likely to be taken up during this time.
- Continue with the payroll cleaning exercise, at the same time ensuring that unplanned expansion stops.
- Retire those above the age of retirement using an interim pension scheme if needed.
- Conduct ongoing reviews of the payroll under the leadership of the SSCSC.
- Consider a freeze further employment till the situation stabilizes.

- Follow up functional reviews and job evaluations with appropriate grading of staff based on qualifications and job descriptions.
- Consider a phased/selective implementation of the public service law so that everyone does not get tenure protection right away. The initial application to a core set of public service employees with defined, minimum levels of competence that productively fulfill a defined function/role within a defined organizational structure. This will also make subsequent retrenchment easier.

**Decentralization**

- Prepare a policy for decentralization indicating the evolution of service delivery responsibilities consistent with resources and capacity to limit the fiscal impact.
- The establishment of the administrative structures envisaged in the CPA, ICSS and the LG Act 2009, should be done after due consideration to fiscal implications with a focus on what is essential for service delivery.
- Clarify whether (i) each level of government (state/county) is responsible for its own human resources and wage bill and GoSS provides incentives through the grant system that encourages reform; or (ii) GoSS directly manages of human resources and the wage bill for the states for an interim period.
- Review the intergovernmental arrangements:
  - Review functional and revenue assignments.
  - Review the grant system from the perspective of vertical balance, equalization and incentives for efficiency and consider the option of making adjustments for fiscal capacity where this can easily be done as in the case of the oil-producing states.
  - Review and support the capacity of the SSFFAMC to perform its functions.
  - Plan the creation of a states and local government unit in the MoFEP.
- Review the potential for own/non-oil revenues at the level of the GoSS, states and counties and identify administratively simple ways for raising revenues.
- Support capacity development of the states and counties for planning, project design and implementation through "learning by doing" by providing block grants to counties for capital expenditures with suitable arrangements for fiduciary compliance and accountability.
Corruption

- Enact and implement the procurement law.
- Complete pending audits.
- Provide SSACC with capacity to complete pending investigations.
- Improve recruitment procedures through the enactment and implementation of the public service law and regulations.
- Embed social accountability principles in the functioning of the SSACC and the government to promote downward accountability of government to the citizens

Medium term to long term (3–5 years)\(^5\)

Service Delivery

- Gradually transfer service delivery responsibilities to states as they demonstrate the capacity to take on those responsibilities; principal responsibility may be to prepare service delivery policies in line with budgetary resources and monitor their implementation rather than direct delivery by the state.
- Improve federal and state budget planning capacity through on the job technical support.

Public Service: Quality

- Implement the recommendations of the functional reviews across all ministries and state governments.
- Ask reform cadres to prepare plans to improve the efficiency and effectiveness of their ministries/states; these plans to feed in to the state and federal budget processes.
- In line with agreed national and state budget priorities, prepare staffing and capacity building plans for ministries and agencies at federal and state levels.
- Following the functional reviews, re-hire/re-select staff. Initially, the position can be given to the incumbent if the job description has not changed significantly and opened to competition only if performance is unsatisfactory.
- Build capacity of SSCCS to promote a merit based civil service, with account taken of diversity requirements
- Develop training institutions to build the capacity of public services through in-country training

Public Service: Size and Wage Bill

- Prepare a medium term pay strategy, linking improving incentives to bringing the wage bill down to a more sustainable level

\(^5\) For the period after 2011.
• Initiate retrenchments possibly starting from grades 10–17.

Decentralization

• Intergovernmental arrangements:
  o Implement a new intergovernmental fiscal architecture that includes a SSFFAMC capable of performing its assigned functions and a states/local government unit in the MoFEP.
  o Implement as second-generation grant system that addresses vertical balance, equalization and incentives for performance and efficiency.

• Provide options and targets for own/non-oil revenues for states and local governments and incentives for increasing revenues.

159. All along, there is a need to monitor progress in executing the federal and state budgets, with a very pragmatic approach to improving services. There needs to be a shift from the current focus on establishing the administrative machinery to service outcomes. Expanding the size of the public service and establishing all the identified institutions in the face of human resource and financial constraints and in the absence of robust accountability mechanisms is risky and, in any case, diverts resources and attention from development objectives.

160. It is important to be clear about the medium to longer term institution building objectives, be very realistic about what can be achieved in the short to medium term, monitor progress carefully and be prepared to make adjustments to action plans as circumstances change or new opportunities arise. Much less progress than expected has been achieved in every post-conflict country.\(^{59}\) The need to focus on security, the lack of political space and weak national capacity make it difficult to move forward with the kinds of transformations of institutions required to bring about sustainable improvements in the delivery of services needed to alleviate poverty in post-conflict countries and bring about robust stability.

\(^{59}\) For findings from a number of country case studies see A-P. Lopes and H. Garnett, forthcoming. For a discussion of the importance of having clear objectives, a good system to monitor progress, and being ready to adjust to changing circumstances or problems in achieving the objectives, see G. Reid and H. Garnett, forthcoming.
PART II

CHAPTER 3: ESTABLISHING AN EFFECTIVE PUBLIC SERVICE

161. This chapter is based on the “Strategic Options Paper Number 2: Public Service Reforms.”\(^{60}\) The chapter is divided into four parts. Part A explains the context in which public service reform is to be managed. Part B provides information on the current status of various ongoing reforms and institutional development initiatives. Part C presents options for managing these challenges and proposes a reform strategy. Part D summarizes short- and medium-term priorities.

A. BACKGROUND

162. The January 2005 Comprehensive Peace Agreement (CPA) ended the second Sudanese civil war (1983–2005) and established a government of national unity (GoNU) in Khartoum. It also established the government of Southern Sudan (GoSS) in Juba (with "authority in respect of the people and States in the South"), with its complement of state and local governments. The Interim National Constitution (INC) and the Interim Constitution of Southern Sudan (ICSS) ratified in 2005 enshrined the principles of the CPA. Part six of the ICSS vests the president of the GoSS, the vice president of the GoSS, and the council of ministers (CoM) with executive authority. Under an interim arrangement, until elections are held,\(^{61}\) the chairperson of the Sudan People's Liberation Movement (SPLM) is the president of Southern Sudan and the first vice president of the Republic of Sudan. The president of the GoSS appoints the vice president and the CoM (in consultation with the vice president), and these appointments are to be ratified by a two-thirds and simple majority, respectively, of the Southern Sudan legislative assembly (SSLA). Twenty-five percent of the CoM must be women. Part seven of the ICSS establishes an independent judiciary, the senior-most positions of which are appointed by the president of Southern Sudan, ratified by the SSLA.

163. Part 9 of the ICSS establishes the Southern Sudan Civil Service (SSCS), consisting of all the employees of the GoSS, as defined by law and based on principles of nonpartisanship, professionalism, and merit, with balanced representation assured to all the people of Southern Sudan, accountable to the appropriate level of government, whose terms and conditions of service are to be determined by law. Article 142 (1) (m) states that "all levels of government in Southern Sudan shall be responsible for the recruitment, appointment, promotion, transfer and dismissal of employees of the civil service in their administrations guided by uniform norms and standards set out” in the ICSS and the law.

164. A model on which the state constitutions are based—created as a framework after consultation with the state governments—provides that "the Government of the State shall have a Civil Service

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\(^{60}\) It also draws with out any further attribution to a background note—"Civil Service Reform in Southern Sudan,” January 2008, by Mike Stevens—prepared as part of this study.

\(^{61}\) Under the CPA, the elections were originally scheduled for July 2009 and have now been rescheduled for 2010 to allow for the resolution of logistical and remaining legal issues.
consisting of all its employees.” It further repeats the clause that each level of government manages its own civil service according to common norms. This is reflected in the various state constitutions.

165. The ICSS created a Southern Sudan Civil Service Commission (SSCSC), with power to review, oversee, issue directives, and give advice to the government on civil service matters and to hear and determine the grievances of civil service personnel. The model state constitution provides for the establishment of a state civil service office as a branch of the SSCSC.

166. The ICSS created the Southern Sudan Employees Justice Chamber (EJC) as an optional forum to the courts and the SSCSC, without prejudice to the powers of these institutions, and for the specific purpose of considering and addressing the grievances of SSCS employees. The model state constitution provides for the establishment of a state EJC in each state.

167. The Southern Sudan Public Grievances Chamber (PGC) was also created, notwithstanding the final judgment of the courts, as a forum of last resort to hear public grievances against government institutions and to make recommendations to the president or to the SSLA to improve the performance of government institutions. The model state constitution provides for the establishment of a state PGC in each state.

168. Southern Sudan has inherited at least two separate systems of administration. That inherited from the Coordinating Council of Southern States (CCSS) of the is rooted in a style of governance somewhat different from that of the SPLM-managed Civilian Authority of New Sudan (CANS), which, during the wars years, ran a rudimentary administration in the areas controlled by the Sudan People’s Liberation Army (SPLA). The CCSS administration was largely restricted to the three garrison towns of Juba, Malakal, and Wau. Meanwhile, the SPLM/CANS administration was dominant in rural areas and counties. With over 14 major tribes, tribal identity is a significant social force in Sudan. English was the accepted administrative language in the CANS areas, while Arabic prevailed in the areas controlled by the northern government and the CCSS. Southern Sudan consequently has no historical legacy of unified governance and is today characterized by a loose adherence to commonly accepted administrative principles, implemented under widely different patterns of management, systems, and processes. In addition, remnants of the southern regional government of 1971–83 are to be found in some areas and overlapping with the CANS.

169. The CCSS was largely dependent on a transfer of resources from the Government of Sudan (GoS) and followed the traditional “chapter” based budget system (in force even in 2007 in the north). Under the CANS structure, six commissions with attached secretariats were created to oversee political, economic, and social spheres of activity in the SPLM-controlled areas of the south. These were located in various towns in the south and in Nairobi and had limited links to the local level (Rolandsen 2005). The SPLM/CANS relied on donor-funded nongovernmental organizations (NGOs) to provide basic services in their areas—while also collecting fees from communities for the services provided by volunteers in the CANS. Its nonformal fiscal system was neither standardized nor transparent.
B. STATUS OF THE PUBLIC ADMINISTRATION

170. The task is daunting, but in the years since the CPA, the government has made good progress toward creating an institutional framework for the public sector, staffing key positions, and commencing the normal functions of an operational government.

Constitutional Framework

171. The Southern Sudan Legislative Assembly (SSLA) is functional, with 170 members. It has regular sessions for transacting business. It has formed 15 specialized subcommittees. To date, 23 acts have been approved by the SSLA and others are under consideration. There is, however, a huge backlog of pending legislation. The SSLA has considered and approved four GoSS budgets from 2006 to 2009. But because its members are appointed by the political parties in the ruling coalition, a true separation of power has not yet been achieved.

172. Based on the model state constitution, all 10 states have framed their own constitutions in conformity with the ICSS. In each state, LAs of approximately 80 members meet and transact business regularly. These LAs have passed the 2008 and 2009 budgets in all 10 states. As in the case of the SSLA, the members of the state LAs are appointed. Some states have also formed the various independent commissions, as provided for under the ICSS.

173. A judiciary has been established at the level of the GoSS and the states, as provided for under the ICSS; together with traditional authorities (which function on the basis of customary law), it provides the underpinnings for the rule of law. The independence of the judiciary envisioned in the ICSS is unlikely to be achieved during the interim period.

174. Nineteen constitutionally mandated independent commissions, of which three (the SSCSC, EJC, and the PGC) relate to the public service and public administration sector, have been established by the GoSS.

175. The task of the SSCSC, according to both the Interim Constitution and the draft SSCSC Act, is to promote public service principles and values, encourage efficiency and effectiveness, review civil service terms and conditions, issue directives to ensure personnel procedures are in compliance with laws and regulations, provide advice to all levels of government, and hear and determine grievances. The SSCSC is also charged with providing guidance and coordination to state-level civil service institutions. The chairperson, deputy chairperson, and four members of the SSCSC have been appointed, but inadequate staff constrains the functioning of the commission. The draft act proposed by the commission is yet to be approved and, in its absence, the commission feels that it lacks the necessary legal authority to act on its mandate.

176. The EJC, which has a chairperson and members, has been established by presidential decree. Its draft act and regulations are still to be approved as of this writing, but it has already started grievance management and has heard and settled 47 cases, including private employee grievances referred by labor offices.
177. The PGC is similarly established and has a chairperson and members. The draft act and regulations formulated by it are yet to be approved.

**Law and Regulations**

178. A public service law and supporting regulations have been drafted by the Ministry of Labor, Public Service and Human Resource Development (MoLPS&HRD) of the GoSS but are still under government consideration. States have not framed their public service laws and regulations. Interim regulations governing recruitment, appointment, and a code for employees were issued as an executive order in January 2006 by the MoLPS&HRD. Thereafter, more detailed instructions covering a range of human resource (HR) management areas were issued in January 2007 by the MoLPS&HRD, GoSS. These executive orders provide the rudimentary regulatory framework for the civil administration’s day-to-day functions.

179. Draft acts and regulations for the SSCSC, EJC and PGC have been prepared but are still under government consideration. Until these are approved, the three commissions and the LGB are constrained to work within the confines of the explicit powers conferred on them by the ICSS and any subsequent presidential decrees.

180. A Local Government Act has recently been enacted, but the definition of public/civil service has yet to be established by law. The emerging consensus, which should be reflected in the public service bill (PSB) to be tabled in the SSLA, is that the GoSS public service would include all employees except those in the judiciary; the army; and security, disciplined, and organized forces and uniformed services (police, prison guards, the fire brigade, and so on). Each state would have its own public service consisting of officials working at the state or county level. But the status of the following questions and issues remains ambiguous:

- Some constitutional posts, such as members of commissions
- Officials in the judicial system who are not judges
- The wildlife service, which is a “unformed” service but functions under the Ministry of Environment
- Traditional authorities, such as executive chiefs, who perform some quasi-judicial and executive functions and are paid from public resources.
- Employees of the two public corporations—the Electricity Corporation and the Urban Water Corporation

**Government Machinery**

181. GoSS ministers were appointed in late October 2005. By the end of that year, 22 ministries were functional—expanded to 23 ministries in 2007 with the creation of a Ministry for Presidential Affairs. By early 2006 the GoSS ministries were established in Juba, mostly accommodated in the ministry complex
originally created for the regional government of Southern Sudan after the Addis Ababa agreement in 1972.

182. All 10 state governments have been established. Each is headed by a governor and a deputy governor with a council of around eight ministers, all of whom are centrally appointed.

183. An LGB that advises the president of the GoSS was established by presidential decree on May 17, 2006, as provided for in the ICSS. Seventy-eight county councils have been established and are functional. Each county prepared budgets for 2008 and 2009.

184. There is a proposal to establish a Ministry of Decentralization Affairs in 2009. The distribution of functions between this ministry, the Ministry of Finance and Economic Planning (MoFEP), and the LGB will need to be carefully worked out.

Staffing

185. Numbers on the GoSS budget. The first survey of public service personnel in Southern Sudan was done in November 2005, even before the government was fully functional (GOSS 2006). The survey identified 62,172 persons who claimed to be public servants, whether serving in the GoSS, states, or counties. Of these, 53 percent were from the CANS and 47 percent from the CCSS. The distribution of these personnel was skewed, with the state of Central Equatoria recording 20.4 percent and the state of Unity only 5.3 percent; 80 percent of the personnel were concentrated in only 38 percent of the 78 counties. Since then, the number of people drawing salaries from the public account has significantly expanded. Table 1 lists the personnel in the GoSS budgets of 2006–9. The table shows that there were 94,217 public servants on the GoSS budget in 2008 and, according to budget estimates, there would be 126,001 in 2009. The figures for 2008 and 2009 show that the number of state-level personnel on the GoSS budget is 75 to 80 percent of the total. Seventy-three percent of the actual civil service staffing in 2008 was for education and 9 percent for health. These are estimated to change to 61 percent and 16 percent, respectively, in 2009. The biggest increases have been in wildlife service and internal affairs (police), followed by education and the 19 commissions. The number of personnel in the organized forces almost doubled between 2006 and 2009 to almost 50 percent more than those in the civil services.

186. Numbers on the state budgets. There is no comprehensive record of the number of employees on the state budgets in the 10 states and 78 counties. Data are available for Central Equatoria, Eastern Equatoria, Western Bahr al Ghazal, Northern Bahr al Ghazal, Unity, Upper Nile and Jonglei. The total staff in these seven states, including those paid by the GoSS, was 65,089 in 2008. Central Equatoria, an outlier in terms of staffing, has recently concluded a detailed survey of its employees; around 16,000 are said to have been informally counted, although in 2008 the state had budgeted for 23,034 employees—of which 15,121 employees (66 percent) were said to be in the counties (an average of 2,520 employees in

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62 The GoSS budget for 2006 had an estimated 116,691 employees, but this seems an overestimate in light of the significantly lower estimates in the 2007 budget.
each of six counties). Excluding Central Equatoria and extrapolating the numbers, an estimated 42,300 employees were borne by the state budgets.  

### Table 1: Number of Public Service Employees on the GoSS Budget

<table>
<thead>
<tr>
<th></th>
<th>2006 (BE)</th>
<th>2007 (BE)</th>
<th>2008 (BE)</th>
<th>2008 (actual)</th>
<th>2009 (BE)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GoSS</td>
<td>States</td>
<td>Total</td>
<td>GoSS</td>
<td>States</td>
</tr>
<tr>
<td>Education</td>
<td>72,809</td>
<td>19,962</td>
<td>27,831</td>
<td>476</td>
<td>26,592</td>
</tr>
<tr>
<td>Health</td>
<td>5,449</td>
<td>2,456</td>
<td>2,291</td>
<td>2,946</td>
<td>330</td>
</tr>
<tr>
<td>Others:</td>
<td>14,364</td>
<td>12,381</td>
<td>12,348</td>
<td>6,154</td>
<td>770</td>
</tr>
<tr>
<td>of which 19 commissions</td>
<td>1,171</td>
<td>1,668</td>
<td>2,179</td>
<td>1,744</td>
<td>1,744</td>
</tr>
<tr>
<td>of which two corporations</td>
<td>0</td>
<td>1,601</td>
<td>1,247</td>
<td>901</td>
<td>901</td>
</tr>
<tr>
<td>of which SSLA</td>
<td>490</td>
<td>430</td>
<td>540</td>
<td>556</td>
<td>556</td>
</tr>
<tr>
<td>of which other ministries</td>
<td>12,703</td>
<td>8,682</td>
<td>8,382</td>
<td>2,953</td>
<td>770</td>
</tr>
<tr>
<td>Subtotal (civil service)</td>
<td>92,622</td>
<td>34,799</td>
<td>42,470</td>
<td>9,576</td>
<td>27,692</td>
</tr>
<tr>
<td>Internal affairs</td>
<td>21,242</td>
<td>27,313</td>
<td>54,404</td>
<td>41,920</td>
<td>41,920</td>
</tr>
<tr>
<td>Wildlife services</td>
<td>718</td>
<td>2,963</td>
<td>13,150</td>
<td>12,994</td>
<td>12,994</td>
</tr>
<tr>
<td>Judiciary</td>
<td>2,109</td>
<td>2,035</td>
<td>2,035</td>
<td>2,035</td>
<td>2,035</td>
</tr>
<tr>
<td>Subtotal (organized forces and judiciary)</td>
<td>24,069</td>
<td>32,311</td>
<td>69,589</td>
<td>56,949</td>
<td>0</td>
</tr>
<tr>
<td>Grand total</td>
<td>116,691</td>
<td>67,110</td>
<td>112,059</td>
<td>66,525</td>
<td>27,692</td>
</tr>
</tbody>
</table>

Source: Budget document; staff estimates.

Note: BE = budget estimates.

187. **Total numbers.** Together with the estimates presented in Table 1, the total number of public servants in Southern Sudan (excluding Central Equatoria) was an estimated 136,500 in 2008 and might very well increase to an estimated 165,000 in 2009. (Assuming that there are 20,000 personnel in Central Equatoria, the numbers are 156,500 and 185,000 for 2008 and 2009 respectively).

188. **Decentralized recruitment.** Recruitment is decentralized in Southern Sudan. There are more than 230 appointing authorities: the president, vice president, and the 23 GoSS ministers; 10 governors, 10 deputy governors, and 80 state ministers; 19 chairpersons of the commissions, the SSLA, and the 10 state LAs; and 78 county commissioners. Each “appointing authority” can recruit on its own, although there has been recent pressure to follow a standardized recruitment procedure.

189. **Interim regulations.** In January 2006 interim regulations for recruitment and selection were issued by the MoLPS&HRD, which prescribed, for the GoSS, who the appointing authorities would be and the procedures to be followed. Then, in January 2007, more detailed principles for governance and public service regulations were issued as an executive order by the MoLPS&HRD. By August 2007 the ministry, with assistance from the United States Agency for International Development (USAID) and Bearing Point, had framed a draft public service bill (PSB) and regulations that were under consideration by the government.

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63 The data on the number of public servants borne on state budgets is not yet firm. Other estimates indicate higher numbers.
190. **Action plan on payroll reform.** The government has formulated an action plan for dealing with payroll reform based on the recommendations of a World Bank–led mission in 2007. In October 2007 the government appointed Adam Smith International (ASI) to advise it on its policy for payroll management. ASI has since submitted its report. The government now plans to contract a payroll consultant through the Capacity Building Trust Funds (CBTF).

191. **Review of approved posts.** The government also completed a review of the approved posts (the "nominal roll") in each ministry and commission in 2007. The 2008 budget reflected a consequential increase in approved posts. The personnel borne by the GoSS budget increased by about 40 percent between 2007 and 2008 and are estimated to increase by about 33 percent between 2008 and 2009.

**Compensation Policy and Practice**

192. **Inherited pay scales.** At the time of the CPA, there was no consistent structure for public service pay. CCSS personnel were paid according to the public service scales of the government of Sudan (GoS), with salaries ranging from about $55 a month at the bottom to about $300 a month at the top, augmented by a long list of about 39 allowances and in-kind benefits. These accrued disproportionally to senior grades, effectively stretching out what was otherwise a fairly compressed set of scales. CANS staff were not compensated according to any formal pay structure, having originally been seen as "volunteers" receiving ad hoc stipends and allowances often referred to as "incentives."

193. **New GoSS pay scales and their adoption by states.** The current set of pay scales operated by the GoSS was devised on the basis of decisions taken by the SPLM prior to the formation of the GoSS. In the 2006 budget consolidated wages were introduced, ranging from a top rate of $1,050 per month for grade 1 (undersecretary) to about $65–$80 for the lowest grade, 17 (unskilled). These consolidated sales were revised in the 2007 budget and split into a basic wage component and three allowances. The top salary in grade 1 was increased to a fixed $1,050, plus $200 in allowances, while the midpoint of the lowest salary (for grade 17) was set at $104, plus $12.50 in allowances, leading to a compression ratio of close to 11. Allowances were simplified by reducing a long list to just three, in aggregate worth a little less than the earlier set. The adoption of newly consolidated scales by the GoSS put pressure on the states to follow suit, and they have broadly adopted the new scales. In this way, the GoSS scales have become a standard for all tiers of government, including the organized forces (though not the SPLA, which has different pay arrangements). There are 17 grades in the present system, each (except the topmost one) with a set of annual increments, ranging from 4 to 8 percent.

194. **Further salary increase.** Salaries were increased by a further 25 percent in April 2007, when the government decided to determine salaries, paid in Sudanese pounds (SDG), in terms of a fixed exchange rate of 2.5 SDG to 1 U.S. dollar (USD) against the then-prevailing exchange rate of 2 SDG to 1 USD. The USD peg for salaries was subsequently abandoned, and the salaries are now determined nominally in SDG. Changes to GoSS salaries tend to get adopted by states, with an associated knock-on fiscal impact.

195. **Pensions.** Public sector pensions are not yet defined. Sudan operates a generous (approximately 80 percent of last pay drawn) pay as-you-go public pension scheme, with a 17 percent contribution from the government and 8 percent from the employee.
The Fiscal Burden of the Public Service

196. **High wage bill.** What is perhaps more significant than the number of public service staff is the percentage of total public expenditure consumed by their wages. As shown in Table 2, high staff numbers translate into a high wage bill. Except for 2008, when there was a spike in oil revenues, the wage bill between 2007 and 2009 has been around 50 percent of total expenditure—and around 64 percent if it is assumed that the block grant to states goes toward salaries. These are very high percentages by international standards; wages and allowances are typically 40 to 60 percent of recurrent expenditure (and thus a much lower percentage of total expenditure, including capital). Ministries of finance often set a target of wages and allowances at around 40 percent of total recurrent expenditure. If expenditures on the SPLA are included, this leaves very little room for spending on development (see Table 2).

Table 2: GoSS Expenditures (in US$ million)

<table>
<thead>
<tr>
<th></th>
<th>2005 (A)</th>
<th>2006 (A)</th>
<th>2007 (A)</th>
<th>2008 (BE)</th>
<th>2008 (Q3)</th>
<th>2009 (BE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total expenditure</td>
<td>226.14</td>
<td>1,790.77</td>
<td>1,468.25</td>
<td>1,714.05</td>
<td>2,278.62</td>
<td>1,803.56</td>
</tr>
<tr>
<td>Salary</td>
<td>17.73</td>
<td>592.87</td>
<td>739.88</td>
<td>823.43</td>
<td>781.69</td>
<td>923.11</td>
</tr>
<tr>
<td>Share of salaries (%)</td>
<td>8.0</td>
<td>33.0</td>
<td>50.0</td>
<td>48.0</td>
<td>34.0</td>
<td>51.0</td>
</tr>
<tr>
<td>Change in wage bill (%)</td>
<td>24.80</td>
<td>11.29</td>
<td></td>
<td></td>
<td></td>
<td>18.09</td>
</tr>
<tr>
<td>Block Grants (BG) to states</td>
<td>162.03</td>
<td>208.01</td>
<td>222.08</td>
<td>197.18</td>
<td>220.33</td>
<td></td>
</tr>
<tr>
<td>Share of BG (%)</td>
<td>9.0</td>
<td>14.0</td>
<td>8.0</td>
<td>9.0</td>
<td>12.0</td>
<td></td>
</tr>
<tr>
<td>Conditional transfers</td>
<td></td>
<td></td>
<td></td>
<td>344.67</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total transfers</td>
<td></td>
<td></td>
<td></td>
<td>565.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share (%)</td>
<td></td>
<td></td>
<td></td>
<td>31.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation to SPLA</td>
<td>598.75</td>
<td>592.72</td>
<td>500.00</td>
<td>780.27</td>
<td>500.00</td>
<td></td>
</tr>
<tr>
<td>Share of SPLA (%)</td>
<td>33.0</td>
<td>40.0</td>
<td>29.0</td>
<td>34.0</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>Salary + BG share (%)</td>
<td>42.0</td>
<td>64.0</td>
<td>56.0</td>
<td>43.0</td>
<td>63.0</td>
<td></td>
</tr>
</tbody>
</table>

Note: The “salary” figures include SPLA salaries which would also be included in the “Allocation to the SPLA.” Adding these two would amount to double counting.

Source: GoSS 2008

Performance Management

197. **No practical application.** The public service regulations issued as executive orders in January 2006 and January 2007 espouse the principles of modern management but fall considerably short of introducing a practical scheme for better resource management. For example, the regulations do not specify how to distinguish between good or average performance or how performance is to be evaluated and improved.

198. **No human resource management information system (HRMIS).** There is no HR database of demographics, skills, and experience, which is the building block for HR planning and management systems.

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64 Block and other grants are discussed in more detail in chapter 3.

65 Note that the “Allocation to SPLA” would also include salaries to SPLA. Simply adding this to the salaries and block grants would lead to some double counting.
Diversity. Despite constitutional provisions that specify the need for workforce diversity and broad representation of the public in the public service, how to implement these ideals has not been explicitly stated.

C. OPTIONS FOR INSTITUTIONAL CHANGE AND POLICY REFORM

200. The following basic building blocks need to be put in place. Each of the four is discussed further in this section.

- A legal framework for institutional change and policy reform
- Improved pay incentives—even while the wage bill is brought under control
- Effective government machinery
- Capacity for better performance

Legal Framework

201. Implement a legal framework for effective public administration. The biggest challenge is to define new operational rules for institutions and the three levels of government, with the aim to reduce executive discretion, improve the efficiency of decision making, and make the functioning of the government transparent. An uncertain legal framework and a multitude of laws and regulations sourced from the existing laws of the Republic of Sudan, the SPLM laws, and the customary laws is confusing and undermines the functioning and effectiveness of government entities, and erodes their credibility. Overall, a public service law supports the creation of rule-driven institutions in the government, and thus good governance. In recent years, several countries in Africa have either updated their existing public service laws and regulations (as, in effect, Southern Sudan is doing) or enacted legislation for the first time.\(^{66}\)

202. Establish rules. More than three years after the establishment of the GoSS, an approved regulatory framework does not exist. The government seeks to break from the past and establish new laws and regulations in keeping with the norms of a secular, democratic, and development-oriented polity—a worthy aim, but a huge overload on the rule-making capacity of the government and the legislature. What are some short-term options to avoid a regulatory vacuum?

203. Issue executive orders based in the ICSS. The ICSS is a fairly extensive document that specifies the distribution of functions, powers, and responsibilities in some detail. This makes it possible for the government to systematize its operations through the issue of executive orders, so long as the orders align

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\(^{66}\) Countries in the Anglo tradition often came to independence without a formal civil service law, but with regulations issued either by a finance ministry or the office of the head of government ("General Orders"). This reflected the fact that, at the time, the United Kingdom itself did not have a separate civil service law. Most Commonwealth countries (including the United Kingdom) now have such laws, many of them enacted in the past two decades.
with the ICSS. This is the fastest way to get started. But, clearly, prolonged use of this method would in fact undermine the role of the legislature enshrined in the ICSS.

204. *Regulate by presidential decree.* A variation of this option is for the government to get laws notified by presidential decree, which has the force of law under specific circumstances (Article 86 [1]) under the ICSS. While this option is more in line with the spirit of the provisions of the ICSS, it still should be used only sparingly and under circumstances that merit immediate action and cannot await the process of legislative approval.

205. *Amend existing laws.* Another option could be to review the existing laws of both the Republic of Sudan and the SPLM and adopt these laws with amendments. While this may provide a regulatory framework that is less than perfect, it would be a quicker process than formulating and adopting completely new laws. In fact, the use of presidential decrees in particular could well be restricted to the amendment of existing laws rather than for the approval of new laws, since amendments, being partial in character, align more closely with the spirit of the provision. While framing the new law and regulations, it is also important to consider capacity and the time constraints on implementing the new legislation and its supporting regulations. In case of severe capacity constraints, amending existing laws may be a more practical option than planning for the efficient adoption of completely new rules and regulations in a short time frame.

206. *Build capacity to implement new legislation.* The purpose of the new draft public service act, supporting regulations, and code of conduct is to adopt a modern, performance-oriented legal framework significantly different from existing regulations. Extensive training of officials in the provisions of these regulations and subsequent work on the development of guidelines and manuals to translate regulations into everyday practice is required.67

207. *Decide whether the new legal framework will cover only the GoSS or include states.* An immediate issue is deciding the coverage of the new public service law, once enacted. The law as currently drafted covers only the GoSS, which means the ministries, departments, and agencies in Juba and their deconcentrated offices in the states. It does not cover state governments, since these are constitutionally separate tiers of government. But since the states suffer from the same legal vacuum as the GoSS and are equally in need of a modern public service law, they should be encouraged to either pass identical laws themselves or adopt resolutions that extend coverage of the GoSS law to the states. The practice in other countries with federal-style structures varies. In the United States, each of the 50 states and the District of Columbia has its own legal framework that covers both the running of state finances and the state public services in various ways (not least in the roles and responsibilities of the civil service commissions or its equivalent in different states). In India, the states have their own legal frameworks but there is little variation across them. In Nigeria there is no differentiation—states apply effectively the same public service (and financial) rules as the federal government. They do not have

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67 A multidonor trust fund (MDTF) project, Capacity Building for Institutional and Human Resource Development (CABIHRD), has provisions to provide such training and dissemination support.
separate laws and have reissued federal public service regulations as their own. In the light of the limited capacity of Southern Sudan states to develop their own public service laws and regulations and the existence of a best-practice model at the GoSS level, adoption of the latter—with suitable amendments—is a practical option.

208. Decide how employees are covered by new public service law. The administrative tradition in Sudan is to regard all government employees as public service employees. But in the current context of Southern Sudan it may be appropriate to distinguish among three types of government employees:

- Political appointees to nonconstitutional posts with possible executive functions; typically, these would be on contract with terms coterminous with those of the government (when it is elected). In Liberia, a large number of assistant ministers have been appointed from outside the ranks of the civil service, typically from the Liberian diaspora. This is a temporary measure, pending greater civil service managerial and professional capacity. Although called ministers, they are, in effect, departmental directors serving at the pleasure of the president.

- Workers benefiting from "public employment" financed by the government as a measure of social protection; typically unskilled.

- Public service employees with defined, minimum levels of competence who productively fulfill a defined function/role within a defined organizational structure and are linked into the chain of command delivering public services. Thus defined, the number of public service employees would be only a fraction of the total numbers employed.

209. This distinction is important for three reasons: (a) the terms and conditions of employment of these three sets of employees can be differentiated, (b) the management structures for the three sets can vary, and (c) the cost to the public account of employment can vary significantly. The aim would be to create a small, reasonably paid civil service core on which training can be focused, and hire the remainder of government employees on a contract basis. A major advantage of this approach would be to avoid locking into a structure of tenured positions from which the government might find it difficult to disengage should it decide that fewer staff are needed. Another variant would be to separate teaching and health services, with pay and conditions tailored more precisely to employment conditions within these sectors. Options include:

- **Apply law only to public service employees.** One option is to make the new law applicable only to the set of employees described above as public service employees. This would reduce the burden of implementation considerably and focus management attention on the core set of employees who are vital to keeping the government functional. The second and much larger set of employees could be managed under the current labor laws for workmen, with far lower levels of management attention and effort. This would also enable the government to make political appointments, but at differentiated terms and only on time-bound contracts. Similarly, the level of legal protection (on tenures and so on) for unskilled workers would be much lower and could be

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68 This has in the past been justified on the grounds that by long-established policy, senior-level civil servants move between state and federal civil service positions, and thus require common operating rules and processes.
equated to "casual" need-based employment, which can be terminated at any time. Simultaneously, sifting out these two sets of employees from the mass of public employees would enable a more formal and rigid application of eligibility and qualification conditions as a precondition for continuing in public service employment.

- **Apply law to all government employees.** Bringing all the government employees (other than the SPLA and the organized forces) under the coverage of the new law is in line with administrative tradition. This would include the states, where the bulk of employees currently work and where the management capacity is lower than in the GoSS.

- **Phase application of the new law, starting with senior and professional grades.** A third option is to implement the new law in phases; initially only for the senior and professional grades in the GoSS, states, and counties (grades 1–9, about one-third of total employees) and continue to regulate the other grades under the existing law with marginal amendments. This option reduces the managerial load likely to be imposed by the new law, which is likely to require far more proactive management and development than is the current practice.

### Pay Incentives and the Wage Bill

210. *Improve pay incentives while bringing the wage bill under control.* The fiscal burden of public sector salaries is clearly unsustainable, with an adverse impact on development as wages crowd out other essential expenses. With the allocation to the SPLA, recurrent non-development expenditure is 75-90 percent (see Table 2) percent of total expenditure. The fiscal burden of public service salaries mostly comes from states, which use salary claims to bargain for additional resource transfers from the GoSS. There is a need to implement an intergovernmental fiscal transfer mechanism that will provide graduated incentives for the states to better manage their HR and to leave room in their budgets for developmental expenditures. Although the volume of transfers has been steadily increasing (see chapter 3), the grant designs provide no incentives for efficiency in HR management.

211. Controlling the wage bill is a challenge facing all tiers of government, though in different ways. At the GoSS level, the challenge is to freeze employment at the existing level in the public services and implement the integration of demobilized soldiers or the assimilation of "other armed groups" (following the Juba Declaration), in a manner other than simply absorbing them into the public service. At the state level, wage-bill pressures have become even more critical. The challenge for the states is to clearly distinguish between "public employment" and "employment in the public service." The former is employment, including a measure of social protection, paid for by the government but with limited long-term implications. The latter involves a far smaller number of employees, who are members of a professional public service cadre for whom the government takes on a long-term liability.

212. *Manage the fiscal impact.* Managing the fiscal impact, in the near term, is a function of ensuring that payments are made only to those eligible to receive them and are in line with entitlements. The set of interventions are well known: (a) putting a freeze on recruitment until a headcount/HR survey can be completed and a secure payroll developed, (b) ridding the payroll of "hosts" and others who should
obviously not be on it, ending automatic absorption of demobilized soldiers into the public service payroll, (d) reviewing nominal rolls to weed out excess HR allocation, (e) specifying the skill sets required for each job and categorizing jobs/tasks by appropriate grade in a consistent and nondiscriminatory manner, (f) adjusting the compensation policy in line with affordability and competitiveness, and (g) establishing controls to ensure that the cleaned payroll does not become bloated once again. The options emerge according to how this process is implemented. Options include:

- **Each level of government manages its own HR and wage bill.** The problem here is that the states and counties have perverse incentives to enlarge their nominal payrolls rather than to take the political pain associated with downsizing. International experience suggests that without hard budget constraints, the unpaid liabilities of subnational governments are eventually borne by national governments, though with a lag. States consequently feel that they can afford to overemploy, pay employees once in three months, and build up salary arrears in the hope that the GoSS will eventually subsidize their actions, particularly as elections draw near.

- **Financial incentives encourage states to manage their HR and wage bills.** The second option is to introduce financial incentives for states to improve their fiscal management and achieve specified milestones in workforce rightsizing, accountability, and public financial management rewarded by the transfer of enlarged federal resources. The fixed-block grant currently provided does not provide any incentive for reform. There is a case for a program of variable grants, calibrated according to the willingness of states to implement stronger payroll controls and organizational and staffing reforms. States then would be faced with a choice: continuing the partial funding of a grossly oversized payroll and accepting the fraud and inefficiencies that go with the existing system, or progressively establishing the foundations for a more effective and appropriately sized state government, supported by additional transfers from the GoSS. Box 2 describes one such scheme for graduated variable grants.

- **Direct management by the GoSS.** The third option is for the GoSS to recognize the threat that inaction poses for its own fiscal stability and to initiate direct management of the process of adjustment in the states with a combination of TA, direct supervision, moral persuasion, and fiscal rewards linked to performance. This option clearly is not consistent with the constitutional scheme of devolved responsibilities but can be implemented on a voluntary basis if states have an incentive to participate. Under such an arrangement, devolution would take a back seat to deconcentration as a transitional mechanism.

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69 This exercise has been started by the GoSS and has already resulted in a reduction of the payroll in particular in the states. GoSS is reported to have reduced its payroll by 3,000 resulting in an estimated annual saving of $18.0 million.

70 Types of grants are discussed in Strategic Options Paper No.1, “Making Decentralization Work” and in chapter 3.
## Box 2: Discretionary Grants for State Public Service Reform

States are unable to finance meaningful public service reform with their own resources, since excessive wage bills (and mounting salary arrears) have already crowded out recurrent and investment budgets. One option is to provide graduated assistance to states along the following lines:

- **Level 1.** Technical assistance (TA) grants (by donor-funded consultants) to assist states in implementing basic control systems and basic HR management systems, eliminating payroll fraud, and instituting regular reporting. Conditions would include a commitment to freeze new recruitment, vigorously tackle payroll fraud (ghosts and double dipping), and regularly and transparently report monthly staffing numbers.

- **Level 2.** TA and financial grants to states prepared to undertake functional and organizational reviews, leading to new staffing structures and job descriptions, followed by the reselection of staff on a competitive and merit basis. States would adhere to a maximum number of unclassified staff for ministries and shed staff surplus to meet requirements (either by temporary workshare or retrenchment). Grants would be available for organizational studies, implementation of the selection process, and equitable and affordable separation payments (based on a simple statewide compensation formula) to retrenched staff who had been legitimately hired.

- **Level 3.** Grants to states (both TA and cash) to support capacity building of a new, resized, state public service. Requirements would include operation of the basic staff controls by the state personnel and finance ministries, submission of a training plan, and continued reporting of staff strength.

Source: Stevens 2008 op cit.

213. **Graduated-access grants systems.** The challenge of graduated-access grant systems is to design meaningful eligibility criteria that are also enforceable based on the demonstrated impact of previous grants. This is possible but difficult to implement since there is always political pressure to accommodate shortfalls in performance on what usually appear to be excellent and rational grounds. Eligibility for level 1 (see box 3.1) is reasonably straightforward—it requires little more than willingness to prepare an acceptable plan to strengthen a state’s HR management systems, clean up the payroll, and generate monthly reports on the payroll and personnel. Eligibility for level 2 would require a satisfactory achievement of some monitorable improvements in the functioning of these HR management systems under the state’s level 1 grant; for example, an audit of a sample of units finds no significant numbers of “ghost workers” or “double dippers,” and monthly reporting meets minimum standards of timeliness, completeness, and reliability. Eligibility for level 3 grants could include evidence that particular targets (for example, reductions in staff) were achieved under the level 2 grant. The downside here is that states may still not be able to cope with local capacity constraints and political pressure. The upside, of course, is the sense of ownership that this reform process inspires.

214. Such a system of grants could be supported by GoSS directives that state employment levels are set at a reasonable, objectively defined level, perhaps decreasing over time from the current high level. A GoSS grant for the payment of state wages and salaries would then be in line with targets and agreed salary norms. The grant for nonwage expenditures could also be linked to the achievement of these norms.

215. **Establish control over the number of employees and the wage bill.** In the near term (the next two years), a measurable indicator of budgetary control over the payroll could be the absence of “ghosts,”
ineligible persons and those over the age of retirement; employee numbers set in accordance with approved, graded staffing plans; accurate computing of the correct grade and salary scale step for each employee; and a payroll based on a staff survey, physical verification, and document check. There are two options for achieving these objectives:

- **The GoSS to carry out the survey and set up the HRMIS.** A comprehensive survey, verification, documentation, and payroll computerization plan could be launched and managed centrally by the GoSS using contracted TA. The central purpose of the exercise would be to record genuine public service employees and to link the payroll and HR database in a manner that makes subsequent unauthorized insertions or deletions difficult or impossible. The completed surveys could also feed into the fiscal grants formula, which, among other factors, would also assess under/overemployment relative to allocated functions, prior to allocating resources, and thereby provide incentives to rationalize state payrolls. The advantage of this option is that central management allows speedy implementation of a standardized process. The disadvantages are low levels of state ownership over the process and a considerable increase in the implementation workload for the GoSS.

- **States to carry out the survey and set up their own HRMIS.** Another option is for the GoSS to provide contracted TA to the states for undertaking this exercise, maintain a hands-off approach to the actual process, but monitor the process and the outcomes via contracted monitoring and evaluation expertise. The advantages of this option are the retention of a higher degree of state ownership over the process, a lighter implementation workload for the GoSS, and a higher possibility of the system becoming embedded in the states' management system. But there are risks that the system will not be implemented by less proactive states and that departures from the process will go undetected due to poor central monitoring.

216. A precondition for either option is that the eligibility criteria for each post and the process of appointment to each post (either through direct recruitment, reappointment, or promotion) must be transparent and well understood. This implies that recruitment, appointment, and promotion regulations are prepared and widely disseminated; staff members are trained in the regulations; and the regulations are embedded into the functioning of all administrative units before this exercise is started. In case this is not done, the survey will generate unreliable and nonstandardized results. Early approval of the recruitment rules and regulations is therefore essential, as is an intensive program for the dissemination of the new rules and regulations to ensure that they get embedded in the actual functioning of government entities.71

217. Over the medium term (three to five years), the adequacy of budgetary control could be measured by consistency with the salary sustainability ratios, conformity with the medium-term framework for the

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71 The CABIHRRD project proposes intensive dissemination of the new public service regulations once they are approved.
public service being developed under the CABIHRD project, compliance with service-delivery standards, and capacity to manage and implement development-related programs and projects.

218. **Set compensation policy.** The key challenge is to (a) recognize that salaries may have grown rapidly in the last two years, with no visible links to productivity enhancement (leading to a freeze of all salaries at existing levels, pending a comprehensive review of the competitive salary levels for the public sector); (b) harmonize the grades and pay scales of the GoSS and the states; (c) put in place mechanisms to monitor and ensure that value added in the public sector increases to justify existing salary levels; (d) evolve a medium-term salary strategy that links salary enhancements to productivity gains, converts all nonmonetary benefits such as free housing to monetized benefits, and further develops the policy of bundling allowances into the salary package in the interest of transparency.

219. **Manage compensation policy.** The key question here is who will manage the compensation reform policy and thus shoulder the implicit responsibility of paying the wage bill?

- **Centralized.** Centralized management of the compensation policy, as is common in East Africa, has obvious advantages: it is politically convenient, insulates employees of poorly managed states from the fiscal impact of state inefficiency, and makes transferability of personnel easier. On the other hand, a centralized compensation policy can fail to encourage good performance (since employees are insulated from the fiscal impact of their and the state’s actions), ignore the genuine needs of some areas afflicted by extreme hardship, make salaries uncompetitive in some areas and overgenerous in others, and become a cumbersome and time-consuming task for a central regulator. But centralized setting of basic pay is possible through states’ voluntary adoption of the central basic payment package.

- **Decentralized.** The ICSS provides states with a high degree of autonomy in managing their civil services. Each set of original appointing authorities (in the case of Southern Sudan, the president and the governors) has the original jurisdiction to determine the payment policy for public servants employed by them. For example, each state has its own policy in the United States and India. One problem in the case of Southern Sudan is that states do not have substantial revenue resources of their own; they are highly dependent on transfers from the GoSS.

- **Fiscal incentives to states to apply principles.** Even if the compensation policy is decentralized, fiscal-transfer mechanisms can also be used to provide states with incentives to improve the efficiency of resource use. For example, a system of grants could be designed that provides incentives to keep the wage bill manageable while maintaining service standards.

220. **Determine compensation policy.** Devising public service pay scales requires striking a balance between the principle of internal relativity (equal pay for equal work) and the realities of the external labor market, notwithstanding the distorted nature of the market in Southern Sudan, where the bidding of donors and international NGOs has raised the price of scarce local talent. Despite a significant increase in

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72 In South Africa, compliance with strict budgetary requirements adversely impacted the delivery of basic public services, even as the government was trying to increase public entitlements and the reach and scope of basic services.
pay in 2007, the government still finds it difficult to attract qualified employees, largely due to a supply shortfall.

221. Public sector compensation tends to be uncompetitive in the higher grades and overcompensated at the lowest grades, relative to private sector wages. A reduction in the compression ratio from the existing 11:1 would heighten the need for compensatory allowances in the higher grades and reduce demand for government jobs at the higher end. At the lower end, public sector wages are currently higher than private sector wages for comparable tasks.

222. New pay scales should always be framed with reference to budget affordability. This implies calculating the cost of changes on the wage bill and relating this to the total budget, both in current and future years. Since counties and states are constitutionally empowered to raise their own resources, the concept of “affordability” will vary across states and counties.

223. In more evolved systems, salaries are determined within the constraints of a medium-term fiscal framework (MTFF) to ensure that pay decisions are taken with affordability in mind—and to avoid the irrelevance of a salaries commission that makes pay and grading recommendations that are summarily dismissed by the finance ministry for being fiscally unrealistic. A good example of a medium-term pay strategy is that of Tanzania. In a federal system, such as Southern Sudan, the need for sustainable decentralized compensation policies requires some harmonization at the federal level to ensure sustainability and efficiency in the compensation policy design.

224. In the short term, however, there is no option but for the government to freeze all salary payments at existing levels until a complete survey of the grades and demographic profiles of all employees has been made, final payrolls established, and controls made functional. These initial steps are necessary to model the impact of pay changes and to estimate budgetary effects.

225. Pensions are an important component of the compensation package and old-age insurance for public servants. Pension schemes vary based on the coverage, replacement rates, nature of contributions, funding of liabilities, and management of assets. Pay-as-you-go pension scheme liabilities become a significant fiscal burden with the aging of the system as the number of pensioners becomes too large to be sustained by the payees (serving employees). There are several options for developing sustainable pension schemes, which is a highly specialized task. The government would be well advised to seek TA for this purpose so that a review of the status of pensions followed by an analysis of the options and issues can be started right away. Attrition of employees is facilitated when pension liabilities are secured; this will be a precondition for any retirement or retrenchment scheme of the government.

**Machinery of Government**

226. *Implement effective government machinery.* Making the machinery of the government effective and oriented toward the task of delivering basic services and infrastructure development requires a series of interventions aimed at defining the roles and functions of the three levels of government, making the three independent oversight commissions effective, managing the payroll and containing the wage bill, introducing a performance-linked compensation policy, and introducing a sustainable pensions policy.
227. **Make the three levels of government operational.** In the medium term, until staffing levels are matched with functions, it will be impossible to achieve a well-functioning public service in Southern Sudan. If the latter is the goal, there is no alternative to a methodical program of reexamining mandates and functions, matching organizational structures and staffing levels to these, developing accurate job descriptions, and selecting staff on a competency basis to perform these tasks—ministry by ministry and at each level of government. Furthermore, even if payroll numbers were not a problem, there would be a need to carry out the type of mandate and function reviews suggested here if only to clarify the roles and responsibilities of the GoSS-level ministries and departments in a governance structure where the main bulk of services are to be delivered by state and local government agencies. A limited organizational review is planned under the MDTF-funded CABIHRD project, but it may need to be supplemented by more detailed work in the states and counties.

228. In the short term, making the three levels of government operational requires a limited functional and management review focused on the key ministries and entities that manage basic service delivery and generate livelihoods. These are the immediate manifestations of the peace dividend promised to citizens and it is in these two areas the government could focus. Public expenditure tracking surveys (PETSs) that map the expenditure chain from the federal to the local level are a good option for identifying areas where there are systemic disorders—and options for removing them.

- **GOSS to take the lead.** One option is for the GoSS to take the lead in identifying the critical functional areas at each level of government (and within each ministry) and to provide targeted TA to make each part of the supply and delivery chain effective. While this is yet another detour from the constitutional goal of decentralization, it can be justified on the grounds of practicality and the need for time-bound action.

- **Contract out service delivery.** The second option is to externalize basic service delivery and the creation of livelihoods to NGOs and contractors on the pattern familiar to the SPLM—the key difference being that these external agents would now also use public resources managed by the GoSS, whereas earlier they were funded by donors. This can also be a powerful tool to develop the capacity of national NGOs. While this approach could be a powerful tool for local capacity development in service delivery and active government participation in the management of NGO-delivered services (a qualitative difference from the previous role of the SPLM as beneficiary), its acceptability is uncertain; the current trend is to focus on developing the capacity of the government.

229. **Establish commission independence.** Under the ICSS, the chairperson and members can be removed from office on specific grounds by the president, with ratification by a majority in the SSLA. While these provisions look adequate to safeguard independence if the SSLA were an elected body under a multiparty rule, under the present circumstances (with members of the SSLA strongly committed to the dominant party), its efficacy is uncertain. More elaborate safeguards than mere ratification of removal may be necessary to ensure that the independence of a commission is safeguarded. This is illustrated by the case of Albania, where even with a democratically elected parliament it was felt necessary to adopt special provisions for members’ appointment to ensure the independence of the civil service commission (Reid 2005)—and it still took several years and much perseverance to make the commission operational.
230. The independence of commissions can also be eroded by funding constraints. In some constituencies, in the Anglo-Saxon tradition, the budget of all constitutional entities (such as the parliament, auditor general, election commissions, judiciary, and so on) are “charged” to the budget but not voted or debated in parliament. The idea is to preserve the financial independence of these constitutional entities by insulating their budgets from interference and pressure from the executive. These conventions have yet to evolve in Sudan. Independent commissions were aggressively vocal in their complaints of inadequate budgets during the 2007 budget session. The 2008 budget provided significantly better allocations, in line with this important tradition of insulating the commissions (which are constitutional entities) from financial pressures. Because commission staff members are regarded as part of the public service and are thus subject to the same regulations, it is difficult for commissions to secure staff of appropriate quality—an issue that begs further examination. Generally, it is not unusual for “independent” commissions to have greater flexibility in defining the terms and conditions of their employees, who may be drawn from the public service or externally depending on the skills required, and could be on contract for specified periods.

231. **Harmonize functions across the three commissions.** The most immediate task is to arrive at a rational scheme for the sharing of functions and responsibilities across the three commissions in the public administration sector—in line with constitutional provisions. The most important part of the SSCSC’s mandate is its oversight function. Disciplinary appeals from state commissions would be another significant function to retain its powers of oversight over the state-level commissions. But a large part of the grievance-handling area could be managed by the EJC, whose focus is purely on handling the grievances of civil servants. The PGC has its work fairly well defined as the forum of last resort for petitioners and for those seeking systemic changes within the government. Pending the approval of the individual laws and regulations for each of the three commissions, a joint policy statement or a joint agenda for action, possibly blessed by the president, could easily substitute, in the very near term, for laws mandating harmonization—even while making stakeholders aware of their functional distribution. An informal agreement already exists and it only needs to be made public. The three commissions need to see themselves as complementing each other’s work rather than as competitors for functional turf. In case this is not achieved, not only will the petitioners remain confused over where to seek redress but will be encouraged to "hop" across forums.

232. **Clarify the responsibilities of the commissions vis-à-vis the administration.** The most important strategic decision facing the commissions is whether to stand apart and act primarily as watchdogs and forums for redressing grievances or whether to become engaged in the development of a public service policy alongside the government and thus work to create effective manpower controls and HR management processes.

233. **Regulatory commission.** Commissions as regulators monitor what is going on, yet keep a distance to preserve their independence. They rely on their annual report to the legislature and general public to give them leverage. In some countries, such as South Africa, commissions act primarily as watchdogs.

234. **Administrative commission.** In some countries, the commissions have been able to keep their autonomy while at the same time working hand in hand with the government to ensure that policies,
processes, and rules are consistent with the principles of merit and equity and the intended values of the public service. Working alongside the government in formulating the regulatory structure for the public service is extremely rewarding and engaging. In Southern Sudan, this function would give the SSCSC an opportunity to shape the environment in which it will work. The downside to this option is that the commission may not have the requisite capacity to actually undertake this enormous task, in addition to its core function of exercising oversight, and may thereby become a passive partner in the process. Worse, it could find it difficult to objectively evaluate the system developed since it is a participant and not merely an observer. Lastly, it may be difficult for a new entity to establish its independence if it is seen working alongside the government. Over time, once its independence is established through the quality of its decisions and its own capacity constraints are less, as in South Africa, the oversight function would include working with the government to develop the regulatory structure.

235. _Would the politicization of appointments be reduced if the SSCSC were to manage the process?_ The experience in South Asia has been that while it can insulate the recruitment process from politicization, the ability of the commission to do so depends largely on the political will of the government to allow it to do its work. In India, the Union Public Service Commission (UPSC), which manages recruitment for the federal government, has upheld the highest standards for merit- and rule-based recruitment. But similar commissions in state governments have a spotty record. The difference is primarily due to the political will of the concerned government to keep recruitments apolitical.

Centralized recruitment through a civil service commission can also easily become bureaucratized, lengthy, and unresponsive; it can divert the commission’s attention away from the strategically more important oversight functions.

236. In Southern Sudan there is a decentralized system of appointment and promotion; the bulk of HR management responsibilities devolve to ministries and agencies in the three levels of government. No transparent rules exist for ensuring the ethnic/tribal or gender balance in recruitment and promotion, nor are there guidelines for the management of diversity in the workplace. Decentralization combined with discretion have vitiates the recruitment process—an issue the SSCSC could take up and work to solve by creating an agenda for government consideration (for formalizing the rules, procedures, and guidelines for recruitment and the control mechanisms) and then, along with the EJC and the PGC, independently assess to ensure compliance. The example of Albania (Box 3, Reid 2005) provides a good example of recruitment rules designed to check discretionary abuse by ensuring that neither the authority to recruit nor the power to check abuse is concentrated in a single entity.

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73 In India, the Union Public Service Commission (UPSC), which manages recruitment for the federal government, has upheld the highest standards for merit- and rule-based recruitment. But similar commissions in state governments have a spotty record. The difference is primarily due to the political will of the concerned government to keep recruitments apolitical.
The recruitment and selection procedures mandated by Albania’s Civil Service Law were designed in recognition of the Albanian reality that unchecked authority is almost certain to be abused. In light of this, the recruitment and selection procedures mandated by Albania’s Civil Service Law require a series of tiered screens by differing sets of actors, rather than either concentrating recruitment and selection power in the hands of a single, central authority (for example, the Department of Public Administration, DoPA) or creating multiple clearance requirements, each of which presents an opportunity for abuse by giving the clearance agent veto power. The tiered screens work as follows. Recruitment and selection consists of three separate steps, each of which is the responsibility of a distinct set of actors. The three steps are: (i) advertising and long-listing of candidates, (ii) short-listing of candidates, and (iii) final selection.

Advertising and long-listing is undertaken by a central authority (DoPA), in conjunction with the civil-servant-staffed personnel departments within the beneficiary entities (for example, a line ministry seeking to fill a vacancy). The DoPA reports directly to the prime minister, and is staffed by civil servants, which gives it some independence from the individual line ministries for whom any particular recruitment process is undertaken. Short-listing of candidates is undertaken by an ad hoc committee of five persons, two of whom are appointed by the beneficiary entity (for example, a ministry), one of whom is a member of the DoPA’s staff, and the remaining two of whom are professors from the faculty or chair of the field in question or two distinguished experts in that field (Article 13[b] of the Civil Service Law) appointed by the director of the DoPA. This composition is intended to ensure that while the ministry has a voice in the short-listing process, its voice is not determinative; that is, it cannot exercise veto power since it does not control a majority of the members of the short-listing committee. The final selection is made by the direct superior of the position to be filled. Except in the case of the secretary-general, that direct superior will always be a civil servant. At both the long-listing and the short-listing stage, the function of the relevant agent or committee is to winnow the candidate pool, not to select a single candidate. Only at the final selection stage is veto power exercised by a single actor.

This tiered screening process of checks and balances has worked reasonably well. Despite this elaborate (but by no means atypical) recruitment and selection process, concerns have been raised about ministers still managing to skew the outcomes by exerting informal pressure over the final selection decision. In response, the DoPA recently proposed to tighten the short-listing requirements, by imposing a higher minimum qualifying score.

Source: Reid 2005.

237. The ICSS provides for state civil service commissions, though few have been established. In the short term, it may be more efficient for states to look to the SSCSC, EJC, and PGC for guidance rather than rush to replicate these institutions at the state level. Activation of the state civil service commissions could be decided in the context of the speed at which the decentralization process unfolds.

238. Develop commission capacity. The SSCSC has signed a memorandum of understanding (MoU) with the Public Service Commission (PSC) of South Africa recently, under the CABIHRD project, which will enable mutual cooperation between the two institutions and exchange visits of staff and TA from the PSC to operationalize the SSCSC. This could be one model of gaining access to expertise and guidance that is particularly well suited to the independent commissions. It is also important for commissions to participate in regional meetings bringing together regulators to discuss best practice options. Leaving commissions with the operational freedom to determine compensation policy, within a budget ceiling, is another option to enable commissions to get better-qualified staff on contract.
239. **Select staff for revised organizational structures.** Once ministries have undergone a process of functional reviews resulting in revised organizational structures, staffing plans, and job descriptions, it will be necessary to ensure appropriate staffing. There are several ways of doing this and the GoSS and their counterparts in the states will have to decide which approach will best achieve their staffing objectives. The basic idea is that, in order to tackle the problem of previous appointments that put people into positions they were not suited for, automatic mapping of staff back into the jobs they formerly occupied must be avoided, and some form of competency testing should be applied. There are two issues here: (a) how the process should be structured and (b) the nature of the competency testing.

240. There are several ways in which a reselection process can be ordered:

- **Open competition.** The most rigorous would be to require all incumbents to compete in an open competition for each position in the new structure, both against each other and against outsiders. They could apply for their former position (if existing) or other comparable positions in the ministry. Such a competitive process is likely to create high levels of staff anxiety, be more complex to manage, and be more likely to break down—possibly ending in patronage-based selection.

- **Restricted competition.** Alternatively, competition could be restricted, with the first round confined to the incumbent, to be opened up only if the current holder is deemed unsuitable. This might be the most practical option since too much competition could make the process unwieldy.

241. The second operational issue is the nature of the reselection test. The goal here is to correct past recruitment errors—that have resulted in the appointment of unqualified staff to positions they cannot discharge—while ensuring that competent staff are reengaged. The best screening mechanism is likely to be one which combines the criteria of (a) professional qualification, (b) experience, and (c) competence. Here, it will be advantageous to devise a competency test (combining interviews with written tests) that can screen people for their potential to be effective on the job and absorb necessary training—even when formal qualifications are lacking.

242. **Manage decentralized authority and the needs of ethnic diversity.** A key factor to bear in mind while designing such assessment and regrading programs is the decentralization of the appointing authorities in Southern Sudan. Simultaneously, there is need to ensure appropriate ethnic, tribal, and gender balance. This requires balancing two often conflicting objectives: merit and representation. In a decentralized environment, explicit rules and guidelines over the entire process are crucial in determining the efficacy and fairness of the staffing plan. Diversity and representation can be ensured using two sets of (possibly overlapping) options: legal and managerial.

- **Ensure diversity by law.** The legal option uses laws and regulations to ensure that the public service represents the composition of the larger population (Caiden and Caiden 2001). Affirmative action is a legal option that requires government agencies to make reasonable efforts to promote and recruit people from underrepresented ethnic groups. A mandatory quota system is another legal option.
• *Implement managerially.* Diversity management” is based on the belief that organizations that include a diverse workforce are stronger and more effective than insular organizations (Riccucci 2002).

243. Ensuring the implementation of either option would span a number of jurisdictions; clearly all three levels of government would be involved, as would the three independent commissions. Effective implementation would require agreement and consensus on the roles and functions of all the three levels of government. Two options emerge:

• *GoSS to implement.* The GoSS would undertake the entire task, thereby harmonizing norms and standards for the delivery of public services and HR allocation. Specifically, it would allocate resources under a centrally determined HR allocation and development plan.

• *GoSS to exercise oversight.* The GoSS would lead the process of developing public service delivery standards, performance norms, HR allocation norms, and specifications for systems to monitor progress and evaluate outcomes on a consultative basis. States and counties would (a) assess HR allocation to achieve public service delivery standards; (b) identify training needs; and (c) explore and promote reassessment, reselection, recruitment, and retention possibilities by building these into their state and county plans. The advantage of this option is higher levels of ownership by the implementing agencies and more efficient outcomes as states compete with each other to produce and implement more efficient resource allocation plans.

**Developing Capacity for Better Performance**

244. A number of preparatory steps need to be taken:

• *Asset mapping.* The key challenge, in this area, is to assess public service staff in terms of their skills and qualifications and make a profile available. This task can be combined with a public service survey and the updating and verification of the payroll.

• *Medium-term strategic management plan.* Another, simultaneous, challenge is to develop a strategic management plan, based on functional and management reviews, which can provide direction to the future development of the public service by recommending a rational allocation of roles and functions across the three levels of government; prescribing organizational structures, staffing and skill levels, and improved management systems and processes; and a dynamic monitoring and evaluation system to track progress against the work plan. Downsizing the government payroll would be one such medium-term intervention in line with the functional distribution across the three levels of government: the GoSS aiming for a small group of high-quality professional employees for policy making, federal-level development planning, and the federal management of human, financial, and material resources; states providing for regional development planning, supply chain management for basic services, and regional resource management; and local governments managing the actual delivery of basic services and local development.
• **Capacity development plan.** The government needs to boost core professional capacity in the short term and develop, over the medium term, the capacity of core, identified professional staff, keeping in mind the emerging capacity requirements. A comprehensive roadmap for capacity development is necessary to harmonize activities and focus efforts.

245. **Prepare for diversity and representation in public service.** Ethnically diverse Southern Sudan must manage and accommodate diversity in the public sector workforce, ensure public service is broadly representative of the community, and take necessary action—in a transparent, explicit, and rule-bound manner—to redress imbalances. A balance needs to be struck between (a) the goal of creating a public service that reflects the diverse ethnic composition of the population and also achieves gender balance and (b) the principle of recruitment and promotion on merit. A particular challenge in Southern Sudan is that the government is dominated by the ethnic group that led the SPLA while those with the greater experience in public administration are from another ethnic group.⁷⁴ In Nigeria there is a Federal Character Commission (FCC), a constitutional body that monitors promotions to senior positions in the Federal Civil Service. Whatever the original intent, the result has been the downgrading of merit as the principle criterion for promotion to senior positions, to the detriment of administrative performance and credibility. Officials gain senior rank not so much on merit but on their state of origin and religious credentials, resulting in an unmotivated civil service and cynicism outside it. In both Malaysia and Fiji, senior ranks of the civil service have become, in effect, protected domains of the indigenous ethnic group. This suggests that while all groupings—ethnic, religious, and gender based—should have equal opportunity to apply for government jobs, additional steps need to be taken to proactively enhance the capacity of such employees so that the fact of preferential employment does not remain a lifelong crutch. Defining an efficient scheme for affirmative action is complex since preferential employment opportunities can be viewed as entitlements that become politically difficult to change and often serve only the resultant elite within each group, as is the case in India.

246. Developing the capacity of organizations and staff cannot be done overnight. One option to deal with low capacity in the interim is to hire capacity—either firms or individuals—for specific tasks. In Southern Sudan, this would mean hiring expatriates or returning members of the diaspora. This is clearly a more expensive option than hiring local staff, but so long as such capacity additions are time bound and are simultaneously supplemented by separate, time-bound capacity development efforts to enable staff to fill these roles, it can be a fairly efficient way of maintaining the efficiency and effectiveness of government functioning.

247. Southern Sudan’s present dearth of government capacity is not unique. Many other countries in the region came to self-government and independence with similar skilled manpower lacunae. The solution—40 or more years ago—was expatriate TA, the bulk of which was on contract.

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⁷⁴ This tension first surfaced during the period of the Southern Regional Government of 1971–1983 as the Dinkas representation in the government increased, which put pressure on the government and contributed to its ultimate collapse.

⁷⁵ In the area of public financial management the model of contracting firms for specified tasks — procurement, accounting and audit — has been used.
248. The particular circumstances of Botswana four decades ago cannot be replicated in Southern Sudan, but there is relevance in other countries' experiences, and the model could be adapted to the contemporary needs of Southern Sudan. The Southern Sudan diaspora is a largely untapped source for professional HR. Along with the nation's less-than-adequate facilities is the very real concern over compensation levels, especially if families are not to relocate from their existing homes. Managing a dual compensation policy—a lower one for nationals who stay behind and a higher one for those being induced to return—is difficult to implement even as a short-term measure. But, clearly, in case capacity is to be contracted to cover the near-term deficit, getting professionally qualified diaspora back home is a preferred option. Note, however, that this approach is also fraught with tension and is potentially hard to reverse as the example of Sierra Leone demonstrates.

249. In the medium term, capacity development (CD) programs can be structured in a variety of ways. In the context of Southern Sudan it is important to target the CD program, given the generally low level of capacity and the large numbers employed in the government. CD is expensive and needs to target those who are likely to add value to the public sector system or the overall economy. In Southern Sudan, this implies that choices will have to be made with respect to who should be trained. The need to ensure that women get more than proportional consideration is one obvious factor.

250. Training. What is the best approach to training?

- **Formal training.** One option is to adopt a top-down approach and specify a training plan, indicating the posts and grades that must be trained compulsorily, and make the successful completion of a minimum set of training programs a precondition for advancement.

- **Tailored on-the-job training.** A second option is to orient training programs toward making employees more efficient in their workplace. The choice of training programs must also be relevant to the work situation of the trainee. Programs that add professional value but are more suitable for the external world should generally be avoided since they encourage talent drain from the government. Training for such professionals should be limited to making them conversant with government functioning. This is most relevant for crossover professions such as accountants, auditors, lawyers, engineers, and economists who have a ready market outside the government.

251. What steps can be taken to ensure that trainees take training seriously? One approach is to permit trainers to self-select programs instead of leaving this to the government. Another approach is make the trainees contribute to the training; if not financially, then at least in terms of personal time devoted to training (training on weekends, compulsory marginal deduction of annual leave, and so on), with rewards for those who pass with merit. This approach has three advantages: (a) it ensures that only those with the requisite commitment get trained, (b) it ensures that the training is relevant to progression within the system (in case training is unrelated to advancement within the cadre, the number of employees volunteering for the training will be lower), and (c) it is a good way of evaluating the trainer. Programs that are not worthwhile will end up with no applicants.

252. How training programs should be organized?
Focus on the individual. The traditional route is to focus on training individuals and building their personal competence. Unless such programs are fine-tuned to the specific requirements of the organizations, the individuals on return from the training may have enhanced competence but not the systemic support available within the organization to use these enhanced capabilities.

Training teams. The second option is to train teams, since this best replicates the environment employees work in. Defining group objectives in line with the organizational mandates, specifying each individual's role and linkages with other team members, and enhancing both individual and team capacity to achieve specific objectives not only focuses training efforts but ensures a multiplier effect from group synergy. Team-based training can also be a useful integration mechanism to assimilate individuals of ethnic and regional diversity drawn from different organizational cultures and is useful for making the organizational culture sensitive to gender and ethnic diversity.

D. Linking Reform to Conditions on the Ground

253. It is important to link the resolution of the issues listed—in the various ways discussed—to the political, social, and capacity conditions on the ground. Some of these are common to all fragile states, others unique to Southern Sudan.

254. Weak capacity. Most fragile states have weak capacity in terms of staff skills in public administration and government processes, and lack the incentives needed for staff to deliver the services they should to the public. In the case of Southern Sudan, the problem is not the number of staff (in some post conflict states, for example, Mozambique, numbers are a problem since many civil servants have left the country) but their quality. The total numbers are in fact very high but the numbers of well-qualified professionals small. There is a further quality issue unique to Southern Sudan: the leaders of the civil war, who are now the leaders of the government in a time of peace, are experienced soldiers—not always experienced public administrators. South Sudanese with experience in public administration are often not in the top government and public administration positions. Quality has further been diluted by the introduction of former combatants into the public administration. All post conflict countries have had to deal with this issue—idle, unemployed former combatants are easily attracted into another civil war (see Sierra Leone, Afghanistan, and Somalia, for example). It is indeed important that they be employed or funded in some capacity; in general they have been directed into the organized services in Southern Sudan rather than the core public administration. So, the selection of policy options has to be tempered by an appreciation of extreme capacity weaknesses. This will mean that progress can only be made as capacity in terms of trained staff, processes, and incentives is improved.

255. Raising the flag: Diversity and service delivery. Post conflict government has some overriding political objectives that are bound to influence reform programs. First and foremost is the need to “raise the flag.” The government must be recognized throughout its territory, or rebel groups or the former enemy will break off pieces of the territory, perhaps leading to another civil war. This problem has bedeviled governments of Southern Sudan more than in most other fragile countries; there have been rebellions within the rebellion. The risk of fragmentation is usually linked to tribalism and Southern
Sudan is no exception in this regard. In Southern Sudan there is the added risk of external manipulation. Raising the flag requires two sets of actions: making sure that all social and political groups benefit from peace and, related to this, that basic services are quickly made accessible throughout the country. The first requires the implementation of a diversity policy in the government and the public administration, as well as the creation of private sector job opportunities for all (although formal private sector jobs are slow to come by in post conflict countries). The second invariably requires persuading NGOs (usually international ones who are already on the ground, providing humanitarian relief) to continue to provide basic services and winning donor support for quick-fix service delivery, without paying too much attention, at first, to building the capacity of the government service delivery systems. In each case, a longer-term objective has to be sacrificed for immediate results. The short-term diversity objective will clash with the need to establish an effective and efficient merit-based public administration. Improving service delivery through the NGOs and social funds sacrifices long-term development objectives for shorter-term needs. But both are required by the overriding immediate objective of establishing the legitimacy of the government in the eyes of all the people.

256. **Decentralization and revenue sources.** The diversity problem is linked to a form of government often favored by post conflict countries. Sudan is not unique in allocating many responsibilities for public service delivery to the states under the new federal constitution. Sierra Leone set out to address the ethnic and regional origins of its long civil war by passing a local government law and rebuilding the capacity of its local authorities. Mozambique passed legislation creating, for the first time, 35 (now more) autonomous municipalities. A particular problem in Southern Sudan is that the states are dependent on oil revenue allocations and other grants from the GoSS. With the exception of the two oil-producing states, state revenues are very limited. This means that it is difficult to win support from people in the states (from various different ethnic groups) by giving them real responsibilities for their own services, since the states are so dependent on revenue from the GoSS which is itself dependent on volatile oil revenues. Effective decentralization is also hampered, of course, by extremely weak administrative capacity at the state level.

257. **High wage bill.** Most post conflict governments have Southern Sudan’s high public sector wage-bill problem. Very high wage bills are a result of the need to retain the public servants still in the country, win their support for the new government, and to support noncombatants. In some cases such as Sierra Leone and Burundi the problem is exacerbated by the need to pay high salaries to attract back to the country professionals from the diaspora. Although Southern Sudan has oil revenues, its non-oil GDP is very low and the wage bill as a share of GDP could be even higher than that of Burundi. The problem is exacerbated by the volatility of oil prices and revenues. Donors are typically very sensitive to high wage bills, fearing that that high wages tend to crowd out the other recurrent expenses needed to deliver services—which is true if their proportion drifts up to 60 percent of total recurrent expenses. But donors should probably be more tolerant of high wage bills in post conflict countries to give the government time to integrate surplus or unproductive civil servants and former combatants into a more private-sector-oriented labor force. Further, the problem of high wage bills relative to the GDP is as much a problem of the denominator as the numerator; GDPs are particularly depressed in post conflict countries (meaning lower than they might be expected to be if the country had the benefit of a long period of peace).
258. *Representation without taxation.* Southern Sudan may suffer from one particularly unique problem, although this problem has occurred elsewhere where there has been a very long civil war. The SPLM was dependent on a funding source outside Sudan, namely the Derg in Ethiopia. It did not build up connections with the people of Southern Sudan as a formal source of funding over time. Governments have less reason to hold themselves accountable to their people (or citizens to hold government to account) if they are not dependent on funding from the people. In the views of some observers, as a result of this situation the SPLM government is under less pressure to organize itself to deliver services to the people. But, it should be said that this is not a view held by all. In fact, it is in the interests of any post conflict government to win the support of the people simply to stay in power—and one of the best ways to do that (and *raise the flag*) is to be responsive to the people by improving the delivery of public services. One problem is that because the CANS administration operated in the areas controlled by the SPLA (generally rural areas), it is better connected to the people but tends to be weak in terms of capacity.
CHAPTER 4: MAKING DECENTRALIZATION WORK

259. This chapter based on ―Strategic Options Paper No 1: Making Decentralization Work,‖ discusses one of the key provisions of the Comprehensive Peace Agreement (CPA), Interim National Constitution (INC), and the Interim Constitution for Southern Sudan (ICSS): a fully decentralized system with the responsibility for providing basic public services with state and local government. Issues concerning the implementation of these provisions and options for their resolution are discussed.

A. BACKGROUND

260. Decentralization is a core part of the peace process in Sudan. Decentralization is central to the power- and wealth-sharing agreements on which the CPA is based and is also incorporated into other framework documents such as the INC and the ICSS. The foundation for north-south peace is provided by an asymmetric federal structure in which the government of Southern Sudan (GoSS) has a very high level of autonomy over the geographical area in its jurisdiction (―power sharing‖) and a clearly defined share of the national oil revenues and other national revenues generated in the south (―wealth sharing‖).

261. The framework documents also identify state and local governments as tiers below the national governments— the Government of Sudan (GoS)\(^\text{76}\)—in the north and the GoSS in the south. The vision articulated in the documents is of a decentralized governance arrangement with a high level of devolution.\(^\text{77}\) It is well understood, as in other post conflict and conflict-prone jurisdictions that decentralization can contribute to preempting the risk of reversion to conflict.\(^\text{78}\) Box 4 defines alternative forms of decentralization.

262. The discussions around decentralization concern the level of state capacity that policy makers would like to see emerge in Southern Sudan. The effective implementation of decentralization is critical to promoting effective basic and equitable service delivery across all of Southern Sudan. Given the size and diversity of needs across its area, some degree of autonomy at different levels of government is likely to be a key element of building responsive government. At the same time, it must be recognized that any decentralization is a complex technical and political process. It is not merely about pushing more or less resources to one level of government, but about clarifying the roles and responsibilities across all ministries/agencies and levels of government in Sudan their responsibilities and their respective control over resource allocation decisions. Decentralization is not necessarily synonymous with weakening the

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\(^{76}\) Referred to as the Government of National Unity (GoNU) during the interim period.

\(^{77}\) In practice, as this chapter concludes, the current situation is one that is better described as deconcentration (see Box 5: Deconcentration, Delegation, and Decentralization).

\(^{78}\) Decentralization can contribute to managing conflicts by: (i) broadening public participation, in particular by inclusion of minority groups in political process; (ii) bringing regional groups into a negotiation process with the government; (iii) strengthening state legitimacy through increased public participation; (iv) reaching out to remote/isolated areas; (v) building trust among political groups at the local government level; and (vi) redistributing wealth and resources across regions. See Schou and Haug (2005).
role of the center. Rather, successful decentralization requires a strong center and empowered government at all levels. Progress in these areas is a prerequisite to better service provision overall; improved accountability leads to more efficient allocation. But it is clear that not every daily decision and action in Southern Sudan can be made in or depend on Juba and still lead to a government that functions in practice and not just in theory.

263. Given the ongoing legacy of conflict in Southern Sudan, an overarching challenge is to build capacity at all levels to ensure capable government. A capable government would, in turn, ensure that services needed by the South Sudanese population are delivered—whether directly by the government or by private or other nongovernmental providers. And it would respond to local needs and maintain peace, security, and rule of law across its territory.

Box 4: Uganda’s Decentralization Experience

Uganda’s decentralization emerged in the late 1980s as part of broader efforts to enhance political participation and state legitimacy. In a number of respects, the evolution of the system continues to present challenges and concerns for better service delivery. The well-known Public Expenditure Tracking Surveys (PETSs) conducted in the mid-1990s suggested that the bulk of resources for schools and clinics were not reaching the frontline. Paradoxically, concerns with the results of service delivery, partially driven by donors’ requirements, have resulted in a deconcentrated system relying on conditional grants and unfunded mandates. This has reduced the incentives, responsibility, and ownership for local authorities to improve service delivery. Crucially, for functions where the local authorities have had full responsibility, better service quality has resulted in those areas in which there are overlapping responsibilities between the center and the local authorities. The challenge for Southern Sudan will therefore be to effectively balance mechanisms for top-down and bottom-up accountability at all levels of government, including among traditional authorities. The case of Uganda highlights the need to carefully assess the evolving role of sectoral line agencies vis-à-vis subnational government structures and particularly how, on aggregate, these are aligning with the desire of citizens for better service delivery.

Source: Ehtisham and others 2006; Smoke 2008.

264. In short, South Sudanese policy makers will need to think carefully about how to build a state that functions at all levels of government. As experience elsewhere has shown, this will take time. Even in a country like Uganda, often held up to the developing world as a model of decentralization, the center still has substantial control over service delivery, with most grants to local authorities being conditional—in other words, targeted at certain types of services, with grant levels decided by the center. Regardless of Southern Sudan’s future, if it is to function as a regional or national government, it must begin to invest in building the foundations for an effective state. Just like the building of a house, this requires a policy framework and a workable plan, along with the necessary building blocks. Capable government at all levels means both being able to and tending to do the right thing. For this to be possible, decentralized government needs to strike a workable balance between top-down and bottom-up accountability. To maintain standards and coherence across Southern Sudan, the central government must be able to adequately oversee and fund the actions of lower levels of government. At the same time, bottom-up accountability is critical to ensure that lower levels of government are ultimately responsive to their populations. This requires some degree of clarity as to the roles and responsibilities of lower levels of government, their ability to respond (including some degree of autonomy), and the capacity of human and
financial resources. Financial resources can come from higher levels of government or be collected directly from the population by lower levels of government.

265. This chapter lays out a number of options for effective decentralization in Southern Sudan, with special consideration given to the existing institutional arrangements and capacities, as well as their political context. Several of the main debates around decentralization in Southern Sudan will be summarized, with the objective of helping to promote the emergence of capable and responsive government at all levels. Ultimately, how Southern Sudan structures its government is a political decision. But international experience provides a number of lessons on the technical options and pitfalls that are likely to face Southern Sudan as it builds its government.

266. Opinions on how to design and implement decentralization in Southern Sudan differ. Some see strong states as a potential risk and would prefer that the focus of decentralization be on creating strong local-level (county) government structures along with a strong center at the level of the GoSS. In this view, consolidation at the GoSS level is important for establishing and consolidating the southern identity, managing the relationship with the north, and establishing an effective state. Consistent with this is the view that counties are effective instruments for service delivery closely linked to communities. The role of counties has been central to the governance style of the SPLM.79 States, on the other hand, are seen by several members of the leadership as imported from the northern/national structures and not intrinsic to the original SPLM vision.80 Related to this is the structure of the relationship between the GoSS, state, and local government. According to the ICSS, local government is a state subject with legislative authority in counties vested in the states. On the other hand, in view of its political, security, and service delivery concerns, the GoSS would prefer to have a more direct influence on the counties.81

267. Post conflict Southern Sudan is characterized by lack of capacity. Decentralization increases the demand for human resource capacity and raises the cost of establishing government. In addition to the GoSS, 10 state governments and close to eighty local governments have already been established. Policy makers will therefore need to carefully think about how to build government capacity across all of Southern Sudan. Concentrating it all in Juba is not likely to lead to a responsive state. But spreading it too thin, especially at the outset when human resources are severely constrained, will likely to lead to fragmentation and highlight the uneven quality of government. Just as it is important for capable teachers to appear in schools across Southern Sudan, it is important to make sure that policy decisions are responsive to the needs of the population and that public servants are held accountable for performance. Consequently, policy makers will need to think carefully about how different functions are best implemented across government levels. An important starting point is to figure out how the most critical and often scarce technical and leadership skills are deployed, including, for example, in basic financial

79 In 2004 SPLM chairman John Garang famously noted that the counties would be used for bringing urbanization and development to the people.
80 The current demarcation of states is based on national legislation of 1994 at which time most of the south was in the administrative control of the SPLM. This issue has been discussed in more detail in chapter 1.
81 Under an interim provision of the ICSS, the GoSS has drafted a Local Government Act, even as some of the states (such as Central Equatoria) have drafted their own local government acts. A national Local Government Board has been established to advise the president.
management such as procurement, accounting, and reporting. How can Southern Sudan best deploy its scarce human resources in government and make sure the necessary jobs get done? This question clearly suggests that the debates over decentralization in Southern Sudan need to focus on administrative and human resource management. While political and fiscal decentralization are clearly important, it is up to capable and accountable personnel to make the system function over time.

268. There is also the issue of integrating traditional authorities into new local government structures. Although the “modern liberal thinkers” in the SPLM during the war years did not see a role for traditional authorities in the New Sudan, this thinking has changed. The SPLM recognizes that, in the absence of any other effective structures, traditional authorities play a key role in local governance. They effectively raised revenue to support the war effort and continue to have an important role in local dispute resolution.

Box 5: Deconcentration, Delegation, and Decentralization

- Deconcentration occurs when a central government establishes branch offices throughout the nation and provides services through those offices. In these circumstances, there is only one government. Some decisions relating to implementation might be made at subnational centers, but all the priorities are set and all the major decisions are still taken in the capital city. Although sometimes described as decentralization, deconcentration is not in fact decentralization.
- Delegation of powers occurs when a higher level of government (either the central government or a state) delegates power and authority to a lower level of government, which makes decisions within the limits of those delegations. There are governments outside the national capital (or the state capital) but all decisions are made on behalf of the higher level of government. The lower level of government to which powers are delegated has no real power. It cannot act based on its own decisions. There is no decentralization of authority.
- Decentralization occurs when power and authority for raising public sector revenue and providing public services are spread across a central government and subnational (state and local) governments. Governments at each level have real and independent authority to raise revenue and provide services as they see fit; the power of subnational levels of government has been legally devolved to them. Each government level knows what it has to do and what powers are vested in it, what other levels of government have to do, and how each fits into the overall public sector of the nation.

269. There are several important decisions to consider when establishing a decentralized government. Decentralization is generally discussed in terms of five questions. These include:

- The structure of the decentralized government
- What level of power and authority is to be given to each level?
- What sources of non-oil revenue are to be given to each level of government (revenue assignments)
- How gaps in the financial capacity of lower levels of government will be overcome (through a grant system, for example)

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82 Discussed in some detail in chapter 2.
• What service responsibilities are to be given to each level of government (expenditure/functional assignments)

270. This chapter addresses the first four of these questions by outlining the relevant provisions of the CPA and the ICSS, providing an indication of the current situation, and discussing the options now available to Southern Sudan.

B. THE STRUCTURE OF DECENTRALIZED GOVERNMENT IN SOUTHERN SUDAN

Constitutional Position

271. The ICSS specifies both longer-term and interim arrangements for government in Southern Sudan. Since it is aimed at policy development for the longer term, this chapter concentrates on what the documents say about structures of government for the longer term.

272. The Power Sharing Agreement (PSA) chapter of the CPA includes a statement in its preamble that "decentralization and empowerment at all levels of government are cardinal principles of effective and fair administration." It outlines the structure of government as follows. 83

273. Southern Sudan shall have a decentralized system of government with:

• The government of Southern Sudan, that shall exercise authority in respect of the people and states in Southern Sudan
• The state level of government, which shall exercise authority within a state
• The local government level, which shall be the closest level to the people

274. The CPA goes on to describe the level of independence to be given states and talks of "the need for autonomy of the Government of Southern Sudan and States." 84 In the case of local governments, it is more specific, noting that local governments are "an important level of government and its election, organization and proper functioning shall be the responsibility of the states in accordance with the relevant state constitution." 85 The CPA makes no mention of the traditional authorities, so gives no guidance on how these are to be incorporated into the decentralized government structure.

275. The ICSS is also clear on the intended structure of government. It outlines the decentralized structure of the GoSS, the states, and local government, 86 and extends the description of local government by adding that "local government tiers shall consist of county, payam and boma in the rural areas, and of city, municipal, and town councils in the urban areas." 87

83 Clause 1.3.
84 Clause 1.4.
85 Clause 4.3.
86 Section 50.
87 Section 173.5.
276. The ICSS also recognizes the traditional authorities as institutions at the local government level. It sets the acknowledgement and incorporation of the traditional authorities and customary law in the local government system as an objective of local government. Traditional authorities are intended to be part of local government, not a separate level of government, but the documents give no guidance on how this might be achieved.

277. In summary, a literal reading of the documents indicates that the states are truly decentralized and have a high level of autonomy from the GoSS, but that the local governments are the responsibility of the states and thus less independent. This follows the pattern of government found in Ethiopia in which local government is seen as a delegated level of state government. Most decentralized settings face a number of questions around the extent of power to be vested in the central, intermediate (for example, state/region), or the lowest levels of government. The principle of subsidiarity suggests that functions should be vested at the lowest possible level able to efficiently deliver the service closest to the beneficiaries. Those concerned about capacity may argue for assignments at more intermediate levels of government. Politically, the literature also suggests that strong intermediate levels may yield political fragmentation. For example, strengthening intermediate levels may undermine the goal of a strong center (GoSS), seen as critical for southern autonomy and long-term security. This highlights the particular mix of political, security, and service delivery considerations that policy makers in Southern Sudan confront in the design and implementation of decentralization and the broader building of public sector institutions. The answer might be to have a relatively strong federal government, as in countries such as the United States and Germany, with the federal government able to influence basic service delivery through funding leverage and legal provisions, even though it does not provide services.

**Current Situation**

278. The current situation is characterized by the following set of arrangements:

- Until the elections, states operate with appointed members of the legislature and council of ministers and, as such, can be seen as outposts of the GoSS. While the basis of appointee selection is not clear, it is known that the traditional authorities are chosen to present community views.
- Both state and local government levels act under the authority and instructions (informal delegations) of the GoSS.
- Local government commissioners and executive officers are appointed into the current local government structure.
- Local governments have no elected councils/assemblies and are operating under a system of appointed executive committees that are said to be representative of the community and were organized through traditional authorities.

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88 Sections 174 and 175.
89 Section 173.
90 See Siegle and O’Mahoney (2007).
279. In summary, at present, there is a deconcentrated or delegated system of government, with real power distributed in an ad hoc way between the GoSS (through the appointed governors and local government commissioners) and the traditional authorities. The future positions of all three levels are unclear, and several competing assumptions about future structures are potentially confusing and create uncertainty. Effective systems of government planning and budgeting will be hard to establish until clarity is achieved.

**Options for the Future**

280. Leaving aside for the moment how traditional authorities fit into the future structure, there are several options for a decentralized government in Southern Sudan. These include:

- **A fully decentralized or devolved system.** This would imply that most decisions made at both the state and local government level would be independent of the higher level of government. The balance of decision making would therefore be based on bottom-up accountability, assuming that state and local officials derive their authority from such processes as elections. To the extent required, higher levels of government could influence lower-level activities through management legislation and the fiscal transfer.

- **The system proposed in the ICSS, under which states would be decentralized from the GoSS but local government would be part of the state administration.** There are two alternatives for the level of authority that might be given to local government under this option:
  - Local government could exist under *delegations* of power and operate as it thinks best within those delegations.
  - Local government could be a *deconcentrated* arm of the state and have no decision making power at all. This, however, seems contrary to the ICSS provision for local governments to be made up of elected members.

- **The state and local governments would both become arms of the GoSS and operate under delegated authorities.** This would mean they could make decisions on how to implement the responsibilities they were given, but would do so as arms of the GoSS, not as autonomous governments.

- The states and local governments would not act independently at all but would be branches of the GoSS and operate as deconcentrated units of that government. This would mean they could make

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91 The Local Government Act 2009 attempts to achieve full conformity with the ICSS, yet it did not come out very clearly on intergovernmental relations, especially between states and local governments. While it provides for local government to be established based on “the principles of decentralization and democratic local governance that demands the devolution of authority and power to the lowest level of government closest to the people,” (Sec. 6(2)) it is not clear how this is to be achieved in practice. A state Ministry of Local Government and Law Enforcement (Sec. 125) has important powers to make policy “in order to harmonize the State and Local Government plans and programs; coordinate between state ministries and councils; and transfer Local Government Administrative Officers and senior staff. The clarification (Sec. 126(1)(a)—which states that “the linkages between the Government of Southern Sudan and the Local Government shall be through the relevant State Government organs or institutions”—suggests that local governments are subordinate to the state.
only very minor decisions on how to implement the tasks given to them, and would do so as part of the GoSS administration. All major decisions would be made either in Juba or according to rules set by the GoSS ministries in Juba.

281. These alternatives are diagrammed in Figure 1, with options 3 and 4 shown only differing according to the level of authority given to the state and local levels of administration. The acceptance of options 1, 3, or 4 would mean that the constitution that replaces the ICSS would need to have different provisions for the structure of government in Southern Sudan. International experience suggests ambivalent decentralization could compromise service delivery and public good outcomes.92

**Figure 1: Possible Government Structures**

![Possible Government Structures Diagram](image)

282. Although these issues were discussed in detail at the workshop “Governance for Decentralization” in Juba in June 2008, clear conclusions were not reached. The report of that workshop appears in annex 2.

**The Position of Traditional Authorities**

283. *The proposed relationship of traditional authorities to local government.* The subject of traditional authorities is discussed in more detail in annex 3, which notes that “inconclusive or contradictory statements regarding the relationship between traditional and other local government authorities could lead to conflicts over competencies and power sharing.” As indicated above, the ICSS requires that traditional authorities be incorporated into local government.93 The Local Government Act (Sec. 19) incorporates this provision and provides a place for traditional leaders in the County Legislative Council. The *boma* is identified as “the main domain” of traditional authorities, but their administrative

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92 Devarajan and others (2007).
93 Article 173 includes an objective “to acknowledge and incorporate the role of traditional authorities in the local government system.”
and customary functions” are not specified.94 The Act further identifies traditional authorities as “semi-autonomous”—responsible for customary law and justice and for exercising deconcentrated powers in the performance of executive functions.95 Thus, traditional authorities would be taken into new and more formal areas of organization and influence.

284. In addition, consistent with the ICSS,96 the Local Government Act establishes a Council of Traditional Elders at the Southern Sudan level and a State Council of Traditional Authority Leaders whose composition, functions, and duties are to be determined by State legislation.

285. The current position appears to be quite different from what is proposed in the Local Government Act. At present, traditional authorities or their representatives make up the interim executive committees at all levels of local government and have some influence on the state legislatures and executive branch. The necessity of this position may arise from the fact that traditional authority roles were expanded during the war to help meet community needs. The task of winding back the power of the traditional authorities would now require substantial political leadership skills. This problem is common to several African countries and must be discussed widely if a smooth transition to modern systems of democratic governance is to be achieved. (See annex 3 and Hoehne 2008.)

286. Optional relationships with local government. An important issue to be considered when looking at the future position of traditional authorities is their level of independence from partisan politics and whether their authority should be an integrated element of—or equal to—local government. Integrating traditional authorities into local government risks that they might control the more formally elected levels of government and thus undermine the apparent intentions of the CPA and the ICSS. Sierra Leone provides a good example of how lack of clarity on functional and revenue jurisdictions is a potential threat to decentralization.

287. Whether the traditional authorities can continue their traditional cultural roles and be part of the modern structure of government might depend on the:

- Balance between traditional methods of identifying community leaders and the democracy based on full adult suffrage outlined in the ICSS
- Extent to which the local government system takes over powers and functions, which is, currently, the responsibility of traditional authorities
- Extent to which chiefs might be prepared to hand over power and control to elected members or will want to be appointed to the councils
- Extent to which local government (and state) revenue collections are structured to make fiscal space for the traditional authorities to be financially independent

288. The alternatives would include implementing:

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94 Section 19 (3).
95 Section 112 (1) of the Local Government Act 2009.
96 Article 175 (2).
• Complete separation between the elected councils and the traditional authorities, with clear
delineation of revenue capacities and service responsibilities

• Complete integration of the traditional authorities into the local government structure, with the
chiefs as controlling members of that structure

• A provision that a number of chiefs may be elected (or appointed) as council members but that
they cannot constitute the majority of members

• An invitation to a number of chiefs to attend council meetings as ex-officio members with no
voting rights

289. In reality, since public order and stability are enhanced rather than diminished by acceptance of
traditional governance, the people would probably not be happy with complete separation. They see their
traditional authorities as having a legitimate role in representing them within all levels of government and
most strongly at the local government level. Complete integration, however, would probably go too far in
handing all power over to the traditional authorities at the expense of the democracy-based local
government outlined in the ICSS. The last two options are therefore the more realistic choices. Both
require methods by which traditional authorities choose their representatives at council meetings, an issue
that is often the subject of legislation.

290. Other countries have also had to make decisions about the role of traditional authorities. In post
conflict Sierra Leone, the Local Government Act of 2004 specified that 20 percent of the traditional
authorities in each local region be elected by their fellow traditional authorities as voting members of the
local council, but at the time there was no prescription of how these elections were to take place97. Under
Sierra Leone’s Act every council has at least twelve members with a maximum of three Paramount
Chiefs98. Thus the traditional authorities have less than 25 percent of the vote in all cases. In Ghana,
where decentralization is not yet effective, the traditional authorities are consulted by the president in
determining the 30 percent or fewer members that the president appoints to each district assembly.

**C. The Decentralization of Power and Authority**

291. As soon as questions concerning the number and interaction of independent tiers of government
are addressed, there is a need to consider what level of power and authority, or independence, each level
will have. The big questions here are whether the states will be part of the GoSS or independent
jurisdictions, and whether local government will be an arm of the states or independent of them. Both the
CPA and ICSS clearly specify the independence of the states after the interim period, but there remains
some doubt about the independence of local government from the states.

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97 A law has now being enacted to formalize traditional electoral practices.
98 The larger councils that have three Paramount Chiefs as members have
292. **State government.** The ICSS indicates that state governments exercise authority and are expected to respect each other’s powers and competencies.\(^99\) Also, it states that the —Southern Sudan Legislative Assembly may **request** a governor of a state to make a statement before it (it cannot demand such an appearance)\(^100\) and defines the states’ exclusive executive and legislative powers.\(^101\)

293. Regarding the executive and legislative branches at the state level, the ICSS provides that the governor will be elected by state residents (not appointed by the president) and he or she will appoint the state council of ministers, who will be accountable to the governor and the state legislative assembly (whose members are elected by state residents).\(^102\)

294. The most common interpretation of the ICSS is that after the elections each state will have a well defined domain independent of the GoSS and will not be subject to it. There is no representative of the president or the GoSS embedded in the state structure. State governors and members of the legislative assemblies will be elected by the people and the GoSS will have no power to appoint anyone to a position of authority within the state structure. Others, however, believe that the president and the GoSS will have some capacity to influence (or control) the states even after the interim period.

295. International experience suggests that even in federal systems there is a significant variation as to the legal and actual relationship between the national and subnational levels of government. For example, in the United States the federal government plays the preeminent role in defense. While the states and their respective local governments have the bulk of responsibility in providing education, basic infrastructure, police security, and health services, the federal government has a number of programs and instruments to support outcomes at the subnational level, notably by fostering national standards. Similarly, the central government in India uses a variety of instruments to influence and shape subnational outcomes. Consequently, policy makers in Southern Sudan need to consider a range of workable instruments to promote capable and effective government across all levels, including necessary checks and balances.

296. **Local government.** Under the ICSS, each state is to enact legislation to establish local government and determine structures, composition, finance, and functions in accordance with the state constitution. The local government is elected by the residents and has power to levy, charge, and collect fees and taxes, and to spend the revenue collected. See annex 2 for a summary of the discussion of this issue in the Juba workshop of June 2008.

297. The ICSS’s provisions for local government seem much less definite than those for the states. Some are interpreting them as resulting in an elected and independent level of government with power to

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\(^99\) S 50 (b) and S 52 (1) (b).
\(^100\) S 79 (3).
\(^101\) S 168 (2).
\(^102\) S 169 (1), (2), and (4) and S 170 (1).
raise and spend money, but operating under uniform GoSS legislation. Others read the provisions as giving local government much less independence and being part of state administrations.

The Current Situation

298. A centralization of power. The current situation is greatly influenced by the interim arrangements spelt out in the ICSS, and it may be that these are influencing present thinking. Under the interim arrangements, governors, councils of ministers, and members of state legislatures are appointed and removed by the president of Southern Sudan; local government commissioners have been appointed either by the president or by the state governor under presidential delegation; and executive committees of local government have been appointed under the authority of the state governor. All legislative and executive positions thus owe some allegiance to Juba, and the president has much more wide-ranging political power than the ICSS indicates for the period ending with the election in 2010 and the referendum in 2011. Under the Local Government Act 2009, Commissioners (mayors in urban areas) are to be directly elected yet represent the Governor in the County.

299. Civil service staffing. Although the ICSS is quite clear, in the absence of specific legislation some confusion about whether those working in the states, even on state functions, are state or GoSS civil servants remains. GoSS line ministries often work directly with their counterparts in the states and see the state structures as an extension of the GoSS structure—or deconcentrated government staff. Yet the power-sharing chapters of the CPA, the ICSS, and the state constitutions give the states authority to manage their own civil services.

300. The confusion is increased by the current system, under which the GoSS takes responsibility for setting overall civil service staff numbers and for distributing the funds available to pay those staff either through block or tied grants. In some instances, the GoSS line ministry directly pays staff employed in the states and local governments in what are supposed to be state or local government functions. These issues are discussed in greater detail in chapter 3.

Options for the Future

301. At the state level, the future autonomy of state executive and legislative arms seems clear, but there is some doubt about the administration of state governments. The issues are whether staff will be state or GoSS employees and whether they will operate under state or GoSS legislation.

302. At the local government level, ICSS intentions for the longer term are more difficult to interpret. Some say the independence of local government will mean elected commissioners and legislative councils, while others see the commissioners being appointed by the state and the local government staff as state employees. It is generally agreed that local government will operate under state legislation, but
some favor a continuation of the interim arrangements under which GoSS legislation would prevail. The Local Government Act clarifies that commissioners and mayors will be elected.

303. Possibly because of perceptions about the human capacity of the different levels of government, some see the states and local government using GoSS legislation on such things as financial management, civil service employment, external audit, and anticorruption. Others see the equivalent of these Acts being passed individually by each state (but probably based heavily on GoSS legislation).

304. Inevitably, some GoSS functions, including revenue raising, will continue to be conducted in the states through the deconcentrated offices of GoSS ministries. GoSS legislation will apply to the GoSS staff employed in the states to carry out these functions. Whether it also applies to state and local governments, appointing staff is a policy decision that is central to decentralization of power and authority.

305. Consideration of these matters needs to be based around three relationships:

- The relationship between the GoSS and the states
- The relationship between the GoSS and local government
- The relationship between the states and local government

306. In each case, the issues relate to the extent (if any) that the higher level of government is represented at the lower level; the extent to which the lower level is supervised or controlled; the role of the higher level in revenue-raising decisions at the lower level; and the role of the higher level in deciding service delivery at the lower level. In all these areas, many administrative decisions of a technical nature can be made once overall policy positions have been established.

**The GoSS, States, and Local Governments**

307. In decentralized government systems, the level of central government “control” varies widely—from near total control to very little control. The issue for Southern Sudan is: what level of authority will states have? One aspect of central government control, as previously discussed, is furthered through “federal” grants. The issue here relates to other GoSS legislation and the extent to which it will apply to states. Financial and civil service management, auditing, and anticorruption are areas that will need deep consideration. What authority, for example, will check the power that anticorruption agencies established by the GoSS have over state and local government activities? An important decision is the status of employees working for the state to provide state services. Are they to be state employees, employed under state legislation and subject to state control? Many developing countries have limited the overall policy development task by having centralized legislation but then giving the subnational governments the management task of operating according to that legislation. Under these arrangements, the states would be

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103 The ICSS provides for both GoSS and state legislation. The GoSS has enacted a Local Government Act (2009) while some states have enacted their own legislation.

104 See discussion in chapter 4.
responsible for their own financial and civil service management, for example, but would apply uniform
GoSS legislation to undertake that management.

308. *The GoSS and local government.* Under the interim arrangements spelt out in the ICSS, the GoSS
has a fairly wide-ranging responsibility in relation to local government. But what will its role be after the
states have elected legislative assemblies and are more independent of GoSS? At one extreme, the GoSS
could have no function at all because, under the ICSS, its links with local government are to be through
the states. On the other hand, the GoSS could continue to play the role provided for it in the transitional
clauses.

309. *The states and local government.* The issues here are similar to those concerning the relationship
between the GoSS and the states. On representation of the states at the local government level, there is a
legal opportunity available to the states as the ICSS is silent on this issue (it specifies that councilors will
be elected but says nothing about the executive level of local government). This allows local government
commissioners to be either appointed by the states as formal representatives or elected by the citizens.

310. On the issue of legislative controls for the operation of local government, there is little benefit in
each of the 80 or more councils passing financial management, civil service, audit, anticorruption acts,
and so on—although that would be possible. The more workable options would be to have local
government operate to uniform standards within a state or within the nation, and apply either state or
national legislation. If both local and state governments adopt common practices in financial reporting,
for example, this would greatly facilitate the generation of comparable information on how the
government is operating.\footnote{\textsuperscript{106}}

311. Similarly, it would be possible for each council to be a separate employing authority, but a more
workable procedure might be for the staff to be state employees responsible to the council administration
for their performance.

312. *Using tied grants to reform state civil service.* Given that states remain heavily dependent on
discretionary transfers from Juba and tend to see themselves more subordinate to the GoSS than
autonomous, there is a case for a program of variable grants, calibrated to states' willingness to
implement stronger payroll controls and organizational and staffing reforms. States would then be faced
with a choice: to continue the partial funding of a grossly oversized payroll and accept the fraud and
inefficiencies that go with it, or progressively establish the foundations for a more effective and
appropriately sized state government, supported by additional transfers from the GoSS.

313. In federal systems, subordinate tiers usually receive a mix of untied and tied grants. The former
are often automatic, formula-driven transfers, while the latter are discretionary grants. Typically, the latter
are available to states that are willing to implement programs originating from federal policy on service

\footnote{\textsuperscript{105} S 52 (1) (a).}

\footnote{\textsuperscript{106} For example, international benchmarking exercises such as the Public Expenditure and Financial Accountability Framework (PEFA) emphasize the availability of consolidated information on revenue raising and spending. The presence of fragmented standards (for example, chart of accounts, accounting practices) would significantly undermine performance in this area.}
provision, but they can also be used to achieve reform to economic and administrative infrastructure. In this case, the conditioned program would be public service reform. South Africa’s national government provides substantial conditional transfers to elected provincial governments to implement national programs that include public service reform dimensions. Australia has used such grants effectively to ensure public sector infrastructure reform.

314. Depending on the level of autonomy to be given to councils in raising revenue, the states may or may not have roles in setting the rates of local government taxes and license fees, coordinating the different councils’ revenue efforts, and arbitrating disputes between councils at border revenue-collection points. It would be expected that, if local government is to operate under state legislation, the revenue bases and their uses available to local government would be laid out in that legislation.

315. On service-delivery functions, the ICSS differentiates only between Government of National Unity (GoNU, as the national government is known during the interim period), GoSS, and state functions. It is left to the legislation to specify what council responsibilities will be. The Local Government Act includes a suggested list, but whether this will apply in the longer term as state autonomy increases, is not clear. This matter will need future clarification once all three levels of government have had more experience in operating Southern Sudan’s model of decentralized government.

D. THE ALLOCATION OF NON-OIL REVENUE

316. Southern Sudan depends on oil for the bulk of its fiscal revenues. Non-oil revenues are, however, especially critical for a number of reasons:

- Diversification to more non-oil revenues is critical so as not to hold the various levels of Sudan’s government hostage to one source of revenue. The high degree of volatility in oil prices, highlighted by Southern Sudan’s experience in the aftermath of the global crisis, underscores this point. Non-oil revenues are likely to add a degree of stability and long-term sustainability to Southern Sudan’s finances. Besides, Southern Sudan cannot expect to rely on oil revenues indefinitely, as at presently known oil reserve levels and production plans, revenues from oil in Sudan will run out in 20 to 30 years, with oil production peaking by 2012 in the most optimistic scenario.

- Having some degree of autonomy at different levels of government will build a degree of flexibility and responsiveness into the system. Giving state and local governments their own revenue base will encourage them to make more effort to generate these revenues for their own priorities.

- Non-oil revenues also play important roles in shaping the relationship between the state and its citizens, or the government and society. Populations are likely to be more interested in and concerned about what their governments are doing if they see a direct link between what they are paying and what services they are seeing, rather than just depending on transfers from higher levels of government.
317. In both the design and implementation of non-oil-revenue policy (for example, basis and rate-setting authority) and administration (who actually collects), the role of the GoSS, states, and local governments needs to be carefully considered. Policy makers, therefore, need to consider all options carefully, including their technical implications, to ensure that non-oil revenues are not only mobilized effectively on aggregate but that they also contribute to the financing and accountability of all levels of Southern Sudan’s government and its political leadership.

The Constitutional Position

318. The provisions of the CPA and ICSS relating to non-oil revenue are the same except that the CPA specifies the sources of GoS/GoNU revenue as well as those of the GoSS and the states. Each contains a long list of taxes and fees and licenses that can be imposed by different levels of government, but there is no mention of the revenue sources to be allocated to local government. In fact, few of the traditional sources of local government revenue are included in the lists unless under general terms such as excise duties, licenses, and agricultural taxes. Some commentators use these provisions to claim that all the revenue sources of a local nature are included incorrectly as state sources.

319. The most important limitation of the documents, however, is that they have created confusion about what level of government has capacity in what areas, and provide no details about how tax-collection mechanisms are to work in the decentralized government model. These confusions have arisen because of:

- Concurrent taxing powers of the GoSS and the states (for example, personal income tax and excise duties)
- General provisions for both levels of government that allow them to levy “any other taxes as may be determined by law”
- Lack of provision for local government
- An ICSS provision that allows GoSS to raise revenue from “any of the sources listed as state revenue sources”

The Current Situation

320. To date, the GoSS has no legislation on revenue raising, but some of the states have established revenue authorities and have passed legislation for some specific taxes and licenses. In general, there is confusion over what revenues can be collected, where, and by what government. At the GoSS level, non-oil revenues provide a negligible portion of the total revenues. As Table 3 shows, these were consistently less than 1 percent of the total during 2005–7. This share was originally estimated to rise to about 4.8 percent in 2008. In fact, the actual revenues in 2008 are expected to be less than this, partly because of the spike in oil revenues in the first half of 2008 as well as lower-than-budgeted collections. Although the comparative figures for states are higher, they are less than 10 percent.

107 Section 184 (1) (b).
Table 3: GoSS revenues ($ billions)

<table>
<thead>
<tr>
<th>Year</th>
<th>Oil revenues</th>
<th>Non-oil revenues</th>
<th>Non-oil/total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>935</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>2006</td>
<td>1366</td>
<td>2.0</td>
<td>0.12</td>
</tr>
<tr>
<td>2007</td>
<td>1482</td>
<td>7.0</td>
<td>0.45</td>
</tr>
<tr>
<td>2008</td>
<td>1656</td>
<td>76</td>
<td>4.40</td>
</tr>
<tr>
<td>2008 (Q3)</td>
<td>2915</td>
<td>45</td>
<td>1.51</td>
</tr>
<tr>
<td>2009 (BE)</td>
<td>1707</td>
<td>123</td>
<td>6.70</td>
</tr>
</tbody>
</table>

Note: (i) Data for 2005–07 are outturns; (ii) 2008 and 2009 data are budget estimates; (iii) data for 2008 Q3 is the outturn up to Q3; (iv) BE: Budget Estimates.
Source: Draft budget 2009.

321. It is agreed that the harmonization and coordination of revenue efforts at both the GoSS and state levels are necessary before collections can sizably increase. But, with this yet unaccomplished, the state budgets for 2008 had included a wide range of revenue sources, often with very optimistic expectations attached to them, and often overlooking the ICSS allocation of revenue capacities to the GoS/GoNU and the GoSS.

322. Because local government revenue sources were not mentioned in the CPA or ICSS, there is even more confusion at that level. The states are yet to specify what areas the councils can operate in. They appear, at least in the interim, to be using revenue sources that may have been better allocated to councils. The Local Government Act takes a very different stance and would allocate many of the revenue sources (council sales tax, capital gains tax, gibana) to councils at the expense of state-revenue-raising capacity.

**Options for the Future**

323. It is clear from the CPA and ICSS that it is the GoSS’s responsibility to manage taxation and revenue raising in Southern Sudan as a whole.108 Political leadership is needed to clarify how this is to be done and the extent of decentralization that is to be applied. This will require decisions on:

- The principles to be applied when distributing revenue capacities between the GoSS, the states, and local government
- What level or levels of government can set the tax rate to be applied to each tax base
- Whether one government level can vary tax rates set by another (it has been proposed that concurrency of authority would allow a state to vary the rate of a GoSS tax to be applied in its area)
- What authority is to be given to governments at each level (and traditional authorities) so as to maximize the efficiency of revenue collections
- Where two or more governments are sharing a revenue base:
  - How that base is to be defined; can the two have different definitions?

108 Schedule B, item 12.
Are governments to set a combined rate and issue a combined assessment, or are they to act
separately, including on collection?

How are they to agree on divvying up revenue?

- What arrangements are to be established to cover the costs of authorities collecting revenue on an
  “agency” basis

- What overall agreements are to exist between governments to implement the arrangements,
  including such things as the frequency of redistributions from collectors and the auditing of joint
  collection procedures

324. **Principles for revenue allocation.** Few public sector revenue sources other than service user
charges have a natural association with a particular service. Most are used as sources of general revenue.
The allocation of expenditure responsibilities between governments (even if it had been decided) cannot
therefore be used as any guide to allocating revenue sources. Nevertheless, it will be best if each level of
government has substantial own-source revenue in relation to the cost of its service delivery
responsibilities. As noted earlier, greater revenue-raising responsibility makes subnational governments
more answerable for their expenditure policies and levels of efficiency. It should not be assumed,
however, that the state and local governments can be financially self-sufficient; non-oil revenue bases in
Southern Sudan are unlikely in the medium term to provide that level of fiscal capacity. Efficiency in
collection should be a major determinant in revenue-collection allocations. Market fees, for example,
cannot be efficiently collected by the GoSS, and cross-border transactions would mean that VAT could
not effectively be assessed and collected at the council level. Fees and charges for services should, of
course, be attached to the level of government managing the service delivery.

325. Because of collection efficiencies, the tendency in allocating revenue sources will be to give them
to either the GoSS or the local council level. There are two options by which own-source revenue could
be provided to the states. It could be handled through the concurrent powers by giving the states rights to
levy piggy-back taxes on GoSS sources, or it could be done by revenue sharing with the GoSS, with only
one tax imposed on behalf of both governments. The latter option is administratively simpler and might
be best for Southern Sudan. It would involve the GoSS defining the revenue base, setting the tax rates,
and collecting the revenue, knowing that under a preexisting agreement it would be providing each state
with a set percentage of the revenue that was derived from taxpayers or taxable activities in that state.
Associating tax payments or taxable activities to a geographic area such as a state can sometimes be
problematic, but this should not discount the possibility of revenue sharing.

326. **Technical support for revenue allocation.** The technical input required for revenue-allocation
decisions might be best explained by looking at possible arrangements for some current revenue sources.
Tables 4.2, 4.3, and 4.4 look hypothetically at personal income tax and Gibana.\(^{109}\) They assume a large
number of decisions for which future policies should provide a firm basis.

- For **personal income tax**, it is assumed:

\(^{109}\) Gibana is the duty imposed on the value of agricultural production in a local council area that is not exported
from Sudan or consumed locally.
• Tax and revenue bases have been defined.
• GoNU, the GoSS, and the states can all set tax rates.
• States are to have a uniform and agreed piggy-back tax to be applied on top of the GoNU (if any) and GoSS rates
• There is to be a joint GoNU/GoSS/state tax assessment
• GoSS will do the collection in city and municipal council areas
• States will do the collection in town council areas
• Local government councils will do the collection in rural areas
• Net revenue collected (that is after the subtraction of collection costs) will be shared 40:50:10 between the GoNU, the GoSS, and the states, in accordance with their tax rates

For Gibana, it is assumed:
• Duty has been defined so as to differentiate it from customs duty and consumption taxes.
• Point of imposition has been defined and laid out.
• Only local governments can set the rate of duty.
• Rates of duty can vary between councils, even in the same state.
• Urban councils (city, municipality, and town) collect their own revenue.
• Traditional authorities collect in the rural areas and give the net revenue (after costs of collection have been deducted) to the local governments.
• Net revenue is shared: 20 percent to the states and 80 percent to the councils in accordance with an agreement.

327. These examples are not given as proposals. They simply illustrate the range of issues over which—harmonization and coordination—is necessary and provide a structure for future decisions.

328. It may be necessary to examine the constitutionality of some of the proposed taxes because they relate to the movement of goods. The ICSS provides that “No legislation shall impede interstate commerce, the flow of goods . . . between the states and local governments in Southern Sudan.”110 In other countries, the imposition of a tax or levy on goods crossing state and local government boundaries has been found unconstitutional under similar provisions. Will the ICSS provision make revenue sources such as Gibana and border-trade charges illegal?

110 S 196.
Table 4: Understanding the Revenue Bases

<table>
<thead>
<tr>
<th>No.</th>
<th>Source of Revenue</th>
<th>Description</th>
<th>Revenue base</th>
<th>Point of imposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal income tax</td>
<td>A tax on an individual’s income, in cash or kind, during a period</td>
<td>An individual’s income over a period</td>
<td>Location of residence</td>
</tr>
<tr>
<td>26</td>
<td>Gibana</td>
<td>A duty imposed on the value of (agricultural) production in a council area that is not exported from Sudan or consumed locally</td>
<td>Value of production exported to another local government area in Sudan</td>
<td>Point of export from local government area of production</td>
</tr>
</tbody>
</table>

Table 5: Determining the Tax Rate

<table>
<thead>
<tr>
<th>No.</th>
<th>Source of revenue</th>
<th>What government can set the tax rate</th>
<th>Are states/LGs to have one agreed rate of tax?</th>
<th>Where two or three governments set rates, is it</th>
<th>There is only one assessing government</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>GoNU</td>
<td>A joint assessment</td>
<td>Separate assessment</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Personal income tax</td>
<td>X</td>
<td>Yes</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Gibana</td>
<td>X</td>
<td>No</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Table 4.4 Revenue Collection and Distribution

<table>
<thead>
<tr>
<th>No.</th>
<th>Source of revenue</th>
<th>Revenue collection agency in Juba City</th>
<th>Municipalities</th>
<th>Towns</th>
<th>Rural counties</th>
<th>GoNU</th>
<th>GoSS</th>
<th>State</th>
<th>Local government</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal income tax</td>
<td>GoSS</td>
<td>GoSS</td>
<td>State</td>
<td>LG</td>
<td>40</td>
<td>50</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Gibana</td>
<td>LG</td>
<td>LG</td>
<td>LG</td>
<td>Traditional authority</td>
<td>20</td>
<td>80</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

D. THE GRANTS SYSTEM

The Constitutional Position

329. No matter how revenue is allocated in Southern Sudan, it will be necessary to have a system of grants from the GoSS to the states (and local government) because the GoSS receives 98 percent of the oil revenue flowing to the south. Such grants were foreseen in the CPA and ICSS, and a framework was provided to guide the institutional design. The CPA established the Fiscal and Financial Allocation and Monitoring Commission (FFAMC) in Khartoum to ensure fairness in the distribution of funds to the states,\(^{111}\) and the ICSS established the Southern Sudan Fiscal and Financial Allocation and Monitoring Commission (SSFFAMC) to ensure fairness in the distribution of resources between governments in Southern Sudan. This chapter looks only at the arrangements within Southern Sudan, as that will be the focus of the future GoSS policy decisions necessary to make decentralization work. Obviously, fairness in the allocation of resources within Southern Sudan is essential to any improvement in the provision of public services.

\(^{111}\) Although there is some ambiguity as to whether southern states are in its purview, in practice it is clear that its mandate is limited to the 16 northern states.
330. In summary, the ICSS provision\textsuperscript{112} establishes the SSFFAMC to:

- Guarantee appropriate sharing and utilization of financial resources
- Ensure transparency and fairness in the allocation of funds to the states and local governments in Southern Sudan
- Ensure that equalization grants from the Southern Sudan Revenue Fund are transferred in a timely manner.

331. The ICSS does not specifically give the SSFFAMC power to look at the revenue share to be kept by GoSS (the vertical pool), although this might be implied from item (i).

332. Another issue that the ICSS does not discuss is the type of grants that can be used by the GoSS, except to describe at least some of them as “equalization grants.” Generally, the simplest categorization of grants is as either “tied” or “untied” to a particular service responsibility. Must they be used for a purpose dictated by the government that supplies the funds, or can they be used for whatever purpose the government receiving them decides? Both tied and untied grants can be designed to equalize the level of services across regions. In those circumstances, the criteria for distributing the grants usually take account of the different levels of expenditure need in the receiving areas, as well as their different capacities to raise their own revenue.

333. The draft SSFFAMC Act takes a very broad view of how the CPA and ICSS can be interpreted. It would enable the institution to:

- Monitor oil revenue flowing from the GoNU as a result of the Wealth Sharing Agreement of the CPA
- Monitor other funds being transferred to GoSS from the GoNU’s National Revenue Fund
- Make proposals on the criteria for the distribution of funds generally in Southern Sudan, including the GoSS share
- Ensure the agreed formula for grants distribution is based on equity
- Ensure grant funds are used for their intended purposes

334. Surprisingly, it does not involve the SSFFAMC in any issues relating to tied grants.

The Current Situation

335. In 2007 and 2008, the GoSS made grants to states through several different mechanisms, with the SSFFAMC playing no role. Because of the stage of development of the expense classification system within the accounts of the MoFEP, it is difficult to get complete or accurate details of the grants being made. One difficulty is that the definition of “transfer,” as it is used in the accounting documents is not

\textsuperscript{112} S 188.
consistent over time or between GoSS agencies. The transfers (grants) most usually identified in 2007 and 2008 expenditure statements are:

- **Block grants**
  1. Cover the cost of each state's council of ministers
  2. Cover the cost of each state's legislative assembly
  3. Provide special development opportunities in five states
  4. Other block grants

- **Tied grants**
  5. Cover education workers' salaries
  6. Cover veterinary officers' salaries
  7. Cover health workers' salaries
  8. Other tied grants

336. In 2009, the GoSS is making direct equal block grants to the counties.

337. The current basis of distribution of the grants is as follows. Categories 1, 2, 4, and 7 provide an equal amount to each state, irrespective of expenditure needs and revenue capacities. Although these are meant to cover the relevant salary costs in the states, differences between the states are such that this goal is not always achieved. Little is currently to ensure that funds are spent as required, but it is the intention of the MoFEP to ensure that these grants should be used for their given purposes. Category 3 is also an equal amount per state, but only five states got these in 2007. Categories 5 and 6 are, in principle, based on the number of staff whose salaries are being supported.

338. In effect, the block grants are all tied to specific areas of state expenditure. Their distribution across states was decided at a governors' forum that discussed and rejected a paper prepared by the SSFFAMC. The grants nominated as being tied are distributed on the recommendations of the relevant GoSS line ministries.

339. There are at least four additional ways by which states receive assistance. They are:

- Grants made direct from the presidency; but these are not classified as transfers in the MoFEP system and no details are available
- Grants made through cash checks to states by GoSS ministries and not recorded as transfers
- Direct payments by the GoSS to cover state expenses
- GoSS provision of capital assets for the states

340. An additional category of grants was added in the 2008 GoSS budget: Transfers to Blue Nile State, Southern Kordofan State, and the Abyei area.
341. As noted above, grants to counties figure in the 2009 budget.

342. The grants system has been evolving. As shown above there are two key types of grants from the GoSS to states: block grants and conditional grants. Block grants are those in which neither the economic nor functional use is defined. In 2007 and 2008, separately identified block grants were given to the state assemblies, state council of ministers, and the state governments on an “equal” basis to all 10 states. In 2008 a block grant for the three areas was added which, however, has been discontinued in 2009. Conditional grants are those in which either the economic use or the functional use or both are defined. In 2008 conditional grants were made for the state ministries of education, health, and animal resources for payment of salaries. Conditional grants were also made to the state ministries of gender, culture, commerce, and agriculture for meeting their operating costs. In the same year, conditional grants were also made to the state ministries of agriculture, cooperatives and the anticorruption offices for capital expense.

343. In the 2009 draft budget, the grants system has evolved further. Block grants are now made by GoSS to the state assemblies, the state governments, and a separate block grant for use by the counties. The grants to counties pass through the state governments and the horizontal distribution across counties is left to the state. It is expected that the existing pattern of “equal” block grants followed by the GoSS to the states would be replicated by states to the counties. Conditional grants are made by 19 GoSS entities to their counterpart entities at the state level. These conditional transfers are defined by both economic use (salaries, operating costs, capital expense) and by function (education, health, agriculture, animal resources, police, prisons, fire brigade, wildlife, gender, legal affairs, war veterans, peace commission, HIV/AIDS commission, water resources, Bureau of Community Security and Small Arms Control, Employee Justice Chamber).

344. The overall trend is for a decline in the proportion of block grants relative to conditional grants, from a level of 61 percent of block grants in 2008 to only 29 percent in 2009. This is largely due to an increase in the overall volume of transfers. No implications for state autonomy should, however, be read into this trend since it is a result of better assignment of costs that, earlier, were borne by the GoSS budget (see Table 6).

345. Transfers have increased from around 7 percent of total budgeted expense in 2006 to 11.4 percent in 2008 (including the supplementary grant proposals). In nominal terms the block (unconditional) grant element has nearly doubled from about $115 million in 2006 to $223 million in 2008 (see table 4.5). Plotting the flow of conditional transfers is complicated by data uncertainty and the lack of a clear link between expenditure and functional assignments at GoSS and subnational levels. It is noteworthy that the GoSS meets the entire expenditure of the police and prisons from its own budget, though typically the bulk of these functions would be state functions.
### Table 6: Transfers to States (US $ million)

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008 (BE)</th>
<th>2008 (SE)</th>
<th>2009 (BE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block grants</td>
<td>115</td>
<td>115</td>
<td>159</td>
<td>223</td>
<td>220</td>
</tr>
<tr>
<td>Conditional transfers</td>
<td>0</td>
<td>111</td>
<td>92</td>
<td>92</td>
<td>345</td>
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<tr>
<td>Total transfers</td>
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<td>315</td>
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<tr>
<td>Total expenditures</td>
<td>1650</td>
<td>1535</td>
<td>1714</td>
<td>2753</td>
<td>1803</td>
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<tr>
<td>Share of transfers (%)</td>
<td>7.0</td>
<td>14.7</td>
<td>14.6</td>
<td>11.4</td>
<td>31.3</td>
</tr>
</tbody>
</table>

Notes: (i) Conditional transfers not provided for in 2006 budget; (ii) 2007 conditional transfers computed for Ministries of Education, Health/HIV Aids and Agriculture and Animal Resources; (iii) Conditional transfers for 2008 from budget; (iv) 2009 data from 2009 draft budget; (v) BE: budget estimates; SE: supplementary estimate; (vi) Oil revenues of oil producing states not included.

### Options for the Future

346. There is an urgent need for better and consistent data on transfers to states. The MoFEP must establish a firm stance on what transactions are seen as grants to the states, and all reports must be prepared accordingly. The international approach is to classify grants as all GoSS expenses that cover costs incurred by states in satisfying state legislative, administrative, and service provision responsibilities. This would apply whether the payments are made to the State Ministry of Finance or a line ministry, or given either as cash or a check or in the form of materials provided (for example, new ambulances given to the states by the GoSS). A more realistic measure of the extent to which the GoSS is supporting the states is required—one that will give a more accurate picture of the vertical distribution of resources.

347. There are, however, several policy issues that must be considered before a grant system can be developed so as to align with the general policy on decentralization. It will be seen that they relate closely to the political issues of autonomy and intergovernmental relationships already discussed in this chapter. This is not surprising as the fiscal transfer system in a nation reflects its governance structure.

348. **Grant type.** The first issue relates to the types of grants that the GoSS might use in its dealings with subnational governments. To have only tied grants, as is effectively the case at present, gives states less financial autonomy than if they received some of their grants untied. It also limits the government providing the funds from implementing equalization of service provision as an objective. Untied grants give recipients a greater capacity to decide their own budgetary priorities and satisfy the differing expectations of their people. They also allow greater ability to adjust for the influence of differences in revenue capacity on service levels. Tied grants give a central government more capacity to influence states’ planning and budgetary decisions and are favored by central financial planning agencies as better means of managing the public sector overall. The best balance is often a blend of tied and untied funding, but the question is the proportion of the total grants that should be untied.
349. Assuming some tied grants are to be used, the type of conditions can also vary greatly and influence the level of autonomy given to states. They can be either restricted by what services are to be funded, or expanded to include administrative and data-provision type conditions. A tied grant for education, for example, can be specified as being for teacher salaries that must conform to a national standard salary scale with teacher classifications decided on the basis of qualifications and an annual assessment of work value. This limits the flexibility of the states’ education budget considerably. On the other hand, a grant with the only condition being that the state must spend it on education is still a tied grant. Here, the state can decide the mix of salaries, textbooks, new schools, and examination expenses that they might incur in their education budget. They have much more autonomy to meet local needs, but still within a tied grant. Political decisions will be needed to develop a general policy on the use of tied and untied grants and the types of conditions to be applied to any tied grants.

350. Some grants may, in fact, not relate to particular services at all, but to more wide-ranging aspects of public sector operations such as staffing and payroll control, limiting corruption, or improving transparency in government. Such grants are usually given as untied grants as far as purpose goes but require the recipients to take action before they are received. Such systems have been used beneficially in both South Africa and Australia to achieve overall public sector reform.

351. Grant distribution. For both tied and untied grants, political decisions will also be needed to develop policies on the distribution of grants. This does not mean that the government develops the distribution formula or even the formula criteria into policy or legislation. The government’s role is to decide the philosophy that is to be applied. In education grants, for example, the aim could be give equal assistance to: (i) potential number of students, where demographic profile; (ii) actual number of student, where enrollment might determine the distribution; (iii) each school; (iv) each teacher; or (v) each state.

352. Clearly, the concept of equity (or fairness) implied by these alternatives varies. It is the government’s role to decide the application of the concept of equity, and then the technicians’ task to see that the grant distribution achieves that concept as well as possible.

353. Whenever tied grants are used, there is a technical issue of enforcement that requires political support. Governments must decide the extent to which the conditions attached to their grants are to be enforced, and whether or not they want to have formal agreements with the states that specify the conditions of the grant, and the means of monitoring how they are spent and the loss states will suffer if the funds are misspent. It is good administrative practice to have such agreements, but they can create a workload and expectations that cannot be justified for a newly established system of government.

354. Similar political decisions are needed in relation to any untied grants. Tied grants can allow for different expenditure needs of states, but it is the distribution of untied grants that is more frequently used to adjust for states’ different revenue capacities. Untied grants also allow greater flexibility for subnational governments to meet the different objectives and needs of their local communities. If equalization, as mentioned in the CPA and ICSS, is to be applied, some untied grants will be necessary so that the oil revenue received by the Unity and Upper Nile states (and differences in non-oil revenue across all states) can be taken into account in the grant distribution.
355. Exactly how equalization is achieved should not be a decision of the government but a recommendation of the distribution agency (the SSFFAMC). What is required of the GoSS is a statement of policy that the SSFFAMC can then apply to the distribution of untied funding. It might mean either full or partial equalization, under which all or only some revenue sources would be adjusted for. For political reasons, it is not unusual for nations to opt for partial equalization and not adjust fully for differences in revenue capacity (for example, Canada, Indonesia, and Nigeria). In the very short term, adjustments can be made to the grants to the oil-producing states in view of their greater fiscal capacity (and revenues).

356. The ICSS gives the SSFFAMC a role in safeguarding the flow of funds to local government.\(^\text{113}\) It does specify, however, that “the linkage between the GoSS and the local government shall be through the government of the relevant state.”\(^\text{114}\)

357. The role of the SSFFAMC in regard to local government will need an agreed interpretation of these sections of the ICSS. Can the SSFFAMC assess grants for individual councils and then pass the grants to the states for onward passing? Or is its role limited to monitoring the way individual states distribute funds to the councils in their areas?

358. If the GoSS were to introduce “administrative condition” grants to encourage or enforce widespread public sector reforms, other agencies may need to be introduced into the group writing tied grant agreements and then monitoring the performance of the states. These may include the Ministry of Labor and the Anticorruption Commission.

E. CONCLUSION

359. Making decentralization work to improve basic service delivery, state legitimacy, and sustained peace requires both political and technical input. It will require governments at all three levels specified in the ICSS to know: (i) where they stand in relation to one another, (ii) what levels of power and autonomy they have, (iii) how they can raise revenue, and (iv) what services they are responsible for providing. It also requires that state and local governments be certain about the way the GoSS will assist in their funding through a grants system. At present, there is a great deal of uncertainty in all these areas and, as a result, the system of decentralized government outlined in the ICSS is not working well.

360. While the interim constitutional frameworks introduced at the beginning of this chapter provide a general road map for building government in Southern Sudan, a number of steps still need to be taken to actually make decentralization and government work in practice. The chapter has presented a number of options, including accountability to elected or traditional bodies, public employment, revenue raising, and transfers.

361. The chapter also highlights that debates around decentralization cannot be seen in isolation from a broader set of reforms, including those that strengthen the public sector. In time, policy makers in

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\(^{113}\) S 188 (2) (e).

\(^{114}\) S 52 (1) (a).
Southern Sudan will need to find ways of rationalizing public sector employment and the wage bill. Much of this spending is lodged at the state level. Together, the different levels of government will need to find a workable means of addressing these issues and beginning to put in place the basic building blocks of an effective civil service. But it is clear that not everything can be done at the same time. Southern Sudan continues to face significant challenges to its security. Hence, authorities will need to carefully think about how to best prioritize and sequence actions, especially given that building capable government in Southern Sudan will take time. Regardless of its constitutional future, the political and policy leadership will need to identify the key elements for medium-term stability and effective government in Southern Sudan.

362. At the same time, policy makers at all levels of government presumably will work to ensure that a core cadre of capable public officials is in place to actually make sure that the government functions. For example, key cross-cutting functions in areas such as public financial management need to be effectively staffed and operating. Rudimentary and sustainable staffing will also be needed for key areas of priority service delivery, be it education, health services, or local law and order. In some areas, such as rule of law, traditional authorities may continue to play an important role. Over time, the GoSS will also need to start putting in place a functioning system to raise non-oil revenue throughout the country. This will require the cooperation of state and local officials and populations, as well as strategic vision and consensus.
CHAPTER 5: TACKLING CORRUPTION

A. POTENTIAL FOR CORRUPTION IN SOUTHERN SUDAN

363. In 2006 the president of the Government of Southern Sudan (GoSS) declared Southern Sudan to be an area of zero tolerance for corruption.” Then, in April 2007, the finance minister and both his undersecretaries were removed from their posts on charges of corruption. In February 2008, the auditor general (AG) was charged with corruption and removed, along with the other members of the audit chamber.

364. All of this occurred within just over two years of the government’s formation in October 2005. Perception surveys, including those conducted by the Southern Sudan Anticorruption Commission (SSAC), rank corruption as the nascent government’s foremost problem. See Box 6 for a working definition of the term corruption and the relevant constitutional provisions in Southern Sudan.

365. The pervasive concern with corruption in Southern Sudan stems from the perception that the government is not utilizing its revenue from oil wealth usefully and for the benefit of all citizens. Southern Sudan, historically a marginalized and neglected area with little or no development and negligible infrastructure, has recently received a sudden inflow of fiscal resources from oil. In 2004 total revenue managed by the SPLM Ministry of Finance amounted to about $120,000. Soon after, with the signing of the Comprehensive Peace Agreement, the GoSS revenue rose to $1.7 billion in 2006—or around $188 per capita, assuming a population of 8 million. This is more than the equivalent for Kenya ($167), Zambia ($162), and Uganda ($42) in that year. Fueled by an oil windfall, total GoSS revenue continued to rise, reaching $2.5 billion in 2008. But against this fiscal inflow, the actual benefits filtering down to the average person appear negligible (albeit marginally better than in the war years)—hence the perception that resources are being mismanaged.

366. Another reason for the concern over corruption is that Southern Sudan’s strong tribal affiliations may drive resource allocation and distribution decisions by government functionaries unfettered by established traditions and norms and in the face of weak institutional regulations and oversight. The risks

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363. The simplest definition of corruption is the abuse of office for private gain. Beyond this, conceptions and forms of corruption vary across regions and cultures. Comparative experience suggests that corruption encompasses a broad range of institutional practices and behaviors: state capture by elites or ethnic cabals, bid rigging, bribery, currying favors for gain or personal benefit, asset stripping, and various forms of administrative malpractice. The Interim Constitution of Southern Sudan (ICSS) adopts a broad definition of corruption that covers a wide range of malpractice in public institutions, including nepotism, tribalism, gender discrimination, bribery, embezzlement, and sexual harassment. The focus of this chapter is state capture and administrative corruption. The World Bank’s Global Monitoring Report 2006: Strengthening Mutual Accountability defines state capture as the actions of individuals, groups, or firms in either the public or private sectors to influence the formulation of laws, regulations, decrees, and other government policies to their own advantage as a result of the illicit and nontransparent provision of benefits to public officials” and administrative corruption as the provision of illicit and nontransparent benefits to influence how these established rules are implemented” (p. 133).
associated with such practices are high. The stratification of resources along tribal lines and the resultant social tensions are clearly not conducive to the emergence of Southern Sudan as a modern nation-state.

367. Meanwhile, the government wants to live up to the SPLM‘s popular image as a modern movement that will turn Sudan into a democratic state accountable to its people. Donor assistance to Southern Sudan equals around one-third of government revenue, and it is critical for the government to show donors that their money is well spent.

368. The GoSS concern over corruption is shared by other fragile post conflict societies with nascent bureaucracies and weak rule of law. In this context, corruption can dangerously alienate groups out of power. Experiences from other African countries are instructive (see Box 6). The correlation between the fragility of post conflict societies and the high levels of corruption noted in the study by Kaufman and others 2007 may be explained by the corruption that could arise from the ethnic and political structures of societies and the pressures that these create in particular in the wake of conflict. The SPLM has fought against the marginalization of the south and cannot, ideologically, accept inequality as an outcome of its own system of public governance—hence the concern with combating corruption. There are also tensions between the Equatorians, who dominated the civil service in the past, and the growing dominance of the Dinkas due to the strong presence of the Sudan People‘s Liberation Movement/Army (SPLM/A) in the post-CPA period.

**Box 6: The Genesis of the Biafran War**

In 1966 anti-Ibo riots broke out in Nigeria, in part because an Ibo military government passed a decree that integrated the civil service across Nigeria. By making Ibos eligible for employment in the civil service of the north, this policy in effect favored Ibos over northerners. The asymmetric measure was so schismatic that it eventually stoked the Biafran War.

369. Finally, corruption undermines public trust in institutions. Fortunately for the SPLM, it still has reputation to live up to. Forty percent of those who participated in the SSAC survey look to the government to spearhead the fight against corruption. Thirty-five percent said that they would go to the SSAC as the preferred stop for reporting cases of corruption. Thirty percent would go to the police. These numbers are high, relative to others in the region.¹¹⁶ Maintaining and enhancing public confidence in the emerging anticorruption institutions in Southern Sudan and in the GoSS is a critical component of strengthening democracy and forging a lasting peace in the south. These considerations are backed by a growing body of evidence¹¹⁷ from post conflict societies that — neglecting the corruption problem from the

¹¹⁶ This inference is drawn from the police ranking in various issues of the Kenya Bribery Index, in which the police have been ranked as the most corrupt department of government for over five years. Moreover, public perception surveys on the effectiveness of the Kenya Anticorruption Commission and on the Kenyan government’s commitment to fighting corruption are persistently low.

outset is a dangerous strategy, as corrupt elites use the interlude to entrench themselves in politics and set up predatory schemes, which makes reform difficult to achieve at a later stage” (Mathisen 2007). Such elites can often find comfort in the fact that development partners fear that a vocal stance on anticorruption reform may undo or threaten the often fragile settlements that form the basis for peace.

370. This chapter is based on a background paper, a companion to the ones on decentralization and public service reform, which provide the bases for chapters 2 and 3. Together, these three subjects—corruption, decentralization, and public service reform—must be addressed through positive action before good governance practices are firmly established in Southern Sudan. Although there is a reference to demand-side factors in this chapter, the discussion concentrates on supply-side options since, given the low starting point for demand side institutions, not much change can be expected on the demand side in the short term. The rest of the chapter reviews the broad architecture of anticorruption as prescribed in the ICSS and as it exists in practice, considers key issues relating to the structure and functioning of the nation’s core anticorruption agencies, and concludes with some recommendations.

B. ACCOUNTABILITY: ISSUES AND OPTIONS

371. This section describes the components of Southern Sudan’s national integrity framework and discusses issues concerning their efficient and effective operation, beginning with the demand-side institutions but focusing on the supply-side ones in the government itself.

The Demand Side of Accountability

372. Civil society. Southern Sudan is not unique in relying—at least for now—on supply-side solutions to combat corruption. The nascent state of its nongovernmental organizations (NGOs) and civil society organizations (CSOs) and their recent advent as service providers has not prepared them for discharging the role of instruments of social accountability. Since 2005 many are struggling to redefine themselves and play a monitoring role. Meanwhile, they face serious capacity gaps and internal governance challenges. Several local NGOs have (as in South Africa in 1994 and in Kenya in 2003) steadily lost their most experienced leaders to government. Fortunately, Southern Sudanese NGOs appreciate these challenges and are taking steps to tackle them. Nearly 70 NGOs have formed under the banner of the New Sudanese Indigenous Network (NESI). In June 2007, they reaffirmed the significance of this collaboration in a high-level conference in Juba. NGOs currently operate under the Non-Governmental Organisations Act, an SPLM law made in 2003. The realities of the country and the role of NGOs have changed since the CPA was signed in 2005. The time is ripe for reviewing the existing legislative framework and amending it, as needed, to recognize NGOs as partners in development and an essential part of the democratic governance framework.

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373. **Independent media.** Though the number of media outlets in Southern Sudan has increased since the CPA was signed, these outlets have a short reach; the rural south is underserved and supportive media laws and policies need to be enacted.\(^{120}\) Radio has the best prospects since print media is limited by low literacy rates, estimated at 20 percent. In the Perception Survey on Corruption conducted by the SSAC, 51 percent of respondents considered radio the most reliable source of information on corruption issues, more than twice as many as those who considered newspapers the most reliable source (22 percent). Though television has potential, it currently only covers Juba and its environs. The print media issued a Code of Self Regulation on June 21, 2007,\(^ {121}\) but the capacity for self-regulation is still low. Technology diffusion is low throughout Southern Sudan and the reach of the internet is limited. According to one estimate, 90 percent of ownership rights are concentrated within the government,\(^ {122}\) skills and training levels in journalism are low, journalists face the risk of reprisal,\(^ {123}\) and the levels of technology uptake and diffusion are still very low. The most pressing challenges are: (i) expanding the reach of the media to rural Southern Sudan; (ii) enacting supporting legislation, especially a freedom of information law; and (iii) developing the self-regulative capacity of the *Union of Journalists of Southern Sudan* (UJoSS). As the largest media owner as well as regulator, the GoSS can lead efforts to enhance the reach of media through policy as well as investments in technology. Through laws, it can enhance the capacity of the media to regulate itself.

374. **Donors.** Probably the most powerful source of demand for accountability in post conflict countries is the donor community. This is because donors have to account for the use of their own funds to their legislatures back home. Meanwhile, donor funding typically forms a large proportion of public revenue at a time when a nation’s other oversight mechanisms are either nonexistent or only partially formed and weak in terms of human capacity and incentives. For example, even today, many years after the conflicts have ended donors fund a large proportion of the capital budgets of Sierra Leone and Mozambique. This was certainly the case in Southern Sudan in the years before the CPA (i.e. before oil-based revenue became the major source of public revenue) and, even now, donor contributions are not insignificant. Donors exert their control on the input side through project financing till such time as national accountability systems are robust enough for funding through budget support and the focus shifts to results from a focus on the “——paper” acquisition of inputs. Even in later years, donors, through their embassies and development agencies, remain a major force for accountability—in many cases more effective than national institutions. On the other hand, overactive donors can frustrate the birth and development of local institutions and processes. In the end, donors should focus on improving accountability and transparency. This has been the case in Southern Sudan, where donor resources provided through the Multi-donor Trust Fund for Southern Sudan (MDTF-SS) have been pooled with GoSS resources to ensure that both are subject to the same fiduciary standards.

\(^ {120}\) Team interview, November 9, 2007.
\(^ {121}\) The Code was issued by the following newspapers and groups: *Al Muragib; Juba Post; Insight Sudan; Khartoum Monitor; South Sudan Post; Sudan Tribune; Sudan Mirror; the Citizen;* and the UJoSS.
\(^ {122}\) Estimate of the UJoSS.
\(^ {123}\) One Juba newspaper editor informed people at a meeting with the UJoSS that his reporters had been arrested and locked up in custody after covering a story involving militias that were believed to be linked to a progovernment businessman.
The Supply Side of Accountability

375. Forty percent of people in the perception survey said that they look to the government to spearhead the fight against corruption, and 14 percent would actually want to see the president himself involved. Sensing the mood of the people and recognizing the need to tighten regulations and develop institutions that enforce accountability and transparency, the government has taken a number of steps to reinforce the four key organs of the state: executive, legislature, judiciary, and formal oversight agencies.

376. The executive. Public money may be misused for private gain (in other words, corruption) or to balance weak administrative capacity and carelessness (inefficient government functioning). But the instruments for controlling either type of misuse are similar. Codified procedures for making decisions and managing finances, a well-defined code of conduct for public officials, standardized systems, trained staff, and an effective internal audit are the key activities that the executive must ensure with respect to its own system of working. An independent and effective judiciary; proactive legislature; and functional, specialized, and autonomous oversight institutions are the other pillars of good governance.

377. Public financial management. The sudden expansion of fiscal resources flowing through the public account in Southern Sudan since 2005 has rendered the old systems of budgeting and accounting ineffective and the officials trained in those systems redundant. A mere handful of the 500 people employed by the Ministry of Finance and Economic Planning (MoFEP) in the GoSS are critical to the services that the ministry delivers. The government has struggled to gain control over budget execution by centralizing all significant treasury operations in the MoFEP. This has been effective in disciplining expenditure relative to the availability of cash and better sequencing expenditure and budgeting execution. Simultaneously, more elaborate budget formulation practices have disciplined the planning and forecasting of expenditure.

378. About 40 percent of the total GoSS budget relates specifically to the SPLA, and that allocation is a black box of which very little is publicly known presumably for security considerations. Similarly, the MoFEP’s capacity to discipline line ministries is not sufficient to keep politically important ministries within budget limits. Supplementary budgets to meet past or expected future budget overruns have become routine. In 2008, prompted by excess revenue from an oil price windfall, the supplementary budget was equal to 60 percent of the approved budget, with 40 percent of it going to the army.

379. Yet the overall health of the public financial management system is gradually improving. The systematic process of budget preparation—discussed and approved by the GoSS since 2007—is slowly being replicated in the states. The quality of the budget process at the state level was considerably better in 2008 than in previous years. In 2009 all counties are expected to have followed the same budgetary process with participative decision making, standardized budget formulation norms and regulations, and common processes for seeking legislative approval.

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124 In 2008 the government sought a supplementary budget for salaries for the Presidency, Ministry of Cabinet Affairs, Ministry for Regional Cooperation, the SPLA, Wildlife and the SSLA.
380. But such advances on the formulation side are not matched by advances on the execution side. Internal audit remains a very weak area within the public financial management (PFM) system. What is worse is that there was no substantive auditor general (AG) since early 2008 for almost two years. With low accounting capacity and inadequate institutionalized accounting systems, poor internal and external audit control tempt financial mismanagement.

381. As discussed in detail in chapter 2, a grossly mismanaged area is personnel accounts and payroll management. Lax controls over recruitment, inefficient processes for guarding against irregular claims, and poor personnel verification systems have resulted in an ever-expanding payroll without commensurate enhancement in the service delivery capacity of government. In 2008 over half of the GoSS budget was spent on salaries. In the states and counties, more than 75 percent is spent on salaries. It is not surprising therefore that nepotism and tribalism are cited by people as their key reasons for being dissatisfied with access to public employment. Tellingly, Dinkas and Nuers, the major tribes with significant representation at the leadership level, are the least dissatisfied with the state of public employment.

382. Progress toward installing effective regulatory mechanisms has similarly been slow. While rejecting the somewhat antiquated, but still workable, financial management regulations of the GoS/GoNU, the GoSS has not yet been able to implement its own regulations. The result is a free-for-all in which accounting practices are a matter of judgment and good sense rather than rules and standards. A draft Public Financial Management Bill has been around for over two years but is still to be approved. Procurement procedures are neglected. Interim procurement regulations were introduced by the GoSS in 2006 and approved by the council of ministers but appear to be routinely ignored. A draft procurement law is also yet to be passed.

383. The 2007 anti-corruption action against the then–finance minister and his two undersecretaries was in fact over a procurement scandal in which cars were allegedly contracted at more than double their normal price. The findings of a review of contracts conducted jointly by the AG and the SSAC in 2007 are yet to be made public. In the absence of established regulations and procedures for procuring goods, services, and civil works, and in the absence of transparent financial regulations, efficient public financial management is difficult. Indeed, it is remarkable under the circumstances that the system has worked as it has, shored up by honest and dedicated individuals who constrain the misuse of public finances. While individual effort has kept the system on track, it is not oriented toward the delivery of public services—hence public dissatisfaction with the visible results of the new oil revenue.

384. The judiciary. A functioning and independent judiciary is one of the key pillars of good governance. In Southern Sudan, the traditions for such a judiciary are yet to be established. The current judiciary also faces structural challenges. First, there is a dual system of law: formal law is draped over a bedrock of customary law. In other jurisdictions in Africa, legal pluralism of this nature has been a source of persistent conflict. Customary law raises pressing challenges: what customary practices have force of law among the 250-odd ethnic and tribal groups in Sudan? Although this does not have a direct bearing

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125 Judiciary of the Southern Sudan, Training Needs Assessment Report of the Southern Sudan, 2007; the constitution of Southern Sudan (article 5) and UN Sudan Country Analysis 2007.
on corruption, as with other patriarchal societies in Africa, customary law may exclude and marginalize women and children and thus erode efforts to create an inclusive and just society.  

385. Since 2005 significant advances have been made toward establishing and staffing the structure of the judiciary at the level of the Supreme Court, Courts of Appeal, High Courts, and County Courts. Around 76 GoSS judges are functional today at various levels. As yet, however, there have been no landmark judgments in support of good governance. In July 2007 the president of the Supreme Court was relieved of his duties by a presidential decree; this was accompanied by a reshuffle of the Cabinet. The reasons for his dismissal were never made public. He was merely substituted by another appointee, in the same manner as any other minister, thereby underscoring the fact that the judiciary is yet to emerge as an independent organ of the state.

386. Similarly, not much is publicly known about the results of the judicial proceedings against the indicted finance minister. The SSAC complains that it does not have powers of prosecution and that the prosecution of those who have been indicted for corruption is lax. Be that as it may, the courts have stepped in, even though the ends of justice have clearly not been met in such cases.

387. The legislature. The Southern Sudan Legislative Assembly (SSLA), with 170 members and 10 state assemblies, is now operational. In accordance with the provisions of the CPA/ICSS till elections, all members are appointed by the president on the basis of nomination by their respective parties (70 percent by the SPLM, 15 percent by the National Congress Party [NCP], and 15 percent by other Southern Sudanese parties). The SSLA and the state legislatures have, since 2008, been regularly discussing and approving the budget. The SSLA has 16 specialized committees, including a committee on corruption and a Public Accounts Committee (PAC). Though the structure of the legislature exists, the extent to which it can play an oversight role is constrained by low capacity, inadequate technical assistance, and the fact that members are nominated by their parties (all of which are represented in the executive) and not directly elected by the people. Members recognize this limitation and feel that elections would empower the legislature.

388. The SSLA had, for the first time, closely scrutinized the 2007 budget through its various specialized committees. It forced an amendment of the overall resource envelope by unrealistically increasing the estimated receipts from non-oil revenues and the aggregate expense allocations, thereby leaving the door open for charges that the budget approval process was unrealistic. Part of the reason for the SSLA’s combative stance was the lack of consultation prior to presentation of the 2007 budget. The relationship between the executive and the SSLA and the nature of budget amendments changed in 2008, when the SSLA became more restrained and took care to balance the budget on account of its amendments. While the confrontational stance between the executive and the legislature has been toned down, a commensurate enhancement in technical scrutiny and comment on the budget calculations is not immediately visible. December budget debates barely last for two weeks and are very political in content.

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126 Some of these issues are discussed in further detail in annex 2.

127 The term chief justice is not used as Sudan is one country and the chief justice is in Khartoum. However, as with the audit chamber, the southern judiciary is independent of the national judiciary. The jurisdiction of the latter is restricted to the northern states.
In 2008 the SSLA also approved Constituency Development Grants, totaling $51 million, to fund itself. Most members feel that such funds are justified for the development of their constituencies. While the potential for fraud and corruption in the use of these funds is recognized, most SSLA members believe that adequate safeguards—in the form of a central review committee and village-level committees—have been put in place. It is unclear whether the use of these funds will be open to investigation by the SSAC or that self-regulation by the SSLA will be the only oversight mechanism.

389. The legislature has been proactive, thus far, in taking action against perceived corruption within its own domain. The speaker of the SSLA has suspended the assembly clerk. The Jonglei State Assembly has passed a vote of no confidence against two ministers. The Upper Nile Assembly similarly expressed no confidence in its finance minister and speaker, laying the basis for their dismissal. Eastern Equatoria State is in the process of dismissing the speaker for corruption. The SSLA took the lead in taking action against the AG of Southern Sudan, allegedly on charges of corruption. The AG was subsequently dismissed by the president of Southern Sudan. While there were press reports regarding the charges against the AG, the GoSS did not provide an official statement.

390. The desire to break with the past and establish new regulatory structures has resulted in legislative overload. Five laws were approved by the SSLA in 2006, three in 2007, nine in 2008, and six so far in 2009. However, 16 bills remain pending for approval of the SSLA (including the SSAC), and dozens more await the approval of the council of ministers before they can be sent to the SSLA. This legislative overload further constrains the capacity of the legislature to discharge its oversight functions.

C. Specialized Anticorruption Institutions

391. The architecture for anticorruption in Southern Sudan conforms to the so-called universal model, which was imported, with modifications, from Hong Kong into African countries such as Malawi, Zambia, Botswana, and Kenya. Under this model, the SSAC has important powers and functions (investigation, prevention, and public education) to address corruption, but prosecutorial powers and the right to authorize prosecution are vested in the Ministry of Legal Affairs and Constitutional Development (MoLACD). The effectiveness of this model hinges on collaboration between the institutions and agencies with core anticorruption mandates. The core anticorruption institutions in the Southern Sudan are the SSAC, the Southern Sudan Audit Chamber, and the MoLACD. Where collaboration is underdeveloped or weak, as in Kenya and Malawi, the anticorruption effort can lose focus and fail, as cases fall through the interstices created by arguments about mandate and overreach. More important, the responsibility and leadership for the anticorruption effort has to be at the center of government. This poses a risk for Southern Sudan. By passing on the responsibility of leading the anticorruption effort to the SSAC, there is a risk that what is essentially a political problem to be solved by political will and leadership might end up being treated as a technical problem—making the effort ineffective (Heilbrunn 2004).
The Southern Sudan Anticorruption Commission

392. The SSAC is established in chapter 3, part 9, of the Interim Constitution of Southern Sudan. Section 147 provides for the formation of the commission and the appointment of its members. It also establishes a mandate for parliament to enact further legislation to regulate the operations of the commission. The functions of the commission are outlined in section 148. A bill to detail these powers is in the SSLA. The final version of the bill is not publicly available, but Table 7 compares the mandate of the SSACC under the ICSS and a draft version of the legislation made available in 2007.

Table 7: Mandate of the SSAC under the Constitution and the Draft Anticorruption Legislation

<table>
<thead>
<tr>
<th>Mandate of the SSAC in the constitution</th>
<th>Mandate of the SSAC in the draft legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 148(1) states that the commission’s functions are to:</td>
<td>As understood by the commission and the draft legislation, the mandate is to:</td>
</tr>
<tr>
<td>Protect public property</td>
<td>Protect public property</td>
</tr>
<tr>
<td>Investigate cases of corruption involving public property as well as in the private sector</td>
<td>Combat conduct that tends to promote corruption</td>
</tr>
<tr>
<td>Combat administrative malpractices</td>
<td>Combat administrative malpractices</td>
</tr>
<tr>
<td>Receive asset declarations from a specified group of public officers</td>
<td>Educate the public and seek their support for anticorruption</td>
</tr>
<tr>
<td></td>
<td>Instruct, advise, or assist any person or authority on ways of reducing corruption</td>
</tr>
<tr>
<td></td>
<td>Focus anticorruption reform in the Sudan with a general duty to develop national anticorruption plans</td>
</tr>
</tbody>
</table>

393. The differing provisions of the ICSS and the draft legislation raise issues that require further clarification:

394. *Protection of public property.* The power of the commission to protect public property is not qualified in any way in the text of the constitution. One option is to read the mandate given by the clause narrowly. On such a reading, this clause merely reinforces the idea that in fighting corruption, the commission’s responsibility is to safeguard public assets from waste and theft. Read this way, the constitution only requires the commission to both investigate corruption and make efforts to recover stolen public assets. On a broader interpretation, the commission would be the equivalent of a general custodian of public property. This would significantly increase the commission’s workload: it would have a custodial duty over all public property, not just property involved in cases under investigation. This would impose a range of administrative obligations on the commission: the need to make a preliminary determination of the threshold value of property to be protected; develop and maintain registries of public property; design standards for the transparent disposal of public property; and develop mechanisms for receiving complaints about dealings with public property, whether such property is involved in a corruption case or not. The draft legislation merely reiterates the mandate as set out in the constitution. It is unclear why the commission would want an enlarged mandate given the severe capacity constraints it is functioning under and the comparative advantage of other government departments in discharging the broader “line” function.

395. *Investigation of corruption in the private sector.* Unlike anticorruption commissions elsewhere, the SSAC has a mandate to investigate corruption in the private sector. One option is that the commission should generally investigate all reported cases of corruption in the private sector. This would be a huge task potentially compounded by the risk that the commission may then become an unwitting accomplice
in business rivalries as competitors deploy Trojan horses in each other's businesses to report fanciful cases of graft and provoke unnecessary investigations by the commission. A second option, more consistent with the commission’s duty to protect public property, would be that the commission should investigate cases of corruption in the private sector only if they involve public property. This would then cover government suppliers and contractors performing a public function for the state. This is the practice in other jurisdictions with comparable legislation. A legislative clarification is necessary to focus the efforts of the commission.

396. **Investigation of administrative malpractice.** A related issue is how widely to read the scope of the commission’s powers relevant to administrative malpractice. The components of administrative malpractice itemized in the constitution—nepotism, favoritism, tribalism, sectionalism, gender discrimination, bribery, embezzlement, and sexual harassment—are not among the elements usually in the mandate of an anticorruption commission. Except for bribery and nepotism, these are matters that typically fall under the jurisdiction of the office of an ombudsman. Moreover, sexual harassment—which under the UN Convention on the Elimination of All Forms of Discrimination Against Women is part of sex discrimination—probably sits more easily with the mandate of the Southern Sudan Human Rights Commission (SSHRC). The trouble with this wide reading is that it would require the commission to establish a full-fledged directorate of public complaints, consistent with the discharge of an ombudsman function.

397. One interpretation offered by the commission's own lawyers is that it is intended to cover only malpractice amounting to criminal conduct. According to this reading, “administrative malpractice” is to be understood in Southern Sudan as “criminal conduct.” Though this interpretation has the merit of suitably limiting the commission's mandate and work to manageable proportions, it has the demerit of straining the language and of creating long-term uncertainty over whether the judiciary would accept this reading if the clause were ever in dispute in a lawsuit.

398. A narrow reading, however, leads to the conclusion that these are merely different ways in which corruption may manifest itself. The commission’s mandate to investigate administrative malpractice covers only those actions that lead to or include corruption rather than all administrative malpractice.

399. **Asset declaration.** The interim constitution requires the commission to receive declarations of assets from a specified list of senior government officials. This function is omitted altogether from the draft legislation. Opinion is divided whether this is important at all. Though a common view is that confidential declarations of wealth are less effective in countries characterized by institutionalized opacity, any declaration of assets (whether in public or private) is an important first step toward imposing accountability on public servants. Taking the long view, even confidential asset declarations are not as naïve as they first seem, especially when they are made to an anticorruption commission. These can be the foundation of a criminal charge, since to lie in these declarations is usually considered a corrupt offence. Confidential declarations are more problematic when they are made (as in Kenya) to service commissions that are barred by law from disclosing the information to anyone including, arguably, an anticorruption commission. In any event, the need for complementary measures, such as laws on disclosure of personal interest where public decision making is involved, public officers’ codes of
conduct, regulation of lobbyists and political contributors, and restrictions on postemployment activities, can buttress a weak asset disclosure law.

400. Internationally, there is a growing consensus that an essential part of an anticorruption effort is a program requiring senior public officials – cabinet ministers, legislators, judges, and top level civil servants and judges – to disclose their income and assets. This is required by the African Union Anticorruption Convention and strongly suggested in United Nations Convention Against Corruption. While the better practice is to vest responsibility for the management of the program with an ethics unit, in any event, the anticorruption agency should have access to all materials submitted by filers and should establish close working relations with the ethics entity.

401. **Responsibility for non-conviction based forfeiture proceedings.** An important tool in the fight against corruption is the ability to seize the proceeds of corruption offenses – the proceeds of a bribe, monies stolen from the treasury, and the like. While the criminal laws of virtually every country provide for asset forfeiture in the event of a defendant is convicted of a crime, the power to seize assets through non-criminal proceedings is equally important. This permits the victim government to confiscate assets where a defendant has died or fled the country. Anticorruption agencies with the authority to investigate corruption crimes often have the power to proceed against assets in non-criminal proceedings, either in their own country in the courts of another country. The skills required to litigate such cases are closely related to those needed to investigate corruption crimes, and a where skilled personnel are in short supply, vesting this power with the anticorruption agency helps to reduce duplication and economize on manpower.

402. The following institutional issues will also need to be resolved:

- **Well-defined legislative mandate.** The laws specifying the agency’s powers and its relationships with other entities responsible for anticorruption policy must be clearly and precisely specified. If the agency is responsible for investigating allegations of corruption, does it have the same powers as the police? These include the right to interrogate witnesses and potential defendants, to gather documentary evidence, both at home and abroad, to tap phones, and conduct surveillance and sting activities. Other questions the law should resolve include: Must the police and other agencies share information with it? Do the police continue to have authority to investigate corruption crimes or must they defer to the agency? What about crimes growing out of a corruption investigation? If a corruption whistleblower is murdered, who investigates? The agency or the police? Experience shows that if such issues are not resolved by law, bureaucratic in-fighting and legal maneuvering can side-track if not derail the anticorruption effort.

- **Coordination of national anticorruption efforts.** Interagency coordination and collaboration is central to successful anticorruption effort in Southern Sudan. As discussed earlier, it is important to understand that while being a key agency, the SSAC is one of several institutions combating corruption. The commission sees itself as the national anticorruption focal point of Southern Sudan. This view is shared by some sections of the government. The commission has been tasked with the responsibility of developing a national anticorruption strategy. But this is somewhat unusual for anticorruption commissions. In the countries specifically reviewed as part of this
study—Botswana, Malawi, Uganda, Tanzania, and Kenya—the mandate of the anticorruption commission is rather narrow, being primarily limited to either one or all of only the following: investigation, public education, and asset tracing. Although the directorate in Botswana and the commission in Kenya have powers of arrest, the decision to prosecute lies with the attorney general. The anticorruption commissions in these countries are variants of the Hong Kong model, which in some ways is mirrored in Southern Sudan.

- **Accountability of national anticorruption efforts.** Several anticorruption agencies have established oversight boards of distinguished jurists and civil society activists to oversee their activities and provide advice on both technical legal issues and policy matters. Such boards provide an answer to the claim that the agency is not subject to effective oversight and at the same time can provide it with important support when controversy arises. The board can also receive complaints of abuses and issue reports of its findings. Nigeria’s Economic and Financial Crimes Commission provides a best practice example of such a board. *Another way* to enhance accountability is to require the agency by law to file an annual report listing its activities. Because its effectiveness will depend upon other agencies, such as how quickly the courts dispose of corruption cases, the report should include details on the effect the actions of other agencies have had on its work. The annual report of the Kenyan Anticorruption Commission is an excellent example.

- **As previously stated,** the practical ramifications of the SSAC taking overall leadership of the anticorruption reform is that this will lead to technical, but not political, solutions. Though this has the merit of *appearing* to depoliticize anticorruption reforms and activities, in fact, its real effect is usually to *politicize* the technical work of the commission and erode its effectiveness in performing its function. There are many reasons why this happens. First, anticorruption reform often requires difficult political compromises. Such compromises are best made by the politically accountable branches, which ought to bear the brunt of public ire if such compromises are seen as self-serving. Second, those who have most to fear from the technical work of the commission stand to gain if, through politicization, the credibility and legitimacy of the commission is compromised. Assuming the leadership role would therefore require the commission to internalize and play a difficult balancing act between political guile and technical correctness.

- **Decentralization and the anticorruption effort.** As discussed in detail in chapter 3, based on the CPA and the ICSS, decentralization provides the foundation for sharing both power and resources within Southern Sudan. International experience suggests that there are several risks associated with rapid decentralization. As Mamdani 1996 notes, decentralization can localize despotism by reorganizing “decentralized power” so as to unify it through “a reform that tend[s] to centralization.” Local governments no less than national governments can then be captured by elites. Participation becomes blunted and accountability ceases and local affairs become intensely politicized. Under these conditions, decentralization may actually increase incidents of

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128 When the Office of Governance and Ethics in the Office of the President in Kenya was abolished, both the technical and political leadership of anticorruption reform shifted implicitly to the Kenya Anticorruption Commission. But since that shift occurred, the work of the commission has been perceived as highly politicized—a perception that has hardly helped the commission.

corruption. Indeed, sometimes the problems of corruption, misuse of resources, and abuse of power are more intense at state and local than at national levels. The risks are compounded in an environment of weak public sector capacity. To this end, rolling out and strengthening anticorruption operations at the state and local levels is critically important.

- **Anticorruption efforts at state and local levels.** In federal states, special problems can arise over the division of authority between central government agencies and state-level ones. Anticorruption agencies require a highly skilled cadre of employees. Where skilled personnel are in short supply, this generally counsels for establishing a single agency with nation-wide reach. However, unlike the audit chamber, the SSAC does not have a mandate in those states where state-level anticorruption agencies are to be established by state law. Yet the public will see the effects of corruption/anticorruption reform most clearly in local service delivery. This means that good works by SSAC at the GoSS level will go unnoticed unless there are corresponding efforts in the states and counties. In principle, the SSAC can benefit from effective state-level anticorruption agencies, and these agencies can benefit from the skills and knowledge of the SSAC. The important policy issues are related to institutional arrangements between the SSAC and the state-level anticorruption agencies in the context of political and administrative decentralization. What sort of (formal) relationships should be forged between the SSAC and these state-level agencies? The SSAC is already collaborating with state anticorruption bodies and it sees the strengthening of their capacities as a key priority. Though these capacity-building activities are not, on a pedantic reading of the law, within its core mandate, they may, nonetheless, be justified as appropriate outreach and communication activities to help the commission fulfill its mandate.

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132 It has already been involved in capacity-building activities with the state anticorruption commission in Jonglei.
Box 7: Anti-corruption Agencies – Emerging Lessons

Over the past decade and half a number of developing countries have established specialized agencies to address the problem of corruption. Although the structure and powers of these agencies differ from country to country, most have been created as independent, stand-alone entities with authority to investigate bribery, conflicts of interest, and other corruption related offences. Some also have been given the power to prosecute while others have been required to forward cases to the Attorney General or Public Prosecutor for prosecution. Additional authorities often granted to these agencies include responsibility for managing a program of financial disclosure for public servants, educational activities, and the promotion of prevention measures.

While difficult to generalize given the differing make up of these agencies and differences in the country context within which the operated, nevertheless there are some emerging lessons that hold across many different countries.

*Well-defined legislative mandate.* The laws specifying the agency’s powers and its relationships with other entities responsible for anticorruption policy must be clearly and precisely specified. For example, if the agency is responsible for investigating allegations of corruption, does it have the same powers as the police? These include the right to interrogate witnesses and potential defendants, to gather documentary evidence, both at home and abroad, to tap phones, and conduct surveillance and sting activities.

*Exclusive authority in federal states.* In federal states, special problems can arise over the division of authority between central government agencies and state-level ones. Anticorruption agencies require a highly skilled cadre of employees. Where skilled personnel are in short supply, this generally counsels for establishing a single agency with nation-wide reach.

*Back-up prosecution authority.* The best solution when the power to investigate is with the anticorruption and agency and the power to prosecute with the Attorney General or other official is for the two agencies to establish close working relations to ensure files are smoothly handed off from the agency to the prosecutor. Because this is not always possible, some countries, such as Thailand and Indonesia, give their anticorruption agencies the power to prosecute a case if, within a specified period of time the prosecutor refuses to do so.

*Oversight/advisory board.* Several anticorruption agencies have established oversight boards of distinguished jurists and civil society activists to oversee their activities and provide advice on both technical legal issues and policy matters. Nigeria’s Economic and Financial Crimes Commission provides a best practice example of such a board.

*Annual report.* To enhance accountability, the agency should by law be required to file an annual report listing its activities. Because its effectiveness will depend upon other agencies, such as how quickly the courts dispose of corruption cases, the report should include details on the effect the actions of other agencies have had on its work. The annual report of the Kenyan Anticorruption Commission is an excellent example.

*Access to financial disclosure program.* There is a growing consensus that an essential part of an anticorruption effort is a program requiring senior public officials – cabinet ministers, legislators, judges, and top level civil servants and judges – to disclose their income and assets. While the better practice is to vest responsibility for the management of the program with an ethics unit, the anticorruption agency should have access to all materials submitted by filers and should establish close working relations with the ethics entity.

*Responsibility for non-conviction based forfeiture proceedings.* An important tool in the fight against corruption is the ability to seize the proceeds of corruption offenses – the proceeds of a bribe, monies stolen from the treasury, and the like. While the criminal laws of virtually every country provide for asset forfeiture in the event of a defendant is convicted of a crime, the power to seize assets through non-criminal proceedings is equally important.
The Southern Sudan Audit Chamber

403. The Southern Sudan Audit Chamber is established under chapter 7, part 12, of the Interim Constitution of Southern Sudan. As an audit watchdog institution, the audit chamber has two important accountability functions. Under 195(2) it is required to “supervise the financial performance of all levels of government in Southern Sudan.” That function covers “revenue collection and expenditure” against “budgets approved” by different legislatures. The second function is under section 195(4), which provides for a comprehensive coverage including “public institutions and corporations.” This covers the audit function and extends to “accounts of the Southern Sudan executive, the Southern Sudan legislative assembly, the judiciary of Southern Sudan, and the accounts of states, local governments, independent commissions, public institutions, and corporations” and any other institutions as determined by law.

404. The following issues remain to be resolved.

- **Audit chamber’s scope.** Although the audit chamber’s mandate under section 195(4) is a standard function for an audit office, the reference to “supervision of financial performance” under section 195(2) could be confusing, as the scope of the supervision function is vague. This issue is partially clarified in the draft bill, which indicates that the function of the audit chamber be limited to financial/compliance audits and selective “value for money” (performance) audits in addition to functions assigned under the constitution.

- **Reporting requirement.** Under section 195(5), the AG presents an annual report to the president of the GoSS and the SSLA. Although this is similar to the practice in other African countries (for example, Tanzania) this is not consistent with international standards as AGs ordinarily work on behalf of parliament in the discharge of their oversight responsibilities. Under the draft legislation, the clear reporting relationship between the AG and the legislature is further diluted since the AG submits the report to the president and the minister of finance (not directly to the SSLA) and the latter is required to place it before the SSLA. There is also a lack of clarity regarding the state audits and the role of state legislatures. Although this is not entirely clear, the constitutional documents seem to suggest that the AG will also place the state audit reports before the SSLA.

- **Autonomy and independence.** Both the ICSS and the draft law provide for the appointment (and removal) of the Auditor General by the president, with approval by two-thirds of the SSLA. However, the period of the appointment is not specified in the law. Evidence from other African countries is that the president is able to exercise undue influence on the appointment and removal of staff. In Southern Sudan the entire audit chamber was dismissed by presidential decree, following a vote of no confidence by the SSLA. In the absence of a well functioning AG, the efficacy of anticorruption efforts are bound to be compromised. An international firm that has

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133 The model constitution for the states as well as several state constitutions makes reference to state audit chambers. While it is understood that the (GoSS) Audit Chamber will audit state accounts, the relationship between the two is not clear.

134 See sections 11, 12, and 14 of The Southern Sudan Audit Chamber Bill, 2006.

been contracted at great cost to support the AG could not function as planned in the absence of an AG.

National Coverage

405. *The challenge of capacity.* Unlike the SSAC, the AG has comprehensive responsibility under the constitution for audits across all the levels of government. The immediate need is to complete the audits at the various levels of government for 2005, 2006, and 2007. If audits are to be an effective anticorruption measure, they must be current. Kenya’s experience in this regard is salutary. Over the period 1992 to 2002, the controller and AG were regularly behind in audits. And although audit delays are not to blame, over that same period Kenya experienced some of the worst financial scandals in its history.\(^\text{136}\) It may well be that officials are more encouraged to be corrupt if they know that investigation will not be prompt. With weak audit capacity and the absence of an AG since December 2007, managing corruption will be a difficult task with adverse medium-term impact due to pending incomplete audits\(^\text{137}\). In Sierra Leone, though the audit reports are now up to date, reports from 2002 to 2007 are pending with the PAC and have not been tabled in parliament.

406. *Collaboration with other agencies.* The financial supervision responsibilities and audits conducted by the chamber are likely to be the single largest storehouse of information about corruption and the theft of public funds in the Southern Sudan. And early development of institutional collaboration between the audit chamber and the SSAC would strengthen the work of both. Both institutions have already been collaboratively involved in the review of expenditures (especially contracts) for FY 2005–6.\(^\text{138}\) In most commonwealth countries, there are usually no pre-audit links between the SSAC and the AG’s office. The typical cycle begins with an audit by the AG. The AG’s report is then sent to parliament where, upon scrutiny by the PAC, parliament makes recommendations on follow-up action. It is at this point that the anticorruption commission typically steps in. The downside to this conventional cycle is that the recommendations of the PAC rarely lead to major changes in policy and legislation or even to prosecution. In this regard, the situation in Uganda, where financial crimes that “emerge from committee hearings lead directly to police investigations and many times to court cases” are rare.\(^\text{139}\) Given this, the expenditure reviews of the type undertaken by both the SSAC and the Southern Sudan Audit Chamber are typical of the relations between such agencies. Nonetheless, they are consistent with the value-for-money audit function of the AG and can preempt corruption.

407. A related issue is collaboration between the AG and state-level anticorruption agencies. If state audit reports are presented to state assemblies for action, then evidently the responsibility to investigate and prosecute any corruption cases arising from these reports will lie with state-level anticorruption commissions. However, this point has not been clarified by the interim constitution or by the draft audit

\[^{136}\text{ Including the notorious Goldenberg Scandal, in which the country lost more than$1.5 billion in a scam involving export of nonexistent gold and diamonds.}\]

\[^{137}\text{ An AG was appointed in February 2010 after a gap of over two years.}\]

\[^{138}\text{ The findings of this review have not been made public. The lack of transparency on this issue has fuelled public speculation that there may be a link with the dismissal of the AG.}\]

\[^{139}\text{ See Stapenhurst and others (2005).}\]
bill. Equally important, this means that the audit chamber must not only have full-fledged capacity to audit at the state level, but also formalized mechanisms for collaborating with state-level anticorruption agencies.

The Ministry of Legal Affairs and Constitutional Development

408. The MoLACD serves as the chief legal advisor and the prosecuting authority at all levels of government in Southern Sudan. As the department mandated to oversee legal and constitutional development, the ministry's role in anticorruption reform could well be pivotal. It will be involved in developing additional legislation to supplement and complement the Anticorruption Act, including but not limited to asset-tracing laws, public service ethics laws, and anti-money-laundering legislation. It may have to provide overall political leadership for the anticorruption efforts of the GoSS, will probably be the anticorruption policy and legislative leader in the SSLA, and will provide prosecutorial services to the SSAC.

409. The MoLACD has seconded its officers to both the audit chamber and to the anticorruption commission. It also has final drafting responsibility for all legislation initiated by other departments and agencies. The implementing legislation for both the audit chamber and the anticorruption commission has to be forwarded through this office. But it too faces a range of challenges and is considering the remedial measures needed to deal with these challenges.

410. The current situation, in which attorneys act as general practitioners without specific departmental specialization, is an understandable short-term measure but will progressively weaken the professional development and depth of the ministry in the long term. In terms of skills, the ministry faces a dual challenge: attracting new professional staff and retraining existing staff. Many of the attorneys read law in the north and were instructed in Arabic. Now they must operate in an English-speaking area with a pluralistic legal system twinning different legal concepts with a new jurisprudence at variance with that which they were schooled in. Though the ministry has a retraining program for them, it is of questionable scope, depth, and effectiveness.

411. For the purpose of salaries and benefits, the ministry equates itself with the judiciary. Consequently, its benefits structure is considerably better than the rest of the civil service. This asymmetry was the subject of intense debate within the council of ministers in the context of the general concern that government agencies take advantage of a decentralized recruitment system to pass through irregular benefits to staff. There is currently a standoff with the ministry, retaining the status quo and pending a systemic review by a special committee on compensation.

412. The respective roles of the ministry and other anticorruption agencies will have to be clarified:

- **Relationship between the SSAC and the Office of Public Prosecution (OPP).** Departments of public prosecution and anticorruption commissions in Sub-Saharan Africa often have a difficult relationship. In Southern Sudan, one contentious point has been the status of the chair of the SSAC. The MoLACD did not want the chair to have a status higher than the director of public prosecution. This issue was resolved in favor of the SSAC, and the council of ministers approved
a status of minister for the chair. In Malawi and Kenya, for example, there are tensions leading to dysfunction between the better-paid investigators (many of whom are policemen) at the anticorruption commissions and the poorly paid prosecutors at the directorate of public prosecution (many of whom are lawyers). In worst cases, anticorruption agencies accuse prosecutors of undermining their work and prosecutors charge anticorruption commissions of shoddy investigations that cannot support prosecution. This problem is acute in countries such as Kenya, Uganda, and Ghana, where the anticorruption commissions report directly to parliament. The tension arises from the political role of the attorney general and the more technical role of the commissions. In Ghana, the Serious Fraud Office (SFO) reports to the attorney general, while the Commission on Human Rights and Administrative Justice (which has an anticorruption mandate) reports to parliament. This divided reporting machinery has undermined anticorruption efforts. In contrast, the conflict is muted where, as in Malawi, the anticorruption commission reports to the ministry of justice. However, interagency calm may be bought at a high price; the commission in Malawi is particularly weak.

- **Separation of investigation and prosecution.** The fact that the SSAC has investigative but not prosecutorial powers may, on one side, provide checks and balances in the anticorruption system. Without prosecutorial powers, the SSAC must ensure that its investigations have the highest level of integrity, be brought before the courts, and result in prosecutions by the OPP, if appropriate. Meanwhile, the OPP provides an institutional control over cases to be actually prosecuted. But the SSAC feels that it would be appropriate for it to have powers to prosecute corruption. The inability of anticorruption commissions to effectively fight corruption may rest, in part, on the inability to prosecute cases that they have investigated. However, in Southern Sudan, this would involve amending the ICSS. Elsewhere in the continent, even when anticorruption commissions have power to prosecute, such as Botswana, they still must obtain the permission of the AG. One option is to set up an anticorruption unit within the OPP or somewhere within the MoLACD. Currently, the ministry has not separated its attorneys into prosecutors and civil litigators. This also means that there are no lawyers departmentally mandated to specialize in corruption cases or serious fraud. It may be that the current volume of anticorruption work and serious fraud does not warrant specialization within the resource constraints of the ministry. In the medium term, however, it would help if a number of prosecutors are earmarked for corruption cases. This allows the appointed prosecutors to make career decisions such as additional professional training and specialization.

- **Back-up prosecution authority.** The best solution when the power to investigate is with the anticorruption and agency and the power to prosecute with the Attorney General or other official is for the two agencies to establish close working relations to ensure files are smoothly handed off from the agency to the prosecutor. Because this is not always possible, some countries (e.g. Thailand and Indonesia) give their anticorruption agencies the power to prosecute a case if, within a specified period of time the prosecutor refuses to do so. The agency should have the right to hire a private attorney to prosecute so it doesn't have to build the capacity among its staff. The law might even allow it to hire a non-national. In the Solomon Islands and Papua New Guinea Australian lawyers prosecute, and one of the unappreciated elements in the Hong Kong
success story is that in the early years of its anticorruption agency British lawyers handled prosecutions.

D. HARMONIZING ANTICORRUPTION INSTITUTIONS

413. The government’s intent to have a corruption-free society in Southern Sudan has tremendous popular appeal. More significantly, people continue to feel that this is possible under the existing leadership. In line with this mission, the government has, over the last three years, set up the structure of core anticorruption agencies (SSAC, MoLACD, police) and the key pillars of the state (judiciary and the legislature) that provide oversight. Like counterparts in other countries, the SSAC receives substantial attention from the public in the fight against corruption in Southern Sudan. Yet, the reality is that the SSAC is merely one of key institutions, along with the audit chamber and the MoLACD. Each institution alone achieves very little in addressing corruption issues. Thus, the way ahead is to build the overarching architecture for anticorruption in an integrated and harmonious manner such that each agency plays a clearly defined and complementary role with close and intensive oversight and accountability.

414. To achieve a more harmonized approach to anticorruption, the following steps will have to be taken:

- **Establish an overall framework for anticorruption.** The SSAC has finalized a national anticorruption strategy which should provide a framework for the individual plans of all government agencies. During implementation the focus should be on preventive rather than punitive measures. The GoSS should recognize that corruption is a result of systemic and structural causes and thus focus on institutional reforms rather than blame apportionment, and understand the critical role of public awareness as a check on official excesses—and the need for each public agency to develop its own anticorruption strategy and plan within the national integrity framework developed by the SSAC.

- **Put in place the regulatory framework.** Legislative overload has slowed the formulation of an appropriate regulatory framework. This must indeed be the first priority of the government. Laws that govern the use of executive powers, define financial powers and procedures along with supporting regulations, and make anticorruption agencies operational are a priority. In the absence of regulations, executive discretion is enlarged, leading to varying practices and judicial sanctions difficult to impose on offenders.

- **Embed good governance in everyday work.** Once the regulatory framework is in place this will need to be followed by a systemic training and capacity development program so that the new laws are internalized and institutionalized into the everyday work of the government. This is a medium-term activity and would span around five years due to the complexity of government in Southern Sudan spanning the federal, state, and county levels.

- **Develop social accountability mechanisms.** Although the foundations are weak some steps can be taken in the short term to strengthen the demand-side. Making information public has a salutary impact on public efficiency. Participative decision making, including in the formulation of laws,
is key for good public decisions. Aggressive development of social accountability is likely to go well with the tribal structure of society. The role of traditional authorities as local oversight agencies should be explored since they are proxies for civil engagement. Proactive media development is similarly a vital link in the chain of social accountability.

415. Given that it is a post conflict environment, Southern Sudan has made important progress in putting together its agenda for good governance. The supportive stance of the leadership gives hope that this trend will be sustained. The elections in 2010 are expected to enhance the effective and vocalized demand for good governance and empower oversight institutions. Continued leadership, vision, and a buy-in from government at all levels are required for progress to continue.

E. POLITICAL COMMITMENT AND FOCUS

416. World experience in developed and developing, stable and conflict-prone, countries has two very clear lessons to offer:

- If the political leadership, in particular the president, does not want to eliminate corruption, it will not be eliminated, no matter what state-of-the-art institutions are put in place.
- The anticorruption effort must be focused on the most important corruption issues.

417. On the first point, many countries in Africa and other regions have very similar institutions to those now in place, or being put in place, in Southern Sudan, but very few have successfully stamped out more than a fraction of the corruption taking place in their countries. For example, before Sierra Leone brought in judges from outside the country, not a single prosecution of a minister or senior official had resulted in that person going to prison; those found guilty had been released on appeal. Most of the files prepared by Sierra Leone’s anticorruption commission, modeled on the Hong Kong pattern with technical assistance from former Hong Kong staff, never left the office of the AG. It is not uncommon that minor officials are successfully prosecuted for relatively minor offences (and sometimes those prosecutions are politically motivated), while bigger fish go free. Only when Zambia’s late president decided to make anticorruption a cornerstone of his administration were the bigger fish prosecuted, including the former president (in whose cabinet he had served) and the head of intelligence, even though, long before this, all the right anticorruption institutions were in place.

418. The reasons why the president’s will is so important are simple: the AG is part of the executive branch of government; the judges are appointed by the president; and, in most cases, legislatures and the AG are too weak or too much under the control of the president to force investigations and prosecutions independently.

419. It has to be recognized that it is very difficult for presidents in post conflict countries to exercise political will. They are inevitably in somewhat precarious political positions, with foes within and without. One way to win over opposition members is to turn a blind eye to their corrupt practices. Even friends who remain loyal expect the spoils of peace. In their eyes, aggressive anticorruption actions risk
reigniting the civil war, or at least risk their own position. Some leeway may help to win support for important legislation.

420. Focus is important, largely because of a lack of capacity. We have listed, in this chapter, a number of actions that have to be taken for the full anticorruption framework to be in place. While these actions are being taken, the risks of corruption are very high. The government should probably focus its limited capacity, and its political capital, on the process where most of the corruption takes place: procurement. But again, it is not so much the process that matters but the application of the process. Many countries have UN-standard procurement laws and processes, but few have the authorizing environment and human capacity to operate those processes effectively, and even fewer the political backing to take on the most egregious cases of mismanaged or fraudulent procurement. Southern Sudan is in a more difficult situation than most other countries since it does not have donors monitoring most of its procurement; it is, or will be, less dependent on donors for funding its capital budget than other low-income countries in Africa. This makes the will of the government and the president to eliminate corruption in procurement even more important than usual.
ANNEXES

ANNEX 1. NOTE ON THE CONSULTATION PROCESSES

This annex provides a brief description of the implementation process of the joint initiative of the Government of Southern Sudan (GoSS) and World Bank on —Strengthening Good Governance for Development Outcomes in a Post-Conflict Setting” during the period of 2007-2008 with a special focus on consultation processes around the three strategic options papers on decentralization, public service reform, and anti-corruption. Given the cross-cutting nature of the agenda the core counterpart in government for this activity was decided to be the MoPA which was expected to coordinate and facilitate the engagement with other government counterparts such as the Ministry of Labor Public Service and Human Resource Development, the Ministry of Legal Affairs and Constitutional Development, Southern Sudan Anti-corruption Commission, the Local Government Board and others associated with service delivery.

The note discusses the rationale, objectives, and results of the consultation process. Then, it presents an overview of the consultation processes. It concludes with a preliminary assessment of the outcomes.

Objectives and Approach

The initiative envisaged a participatory approach that emphasized consultation with stakeholders to (a) start to develop capacity within the Government (and more broadly) for policy analysis and implementation; (b) help to establish parameters for broader consultation and transparency in policy formulation by the Government; and (c) harmonize donor interest, resources and support around the priority areas of public sector management and governance reform and through this process arrive at a set of feasible policy options. Developing domestic ownership over the initiative and, most importantly, follow-through across various line agencies was considered as key to ensure policy formulation and management arise from within government.

The initiative was designed to produce analytical notes (Strategic Options Papers) in three thematic areas of governance and public sector management: (i) decentralization, (ii) public service reform, and (iii) anti-corruption. By presenting key issues and options to address those, the papers were designed to generate structured debate and discussion and to develop broad consensus on policy directions and options within the GoSS. Furthermore, based on the consensus, the initiative envisaged assisting the GoSS in preparing policy recommendations (Policy Briefing Notes) and laying out concrete entry points and next steps.
Consultation Processes

The Task Team in consultation with GoSS counterpart prepared all the three strategic options papers by March 2008. Following this the Ministry of Presidential Affairs requested relevant government counterparts to lead and convene technical task forces to lead the discussion and consultation process in each of the three thematic areas of governance. It was expected that these teams would represent various viewpoints and interests within government and would recommend a way forward. These recommendations would then be presented to GoSS leadership and policy makers for taking action.

The Ministry of Presidential Affairs requested the GoSS’s Local Government Board, the Ministry of Labor, Public Service, and Human Resource Development (MoLPS&HRD), and the Anti-Corruption Commission to lead the technical task forces on decentralization, public service reform, and anti-corruption, respectively. To facilitate the process and assist in carrying out secretariat work for each technical task force a local consultant was hired.

However, contrary to the initial expectation, only a task force on decentralization took shape. Apparently due to dissatisfaction with the process and concerns over jurisdiction and responsibility, the initiative did not receive from the Ministry of Labor, Public Service, and Human Resource Development or the Anti-Corruption Commission the support needed to establish technical task forces on public service reform and anti-corruption and to discuss with stakeholders the respective strategic options papers. The very coordination failures that the initiative had set out to address came in the way of effective and satisfactory implementation.

Meanwhile, the Local Government Board took the lead in the consultation process on decentralization. Co-chaired by the Undersecretary of the Local Government Board and the Director of the Ministry of Presidential Affairs, the technical task force on decentralization brought together twelve members from the Government of Southern Sudan and local government to identify and discuss key issues in decentralization in Southern Sudan, as identified in the strategic options paper. The technical task force discussed the paper in a series of meetings over three months from the end of February to May 2008.

To facilitate discussion, the technical task force set up three subgroups on fiscal, political, and administrative decentralization. Each subgroup was asked to prepare a list of discussion questions and lead internal consultation. It was proposed that fiscal subgroup be headed by the Southern Sudan Fiscal & Financial Allocation and Monitoring Commission (SSFFAMC), the political subgroup by the Ministry of Presidential Affairs, and the administrative subgroup by the Ministry of Education, Science, and Technology.

The depth of discussion varied substantially by subgroup. Reflecting the preferences of the members, the technical task force spent a significant amount of time discussing a range of issues related to political decentralization—among them its history, rationale, objectives, overall legal framework and structures, and the role and status of traditional authorities. The key messages and thoughts from the meetings were captured in technical task force’s position paper on political decentralization. On the other hand, though the technical task force also devoted some sessions to consider issues in administrative and
fiscal decentralization, the level of engagement was more limited than in the case of the political subgroup. Discussions did not go beyond general issues and analysis, and little consensus emerged on technical issues and options. There was also no discussion on the costs of implementing the envisaged administrative arrangements and of a plan for staged implementation. Implicit in this is the assumption that the first priority is to establish the structures.

Results from the Workshop on Decentralization

To conclude the consultation process on decentralization, a two-day workshop on “Governance for Decentralization” was held on June 18-19, 2008 in Juba, where the technical task force presented its findings and recommendations. Stakeholders representing the GoSS, state and county governments, traditional authorities, universities, NGOs, and development partners discussed the critical policy imperatives, priority issues, and institutional conditions to advance the decentralization process in Southern Sudan.

A broad consensus emerged from the workshop on the importance of decentralization as a means to further the overarching goals of power sharing, political stability, and improved service delivery. It was emphasized that decentralization could help reinforce the legitimacy of national institutions and build a constructive relationship between those institutions and the citizens they serve. The key issues in political decentralization concern the structure, and respective authority of the GoSS, the states, and the local governments.

Areas requiring further clarity included: (1) Differences in interpretation as to whether political decentralization extends to local government; (2) The commitment to decentralize power and responsibility fully to local government is not as strong as it is to decentralize to the level of state government; (3) Interpretation of the three ICSS Articles 50 (c), 173 (1) and 173 (2) on power and authority of states and local governments; and (4) Jurisdictions of the statutory and customary law courts at the local level. While ICSS Article 133 recognizes the other courts at the lower levels in the states, the Judicial Act 2008 creates Payam courts.

On administrative decentralization, from a service-delivery perspective, the technical task force called on the GoSS to address a number of urgent issues, including: (1) lack of clarity in functions assigned to different levels of government; (2) difficulties in harmonizing the Coordinating Council of the Southern States (CCSS) and the Civilian Authority of New Sudan (CANS) and in unifying government systems at all levels; (3) poor functional performances, interference across levels of government, and abandonment of certain functions no longer performed by a particular level of the government; (4) unavailability of qualified personnel, and mismatch between assigned functions and the people available to perform them; and (5) absence of public service regulations and protection from political interference.

On fiscal decentralization, the technical task force focused on several key areas around which consensus is required, including: (1) revenue assignment; (2) intergovernmental fiscal transfer systems and procedures; (3) accountability and monitoring and evaluation mechanisms; and (4) legal and regulatory frameworks. A number of participants called for a new formula for allocating and distributing revenues, arguing that the present one, which allocates about 75 percent of available funds to the GoSS
and 25 percent to the states and counties, is inadequate. In addition, it was pointed out that a large portion of grants to States is currently used for salaries, crowding out development-related investments and services. It is imperative for states and local government at minimum to clean up their wage bills and weed out practices such as paying “ghost workers.” Finally, it was noted that subnational tax systems are still underdeveloped and should be studied in detail as a possible means to help finance state and local services.

The workshop confirmed GoSS commitment to implement decentralization in Southern Sudan as envisioned in the constitution, urged the enactment of the Local Government Act, and called on all levels of government to fulfill their assigned responsibilities and promote accountability and transparency. From the workshop a clear consensus has emerged that the GoSS should develop a set of guidelines presenting government’s political decisions and interpretations along with a transition strategy and roadmap to decentralization, and it should prepare a strategic plan for the implementation of a coherent government policy on decentralization.

Preliminary Assessment of the Outcomes

The initiative’s participatory and programmatic approach has produced mixed results. Combined with the government’s strong interest in decentralization, it has certainly contributed to building political momentum to start developing a decentralized governance system in Southern Sudan. At two Governors’ Forums in 2008, GoSS’s main venue for high level interaction with the states, decentralization issues were extensively discussed, and it seems that the GoSS clearly recognizes decentralization as a means to further the overarching goals of power sharing, political stability, and improved service delivery. It is fair to say decentralization is now placed high on the GoSS’s political and development agenda.

Meanwhile, despite a strong interest which has emerged from the workshop in developing a set of official guidelines and government’s key decisions on decentralization, the Task Team decided to hold on provision of technical assistance in preparing a policy briefing note until GoSS counterparts reached at consensus on which agency will lead the effort. Yet, as a longer time passed since the workshop, it appeared that the momentum has been gradually lost for developing such a policy briefing note. However, the GoSS has moved forward on addressing some of the issues, notably through the Local Government Act passed in April 2009.

The ministry did not use the strategic options paper on public service reform to facilitate policy discussions, as originally intended. Nevertheless, it is worth noting that during the period of the initiative the MoLPS&HRD undertook a series of policy actions and moved forward to identify and develop GoSS’s public service reform agenda. At the Governor’s Forum in October 2008, the issues of public service reform were central to the discussion, and the president declared it, along with decentralization, as pillars of the national vision. Subsequently, 2009 has been declared by the president of the GoSS the year of public service reform and decentralization. The government also launched a public sector reform program (GoSS 2008) in August 2008. Subsequently, the CABIHRD project has been restructured to address some of the emerging needs in the area of public sector reform. The Bank continues to provide
just in time advice and policy notes. Many of the issues discussed in the course of this engagement find a place in the Juba Compact of June 2009.

Equally important is good progress of the government’s anti-corruption effort. Setting up accountability mechanisms is a prerequisite for effective public sector management and a cross-cutting issue in all the thematic areas of public sector governance and management. While the initiative’s direct contribution was limited on this front, the Anti-Corruption Commission succeeded in putting together and launching a national anti-corruption strategy. The enabling legislation for the SSACC has also since been enacted. Corruption remains a main concern of the public, and the GoSS has showed a strong commitment to addressing corruption issues across the region. At the workshop on decentralization, a number of participants expressed serious concern over corruption, especially nepotism in recruitment, appointment, and promotion in public service at all levels of government. They called for meritocracy, and greater transparency and accountability in the public service. Furthermore, anti-corruption efforts have been accelerated at state and local levels by the MoLPS&HRD’s employment verification initiative to remove ghost workers and strengthen integrity in the state public services.
ANNEX 2. NOTE ON JUNE 2008 WORKSHOP ON DECENTRALIZATION

June 18—19, 2008
Juba, Southern Sudan

Summary Report

A two-day workshop on “Governance for Decentralization” on June 18-19, 2008 in Juba, confirmed GoSS commitment to implement decentralization in Southern Sudan as envisioned in the constitution, urged the enactment of the Local Government Act, and called on all levels of government to fulfil their assigned responsibilities and promote accountability and transparency. The workshop was attended by Vice President Dr. Riek Machar Teny and several cabinet ministers, including Dr. Luka Biong Deng (Minister of Presidential Affairs), Mr. Paul Mayom (Minister of Interior), Mr. Anthony Lino Makana (Minister of Commerce), Mrs. Awut Deng Acuil (Minister of Labor, Public Service and Human Resource Development), Mr. Caesar Arkanjelo Suleiman (Local Government Board Chairman), State Ministers, senior GoSS and state government officials, and chiefs.

Background and Objectives

Good governance plays a critical role in reconstruction, poverty reduction, and economic growth. In Southern Sudan, weak state capacity, underdevelopment of the civil service, slow progress in decentralization, and the high risk of corruption all are obstacles to improved governance and to the full implementation of the Comprehensive Peace Agreement (CPA).

To better understand the governance challenges facing Southern Sudan, the World Bank and the Government of Southern Sudan (GoSS) jointly undertook an analytical effort, “Strengthening Good Governance for Development Outcomes in a Post-Conflict Setting”—focusing on decentralization, public service reform and the institutional architecture for fighting corruption. The analysis is intended to help clarify the key policy choices as the GoSS continues its efforts to strengthen governance and build credible institutions over time. The findings are designed to inform a process of consultations within and outside government, and among international partners supporting Southern Sudan.

A Strategic Options Paper on decentralization has been extensively discussed in a series of meetings over three months, and by a multi-sector GoSS technical task force on decentralization. Through these deliberations, the technical task force on decentralization reached conclusions related to political, administrative and fiscal decentralization.

Building on the work by the technical task force on decentralization, the Ministry of Presidential Affairs of the GoSS and the World Bank, with support from the Joint Donor Office and GTZ, held a two-day workshop on “Governance for Decentralization” on June 18-19, 2008 in Juba, Southern Sudan. The main purpose of the workshop was to consider the critical policy imperatives, urgent choices and institutional conditions to advance the decentralization process in Southern Sudan. Specifically, the workshop sought to:
• Develop a common understanding of political imperatives and key policy issues for the establishment of a coherent policy framework for decentralization;
• Achieve consensus on prioritizing the key policy actions and institutional constraints that need to be addressed to ensure effective and coherent decentralization; and
• Clarify an action plan to consolidate decentralization policy for a coherent and effective programme of decentralization.

The workshop brought together stakeholders representing the GoSS, State and County Governments, Traditional Authorities, universities, NGOs, and development partners. (Annex 1 provides the list of participants.) The workshop agenda and full workshop report can be found in Annexes 2 and 3 respectively. The set of PowerPoint presentations made at the workshop is available on the following website: http://go.worldbank.org/V87QB00NL1

The workshop is the third in a series of workshops on decentralization supported by the World Bank. The first was with the Sudan People's Liberation Movement (SPLM) in the Nairobi from November 1-9, 2004 and the second was a one day workshop for the GoSS during the Governors' Forum on February 16, 2006.

**Key Discussion Points and Emerging Consensus**

During the workshop the following key points were made on the current status of decentralization policy and practice and future directions in Southern Sudan:

• Decentralization is a dynamic and evolving process. It is understood to be a means to further the overarching goals of power sharing, political stability, and improved service delivery. An important aspect of state-building, decentralization can help reinforce the legitimacy of national institutions and build a constructive relationship between those institutions and the citizens they serve.

• Participants recognized that the GoSS leadership is committed to decentralization, and the workshop made clear that there is strong political will to make decentralization work in Southern Sudan. It was broadly agreed that this political support now must be translated into specific actions.

• Despite good progress, gaps still exist between the constitutional vision for decentralization and the current situation, and several key areas require clarity.

• All stakeholders recognize that there are three levels of government (GoSS, state, and local government), plus the traditional authorities, but there is a lack of definition concerning the specific jurisdictions, authority, power, functions, and interrelationships among the three levels.

• Although participants agreed that the CPA, the Interim National Constitution (INC), and the Interim Constitution of Southern Sudan (ICSS) provide the vision and the framework for decentralization in Southern Sudan, these are not sufficiently detailed and in themselves do not resolve many of the questions surrounding the precise modalities of decentralization. Participants
agreed that there is a need for a policy that lays out the specifics and describes the transition arrangements.

• Despite the broad legal framework spelled out in the ICSS, there are still a number of political decisions and clarifications to be made and institutional bottlenecks to be addressed in the areas of political, administrative and fiscal decentralization (e.g., objectives, structures, power and discretion, expenditure and revenue assignments, grant arrangements).

• Participants also agreed on the importance of the GoSS leadership pushing enactment of the Local Government Act. It was also agreed that clarifying policies were needed to define the role and scope of traditional authorities in relation to local government. These clarifying policies would incorporate a plan for reconciliation of statutory and customary jurisprudence.

Three dimensions of decentralization (political, administrative, and fiscal) were discussed at technical sessions, where the multi-sector technical task force presented analyses and findings on key issues and proposed options. The main messages captured from the sessions are as follows:

**Political Decentralization**

• The key issues in political decentralization concern the structure, and respective authority of the GoSS, the states, and the local governments. Areas requiring clarity include: (1) differences in interpretation as to whether political decentralization extends to local government; (2) the commitment to decentralize power and responsibility fully to local government is not as strong as it is to decentralize to the level of state government; (3) the three ICSS Articles 50 (c), 173 (1) and 173 (2) on power and authority of states and local governments are being interpreted differently by different actors in the political process; and (4) While ICSS Article 133 recognizes the other courts at the lower levels in the states, the Judicial Act 2008 creates Payam courts, creating some confusion around the jurisdictions of the statutory and customary law courts at the local level.

• Participants agreed with the technical task force on which issues required clarification, but there was no apparent consensus on solutions.

**Administrative Decentralization**

• Administrative decentralization can contribute to controlling corruption, improving governance, and ensuring better service delivery by addressing four core requirements: (1) clarification of who is responsible for what functions; (2) clear division of responsibilities for given functions; (3) creation of effective checks and balances in the exercise of authority granted in the assignment of functions and responsibilities; and (4) design and implementation of management systems that reinforce assigned roles and responsibilities.

• Intergovernmental transfers can be tied to other local government reforms and capacity-building activities to create proper incentives to improve administrative performance and service provision at state and local levels.

• Emphasizing the importance of administrative decentralization from a service delivery perspective, the technical task force called on the GoSS to address a number of urgent issues,
including: (1) lack of clarity in functions assigned to different levels of government; (2) difficulties in harmonizing the Coordinating Council of the Southern States (CCSS) and the Civilian Authority of New Sudan (CANS) and in unifying government systems at all levels; (3) poor functional performances, interference across levels of government, and abandonment of certain functions no longer performed by a particular level of the government; (4) unavailability of qualified personnel, and mismatch between assigned functions and the people available to perform them; and (5) absence of public service regulations and protection from political interference.

- A number of participants expressed serious concern over corruption, especially nepotism in recruitment, appointment, and promotion in public service at all levels of government. They called for meritocracy and competency-based human resource management and stressed the need for greater transparency and accountability in managing the public service.

- The old formula for lean government, in which the GoSS makes policy, the states coordinate, and local government implements and delivers, should be revisited and implemented, participants agreed.

- Underscoring the high priority of administrative decentralization, the Ministry of Labor reaffirmed its commitment to: (1) strengthen institutional capacity at the three levels of government; (2) build the required human capital for the three levels of government to perform their assigned functions; (3) strengthen management systems for effective governance; (4) refine human resource management policies, including rightsizing the public service and reconciling the CCSS and CANS, the two parallel systems for public service; (5) formulate strategies for effective service delivery at all levels of government; and (6) improve productivity of the public service generally.

**Fiscal Decentralization**

- The technical task force studied and identified several key areas around which consensus is required, including: (1) revenue assignment; (2) intergovernmental fiscal transfer systems and procedures; (3) accountability and monitoring and evaluation mechanisms; and (4) legal and regulatory frameworks.

- A number of participants called for a new formula for allocating and distributing revenues, arguing that the present one, which allocates about 75 percent of available funds to the GoSS and 25 percent to the states and counties, is inadequate.

- On revenue assignment, additional suggestions were made to: (1) determine the principles to be applied when defining revenue-raising roles across the three levels of government; (2) decide what level or levels of government can set the rate of tax to be applied to each tax base; (3) decide whether one level of government can vary tax rates set by another; and (4) decide what authority is to be given to government at each level (and Traditional Authorities) to maximise the efficiency of revenue collections and other tax functions.

- The success of fiscal decentralization partly depends on improvement of public financial management and institutional and human capacity at state and local levels.
• The fiscal burden of public sector salaries is unsustainable. A large amount of grants to States are currently used for salaries, crowding out development-related investments and services. It is imperative for states and local government at minimum to clean up their wage bills and weed out practices such as paying —“ghost workers.”

• While states and local government need to be supported through intergovernmental transfers, sub-national tax systems are underdeveloped and should be studied in detail as a possible means to help finance state and local services.

• The design and development of a grant system calls for a series of decisions to be made on the types of grants, optimal allocation and distribution mechanisms, policy objectives, and the status of local government in the grants system.

• Fundamental legal frameworks for effective public financial management are not fully in place. A Revenue Act has been drafted but it is currently under review. A Public Financial Management Act has been drafted and submitted to the Southern Sudan Legislative Assembly (SSLA), but has not been enacted. While Interim Procurement Regulations were approved, a Procurement Act is still being drafted.

Conclusions and Next Steps

Based on the discussions at the workshop, the technical task force highlighted the following actions to advance the decentralization agenda:

• The GoSS should produce a policy paper or set of guidelines presenting government’s political decisions and interpretations along with a transition strategy and roadmap to decentralization. The GoSS should prepare a strategic plan for the implementation of a coherent government policy on decentralization.

• The GoSS should clarify inconsistencies in existing legislation pertaining to decentralization and define respective roles, powers and responsibilities of the three tiers or spheres of government. The GoSS should also incorporate the necessary oversight mechanisms.

• The GoSS, states, and local government should clarify the role and scope of traditional authorities and harmonize the justice system, reconciling statutory and customary jurisprudence.

• The Local Government Act should be enacted.

• The government must ensure support for all the levels of government to fulfill their assigned responsibilities and functions.

• The GoSS should develop a strategy for cushioning states and counties lacking human capacity for managing the government machinery.

• The assessment of revenue-raising potential of the States and Counties should be carried out to develop equitable fiscal allocation formulae for intergovernmental transfers.
In the absence of new laws, the GoSS, States, and Local Government should selectively use old laws for administrative efficiency and effectiveness.

None of the three levels of government in Southern Sudan has been able to raise sufficient revenue for the delivery of goods and services, creating a heavy reliance on oil revenue. As such, equitable oil revenue allocation formulae must be developed in order to ensure all the three levels of government function as envisioned in the ICSS.

Currently allocation of block grants does not take into account the revenue collection capacity of the states and counties. There should be an equitable distribution mechanism based on the available revenues collected at the state or county level.

Block grants should be increased while conditional grants are reduced, so that the intergovernmental transfer system provides states more discretion to pursue their own priorities. The GoSS should also transfer a percentage of block and conditional grants to the counties as the closest level of government to the people.

The GoSS’s current share (50 percent) of oil revenues generated in Southern Sudan is not sufficient for running governments at all levels in Southern Sudan. The GoNU should be asked to fulfill its national obligation by transferring part of the national revenue to the GoSS as block and conditional grants.

The GoSS should as a matter of urgency enact The Revenue Act.

Financial documents are necessary for revenue collection. As such, financial forms for all the government institutions at all levels in Southern Sudan must be produced and centrally controlled.

The GoSS should call on development partners, including the World Bank, to provide necessary resources to carry out the follow-up actions.
ANNEX 3. NOTE ON THE ROLE OF TRADITIONAL AUTHORITIES

Background to Traditional Authorities in Southern Sudan

In the late 19th century, first the Turco-Egyptian and then the Anglo-Egyptian administrations set out to establish control over the southern Sudanese territories. Initially the British tried to simply take over and co-opt traditional authorities and customary law.

It took until the 1930s until the British arrived at a more orderly form of administration. “Its basic principle was that the local administration of colonial peoples should be conducted through indigenous structures of authority, employing indigenous law or custom, as far as this was consistent with British ideas of good government and justice” (Johnson 2003: 11). An explicit aim of indirect rule was to keep the costs low and administration simple.

During the early 1990s, self-determination of Southern Sudan as well as the reform of the local administration in the guerilla-controlled areas became important aims (Rolandsen 2005: 38-40). In April 1994 a national convention of the SPLA/M was held in Chukudum. Chiefs were part of the civilian delegates to the conference. One result of the conference was that the position of chiefs as local authorities was strengthened, particularly as judges in local courts. In 1996, finally, a conference on civil society and civil authority was held by the SPLA at which the Civil Authority of New Sudan (CANS) was initiated. The aim was to arrive at democratic and representative local government and to devolve some power from the SPLA to the CANS. In this context, traditional authorities were further integrated into the new local government framework of the SPLA/M. At the Boma level, administrative control was split between traditional chiefs and Boma administrators. The chief should be chosen by the local population and, advised by a council of elders, engage in conflict settlement among the members of the local community. The Boma administrator was appointed by the SPLA/M and was supposed to serve as the SPLA/M’s liaison to the village. At the Payam level, the SPLA/M did not foresee a traditional authority next to its civil administrator. Yet, the judiciary from the Boma up to the Payam and the County levels was split with criminal courts operated by the SPLA/M and customary courts headed by traditional authorities enacting customary law. Most importantly, land tenure came under customary law interpreted by traditional authorities (Branch and Mampilly 2005: 6-8, 11). At the County level, the SPLA also set out to collect a poll-tax from every able-bodied man in the County, under the supervision of the county commissioner (ibid: 9).

Planned Role for Traditional Authorities

Interim Constitution of Southern Sudan (ICSS)

The ICSS provides the basis for the integration of traditional authorities into local government. Article 50 ICSS provides three levels of government: (a) the central government, (b) the state level government; and (c) the local government within the state. Pursuant of this article, the articles 173, 174 and 175 outline the particularities of local government in Southern Sudan. Article 173 (5) establishes that

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140 This annex is summarized from Hoehne (2008).
the local government tiers shall consist of County, Payam and Boma in the rural areas, and of city,
municipal and town councils in the urban areas. Paragraph 6 (i) of the same article comprises the
obligation to “acknowledge and incorporate the role of traditional authorities and customary law in the
local government system.” Article 174 ICSS deals with various aspects of traditional authority and
prescribes, for instance, that “the courts shall apply customary law subject to this Constitution and the
law.” Since the ICSS was adopted before a local government bill was elaborated, further legislation had to
concretize the roles of traditional authorities within the local government structure.

**Draft Local Government Bill (LGB)**

**Basic Provisions**

The basis for the incorporation of traditional authorities into local government is provided by the
articles 9, 15 and 16 of the LGB. Article 9 (c) states that “customs and traditions of the people of the
respective Local Government territory within the States of Southern Sudan” shall be among the sources of
legislation in the Local Government Councils. Furthermore, the devolution of authority and the exercise
of local government power shall acknowledge the role of the traditional authorities in local government.
This “demands the incorporation of traditional systems and institutions of government into Local
Government Authorities in Southern Sudan to make them relevant bodies of Community Governments” (Article 15 (2) (b)). Article 16 deals with the incorporation of traditional authorities into a new local
government system. It states that “the traditional leaders of the respective Counties shall represent their
people in the County Legislative Council either by virtue of office as ex-officio members or on ad-hoc
basis as determined by law” (article 16 (2)).

The further paragraphs of article 16 prescribe the different positions of traditional authorities at
County, Payam and Boma level. At County and Payam level the traditional leaders shall perform “ceremonial traditional leadership functions” in addition to customary judiciary functions. Article 16 (6)
confirms that “the Boma shall be a full domain of the traditional authority where the traditional leaders
perform legislative, executive and customary judiciary functions according to customary practices and the
law.” Article 23 deals with types of traditional authorities. It distinguishes kingdoms and chiefdoms. It
provides that “whereas kingdoms are recognized self-existing traditional organizations in Southern Sudan,
chiefdoms shall be created and established by this Bill and the law” (article 23 (2)).

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141 This annex is based on Hoehne 2008 which pre-dates the Local Government Act 2009 which has important
differences with the Local Government Bill 2008. Some of these are noted in footnotes.
142 The relevant sections or the LG Act 2009 are 9, 19 and 112.
143 There is no analogous provision in the LG Act 2009.
144 Section 19(2) of the LG Act 2009 states: “the traditional leaders shall represent their people in the County
Legislative Council as determined by this Act and the regulations there under…”
145 The provisions of section 16 are largely reflected in the new section 19.
146 These provisions are largely reflected in the new section 113.
The Unit of Community Government

The basic administrative unit of community government through traditional authorities is, according to article 18: clan or neighborhood.147 At this level, the headman or Gol-leader shall perform administrative functions, be responsible for resolving family disputes, and protect family rights. It has to be noted here that the reference to clan and neighborhood may have severe repercussions for migrants coming into an area and not belonging to the local descent group/the local clan. It remains unclear if this potentially exclusionary reference to clan can be countered by the reference to neighborhood. Is the term neighborhood understood as a spatial term providing room for incorporation of newcomers to a certain locale? Or do clan and neighborhood form an exclusive unit? In any case, the close linkage of clan and neighborhood as basic administrative units headed by traditional authorities seems to introduce a very static and exclusive element into local government that does not or only with difficulties allow for demographic changes through migration. This also concerns rural-to-urban migrants. Who represents and administers villagers belonging to a certain clan after they migrated to a town in search for employment? Can they register as town dwellers in a municipality? Or will they always be treated as members of clan x in village y under headman z, even if they do not feel related to these “roots” anymore? These kinds of questions have not yet been addressed in the LGB.

The Relationship between Customary and Statutory Law

Article 22 (1) of the LGB defines the semi-autonomous status of traditional authorities ruling their own people at the State and Local Government levels. It grants them specific jurisdictions of authority in the administration of customary law courts and the administration of justice among their people.148 It also states that customary laws shall be applicable in the administrations of their people within their kingdoms and chiefdoms. Paragraph (2) of the same article continues:

Without prejudice against the generality of sub-section [paragraph] (1) above, the traditional authorities shall apply statutory laws in exercise of the delegated and, or deconcentrated powers conferred upon them by this Bill and shall observe respect and adhere to all provisions of this Bill, the Interim Constitutions of the States and the Interim Constitution of Southern Sudan.

The highest customary judicial authority in the County is the Customary Judicial Council headed by the Paramount chief (articles 94 and 95).149 This council is competent to adjudicate civil cases, and only exceptionally, criminal cases (article 98). Thus, it seems that the Customary Judicial Council is firmly established within the realm of customary law. Yet, article 98 (6) (a) holds that it shall apply the principle that “justice shall be done to all, irrespective of their social, economic and political status, race, gender, age, religion, creed or beliefs.”150 Finally, Chapter XII LGB151 regulates the establishment of customary courts at the County, Payam and Boma levels, as well as in towns. Paramount chiefs, Head

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147 See section 107 of the LG Act 2009.
148 Competence to the Customary Law Courts is provided in section 98 of the LG Act 2009. The provisions are somewhat weaker than in the draft bill.
149 This is referred to as the Customary Law Council in the LG Act 2009.
150 New section 98(3)(b).
151 Chapter X of the LG Act 2009.
chiefs, Executive chiefs and Town chiefs are the judges of these respective courts. They are appointed by a Customary Judicial Service Committee constituted by the County Commissioner or Mayor and have to be approved by the Chairman of the County or Town Legislative Council.

Some of these provisions seem to sit uneasily with each other. Basically, they outline the respect for customary law and the authority of traditional authorities, while they at the same time introduce measures to control the application of customary law and the coming to power of customary judges. Article 22 (1), for instance, provides that traditional authorities are responsible for the application of customary law. On the other, the article maintains in paragraph (2) that traditional authorities should apply statutory law in exercise of delegated/deconcentrated powers. Furthermore, it is the question in how far justice can be done to all, as stated in article 98 (6) (a), within the framework of customary law. Usually, the latter discriminates against youths, women, minority groups and migrants/immigrants. Some of these issues will be taken up in the comparative discussions in section 5 below. Finally, the provisions of Chapter XII seem to hinder the integration of traditional authorities into local government. The questions in this regard are if traditional authorities shall be integrated as judges in customary courts as authorities sui generis, or if they have to be approved first by representatives of the state. The lack of clarity in this regard entails a potential for conflict between traditional and civil authorities.

**Election/Selection of Traditional Authorities**

Article 27 (1) maintains that traditional chiefs shall be elected according to conventional electoral systems or selected according to traditional practices as the case may be.” The subsequent paragraphs of article 27 concretize similar procedures for the different positions of Paramount chief, Head chief, and Executive chief. The Paramount chief, for instance, shall be nominated by the Council of Elders of the County, and he shall be elected by the people of the County as determined by law.” Election and selection, thus, are mixed. The same provisions can be found regarding the other offices of traditional authority. It is not fully clear how selection by some members of the local elite (represented in the Council of Elders), on the one hand, and election through all locals according to the law, on the other, can be harmonized. Furthermore, it is unclear if the election/selection is for a fixed term of office, or for life time.

**Powers and Functions of Traditional Authorities**

The Executive chief is active on the Boma level. Among his duties and functions are the resolution of conflicts among citizens of the Boma through mediation, conciliation and arbitration; the maintenance of law and order within the chieftaincy; the supervision of tax collection; the allocation of land and distribution of food to returnees; the making of rules and regulations in relation to social,

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152 For more details about the types of and the hierarchy of traditional authorities see below, section 4.
153 The LG Act 2009 (section 98(2)) clarifies that the Customary Law Court will not have competence over criminal cases unless referred to it by a Statutory Court.
154 A closer look into the Judiciary Bill that was passed in December 2007 may help to clarify these seeming contradictions and ease the tensions between customary and statutory law that are related to the above mentioned provisions of the LGB.
155 Section 117 (chapter XII) in the LG Act 2009.
customary and traditional issues; and the mobilization of members of the community for communal work (article 29). Article 110 provides that ―local revenues shall be generated through the imposition of levies on local taxes and local rates.‖ Taxes include, among others, land tax, animal tax, and hut tax (article 110 (1)). Thus, traditional authorities in principle have the legal authority to collect taxes.\footnote{156}

Obviously, the Executive chief combines legislative, executive and judicative powers in one person.\footnote{157} Yet, this is against the principle of the division of powers within modern state systems. Moreover, traditional authorities shall generate local revenue in order to finance themselves though taxes, and so forth. This raises the questions: how can one (technically) collect taxes in an economically exhausted society after decades of civil war and droughts?\footnote{158} Also, as outlined in section 4.2, in the past, traditional authorities have sometimes been forced by external powers to collect ―taxes‖ (in the form of sorghum, animals, etc.). This raises the question if the responsibility to finance themselves through taxes, among other things, as foreseen in the chapter XIV of the LGBW will not evoke ―bad memories‖ among the local populations. Finally, two more technical questions that have not yet been addressed in the LGB are: who helps traditional authorities to collect these taxes? And: what sanctions are at hand in case somebody refuses to pay them?

The Question of Democracy

Article 8 (5)\footnote{159} provides that ―the local government authority shall be democratic and representative of the people in the respective local areas.‖ This is in accordance with the aims of decentralization discussed above. Yet, traditional legitimacy and authority is not necessarily democratic in the Western or modern sense. Some of the articles within the LGB, particularly those stressing democratic rights ―for all" are in contradiction to the everyday practice of traditional authority and customary law in many local contexts. In this context, the effective enactment of provisions of the LGB concerning women (e.g., articles 18 and 19) seems to be highly doubtful under the rule of traditional authorities.\footnote{160}

Problems to be resolved

The LGB provides detailed legislation regarding the integration of traditional authorities into the local government system of Southern Sudan. However, the Bill comprises contradictions, some of which could lead to conflict over competences and power sharing between the different actors of local governance. The first and possibly most far reaching contradiction or area of conflict concerns the establishment of the democratic principle in article 8 LGB. The \textit{de facto} working of traditional authority is frequently not democratic in the Western or modern sense, as can be seen in Southern Sudan as well as

\footnote{156} This does not appear to be the objective of sections 73 and 74 of the LG Act 2009.
\footnote{157} The same goes with the traditional leader at the Boma level, see above, article 16 (6).
\footnote{158} This question, of course, does not only concern traditional authorities in particular, but all state actors in war-torn Southern Sudan in general.
\footnote{159} See section 8(1) – 8(3) of the LG Act 2009.
\footnote{160} Article 18 (5) maintains that \textit{no marriage shall be entered into without the free will and consent of the man and woman intending to marry}‘; article 19 (5) provides that \textit{all local councils and communities shall ensure that women are given the right access to justice in their families, community and the courts of law.}‘ (See similar provisions in sections 108- 110 of the LG Act 2009.)
elsewhere in Africa (see below, section 5). The question is: what kind of democracy and representation did the legislator have in mind when referring to "democratic" and "representative" in the LGB? Furthermore, the LGB does not clarify definitively if traditional authorities are part of the local government as authorities *sui generis*, or if they have to be created, recommended and/or accepted by civil state authorities first. Also their terms of office are not clear. Thus, the usual democratic checks and balances of rule are not in placed regarding traditional authorities.

Furthermore, inconclusive and/or contradictory statements about the relationship between traditional and other state authorities could lead to conflicts over competences and power sharing. This became particularly clear with regard to the applicability of customary or statutory law at various levels of local government, and regarding the issue of naming judges of the customary courts.

**African Experience**

Experience of traditional authorities and local governance in Sierra Leone, Mozambique, South Africa, Ghana and Somaliland is summarized under the following five questions: first, what role do traditional authorities play in contemporary African politics; second, can (democratic) decentralization be achieved through recourse to traditional authorities; third, what is the track record of conflict/cooperation with local government; fourth, what are the experiences about traditional authorities being paid with public resources and in how far can accountability mechanisms be introduced; finally, what are the sources of legitimacy of traditional authorities and how would the incorporation of traditional authorities in formal state structures impact on their legitimacy?

**What role do traditional authorities play in contemporary African politics?**

*Sierra Leone.* Chieftaincy plays a contested role in post-civil war Sierra Leone. The present government remains supportive of chieftaincy. After cessation of hostilities in 2002 the post-war Sierra Leonean government decided on a program for decentralization. This was in line with some recent assessments of the causes and drivers of conflict in the country that pointed to the fact that the previously existing institutions of state but also traditional authority had been involved in alienating the youths and pushing them into rebellion. Shortly before the cessation of hostilities was reached, civil society representatives agreed that chiefs had a vital role to play in restoring stability in the country.

*Mozambique.* After a peace accord had been reached between *Frente de Libertacao de Mozambique* (FRELIMO) and the *Resistencia Nacional Mocambicana* (RENAMO) in 1992, FRELIMO realized that traditional authorities wielding authority over kin based institutions could powerfully influence voter behavior. Shortly before the first post-war elections in 1994 the FRELIMO government passed legislation providing for the devolution of responsibility over a variety of governmental functions to municipalities. This law stated that the municipality governments would listen to traditional authorities, as long as they were accepted by the communities. In the mid-1990s, under a new framework for local governance was established, based on democratically elected institutions in urban areas, traditional authorities are supposed to continue working, taking over local administration and representation, also toward the outside, e.g., toward international NGOs.
Somaliland. In post-conflict Somaliland, traditional authorities were institutionalized as one chamber of the bicameral parliament consisting of a House of Elders (golaha guurtida) and a House of Representatives (golaha wakiiladda). The most important powers and duties of the House of Elders, as regulated in Article 61 of the constitution are the enactment of laws concerning religion (diinta), culture/tradition (dhaqanka) and peace (nabadgelyada), reviewing laws already passed by the House of Representatives, with the exception of the budget, advising and assisting the government and enquiring into the performance of its duties (Hoehne 2007). Besides the House of Elders, however, traditional authorities have no formal position at the regional and local level. Informally they nonetheless can contribute greatly to the maintenance of law and order on the ground (Gundel 2006; Hoehne 2007).

South Africa. Oomen (2005b: 88) and Ntsebetza (2005: 72) found that traditional authorities in the post-Apartheid era were strongly criticized for having been involved in previous state-repression. On the other hand, Oomen, who did her research in the late 1990s, emphasizes that people respected their chiefs as guarantors of social cohesion at the local level and as symbols of group identity. In this regard it is important to note that in the eyes of many locals, chiefs hold and represent their relationship with the ancestors (Oomen 2005b: 112). They agreed that chiefs are qualified well for dealing with land allocation and building regulation, local democratic government and the settlement of local conflicts beneath the threshold of serious criminal offences (ibid. 88-91). Finally, particularly the inhabitants of remote areas perceived chiefs as the only connection to the state (ibid. 96).

Ghana. Chiefs have enjoyed legal recognition since colonial times. Immediately after independence, President Kwame Nkrumah sought to control and limit the powers of the chiefs as much as possible. After Nkrumah’s death in 1966, however, chiefs regained ground on the national political stage, besides their participation in local government. Under the 1979 Constitution chiefs were established in Houses of Chiefs at the national and regional levels. While chiefs are not allowed in party politics, many individuals who are chiefs also hold offices in the government and the administration (Valsecchi forthcoming: 127-129). An area where chiefs exert considerable material control is land allocation, including farming as well as house and road construction.

Can decentralization be achieved through traditional authorities?

Sierra Leone. The relation between central and local government and traditional authorities is regulated in the Local Government Act (2004). It identifies the chiefdom as basic institutional tier of local governance. Around hundred-fifty chiefdoms _are still needed to perform essential functions, notably the administration of customary land rights, revenue collection, and the maintenance of law and order_ (Fanthrope 2005: 35). Currently, chiefs in Sierra Leone are elected for lifetime by an electoral college consisting of representatives of taxpaying community members. This excludes the poor and in fact the majority of the chiefs’ subjects. The relationship between local councils and chiefs has to be clarified legally.

Mozambique. In rural areas traditional authorities act as link between the local level and the state. Their tasks, according to a year 2000 decree, are, _inter alia_, policing, taxation, population registration, justice enforcement, land allocation and rural development. They are also supposed to engage in civic and national education, and support e.g., anti-HIV/AIDS campaigns. The language of the decree, however, is
rather imprecise. It states that the authorities have to be chosen according to the traditional rules of the respective communities, with “communities” not clearly defined.

**South Africa.** In South Africa, traditional leaders were recognized in the constitution of 1996. Simultaneously, legislation with regard to decentralization was planned. According to Ntsebetza (2005: 82), initially traditional authorities vehemently opposed to the moves of the ANC-led government to introduce decentralization and democratization in rural areas. At the local level, traditional authorities perceived the introduction of a civil government as threat to their rule and as a system of “two bulls in one kraal” (Oomen 2005a: 60). They realized that the local councils that were established in legal reforms in the early 1990s were going to take over some of their previous responsibilities. The role of traditional authorities was to participate in these councils partly as *ex officio* members, partly as stakeholders holding up to 10 per cent of the seats. However, much confusion remained, for instance regarding the number and powers of the *ex officio* members (ibid: 61-62). Most of the local councils did not become effective, and when some of them set out to implement the ambitious development plans of the new South African government this frequently lead to tensions with traditional authorities. The constitution of 1996 introduced a notion of co-operative government with three independent spheres: the national, the provincial, and the local government. Also, three types of municipalities were established. Traditional authorities were vaguely assigned responsibility for the observation of customary law and participation in the local government meetings. They also remained in control, to some extent, over land tenure and allocation.

**What is the track-record of conflict/cooperation with local government?**

**Sierra Leone.** Officially, according to the Local Government Act 2004, local councils are the highest political authority in their respective localities. Their responsibility is to promote development and welfare of the local people. Thus, local councils are supposed to be “above” chiefs. In reality, however, it seems that local councilors have generally been accepted by communities as legitimate actors, particularly in terms of “bringing development,” but are not perceived as equal authorities to chiefs and others” (Manning 2008: 11). According to Fanthrope (2005: 35) new councils staffed by civil administrators officially delegate functions to the chiefs. Manning maintains that in many instances, chiefs and councilors in Sierra Leone are working closely together—even without any clear guidance from the central government. The reason is that both usually come from the same social system. Locally, the paramount chief demands respect, and many councilors have understood that they can achieve more by cooperating with the chief. Councilors are dependent on chiefs in so far as the latter collect the local tax revenue and also have a much greater ability to mobilize labor and enforce cooperation with community projects (Manning 2008: 15). In conclusion, Manning argues that local councils have gained in significance since the Local Government Act came into force in 2004, yet, in order to get things done, they have to engage with the existing governance structures, particularly with the chieftaincy system (Manning 2008: 16).

**Mozambique.** Even the process of implementing the decree (2000) that lay the basis for decentralization and the integration of traditional authorities was conflict-ridden. State authorities had to visit rural areas and register the traditional authorities. In some places traditional authority was disputed. In order to present a “stable” traditional institution to the state officials for registration, local communities
had sometimes to find a compromise between candidates who were legitimate according to the principle of family inheritance, but were not acceptable as individuals, and those who possessed individual skills required for dealing with state and NGOs, but lacked necessarily family connections. Compromise-candidates were frequently —weak regarding the qualities of chiefs, but at least contributed to easing local conflicts (ibid. 180-82). Another problem related to the integration of traditional authorities into the post-conflict Mozambican government was that some individuals who undisputedly were legitimate traditional authorities in the eyes of their communities were not interested in engaging with the state. They refused to collect taxes, mobilize labor force for community works and thereby effectively blocked state administration and development, since local people respected them even in their disengagement (Buur and Kyed 2006: 177).  

Also, the endeavors of the Government to restrict the scope of operation of traditional authorities through legislation lead to conflicts, particularly in opposition RENAMO controlled areas. In practice, this attempt to incorporate non-state actors and simultaneously to control and eventually sanction them —has placed ‘community [traditional] authorities‘ in an anomalous role as state but not really state: physically outside of the offices in which the state officials operate, they are obliged to act ‘as if’ state, yet without adequately sanctioned authority” (Kyed forthcoming: 162). Traditional authorities acquire thus a dual position—they are betwixt and between, as West and Kloeck-Jenson argued; this leads some traditional authorities to seek a way out of their uncomfortable position and to circumvent state law. Thereby they of course risk being sanctioned by the state (Kyed forthcoming: 163).

South Africa. As mentioned already in the previous section, traditional authorities perceived elected local government structures as adverse to their local powers that they inherited from the time of Apartheid. Any attempt to reform land and other rights was met with resistance by the traditional authorities. Even if they could not prevent reforms, they at least did their best to delay them. Thus, the potential for tensions between traditional authorities and elected local governments is quite high (Ntesbetza 2005: 87; Oomen 2005a: 70-84).

What are the experiences with traditional authorities being paid with public resources and in how far can accountability mechanisms be introduced?

Sierra Leone. Traditional authorities and their clerks finance themselves out of the revenue they generate through taxation. Bookkeeping practices and cash management are very poor in most chiefdoms. The chiefs and their staff themselves have argued that it would be better that the government finances the chiefdoms directly (Report on Chiefdom Finance Study held between the 3rd and 18th March 2008).

Somaliland. The members of the House of Elders (guurti) in Hargeysa receive salaries and allowances. According to article 66 of the constitution they also enjoy immunity. During field research, ordinary people sometimes complained about the members of the guurti who, in their view, just sat in the capital city and enjoyed life, without caring about the problems of the people in the rural areas. Some

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161 This hesitation on the side of some traditional authorities frequently derived from their experiences with the FRELIMO during civil war time. Many chiefs, as outlined above, had rather been close to RENAMO or had even left their homes in order to escape the violence inflicted on the local population by both parties to the conflict (Kyed forthcoming: 155).
other traditional authorities in Somaliland, such as Aqils, also receive some payments (around 15-20 US$ per month) from the government. This, according to some statements of elders in different villages, neither impedes their independence, nor diminishes their legitimacy in the eyes of the local population.

Mozambique. Kyed (forthcoming) makes it clear that in the face of state sanctions and potential financial benefits active chiefs try to obey state instructions and fulfill the tasks allocated to them by the state. Yet, this might well bring them into conflict with their own communities who do not consent to being taxed and so forth. Thus, they may lose the support of the local communities, which are, however, an important source of the legitimacy of traditional authorities.

What are the sources of legitimacy of traditional authorities and how would the incorporation in formal state structures impact on their legitimacy?

Sierra Leone. In Fanthrope's (2005: 44) view chiefs still have a vital role to play because they (and by implication not the state) "know a person's right"—the customary rights and properties that establish de facto local citizenship. He adds that people see the need to establish some checks and balances regarding chiefs and thus to "re-bureaucratize" chieftaincy (ibid.). Manning (2008: 8) stresses that "even when alternatives are available, most people still accept the authority of chiefs and look to them to make decisions, resolve disputes, and engage with outside actors such as government representatives or development agencies. [...] chiefs are more trusted across the board, even in how they would administer development funds." Authority, particularly of paramount chiefs, is constructed in relation to kinship and land. To belong to a certain chiefly family and to be "first comer" is used in order to legitimate the claim to rule (ibid.). Manning continues that the relationship between chiefs, on the one hand, and youths and women, on the other, seems to have changed in Sierra Leone over time. This is particularly also a result of the most recent war and possibly some external interventions. Chiefs now more often include youth leaders in local decision making processes. In some places it was proposed that young people and women should have seats in the courts of paramount chiefs (ibid: 10). Further changes include that more locals now demand their chiefs to be "democratically" elected and educated.

Mozambique. The authority of chiefs, historically, derived thus partly from violence and exploitative rule. This confirms that since long, "chiefs at all levels have occupied positions betwixt and between their populations and higher authorities" (West and Kloeck-Jenson 1999: 475). The recognition and legitimacy of traditional authorities, in this case, had a double nature: it depended on the local community and on external powers. Consequently, figures of traditional authority were "Janus faced"; they were simultaneously respected and suspected by their own constituencies and the (colonial and post-colonial) states (ibid.: 476). West and Kloeck-Jenson add that in some cases, particularly during the recent Mozambican civil war, figures of authority have been exchanged so frequently, depending on FRELIMO and RENAMO attacks and counter-attacks, that the local people today are unable to outline what exactly constitutes traditional authority. In this context, and quite pragmatically, authority is an attribute of someone who "is in charge"; and particularly in the rural areas legitimacy derives from the success in delivering state or other external resources and services to the local community (ibid.: 479).
Somaliland. Authority is traditionally flexible and non-centralized (Hoehne 2007). Throughout the 20th century colonial and post-colonial states sought to control the predominantly pastoral-nomadic Somali people by co-opting their traditional authorities. This had an impact on the latter's legitimacy. Previously, traditional authorities were predominantly accountable to their local constituencies who could easily dismantle them in case of discontent. State recognition introduced new resources as well as a notion of permanence of the position. The hereditary principle of traditional authority was established under the British in the early 19th century. Moreover, the more they received support from state institutions, e.g., in the form of payment, weapons or access to economic infrastructure, the more the traditional leaders became upwardly accountable and ran the risk of being deposed by state-authorities. In the 1990s, finally, traditional authorities were installed as members of the House of Elders (guurti) in Somaliland. As such, they are supposed to be elected (according to article 58 of the Constitution of Somaliland). So far, no election has taken place.

**Summary**

Lutz and Linder (2004: 37) argue that traditional authorities are often more legitimate to govern in the eyes of the people than local state administrations.” They continue that “one of the main reasons to incorporate traditional structures is to improve local governance, especially in countries where attempts of decentralization in building strong structures have failed at the local level. Another strong reason is that many policies have not been implemented because traditional structures were excluded or because they resisted certain policies” (Lutz and Linder 2004: 16). Other authors, however, do not seem to share this positive assessment and rather emphasize the uncomfortable position of traditional authorities betwixt and between external powers and local constituencies.

In historical perspective, it becomes clear that traditional authorities became increasingly dependent upon external “recognition” through colonial and post-colonial administrations. Therefore, any separation between traditional authorities—as apolitical, non-state entities whose legitimacy derives exclusively from “the local community”—and the modern state is misleading. Both, in fact, have historically been intertwined. This is confirmed by Englebert (2002: 16) who found that “traditional institutions have become contingent structures” with part of their salience depending on the strategies of local constituencies and local elites vis-à-vis exogenous factors.

Moreover, the current situation of traditional authorities in many African countries is characterized by legal confusion and political tensions regarding the division of powers and competences. It is unclear how after decades of co-optation and civil war in many settings traditional authorities, who frequently had to take a political stance in the face of superior powers, can be “purified” in order to take up positions in newly democratic government structures. Civil war and state repression frequently undermined the downward accountability of traditional authorities and damaged their positions in the eyes of their people. On the other hand, if some traditional authorities had sought to defend their people

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162 The Somali society is characterized by a segmentary lineage system, similar to the Nuer society.

163 The usual strategy to dismantle or undermine traditional authority was to split and elect a new leader for the splinter group. Sometimes traditional authorities — who had a position of *primus inter pares* — were also directly physically attacked by discontent followers.
by fencing off external interferences, such as in Sudan in the 1980s and 1990s, this enhanced their legitimacy in the eyes of their people; but it made them suspicious to state actors who constantly strive to expand their control.

**Conclusion**

The study discussed the powers and positions of traditional authorities in Southern Sudan. The aim was to explore the role of traditional authorities in a decentralized political framework for Southern Sudan, as set out in the Local Government Bill (LGB). Under the LG Bill traditional authorities in general are responsible for customary law at the Boma, Payam and County levels. On the Boma level (the lowest level of local government) they combine executive, legislative, and judicial powers. Yet, while the LGB is quite explicit in its individual provisions, some contradictions inherent to the bill as a whole could be identified. Three of the more severe contradictions are:

- It is not clear if customary law operates independently of statutory law, or if it has to conform to state law. This question also involves the position of traditional authorities as judges, and the issue if they have to be approved by state institutions first, or if they can act as institutions *sui generis*.

- On the one hand, human rights and democracy are advocated; on the other, however, traditional authorities and customary law are granted powers that most probably infringe with equal justice for all as well as with transparency and accountability of rule. More concretely, it is not clear how traditional authorities and customary law shall provide justice to women who usually have no or only a very weak standing before customary courts.

- The questions if traditional authorities are elected democratically through universal suffrage, and if their term of office is limited or for lifetime has not been clarified in the LGB. Thus, there is a risk that under this bill undemocratic practices stemming from the past are perpetuated.

In addition to these legal problems, the incorporation of traditional authorities into the local government of Southern Sudan has also to be assessed with regard to its historical legacy. Traditional authorities in Southern Sudan have frequently been co-opted through external forces—states and guerillas. Furthermore, particularly in the context of the recent civil war SPLA/M and the Sudanese state heavily interfered with traditional authorities. They forced established authorities into cooperation, often against the interests of the local populations, or simply installed new and obedient authorities serving their purposes. This damaged the legitimacy of the traditional authorities, which besides external recognition, derives from acceptance through the local community. The other African examples (section 3) showed that a history of co-optation and manipulation is the rule, rather than the exception with regard to traditional institutions in Africa. Hence, the present day relation of the Southern Sudanese government to traditional authorities is neither neutral, nor necessarily benevolent. Individual traditional authorities may perceive the current SPLA/M government as former enemy/perpetrator. Others may feel that they have to succumb to state power, *—a always.*” These aspects of the historical legacy involve the risk of conflicts between traditional and state institutions. Moreover, it is the question if traditional authorities who feel inferior to the state power are able to adequately represent their people towards the state.
The findings from the other African examples outlined in section 3 have important implications regarding the current role of traditional authorities in Southern Sudan. On the one hand, it is clear that traditional authorities in Africa still matter. On the other hand, the historical burden and the complexities of the current legal and political situations in many African contexts complicate the positions of traditional authorities further. In the face of state-weakness or even state-collapse, traditional authorities are often the only effective powers at the local level. In Somaliland, but also in Mozambique and rural Southern Sudan they guarantee a minimum of social and political order. They settle conflicts, employ customary law and provide some orientation for group identification in contexts of rapid political and social change. This also holds true for traditional institutions in Southern Sudan, as was outlined in section 3 and 4. On the other hand, traditional authorities in all African contexts discussed here had difficulties with integrating into the framework of modern government, which involved giving up some of their old privileges, on the one hand, and taking over new responsibilities and acting self-confidently toward state institutions, on the other. Despite these challenges, a clear conclusion from the African experience is that the question “is traditional authority necessary in order to provide a minimum of stability and order?’” can be answered in the affirmative.

This study also showed that while traditional authorities can exist side by side with modern state structures, legitimate authority is constructed differently in traditional and in modern contexts. Traditional authorities are not subject to the well-established checks and balances of modern democracy, based on universal adult suffrage and limited terms of office. The customary law they administer frequently does not provide “justice for all” but discriminates against women and young people. Thus, and in reference to the second initial question, it has to be concluded that the rule of traditional authorities undermines the emergence of modern state structures at the local level. This is at least the case if one accepts the high standards of modern democracy in general and democratic decentralization in particular. The rule of traditional authorities and equal rights for women can hardly be combined. Nor do the hereditary principle and the modes of selection through some privileged men dominating traditional institutions harmonize with the democratic principle of universal adult suffrage and periodical elections.

Finally, can the integration of traditional authorities into modern government structures pave the way to a country-specific form of democracy, and if yes, is there a way of doing this well? The answer to this question of the study has to take into account issues of legitimacy and accountability. Similar as in colonial time, traditional authorities today are betwixt and between—they have to mediate between and satisfy both, the local constituencies and the state powers. In this sense they have to fulfill a kind of “dual mandate.” These complexities cannot easily be resolved in legislation, as Buur and Kyed, and others have shown. Against this background, the integration of traditional authorities in local government at least helps to reach out to previously “pressed,” “oppositional” or “uncaptured” constituencies of the state. Thus, a kind of country-specific form of representation of previously marginalized or distanced populations can indeed be achieved.

164 Originally, the term _dual mandate_ was introduced by the British at the beginning of the 20th century. It concerned the colonial administrations that had the dual mandate to benefit the African peoples, on the one hand, and the _motherland_ or even world economy, on the other. Under this policy, African governments were prescribed to serve external economic agendas. This continued after independence. Dual obligations, however, raise serious governance tensions and have the potential to undermine the local legitimacy of governments (Ribot 2002: 4).
The role of traditional authorities at this moment in Southern Sudan may be to figure as a "transitory gate" from a violence ridden and undemocratic era of state oppression and civil war to a new era of more rights for all citizens. In order to advance with democratization the state would have to engage with traditional authorities in the short term, and simultaneously prepare for their "fading out" in the longer run. Since, as we found above, traditional authorities usually cling to "old" privileges and powers, and resist democratic checks and balances. This ultimately undermines the emergence of modern state structures at the local level.
Appendix to Annex 3

The ethnic terminology employed should not be taken to suggest that Nuer, Dinka, and others are clear-cut and stable — in fact, to the contrary, they consist of many different tribes, sections and clans. The boundaries between both groups are much more flexible than the (colonial and earlier socio-anthropological) literature suggests.

**Nuer**

In academic literature Nuer are described as classic case of the segmentary lineage society. Segmentary societies have an un-centralized, fragmented political organization (Badal 2006: 58). The village is the smallest political segment. Kinship terminology is used in political processes at village level. Kinship creates or demands reciprocal obligations to provide help to other members of the kin group” (Badal 2006: 58). Successful cattle herding, but also planting and harvesting depend on cooperation. Later on, food is shared within village community (Badal 2006: 59). Kinship terminology aids integration and cooperation. An individual selectively recognizes those ties which correspond to his/her current needs and correspond to surrounding environmental and social factors. Integration into kin groups functions through adoption, extra-legal marriages, or genealogical fiction” (Badal 2006: 59). Alliances among Nuer lineages are rather segmentary and pyramidal in nature.

**Nuer traditional structure.** While Nuer are said to have an egalitarian structure, some differences in power and status can be observed. The *elder* of the village is probably the most important individual at this level [village], someone all can turn to for advice and impartial judgment” (Badal 2006: 60). He is from a family belonging to the dominant clan/lineage; his family must be rich in cattle (*gät tuot*—bull of the heard). *Göt tuot* or *dil* refer to any member of a dominant or aristocratic lineage.

"Wut hok,*  — the man of cattle” is charged with responsibility and welfare of the cattle” (Badal 2006: 60). He is consulted in cases of diseases/epidemics and is asked for his blessing for herds to flourish. *Kuär thoi* is the man of the water and river. The *Kuär bith* is *the fishing-spear chief* who is responsible for making war and training warriors” (Badal 2006: 61). The *Kuör muon* is the *land chief.* He is associated with the land. Sometimes he is also called *Kuär kuac,* the *Leopard skin chief.* *Ruic Naath* is the *leader of the people.* This concept for a while remained vested in Nuer *prophets.* They played important roles in opposition to foreign oppressors/aggressors, e.g., the colonial powers. The office was not institutionalized, but had a tendency to be hereditary. *Ruic Naath* had to be generous, wise and well experienced in settling disputes and maintaining or creating cohesion among the local people; finally, they had to be brave and powerful leaders (Badal 2006: 61). The authority of a *Ruic Naath* is strongly based on his powers of persuasion and his abilities to voice the will of his people. The idea of leadership among the Nuer is thus strongly related to the spoken word (Badal 2006: 62). Nuer prophets challenged colonial administrators regarding authority over the group.

Family and intra-tribal feuds are settled by elders belonging to the parties of the conflict, and sometimes third-party elders whose groups are not involved. Inter-tribal conflicts between different Nuer

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165 *Dil* can be understood as the *agnatic core*” of Nuer lineages (Badal 2006: 68).
clans or between Nuer and others (e.g., Dinka) are settled by prophets (ruic naath). The “Leopard Skin Chief” (Kuăr muon) is involved in the resolution of blood feuds. He is concerned with the spiritual well being of the killer who can hide in the chief’s home. The group who seeks vengeance is not allowed to enter (Badal 2006: 64-65). “Although the Leopard-Skin Chief has no mechanism by which to enforce his decisions upon disputants, he has sufficient moral and spiritual authority to compel obedience” (Badal 2006: 65). The Leopard-Skin Chief has also the power to curse (ibid: 65-66).

Dinka

The Dinka socio-political system is another example for a segmentary system. However, compared with the Nuer system the Dinka differ in so much as lineages have definitive territorial bases and permanent settlements. Politically, Lienhardt suggested the term “associate lineage structure” in order to point to the fact that “leadership in a Dinka political segment necessarily entails the presence of people from two different categories of clans or classes: the warriors and the spear-masters” (Badal 2006: 67). Each Dinka sub-tribe comprises both descent groups—of warriors and spear-masters. Individual members of these groups can, at times and depending on their individual skills, acquire a pre-eminent position as leaders. Among Dinka there is no dominant lineage as among Nuer (called dil). Dinka “possess several cores in rather fluid and ambiguous or rival associations” (Badal 2006: 68).

Dinka traditional structure. The spear-masters (Bany Biith) are superior in rank to the warriors. They act as religious specialists, arbitrators, initiators of age-sets, and so forth, and are “the main focus of Dinka political unity.” They combine thus ritual and political leadership. (In contrast, among the Nuer political and ritual leadership is more dispersed.) Warrior clans provide community leaders with fighters and, at least in the areas where Dinka neighbor Nuer, with war-leaders. Recently, however, spear-masters, also under Arab influence (from the north) became more centralized and institutionalized (Badal 2006: 69).
ANNEX 4. MAP OF SUDAN
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