

**RESILIENT
SOCIAL
CONTRACTS**

WITS SCHOOL OF
GOVERNANCE

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG



South Sudan:

The Quest for a Resilient Social Contract

1. Disclaimer: The views expressed in this paper are those of the author and are not an official policy or position of the National Defense University, the Department of Defense or the U.S. Government, University of Juba or PRIO.
2. Christopher Oringa, Lecturer at University of Juba, assisted in collecting and analyzing primary data from key informants and focus group discussions.

Luka Kuol, PhD¹
*Africa Center for Strategic
Studies, National Defense
University, USA*
*University of Juba, South
Sudan²*
*Peace Research Institute
Oslo (PRIO), Norway*



University of Witwatersrand
School of Governance
Johannesburg

South Sudan: The Quest for a Resilient Social Contract

Wits School of Governance Working Paper Series
978-1-86838-416-7

Copyright ©University of Witwatersrand 2018

Design & Production: Design and Production: StartMedia.co.za, Johannesburg, South Africa.
Contribution to cover design: Gabrielle Belli

Table of Contents

Acknowledgements.....	4
Executive Summary.....	5
INTRODUCTION.....	5
CONTEXT.....	8
Historical transitions	8
Core conflict issues and resilience for peace capacities.....	8
DRIVER 1 – POLITICAL SETTLEMENTS ADDRESSING CORE CONFLICT ISSUES.....	10
The post-CPA: the politics of constitution-making and transition.....	10
2015 ARCSS: inclusive but undermined by the elite interests.....	12
DRIVER 2 – INSTITUTIONS DELIVERING EFFECTIVELY AND INCLUSIVELY.....	15
The post-CPA institutions: performance, expectations and legitimacy.....	15
Security sector institutions: representation and diversity.....	19
International assistance: sequencing and prioritising institutional development.....	20
ARCSS: envisioning inclusive institutions.....	21
DRIVER 3 – SOCIAL COHESION BROADENING AND DEEPENING.....	21
Vertical social cohesion.....	22
Horizontal social cohesion.....	23
ANALYSIS AND CONCLUSION.....	24
RESOURCE LIST.....	27

ACKNOWLEDGEMENTS

This working paper is part of a series informing a research and policy dialogue project entitled 'Forging Resilient Social Contracts'. Directed by Dr. Erin McCandless, Phase I of this work involving 11 case studies, validation workshops and policy dialogues around findings, benefitted from the invaluable support of Rebecca Hollender and the methods team of the project, Marie Joelle Zahar, Mary Hope Schwoebel, Alina Rocha Menocal and Alexandros Lordos.

The framing of this research across the case studies was developed by Dr. McCandless, with multiple reviews and invaluable feedback from advisers, notably the project methods team. Dr. McCandless also oversaw the editorial process of the eleven case studies with support of Rebecca Hollender, while they benefitted from extensive peer review – both by advisers within the project working group and external, blind, peer reviewers.

Dialogues for sharing and validating our research finding have taken place with policymakers and academics in high-level meetings and events such as the Geneva Peace Week, the World Bank Fragility, Violence and Conflict Forum in Washington DC, and UN High Level Event on Sustaining Peace in New York, The Stockholm Forum on Peace and Development in Sweden, as well as in a number of case study countries – Bogotá, Sarajevo, Harare and Johannesburg. Insights from these events contributed to the strengthening of the findings.

Diagrams were developed by Gabrielle Belli and Julia Levin.

The project gratefully acknowledges the financial support of the United Nations Development Programme (UNDP) Oslo Governance Centre (OGC), the Friedrich-Ebert-Stiftung (FES) in Berlin and New York, the Julian J. Studley Fund of the Graduate Program of International Affairs at The New School in New York, in this work.

The views enclosed do not necessarily represent the views of the donors or working group advisers.

The summary findings, and this full report, are available on the project and institutional home websites, www.socialcontractsforpeace.org, <https://www.wits.ac.za/wsg/research/research-publications-/working-papers/>, as well as our partner websites: http://www.undp.org/content/undp/en/home/ourwork/global-policy-centres/oslo_governance_centre/social-contract.html. <http://www.fesny.org/>.

EXECUTIVE SUMMARY

Since achieving its hard-won independence, South Sudan has become a theatre of violent conflict and human misery and one of the most fragile countries in the world. Examining this crisis and prospects for achieving and sustaining peace through the lens of social contract, this article argues that the way the ruling elites managed the transition to statehood, including the constitution-making process, has produced a social contract that has failed to address and instead accentuated the core conflict issues that contributed, among other factors, to the eruption of civil war in 2013. Although the 2015 Peace Agreement provides an opportunity for the people of South Sudan to forge the much-needed social contract, its revitalisation by new agreements recently signed in Khartoum during July 2018 that maintain status quo and reward those with guns will be a recipe for another cycle of violence that may drag the country to the trajectory of a Hobbesian state.

1. Introduction

South Sudan became an independent country in July 2011 as a result of the successful implementation of the Sudan Comprehensive Peace Agreement (CPA) signed by the Government of Sudan (GoS) and Sudan People's Liberation Movement (SPLM) in 2005 (IGAD 2005). Its birth provided the impression that South Sudan would not only succeed in fulfilling the aspirations of its people, but that it would become a key player in promoting peace and stability in the region. However, some analysts casted doubt on this optimism and painted a bleak picture, describing it as failed state before it was born (Howden 2011).

To the disappointment of the region and international community as well as its people, the new independent South Sudan slipped into civil war in December 2013 – less than two and half years after its birth. It is now a leader in exporting refugees, with major fragility indices ranking South Sudan as a top fragile country in the world³. Despite the signing of the Agreement on the Resolution of Conflict in the Republic of South Sudan (ARCSS) in 2015 (IGAD 2015), violent conflict remains the pattern in most parts of South Sudan. The civil war created a serious social fracturing and damaged social cohesion, possibly putting South Sudan at the fringe of anarchy or even genocide.

The eruption of this civil war raises the fundamental question of what went wrong and revives the debate about the core conflict issues and how to build and sustain peace in South Sudan. The failure of South Sudan to manage its transition to statehood to achieve stability and social cohesion provides a good case study for assessing the concept of resilient social contract.

This case study examines the main proposition of this overall study – that a resilient national social contract lies at the heart of preventing violent conflict and achieving and sustaining peace (McCandless, 2018). The three postulated 'drivers' laid out below are used to investigate how they interact in forging such a social contract and, critically, how this supports or undermines the prospects for attaining and sustaining peace in South Sudan (see Box A).

In order to examine how South Sudanese are working towards a resilient national social contract, special attention is given to how two selected core conflict issues (see Box A) – 'political representation' and 'the diversity question' – are addressed through social contract-making mechanisms (described further in 2.2). The choice of these conflict issues is based on how they have been consistently contributing to the recurrence of civil wars in Sudan (1955 and 1983) and importantly the first civil war in South Sudan in 2013. These conflict issues are so connected because the political

3. The Fund for Peace (FFP) 2017.

representation at the national level may not be inclusive where the major ethnic groups dominate. This can be addressed only through a system of government that ensures self-rule at the lower levels of government.

The main argument of this case study is that, when the country became independent, the ruling elites not only monopolised the management of transition to statehood, including the transitional constitutional-making process and post-independence government, but also squandered the decentralised federal system achieved in the CPA to address the 'diversity question'. The monopoly of political power by the SPLM and the abandonment of the system of government that addresses the 'diversity question', among other factors, contributed to the eruption of civil war in 2013. Even the ARCSS, which is relatively more inclusive and reasonably addresses the three postulated drivers of resilient social contract and the two core conflict issues, has failed to produce peace, as the ruling elites saw it as a threat to their political dominance and survival.

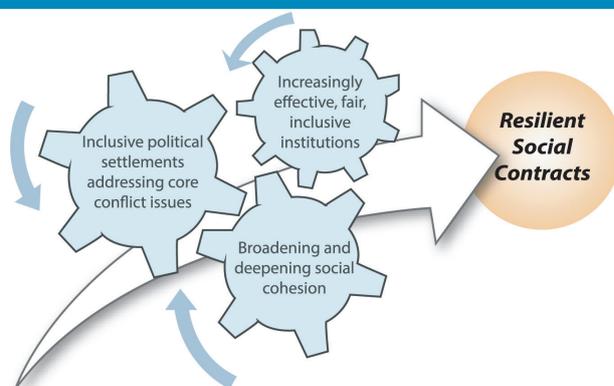
Background to Project and Methodology

This case study and overarching 11-country research and policy dialogue project are informed by a conceptual framing and methodology⁴ that investigates what drives a resilient national social contract – that is, a dynamic national agreement between state and society, including different groups in society, on how to live together. Such a contract includes the distribution and exercise of power, and how different demands, conflict interests and expectations around rights and responsibilities are mediated over time through different spheres and mechanisms. Three postulated ‘drivers’ of such a contract, constructed through deeply rooted in evidence-based research and dialogue within the project working group, are that:

1. Political settlements and social contract making-mechanisms are increasingly inclusive and responsive to ‘core conflict issues’.⁵
2. Institutions (formal, customary and informal) are increasingly effective and inclusive and have broadly shared outcomes that meet societal expectations and enhance state legitimacy.
3. Social cohesion is broadening and deepening, with formal and informal ties and interactions binding society horizontally (across citizens, between groups) and vertically (between citizens/groups and the state).

The value of these proposed drivers and their interactions is assessed in these studies for their ability to better understand what went wrong, and the prospects for attaining and sustaining peace in South Sudan.

FIGURE 1: THREE DRIVERS OF RESILIENT SOCIAL CONTRACTS



‘Social contract-making’ spheres and related institutional mechanisms – central to the study framing and findings – are conceptualised as follows: Peacemaking (i.e., through a peace agreement or political agreement); Transitional (i.e., sequenced dialogues, commissions, truth and reconciliation processes); Governance-related, including formal mechanisms (i.e., codified structures of government, formal institutions, national development plans, devolution frameworks/policies) and hybrid mechanisms (i.e., where religious/customary/non-state actor and state mechanisms interact); and Everyday (i.e., citizen actions or practices, norms, mores). In this study, the everyday sphere also serves as a litmus test of the extent to which higher-level, formalised agreements or processes represent wider societal views.

The study is based on secondary data and global indices collected through deskwork and primary data gathered through focus group discussions (26 FGDs)⁶ and key informants interviews (110 KI)⁷. Also, the study relies on personal knowledge of the author of political events in Sudan and South Sudan. The analysis of the data uses the perspectives of key informants from the former three regions of South Sudan (Bahr el Ghazal, Upper Nile and Equatoria) to reflect regional and ethnic identity perceptions⁸. As the study was unable to cover the views of all ethnic groups, its research findings may provide insight into distinct trends and even though they may not be robust enough to draw generalised conclusions.

4. McCandless 2018.

5. As defined in this study, these are overt drivers of conflict and discord, either historical, or contemporary in nature, broadly agreed by the main parties to drive conflict and discord, that are being disputed in the policy arena nationally, over time, and have resonance for most, if not all of the population. Ideally, they are reflected in formal agreements or mechanisms and enable examination of how state and society address conflict (McCandless 2018)

6. There were 26 focus group discussions conducted with each group consisting of six to eight participants. Most of focused discussion groups were youth (8), women (7), chiefs (5), religious leaders (1) and the business community (5).

7. One-hundred-ten questionnaires were administered through direct interview or self-administered by key informants. The profile of respondents was diverse, from the former Equatoria region (40 percent or 44 key informants), the former Bahr el Ghazal region (31 percent or 34 key informants) and the former Upper Nile region (29 percent or 32), with majority male (65 percent) and 35 percent female. Most key informants are more than 40 years of age (49 percent), with post-secondary diploma (50 percent) and university degree (14 percent) and working with government (50 percent) and NGOs and United Nations organisations (30 percent).

8. The colonial authority established these three regions as administrative units in the 1920s, but they have assumed a political and ethnic character since the independence of Sudan and even since the independence of South Sudan.

2.0 Context

2.1 Historical transitions

South Sudan is made up of about 64 ethnic groups. Prior to colonisation and before permanently settling as distinct ethnic groups in their current territories, these ethnic groups witnessed considerable migration, accompanied by state of lawlessness and violent processes of domination and forming alliances or agreement to co-exist and live together. They adopted socio-political systems that sustained peace and tranquility, but also nurture common identity around their distinct cultures and customs.

Prior to its independence in 2011, the Southern Sudan as a region of Sudan had experienced two civil wars (1955-1972 and 1983-2005) and two peace agreements (the Addis Ababa Peace Agreement in 1972 and Comprehensive Peace Agreement (CPA) in 2005). While the Addis Ababa Peace Agreement provided the people of Southern Sudan a self-rule regional government within a united Sudan, the CPA provided not only self-rule, but also the right of self-determination for the people of Southern Sudan to decide their political future in a referendum.

The people of Southern Sudan voted overwhelmingly on 9 January 2011 to secede from Sudan. Anticipating the proclamation of newly independent South Sudan six months hence, the ruling elites started preparing for the transition to statehood, i.e., with the drafting of the 2011 Transitional Constitution of the Republic of South Sudan (TCSS) (RSS 2011). The drafters of the 2011 TCSS were mainly from the SPLM and, instead of maintaining the decentralised federal system in the CPA, they replaced it with a centralised unitary and autocratic system. Besides this constitutional regression, the post-independence governments have been dominated by the SPLM, which is largely dominated by the two major ethnic groups (Dinka and Nuer). The politics around the drafting of the 2011 TCSS is discussed more in Section 3.

Within two and half years after achieving independence, South Sudan slid into violent conflict in December 2013. With the regional mediation of the Intergovernmental Authority on Development (IGAD), the warring parties signed the ARCSS in 2015. Although it has not been implemented, the ARCSS, as discussed in Section 3, attempts to address the drivers of resilient social contract and the two core conflict issues.

2.2 Core conflict issues and resilience for peace capacities

There are many core conflict issues in South Sudan. However, in this study, 'political representation' and 'the diversity question' have been chosen as the two major core conflict issues in South Sudan. This choice is based on the role that these core conflict issues have played in consistently contributing to the recurrence of violent conflict in Southern Sudan as a region of Sudan and after its independence. The first and second Sudanese civil wars that erupted in Southern Sudan were largely caused by marginalisation of Southern Sudanese in the post-independence government and the policies of assimilation that were pursued by the post-independence northern Sudanese ruling elites. Even during the brief period of self-rule (1972-1983), the two major ethnic groups largely dominated the regional government. This caused the growing feeling of marginalisation among Equatorians that contributed to the division of the Southern Sudan region and the eruption of the second pan-Sudanese civil war. Besides the failure of the guerrilla government of the SPLM (Rolandsen 2014), the monopoly of transition to statehood, the SPLM hegemony over the post-independence government and the abandonment of a decentralised system of self-rule contributed to the eruption of the first civil war in South Sudan.

Political representation: political patronage and big tribe politics

Given high ethnic diversity, weak political parties unable to articulate a national vision, and a lack of credible elections, the issue of political representation is a key driving factor of violent conflict in South Sudan. Tensions around political representation can be traced to the independence of Sudan in 1956 when Southerners were isolated or poorly represented not only in the national government in Khartoum, but also in their region. This created a sense of marginalisation and grievance that contributed to the eruption of the first civil war in 1955. Following the Addis Ababa Peace Agreement in 1972, an elite power-sharing formula, with the central government in Khartoum playing a central role in appointing the political leadership in southern Sudan, established the dominance of one major ethnic group – the Dinka – in the regional government.

The actual or perceived domination of Dinka and Nuer⁹ in the regional government led the elites from Equatoria to call for Kokora¹⁰ or the division of southern Sudan region into three regions (Willems and Deng 2015). This idea to re-divide the southern Sudan region was the goal of Nimeiry, the former president of Sudan, in order to undermine the political strength of a united South; most Equatorians saw the re-division of the South as a way to limit the dominance of the Dinka (Shinn 2004:254). This re-division contributed, among other factors, to the eruption of the second civil war.

Equally, the CPA had given the lion's share – 70 percent – in power-sharing agreement of the regional government of Southern Sudan to the SPLM . The SPLM ex-combatants, who were predominantly from Dinka and Nuer, largely dominated the government at all levels. In particular, the security sector such as the national army and all other uniformed services became dominated by Dinka and Nuer. The other ethnic groups tolerated such domination largely because of the need for unity during voting on the referendum on the right of self-determination; furthermore, they had their own decentralised autonomous state and local governments before gaining independence in 2011.

However, the feeling of domination by Dinka and Nuer was growing and became full-blown when the ex-combatants started grabbing land in Juba, the capital city. This led to tension between the regional government and the government of Central Equatorial State over Juba as the seat of both governments. While the regional government wanted the capital of Central Equatorial State to be relocated outside Juba, the state authority rejected such a demand and some community leaders instead demanded that the regional government relocate to outside Juba as a way of limiting the land-grab by the ex-combatants.

The diversity question: the elusive quest for federalism and self-rule

The management of ethnic diversity shaped and continues to shape the dynamics of peace and conflict in South Sudan. The quest for federalism by the southern elites started even before the independence of Sudan in 1956. In the first pan-southern Sudanese conference held in Juba in 1954, the delegates from the three former southern regions who attended the conference voted overwhelmingly in support of federalism.

The post-independence northern ruling elites not only rejected a federal system and considered the demand for it as treason, but also despised diversity and adopted Arab-Islamic identity as the only way to create a homogenous society in the Sudan. The demand for a federal Sudan was advocated by the people of southern Sudan as the only way for them rule themselves and not to pursue the idea of an independent South Sudan. The rejection of a federal system and the imposition of Arab-Islamic culture were among the reasons that caused the eruption of the first civil war in southern Sudan in 1955.

9. For the people of Equatoria, Nuer and Dinka were considered the same and they were all labeled as "Dinka".

10. Kokora is a word in the Bari language that means to divide something into different parts.

The 1972 Addis Ababa Peace Agreement attempted to address the ethnic diversity by granting the people of southern Sudan autonomous regional government. Although the Agreement allowed the central government to retain economic and political power, it provided an element of self-rule for the first time. However, this regional government was unable to sustain peace and build social cohesion because of the ethnic and patronage politics pursued by the southern ruling elites. This, along with the political manipulation by the central government, culminated in the re-division of the southern Sudan region, the abrogation of the Addis Ababa Peace Agreement and the eruption of the Sudanese second civil war in 1983.

The 2005 CPA was the first agreement to adequately address the diversity question. It provided for a decentralised federal system of government with four tiers of government: national, southern Sudanese, state and local – all with clearly defined powers. These provisions for managing the diversity in the Sudan were enshrined in the national constitution, Interim Constitution of Southern Sudan (ICSS 2005) and state interim constitutions (GoSS 2005). Unfortunately, this decentralised federal system was impaired during transition to statehood and after independence – another factor that led to civil war.

Despite this bleak reality painted by the two core conflict issues, there are other drivers and capacities for nurturing peace and social cohesion, as discussed in Section 5. In particular, this case study shows that the shared history, some symbols of statehood and some ethnical elements may provide the basis for forging social cohesion. Also, the high level of daily interaction between different ethnic groups may reduce fear, anxiety, mistrust and stereotypes as well as allow for forging and nurturing social cohesion. Although it has not been implemented the 2015 ARCSS, discussed in Section 3, addresses in principle and in theory the drivers of resilient social contract and the two core conflict issues.

3.0 DRIVER 1 – Political Settlements Addressing Core Conflict Issues

The CPA and the 2005 ICSS provided the constitutional and institutional bases for the establishment of the new state of South Sudan. A comparison between the two constitutions, before and at independence, in terms of process and content, provides the basis for assessing how the CCIs – political representation and the diversity question – were addressed during the transition to statehood. The 2015 ACRSS is also analysed more broadly in its addressing of CCIs.

3.1 The post-CPA: the politics of constitution-making and transition

The 2005 ICSS provided a clear constitutional process for the new state if the people of southern Sudan were to vote for secession. In particular, Article 208 (7) of the ICSS states, “If the outcome of the referendum on self-determination favours secession, this Constitution (ICSS) shall remain in force as the Constitution of a sovereign and independent Southern Sudan [...]” In order to avoid a constitutional vacuum for the new state, the aim of this Article was to review the ICSS and to become a transitional constitution for the new state and to add national and sovereignty provisions. As argued by Akol (2011), the review of the ICSS for the new state is neither to change relevant provisions nor to introduce matters that require consensus.

Political representation: exclusion and constitutional regression

In preparation for the referendum and to build consensus about the anticipated new state, All Southern Sudan political parties (ASSPP), including SPLM, held a conference chaired by President Kiir in Juba in October 2010 to chart roadmap for referendum. The Conference resolved to reconvene within one month a National Constitutional Conference to carry out, among other issues, a constitutional review

of the ICSS for an independent state in case of secession and to discuss and agree on a broad-based, interim, post-independence national government.

Contrary to these resolutions, and without consulting the leaders of ASSPP, President Kiir appointed the 24-person Constitutional Review Committee to review the 2005 ICSS. The appointment of this Committee was not only contrary to the spirit and resolutions of the ASSPP Conference, but all members were from the SPLM except one hand-picked member from another political party. The other political parties rejected the formation of the Committee and demanded it to be inclusive. In response to this demand, President Kiir expanded the membership of the Committee to include 11 members from the other political parties, one from civil society and two from faith-based groups. Again, without consultation and to the surprise of other political parties, President Kiir appointed an additional 17 members, mainly from the SPLM, to ensure that it would have the two-thirds majority (40 out of 55 members) needed to pass the draft constitution (Akol 2011).

Following these events, other political parties decided not to take part in the Committee and withdrew their members. The subsequent review of the ICSS and the drafting of a transitional constitution for the new state were exclusively left for the SPLM, with limited participation of civil society (one member) and faith group (two members). A Draft Transitional Constitution of South Sudan (TCSS), 2011, was prepared and presented to the regional parliament controlled by the SPLM. Ninety-eight percent of the members passed it and then President Kiir signed it before proclamation of South Sudan's independence on 9 July 2011.

The process for laying a constitutional basis upon which the new state of South Sudan was founded failed to reflect the spirit of unity and cohesion shown by the people of southern Sudan during the referendum. The results of this non-inclusive process were an autocratic system with the President of the Republic granted excessive and absolute powers. Unlike the 2005 ICSS, the 2011 TCSS grants the president the power to dismiss elected state governors and state legislatures without due process of law. It also grants the president the power to appoint and to dismiss ministers without consultation with the vice-president and the power to dismiss justices and judges without recommendations from the Judicial Service Commission. Furthermore, the 2011 TCSS has no provisions by which aggrieved citizens can contest issues concerning the violation of the constitution and the bill of rights. Finally, it grants the president unlimited tenure in office. These new constitutional powers undermine the separation of powers, the supremacy of the rule of law and a decentralised system of government.

Also, the APPSS Conference resolved to agree on new power-sharing arrangements that would ensure a broad-based, post-independence national government. Contrary to this resolution, President Kiir appointed the first 29 national ministers in August 2011, most of whom (25) were from the SPLM and only four of whom were from other hand-picked political parties. The failure to honour the spirit and the resolutions of the ASSPP was a missed opportunity by the SPLM to lay down a solid foundation for addressing the core conflict issues. In July 2013, within less than two years of being in office and in an apparent power struggle within the SPLM, President Kiir, exercising his new constitutional powers and without consulting his ruling party, sacked the entire cabinet, including his vice-president and senior leaders of the SPLM, and replaced them with new faces.

The new cabinet consisted of 19 ministers who were not only from the SPLM (with exception of three from other political parties), but also the majority of whom (10 ministers and the president) were from Dinka. In fact, Dinka and Nuer dominated about 70 percent of the national ministerial positions, with only 30 percent coming from the other 62 other ethnic groups. The increased dominance of Dinka in the national government may be attributed to the growing division within the SPLM, which made President Kiir gradually rely on the advice from some Dinka elders who eventually organised themselves into a powerful lobby group known as the Jeing (Dinka) Council of Elders.

The crisis of power-sharing and political representation shifted from being a struggle between the SPLM and other political parties to a power struggle within the SPLM. As President Kiir started taking unilateral decisions without consultation within his party, the disgruntled and dismissed senior SPLM leaders started calling for democratisation within the SPLM. The SPLM became divided into groups within the government and those outside the government. In December 2013, this division culminated in violent conflict that became a national crisis; it fell along ethnic lines, with the SPLM splitting into three factions: SPLM-In Government (IG), SPLM-In Opposition (IO) and SPLM-Former Detainees (FDs).

This pattern of sense of exclusive entitlement to power by the SPLM is best analysed in the context of a phenomenon described by Clapham (2012) as the “curse of liberation”. He argues that, although most liberation movements enjoy the virtue of selfless sacrifices, such virtues may become a curse when they transition from liberation to governing. These liberation virtues give liberators an exclusive and intense sense not only of legitimacy, but also of full entitlement to state power and its future. The SPLM exhibited this feeling of exclusive entitlement to state power during the CPA period, but the attitude even intensified during the transition to a new independent South Sudan. Subsequently, the transition to a new independent country was a missed opportunity for addressing the core conflict issues and, indeed, it instead exacerbated these conflict issues.

The diversity question: abandoning decentralised federal system

Besides the exclusive monopoly of the SPLM in the transition process, the TCSS failed to protect what the people of South Sudan had achieved in the CPA to manage their diversity. The decentralised federal system provided for in the CPA was replaced, as discussed before, in the 2011 TCSS with a centralised and autocratic unitary system. Also as mentioned earlier, the president was given excessive constitutional powers to dismiss not only the elected state governors, but also the elected state parliaments. With such constitutional powers vested in the president, the national government has usurped the pillars of checks and balances and institutions of autonomous self-rule federal states.

The decentralised services of the police, other uniformed services, the judiciary and other powers of state as enshrined in the ICSS were transferred in the TCSS to the national government and are now centralised. In other words, most powers of the governments of the 10 states have been stripped and those governments have been relegated to the management of prisons and reformatories (Akol 2011). The TCSS was expected to explicitly affirm the federal system, in accordance with the demand of the people of South Sudan, but instead replaced the decentralised system provided for in the CPA with a more centralised system of government. The state and local governments became weaker since the independence and this resulted in renewed discussion about federalism in the 2015 ARCSS, as discussed below.

3.2 2015 ARCSS: inclusive but undermined by the elite interests

As the eruption of civil war in 2013 caused enormous human suffering within a very short period of time, the IGAD convened the warring parties for peace negotiations. These peace negotiations initially involved the SPLM’s various factions (SPLM-IG, SPLM-IO and SPLM-FDs) and then included, at a later stage, other stakeholders (other political parties, civil society organisations, women, youth and faith-based organisations) and resulted in the ARCSS, signed in August 2015. The negotiation of the ARCSS was not only inclusive, with the three factions of the SPLM and other political parties as the main parties to the Agreement, but it also included representatives of the main stakeholders (civil society, women, faith-based leaders and eminent personalities). Notably, these other political parties and stakeholders became a sounding board for the mediators for building consensus on any impasse during negotiations.

The ARCSS is very comprehensive and detailed. It has eight chapters related to power-sharing, security arrangements, humanitarian assistance, economy, transitional justice, a permanent constitution, monitoring and evaluation and a detailed implementation matrix. Although other parties, stakeholders, guarantors and witnesses initially signed the ARCSS in Addis Ababa, Ethiopia, on 17 August 2015, President Kiir refused, under the pretext of the need for more consultation with citizens, to sign it.

With regional and international pressures and threats of more sanctions and an arms embargo, President Kiir reluctantly signed the ARCSS in Juba on 25 August 2015 with a list of 16 reservations concerning the Agreement. Despite these reservations, the ARCSS was unanimously endorsed by the national legislature without the reservations of the president. This lack of political will and commitment on the part of the president raises the question of whether the ARCSS is worth the paper it is written on.

Indeed, the Transitional Government of National Unity (TGoNU) scheduled for formation in December 2015 was not established until April 2016, as the government created obstacles, such as its refusal to demilitarize Juba, the capital city. In fact, the TGoNU was formed without a constitutional basis because the government refused to amend the TCSS to incorporate the provisions of the ARCSS. Within less than three months, violent conflict erupted in July 2016 during the meeting of the presidency in Juba. This resulted in the first vice-president, Dr. Riak Machar, fleeing the country, followed by the renewal of violent conflict and the emergence of armed groups in all parts of South Sudan.

Political representation: SPLM hegemony but fractured

Like other peace agreements, the ARCSS suffers the same problem of elite power-sharing arrangements that reward those with guns. The 30 national ministries agreed upon in the ARCSS are to be allocated to SPLM-IG with 53 percent, SPLM-IO with 33 percent, SPLM-FDs with 7 percent and other political parties with 7 percent. Although the SPLM has 93 percent of the TGoNU, which exceeds its share of 70 percent in the CPA, it is now split and so its dominance is fractured. Also, the national parliament that was dominated by the SPLM has been restructured and its membership increased by 68 new members. These members are to be nominated by the SPLM-IO (50 members), other political parties (17 members) and SPLM-FDs (one member).

Unlike the CPA, the decision-making process in the ARCSS is designed in such a way that the decisions of the national cabinet and parliament are made by agreement or consensus and, in lieu of that, by a two-thirds' majority of all members. Also, the powers of the president in the TCSS have been reduced in the ARCSS: the president has no power to make any decision without consulting or seeking the consent of the first vice-president. In addition, the newly created office of the first vice-president has been given more powers in the ARCSS; these powers include the supervision and coordination of the implementation of the reforms outlined in the ARCSS, oversight of TGoNU business and programmes, and ensuring the implementation of decisions of the TGoNU and the laws passed by the parliament.

The TGoNU that was formed in April 2016 on the basis of the provisions of the ARCSS not only represented the three regions, but the representation of Dinka (40 percent) and Nuer (17 percent) was reduced from 70 percent in July 2013 to 57 percent. Interestingly, the SPLM-IG nominated more than half of its ministers (56 percent) from Dinka, with only one minister from Nuer, while SPLM-IO nominated half of its ministers from other ethnic groups and the other half from Nuer (30 percent) and Dinka (20 percent). The new decision-making process and the reduced dominance of the SPLM-IG and powers of the president made the SPLM-IG so reluctant to fully implement the ARCSS; this might have contributed, among other factors, to the eruption of violent conflict in July 2016.

The diversity question: back to decentralised federalism

During the negotiations of the ARCSS, the issue of federalism became one of the issues that derailed the speedy conclusion of the Agreement. While the SPLM-IO supported the adoption of federalism, the SPLM-IG initially argued that the issue of federalism should be addressed during the permanent constitution-making process; later, it opposed federalism. Civil society organisations, other political parties and elites and senior government officials from the Equatoria region challenged the position of the SPLM-IG and demanded federal system.

In response to the growing demand for a federal system, the government started muting debates on federalism. Its rejection of the federal system became clear when President Kiir, during his address to the Parliament in June 2014, criticised Equatorians for speaking out over federalism. He suggested that the demand for federalism was relevant only in a united Sudan, not in the new country of South Sudan.

Following this clear statement by the head of state about federalism, the government security agencies started cracking down on and silencing voices calling for federalism. Copies of newspapers that criticised the government for censoring public debates about federalism were confiscated. Efforts to create academic and public platforms to debate federalism were curtailed and restrained. Such state behaviour was paradoxically reminiscent of the actions of the post-independence northern ruling elites who, in the 1950s, treated southern Sudanese demands for federalism as treason.

This position of the government against federalism can be attributed to the greater influence of the Jeing (Dinka) Council of Elders (JCE), who saw federalism as a new type of “Kokora” of dividing South Sudan and as a way for Equatorians to get rid of Dinka in their region. Also, with increasing land-grabbing in Juba by Dinka and Nuer ex-combatants, federalism was seen by some Equatorians as a way to have their own autonomous self-rule and to limit the interference of Dinka and Nuer in their affairs. These debates were similar to the discussions of Kokora in the early 1980s that resulted in the division of the southern Sudan region into three regions.

Importantly and unlike other peace agreements, the ARCSS recognizes the important role of transitional justice in peacebuilding and provides for the establishment of the Commission for Truth, Reconciliation and Healing, an independent hybrid court for the crimes committed since the eruption of conflict in December 2013, and of a compensation and reparation authority. Interestingly, the ARCSS makes it very clear that individuals indicted or convicted by the hybrid court shall not be eligible for participation in the TGoNU or its successor governments. Also, the ARCSS sets the core parameters of the permanent constitution, including the establishment of a federal system of government as a popular demand of the people of South Sudan. It also retains a decentralised system of government of the CPA with 10 states.

Within less than three months of his signature of the ARCSS and contrary to the provisions of the Agreement, President Kiir, under pressure from the JCE, unilaterally divided the country into 28 states in October 2015 and then further into 32 states in January 2017, claiming that this was a way of “taking towns to the people”. This decision is less about promoting decentralisation than about weakening the growing political support for federalism, accentuating patronage capacity and loyalty, increasing the dominance of Dinka in more states and shifting the centre of power struggle from the national level to the state level. Now, the new states are not delivering services, but have become new centres for political rivalry and conflicts over position, land, resources and boundaries.

4.0 DRIVER 2 – Institutions Delivering Effectively and Inclusively

Besides the design of peace agreements, institutions play a critical role in addressing the core conflict issues and in creating the institutional arrangements needed for a resilient social contract. The evolution and formation of formal political institutions in South Sudan can be traced back to the Anglo-Egyptian colonial regime (1898-1955). Although formal institutions were established by the colonial authorities, the colonial officials, because of the limited reach of the formal institutions, had to rely on traditional and informal institutions to administer southern Sudan. Traditional authorities applied and were constrained by customary law. During this period, southern Sudan enjoyed relative peace and stability.

After Sudan gained independence in 1956, the formal state structures and institutions started emerging in the south, but they were largely dominated by northern civil servants, with southern Sudanese minimally represented. Yet, these formal institutions became casualties of the first civil war (1955-1972). Also, the formal institutions that were established during the brief period of self-rule of the Addis Ababa Peace Agreement (1972-1983) were poorly supported and financed by the national government and were largely dominated by the major ethnic groups (Dinka and Nuer). These formal institutions again became casualties of the second civil war (1983-2005).

4.1 The post-CPA institutions: performance, expectations and legitimacy

During the second civil war, the SPLM established the Civil Authority of New Sudan (CANS) in the areas under its control in southern Sudan. The CANS was largely managed by military officers who lacked expertise in public administration. The areas of southern Sudan under the control of the Government of Sudan were loosely administered by the Southern Sudan Coordination Council (SSCC), which was based in Khartoum because of civil war. The SSCC did not provide services, but was used by the Government of Sudan to provide employment for southern Sudanese as a way to soothe them and to discourage them from joining the rebellion by establishing puppet authorities. With no serious oversight and political leadership, the SSCC became corrupt with fictitious institutions and highly inflated civil servants with ghost names.

During the transition period of the CPA (2005-2011), the government of southern Sudan started from scratch, as most institutions built during the period of the Addis Ababa Agreement in 1972 had been destroyed. Although the CPA provided for the establishment of many formal institutions at the three tiers of government – the regional government of Southern Sudan, state governments (10) and local governments (about 79 counties) – there was limited capacity.¹¹ Many of these institutions started at a rudimentary level with civil servants from the corrupt SSCC and inexperienced CANS. Besides these inexperienced civil servants, there were no basic laws, no routine bureaucratic systems and no regulations for the daily function of these institutions. Inexperienced ex-combatant leadership further exacerbated the poor quality of institutions. Lacking recruitment regulations, most of these institutions became dominated along the ethnic lines of these institutions' leaders. Also, the issue of language was a challenge, as the official language was English, but most civil servants, particularly those from the SSCC, had been educated and worked in Arabic.

Despite these challenges in building formal institutions, the regional government of southern Sudan, with support from the international community, established institutions at least at the level of regional government and provided a minimum institutional basis for the new state of South Sudan. The

11. In South Sudan, local government consists of counties, payam and boma (Art. 173.5, Interim Constitution of South Sudan, 2005).

performance of public institutions during the period of the CPA and upon independence can be assessed through Millennium Development Goals (MDGs), citizens' perception, fragility assessment and the World Bank's country institutional and policy assessment (CPIA). This now follows

The Millennium Development Goals

Although living conditions in southern Sudan were appalling at the conclusion of the CPA in 2005, the government of southern Sudan, with support from the international community, progressed towards the MDGs (see Table 1). In particular, access to education and health improved considerably during the period of the CPA. For example, primary school enrolment increased from less than half a million pupils in 2006 to about 1.3 million in 2009, which considerably improved the literacy rate. In health care, the increase in the number of births attended by skilled health personnel, among other factors, reduced the incidence of infant mortality.

TABLE 1: Status of MDGs during the CPA (2005-2010)

Some Selected MDG Indicators	2006	2010
Severely undernourished children (per 1,000)	131	122
Literacy rate (%)	28	40
Proportion of seats held by women in national parliament	25	32
Infant mortality rate (per 1,000 live births)	102	75
Proportion of births attended by skilled health personnel	10	19
Access to improved water sources (%)	48.3	68.7

Source: NBS, 2013

This progress towards achieving the MDGs is relative, as it may mask what the government would have achieved with the enormous oil revenues it received during the period of the CPA. Also, the improved access to education and health services is largely attributed to the considerable investment of the international community, while the investment from the government was minimal and indeed far below the average spending of low-income countries. Furthermore, most government resources were spent in the security sector, which accounts for more than 50 percent of total public expenditure and the total number of public civil servants.

Citizens Perception Assessment: Level of Trust, Participation and Satisfaction

In gauging citizens' perception of the performance of governments, the key informants were asked the extent to which various governments in South Sudan have tried to address the root causes of violent conflict and the level of people's trust in state institutions and their participation (see Table 2). The performance of governments established during the CPA period is better appreciated than that in the post-independence period.

This is not surprising, as the decentralised federal system adopted during the CPA made citizens elect state governors and parliament that became more accountable to them. Also, the services provided by the government and the international community started reaching the citizens after the 2010 elections through the lower levels of government (states and counties). This positive trend in the performance of government towards independence is confirmed by the high favourability rating of the SPLM (84 percent), the president (82 percent) and, importantly, NGOs (87 percent), which received the highest favourability rating (IRI 2011).

With these institutions established during the CPA, the new state of South Sudan was in a better position upon its independence to maintain at least the progress made during the CPA. Unfortunately, and as discussed before, the way the ruling elites managed the transition to statehood and the post-independence governments contributed to a loss of trust in government and its inability to address the root causes of conflict (see Table 2). Also within less than two years and before the eruption of crisis, the level of citizens' satisfaction with government performance in reducing security (41 percent) and providing health care (21 percent) and education (32 percent) services became low, mirroring a considerable decline in the favourability rating of the president and the SPLM (IRI 2013).

Table 2: The Level of Performance of Government

Governments/Level of Performance	Very High	Somehow	Not At All	Do not Know
(a) Addressing Root Causes of Conflict				
2005-2011 CPA Transition Period	11%	58%	26%	5%
2011-2013 Post-Independence	10%	45%	45%	0%
(b) People's Trust in State Institutions				
2005-2011 CPA Transition Period	18%	45%	32%	5%
2011-2013 Post-Independence	5%	32%	64%	0%
(c) People's Empowerment/Participation				
2005-2011 CPA Transition Period	25%	38%	33%	4%
2011-2013 Post-Independence	13%	29%	54%	4%

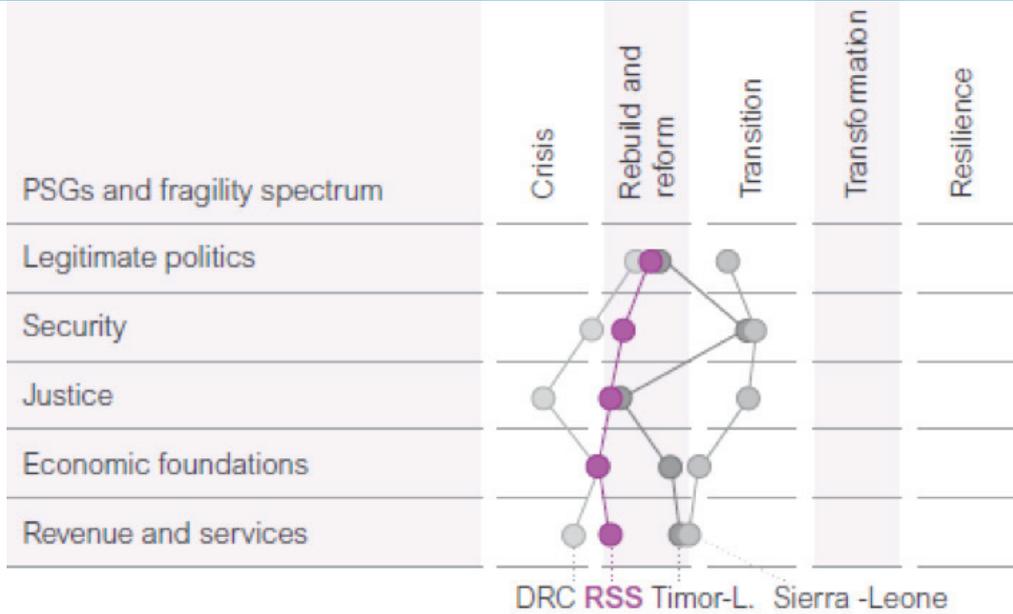
Fragility Assessment: Peace and Statebuilding Goals

A 2012 Fragility Assessment that evaluated progress toward five peace- and statebuilding goals (PSGs)¹² shows that South Sudan generally moved beyond the crisis stage of the fragility spectrum and into rebuild and reform stage (see Figure 1). Within the rebuild and reform stage, more progress is observed in the legitimate politics goal, while the economic foundations goal sluggishly lies between the crisis and rebuild and reform stages of fragility. In comparison with other post-conflict contexts, South Sudan performed better than Democratic Republic of Congo. The Assessment also suggests that all 15 dimensions considered for evaluation of progress toward the PSGs fall within the rebuild and reform stage of fragility spectrum except one dimension: societal relations, which progressed into the transition stage.

Despite this progress, the Assessment fails to recognize that the management of the transition to statehood put the new state of South Sudan on a fragile constitutional and institutional foundation. The Assessment claims that South Sudan made significant progress in fostering inclusive politics after it achieved independence and particularly after the promulgation of the 2011 TCC, which was seen as the first important milestone in advancing legitimate politics. However, as argued earlier, the way the ruling elites managed the transition including the drafting of transitional constitution did not address but rather accentuated the core conflict issues that contributed, among other factors, to the eruption of the first civil war in South Sudan.

12. The peace- and statebuilding goals are: (1) legitimate politics, (2) security, (3) justice, (4) economic foundations and (5) revenues and services. The stages of fragility spectrum are: (1) crisis, (2) rebuild and reform, (3) transition and (4) transformation and resilience.

FIGURE 1: STATUS OF PEACE- AND STATEBUILDING GOALS

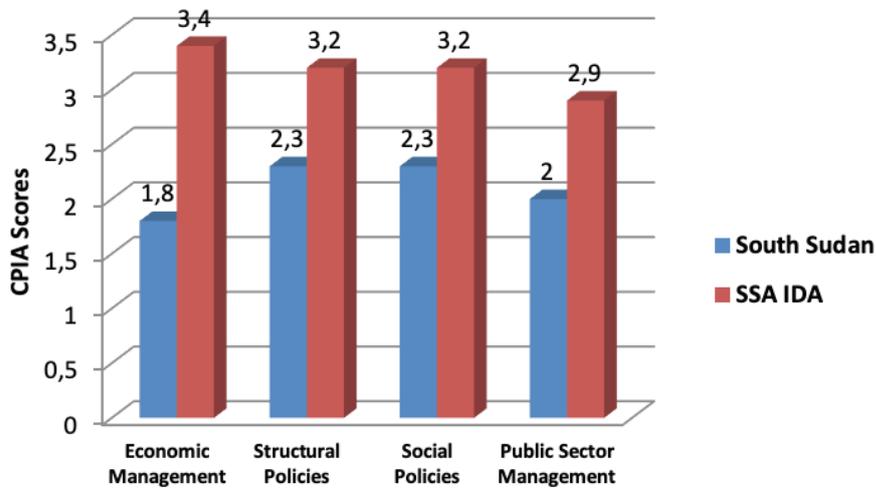


Source: RSS 2012

The Country Policy and Institutional Assessment (CPIA):

The CPIA provides the most reliable and robust tool for assessing the quality of institutions and policies. The overall CPIA score for South Sudan (2.1 out of 6 maximum scores) after independence was not only below the average score for sub-Sahara countries (3.2) and fragile sub-Saharan countries (2.8), but was the lowest score in Africa (World Bank 2012). In particular, South Sudan has performed worse in the economic management cluster and the public sector management and institutions cluster (see Figure 2). It is not a surprise that such weak institutions tend to exist in a fragile environment like that in South Sudan. Furthermore, such aggregate CPIA scores may not be sufficient to illuminate how such fragile institutions are linked to the core conflict issues.

FIGURE 1: STATUS OF PEACE- AND STATEBUILDING GOALS



Source: The World Bank 2012 CPIA Scores (1= Low, 6= High)

Also, the challenge facing most African countries is that the institutions of the post-independence modern state are based on alien colonial systems rather than on traditional institutions that are

considered to be resilient, legitimate and relevant to the socio-cultural, economic and political lives of Africans and that enhance good governance (UNECA 2007). Like other post-independence African countries, the state of South Sudan at the time of its independence was informed less by the resilient traditional institutions than on imported and alien structures and institutions, particularly on those inherited from Sudan.

4.2 Security sector institutions: representation and diversity

The security sector, particularly uniformed services, accounts for more than half of government in terms of allocation of resources and public workforce (Nunberg 2015). Besides its size, this sector is mandated to discharge the core function of the state: legitimacy and order through a monopoly on the threat of legitimate use of force. As such, this becomes the microcosm of the state, and its performance in terms of addressing the core conflict issues may mirror the overall quality of national institutions.

The size of the Sudan People's Liberation Army (SPLA), the national army, which numbered only about 40,000 at the conclusion of the CPA in 2005, reached 195,000 strong in 2010 and 207,000 within six months before independence, but this included a phenomenal increase in the number of untrained and sometimes illiterate officers (Gedima 2011). Also, the share of salaries in the total expenditures of the SPLA, which was about 16 percent in 2006, reached 87 percent in 2009 (Gedima 2011:29) and even more by the end of interim period in 2011. The same pattern is also observed in other uniformed services. In particular, the police service absorbed many officers and soldiers from the SPLA and the other armed militia groups.

The expansion and ethnic composition of the uniformed services have been largely influenced by the early formation of the SPLA, the CPA power-sharing arrangements, the Juba Declaration in 2006 on unity, the integration of the SPLA and the South Sudan Armed Forces (SSDF) and a series of amnesty declarations by President Kiir to various opposition forces. The eruption of the second civil war in 1983 in the Bahr el Ghazal and Upper Nile regions as the epicentres of conflict led a large number of youth and elites from the Dinka and Nuer to join the SPLA. The ethnic groups from Equatoria were sluggish in joining the SPLA, largely because of their perceived role in Kokora as one of the factors that caused the second civil war. Also, the other ethnic groups, with the exception of the Shilluk, started joining at a later stage of the civil war, albeit in limited numbers.

The CPA power-sharing arrangements gave exclusive monopoly to the Sudan People's Liberation Movement (SPLM) to use its forces, the SPLA as the basis for reconstituting and establishing the security sector institutions. As a result, the other armed groups, including the Khartoum-aligned SSDF, were left out in the CPA. The SSDF were under the control of Sudan Armed Forces (SAF) and constituted a loose coalition of distinct non-regular forces that provided security for SAF garrisons in the south and for the oil fields; they posed a real threat to peace after their exclusion in the CPA (Young 2006). The Juba Declaration was a way of pacifying the SSDF and of absorbing them into the SPLA.

While Dinka dominated the security sector, particularly the SPLA under President Kiir, such dominance started changing after the Juba Declaration in 2006. Although the SSDF under Dr. Riek Machar previously consisted of many non-regular forces including some forces from Equatoria, the Nuer constituted the majority of the SSDF. As ever-increasing and unspecified numbers of forces from the SSDF and other armed groups were absorbed and integrated into the SPLA after the Juba Declaration, the Nuer started competing or even becoming the majority in the SPLA. The drastic increase in the strength of the SPLA to 207,000 was attributed to the massive integration into the SPLA of the SSDF and many other armed groups that received amnesty from President Kiir.

Besides the increase in their numbers in the SPLA, the absorption of the SSDF with many high-ranking officers diluted the positions of SPLA officers within the military hierarchy (Warner 2013). This created

resentment among SPLA officers, as their adversaries were rewarded with equal or higher ranks. As a result, the security sector institutions have become not only dominated by the two major ethnic groups, but have also become more fragile by the creation of a new dynamic and a renewed power struggle and rivalry between the former adversaries: the SPLA and the SSDF, on the one hand, and indirectly between Dinka and Nuer, on the other hand.

Given the weak and fragile institutions and lack of professionalism in the security sector, the crisis within the SPLM in December 2013 caused the national army and other law enforcement agencies, such as the police, to disintegrate along ethnic lines in fighting the civil war with Dinka in the national army (largely loyal to President Kiir) and many Nuer in national army (loyal to Dr. Riek Machar, the former president of the SSCC and former vice-president). The international community's efforts to reform the security sector have not only failed to professionalize the security sector institutions, but have not treated reform of the sector as a political exercise to address core conflict issues such as representation and the diversity question.

4.3 International assistance: sequencing and prioritising institutional development

The Joint Assessment Mission (JAM) that was conducted during 2004-2005 to assess and prioritise post-conflict needs of southern Sudan, including institutional development, focused more on state-building in Juba than on the levels of government that are closest to the citizens. It provided the basis for mobilising external development assistance and rationalising the allocation of oil revenues to various sectors. On the basis of the JAM estimates of the cost of post-conflict reconstruction, the international donor community availed enormous and unprecedented bilateral and multilateral aid during the interim period estimated to be about US\$1 billion annually. Despite this huge external aid and technical assistance to build the capacity of the state and to modernize institutions during the interim period of the CPA, South Sudan suffered from weak governing institutions upon gaining independence.

The failure of international assistance to transfer capacity and build institutions in South Sudan could be attributed to the post-conflict development intervention approach and the sequencing of such intervention. Although the JAM identified five key intervention priorities as laid out in the SPLM's Strategic Framework for War-to-Peace Transition, the donors and international organisations prioritised the fifth priority, developing institutional infrastructure for better governance, as a precondition for successful implementation of the Government of South Sudan's strategic objectives to accelerate growth and expand service delivery. This development approach of importing best practices to fill the capacity gap has not been effective in building governing institutions in South Sudan's complex environment (Larson et al. 2013). Instead of starting with small and 'just enough' government, donors and international organisations pursued a development sequence with a huge focus on state capacity-building necessary for a 'modern' nation-state (Larson et al. 2013:8).

Also, the regional government and international community focused most of their efforts on building state institutions in Juba so that the state could perform its core functions and deliver basic services to citizens. While the statebuilding project started in Juba, the presence of the state at local and community levels was weak or even absent and was coupled with unsettled local grievances, as the violent conflict continued unabated.

While such prioritisation was deemed a technical and gradual approach to statebuilding, it neglected the political dimension of addressing the core conflict issues. The CPA sought to address issues of political representation and diversity through decentralised federal self-rule at the subregional levels (states and counties). By focusing only on the national level of government, international assistance may have indirectly strengthened the political patronage and dominance of the SPLM and the two major ethnic groups. When the crisis erupted at the national level, the neglected and fragile

subnational governments were paralysed and unable to control the violent conflict that assumed ethnic dimensions and opened unaddressed local grievances from the second civil war.

Furthermore, the timing of international assistance did not match with capacity-building and institutional development. While the flow of international assistance started at a very high level at the beginning of the interim period in 2005 and then gradually decreased towards the end of interim period in 2011, state capacity and institutions were very weak or non-existent at the beginning of the interim period, but increased towards the end of the interim period. This mismatch between the pattern of international assistance flow and capacity and institutional development trend resulted in a failure to deliver peace dividends; this weakened the state's legitimacy to discharge its core functions. This intervention that prioritised huge state institutional development instead of starting with 'just enough' governance and local community development might have contributed to the current fragility and violent conflict in South Sudan.

4.4 ARCSS: envisioning inclusive institutions

The 2015 ARCSS provides a series of institutional and policy reforms to build effective, fair and inclusive institutions. These include the review of more than 18 commissions and institutions to ensure their independence and accountability. It also reforms the judiciary to ensure its independence, the separation of powers and the supremacy of the rule of law.

In the security sector, the ARCSS provides for a holistic strategic defence and security review with the overall objective of transforming the security sector. In the economic sector, it stipulates institutional reforms in key economic institutions such as the Central Bank, the Ministry of Finance, the Anti-corruption Audit Chamber, and the oil sector; it also establishes new institutions and promulgates new laws. In the oil sector, the ARCSS clearly specifies a thorough audit of the petroleum sector – particularly employment, contracts and oil revenues – to ensure accountability and transparency. In terms of design and content, the ARCSS is more inclusive and comprehensive than previous peace agreements in addressing the CCIs and in providing the necessary institutions for driving and sustaining resilient social contract. Yet its implementation became extremely difficult especially because it would have contravened the interests of the ruling elites. Also, as discussed earlier, the aspirations and ambitions of the ARCSS would have made it difficult to move from drafting to actual implementation.

5.0 DRIVER 3 – Social Cohesion Broadening and Deepening

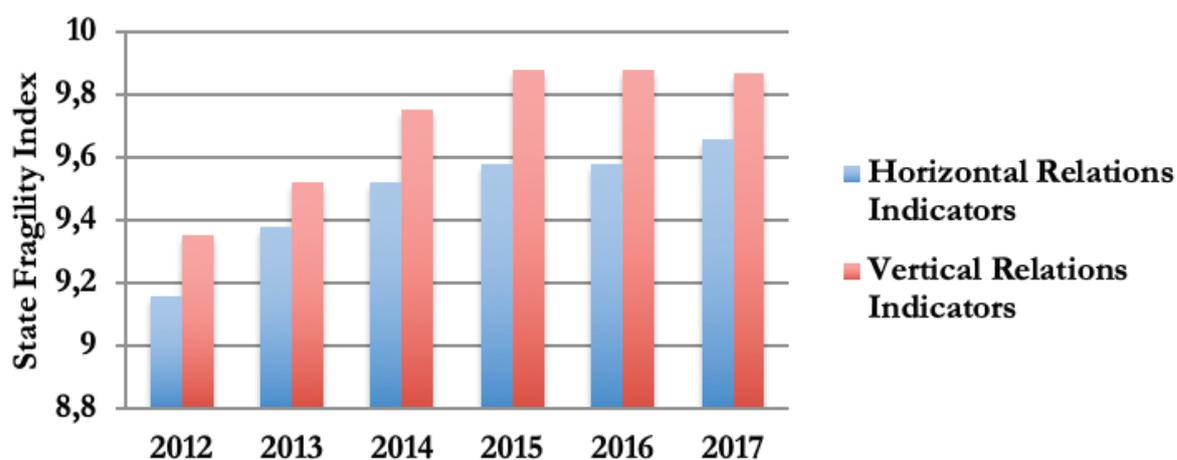
The failure to address the two core conflict issues when the country gained independence, coupled with weak institutions that were dominated by the two major ethnic groups, damaged relations between state and society and between and among various ethnic groups in South Sudan.

13. The state fragility index indicators are regrouped into horizontal relations indicators (security apparatus, factionalised elites, group grievances, economy, economic inequality) and vertical relations indicators (human flight and brain drain, state legitimacy, public service, human rights, demographic pressures, refugees and internally displaced persons and external intervention).

5.1 Vertical social cohesion

Using the state fragility index indicators (social, economic and political) to assess social cohesion as well as horizontal and vertical relations,¹³ it is evident that social cohesion has generally been deteriorating, particularly since independence and the eruption of violent conflict in 2013, with vertical relations deteriorating more than horizontal relations (see Figure 3). This is not surprising, as the ruling elites in the post-independence period have been unable to maintain what the people gained during the CPA period to address the core conflict issues.

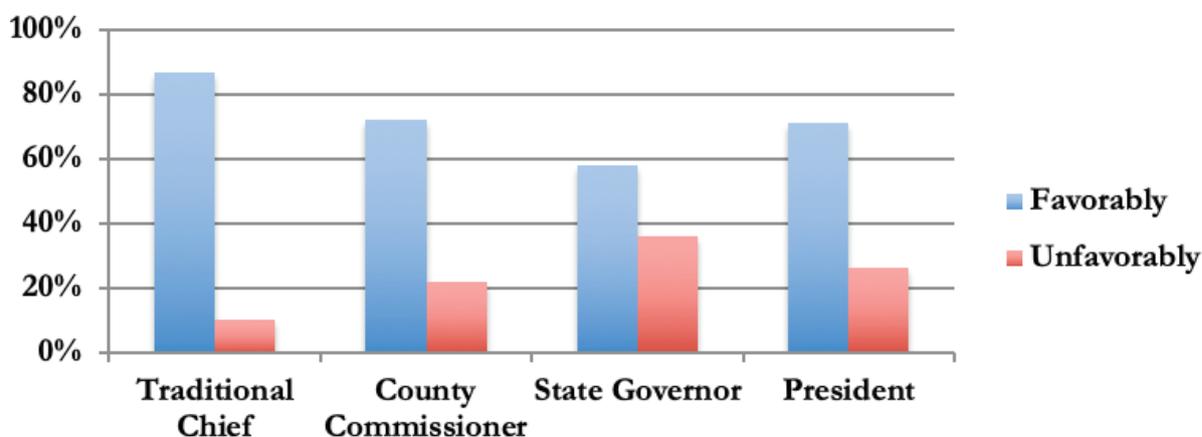
FIGURE 3: STATUS AND TREND OF RELATIONS IN SOUTH SUDAN, 2012-2017



Source: FFP 2012-2017 (calculated by authors)

Also, vertical social cohesion can be assessed by citizens' views of the performance of leaders at different levels of government. There are three levels of government – national, state, and county and traditional authority – that are respectively headed by president, governor, commissioner and chief. On the basis of the opinion poll conducted in May 2013, i.e., before the eruption of conflict in December 2013, the traditional chiefs were viewed more favourably (87 percent) than the heads of formal institutions (see Figure 4).

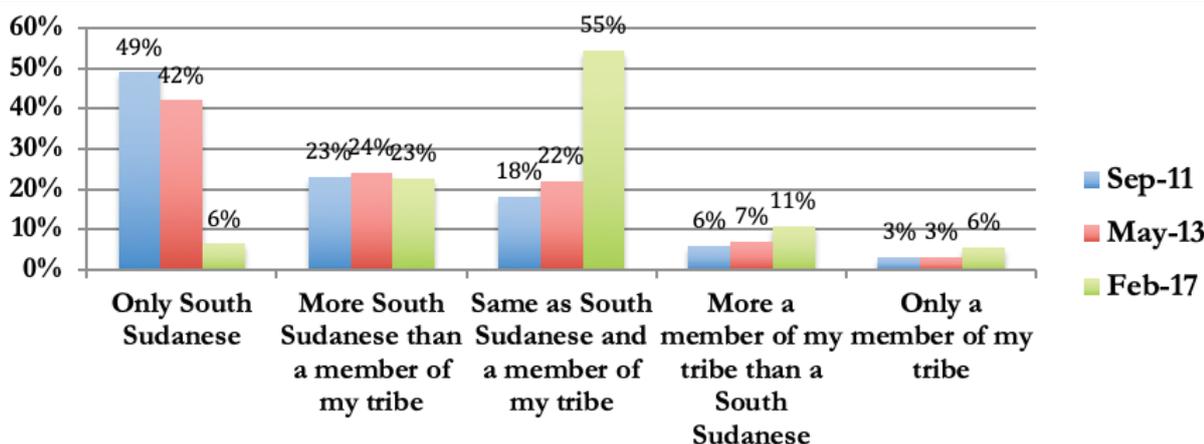
FIGURE 4: LEVEL OF TRUST IN FORMAL AND INFORMAL INSTITUTIONS



Source: IRI 2013:30

Also, citizens' feelings of attachment or affiliation to state institutions may provide a proxy indicator of the status of vertical social cohesion. While identification with South Sudan as a state was shared by almost half of the citizens immediately after independence, it declined in 2013 and reached its lowest level after the eruption of conflict in 2017 (see Figure 5). These findings are consistent with other findings that showed the informal institutions tend to compete with formal institutions and even supplant or substitute them whenever the formal institutions are weak or ineffective (Helmke and Levitsky 2003:13).

FIGURE 5: THE COMPETING IDENTITIES IN SOUTH SUDAN



Source: IRI 2013 and KII 2017

While citizens' felt affiliation with the state of South Sudan has precipitously declined, identification with one's tribe has been increasing. Indeed, about 55 percent of respondents consider themselves to be South Sudanese and members of a tribe in equal measure. Interestingly, though, there has been only a slight increase in 1) the proportion of those who consider themselves to be members of tribe rather than South Sudanese and 2) the proportion of those who consider themselves to be only members of a tribe. As the state faces a legitimacy gap and fails to perform its core function – particularly, its monopoly on the right to use force in defence of the rule of law – the citizens retreat from national identity and associate themselves collectively or individually with the level of authority that provides better human safety and security (Ghani et al. 2005). These findings are also consistent with the argument by Kaplan (2009:47) that states that are weak and do not have a shared social identity are less likely to progress and to leverage the histories and customs of their citizens to build effective institutions with wide legitimacy.

5.2 Horizontal social cohesion

Despite the weakening of vertical social relations, the people of South Sudan have some commonalities, shared values and ties that may provide pathways for forging resilient social contracts and sustaining peace. One of these attributes is shared history. The people of South Sudan fought together in a just war for freedom and independence. When key informants were asked if their shared history may help them to recover from persistent conflict and to build a strong sense of national identity, the overwhelming majority (82 percent) said yes. Focus group discussions revealed a similar sentiment. However, there is a fear that, if the current civil war that is been fought along ethnic lines persists, South Sudan may disintegrate (Samuel 2017).

Despite the growing mistrust between various ethnic communities of South Sudan, there are glimpses of hope. The people of South Sudan do have formal and informal relations that may hold them together across these different divides and allow them to feel an allegiance to the country and its

institutions if a conducive political environment is created with a shared national vision. When the key informants were asked about these attributes and symbols of nationhood that could provide the basis for building a common national identity, most respondents indicated that they very much value the symbols of nationhood (flag, sports and anthem) as well as social attributes (ethnicity, religion, intermarriages) and political ties (shared history and leadership). Certainly, these attributes are not sufficient by themselves to overcome the enormous mistrust caused by the current civil war in South Sudan.

The nurturing of horizontal relations between and among various ethnic groups will be an uphill struggle that will require trusted political leadership with a vision to unite the people of South Sudan. A wealth of evidence shows the centrality of social cohesion and trust in reducing fragility and susceptibility to violent conflict (World Bank 2011). It is also argued in the case of South Sudan that lack of trust and social cohesion between and among various ethnic groups poses a persistent threat to the country's stability (Knopf 2013). The failure of the ruling elites to address the core conflict issues when the country gained independence opened the unaddressed wounds of the past and fractured social fabrics between and among the various ethnic groups.

Most key informants believe that the level of trust and respect between different ethnic groups was stronger during period of the CPA (46 percent) than after the gaining of independence (13 percent) in 2011. This is largely attributed to the fact that the CPA managed to a certain degree to address the 'diversity question' through a decentralised system of government. Although some studies have shown stronger intra-social cohesion during the current civil war in South Sudan (USAID 2016), inter- and intra-social cohesion may deteriorate or strengthen, depending on the nature and characteristics of civil wars, particularly counterinsurgency warfare (Deng 2010). There is no doubt that the current civil war has further deepened inter-community mistrust.

Despite this lack of trust and respect between different ethnic groups, daily interaction between various ethnic groups in South Sudan could strengthen horizontal relations between various ethnic groups. For example, more than 90 percent of key informants had daily interaction with other ethnic groups. Interestingly, this daily interaction has been recognised by most key informants (62 percent) to be helpful in reducing fear, anxiety, mistrust and stereotypes. These findings are consistent with earlier findings of a nationwide survey in which about 62 percent of respondents indicated that they can trust other ethnic groups – but in which the figure was 20 percent among people affected by conflict (UNDP 2015).

6.0 Analysis and Conclusions

The history of South Sudan in terms of recurrent civil wars, political settlements, transitional processes and constitutional-making processes provides a good case study for assessing the concept of resilient social contract. This analysis shows how critical pathways and junctures that contributed to the current state of affairs of South Sudan can be best understood by investigating the drivers of a resilient social contract and analysis of two core conflict issues: 'political representation' and the 'diversity question'. This study illustrates the problems with peace agreements and transitions entrenching the core conflict issues, producing institutions that accentuate the monopoly of power by ex-combatants and major ethnic groups and weakening vertical and horizontal relations.

The recurrent violent conflict that has become a norm rather than aberration in the lives of the people of South Sudan is attributed largely to the design of the peace agreements that tend to reward the ex-combatants to exclusively govern the post-conflict transition. These ex-combatants are not only ill equipped to govern, but have a strong sense of exclusive entitlement and legitimacy to state power and resources. The eruption of civil war in South Sudan after its long-awaited independence underscores the structural challenges that face the people of South Sudan to forge a resilient social contract.

The account of how peace agreements have been implemented and the way the transition to statehood was managed shows how elites use the power of state to pursue their narrow self-interests rather than the interests of citizens. The three peace agreements, with the exception of the ARCSS, included only the warring parties during the peace negotiations and all of them handed over the transitional governments to the warring parties or ex-combatants, who are predominantly Dinka or Nuer.

During the implementation of these peace agreements, the ruling elites failed to address the core conflict issues. They also failed to build robust institutions and deliver basic services. Indeed, through their politics of patronage, they even helped to plant seeds of mistrust and division. Later, the post-independence ruling elites still did not gain the confidence and trust of citizens because of their ongoing failure to address the core conflict issues. Subsequently, the political marketplace in South Sudan is exclusively left for one political party and one ethnic group: the ruling Dinka elites.

This case study illustrates how political representation has been one of the core drivers of violent conflict since Sudan gained its independence and now in the new state of South Sudan. Given their large population and their relatively high contribution in the civil wars, the Dinka and Nuer ethnic groups, with their 'politics of majority' and system of political patronage, have become numerically dominant in all state institutions and have fostered a feeling of exclusion among other ethnic groups. Also, the peace agreements, instead of addressing equitable political representation, have codified power-sharing arrangements that have consolidated the dominance of the SPLM and excluded other political parties. This has created less-inclusive institutions, exacerbated mistrust and opened wounds of the past.

The 'diversity question' is also linked to political representation and the peace agreements. This case study has shown how the challenge of managing ethnic diversity has played a critical role in the recurrence of violent conflict in Sudan and now in South Sudan. The demand by the southern region for federalism that was rejected by the post-independence northern ruling elites resulted eventually in the secession of that region and the establishment of South Sudan. The federal and decentralised self-rule system of government that has been a popular demand of people of southern Sudan has been undermined or even denied, ironically by the post-independence South Sudanese Dinka ruling elites. Although the ARCSS addressed the 'diversity question' by providing for the establishment of a federal system of government, the government is not only reluctant to implement the federal system, but has started diluting it by creating 32 states that has caused even more ethnic conflict concerning boundaries, land and resources. The attitudes of the South Sudanese ruling elites towards federalism are similar to the mind-set of the Sudanese ruling elites that resulted in the disintegration of Sudan.

With the ruling elites failing to address the core conflict issues at the time of national independence and without strong and inclusive institutions, relations between state and society and among the various ethnic groups deteriorated. With the south's secession from Sudan, which was seen as a common enemy, with no national political vision for a unified nation and with weak institutions, feelings of ethnic, tribal or regional identity have become stronger since independence and compete with national affiliation – and even risk supplanting it.

As violent conflict continues unabated, there is a danger that this strong feeling of regional and tribal affiliation that is now at par with national affiliation may grow and threaten the national unity of South Sudan itself. The system and norms that have been adopted by governing elites in South Sudan produce conflict instead of peace and social cohesion. They have created what some theorists call a "predatory state or kleptocracy" (De Waal 2014).

Despite this bleak future scenario for South Sudan, there are opportunities available for the elites to forge a resilient social contract and to address the core conflict issues as pathways to putting South Sudan on a path toward sustainable peace. Although the national feeling of being South Sudanese is under increasing threat from the failure to address the 'diversity question' and grievances involving

political representation, this case study has shown that the shared history, some symbols of statehood and some ethnic elements may provide a basis to forge social cohesion. Also, the high level of daily interaction among different ethnic groups may reduce fear, anxiety, mistrust and stereotypes may also provide the opportunity to forge and nurture social cohesion. Forging a resilient national social contract – one that can endure – and addressing the core conflict issues that South Sudanese continue to struggle with require a consensual revitalisation of the 2015 ARCSS to reward citizens rather than those with guns. Unfortunately, the recent power-sharing agreement signed in Khartoum in July 2018 by the government and the SPLM-IO of Dr. Riek Machar again rewards those with guns to form a guerrilla government rather than a citizens' government. It is a recipe for another cycle of violent conflict in South Sudan.

NOTE ON CONTRIBUTOR

Luka Biong D. Kuol is Professor at Africa Center for Strategic Studies, US National Defense University. He is also Associate Professor at University of Juba, South Sudan and Global Fellow at Peace Research Institute Oslo. He holds a PhD from the Institute of Development Studies at the University of Sussex, UK.

(luka.kuol.civ@ndu.edu, lukabiongdeng@gmail.com).

ACKNOWLEDGEMENTS

The author would like to thank Erin McCandless, Research Director of the overall study, and her team, the Friedrich-Ebert-Stiftung and the United Nations Development Programme's Oslo Governance Centre for their support. The author would like also to thank Mr. Christopher Oringa, Lecturer at the University of Juba, for collecting primary data from key informants and focus group discussions in the rather difficult research environment in South Sudan.

Resource List

- Akol, L. 2011. "Critique of the draft Transitional Constitution of the Republic of South Sudan". Sudan Tribune, April 30.
- Clapham, C., 2012. "From Liberation Movement to Government: Past Legacies and the Challenge of Transition in Africa". Discussion Paper 8/2012. Johannesburg: The Brenthurst Foundation.
- Deng, L., 2010, "Social Capital and Civil War: The Case of Dinka Communities in the Sudan's Civil War", *Journal of African Affairs* 109 (435), pp. 231-250.
- De Waal, A., 2014, "When Kleptocracy becomes insolvent: Brute causes of the civil war in South Sudan", *African Affairs* 113 (452), pp. 347-369.
- FFP, 2017. "State Fragility Index". Annual Report. Washington: Fund For Peace.
- Frontier Economics, 2015, *South Sudan: The Cost of War*. London: UK, <http://www.frontier-economics.com>
- Ghani, A., Lockhart, C. and Carnahan, 2005. "Closing the Sovereignty Gap: an Approach to State-Building". Working Paper 253. London: Overseas Development Institute.
- Gedima, A., 2011. "From a Guerrilla Force to State Military: An Assessment of the Transformation of the Sudan People's Liberation Army (SPLA) from 2006-2010". Monterey, CA: Naval Postgraduate School.
- GoSS, 2005. "The Interim Constitution of Southern Sudan (ICSS)". Juba: Ministry of Legal Affairs and Constitutional Development.
- Helmke, G., and Levitsky, S., 2003. "Informal Institutions and Comparative Politics: A Research Agenda". Working Paper No. 307. Notre Dame: Kellogg Institute for International Studies at the Notre Dame University.
- Howden, S., 2011. "A failed state before it's born? Inside the capital of the world's next nation". Independent January 7. www.independent.co.uk/news/world/africa/a-failed-state-before-its-born-inside-the-capital-of-the-worlds-next-nation-2178075.html.
- IGAD, 2005. "Sudan Comprehensive Peace Agreement (CPA)." Nairobi: Intergovernmental Authority on Development (IGAD).
- IGAD, 2015. "The Agreement on the Resolution of Conflict in the Republic of South Sudan (ARCSS)." Addis: Intergovernmental Authority on Development (IGAD).
- IRI, 2013. "Survey of South Sudan Public Opinion". Juba: International Republican Institute.
- Kaplan, S., 2009. "Identity in Fragile States: Social Cohesion and State Building". *Development* 52 (4): 466-472.
- Knopf, K., 2013. "Fragility and State-Society Relations in South Sudan". Research Report 4. Washington: Africa Center for Strategic Studies.
- Larson, G., Ajak, P. and Pritchett, L., 2013. "South Sudan's capacity trap: Building a state with disruptive innovation". WIDER Working Paper No. 2013/120. WIDER: United Nations University.
- McCandless, E., 2018. "Forging Resilient Social Contracts for Peace: Towards a Needed Re-conceptualisation of the Social Contract." Working Paper. Witwatersrand University.
- National Bureau of Statistics, 2013. "The Millennium Development Goals: Status Report". Juba: National Bureau of Statistics.
- Nunberg, B. 2015. "South Sudan's civil service challenges: An outside perspective". Working Paper. London: International Growth Centre.
- Republic of South Sudan, 2011. "The Transitional Constitution of the Republic of South Sudan (TCSS)". Juba: Ministry of Justice and Constitutional Development.
- Republic of South Sudan, 2012. "Fragility Assessment". Juba: Ministry of Finance and Economic Planning.
- Rolandsen, O., 2014. "Another Civil War in South Sudan: The failure of Guerrilla Government." *Journal of Eastern African Studies*. Vol. 9 (1), pp. 163-174.
- Samuel, C., 2017. "South Sudan Disintegration: Who is to blame?". Comment and Analysis. Sudan Tribune November 4.

- SERC, 2017. "Baseline Evaluation of "Facilitating Access to Justice in South Sudan". Nairobi: Smart Edge Research and Consulting.
- Shinn, D., 2005. "Addis Ababa Agreement: Was it destined to fail and are there lessons for the current Sudan peace process". *Annales d'Ethiopie*. Vol. XX: pp. 239-258.
- UNDP, 2015. "Search for a New Beginning". Juba: United Nations Development Programme.
- UNECA, 2007. "Relevance of African Traditional Institutions of Governance." Addis Ababa: United Nations Economic Commission for Africa.
- USAID, 2016. "Propel-South Sudan Baseline Assessment Report". Juba: USAID.
- Warner, L., 2013. "Armed-Group Amnesty and Military Integration in South Sudan", *RUSI Journal*, Vol. 158 (6), pp. 40-47.
- Willems, R. and Deng, D., 2015. "The Legacy of Kokora in South Sudan". Briefing Paper. Juba: South Sudan Law Society. http://www.upeace.nl/cp/uploads/hipe_content/
- World Bank, 2011. "Conflict, Security and Development". World Development Report. Washington: The World Bank.
- World Bank, 2013. "South Sudan: Country Policy and Institutional Assessment". Washington: The World Bank.
- Young, J., 2006. "The South Sudan Defence Forces in the Wake of Juba Declaration". Geneva: Small Arms Survey, Graduate Institute of International Studies.



WITS SCHOOL OF
GOVERNANCE



UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

Wits School of Governance Working Paper Series
University of Witwatersrand
School of Governance
Johannesburg

