

# **POLITICS AND TRANSITION IN THE NEW SOUTH SUDAN**

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## POLITICS AND TRANSITION IN THE NEW SOUTH SUDAN

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Now that South Sudan's referendum is complete and its independence from the North all but formalised, focus must increasingly shift to the political agenda at home. A new transitional government will preside over a fixed term from 9 July 2011, during which a broadly consultative review process should yield a permanent constitution. Critical decisions taken now and immediately after independence will define the health and trajectory of democracy in what will soon be the world's newest state. Two factors may shape the coming transition period more than any other; first, the degree to which the South's ruling Sudan People's Liberation Movement (SPLM) allows an opening of political space in which a vibrant multi-party system can grow; secondly, the will to undertake democratic reform within the SPLM, as intra-party politics continue to dominate the political arena in the near term. Embracing pluralism now – both inside and outside the party – would lay a foundation for stability in the long term. Failing on either front would risk recreating the kind of overly centralised, authoritarian and ultimately unstable state South Sudan has finally managed to escape.

Post-referendum negotiations continue between the SPLM and the National Congress Party (NCP) toward a peaceful separation and a constructive North-South relationship. While they consume considerable attention of the SPLM leadership, the political landscape in South Sudan has begun to transform. From the signing of the Comprehensive Peace Agreement (CPA) in 2005, South Sudan's divergent ethnic and political communities were united behind a common goal: self-determination. Many suppressed grievances, choosing not to rock the boat until that objective was achieved. Now that the vote has been cast and its results endorsed, the common denominator is gone, and long-simmering political disputes are beginning to re-surface. Likewise, a series of armed insurgencies, recent militia activity, and army defections highlight internal fault lines and latent grievances within the security sector. Continued fighting has challenged government capacity to manage domestic conflict, risks further polarisation of ethnic communities and their political leaders and could stoke broader insecurity.

Jockeying has intensified between the SPLM and Southern opposition parties over the composition and powers of a transitional government and duration of the transitional period. The SPLM desires to move expeditiously toward a transitional constitution amid all that must be done before independence, while the opposition fears it is manipulating the process to entrench its power. A domineering approach from the SPLM has jeopardised the goodwill created by an important political parties' conference in late 2010. Stifling debate and poor political management of such processes unnecessarily risk further antagonism among opposition parties, particularly at a time when the challenges in realising independence and managing domestic security concerns make Southern unity all the more important. The SPLM must recognise that meaningful opposition participation – including in defining the transition and in a broad-based government – is not a threat to its power but an investment in stability and legitimate rule. A politics of exclusion may in the long run undermine the very power some party hardliners are trying to consolidate.

Managing South Sudan's ethno-regional diversity will continue to be a tall order. Political accommodation is a necessity regardless of what form the transitional government assumes. The SPLM leadership will have a difficult chessboard to manage, finding roles for a wide range of party (including many members now returning home), army and opposition elements. It must avoid a "winner-takes-all" mindset and view the appointment of a broadly representative government not as appeasement alone but as recognition of Southern Sudan's pluralist character.

The liberation struggle is over, the CPA era is coming to a close, and it is thus time for the SPLM to mark a new chapter in its evolution. A review of the party's modus operandi is necessary if it is to maintain cohesion, consolidate its legitimacy and deliver in government. Party reforms should aim to manage internal divisions, erode a top-down military culture, professionalise operations and trade coercion for enhanced internal dialogue. Meanwhile, there is no denying that Southern opposition parties are weak; their resources, membership and structures are thin. While the SPLM must engender a conducive environment, opposition parties are equally responsible for pursuing

shared national interests, shouldering national responsibilities and developing credible alternative platforms that target a national constituency. Continued national and international support for political party development is essential.

Once the transition period commences, reviews of several key policy areas and resultant strategies will shape the political and economic structure of the emerging state and help determine the response to the high post-independence expectations that Southerners have placed on their young government. Decentralisation has been championed in rhetoric and neglected in practice. Examination of the current model is in order, as there remains a disproportionate focus on the central government and its capital city, in political, economic and development terms. Expectations for improved development and service delivery in the lives of ordinary Southerners will necessitate increased devolution to states and counties so as to avoid the very centre-periphery dynamic that lay at the heart of Sudan's national woes.

Post-CPA arrangements on oil revenue sharing between North and South have occupied a prominent place in political discourse, but far less attention has been paid to future revenue sharing policy within South Sudan. Given almost exclusive dependence on oil money, decisions as to how petrodollars are managed and shared may soon occupy a prominent place in national politics. Ownership rights, a nationwide revenue allocation model and a corresponding regulatory architecture must be established. If well administered, the oil sector can be a key instrument for decentralising authority, empowering state and local politics and accelerating development in the new South. If not, corruption and mismanagement could prompt national division and surrender another victim to the resource curse.

The transition period will be capped by the country's first independent elections. The electoral system must accordingly be reviewed so as to overcome the shortcomings of the 2010 polls by ensuring a level playing field and providing the best possible opportunities for diverse, accountable and genuinely representative institutions.

Fair or not, the soon-to-be independent Republic of South Sudan will for some time be judged in the context of its decision to separate. One-party rule, tribal-oriented politics or significant governance or internal security failures would generate criticism from sceptics who argued the region could not govern itself. The opportunity now presents itself to prove them wrong; it is up to the South Sudanese to take it.

## **RECOMMENDATIONS**

### **To the Sudan People's Liberation Movement (SPLM):**

1. Afford opposition parties and civil society a meaningful role in defining the forthcoming transition, including prompt agreement – through another meeting of the Political Parties' Leadership Forum – on an unambiguous method to review and endorse the draft transitional constitution produced by the "technical" committee, as well as broad endorsement for composition of the transitional governance structures and length of the transition period.
2. Display the party's seriousness about broad-based government by appointing opposition members to a significant number of minister and (new) deputy minister posts – for example, no less than 25 per cent – including to one or more of the influential ministries that the party has held close thus far: finance, defence, internal affairs, foreign affairs, legal and constitutional affairs or energy and mining.
3. Accelerate the transition from military movement to political party, including through instituting internal party reforms at state and national level (such as regular internal elections and primaries), comprehensively reviewing party structures and relationships and clearly distinguishing its party activities from its role in government.

### **To Southern Opposition Parties:**

4. Develop internal party development strategies, including sustainable financing, membership recruitment and training of party cadres; cultivate stronger relationships with constituents; develop alternative policy platforms that target a national constituency and distinguish themselves from the SPLM's; consider opportunities for coalition-building; and take full advantage of the opportunities provided by international experts supporting political party development.

### **To the Political Parties Leadership Forum:**

5. Agree on a timeframe for the transitional period that allows sufficient time to conduct a broadly consultative review process toward promulgation of a permanent constitution and, if so desired, a new census; in this regard, opposition parties should also consider the time necessary to become more competitive in the next elections and thereby cultivate a vibrant multi-party landscape; agree on the composition of the transitional governance structures, as well as the details of a permanent constitutional review process to be undertaken during the transition.

### **To the (forthcoming) Transitional Government of the Republic of South Sudan:**

6. Re-commit, upon review of the current decentralisation model, to devolving resources and authority to sub-national units of government, including:
  - a) funnelling greater and more consistent grants to state and county level;
  - b) strengthening their role in more participatory budgeting processes; and
  - c) establishing and empowering local government structures so as to bolster accountability among county and state executives.
7. Endorse a national petroleum policy, the principles of which will guide all aspects of South Sudan's oil sector development, management, practices and safeguards; and develop a balanced oil revenue allocation model and supporting mechanisms for management and regulation of the sector that invest national and state authorities in that framework.
8. Build on a broadly accepted petroleum policy to develop instruments for a reformed and transparent oil sector, such as oil revenue stabilisation and oil revenue trust funds; an independent fiscal and financial allocation and monitoring commission; an autonomous central bank; and participation in the Extractive Industries Transparency Initiative (EITI).
9. Create and task through the relevant ministries a committee to sensitise stakeholders to oil sector realities and secure broad support for the policy at state and local levels.

### **To the South Sudan Legislative Assembly (SSLA):**

10. Enact a new political parties law that establishes party rights and responsibilities, restrictions and registration criteria, including requirements for minimum national appeal.
11. Enact new public financing rules that regularly allocate public funds to qualified political parties for activities in both election and non-election years, including stipulations that clearly prescribe equitable public financing disbursement as well as recipient criteria, spending parameters and mandatory expense reporting.
12. Enact, following a broadly consultative review, a new electoral law that builds on lessons learned from previous elections and devises a system that provides a level playing-field and for genuine, accountable, political representation.

### **To International Partners/Donors:**

13. Re-calibrate relations with the SPLM to reflect the post-CPA reality, the changing political landscape and the need to cultivate greater democratic space both within and beyond the party.
14. Ensure that the future UN mission in South Sudan and its leadership position themselves so as to:
  - a) be a supportive but impartial partner to the people of South Sudan and its government, including, as part of a renewed relationship between the UN and the state, drawing a clear line between the government and the SPLM;
  - b) take a hard line with the government when necessary; and
  - c) be able to provide credible mediation among, and between, government and non-government actors within South Sudan, in both political and security contexts.
15. Accelerate current programming in support of political party development for all Southern parties, including through new support for public opinion polling, and continue similar support for SSLA members.

**Juba/Nairobi/Brussels, 4 April 2011**

## POLITICS AND TRANSITION IN THE NEW SOUTH SUDAN

### I. INTRODUCTION

South Sudan's political and security landscape has evolved considerably since the signing of the Comprehensive Peace Agreement (CPA) in 2005, but the most notable domestic changes may unfold now that the January 2011 self-determination referendum is complete. Upon assumption of the presidency in 2005, Salva Kiir adopted a conciliatory posture, bringing warring Southern factions together in a fragile union premised on lowest common denominators. Confounding sceptics – particularly in Khartoum – he kept the Southern ship afloat and moving in one direction through the referendum, though not without significant tests. Now that the electorate has made the choice for independence, a new chapter in Southern politics is in the making. The immediate domestic challenges are immense, and must be navigated amid changing political tides, persistent insecurity and a precarious humanitarian context.

This report addresses the post-referendum political landscape in South Sudan, the politics of negotiating the forthcoming transition and the objectives and attitudes of the principal political actors. It also examines the need for new approaches from political actors as guardians and administrators of a sovereign state with democratic aspirations. It does not address in great detail the need to develop civil society and the media or the critically important roles each can play in establishing an open political environment. This report also assesses a number of key policy areas that will confront a transitional government, particularly those that can foster inclusive governance and political pluralism amid high expectations. It does not attempt to address every one of the many challenges that will directly or indirectly affect these objectives.

### II. POST-REFERENDUM: A CHANGING POLITICAL LANDSCAPE

#### A. INTERNAL GRIEVANCES

Once the CPA was signed, war-weary citizens began looking to the new Government of South Sudan (GoSS), and by extension the ruling SPLM, to provide benefits and services. Their expectations – given a new peace, enhanced autonomy and a guaranteed oil-revenue stream<sup>1</sup> – were high. But the attention of the fledgling government was divided between national politics, CPA implementation and the domestic agenda: governance, security and service delivery. The GoSS made advances in establishing governing structures, adopting foundational legislation and initiating key reforms such as standardising a primary school curriculum and rationalising a bloated public sector payroll.<sup>2</sup> But faced with innumerable demands, the fledgling regional government struggled. Tangible peace dividends were few, state presence was often imperceptible, and the gap between “established” and “functioning” institutions was unmistakable. Government revenue did not trickle down to state or county level in a sustained, effective manner. Security was often weak and concrete gains on the gaping development agenda minimal.

Oft-cited complaints over the last six years also include corruption, pervasive tribalism and nepotism at all levels of government, the civil service, and the army, delays in payment of public sector salaries, ill-treatment by under-

<sup>1</sup> The terms “oil” and “petroleum” are used interchangeably in this report.

<sup>2</sup> The health and education sectors were among those that addressed the issue with relative success in 2009, though cleansing of the payrolls of the police and other security institutions has proven more difficult. Crisis Group Africa Report N°154, *Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan*, 23 December 2009. For more recent reporting on Sudan, see Crisis Group Africa Briefings N°76, *Negotiating Sudan's North-South Future*, 23 November 2010; and N°75, *Sudan: Defining the North-South Border*, 2 September 2010; and Africa Report N°159, *Sudan: Regional Perspectives on the Prospect of Southern Independence*, 6 May 2010.

resourced and sometimes predatory security forces<sup>3</sup> and lack of popular consultation by government representatives.<sup>4</sup> Some progress was made on security, but forcible disarmament campaigns, cattle rustling and ethnic tensions fuelled cycles of internal violence that increased disappointment and mistrust in the government.<sup>5</sup> The Juba-based government has existed for only six years, and its mixed track record must be considered in that context. But the grievances and disenfranchisement of average citizens nevertheless remain.

At the political level, SPLM domination and constraints on political space remain sources of long-simmering discontent. Opposition voices complain the CPA unduly elevated the SPLM and inadvertently sowed the seeds for one-party rule. They argue the accord's power-sharing formulas – which mandated 70 per cent SPLM control of the executive and legislative branches at both state and GoSS level – unfairly anointed it and undermined the development of multi-party democracy. The power-sharing provisions were intended to last until CPA-mandated elections midway through the agreement's interim period. But delays pushed the polls to April 2010, in effect ensuring SPLM control for most of the interim period. Because the executive arm of government is so strong in this young nation and because the SPLM enjoyed “partner” status in the CPA, many argue its control was even greater than it appeared on paper. Opposition parties accuse the SPLM of abusing its special position on negotiations with Khartoum so as to assert the need for its continued control of the South, a tactic they fear may be employed beyond July.<sup>6</sup>

Resentment also exists among some for what is perceived as an SPLM belief that it is solely responsible for “the struggle” and for Southern independence, overlooking the efforts that both preceded, and coincided with, the SPLA rebellion.<sup>7</sup> Pro-secession opposition parties also complain that the SPLM – originally a supporter of a united, though

reformed “New Sudan” – later co-opted the secession narrative as its own.<sup>8</sup>

Southern opposition parties argue that there is little or no distinction between GoSS and SPLM finances and that monetary support from abroad (the U.S. in particular) to both the party and the government has served to solidify the stranglehold of this “darling of the West”.<sup>9</sup> They believe the party monopoly has also hindered institution-building, as much-needed technocrats from outside the party have sometimes been marginalised, their skills idle or lost to emigration.

Sudan's long civil war (1983-2005) and generations of marginalisation at the hands of dominant regimes in Khartoum prompted many in the international community – the West in particular – to come to the defence of the South and the SPLM rebels, and in the end to secure the peace agreement. Most international partners then accepted SPLM dominance as a necessary condition to maintain a fragile peace and keep the CPA on track; they even looked the other way on occasion. This is not lost on the opposition, which perceives a continuing pro-SPLM bias among Western diplomats. An opposition leader warned: “The international community has been nourishing a greedy boy; once that boy becomes strong, he will be difficult to change”.<sup>10</sup> International partners must move swiftly to rebalance their relations in the light of new realities. Stability indeed remains critical in the emerging state, but recent events in North Africa suggest that long-term stability is best built on pluralist foundations. Failing to start on the right foot could undermine progress already achieved and contaminate the institutions and institutional values of the nascent government.

The April 2010 elections did stimulate some positive democratic activity and discourse at multiple levels in South Sudan. But irregularities and abuses also made a lasting impact among opposition candidates and minority constituencies, as well as among disenfranchised members of the SPLM. International observers reported a “high incidence of intimidation and the threat of the use of force”, “[widespread] state interference in the campaigns of op-

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<sup>3</sup> While both institutions have demonstrated important progress in recent years, a still inept police force and an often ill-disciplined army are among the most visible manifestations of state authority across much of South Sudan.

<sup>4</sup> Focus Group Research, National Democratic Institute (NDI), [www.ndi.org/sudan](http://www.ndi.org/sudan). For a detailed sampling of public opinion since the CPA, see NDI's public opinion research series, June 2005, October 2005, November 2005, February 2007, September 2007, April 2009 and September 2009.

<sup>5</sup> For an in-depth review, see Crisis Group Report, *Jonglei's Tribal Conflicts*, op. cit.

<sup>6</sup> The CPA agenda and the post-referendum arrangements will not be complete by 9 July and may in fact require several years of additional negotiation and implementation, thus giving a basis for concern that the SPLM might continue to cite its special relationship as justification for maintaining its dominance in government. Crisis Group interviews, Juba, Nairobi, March 2011.

<sup>7</sup> Crisis Group interviews, Juba, March 2011.

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<sup>8</sup> The SPLM officially supported the “New Sudan” concept, which envisioned a fundamental change in the governance of the country to allow for a united Sudan based on the equal rights of all citizens. However, this official position, championed by the late John Garang, bridged a deep ideological division within the movement between New Sudan supporters, and the many staunch separatists. The split came into sharper focus following Garang's death in 2005 and the accession of Salva Kiir to leadership. The issue has faded with the January 2011 vote for independence.

<sup>9</sup> Crisis Group interviews, opposition party officials, Juba, 2009-2011.

<sup>10</sup> Crisis Group interview, Juba, February 2011.

position candidates”,<sup>11</sup> arbitrary detention, strong-arming by the SPLM and direct interference in polling, all of which contributed to resentment. Allegations of fraud tainted final results in some areas and prompted standoffs, including in high-profile races.<sup>12</sup> A senior SPLM party official later castigated reports by The Carter Center and other international observers as “lies” – the kind of language that has further inflamed party opponents.<sup>13</sup>

In the most acrimonious of reactions, three individuals initiated armed insurrections of varying intensity in the wake of the elections. Jonglei state gubernatorial candidate George Athor,<sup>14</sup> South Sudan Legislative Assembly (SSLA) candidate from Jonglei’s Pibor County, David Yauyau, and Gatluak Gai, who hoped to secure a county commissioner appointment in Unity State, all expressed their displeasure and sought to leverage bargaining power by organising forces and mounting attacks against SPLA and government installations in their respective areas.<sup>15</sup>

## B. PRE-REFERENDUM RECONCILIATION EFFORTS IN 2010

In advance of the referendum, the GoSS and SPLM took a series of steps to ensure South-South harmony, some of which also set the stage for the post-referendum period. After negotiations with the aforementioned insurrection-

ists bore little fruit, President Kiir granted general amnesties to Athor, Gai, and other armed actors, most notably controversial military figure Gabriel Tang-Ginye, in exchange for laying down their arms and joining the SPLA.<sup>16</sup> Tang-Ginye was even “welcomed home” from Northern Sudan in a celebration at the residence of the vice president. The measure was clearly aimed at pre-empting spoilers or internal divisions – which could be stoked by Khartoum – from threatening any aspect of the all-important referendum. A 5 January ceasefire with Athor held through the referendum but would not last.<sup>17</sup>

With similar objectives in mind, the GoSS and SPLM also convened a five-day all-parties’ conference in October 2010 to seek political consensus ahead of the referendum.<sup>18</sup> In reality, the scope was considerably broader, underpinned by a “unity in diversity” theme, and it too proved to be a politically adept move by the SPLM to patch things up ahead of the vote. Opposition voices angered by the April elections and feeling left out of the broader CPA process were given a platform to express themselves on the referendum and, more importantly, the way forward in the likely event of secession. Lasting or not, first steps

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<sup>11</sup> Preliminary statement, The Carter Center, Election Observation Mission, 17 April 2010.

<sup>12</sup> Results of hotly contested gubernatorial races in Central Equatoria and Unity state were among those questioned. Both governorships were awarded to incumbent SPLM candidates in the end, despite tense standoffs over evidence that raised credible questions. The official SPLM candidate, Taban Deng, was declared winner of the gubernatorial race in Unity state, defeating the independent candidate, Angelina Teny. Alfred Ladu Gore stood as an independent in Central Equatoria; the SPLM reluctantly backed Clement Wani, a former Sudan Armed Forces (SAF) major general who was appointed governor by the late SPLM/A commander John Garang as a means of appeasement. Wani was declared the winner, despite questions about the credibility of results, particularly in his home county of Terekeka.

<sup>13</sup> Crisis Group interview, senior SPLM party official, Juba, March 2011.

<sup>14</sup> Athor (a Dinka Padeng from Canal [Khorfulus] county) left the army, where he had served as a division commander as well as deputy chief of staff for political and moral orientation, to contest the election as an independent. A senior SPLA official reported the army strongly advised him against his candidacy. Crisis Group interview, Juba/Bilpam, February 2011.

<sup>15</sup> Gai and Yauyau both levelled accusations of fraud against the SPLM and demanded positions in their respective state governments. Athor’s original demands included dissolving the government and redoing the elections. Despite ceasefire agreements, integration of forces has yet to take place, and Athor remains active from his base in Northwest Jonglei state.

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<sup>16</sup> A Nuer from Fangak County in Jonglei state, Gabriel Tang Gatwich Chan (“Tang-Ginye”) was a Southern militia leader loyal to Khartoum who was appointed a major general in the SAF in 2004. His former – and predominantly Nuer – militia comprised the majority of the SAF component of the Malakal Joint Integrated Unit (JIU) and maintained allegiance to him rather than the JIU command. His visits to Malakal in 2006 and 2009 caused violence, and many Southerners believe they were engineered to destabilise. The GoSS issued a warrant for his arrest. Despite his not being involved in post-election rebellions, President Kiir’s amnesty extended to Tang-Ginye, who agreed to rejoin the SPLA in October 2010, although he subsequently returned to Khartoum and he has not been re-integrated. Reports in March 2011 indicate that he may have returned to the South, along with armed men, though the size and exact location of his forces, as well as his intentions, remain unclear. “Gabriel Tang Gatwich Chan (‘Tang-Ginye’)”, Sudan Human Security Baseline Assessment (HSBA), Small Arms Survey, March 2011.

<sup>17</sup> The ceasefire, signed just days before the referendum, included an agreement, schedule, and assembly points for integration of Athor’s forces into the SPLA, as well as indirect stipulations regarding the militias commanded by Gai and Yauyau. Crisis Group interview, UN Mission in Sudan (UNMIS) security official, Juba, March 2011.

<sup>18</sup> The All Southern Sudanese Political Parties Conference was convened 13-17 October 2010 in Juba, under the theme: “Southern Sudan United for Free, Fair, and Transparent Referendum”. 23 Southern political parties participated and endorsed the resolutions. Additional participants of note included Sudan’s Second Vice President Ali Osman Taha, Kenya’s former President Daniel Arap Moi, CPA negotiator Lazarus Sumbeiywo and the chairman of the African Union High Level Implementation Panel (AUHIP), former South Africa President Thabo Mbeki.



were taken toward reconciliation with important critics who knew they possessed a degree of leverage, notably Lam Akol (SPLM-Democratic Change) and Bona Malwal (South Sudan Democratic Forum). Resolutions were adopted that loosely defined a post-referendum roadmap. These included a constitutional review process, with a National Constitutional Review Commission to examine the Interim Constitution, and an all-party constitutional conference to agree on a transitional government and prepare elections for a constituent assembly mandated to adopt a permanent constitution.<sup>19</sup>

In effect, the convention and its agreed resolutions laid the groundwork for overcoming some of the bitterness generated during the elections and forging a new state in line with the shared vision of a multi-party, multi-ethnic, multi-religious democracy.<sup>20</sup> But the sincerity of those pledges and their democratic sentiments would only be determined in due time.

### C. SUPPRESSED VOICES EMERGE

For the most part, election-related resentment and the broader set of grievances that accumulated during the CPA period were kept in check: restrained but not forgotten. The de facto unanimity that carried Southerners through the referendum was more a product of collective opposition to the National Congress Party (NCP), the long-time ruling party in Khartoum, and the shared objective of independence than of any inherent harmony among Southern communities or political factions. Most recognised, particularly as the referendum approached, that a fractured South would play into Khartoum's hands and could threaten the long-awaited opportunity for self-determination. The prevailing rationale was that internal matters could be addressed once the vote resolved the South's future status.

But as soon as the referendum results were evident, attention turned to the transitional agenda, and political fissures began to appear. Likewise, the ceasefire with Athor unravelled in February 2011 in a series of deadly clashes in northern Jonglei. Other militias – some that may be forging links with Athor – asserted themselves in northern Unity and southern Upper Nile states, challenging GoSS capac-

ity to manage conflict and prompting an army response.<sup>21</sup> In many instances, the primary objective appears to be leveraging favourable terms of integration for one's forces (of Southern origin) into the SPLA.<sup>22</sup> However, such objectives overlay a web of deep-rooted ethnic tensions and competing political objectives that exacerbate hostilities and draw in local communities. Thus, a convergence of dissent from both the political and military spheres presents a problem for the ruling party.

The recent fighting, including a sometimes heavy-handed SPLA response, risks continued instability, poses serious danger to civilians (many have already been killed in the crossfire) and threatens further polarisation between eth-

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<sup>21</sup> The SPLA clashed on numerous occasions in early 2011 with militia forces in Mayom and Abiemnom counties, Northern Unity state, as well as in several locations in Upper Nile state. Militias active in Unity state – many of whom are Southerners currently serving in the SAF – include forces loyal to Gatluak Gai, Bapiny Monytuel and James Gai Yaoch (all from Nuer communities of Unity state). Monytuel – a ranking Southern officer in the SAF – claims to have recently formed a new alliance with Athor and several of the other active militias and has referred to Athor as his “commander”. Crisis Group telephone interview, Sudan-based journalist, March 2011. In Upper Nile state, predominantly Shilluk militias led by commander Olonyi – who may also have links to Athor – clashed with the SPLA on several occasions, the manifestation of ongoing tensions between elements of the Shilluk and Dinka communities as well as the SPLM/A. In early March, fighting took place in Panyikang county and later in the state capital Malakal, resulting in significant casualties, including of civilians. Subsequently, unconfirmed reports circulated of serious human rights violations by both parties, particularly as part of the SPLA follow-on operations. Crisis Group email correspondence, international official. UNMIS documentation obtained by Crisis Group. On 10 March, former SAF-aligned militia leader turned GoSS presidential adviser on border and traditional affairs Abdul Bagi (a Dinka from Northern Bahr al Ghazal) reportedly announced his own rebellion against the GoSS, criticising President Kiir and demanding greater Muslim representation in government. Bagi claimed several thousand SPLA defectors had joined him, which the SPLA denied. “South Sudan says none of its soldiers joined former presidential adviser”, *Sudan Tribune* (online), 24 March 2011. Unconfirmed reports in late March indicated defection of several additional officers, including most notably SPLA Maj. General Peter Gadet (a Bul Nuer from Unity state), with ties to former South Sudan Defence Forces leader Paulino Matiep (Bul Nuer, Unity state). For more background on recent militia activity, see “Small Arms Survey”, Sudan Human Security Baseline Assessment, [www.smallarmssurveysudan.org](http://www.smallarmssurveysudan.org).

<sup>22</sup> Incomplete integration of Other Armed Groups (OAGs) into formal army structures has caused problems since the signing of the CPA, generating disgruntled combatants, uncertain loyalties and shadow chains of command. It remains a threat to stability and a contributing factor to current militia activity. For a more in-depth review of integration issues, see Crisis Group Report, *Jonglei's Tribal Conflicts*, op. cit.

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<sup>19</sup> A summary of the resolutions was included in a Final Communiqué. See Appendix B below for the portions dealing with the way forward in the event of secession. An opposition proposal to form a new government prior to the referendum was rejected. Minor differences in the adopted resolutions and the communiqué appear to have caused some confusion.

<sup>20</sup> An opposition leader said the conference was a “success in pinning them [SPLM] down”. Crisis Group interview, opposition party leader, Juba, February 2011.

nic groups and their political leaders.<sup>23</sup> The post-election rebellions are only the latest in a pattern not unfamiliar in a still militarised region where disgruntled actors resort to arms to extort influence or achieve ends they believe cannot be achieved through other channels.<sup>24</sup> Far more experienced in military administration than civilian government, the SPLM/A sometimes falls back on what it knows best, particularly in times of crisis.<sup>25</sup> It consequently tends to grip political control tighter as well. Finding a way to manage ethno-regional and political diversity and build a common national identity requires a more nuanced strategy.

The post-referendum political landscape will continue to evolve, as attention increasingly shifts away from the old adversary in the North to a new dispensation at home. As such, elements outside the government and the mainstream SPLM recognise a window of opportunity in which relationships between, and among, state and non-state actors may be redefined. The prospects for peace, democracy and development in South Sudan may depend on the tenor of the transition period, and that may turn in large part on the willingness of SPLM leadership to open political space and make room for others.

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<sup>23</sup> Athor's fighters clashed with government forces in February 2011, resulting in more than 200 deaths (including civilians) and displacing thousands. Both sides traded blame for initiating the clashes. Senior SPLA officials say that Athor should have cut a deal while he could, as they are no longer accepting demands. Clashes continued into March, resulting in combatant and civilian casualties and displacement of several thousands to nearby counties, who are now in need of humanitarian assistance. An UNMIS security official confirmed: "They [SPLA] are now hunting him [Athor]". While UNMIS access to the area has been restricted, officials express serious concern about the grave threat to civilians presented by both sides' indiscriminate use of force; numerous (unconfirmed) reports have been received citing extrajudicial killings and the targeting of civilians in both Northern Jonglei and southern Upper Nile states. The level of support for Athor among the local population is uncertain, though officials report some of his fighters are defecting, others returning home. Crisis Group interviews, senior SPLA official, UNMIS security official, Juba, March 2011. Crisis Group email and telephone correspondence, international officials, February and March 2011.

<sup>24</sup> Crisis Group interviews, Juba, February 2011. Given the militarisation of the population, the availability of weapons and divisions among both army and civilian constituencies, there remains considerable potential in many parts of the South for individuals and groups to express grievances or pursue political ends by way of arms.

<sup>25</sup> Crisis Group telephone interview, UN official, March 2011.

### III. TRANSITIONAL GOVERNMENT

The result of the self-determination referendum was both unmistakable and broadly endorsed, and the road to international recognition in July 2011 is now clear. There is cause for celebration in South Sudan but unfortunately little time for it. The interim institutions established by the CPA – the Presidency, the Government of National Unity (GNU) and the series of joint governance commissions – will cease to exist in three months. Southern civil servants, members of the National Assembly and other appointed officials in Khartoum and Northern states will return to the South. The emerging Republic of South Sudan must now establish a transitional government to usher in the independent era and guide it to a permanent constitution and new elections. Decisions as to both the transitional and permanent systems of government, structures, operations and centres of authority will require broad endorsement if they are to last. The challenges ahead should not be underestimated.

#### A. NEGOTIATING THE TRANSITION

As soon as referendum results were announced, the SPLM and the opposition knocked heads over competing visions for the transition period. The SPLM, emboldened by its overwhelming April 2010 election victories, is confident in its right to retain its mandate until 2015 on the basis of a constitutional provision that the Interim Constitution shall remain in force to govern an independent and sovereign South Sudan, in the event of a vote for secession.<sup>26</sup> The party asserts that the GoSS will become the government of the new state, and the sovereign powers previously held by the national government in Khartoum must be re-appropriated accordingly.

The opposition parties seek to break that mandate, and not only because they see the 2010 elections as deeply flawed and lacking legitimacy. They argue the "interim" GoSS institutions – as established through the CPA, the Interim National Constitution and the Interim Constitution of South Sudan – should cease to exist on 9 July. They envision a complete break with the CPA period and that the Republic of South Sudan requires new sovereign institutions to guide it through a transitional period and a constitution-making process that charts the course for new elections and a permanent system of government. They also argue that, unlike the Interim National Constitution, the South's Interim Constitution implies no intention of (and thus makes no specific provisions for) a continuation of the tenure of existing offices in the new state. While the general argument may warrant review, this particular

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<sup>26</sup> Interim Constitution of Southern Sudan, (2005), Article 208 (7).

justification appears relatively flimsy in light of the interim document's clear provision that it, and by implication its institutions and offices, shall remain in force in the event of secession.<sup>27</sup>

The opposition supports a series of proposals that define the structure of, and its ideal share in, a transitional government. Most seek to frame the discussion not in terms of being "given" a role in government by the SPLM, but of Southern political parties together agreeing to a transitional structure.<sup>28</sup> Opposition leaders threaten that if the SPLM is not open to genuine democracy, they will boycott the new government and elections in an attempt to expose the SPLM and invite pressure from South Sudan's democratic allies abroad.<sup>29</sup> Some also imply that a lack of political consensus could invite new rebellions, arguing that it was largely the SPLM's style of governance that forced rebels like Athor to the bush, and that it could happen again.<sup>30</sup>

Though some SPLM members see merit in a moderately conciliatory approach, a majority harbour considerable resentment and scorn for the opposition's stance, and bring a "we don't owe you anything" mentality to negotiations.<sup>31</sup> They demand recognition of the mandate given to them in the 2010 elections and, despite the October commitments, see any sharing of government positions not as an obligation but as a good faith gesture.<sup>32</sup> Further signalling the party's stance on opposition demands, the SPLM political

bureau issued a communiqué that declared "it is entirely within the discretionary powers of the elected President of GoSS to determine the composition of the government in the New State. Notwithstanding the desirability of forming a [broad]-based government".<sup>33</sup>

Given the fluidity of political realities in the North, the fact that official recognition of independence is outstanding, and militia activity is resurgent in the South, some paranoia about Northern motives remains. By extension, this translates into mistrust of political opposition and a prioritisation of stability that prevents a full embrace of a pluralistic political environment.<sup>34</sup>

## B. LENGTH OF TRANSITION PERIOD

Among the biggest questions to be answered is the length of the transition, and therefore the date for new elections. The SPLM appears not to have committed to a position, though sentiments are generally for four to five years dating from the April 2010 elections mandate.<sup>35</sup> However, some have even suggested incumbents should govern for a new five-year term beginning on 9 July 2011, which appears to contradict the Interim Constitution justifications otherwise employed by many party leaders. Opposition actors are suggesting eighteen to 21 months, though this appears flexible, as the objective of preventing the SPLM from clinging to a pre-referendum elections mandate appears more important than the exact duration.<sup>36</sup> A case can be made, however, that it is in the interest of both the SPLM and the opposition parties to agree on a longer transitional period, possibly four years.

First, national politics, CPA implementation, the April 2010 elections and the January 2011 referendum have dominated the political arena and drawn the focus away from the long list of domestic issues that demand attention and resources. It is now time to govern and provide services. Secondly, the last elections cost nearly \$200 million nationwide.<sup>37</sup> There is likely to be little international

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<sup>27</sup> Crisis Group interviews, opposition party members, Juba, February 2011. By comparison, opposition position papers cite Article 69 of the Interim National Constitution, "Interim Provisions for the Tenure of Office of the President and First Vice President", which notes: "(1) Should the outcome of the referendum on self-determination confirm unity, the President of the Republic and the First Vice President shall complete the tenure of their offices. (2) In the event of a vote for secession by the people of Southern Sudan, the President of the Republic shall continue in office if he/her is from the North; however, if the President is from the South he/she shall be deemed to have resigned and the First Vice President shall assume the office of the President of the Republic to complete the tenure to the next elections".

<sup>28</sup> An opposition official argued: "This term 'giving' is one we will not accept".

<sup>29</sup> Such threats were made known in advance of the February meeting of the Political Parties' Leadership Forum. Crisis Group interviews, opposition party members, Juba, February 2011.

<sup>30</sup> Crisis Group interview, opposition party leader, Juba, February 2011.

<sup>31</sup> Crisis Group interviews, SPLM members, February 2011. Opposition party figures also report a willingness to work with Kiir and more often encounter friction when "hardliners" from the political bureau are involved. Crisis Group interviews, Juba, February 2011.

<sup>32</sup> Crisis Group interviews, Senior SPLM officials and party members, Juba, February, March 2011.

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<sup>33</sup> SPLM Political Bureau Meeting Communiqué, no. 1/2011, [12-15 February] 2011.

<sup>34</sup> This issue is addressed further in Section V.

<sup>35</sup> The terms of the Southern Sudan Legislative Assembly and the president are to be five years commencing from the date of its first sitting/assumption of office. Part Five, Chapter I, Article 65(1), Part Six, Chapter II, Article 102, Interim Constitution of South Sudan (2005). Some SPLM officials report willingness to compromise with the opposition on a period of possibly three years. Crisis Group interviews, Juba, January, February 2011.

<sup>36</sup> The SPLM Political Bureau Communiqué, op. cit., rejected "insinuations by certain quarters which call into question the legitimacy of GoSS institutions after 09 July 2011".

<sup>37</sup> "Race Against Time: The Countdown to the Referenda in Southern Sudan and Abyei", The Rift Valley Institute, October

appetite to fund another round soon, as well as a push for the GoSS to substantially contribute to the cost when it is held. Another sizeable financial allocation for yet another electoral process is not necessarily the best use of the country's limited resources, especially on the heels of a referendum on which the GoSS alone spent some 145 million Sudanese pounds (\$52 million).<sup>38</sup> Thirdly, a thorough constitutional review process and a new census as called for in the October roadmap may well take several years to complete, something proponents of a shorter transition appear not to have taken into account.

Most important from an opposition perspective is that it may be better positioned to win seats a few years from now than it is in the immediate term. Opposition parties are fairly weak at present; the single contender for GoSS president captured only 7 per cent of the vote in April 2010, and together the opposition parties acquired only a handful of SSLA seats.<sup>39</sup> If they perform poorly again in the new South Sudan's first elections, the consequences could be devastating both for the parties and for the development of a strong multi-party system. Waiting could prove wise. The glow of independence will eventually fade, the SPLM will have time to be judged, and its constituents may become disaffected should their expectations go unmet. Opposition parties could meanwhile develop alternative platforms to demonstrate their relevance and viability. The absence or decreasing relevance of a common adversary in Khartoum may also weaken the SPLM's grip over time. Depending on internal dynamics and President Kiir's future in particular, it is conceivable the SPLM may change significantly or even splinter. This too would open up the field and present a greater opportunity for opposition parties to gain a foothold. But these kinds of changes are not likely in just eighteen months.

### C. BROAD-BASED GOVERNMENT AND POLITICAL ACCOMMODATION

President Kiir and other senior SPLM officials have pledged that the ruling party intends to establish a more broad-based transitional government after the CPA expires in July.<sup>40</sup>

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2010. New elections in the South may not cost as much as 2010, but they will be expensive.

<sup>38</sup> Crisis Group email correspondence, UNIRED (United Nations Integrated Referendum and Electoral Division) official, January 2010.

<sup>39</sup> The opposition's limitations are further exacerbated by shortcomings in the electoral system; see Section VI.D for a fuller explanation of that system, the April 2010 results and reforms that might yield broader representation.

<sup>40</sup> Salva Mayardit Kiir, "Message during the announcement of referendum results", public address, Juba, 8 February 2011. The SPLM secretary general echoed: "We also have a plan that after July 9 2011, the GOSS President will form a 'broad-based

The opposition is not keen on the references to "after" 9 July, as it wants negotiations now toward a new government that will assume power on that date. At present, SPLM members occupy the presidency and vice presidency, 88 per cent of ministerial posts, and 94 per cent of the legislative assembly seats including the speakership, and the party commands the loyalty of the army leadership. Relaxing this chokehold on institutions of influence is both a means of political accommodation and a compulsory first step toward pluralist government.

The need for political accommodation is a reality: some is necessary and appropriate for achieving a pluralist government; some may be necessary during the transition to ensure stability, though such practices should gradually begin to reflect democratic ideals. Political accommodation need not merely be appeasement, which in any event is not a genuine avenue to a pluralistic environment. Stability and ethnic balance will undoubtedly dictate some forms of accommodation in the immediate term, but the GoSS must gradually wean itself off the all-too familiar practice of awarding government positions and largesse to strongmen who incite or threaten insecurity or spoilers who might otherwise pledge their loyalty to the highest bidder (historically Khartoum). The GoSS should also increasingly make appointments based on competence rather than politics or SPLM loyalty, particularly in the civil service where skilled administrators are few.

Voices within the ruling party and the opposition are calling for a lean government, but while that may be a shared ideal, the political reality is that a considerable number of SPLM and opposition actors will need to be accommodated with first and second-tier positions, at least in the immediate term, as stability concerns remain paramount.

#### 1. Revised Executive Structure

A cabinet re-shuffle is politically necessary and the simplest way both to diversify the executive and accommodate prominent opposition figures. While appointments to these high-profile posts are already the topic of much rumour and debate, little is certain for now. At present, there are 32 ministers, an expansion by one third from a pre-elections cabinet of 24.<sup>41</sup> Not surprisingly, an overwhelming majority are SPLM card-carriers.<sup>42</sup>

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government that will include the political parties that have been opposed to the SPLM and to the GOSS. This is to ensure an inclusive process and to ensure stability in southern Sudan ...". "SPLM to form 'broad-based government' after independence", Sudan Radio Service, 3 February 2011. Crisis Group interview, Pagan Amum, Juba, January 2011.

<sup>41</sup> The cabinet has 32 ministers: peace and CPA implementation; office of the president; cabinet affairs; SPLA and veteran

For a post-CPA broad-based government, opposition parties have recommended slashing the number of ministries to twenty and a power-sharing arrangement that includes a between 40 and 50 per cent share of the national executive.<sup>43</sup> They are also focused on making inroads at the state and local level and thus demand the same share of gubernatorial and county commissioner seats. At present, commissioners (still appointed) have arguably the most unchecked authority at any level of government, often possessing near total control of resources from a position nearest to constituents. Opposition strategists are increasingly cognisant that this is where voting constituencies are built and where they can win seats in the future. 50 per cent power-sharing is an unrealistic target in the current climate but in effect a bold starting point from which to negotiate, as acknowledged by the parties.<sup>44</sup>

As part of a revised executive, the GoSS is considering expanding the cabinet to include deputy ministers, a structure similar to that of the government of national unity in Khartoum. Its idea is that this would make available a considerable number of additional senior posts with which SPLM and opposition figures could be accommodated.<sup>45</sup> The SPLM could display its seriousness about broad-based government by appointing opposition members to a significant number of minister and deputy minister posts – say, no less than 25 per cent – including one or more of the influential portfolios that it has held close thus far; finance, SPLA affairs (defence), internal affairs, regional cooperation (foreign affairs), legal and constitutional affairs, or energy and mining (oil).

At this stage, the SPLM appears reluctant to agree to power-sharing formulas of any kind, and most of its senior officials – harbouring a “winner-takes-all” mentality – indicate no intention of giving up high-profile ministries.

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affairs; legal affairs and constitutional development; regional cooperation; internal affairs; labour and public service; parliamentary affairs; finance and economic planning; roads and transport; agriculture and forestry; animal resource and fisheries; cooperatives and rural development; energy and mining; commerce and industry; wildlife conservation and tourism; water resources and irrigation; housing and physical planning; education; health; information; communications and postal services; gender, social welfare and religious affairs; culture and heritage; investment; human resource development; environment; higher education, science and technology; youth, sports and recreation; humanitarian affairs and disaster management; and one minister without portfolio.

<sup>42</sup> Fourteen ministers are elected members of the SSLA.

<sup>43</sup> Opposition position papers, obtained by Crisis Group. Crisis Group interviews, opposition leaders, Juba, February 2011.

<sup>44</sup> Crisis Group interviews, opposition party members, Juba, February, March 2011.

<sup>45</sup> This would, ideally, be accompanied by a reduction in the number of ministers and ministries.

One such figure asked rhetorically: “Why would I give away an important ministry that they [the opposition] will merely use against me?”<sup>46</sup> But until this attitude changes, the opposition will continue to see SPLM overtures as purely cosmetic.<sup>47</sup>

Upon international recognition, South Sudan’s existing diplomatic presence in some fifteen nations will convert to embassy status. Its diplomatic presence will also expand, albeit gradually, across the globe. That means ambassadorships and other prominent embassy posts (executive appointments) will also be available, a prospect that has already generated considerable interest.

## 2. Revised Legislature?

The unicameral SSLA currently has 170 members, its seats allocated as follows: 60 per cent for members elected from geographical constituencies, 25 per cent for women and 15 per cent for political parties on the basis of proportional representation.<sup>48</sup> A variety of proposals have been floated in light of calls for more inclusive government. Some seek to maintain something relatively similar to the existing design, at least for the transition period. Others see merit in ultimately creating institutions similar to those that the South previously fought to establish at the national level so as to better balance power and thus have suggested creating a Council of States for South Sudan.<sup>49</sup>

Options are being considered in light of the demand to accommodate political actors, particularly those returning from the North. The prevailing SPLM vision is to temporarily expand the assembly – for the duration of the transition period – to absorb the 116 elected Southern members

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<sup>46</sup> Crisis Group interview, senior SPLM party member, Juba, February 2011. Another SPLM official remarked: “We cannot give away internal affairs; the other parties can’t be trusted to handle George Athor”. Crisis Group interview, Juba, 10 March 2011.

<sup>47</sup> A lean cabinet is preferable in the long term, and parameters for size and composition of the executive may ultimately be enshrined in a permanent constitution if so desired. For example, Kenya’s 2010 constitution stipulates a cabinet of “not fewer than fourteen and not more than 22 Cabinet Secretaries” (Ministers), Article 152 (1)(d). Uganda’s 1995 constitution specifies that “the total number of Cabinet Ministers shall not exceed 21 except with the approval of Parliament”, and the total number of assistant ministers “shall not exceed 21 except with the approval of Parliament”, Articles 113-114.

<sup>48</sup> The National Elections Act (2008), Article 30.

<sup>49</sup> The Council of States is the upper chamber of the national legislature in Khartoum, composed of two representatives from each state, who are elected by the 25 state legislatures. It is meant to pay special attention to interests and concerns of states and decentralisation but in practice has exercised little influence and convenes infrequently.

of the national parliament in Khartoum.<sup>50</sup> The opposition instead favours dissolving both the SSLA and state assemblies and re-constituting them at their current size but, again, with 40 to 50 per cent of the seats earmarked for opposition members.<sup>51</sup> Any move to oust recently-elected members, however, is sure to generate outrage and could result in even greater political obstacles (and conflict), and thus the opposition's reconstitution proposal seems unlikely to be embraced.

Expansion may be workable for the transition period, but the drawbacks to more permanent expansion are evident. Increasing the assembly would reinforce a centralisation of power in Juba. An outward shift in authority, to states and counties, and a strengthening of local politics would be a more desirable direction in which to move. Furthermore, additional legislative seats would not necessarily yield better governance; they might only produce more political actors and additional public expenditure.<sup>52</sup> If the measure is deemed politically necessary in the transition period, the architects must remember that once the legislature has been expanded, it will be difficult to amass the political will to reverse it.

Whatever composition is agreed upon should be spelled out in detail in the transitional constitution, in addition to competencies and decision-making powers, particularly with regard to special transitional tasks. During the transition, a series of models will then be considered for a more permanent legislative framework. A federal system based on existing state structures is likely.<sup>53</sup>

#### D. TRANSITIONAL CONSTITUTION

As the interim period comes to a close, Southern leadership has concluded that a revised constitutional framework is necessary to lay the "foundation of the new order".<sup>54</sup> While the legal obligation may only be for technical amend-

ments to enable the emergence of a sovereign state,<sup>55</sup> there appear to be at least two political objectives. First, a transitional document will accompany whatever kind of transitional government emerges and clearly define its powers and duration. As such, the process of revising the interim constitution has generated considerable political wrangling in recent months, as it is the vehicle through which the transition will be defined, and thus to some extent, through which political space might be carved out. Secondly, a new constitution represents a break with the past and will become another tangible assertion of the reality of Southern independence.<sup>56</sup> It will guide the nascent republic beyond 9 July until a permanent constitution can be devised and promulgated at the end of the transitional period. Ideally, it will also detail the broad consultative process that will culminate in that permanent constitution.

In a 21 January 2011 presidential decree, President Kiir appointed a Technical Committee to Review the Interim Constitution of Southern Sudan, tasking it to transform that document from a sub-national constitution to one of an independent state.<sup>57</sup> In theory, this requires little more than a series of minor amendments to the existing text. The committee would remove all references to national institutions, representation and obligations and vest Southern Sudanese institutions with the exclusive powers previously exercised by Khartoum. The initial twenty-member technical committee was comprised of ministers, lawyers and other relevant experts and chaired by Legal Affairs and Constitutional Development Minister John Luk Jok

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<sup>50</sup> This includes 96 elected members of the National Assembly, and twenty members of the Council of States. Some of these were encouraged by the party to stand at the national level. This would duplicate representation in many Southern constituencies.

<sup>51</sup> Proportional representation is a start in the current climate but may ultimately not be as valuable as geographical seats on which a constituency support base can be built. See Section VI.D for more details.

<sup>52</sup> Crisis Group email correspondence, Aly Verjee, senior researcher, Rift Valley Institute, February 2011.

<sup>53</sup> A federal system may be accompanied by establishment of an additional legislative house in which states are officially represented. Crisis Group interviews, international legal expert, electoral expert, Juba, March 2011.

<sup>54</sup> "South Sudan's Kiir urges Abyei to be patient", Agence France-Presse (online), 24 January 2011.

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<sup>55</sup> Article 208 (7) of the ICSS states: "If the outcome of the referendum on self-determination favours secession, this Constitution shall remain in force as the Constitution of a sovereign and independent Southern Sudan, and the parts, chapters, articles, sub-articles and schedules of this Constitution that provide for national institutions, representation, rights and obligations shall be deemed to have been duly repealed".

<sup>56</sup> GoSS oversight for this process lies with the Southern Sudan 2011 Taskforce. Established in February 2010, it is a mechanism through which the GoSS could prepare for the referendum and the post-CPA transition, as well as coordinate such preparations between government entities and with international partners. Its work was sub-divided into three areas: Referendum Management; Post-Referendum Arrangements; and Preparing GoSS for the Post-Referendum (era). The work of the first area is complete; the second has happened largely outside the taskforce framework. The third sub-committee is tasked with constitutional development. Legal Affairs and Constitutional Development Minister John Luk (SPLM) has the lead role on this agenda. Cabinet Affairs Minister Kosti Manibe (SPLM) and Parliamentary Affairs Minister Michael Makwei (SPLM) also play important roles.

<sup>57</sup> Presidential Decree no. 002/2011, Office of the President, GoSS, 21 January 2011. The ICSS acted as the supreme law of the region, incorporated the CPA provisions and functioned in compliance with the Interim National Constitution, which governed the CPA interim period beginning in July 2005.

(SPLM). All were said to have experience in drafting the interim constitutions or to possess other relevant functional expertise.

The committee was mandated to deliver a draft to the president no later than 25 April, which would then be presented to the legislative assembly for deliberation. This timeframe would meet the legislative requirement for constitutional amendments and ideally allow enough time for broader political consultation before adoption and the day of independence (9 July 2011), when the transitional constitution should enter into force. However, in political terms, Kiir's decree was not so straightforward. It appeared to disregard the outcomes agreed at the October 2010 Political Parties Conference, which included establishment of a "National Constitutional Review Commission" and convening of an all-party constitutional conference that would agree on a constitutional system, a broad-based transitional government and the duration of the transitional period.<sup>58</sup> Following establishment of the committee, prominent members of the opposition immediately cried foul, calling the president's move a unilateral breach of that agreement and drawing attention to the body's overwhelmingly SPLM composition.<sup>59</sup>

Despite the decree's stated commitment to inclusivity, all but one appointee were SPLM members. Party officials argued that the committee's mandate is technical, and members should be acting in that capacity rather than in any political capacity. The opposition did not accept this, concerned that October's collaborative spirit was already succumbing to one-party domination, and called on President Kiir to correct course. The single opposition-party appointee, Culture and Heritage Minister Gabriel Changson (United Democratic Salvation Front-Mainstream), refused to participate.<sup>60</sup> Those leading the technical process argued that their mandate is driven by the existing constitution and pointed to the decree's request to present options for a *subsequent* process leading toward a permanent constitution, during which a broader set of stakeholders would be consulted.

The move was a clear misstep, one the SPLM initiated within days of the referendum but appeared not fully prepared to manage politically.<sup>61</sup> There was no chance an unannounced shift from the October roadmap to a "technical committee" approach would be accepted, particularly not without advance consultation and clear guarantees as to the structure and timing of a broader follow-on consultation process.

Faced with vocal opposition, the SPLM attempted to massage its position, but confusion ensued. Kiir publicly welcomed broader participation, though he did not immediately define it. Some party officials and members of the committee began to expound that its work could feed into a broader constitutional conference as agreed, while others appeared defensive, arguing the opposition parties misunderstood the process and did not need to have any role in a wholly technical exercise. Despite the objections, the work began.<sup>62</sup> The chair, John Luk, attempted to clarify a difference between a narrow technical process and a broader permanent one that might involve substantive changes to the system of government and pledged that the SPLM would "not act alone, and it will not act in isolation" from other political parties.<sup>63</sup> But the damage was done and opposition suspicions reinforced.

There is a clear desire within the SPLM to move swiftly and undertake a more comprehensive process later, when a permanent constitution is drafted.<sup>64</sup> This is not necessarily bad policy, if powers are not unfairly usurped and if the subsequent process is genuinely inclusive. However, political management has been bad, and thus a tension exists between a legitimate desire to expedite and reasonable concerns that the SPLM could use a closed process to cement its control.<sup>65</sup>

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<sup>58</sup> Final Communiqué of the Southern Sudan All Political Parties Conference, 17 October 2010.

<sup>59</sup> Civil society groups also objected and called on the GoSS to reconsider the composition of the committee in light of the conference resolutions. "Civil Society Joint Statement on the Referendum Process and the New Nations 'South Sudan'", obtained by Crisis Group. Groups soon began organising their own strategy sessions to formulate submissions for the review process.

<sup>60</sup> An SPLM minister, infuriated by what he saw as Changson's repudiation of a presidential directive, called the move "conduct unbecoming of a minister", and suggested that he should resign not only from the committee but also from his ministerial post in government. Crisis Group interviews, Juba, February 2011.

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<sup>61</sup> This generated some internal party criticism of the technocrats driving the process. Crisis Group interview, Juba, March 2011.

<sup>62</sup> Internal procedures were adopted and a review commenced. Committee members were divided into four groups to share the workload: legislative and executive, rule-of-law, Finance and Security. These would then feed into subsequent plenary discussions.

<sup>63</sup> John Luk Jok, "Opening statement at the inaugural meeting of the Technical Committee to review the Interim Constitution of Southern Sudan, 2005", Juba, 2 February 2011.

<sup>64</sup> Concerned about approaching deadlines, SPLM officials close to the technical committee process have at times been upset with the opposition, concerned that its inclusion in the committee and/or extensive wrangling over amendments would threaten what must necessarily be a finite process. Missing the deadline might set a bad precedent for inclusive processes, as some would undoubtedly blame the expansion of the committee.

<sup>65</sup> Some report a fear that the process may be used to dilute or even supplant a subsequent permanent constitutional review.

The heads of political parties convened again for two days in mid-February, with the transitional constitution atop the agenda.<sup>66</sup> An opposition bloc came eager to steer the SPLM back to the October roadmap and commit it to formation of a new transitional government on, not later than 9 July. It also sought to negotiate, having prepared its own draft amendments regarding constitutional powers, as well as position papers addressing termination of the GoSS mandate and dissolution of its institutions, composition of national, state and local government, creation of a prime minister post, reduction of the number of ministries, future power-sharing formulas and an eighteen to 21-month transitional period.<sup>67</sup> While most important opposition parties support the demands, they seem not entirely coordinated on all aspects of the position papers.<sup>68</sup>

Kiir this time was accompanied by SPLM politburo members, who laid down a firm line, again emphasising the limited timeframe and articulating the difference between the transitional and permanent constitution-making processes. Following two days of talks at the presidential compound, the Leadership Forum resolved to go ahead with the technical committee process, but to expand it by fourteen members (eleven opposition figures, two faith-based representatives and one civil society representative) and agreed the draft transitional constitution would be presented to the Forum prior to its submission to the SSLA.<sup>69</sup> There was no discussion of transitional government structures, power-sharing arrangements or duration of the transition period. These fundamental questions are expected to be addressed when the Leadership Forum reconvenes, though in the interim this means the technical committee is working somewhat in the dark.

The concessions undoubtedly were a step in the right direction, though a small one. Opposition parties welcomed them but remain wary of the SPLM's commitment to an inclusive process. Since opposition elements were added and the committee had thus expanded beyond its "technical" composition, the SPLM immediately added a further seventeen of its own party appointees to the rapidly expanding body.<sup>70</sup> This was an obvious move to balance the opposition presence and retain the two-thirds majority necessary to approve substantive amendments, as stipulated in committee by-laws.<sup>71</sup>

When the expanded committee moved to plenary discussions, members reported that the line between an ostensibly technical mandate and decisions on emerging political issues became increasingly blurred. For example, SPLM members attempted to approve the incorporation of National Assembly members into the SSLA (their preferred choice) – clearly a political question that would require input from the parties via the Leadership Forum. But in the absence of another meeting of that body, issues requiring further guidance were taken to the president.<sup>72</sup> Sentiments emerged from officials close to the process, including from within the SPLM, that party leaders seemed now to be using the process to shape constitutional provisions in its favour and thereby "entrench themselves".<sup>73</sup>

Citing a series of objections, undemocratic procedures and SPLM disinterest in genuine opposition participation, a group of opposition parties captured headlines in early March when they announced their withdrawal from the committee.<sup>74</sup> The committee's work continued anyway, and

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<sup>66</sup> South Sudan Democratic Forum (SSDF) leader Bona Malwal met with Kiir the preceding week, preparing the ground for the forum and its outcomes.

<sup>67</sup> Opposition party position papers, obtained by Crisis Group.

<sup>68</sup> A senior opposition figure who does not support creation of a prime minister post remarked: "That's just Lam [Akol] shopping for a position". Crisis Group interview, Juba, February 2011. It appears that the SPLM-DC and its chairman, Lam Akol (nominated to speak on behalf of the bloc), may also have authored the opposition documents. Crisis Group interviews, opposition party members, Juba, February, March 2011.

<sup>69</sup> The resolutions of the Political Parties Leadership Forum Meeting also included approval of the names of the new state ("The Republic of South Sudan"), and currency ("South Sudan pound"), as well as adoption of the current flag (surrendered by the SPLM) and the processes of creating a national anthem and a coat of arms. It also endorsed the on-going work of the 2011 Referendum Taskforce, following a report by its chairman and GoSS Vice President Riek Machar. Outcome document obtained by Crisis Group.

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<sup>70</sup> Presidential Decree no. 10 of 2011, 21 February 2011. The expansion included a number of senior SPLM officials, including Deputy SPLM Secretary General Ann Itto, GNU State Minister for Justice Wek Mamer, GoSS Humanitarian Affairs Minister James Kok and GNU Education Minister Peter Adwok Nyaba, among others. The president also appointed three additional faith-based representatives to the committee, bringing the total membership to 51.

<sup>71</sup> There was an earlier aspiration to achieve consensus where possible, though some report it has become more difficult following committee expansion, and opposition parties complain the SPLM has abandoned its pledge. Crisis Group interviews, Juba, February 2011.

<sup>72</sup> Section 3.1.4 of Presidential Decree no. 10 tasks the committee to: "Evaluate and identify provisions in the ICSS that may need immediate modification or amendment to ensure effective governance, and present recommendations for such modifications to the President of the Government of Southern Sudan for consideration".

<sup>73</sup> Crisis Group interview, Sudanese official close to the committee process, Juba, March 2011.

<sup>74</sup> "Withdrawal of South Sudan Political Parties from the Technical Committee for the Review of the Interim Constitution of Southern Sudan 2005 and the Task Forces", press release, 7 March 2011. The nine political parties that endorsed the state-



finalisation of a draft constitution and accompanying explanatory report were underway by the last week of March.<sup>75</sup>

Despite the agreement to convene the Leadership Forum again before finalising the draft, the modalities of that meeting remain undefined. The Forum itself is not particularly well structured, and there appears no consensus on whether political parties will have an opportunity to propose changes and ultimately adopt the committee's draft by vote or be able merely to review it. Opposition parties expect that opportunity, while senior SPLM officials assert that the Forum is a mechanism for voluntary political consultation and has no authority to seek changes to the document. If left unresolved, this is a recipe for more political upheaval at an inopportune time, particularly if the opposition again feels slighted.<sup>76</sup>

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ment were: United Democratic Front (UDF), United South Sudan Party (USSP), Sudan Labour Party (SLP), Sudan People's Liberation Movement-Democratic Change (SPLM-DC), Communist Party of Sudan (CPS), United Democratic Salvation Front (USDF), South Sudan Democratic Front (SSDF/Front), and the National United Democratic Front (NUDF). "SDA" was also a signatory, but the party could not be identified. The boycott did not include all opposition parties. Lam Akol alleged that the SPLM was "dangling the carrot" to other parties, actively working to divide the opposition. Crisis Group telephone interview, 8 March 2011. The opposition was incensed by, among other things, a desire to retain the "SPLA" as the national armed forces rather than reconstitute it under a more objective title and a proposal to make the SSLA position of opposition leader contingent upon a minimum percentage. Crisis Group interview, official privy to committee talks, Juba, March 2011.

<sup>75</sup> The explanatory report should ideally address points of disagreement encountered within the committee as well as policy issues that require decisions from political actors. It might also lay out recommendations for a permanent constitutional review, but should be fairly conservative – or alternatively propose options – as this too will require political dialogue and broad endorsement.

<sup>76</sup> Opposition party members confirm they will boycott the process and the transitional government if not given a legitimate opportunity to review and endorse the draft. Crisis Group interviews, Juba, February 2011.

## IV. THE SPLM

By any measure, the SPLM is the dominant political force in South Sudan, enjoying a near total monopoly of power in government. Given its beginnings as a rebel movement during the South's long struggle, it is also the most broadly recognised and supported political entity. It so dominates institutions of government that separating the SPLM from the GoSS is no easy task. Easing the party's grip on power and reforming its internal modus operandi are part of a transition necessary to secure real legitimacy in a stable, post-CPA South.

### 1. From military to party

Despite progress in advancing civilian government over the CPA period, a military culture still pervades the SPLM and the GoSS. In some sense, a full transition was impossible until the referendum was complete and independence assured, as the unspoken mindset of many was one of "mission not yet accomplished". But now the SPLM must complete its transformation from liberation movement to political party, including through internal reforms. Since its formation in 1983, the movement suppressed internal dissent, more often relying on force than consent to maintain cohesion,<sup>77</sup> and it continues to employ firm intra-party discipline where possible. It was also long characterised by an opaque, highly-centralised decision-making system. Despite notable changes in leadership, internal party dynamics, the integration of other political forces and broader political realities, that top-down orientation remains, in which checks on the decisions of an elevated few are minimal.<sup>78</sup>

There also exists some lingering sense of entitlement among those who engaged in direct combat during "the struggle". Many senior party and GoSS positions are occupied

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<sup>77</sup> Douglas Johnson, *The Root Causes of Sudan's Civil Wars* (Bloomington, 2003), p. 91. Johnson further explains that having witnessed the internal conflicts that plagued earlier Southern guerrilla movements, the SPLA allowed no space for factionalism during the war, and as a result, its "military organisation was the foundation of its success on the ground". However, divisions exist within the army ranks, particularly since the CPA and the absorption of a significant number of other armed groups, many who previously fought against the SPLA.

<sup>78</sup> The most notable change came with succession of the GoSS presidency. The late John Garang operated in a relatively autocratic style, while Kiir has sometimes opted, and sometimes been compelled, to frequently consult a swathe of SPLM elite. In addition to a more conciliatory approach, complex political relationships with former Garang loyalists at the top of the SPLM (many of which have since evolved), and a difficult division between unionists and secessionists (now obsolete) were among the reasons Kiir consulted more extensively.

by military personnel, some who maintain their military rank. Some have made the transition to governing effectively; others have attempted to govern with a wartime authoritarianism; still others have done little more than enjoy the spoils of government. Further demilitarisation of the party is something that can only be driven from within and will depend on many variables, including the domestic security context, the tone set by the leadership, the party's organisational structure and the extent of legitimate political competition.<sup>79</sup>

## **2. Internal dynamics**

Internal party politics will be among the most significant determinates of political stability in South Sudan. Since the signing of the peace agreement, SPLM membership has been both politically and financially advantageous for many. In addition to its already broad membership, the 2006 Juba Declaration and subsequent reconciliations – at least on the surface – brought former military adversaries into the party fold. President Kiir's strategy to maintain stability by erecting a large tent was a remarkable achievement. As a result, the SPLM is in some regard a marriage of convenience between divergent actors, groups and agendas that in practice means some have long had one foot inside the party tent and one foot outside. Furthermore, old divisions based on wartime allegiances within the mainstream SPLM have faded, but remain, and the fissures caused by the 1991 and subsequent splits in the movement continue to filter throughout sections of the party today.<sup>80</sup> As such, intra-party politics are likely to overshadow inter-party politics for the foreseeable future.

Given this size and diversity, ethno-regional fault lines within the party mirror divisions among the population more broadly. These divisions colour party dynamics, and party differences sometimes aggravate ethnic tensions, which also makes for a web of complex relationships among party elites. Divisions between the party's ethnic constituencies are thinly veiled and are often tied to the personalities and shifting alliances of those at the top. Competing sections and regional associations within ethnic groups also generate power politics inside the most

sizeable communities, while smaller groups resent their marginalisation but find it hard to challenge the status quo from within and alone.

While no one can be certain when, the party is likely to open up at some stage, with competing camps possibly breaking away to form new parties when the time is right. Many fear that such fragmentation could generate serious instability, and schisms that unfold primarily on ethno-regional lines could indeed prove disastrous. A resort to politics by the gun must be avoided. But this scenario is far from inevitable, and division of the enormous party into two or more competing entities could prove a positive development, if well managed by the relevant actors. A multiplication of political parties, platforms and ideas would diversify the political environment and might catalyse democratic renewal.

Latent party divisions and personal rivalries have already begun to emerge, but when exactly those divisions might translate into significant party changes or partition remains unclear. Salva Kiir's future is the most significant variable, as the struggle for succession will intensify when it becomes clear he is stepping down. In a 24 January speech to open the SSLA's second session, the president made clear that "I will continue to discharge my constitutional mandate at least till the end of my present tenure".<sup>81</sup> While some opposition parties worried this was an attempt to ensure an SPLM-governed transition would last until 2015, others saw it instead as a firm signal to ambitious elements in his own party ranks that he was still in control and premature jockeying for succession (or for a post-Kiir SPLM) was not welcome.<sup>82</sup>

## **3. Internal accommodation**

To formulate a broader-based government, a number of senior SPLM figures will necessarily have to step aside, a fact some at high levels in the party acknowledge and welcome.<sup>83</sup> This will be further complicated because of the many National Assembly members, GNU ministers, civil servants and SPLM diaspora who have returned or are now returning to the South and may seek to maintain government positions and the perks and social status that accompany them. Furthermore, the SPLA chief of staff and other

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<sup>79</sup> Curtis, Devon and Jeroen de Zeeuw, "Rebel Movement and Political Party Development in Post-Conflict Societies – A Short Literature Review", Ralph Bunche Institute for International Studies, (no date listed).

<sup>80</sup> In August 1991, forces commanded by current GoSS Vice President Riek Machar and current SPLM-DC Chairman Lam Akol broke away from John Garang's rebel movement to form the SPLA-Nasir faction, which ultimately received financial and military support in a tactical alliance with Khartoum. Machar and Akol, and sections of their supporters, returned to the SPLM in 2002 and 2003, respectively. Akol then left again in 2009. Many within the "mainstream" SPLM/A have never forgiven those who "split".

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<sup>81</sup> Salva Kiir Mayardit, "Second session of the SSLA opening speech", SSLA, 25 January 2011.

<sup>82</sup> Others assert that Kiir may be pressed by elements within his party to stay in power as long as constitutionally possible, as there are interest groups around the president who are best served while he is in control.

<sup>83</sup> Crisis Group interviews, senior SPLM Ministers, Juba, January 2011.

senior officers are ready to retire from the military; some of them will expect government or party appointments.<sup>84</sup>

Several outlets exist through which the party may attempt to ease this transition, at least for those in the highest tier. Officials acknowledge that the party has been so consumed by administration of the GoSS, CPA implementation and post-referendum negotiations that little attention has been paid to building the party, cultivating its political manifesto or generating policy ideas.<sup>85</sup> These competing agendas continue to usurp the attention of top officials, begetting a deficit in political management of domestic affairs. (The politics around the transitional constitution-making are a case in point.) Some executives may be asked or encouraged to help by leaving government and assuming roles with the party.

The division of the party's northern and southern sectors – as agreed in January 2011 – is also relevant in this context. The impending split, and the departure of major Northern personalities such as Yasser Arman, Malik Agar, Mansour Khalid and Abdelaziz al-Hilu, will certainly alter political dynamics but might also create space for others and possibly stimulate the beginnings of generational change within the party.<sup>86</sup>

In addition to existing diplomatic offices, new embassies are already planned in Russia, China, South Korea, Zambia, Ghana and a particularly important one in Khartoum.<sup>87</sup> Speculation abounds as to ambassadorial and foreign service appointments, particularly in high-profile locales such as Washington, London, Beijing and the UN. Such posts may be used partly for political accommodation within and beyond the party. Additionally, it is conceivable that some will be used to neutralise established officials who do not serve the leadership's interests.

Lastly, South Sudan is no stranger to corruption; some individuals have abused official positions for purposes of personal enrichment.<sup>88</sup> The potential, particularly for large-

scale diversion of the new state's revenues, troubles many. A concerned minister confided: "We must find a way to nip this in the bud".<sup>89</sup> President Kiir's rhetoric has been increasingly firm on "zero tolerance", but it seems more a warning to cease such activity than a precursor to public or legal action.<sup>90</sup> Some believe the president has judged the political risk of public steps against offenders to be too high in light of the prevailing inclination to prioritise stability. If not exposed publicly, however, guilty persons could be encouraged to step down or quietly assume lower-profile posts.

#### 4. Internal reforms

The liberation struggle and CPA periods are now over. As South Sudan enters a new phase, the party has wisely initiated an internal review. Committees have been appointed to assess the party's strategic plan, constitution and manifesto and conduct a performance analysis of each directorate. This will naturally include an assessment of party structures and relationships between the state and national levels and between the secretariat and political bureau.<sup>91</sup> The role and composition of the National Liberation Council (NLC) – an elected, though largely inactive, quasi-parliamentary party structure of 270 members – will be reviewed.<sup>92</sup> Development of a deeper, more professional

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ommend a restructuring of the finance ministry, including, among other things, clear auditing procedures, regular employee transfers and a more independent procurement system. Crisis Group interviews, Juba, February, March 2011.

<sup>89</sup> Crisis Group interview, GoSS minister (SPLM), Juba, January 2011. Leading officials at both the government anti-corruption commission and the Bank of Southern Sudan have claimed publicly to possess incriminating information about illegal hoarding of public funds by GoSS officials, including in overseas accounts. No evidence has been made public or legal action taken, in part because the interim constitution and the anti-corruption act give the commission no powers to initiate action. Commission officials are lobbying for a strengthened mandate in the transitional constitution.

<sup>90</sup> A senior SPLM official complained that "acting is much different than talking" and reportedly advised the leadership to stop employing tough rhetoric if there is no plan to back it up with action. Crisis Group interview, Juba, February 2011.

<sup>91</sup> The SPLM political bureau is in effect the most powerful party organ, steering party political direction; it includes the president, vice president and 27 senior figures elected during the May 2008 party convention. The secretariat is the administrative and operational backbone of the party. The review outcomes will be presented at a party workshop in May 2011. Party officials are sometimes frustrated by breaches of party discipline and lack of accountability among senior SPLM members of the GoSS executive. Crisis Group interviews, SPLM party officials, Juba, March 2011.

<sup>92</sup> The full National Liberation Council has not been convened since the 2008 party convention, despite several attempts to do so. While the party claimed it proved difficult to convene a

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<sup>84</sup> Retirement may also be an option for senior SPLA and SPLM officials, "if the packages are sweet enough". Crisis Group interview, SPLM minister, Juba, February 2011. In this context, the Council of Ministers agreed in February 2011 to establish an independent pension fund outside the finance ministry to facilitate a revised pension program specifically for South Sudan.

<sup>85</sup> Crisis Group interviews, senior SPLM ministers, SPLM party officials, Juba, January, February 2011.

<sup>86</sup> The party agreed to split and form two separate entities on 8 July 2011. "SPLM adopts South Sudan name, untangles its northern sector", *Sudan Tribune*, 13 February 2011.

<sup>87</sup> Crisis Group email correspondence, Juba-based international official, February 2011.

<sup>88</sup> A finance official explained that the awarding of government contracts is the single greatest source of leakage, as many are not subject to competitive bidding. Concerned individuals rec-

secretariat with dedicated policy and communications units would also be desirable.

Generational change must be welcomed, not resisted, as part of this self-examination. Because of the system of hierarchy within the movement and a young government that has little experience in exercising democratic transfers of power, personalities dominate Southern politics. There is a need to de-personalise the institutions and offices of government from those who occupy them. Similarly, the SPLM should use this review to draw a clearer line between its role (rights and responsibilities) as a party and its role in government.

The democratic quality of internal party practices must also be part and parcel of this review. A party critic asked: "How do you expect them to practice democracy with regard to others when they don't practice it inside their own party?"<sup>93</sup> Criteria should be instituted for party appointments, nomination procedures and, most importantly, internal primary elections.<sup>94</sup> A senior party official asserted commitment to internal primaries already exists but argued there was not sufficient time to conduct them prior to the April 2010 elections.<sup>95</sup> Political motivations were at least as responsible for bypassing the primaries, however. As a result, the nomination process proved contentious and generated notable internal dissent.

The SPLM initially appointed a National Elections Committee, whose work included devising a semi-representative candidate selection process based on elections by the NLC and input of NLC members from the constituency or state in question. Complaints surfaced when its proposed selection framework was ignored and a system was employed that, in the eyes of some party members, favoured the political bureau's preferred candidates.<sup>96</sup> As a result, some disaffected officials chose to run as independents in the April elections.<sup>97</sup> Given the party's dominance, the impor-

tance of internal SPLM elections cannot be over-estimated, as they may prove more significant than formal elections in the near term.

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planned meeting in 2010, and members were occupied with other important CPA tasks, there was speculation the party did not want to open up decisions to such a broad group in the critical pre-referendum period, or again formally confront the unionist/separatist rift with prominent members of the party's Northern sector.

<sup>93</sup> Crisis Group interview, civil society member, Juba, March 2011.

<sup>94</sup> Crisis Group interviews, SPLM party members, international democracy and governance experts, Juba, March 2011.

<sup>95</sup> Crisis Group interview, senior SPLM official, Juba, March 2011.

<sup>96</sup> Crisis Group interview, individual who stood as an independent candidate, Juba, March 2011.

<sup>97</sup> A majority of independent candidates were SPLM defectors. The most significant internal dispute came in Unity state, where the SPLM state secretariat endorsed state party chairman Dr Joseph Minytil Wijang for governor. The political bureau overruled, endorsing incumbent Taban Deng Gai and angering many state constituents. As a result, the then GNU state minister for

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energy and mining, Angelina Teny, decided to stand as an independent. The dispute had deeper political implications, as Teny is the wife of Vice President Riek Machar and enjoyed the support of SPLA Deputy Commander in Chief Paulino Matiep. Some saw the political bureau endorsement of Deng as a means of keeping Machar's influence in his home state in check.

## V. THE OPPOSITION PARTIES

Opposition parties are weak. Outside Juba and a handful of state capitals, few have substantial followings or enjoy any noteworthy degree of name recognition. All suffer from scarce resources and physical infrastructure, and only a few convene regular party conventions or have established communications networks. Party bases are often limited to a specific regional or ethnic dimension. Some maintain structures in multiple states, while for others the oft-cited “briefcase party” label is not unwarranted. The SPLM has not allowed the kind of space necessary for credible opposition to grow, but the opposition parties share responsibility for their current standing. They also share responsibility for the development of a robust multi-party system going forward.<sup>98</sup>

The SPLM has little respect for the opposition, whose parties are commonly derided as not serious, and their post-election complaints attributed only to their poor results. Their aspirations for power are criticised as “based on no popular mandate and driven by no policy agenda”.<sup>99</sup> SPLM members frequently assert that the opposition parties are “stooges”, backed financially or otherwise by Khartoum, a claim originating in the war.<sup>100</sup> Some opposition elements, particularly those with connections to the former South Sudan Defence Forces (SSDF), did receive financial and other support. While much has ceased, the mistrust it engendered has not. Such feelings are exacerbated by security threats, the uptick in militia activity and, most recently, alleged links between Khartoum and the Athor insurrection as well as with SPLM-DC chairman Lam Akol.<sup>101</sup> True or not, the perception of illicit ties and

the range of security threats underscore mistrust and prompt the party to clamp down. Regardless of the veracity of claims about continuing links between Khartoum and specific Southern parties, the SPLM is likely to ensure the narrative has a long shelf-life.<sup>102</sup>

Negative sentiments are not restricted to the SPLM. A non-SPLM critic despaired at the commitment of opposition parties to building real political movements, noting: “Nothing has changed. The majority of these guys just want positions, nothing more, and they’ll shut up as soon as they get them”.<sup>103</sup>

However, the criticism of opposition parties cannot be accepted in blanket fashion; some are committed to democratic ideals and articulate genuine visions for the country’s future. But development of credible alternatives to the SPLM will take time. Rather than let the ruling party drive political processes, the opposition as a group must assume a more pro-active approach to politics and processes in the new South and build deeper constituencies. Individual representatives must learn to cultivate stronger relationships with their electorate, and parties should focus on consolidating state structures, where they can begin to win greater support. Parties might also consider the merits of coalition-building, finding common ground and realising greater influence through combined weight. They should exploit the SPLM’s policy gaps and lack of service-delivery and articulate alternatives on core issues, such as security, education, poverty, jobs and health care. A coalition might do better formulating a joint manifesto and attempting to win or leverage a greater share of power than individual parties relying on handouts from the SPLM.

Political party development is essential, and training can usefully be provided by international partners to all, including the SPLM. Some have taken advantage of opportunities on offer from international democracy and governance practitioners, though programs have often been under-utilised. In addition to comprehensive campaign and election-related training in advance of polls, parties could benefit from regular training in recruitment, policy formulation, public relations and communication strategies, grassroots mobilisation and participatory dialogue, fundraising and financing mechanisms, as well as internal

<sup>98</sup> Some argue opposition complaints about the CPA’s power-sharing formulas are flawed, as the 15 per cent of SSLA seats allocated to non-SPLM Southern parties are themselves not backed by popular appeal and were lost in the April 2010 election.

<sup>99</sup> Crisis Group interview, senior SPLM party official, Juba, March 2011.

<sup>100</sup> During the war, Khartoum and its army backed many of the so-called “other armed groups” fighting in the South, as part of a policy to divide and turn them against each other. While together they posed a credible threat to the SPLA, the event with the most lasting implications was the 1991 split within the SPLM. See fn. 80 above. Considerable resentment remains against those who aligned with Khartoum.

<sup>101</sup> In March 2011, internal GoS documents were released that appeared to implicate Northern defence, army and intelligence units in arming Athor and other “friendly forces” in South Sudan, including militia allegedly linked to SPLM-DC Chairman Lam Akol. A letter from the NCP political secretariat rejected the allegations as a mere fabrication. Copy of letter obtained by Crisis Group. Lam Akol also issued a statement denying the allegations. “SPLM-DC denies links to any militia group in South Sudan”, *Sudan Tribune*, 14 March 2011. He further claimed the documents were forged and after more inspection, independent

observers noted considerable errors in them, leaving their authenticity in doubt.

<sup>102</sup> Two of the most prominent and capable Southern opposition figures – Lam Akol and Bona Malwal – remain particularly tainted in South Sudan by their connections to Khartoum.

<sup>103</sup> Crisis Group interview, Juba, 6 March 2011.

party procedures and elections. These can be framed to fit both majority and opposition objectives.<sup>104</sup>

Public opinion polls could also be useful in developing party capacity and cultivating issue-based campaigning. International experts might partner in regular polling and corresponding quantitative analysis. Plotting a variety of demographic results against a series of issue responses could produce a data set useful in better understanding fluctuating public opinion. This would aid parties in developing responsive policies on issues of concern to citizens and in building constituencies. Opinion polls might also inform government and donor expenditures and programming. Regular public financing, training support and space to operate freely are requisites for building stronger opposition. But in the end, the single greatest catalyst for opposition growth may be a fundamental change within the SPLM.

## VI. THE TRANSITIONAL AGENDA

The transitional government will face many challenges, and no matter what is decided regarding duration of the transition period, it is bound to be pressed for time. It must oversee the conduct of a new census, prepare an electoral system for the country's first elections and make headway on a long list of legislation necessary to equip the new state for independence. A review of the decentralisation model is in order, as is a strategy and the resolve to better devolve authority and revenue if the late John Garang's pledge to "bring the towns to the people" is to be realised. The government must also lead a discussion over a future oil-revenue allocation regime and a sound regulatory framework. These tasks all have the potential to yield more inclusive governance and foster political pluralism.

Given the regional autonomy with which the South operated (particularly since the CPA), much of the architecture necessary to govern at the national level is in place, even if rudimentary. While GoSS is not starting from scratch, progress on a long list of administrative, regulatory, and legislative tasks and supporting mechanisms will help boost capacity and prepare it for the difficult road ahead. In February 2010, the government established the Southern Sudan 2011 Taskforce, charged in part with preparing the GoSS for the post-referendum era. Work is underway on a government-wide matrix of 59 objectives outlined by the Taskforce, more than half of which are designated "urgent", ie, they should be completed before 9 July.<sup>105</sup> This matrix addresses everything from absorption of returnees, to banking structures and fiscal policy revisions, to the status of Northerners in the SPLA. A communications strategy will also be essential to manage expectations, as the population's hopes are sky-high.

Many of the tools critical for rapid development of GoSS capacity are further detailed and budgeted in a Core Functions Action Plan produced by the finance and economic planning ministry, with strong support from the "group of six" – UN Development Programme (UNDP), World Bank, U.S., UK, EU and Norway. Existing capacities and gaps are identified and targets set for the next six to twelve months.<sup>106</sup> The matrix and action plan together set

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<sup>104</sup> International Republican Institute (IRI), [www.iri.org/countries-and-programs/africa/sudan](http://www.iri.org/countries-and-programs/africa/sudan). IRI supports political party development with the SPLM and seven opposition parties. It supports the cultivation of legitimate, accountable and capable parties and gives attention to those previously excluded from political participation. Funded by the U.S. Agency for International Development (USAID), it has worked in Sudan since 2004. Focus group research, civil society development, and support for constitution-making and other political processes led by the National Democratic Institute (likewise USAID-funded) also bolsters capacity development in this sphere. Building a robust opposition requires support and institutional reforms, but also long-term civic education efforts among a largely illiterate population.

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<sup>105</sup> The themes under which the 59 tasks are clustered include: international relations & statehood; diplomacy & aid; citizenship & related issues; rule of law, security & intelligence; governance structures & capacity; strengthened executive leadership, line ministry capacity & delivery; economy & finance; human resource management; and infrastructure. The tasks have spurred considerable activity in a series of recently established inter-departmental committees.

<sup>106</sup> The five key areas of the capacity development action plan are: executive leadership, rule of law & law enforcement, fidu-

forth a challenging governance agenda, though the political commitments necessary to guide their content may prove the tougher feat.

The following is not an exhaustive inventory of the tasks ahead, but an assessment of several key policy areas that will demand review during the transition period. How they are dealt with will shape the political and economic structure of the emerging state. Solutions will necessarily take stock of the changing political environment and have the potential to facilitate more inclusive governance and greater political accountability, build national identity, and establish a democratic foundation for the future.

## A. DECENTRALISING AUTHORITY

Despite being prominently enshrined in political discourse, the Interim Constitution of Southern Sudan (ICSS) and the Local Government Act (2009), the principles of decentralisation and devolution of power have been exercised more in word than in action. Strong regional and ethnic identities and an unhappy history of over-centralised regimes led to (interim) constitutional commitments to these principles.<sup>107</sup> However, the GoSS has admitted to partners that in light of the many exigencies of CPA implementation and the goal of self-determination, devolution has not been a priority.<sup>108</sup> This too must change in the post-CPA era, as constituent demands for services and development will intensify. A more tangible interaction with government would help to temper the impact of the inevitable burst of the expectations bubble.

Government presence outside of Juba is concentrated mainly in state capitals, which are often small towns themselves where infrastructure and trained administrators are limited. Service delivery functions – security, infrastructure development, health and social services and education – are minimal at both state and county level. Responsibilities for these functions may shift during and after the transitional process, as South Sudanese think about the most suitable governance structure. Accountability for service provision would likewise shift accordingly.

Citizens desire responsive governance structures that are within reach and whose administrators have a real grasp of their grievances and aspirations. Devolving more resources and authority can increase the profile of local and state politics. Doing so would de-emphasise the centre and expand the average citizen's political participation

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ciary management, public administration and natural resource management.

<sup>107</sup> Chapters 1 and 3 (Part 1) and Chapters 1 and 2 (Part 11) of the ICSS outline the decentralised system of governance.

<sup>108</sup> Crisis Group interview, local government partners, Juba, March 2011.

beyond an all-or-nothing vote for the national presidency, which may often assume a singularly ethnic dimension. But this will not happen overnight. The legacy of centralised authority is strong. Inconsistent commitment to local government among state and national actors as well as limited capacity at county and payam [sub-county district] has inhibited decentralisation thus far and will continue to present challenges.<sup>109</sup>

The new government must move aggressively to ensure state and local administrations are empowered and resourced to provide services and are seen to do so. Over-reliance on NGOs sometimes undercuts the GoSS in the eyes of the public.<sup>110</sup> Human and material resources must increasingly be directed away from the centre toward state institutions in particular, including by drawing capable administrators back to state ministries and commissions. Clearer definition of the relationship between the centre and the states is necessary, including a delineation of the roles and responsibilities of each level of government. Likewise, a future UN mission in South Sudan should be shaped with a greater focus on – and presence in – the state and county level, in line with the government's own need to raise the profile of these levels of government.<sup>111</sup>

The primary vehicle for decentralisation thus far has been the Local Government Act, which attempts to standardise and empower county, payam and boma[village]-level structures and better distribute the administrative functions of government.<sup>112</sup> It also aims to reconcile the roles of state administrators and traditional authorities and the sometimes confusing relationships between them.<sup>113</sup> However, the law, which was enacted in April 2009, is as yet little more than a good idea. Despite efforts by the local government board and international partners, it remains neither well understood nor implemented.<sup>114</sup> Some who occupy

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<sup>109</sup> Now that state governors are elected, there is increasing concern about their power, an issue that has been voiced within the context of the technical committee's review of the interim constitution and reinforces a desire to maintain control in the centre.

<sup>110</sup> Crisis Group interview, senior UNMIS official, 9 March 2011.

<sup>111</sup> A UN assessment mission tasked to develop options for a revised UN presence in South Sudan was deployed to Sudan in February-March 2011. It completed its work in late March, and findings will be presented to the UN Secretary-General's office and later the Security Council.

<sup>112</sup> South Sudan's ten states are divided into 79 counties, which are subdivided into payams that may include several bomas (villages).

<sup>113</sup> Harmonising traditional governance structures and practices with those of a modern state has proven difficult; debate continues.

<sup>114</sup> The Local Government Board is attached to the office of the president and is to advise him on decentralisation and support implementation of the Local Government Act. In practice, the Board and its priorities have been largely neglected, to the cha-

positions in local government, and others who should have roles, are not well-versed in the proposed structures or even aware the legislation exists.<sup>115</sup>

From the establishment of the GoSS in 2005 until the 2010 elections, the president appointed state governors and signed off on county commissioner and state minister posts.<sup>116</sup> Per the Local Government Act, county commissioners are to be elected locally, and the power to appoint interim commissioners and county legislative councils in the absence of local elections rests with governors. But in practice, the SPLM leadership has retained sign-off authority on most county commissioner appointments even after the April elections, a worrying sign of the continued proclivity for centralised decision-making and maintenance of patronage networks. In practice, many commissioners operate like feudal lords, with few if any checks on their authority and their rule subject only to their personal relationship with the governor.<sup>117</sup>

Legislative councils are to be elected in each county to enact local by-laws and oversee the work of the county executive.<sup>118</sup> While the Equatorias have fared somewhat better than other regions, councils are either not established or are not functioning properly across much of the South. This is often due to reluctance from commissioners and state officials who are disinclined to introduce systems of accountability into their spheres of influence.<sup>119</sup> The Local Government Act outlines further executive structures to support the commissioner, but those positions are sometimes occupied primarily in the interest of a government salary, thus amounting to a county-level patronage network.

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grin of its leadership. Though understaffed, it maintains fairly good communication channels with state ministries for local government. Crisis Group interview, international official, Juba, February 2011.

<sup>115</sup> Crisis Group interview, international official supporting local government efforts, Juba, February 2011.

<sup>116</sup> County commissioner appointments were reviewed by the GoSS executive in light of input from the appointed governor, though the executive exerted its influence as it saw fit.

<sup>117</sup> County commissioners played a particularly negative role in several counties during the 2010 elections. The lack of accountability extends to the oil sector, where interaction between companies and communities (including the occasional company-sponsored development projects) are often no more than cultivation of elite patron-client relationships with local commissioners and/or the state governor. "Sudan's Oil Industry on the Eve of Referendum: Facts and Analysis IV", European Coalition on Oil in Sudan, December 2010.

<sup>118</sup> Local government elections have yet to be held.

<sup>119</sup> The 2009 Local Government Act empowers legislative councils to dismiss the commissioner for misconduct or legal violations, Article 50 (4), as well as oversee Executive Council performance, Article 37 (3).

Links between government levels remain weak, not least in finance. Government revenue has not filtered down to the state or county level in a sustained, efficient manner during the CPA period, nor has it been effectively monitored.<sup>120</sup> An appropriate balance must be achieved, as significant funds must be retained at the federal level for things such as national infrastructure (eg, inter-state roads and power grids). But for much of the CPA period, a disproportionate amount of government funds was concentrated in the centre. While sub-national allocations have increased in recent years, 67 per cent of public sector salaries and 73 per cent of total expenditures are intended for the central government in 2011.<sup>121</sup> Development has exploded in Juba but stops at the city limits. Both GoSS and private investment have concentrated in the centre, while publicly or privately-financed improvements elsewhere are scarce.<sup>122</sup>

Efforts are being made to increase outward flow of public funds, particularly to the county-level: the draft 2011 budget allocated nearly 80 million pounds (\$29 million) for unconditional block transfers to counties.<sup>123</sup> These have increased over the past four years but are often intercepted at the state level. County-level budgeting processes are being strengthened, including accurate reflection of block and conditional transfers;<sup>124</sup> there is also a more bottom-up budgeting process with greater involvement of local actors and at an earlier stage.<sup>125</sup> But in one county budget, the state leadership withheld nearly 30 per cent of allo-

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<sup>120</sup> USAID is supporting introduction of financial management software in state finance ministries. Crisis Group interview, international official supporting local government, Juba, February 2011.

<sup>121</sup> Draft budget, GoSS, Finance and Economic Planning ministry, copy obtained by Crisis Group.

<sup>122</sup> In addition to publicly financed infrastructure (government buildings, paved roads, a presidential compound), new hotels, banks, restaurants and businesses have opened, driven by a combination of Sudanese and regional investment. For more on regional investment and cooperation, see: Crisis Group Report N°159, *Sudan: Regional Perspectives*, op. cit.

<sup>123</sup> Draft budget, GoSS, op. cit., p. 13. Transfers to states are also budgeted to increase by 34 per cent. The GoSS Core Functions Action Plan outlines partnership between the finance ministry, The African Development Bank and UNDP to develop integrated planning and budgeting procedures at the state level, as well as state financial capacity. It also envisages a review of decentralised service-delivery, in conjunction with a clear division of labour at each government level.

<sup>124</sup> Block transfers are unrestricted funds for use at the state and county level; conditional transfers are earmarked for specific expenditure, most often salaries.

<sup>125</sup> Officials supporting a bottom-up budgeting process in which county-needs assessments feed up the chain say the finance ministry does not want to hear from lower-levels, comfortable in maintaining a top-down forecasting approach. Crisis Group interview, Juba, February 2011.



cated transfers; in another, the commissioner reported that while conditional grants are received, he had yet to see a block grant.<sup>126</sup>

Some state ministries whose portfolios pertain to county functions do not even recognise local government in framing their work plans. Importantly, the Local Government Board and the finance ministry together established a state transfers monitoring committee in December 2010 and will soon issue guidelines on state transfers (including of county grants).<sup>127</sup> Improved revenue transfer practices should also include a more equitable distribution; conditional transfers for state salaries and operations vary, but block grants to states have been allocated equally, regardless of size, population, need or other demographic indicator.<sup>128</sup>

Lip-service is frequently paid to decentralisation, but states are often reluctant to delegate authority or resources, many times citing a lack of county-level capacity.<sup>129</sup> While absorption and revenue management capacities at the state level are genuine concerns that must be addressed in parallel, they are not in themselves good reasons for maintaining such strong control of resources at the centre. Keeping resources and authority away from counties guarantees that capacity and service-delivery will never improve. Sharing the wealth and improving financial reporting would facilitate local design and implementation of development projects, increase a sense of local ownership, improve efficiency and, ideally, make local office holders more accountable to a participatory constituency. Local politics would likewise be made more significant, thus moving some of the focus away from Juba. Over time, however, it is also important for counties to find ways to generate more of their own revenue, so they are not wholly dependent on the state.

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<sup>126</sup> The commissioner expressed uncertainty as to whether the money was being held up in Juba or his state capital. Crisis Group interview, Unity State, February 2011. An international partner reports that many county officials are unaware block grants exist.  
<sup>127</sup> Crisis Group email correspondence, UNDP official, 17 March 2011.

<sup>128</sup> For example, Jonglei's population is roughly four times that of Western Bahr al Ghazal, but each are scheduled to receive 56 million Sudanese pounds (\$22 million) in block transfers in 2011. Draft budget, GoSS, op. cit.

<sup>129</sup> This sometimes results in highly inefficient procedures, such as executive staff, teachers and other county employees having to travel to the state capital monthly to collect their salary. Crisis Group interviews, county commissioner, Unity State, February 2011; international official, Juba, February 2011.

## B. OIL REVENUE ALLOCATION

Post-CPA oil cooperation arrangements between North and South have garnered much attention, but far less has been paid to future revenue allocation policy within the newly independent South. Oil is the dominant source of revenue, projected to provide some 98 per cent of total GoSS revenue in 2011. Pending future arrangements with Khartoum, Juba may benefit from increased oil revenue over the next three to five years, as it assumes greater control of oil reserves, though a number of variables are at play.<sup>130</sup> While production profile estimates vary, output is projected to decline significantly during that timeframe and drop off even further over the next decade. Many producing fields have in fact already peaked.<sup>131</sup>

The anticipated boost in revenues may outweigh the decline in production, but only in the short term. Efforts to increase recovery rates and the potential for modest new finds near existing production areas may also help stem, but not reverse the decline.<sup>132</sup> Serious attention must therefore be paid to economic diversification in the short to medium term, particularly a move away from strictly exploitative industries to more sustainable pursuits. But for some time at least, oil will remain responsible for the vast majority of state revenue and thus dominate future discussions over division of the national cake.

Oil and oil revenue management will thus have considerable impact on national stability and the character of the new state; as such, it will be an integral element of the constitutional review process during the transition. If well administered, oil can become a key instrument in decentralising authority and empowering state and local politics

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<sup>130</sup> High oil prices also contribute to increased revenues at present. Global crude oil prices averaged \$77 per barrel in March 2010, compared with \$109 per barrel in March 2011 (average 1-18 March), "World crude oil prices", U.S. Energy Information Administration ([www.eia.doe.gov](http://www.eia.doe.gov)), 4 March 2011. However, current prices must be considered with caution; the GoSS budget suffered in 2009, when oil prices plummeted unexpectedly. "Sudan's Oil Industry on the Eve of Referendum", op. cit.

<sup>131</sup> Crisis Group telephone interviews, Sudan-based oil sector experts, February 2011. This does not account for possible substantial new discoveries. Little is proven, but there is considerable anticipation of further exploration in the sizeable block B (118,000 sq. km., encompassing most of Jonglei and parts of Lakes state, Warrap state and the Equatorias), the rights of which are owned by a consortium led by the French company Total; the rights to Block 5B (adjacent to Block B to the north west) were relinquished by White Nile Petroleum Operating Company in 2010 after the six wells drilled were found dry, thus tempering hopes about potential in Block B. A Sudan-based expert remarked of new finds: "There is potential yes, but the sky is *not* the limit".

<sup>132</sup> Crisis Group telephone interviews, Sudan-based oil sector experts, February 2011.

in the new South. If not, it could prompt deeper national division and societal decay, and the young state could easily become another example of the “resource curse”.<sup>133</sup>

In devising a model to collect and distribute revenue, two key decisions must be made, one political, the other technical, but both with significant political implications. First, a model for nationwide allocation of oil revenues must be agreed. It can take a variety of forms, including fully centralised and decentralised systems, assignment of shared tax bases, revenue sharing or some hybrid thereof. Such a decision is usually driven far more by political than economic considerations. Secondly, a strong technical framework must be constructed to institutionalise effective economic governance, independent and transparent financial management and oversight within that model at both central and state level, and stringent auditing so as to prevent the kind of revenue “leakage” that generated deep mistrust between North and South and has precipitated state failure in other resource-rich countries.

Particular attention should be paid to contracts and licensing, often the most opaque activities of natural resource management and thus the most vulnerable. Any such system should spread checks and balances around different institutions, so as to create a strong bulwark against corruption. For example, new contracts, major releases of revenue from a government account or other relevant actions with fiscal implications above a specific monetary value could be made subject to legislative approval.<sup>134</sup> In this context, decisions must be made on the source of authority for regulating the sector, endorsing contracts, setting and reviewing allocation formulas and developing the sector more broadly. Such authority should be enshrined in the constitution. Lastly, whatever model emerges should also be based on a constitutionally-codified ownership

regime that clearly delineates land and subterranean resource rights.<sup>135</sup>

A thorough consultation process that generates broad support for a new oil policy – particularly nationwide allocation formulas – could prevent the kind of painful seesawing experienced in other oil-rich federal states, such as Nigeria.<sup>136</sup> Achieving the right balance now would go a long way toward pre-empting power struggles between local, state and national governments and/or between ethnic groups.

In structuring revenue assignment policy, a number of variables must be taken into account. The volatility of global oil prices and their potential effect on economic stability should be considered, given South Sudan’s extremely narrow revenue base. It must be determined what level of government and what kind of structure can best absorb inevitable fluctuations in crude prices.<sup>137</sup> Assignments should also have a relationship to the kind and degree of expenditure responsibilities entrusted to state and local government.

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<sup>133</sup> The “resource curse” is a term applied to circumstances in which a state with a lucrative natural resource – often oil or another non-renewable resource – performs worse in economic and development terms than states without such a resource. For more on the resource curse, see: Michael L. Ross, “Does Oil Hinder Democracy”, *World Politics*, vol. 53, no. 3 (2001), p. 328. The author writes: “Many of the poorest and most troubled states in the developing world have, paradoxically, high levels of natural resource wealth. There is a growing body of evidence that resource wealth itself may harm a country’s prospects for development. States with greater natural resource wealth tend to grow more slowly than their resource-poor counterparts. They are also more likely to suffer from civil wars. This article suggests as well that there is a third component to the resource curse: oil and mineral wealth tends to make states less democratic”.

<sup>134</sup> Norway employs such a parliamentary approval system. Crisis Group telephone interview, February 2011.

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<sup>135</sup> While important, ownership rights are not always as critical as the agreed framework on control, regulation and management of oil that ultimately frames those rights. Ownership rights were not negotiated in the CPA, only agreements on oil exploitation. “Negotiating Natural Resources for Peace: Ownership, Control and Wealth-Sharing”, Centre for Humanitarian Dialogue, October 2009. This paper is a thoughtful review of natural resource management models in post-conflict states, particularly their enshrinement in constitutions.

<sup>136</sup> As in South Sudan, oil is the dominant source of national revenue in Nigeria (more than 80 per cent), and production is concentrated in just a few of its 36 states. Since independence, the Nigerian government has struggled to design revenue allocation formulas that are both generous enough to mitigate secessionist rumblings in oil-producing regions and parsimonious enough to maintain the dependency of regional states on the central government. 29 years of military rule strengthened the power of the central government at the expense of the states, while progressively chipping away at allocation formulas. Although a 13 per cent derivation rule was enshrined in the 1999 constitution, objections to the government’s tight grip on revenues have been unrelenting. Failure to manage the demands and grievances of oil regions has led to the emergence of violent ethnic militia groups and dangerous rivalries between the centre and state peripheries. For a more detailed discussion, see Crisis Group Africa Reports N°115, *The Swamps of Insurgency: Nigeria’s Delta Unrest*, 3 August 2006; N°118, *Fuelling the Niger Delta Crisis*, 28 September 2006; N°119, *Nigeria’s Faltering Federal Experiment*, 25 October 2006; and N°135, *Nigeria: Ending Unrest in the Niger Delta*, 5 December 2007; and Africa Briefing N°60, *Nigeria: Seizing the Moment in the Niger Delta*, 30 April 2009.

<sup>137</sup> This would usually be the central government, though this assumes a government able to effectively administer the oil sector.

A relatively centralised system, whereby the Juba government collects and stabilises revenue and then redistributes it to states on an agreed formula, may be the allocation model best suited for South Sudan. It has the support of international oil experts and economists supporting the GoSS, as well as of officials at the Ministry of Energy and Mining.<sup>138</sup> In such a system, allocation policy should ideally be outlined in the permanent constitution, but the allocations themselves need not necessarily be of a fixed nature, even in the event of strong horizontal equalisation. Formulas in other resource-rich states mix equitable base allocations with additional allocation tied to weighted demographic indicators (population, geographic area) and needs-based development indicators such as school enrolment, access to clean water and health facilities, rainfall and the like.<sup>139</sup> Incentives-based allocations, while difficult to get right, might also be incorporated, based on a set of state performance indicators that value transparency and good governance or even a state's non-oil revenue generation.<sup>140</sup>

Derivation formulas – where additional revenue is allocated to lower levels of government based on resources derived in its jurisdiction – might also be raised, as there is some precedent. The CPA mandated that at least 2 per cent of oil revenue be allocated to the producing state or region in proportion to its output.<sup>141</sup> Because this formula is now entrenched, it is conceivable that currently producing states (Unity and Upper Nile) could seek to maintain or increase current percentages in an independent South.

In theory, such claims could generate tension and undermine national unity, particularly given ethnic distribution in South Sudan. Interestingly, there has been little discussion of this issue in Unity state, one of the primary producers; to the degree it has been considered, officials indicate, relatively moderate targets have been suggested.<sup>142</sup> Most acknowledge the many competing priorities before 9 July and expect this discussion to be taken up subsequently, during the permanent constitution-making proc-

ess.<sup>143</sup> While there are a variety of expressions of desire for a modest increase, most argue that it is merited only to offset the negative local impacts of extraction, including at future production sites.<sup>144</sup> Unity State Governor Taban Deng said his state may ask for as much as 15 per cent, though he readily acknowledged that not everyone would agree and that something lesser would thus be negotiated. He further maintained that the oil is not for producing states alone, but belongs to all the people of South Sudan.<sup>145</sup>

There is likewise very little discussion in Juba of appropriate allocations, though Juba-based representatives of producing states more often assert the right for a greater portion of revenue than those interviewed in Unity state. The initial reaction of most GoSS officials to the prospect for increased derivation percentages is to assert that oil is a national asset and strong-arming from producing regions would not be tolerated. Others close to the mechanics of the transition indicate a definite desire to avoid this subject for now, in order to get through the transitional constitution process, and open what could be a contentious discussion later as part of the permanent process, a sentiment that appears to have broad endorsement.

While there is a credible rationale for apportioning a small derivation percentage to producing states to counterbalance land acquisitions, forced displacement and the social and environmental impacts of extraction,<sup>146</sup> national sta-

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<sup>138</sup> Crisis Group interview, official, energy and mining ministry, Juba, March 2011. Crisis Group interview, international economist, Juba, February 2011. Crisis Group telephone interview, Sudan-based petroleum sector expert, February 2011.

<sup>139</sup> For example, see Constitution of the Federal Republic of Nigeria, May 1999.

<sup>140</sup> Incentivising other means of revenue generation could spur development of different non-oil sectors in different states across the South, thereby satisfying the need to diversify the economy and reduce the country's reliance on oil.

<sup>141</sup> CPA, Chapter III, Wealth-Sharing Protocol, Section 5.5-5.6.

<sup>142</sup> Crisis Group interviews, executive and legislative officials, Bentiu, Unity State; county commissioner, local chief, Mayom County, Unity state, February 2011.

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<sup>143</sup> While a handful of senior state officials try to follow the transitional constitution-drafting process from afar, they would have little opportunity to contribute, even if they were fully seized and wished to address oil-sharing formulas for the transition period.

<sup>144</sup> Officials argued that despite high expectations, the 2 per cent allocation has been insufficient. One asserted: "We are sharing the oil, but we are not sharing the disadvantages". While many said an additional up-front allocation is warranted primarily to counter-balance war-era displacement and the human, animal and environmental costs of extraction, some cited state development priorities that extend well beyond this justification. As such, it may be that officials know the "offset" argument will be the most effective in securing allocations for the state. Other secondary justifications noted include a complaint that other states collect non-oil revenues (forestry, gold, customs duties) that are not shared on a national basis. However, oil generates far more revenue than all non-oil sources combined. Some also argued that Unity State communities bore the worst brunt of the war and thus deserve compensation. Crisis Group interviews, Bentiu, February 2011.

<sup>145</sup> Crisis Group interview, Taban Deng Gai, Unity State governor, February 2011.

<sup>146</sup> Both the government and oil companies have paid too little attention to the environmental impacts of oil extraction. Communities in oil-producing regions regularly complain of water contamination and other environmental degradation, and officials express concern about the post-extraction phase, when the

bility could be best served by relative equity between states and populations beyond that allocation. Because oil is the dominant source of revenue, and South Sudan's current producing fields are concentrated in two of its ten states, sizeable allocations to states of origin would create considerable economic disparity and could fuel inter-state and inter-ethnic resentment. Most officials interviewed in Unity state readily acknowledged these dangers.<sup>147</sup> Greater horizontal equity might serve national cohesion and national identity, principles that are lacking in this new country where strong tribal and regional identification persist. Prompt demonstration that funds will be transferred regularly and transparently and that social and environmental degradation will be addressed meaningfully is the surest way to pre-empt increased demands from producing states.

Once ownership and allocation policies are agreed, a number of regulatory mechanisms should be established as part of a framework that will administer funds, ensure stable spending, promote transparency and plug holes against corruption. Fiscal accountability is essential if the government is to enjoy legitimacy in the new South Sudan. The following – some of which have existed at national level in the old Sudan and should be recreated for the independent state – are among the instruments that would help guide oil sector reform:

□ **Petroleum Policy.** Officials from the energy and mining and finance ministries, with strong support from Norway, are formulating a policy document that will outline aspirations pertaining to: oil sector management (bolstering long-term sustainability instead of extracting as fast as possible); the relationships between the state-owned company (Nilepet) and the relevant ministries; ownership norms; environmental practice and safeguards; host community compensation; good governance; cash flow management; and anti-corruption commitments.<sup>148</sup> Its fundamental theme of “creating value” is explored at each phase: licensing and exploration, development and planning, production and revenue management. Transparency commitments should also be envisaged at each phase. This document will guide all aspects of the oil sector.<sup>149</sup>

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industry will exit, and significant clean-up rehabilitation will be required. Crisis Group interviews, Unity State, March 2011.

<sup>147</sup> A state official noted that serious disparity would breed inter-communal hatred, cautioning: “Those who advocate a bigger percentage are short-sighted”.

<sup>148</sup> The Norwegian government and its petroleum envoy have been providing technical advice to the CPA parties regarding future North-South cooperation on oil, as well as critical advice to the GoSS and its energy and mining ministry on management of the oil sector.

<sup>149</sup> Crisis Group interview, senior official, GoSS energy and mining ministry, Juba, 9 March 2010.

□ **Petroleum Law.** Broader consultations with all relevant stakeholders would ideally ensure buy-in for the petroleum policy and political decisions on the tough questions regarding ownership, allocation and management that should be further detailed in subsequent legislation. The aim is to have legislation enacted before 9 July, though such questions should ultimately be enshrined in the permanent constitution as well. The law should also provide considerable detail as to the obligations of relevant institutions and companies with regard to transparent management of the sector.

□ **Oil Revenue Stabilisation Fund.** Designed to insulate against the volatility of oil prices, a stabilisation fund could help smooth price fluctuations and stabilise long-term government investment. It would draw on net revenue from sales above and beyond an agreed benchmark price that would be reviewed regularly in light of economic conditions but ideally set relatively low. A similar fund, to which Khartoum and Juba contribute, is currently in place at the national level, but it is ineffective and its principles compromised, as both have arbitrarily drawn on the account.<sup>150</sup> An action plan and supporting legislation for establishment of a GoSS stabilisation fund, as well as policy options on the management structure of such a fund, are currently under consideration.<sup>151</sup>

□ **Oil Trust Fund.** Given the colossal development agenda, huge post-referendum expectations and a poverty-stricken population, Juba and the states may risk over-spending, or ill-spending, in the immediate term, thereby depleting profits from this non-renewable resource. Over-spending in the short term can have a number of indirect effects, including driving up domestic prices while not delivering much more benefit.<sup>152</sup> Oil trust funds accrue a constant share of proceeds so as to create savings and extend oil wealth into the future. Despite some misperceptions, Sudan-based oil sector experts argue that not enough oil remains – at least at current reserve levels – to warrant a fund geared toward future generations.<sup>153</sup> The CPA mandated a “Future Generation Fund”, once daily production surpassed one million barrels, but that benchmark was never reached. Nevertheless, some kind of hybrid fund might be considered that would accompany the stabilisation fund, depending on its structure, and set aside revenue significantly exceeding current

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<sup>150</sup> Crisis Group telephone interviews, Sudan-based oil sector analysts, February 2011.

<sup>151</sup> “GoSS Priority Core Government Functions: Costed Action Plan for Rapid Capacity Development”, GoSS finance and economic planning ministry, November 2010.

<sup>152</sup> Crisis Group interview, Sudan-based economist, Juba, February 2011.

<sup>153</sup> Crisis Group telephone interviews, February 2011.

absorption capacity, so as to manage a ten to fifteen year outlook. This would require political will to moderate current spending, which could prove difficult to muster.

- **Regulatory Architecture.** In addition to the roles and responsibilities of the finance and energy and mining ministries, a series of other instruments might be instituted so as to spread checks and balances among a variety of stakeholders. Such safeguards would help prevent the opaque practices for which the GoSS consistently criticised Khartoum during the CPA period. Options include:

*Fiscal and Financial Allocation and Monitoring Commission (FFAMC) or Petroleum Revenue Authority.* The CPA mandated a FFAMC to monitor revenue transfers – to both the GoSS and the states – and ensure transparency and fairness. Two such commissions were established instead – one for the North and one for the South, but they functioned either poorly or not at all.<sup>154</sup> Monitoring of transfers from Khartoum to Juba was also inadequate, thus generating mistrust and political tension between the CPA parties. Draft legislation is currently under review to establish a new commission in South Sudan.

- *Independent Commission.* A broadly representative monitoring body (including state and national representatives) could be charged to complement the work of the relevant ministries in reviewing contracts, assessing decisions on development of the sector and ensuring benefits are shared equitably and host communities are protected.
- *Autonomous Central Bank.* Oil proceeds need to run through a central account at the Bank of Southern Sudan, which will now become the nation's central bank, rather than directly through the finance ministry. Closely integrated to the budgeting process, transfers would then be made to finance the budget as needed.<sup>155</sup> This requires the political will to establish and protect a firmly independent bank, with a board of directors and clear guidelines for transactions with the finance ministry.<sup>156</sup>
- *Extractive Industries Transparency Initiative (EITI).* A coalition that tries to set a global standard for natural resource governance and transparency, it may be an appropriate partner for the GoSS' regu-

latory framework and is supported by the energy and mining ministry and international experts working with the ministry. The six criteria for implementation include: regular publication of all oil, gas and mining payments by companies to governments and publication of all revenues received by governments; independent audit of payments and revenues; reconciliation of payments and revenues by an independent administrator and publication of discrepancies; extension of this approach to all companies (including state-owned); engagement of civil society in design, monitoring and evaluation of the process, and its contribution to public debate; and host government development of a work plan that includes targets, a timetable and an assessment of potential capacity constraints.<sup>157</sup>

This work necessitates clear political will and a national reporting body of government, industry and strong civil society counterparts, the latter of which is an essential component that is lacking in South Sudan. Membership does not come just via a government decision – a point not fully understood in South Sudan, where there seems, however, preliminary recognition of the initiative's applicability and a desire to participate.<sup>158</sup> The process of becoming a "compliant" country could take some years. In the interim, South Sudan should work toward implementing the four criteria required to become a "candidate" country, which include committing to implement the EITI; committing to work with civil society and the private sector; appointing a lead implementation partner; and producing a work plan that has been agreed upon with stakeholders, often with support from a facilitation team from, for example, the World Bank. It should also voluntarily adopt other core principles, notably publication of earnings.

General comprehension of the oil business is low and expertise scarce. As such a well-placed expert judged GoSS preparedness to make and implement complex sector management decisions as "not even close".<sup>159</sup> Moreover,

<sup>154</sup> Crisis Group email correspondence, Sudan-based petroleum analyst, March 2011.

<sup>155</sup> "The Role of Fiscal Institutions in Managing the Oil Revenue Boom", International Monetary Fund, March 2007.

<sup>156</sup> Crisis Group interviews, official, Bank of Southern Sudan, Juba, March 2011. Crisis Group telephone interview, oil-sector analyst, February 2011.

<sup>157</sup> "EITI Rules Including the Validation Guide", Extractive Industries Transparency Initiative, February 2010.

<sup>158</sup> Crisis Group interviews, GoSS oil officials, Juba, 8-10 March 2011. EITI membership is also supported in the draft petroleum policy.

<sup>159</sup> Crisis Group telephone interview, February 2011. A December 2010 report by the European Coalition on Oil in Sudan noted that the energy and mining ministry has made little progress in building capacity to manage the sector, and of the South's state owned company, "... Nilepet is nowhere near to becoming a fully-fledged operating company. With some thirty staff members and a mere 10 per cent share of non-producing Blocks 5B and B, Nilepet has so far been a company on paper

perceptions of oil wealth are often grossly incongruous with the facts, which raises the stakes in the decision-making process. Additional exposure for a range of stakeholders to technical issues and best practices may be necessary, ideally before making political decisions on issues of ownership, allocation, management and a regulatory framework.<sup>160</sup>

Exposure to the issues led by third-party actors could broaden the base of stakeholders who have a realistic assessment of the technical and economic issues and potentially build greater support for optimal arrangements.<sup>161</sup> The Norwegian government, led by its petroleum envoy, has been offering excellent advice and technical expertise to the GoSS, but it has also been heavily engaged in negotiating post-CPA oil arrangements between North and South, limiting its capacity to also provide exposure to a broad section of Southern stakeholders regarding domestic oil management. The energy and mining and finance ministries should create a committee to help stakeholders obtain basic familiarity with the issues and build support for the petroleum policy among them. It should shuttle to all ten states, not just the two current producers, to educate on oil sector realities and secure endorsement for the policy and principles before they are legislated. Such a tour may require donor support.

Lastly, regardless of the allocation model and supporting architecture, GoSS capacities must improve in step with its increased responsibilities for managing its own oil sector, particularly in the energy and mining, finance and economic planning ministries, where expertise is minimal. Capacity development is necessary vis-à-vis forecasting and tracking revenue, geosciences, taxation and auditing of the oil sector, marketing, contracts and licensing and environmental management. Recruitment and training must also accelerate. Some desire exists for re-structuring the Ministry of Energy and Mining including by separating a more dedicated oil directorate from that for other hydrocarbons and minerals. Special arrangements have been broached in the North-South post-referendum negotiations whereby the GoSS might contract Northern experts for a fixed period of time, though no decisions have been taken.<sup>162</sup> As oil sector flaws at the national level have illustrated, no amount of good architecture can substitute for suffi-

cient capacity, adequate implementation, political commitment and intolerance of corruption.

### C. THE LEGISLATIVE AGENDA

The SSLA is faced with a significant backlog of legislation, including a host of bills necessary to govern a newly independent state. Some require adoption before 9 July; others will become immediate priorities once the transition begins. With some 130 pieces of legislation identified, prioritisation is no easy task but is best cross-referenced against the GoSS taskforce's list of objectives, with special emphasis on the "urgent" items. The SSLA is not yet a mature institution; capacity remains very low,<sup>163</sup> attendance is poor, and its influence kept further in check by reluctance of predominantly SPLM representatives to challenge the party line. The executive sets the priorities and drives the schedule, often rendering the legislature little more than a rubber stamp.<sup>164</sup> The SSLA has adopted 36 laws since it was established in 2005 (though again most originated with the executive), but provisional Executive Orders have been resorted to often in the absence of legislation. Many of these are now being converted into laws.

Many bills are in the drafting process; in other cases nothing is yet on paper. Line ministries have been assigned to work with the legal and constitutional affairs ministry on bills in their respective areas, but legal expertise and drafting skills are in short supply. Efforts are further complicated because many of South Sudan's able legal cadres were trained in Arabic, while laws now need to be crafted in English. Ministry officials report that while the significant amount of drafting assistance from diplomatic and NGO partners has in some instances been critical, not all support offered has been particularly coordinated, and it is sometimes counterproductive.<sup>165</sup>

Bills pertaining to statehood and the powers of a sovereign state are at the top of the list. These address a broad range of institutional areas, including diplomatic representation and privileges, accession to international treaties, establishment of the central bank, customs, excise, and export duties and the like. In some cases, bills addressing powers of the state can be adapted from existing national

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rather than in practice". "Sudan's Oil Industry on the Eve of Referendum", op. cit.

<sup>160</sup> The negative experience of oil exploitation at the national level – where Southern communities received few dividends from revenues reaped by the central government with little transparency – may lend a particularly poignant tone to these discussions.

<sup>161</sup> "Negotiating natural resources for peace", op. cit.

<sup>162</sup> Crisis Group interview, GoSS oil sector expert, Juba, 10 March 2011.

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<sup>163</sup> A government official complained that capacity constraints mean the assembly is run by a handful of representatives. He noted: "This is not an assembly of this century, or even the last one". Crisis Group interview, Juba, 9 March 2011.

<sup>164</sup> Crisis Group interview, GoSS and international officials working closely with the SSLA, Juba, March 2011.

<sup>165</sup> Crisis Group interview, official, legal affairs and constitutional development ministry, Juba, March 2011.

laws.<sup>166</sup> Additionally, a number of critical pieces of legislation may depend in whole or in part, on agreements negotiated by North and South at the post-referendum table. These include citizenship and nationality, currency and exchange and oil laws, as well as an act pertaining to water use and relations with Nile River basin countries. Other areas of note that require new or revised legislation include land, finance and tax and investment protection laws.

Among the legislation necessary to consolidate and protect a democratic environment are a new electoral law, acts pertaining to civil society, media freedoms and the right to information and, most critically, a political parties law. The latter should spell out responsibilities and restrictions on party activity (eg, prohibiting military wings) and regulations on public and private financing, as well as criteria for registration. Most notably, registration criteria should include requirements for a minimum national appeal.<sup>167</sup> Tribalism has long poisoned politics and hinders cultivation of a unified national identity. As such, a law might stipulate a minimum membership in, for example, at least five Southern States so as to require parties to go beyond singular ethnic or sub-regional bases.<sup>168</sup> A sunrise clause – delaying application of strict minimum criteria – might be considered, as immediate enforcement could suffocate a weak opposition that needs an opportunity to grow. An alternative would be to set the bar low for registration and separate substantial parties from insubstantial ones by instituting stricter criteria for public financing eligibility.

Public financing for election and campaign activities should be addressed in either a political parties law or new electoral legislation. Funding should be disbursed not only in advance of elections, but also for general party development in non-election years. As membership fees and other sources of funding are limited, public funding could promote a more level playing field, encourage participation through campaigning and civic education activity and bol-

ster the growth of a vibrant multi-party system.<sup>169</sup> Donors might also contribute through establishment of a political parties trust fund.

In the near term, funding would ideally be distributed equally among parties, above an agreed minimum threshold. The existing electoral law authorises financial support “that may be provided by the National Government, Government of Southern Sudan, or the States Governments to all political parties and candidates on equal basis”.<sup>170</sup> In the April 2010 elections, the national government declined to provide financing. After discussion among Southern parties, the GOSS agreed to fund them, though disbursement was unsystematic and opaque.<sup>171</sup> Financing was to some extent allocated on the basis of approximate size of parties, which left the SPLM with the largest share. Independent candidates received nothing, and parties were free to distribute funds as they saw fit.<sup>172</sup>

New stipulations should be enacted that clearly prescribe equal public financing, recipient criteria and spending parameters and limitations, lest public financing be used to strengthen an already dominant party.<sup>173</sup> In establishing

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<sup>166</sup> There is some seemingly unfounded opposition to adapting national laws. Some are indeed being adapted, but not enough according to a GoSS legal official, who argued: “We don’t have to re-invent the wheel”. Crisis Group interview, Juba, March 2011.

<sup>167</sup> Provisions must be detailed, so as to prevent politically-motivated interpretations of the law.

<sup>168</sup> Neighbouring Kenya and Uganda have political parties’ laws that forbid forming a political party on the basis of race, ethnicity, religion, language or gender. Additionally, Uganda requires a minimum of “50 representatives from each of at least two-thirds of all the districts of Uganda, and from each region of Uganda”. “The Political Parties and Organisations Act, 2005”, Ugandan parliament. Kenya requires parties to obtain at least 200 registered members from each its eight provinces and maintain one member from each on its governing body. “The Political Parties Act”, Kenyan Parliament Act no. 10, 2007.

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<sup>169</sup> Public financing can come in both direct and indirect funds, the latter of which might include in-kind resources such as subsidised access to state-owned media, public buildings, transport, publically-printed material, tax exemptions, etc. “Political Finance Regulation: The Global Experience”, International Foundation for Electoral Systems, November 2009.

<sup>170</sup> The National Elections Act (2008), Article 67 (2)(c).

<sup>171</sup> After prompting the SPLM, the GoSS made available some 5 million SDG (\$1.98 million) to thirteen political parties in the South. The ensuing disbursement process – handed over to a few parties – was inequitable, not transparent and raised questions as to illegitimate use of the funds. “Observing Sudan’s 2010 National Elections, Final Report”, The Carter Center, December 2010.

<sup>172</sup> Crisis Group email correspondence, Aly Verjee, senior researcher, Rift Valley Institute, Complaints from candidates at the state-level who received no money from party headquarters were not uncommon. Crisis Group interviews, Bentiu, Juba, February 2011.

<sup>173</sup> Public funding criteria are often based on one or more of the following principles: 1) equality, whereby an equal share is allocated to all parties that either contest an election, are represented in the national legislature, have met a minimum membership requirement or have obtained a minimum number of seats and/or votes in the last election; 2) proportionality, whereby funds are disbursed in proportion to either the number of candidates fielded, funds raised by the party (“matching grants”), seats held in the legislature, votes received in the last election (several of these options, if employed now, would reinforce SPLM dominance) or party membership (this may be particularly difficult to verify in South Sudan); and 3) need-based, whereby under-represented, smaller or new parties receive additional disbursements to help level the playing field. Models frequently employ elements of each principle. “Allocation of

future electoral management, clear authority to enforce such criteria should be mandated, including scrutiny of mandatory expense reports (an obligation neglected by the National Elections Commission during the April 2010 elections).<sup>174</sup>

#### D. ELECTORAL REFORM

With so many competing transition priorities, electoral reform is not near the top of the list, but new laws and a new election management body will necessarily precede new elections. While elections should not become a dominant focus in and of themselves, they can play an important role in the structuring of an emerging state.<sup>175</sup>

Discussions are at an early stage, but international partners are reviewing implications of different electoral systems and may offer recommendations to inform the permanent constitutional process. That national consultation will ideally yield decisions on an electoral system, the timing and sequencing of elections, the electoral calendar and the system of representation.<sup>176</sup> The organisation of elections will be markedly different from those administered by

Khartoum. Opposition parties will be particularly keen to see changes, given both allegations of fraud and claims that the current electoral system, especially that for legislative elections, worked to the SPLM's advantage in 2010. As part of the forthcoming review of Sudan's mixed system, lessons can be drawn from that election.

The SPLM won the vast majority of seats in the South Sudan Legislative Assembly in 2010. The party's enormous popularity should not be underestimated, but there is more to the story. For example, Central Equatoria state is represented by 23 seats in the SSLA (fourteen on a geographical basis, six on proportional women's lists and three on party lists). The SPLM won all but one.<sup>177</sup> Some 874,320 votes were cast in the state, of which 620,581 were for SPLM candidates.<sup>178</sup> In other words, the SPLM captured 96 per cent of the state's seats with only 71 per cent of the vote. This means Central Equatoria, despite a quarter of a million votes for non-SPLM candidates and a comparatively diverse political landscape, is represented in Juba by only one non-SPLM member. This pattern was repeated in other states.<sup>179</sup> Overall, the SPLM won 159 of 170 seats – 94 per cent – in the assembly despite receiving roughly 75 per cent of the votes.<sup>180</sup>

Several factors contributed to this outcome. The SPLM enjoys strong support in almost all geographic districts across the South. In many of these districts, multiple non-SPLM candidates, usually including independents, stood for office, sometimes splitting the non-SPLM vote. Thus even where SPLM candidates did not win a majority, they usually received more votes than any other candidate, which was sufficient to capture the seat.

Opposition parties fared even worse in the proportional contests. Partly, again, this was due to multiple opposition lists that split the non-SPLM vote. Mostly, however, their poor showing can be attributed to the difficulty in

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Direct Public Funds", The Electoral Knowledge Network (<http://aceproject.org>).

<sup>174</sup> Article 70 (1) of the existing electoral law demands submission of campaign income and expenditure reports within 30 days of the election results. This requirement was largely overlooked, not least because of a lack of capacity and resources to provide oversight. The National Elections Commission set campaign spending limits so late that they served little purpose; some opposition members allege the SPLM exceeded the limitations, though this remains difficult to verify.

<sup>175</sup> Elections in emerging states "can go either way: they can distribute power to marginalised areas, mitigate conflict, channel participation, and develop long-lasting electoral institutions; or they can establish flashpoints for violence, heighten political disputes, aggravate ethnic tensions, and provide incumbent and illegitimate governments with the opportunity to secure their place in power by rigging the outcome of the election". "Electoral Designs, Proportionality, Representation, and Constituency Boundaries in Sudan's 2010 Elections", Rift Valley Institute, 2010.

<sup>176</sup> Members of the Sudanese National Assembly, the South Sudan Legislative Assembly and the state legislative assemblies are elected according to a mixed system. 60 per cent of the seats are contested in single-member, first-past-the-post (FPTP) – or "geographic" – electoral districts. FPTP is a system in which the candidate who receives the most votes wins, regardless of whether or not the tally constitutes a majority of votes cast. 40 per cent are elected at state level in closed proportional representation lists: 25 per cent from state-level lists of women candidates put forward by the political parties and 15 per cent from separate state-level lists of candidates also from the parties. A party must receive at least 4 per cent of the vote to win seats. These are "closed proportional lists", because voters can only select a party list, not a specific candidate on the party list.

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<sup>177</sup> The final seat (geographical constituency for Kajo Kajo town) was captured by an independent candidate who was formerly an SPLM member.

<sup>178</sup> 253,739 votes were cast for other parties or independent candidates. The National Elections Commission did not record spoiled or blank votes. Results are not available for one race: Constituency 2 (Juba South).

<sup>179</sup> Crisis Group email correspondence, Aly Verjee, senior researcher, Rift Valley Institute, February 2011. Similarly, in Unity state, the SPLM captured 92 per cent of the SSLA seats with 69 per cent of the vote. Roughly 157,000 votes for opposition parties yielded just one seat.

<sup>180</sup> "Names of winners of Geographical Constituencies, Political Party Lists, and Women Lists", 2010, SSLA, National Elections Commission. One representative's party affiliation is misreported on the document, which notes 160 SPLM members. Vote tallies are unofficial calculations conducted by Crisis Group; note also that results for several races are not available.



achieving a proportional result when only a small number of seats are elected through each contest. Proportional seats are allocated to state-wide, rather than to larger constituencies; each state had two separate proportional contests: one for women, one for parties. In Central Equatoria state, as noted, only six seats were elected through the women's lists and only three through the party lists; other states had similar numbers.<sup>181</sup> Vote distribution over the few seats available in each contest reduced the proportionality of results and tended toward exclusion of smaller parties. Non-SPLM candidates won fewer proportional seats than geographic assembly seats.<sup>182</sup>

Choosing an electoral system usually involves trade-offs between representation and accountability; mixed systems, such as in Sudan, attempt to combine the benefits of each. Any system must be tuned in light of a variety of local variables, and proposed alternatives to the existing system all have advantages and disadvantages. Their impact on representation is difficult to foresee,<sup>183</sup> their impact on democratic development even more so. As a new electoral system is likely to remain in place for an extended time, current political realities should not be over-emphasised; Southern politics will evolve, and major developments such as a split within the SPLM could fundamentally alter the landscape.

Some experts recommend abolishing all geographic seats and shifting to a fully proportional system for purposes of inclusivity in a post-conflict setting. This might ensure "fairer" results for smaller parties, but it would also sever links between politicians and their constituents and could leave remote areas without clear representation.<sup>184</sup> A second option would see some or all of the geographic seats retained but proportional seats allocated to a single nationwide constituency, rather than the current state-wide constituencies. A third would combine the women's and party lists in each state, or a single constituency, but require parties to include women in prominent positions on their lists to ensure their representation. These latter two options would probably increase the number of non-SPLM legislators, while retaining geographic representation. Lastly,

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<sup>181</sup> Each state elected between three and seven members from the women's lists and between two and four from the party lists.

<sup>182</sup> This included only one of 43 representatives elected from women's lists and none of the 22 from party lists.

<sup>183</sup> Patterns of campaigning and, therefore, voting are likely to change if the system is modified.

<sup>184</sup> Proponents argue that the link between politicians and their constituents in South Sudan is not meaningful in any case. At present, an SPLM nomination offers a particularly good chance of winning a seat, so the allegiance of that representative lies more with the party than his or her constituents. Furthermore, the SSLA agenda is currently driven more by the GoSS executive than by elected representatives. Crisis Group interviews, Juba, March 2011.

a bi-cameral legislature may also be considered in the post-transition era, which would open up another set of options through which to achieve an efficient system.<sup>185</sup>

Modifications to the system aside, the management of the April 2010 elections was sub-standard in many respects. Procedures and safeguards were neglected at most phases of the process, and results management was sub-standard. Allegations of rigging were not unfounded; suspicious results were observed in several contests.

## E. NEW CENSUS

The October 2010 conference also resolved to conduct a new nationwide census under the auspices of the transitional government.<sup>186</sup> The motivation appears to be widespread lack of confidence in the 2008 census and a corresponding desire to start off on the right foot once independent.<sup>187</sup> The resolution seems to have been easily agreed by the political parties, though technical considerations were apparently not fully taken into account.

Sudan's fifth national population and housing census (2008) generated a bitter pre-election dispute between North and South. The GoSS called into question seemingly dubious statistics for the North – low numbers of Southerners but a nomadic population 324 per cent more than in the previous count – and Darfur (higher numbers than expected).<sup>188</sup> Along with representatives of Sudan's other peripheries, it rejected the results.

Those objections notwithstanding, Southern technocrats (and international advisers) stand by the process and the results collected in the South.<sup>189</sup> Census bureau officials posit that while a variety of factors caused some portion of the Southern population to be missed in 2008, the margin of error was statistically acceptable. They cite the fact that, in the end, the GoSS used the results for several purposes. But complaints were lodged within the South, and

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<sup>185</sup> Crisis Group interviews, GoSS officials, international elections experts, Juba, February 2011. A national ID register might be an appropriate mechanism for South Sudan and should be considered in census and registration discussions. Such a register would have multiple applications, including serving as a permanent voter registry. It would eliminate the need for full registration to precede every election, thereby conserving resources and limiting potential disputes.

<sup>186</sup> Final Communiqué, op. cit.

<sup>187</sup> Crisis Group interviews, SPLM and opposition party figures, Juba, January-February 2011.

<sup>188</sup> Suspicions were reinforced when GoSS requests to review the data in question were denied. Crisis Group interview, Isaiah Chol, chairperson, Southern Sudan Centre for Census, Statistics, and Evaluation (SSCCSE), Juba, February 2011.

<sup>189</sup> Crisis Group email correspondence, international observers, March 2011.

irregularities in 2010 voter registration figures in some parts of the region served to reinforce the views of those who doubted the data. Over time, popular views appear to have further deteriorated. As justification for a new census, proponents also cite recent urbanisation trends and the many returnees from the North and neighbouring countries who were not counted.<sup>190</sup>

Census data can have a considerable impact in determining political power and revenue distribution. For example, the distribution and size of electoral constituencies – often highly controversial – is based on census results.<sup>191</sup> No matter what national revenue allocation systems are agreed, they too will likely make use of demographic indicators, including population size and distribution.

However, the political motivation does not necessarily square with technical realities. Despite the October agreement, census officials have yet to be contacted. Meanwhile, they are still analysing characteristics of the last census, information that will be widely used in government planning and policy formulation. Some technocrats believe it is too soon for another census, citing the UN recommendation of ten-year intervals,<sup>192</sup> and are wary of the rationale, arguing that, “any census that is politically motivated will not generate accurate results”.<sup>193</sup>

Conducting a census is time-consuming and expensive. The cost in 2008 was more than \$100 million nationwide.<sup>194</sup> The GoSS may find it difficult to foot the bill, and, as with elections, the international community may be reluctant to contribute to another exercise so soon. Proper field mapping for the 2008 census took some fifteen months,

and census officials complained that even then they were rushed. A senior official at the Southern census bureau estimates that a new exercise could take three years to complete.<sup>195</sup> Regardless of how well it is conducted, a new census is likely to again yield political strife. The political and financial stakes will be even more apparent this time: higher population numbers mean more seats and more government revenue. During the last census, enumerators were hired from their home areas, and state governments were involved in administering the process. If such practices are employed again, census officials worry, the opportunities for manipulation will be many.<sup>196</sup>

Despite the challenges, most seem determined to make a fresh start rather than continue on the basis of population statistics the GoSS so roundly rejected. If indeed there is resolve to stick by this commitment during the transition, time demands must be reviewed. Furthermore, a GoSS-commissioned third-party contractor might provide the necessary impartiality to reduce disputes over census conduct or results. Examples elsewhere of the use of an independent organisation with a strong mandate and political endorsement might be reviewed in this context.

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<sup>190</sup> The International Organisation for Migration (IOM) reports some 261,000 Southerners returned from the North between 30 October 2010 and 22 March 2011. “Return Statistical Weekly Update, 16 March to 22 March 2011”, IOM Mission in Sudan, March 2011.

<sup>191</sup> Electoral constituency delimitation carries an inherent opportunity for manipulation, a practice not unfamiliar in Sudan. On recent manipulation, see: Crisis Group Africa Briefing N°72, *Rigged Elections in Darfur and the Consequences of a Probable NCP Victory in Sudan*, 30 March 2010.

<sup>192</sup> “Principles and Recommendations for Population and Housing Censuses Revision 2”, United Nations Population Fund (UNFPA), 2008.

<sup>193</sup> Crisis Group interview, census official, Juba, February 2011.

<sup>194</sup> “Herbert Kandeh, “2008 Sudan Population and Housing Census Funding, Coordination, Technical and Logistics Support”, presentation to the UN Statistical Division, 25 February 2009. In addition to majority funding from the Government of National Unity and the GoSS, financial and in-kind support came via the Multi-Donor Trust Fund, the EU, Denmark, U.S., France, Norway, the Netherlands and other donors through UNFPA. UNFPA, whose support began in 2002, led and coordinated other donors in providing technical help to the statistical agencies.

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<sup>195</sup> Crisis Group interview, Juba, February 2011. The 2008 Census was also delayed four times, for both political and technical reasons.

<sup>196</sup> A technical observation body comprised of regional and national experts may also be in order to ensure a credible process. Such a committee was appointed during the last census, but its utility was compromised when political actors were later included. Crisis Group interview, census official, Juba, February 2011.

## **VII. CONCLUSION**

In just three months, Africa's largest country will divide and its newest state will be born. Then the hard part begins. With South Sudan's independence come heightened expectations among leaders and constituents alike; living up to the ideals championed will be no easy task. Decisions now and during the transition period will shape the political, social and economic character of the new republic. A transitional government and its ruling party must do their best to learn from the lessons of the past and adapt to new political realities, not as a liberation movement or semi-autonomous regional authorities, but as responsible and accountable administrators of a sovereign and democratic state.

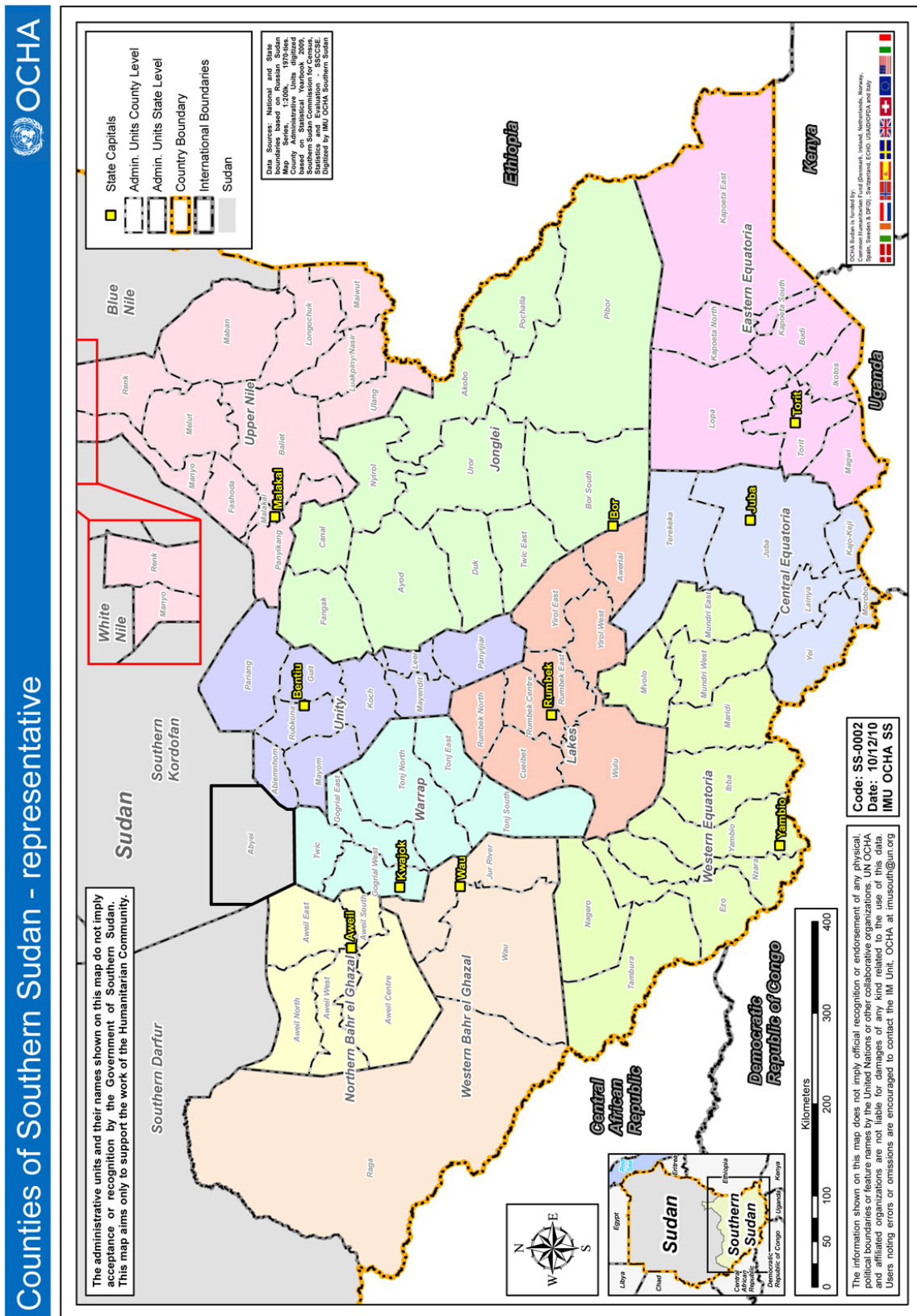
Tangible gains on key transitional issues – decentralisation, oil sector management, security provision and service delivery – would bolster the kind of political and financial accountability necessary to secure the confidence of the people. Progress on these fronts will necessitate political consensus and a stable environment. The SPLM must re-examine its old ways if it is to successfully manage fault lines within the party and the army in the new South Sudan. The party must also loosen its grip and embrace pluralism if it is to achieve the kind of state Southerners longed for in the old Sudan.

The democratisation and transitional agendas are daunting; results will not come overnight. And the job is not for the South Sudanese alone: the international partners who have supported them thus far will continue to have a major role. These allies must continue to support state formation while urging the SPLM and opposition actors forward on the road toward a stable multi-party democracy, all the while cognisant that a dose of tough love may be necessary along the way.

**Juba/Nairobi/Brussels, 4 April 2011**

## APPENDIX A

### MAP OF SOUTH SUDAN



## APPENDIX B

### ALL SOUTHERN SUDANESE POLITICAL PARTIES CONFERENCE (EXCERPTS)

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Theme: “Southern Sudan United for Free, Fair and Transparent Referendum”

Juba – Southern Sudan

13th – 17th October 2010

Final Communiqué

[Relevant Portions]

#### **3. Issues Raised by the Decision of the South in the Referendum**

- a) In the event that the decision of the people of Southern Sudan in the referendum is unity, the south should be prepared to effectively participate in the constitutional review process that will follow the referendum, in order to safeguard the gains of the south in the new dispensation in the country.
- b) In the event that separation is the choice of the people of Southern Sudan in the referendum:
  - i) GOSS shall establish a National Constitutional Review Commission to review the current Interim Constitution of Southern Sudan for adoption by the SSLA as a transitional constitution.
  - ii) GOSS to convene an all party constitutional conference to deliberate and adopt a constitutional system for the new independent and sovereign state in Southern Sudan.
  - iii) The constitutional conference shall discuss and agree on the formation of an interim broad based transitional government, under the current President of the GoSS, H.E. Salva Kiir Mayardit, after the end of the interim period.
  - iv) The transitional government shall be charged, *inter alia*, with the duty to conduct population census and general elections for a constituent assembly that shall promulgate the permanent constitution.
  - v) The constitutional conference shall decide on the length of the interim period necessary to carry out general elections for the constituent assembly.

#### **4. Formation of Leadership Forum**

A Southern Sudan Leadership Forum shall be formed with the membership of the chairpersons or representatives of all Southern Sudan political parties, to be chaired by the President of the Government of Southern Sudan and tasked with the follow-up and implementation of resolutions of this conference. The Forum shall meet at least twice during the remaining period to the referendum.

## APPENDIX C

### GLOSSARY

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CPA	The Comprehensive Peace Agreement, the culmination of negotiations between the SPLM and the Government of Sudan in 2005 which ended the county's civil war and aimed for democratic transformation of the state. It guaranteed Southern Sudanese a right to self-determination at the end of a six-year interim period; the agreement will come to an end on 9 July 2011.
ICSS	Interim Constitution of Southern Sudan, established in 2005 as the supreme law by which Southern Sudan would be governed during the CPA interim period. It complies with the Interim National Constitution.
INC	Interim National Constitution, established in 2005 as the supreme law by which Sudan would be governed during the CPA interim period.
GNU	Government of National Unity, the national governance structure established by the CPA which originally included power-sharing formulas in the national legislative and executive branches. It is headed by a president (Omar al Bashir), a first vice president (Salva Kiir) and a second vice president (Ali Osman Taha).
GoSS	The Government of South Sudan, a semi-autonomous regional government established by the Comprehensive Peace Agreement in 2005 which originally included power-sharing formulas in the regional assembly and is headed by GoSS President Salva Kiir.
NCP	National Congress Party, the Khartoum-based ruling party of the Government of Sudan, headed by President Omar al Bashir.
NLC	National Liberation Council, an elected, though largely inactive, quasi-parliamentary SPLM party structure of 270 members. It was re-established in 2008.
SAF	Sudan Armed Forces, the national army controlled by Khartoum.
SPLA	Sudan Peoples' Liberation Army, the armed wing of the Southern rebel movement that began in 1983 and was commanded by the late John Garang. The CPA formally recognised it as a national armed force alongside the SAF, with its headquarters in Juba.
SPLM	Sudan People's Liberation Movement, the Juba-based Southern rebel movement turned political party that signed the CPA in 2005; it is now the ruling party in the GoSS and is headed by Salva Kiir.
SPLM-DC	Sudan People's Liberation Movement-Democratic Change, a splinter party established in June 2009 by former SPLA commander and former GNU Minister of Foreign Affairs Lam Akol. Criticising SPLM governance, Akol called for a change of Southern leadership, a move that reinforced his traitor status among many in the mainstream SPLM. The party is the most organised of Southern opposition parties; its party base is primarily drawn from Upper Nile state.
SSDF	The South Sudan Defence Forces, the umbrella organisation formed of a broad coalition of Southern armed groups that maintained tactical alliances with Khartoum during the civil war. Under Paulino Matiep's direction, they were integrated into the SPLA – via the “Juba Declaration” – in 2006.
SSLA	South Sudan Legislative Assembly, the seat of legislative authority in South Sudan's unicameral system. Previously constituted on the basis of CPA power-sharing formulas, representatives were elected to the Assembly in 2010.
UNMIS	The United Nations Mission in Sudan, a peacekeeping operation authorised by the Security Council on 24 March 2005. Its primary mandate is to support and monitor implementation of the CPA. It is likely to be replaced by a new UN presence in 2011.

## APPENDIX D

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

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**March 2011**

## APPENDIX E

### CRISIS GROUP REPORTS AND BRIEFINGS ON AFRICA SINCE 2008

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