DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT OF THE REPUBLIC OF SOUTH SUDAN

FINAL REPORT

MARCH 2013

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ACRONYMS AND ABBREVIATIONS

BBC	British Broadcasting Company
CPA	Comprehensive Peace Agreement
CSO	Civil Society Organization
DCHA/DRG	Office of Democracy, Human Rights and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance
DFID	Department for International Development
DRG	Democracy, Human Rights and Governance
FEWSNET	Famine Early Warning System Network
FFP	Fund for Peace
FM	Frequency Modulation (radio)
GOSS	Government of Southern Sudan (2005-2011)
IDP	Internally Displaced Person
INL	Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State
JOSS	Judiciary of South Sudan
MP	Member of Parliament
NCRC	National Constitutional Review Commission
NGO	Non-governmental Organization
NLA	National Legislative Assembly
NSS	National Security Service
PTSD	Post-Traumatic Stress Disorder
RMG	Rebel Militia Group
ROL	Rule of Law
RSS	Government of the Republic of South Sudan (post-independence)
SAF	Sudan Armed Forces
SPLA	Sudan People's Liberation Army
SPLA-N	SPLA-North
SPLM-DC	SPLM-Democratic Change
SPLM	Sudan People's Liberation Movement
TCSS	Transitional Constitution of South Sudan
UN	United Nations
UNMISS	United Nations Mission to South Sudan
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

South Sudan is the world's newest country, having gained its formal independence in July 2011 after decades of bloody civil war with Sudan. It is also among the world's poorest countries, marked by an absence of basic infrastructure, high illiteracy, and frequent humanitarian crises. High levels of violence, often along communal lines, and continuing border tensions with Sudan persist. The combination of these factors has led many analysts to conclude that South Sudan was likely born a "failed state."

This assessment rejects the notion that South Sudan is a failed state in the making, and instead focuses attention on the growing trend toward authoritarian rule in Juba. Authoritarianism is the leading threat to the development of democracy, respect for human rights, and the promotion of good governance in South Sudan today.

The roots of authoritarianism in South Sudan are complex and multifaceted, and mainly have to do with the consequences of the long civil war and the one-party system of domination (Sudan People's Liberation Army [SPLA]/Sudan People's Liberation Movement [SPLM]) that emerged from liberation. The persistence of authoritarianism is much less complicated: South Sudan is an emergent oil state. Until the Government of the Republic of South Sudan (RSS) shut down oil production in January 2012, oil dominated the national budget, making up about 98 percent of government revenues. While foreign currency reserves were used to fill the gap from oil revenues during the shutdown, once oil production resumes, this will make RSS the purest ***rentier state*** in the world. There is a proven and consistent correlation between *rentier* states and political authoritarianism, and South Sudan appears likely to duplicate this "resource curse." It is generally assumed that authoritarianism in oil states is a result of the sharp imbalance of resources between state and society, again something increasingly seen in South Sudan. Oil revenues will continue to dominate South Sudan's national budget for at least two decades, but limited proven reserves will likely make the oil era relatively short-lived.[1]

Emerging authoritarianism in South Sudan is marked by a ***concentration of power and resources*** in the hands of a ***power elite*** that is increasingly unaccountable and can act with growing impunity. The concentration of power is expressed in four primary ways: Geographically in Juba vis-à-vis the remainder of the country, within the executive branch of government vis-à-vis the legislative and judicial branches, within the SPLM vis-à-vis other political parties, and within the upper echelons of the SPLM vis-à-vis the rank-and-file membership. Not surprisingly, the power elite are based primarily in Juba (with a thin veneer as well in state capitals), within the executive branch, and within the top leadership of the SPLM.

The power elite opposes meaningful adoptions of democracy, human rights, and good governance (DRG) ideals and practices because it is not in its interest to be constrained by law, democratic politics, or other forms of accountability. While its members say all the right things with regard to the promotion of DRG goals, its actions have been entirely different. The direction of change is also disturbing, but consistent with our theoretical expectations: Political space in South Sudan is decreasing.[2]

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[1] On oil reserves, see Jill Shankleman, *Oil and State Building in South Sudan: New Country, Old Industry* (Washington, D.C.: U.S. Institute of Peace Special Report, July 2011).

[2] A similar pattern of persistent or even increasing human rights problems is also expected in several forthcoming human rights reports on South Sudan by the U.S. State Department, Human Rights Watch, and Amnesty International.

A number of other dynamics within South Sudan exacerbate the concentration of power. The lack of a strong national identity and the strength of communal identities[3] frequently lead to political complaints being framed as Dinka and Nuer domination. Dinka and Nuer make up about two-thirds of the total population, and appear to disproportionately represent top SPLM and SPLA leadership positions, respectively. The reinforcement of concentrated power with ethnic cleavage is potentially a very dangerous situation, although South Sudan is nowhere close (yet) to Kenya, Rwanda, Lebanon, Syria, Sri Lanka, and other communally divided countries that view all politics through the lens of ethnicity and tribe. Attitudes of SPLM/SLPA entitlement also exacerbate political tensions, as do the general insecurity and prevalence of weapons in South Sudan.

The findings of the assessment warrant a pessimistic view about the chances of overcoming the primary DRG problem in South Sudan. Nevertheless, the findings also suggest a critical window of opportunity may exist for donors and South Sudanese to temper the slide toward authoritarianism. That window may be open until the scheduled national elections of 2015. The window of opportunity for DRG reform will be most auspicious during 2013 when, due to the temporary oil shut off, RSS will almost certainly turn to the donor community for financial assistance. This will represent an excellent opportunity to push for meaningful DRG reform and should not be missed. Without creating a solid DRG foundation now, South Sudan has no realistic chance to be a functioning democracy a decade from now.

USAID developed the methodology used to conduct this DRG assessment; it consists of four steps.[4] Step 1 of the assessment analyzes the five DRG elements as follows:

- **Consensus**. Numerous and often politicized communal divisions, as well as the one-party nature of the South Sudan state, both contribute to relatively weak political consensus.

- **Rule of Law (ROL)/Human Rights**. Formal institutions of law are extremely weak, and a mish-mash of different types of law practiced in South Sudan contributes to a weak ROL. Customary law practices are often abhorrent by modern sensibilities of justice.

- **Competition and Political Accountability**. Thus far, elections have not been competitive, primarily because opposition parties are terribly weak (and secondarily, because the independence referendum was so closely connected to the 2010 elections). The SPLM dominates political life. There are few effective avenues of political accountability for the power elite.

- **Inclusion**. No groups are formally excluded from political, economic, and social life in South Sudan, although informal practices often discriminate against women and girls, as well as certain ethnic groups. Land is emerging as a key issue of conflict that may exclude whole villages from land use decisions.

- **Government Effectiveness**. The lack of institutional and human capacity informs all levels of government, leading to ineffectual government performance. International non-governmental organizations (NGOs) and donors often undertake tasks normally done by government.

Step 2 of the assessment examines key sectors and actors to ascertain where allies and adversaries of DRG ideals and practices may be concentrated. In general, the weakness of institutions and lack of capacity inhibit even well-meaning actors from effectively promoting DRG ideals and practices. The growing strength of the power elite likewise undermines the formation of coalitions to check the concentration of power. The power elite are concentrated in the executive branch, primarily in Juba, and to a lesser degree in state capitals,

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[3] This analysis uses the term "communalism" rather than "tribalism" (as is common even in South Sudan) to locate the problem of potentially primary sub-national rather than national identity and as a source of conflict. For a more detailed analysis of conflict in South Sudan, see USAID's recent South Sudan Conflict Assessment.

[4] The original Strategic Assessment Framework was designed by USAID in 2000 and revised in 2011. See U.S. Agency for International Development. *Conducting a Democracy, Human Rights and Governance Assessment: A Framework for Strategy Development.* Office of Democracy, Human Rights and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance, December 2011.

creating a conundrum for donors: Helping to create greater efficiency and capability in the executive branch will assist in the provision of governmental services to the population, but could also exacerbate the problem of concentrated powers. The judiciary, legislatures, local governments, traditional leaders, and opposition political parties are simply too weak to be effective checks on the concentration of powers, and it will be years, if ever, before they could conceivably play such a role. Security forces—from police to the SPLA to the national security services—often generate *insecurity*, either through lack of professionalism or, it now increasingly seems, on behalf of elements of the power elite.

Four actors have shown a limited ability to check the concentration of power and promote DRG reform: media, civil society, the private sector, and the donor community. However, the first three remain institutionally very weak and small, while the latter has yet to speak with a united and strong voice on the importance of DRG reform in South Sudan. If there is to be meaningful DRG reform in the next few years, these four actors will need to play a leading role.

Step 3 examines USAID's operational and programmatic environment. USAID's 2011 Transition Strategy for South Sudan identified stability as the critical goal that its programs must support. A recent conflict assessment likewise focused on the need to approach development in South Sudan through a lens of stabilization and long-term stability, given the prolific amounts of communal violence and the related possibilities for the country to break apart. The strategy of stability promotion includes several logical tactical steps, including improving the provision of social services to respond to population needs, addressing root causes of social conflict so that such conflict does not metastasize and engulf the country, and strengthening elements of government necessary to promote basic political stability. From a realpolitik perspective, such a strategy makes much sense because, if successful, it would help maintain a friendly regime in power and help keep the country together, thus limiting the potential for chaos and the rise of free zones for anti-U.S. actors. One only has to look in the neighborhood—at Somalia—for an example of how instability and the collapse of the state paved the way for endemic violence, social chaos, and threats to U.S. interests.

From a DRG perspective, a strategy of short- and medium-term stability promotion only makes sense in extreme cases, such as Somalia, where the alternative is state collapse because, in most cases, promotion of stability comes at the expense of DRG. An overriding concern for short- and medium-term stability will tend to undermine democracy; meaningful, contested elections may well be seen as cause for alarm as they can often lead to violence and social tensions between ethnic, geographical, or political groups. Stability would suggest downplaying political contestation in favor of the survival of the status quo. Furthermore, good governance relies on the notion of accountability, yet meaningful accountability could well embarrass and thus weaken the very political leaders who are needed to ensure stability. Thus, a stability-based approach could weaken a free press and other institutions of governmental accountability. The cause of stability may also undermine human rights for the same reasons. In other words, the ability to act with impunity—to be held not accountable—often leads to gross human rights abuses, as was seen, for example, in Jonglei at the hands of the SPLA.

Thus, a focus on short- and medium-term stability is typically the ally of authoritarian rule and the enemy of DRG, except in the most extreme cases of state failure. If that was the Mission's conclusion in 2011—that South Sudan was so fragile that state collapse was a very real concern—then the need for stability promotion could well be argued for there to be any reasonable chance for DRG promotion in the future.[5] However, the fear of state collapse in South Sudan will no longer be reasonable once the oil flows resume, ensuring that the state has the resources to ensure its survival for at least a decade (and probably much longer). Privileging short- and medium-term stability under these circumstances will come at the direct expense of meaningful DRG promotion.

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[5] Some political competition can occur under authoritarian rule, although it would typically be limited. During the 2010 Sudanese elections, there was significant fraud in southern Sudan, but there was some room for political competition. The 2011 Southern Sudan Self-Determination Referendum was seen as free and fair, but did not include internal competition for electoral posts.

Step 4 outlines a recommended strategy that would be directed toward the main DRG impediment, the concentration of power in a new power elite. A determined effort by the power elite to undermine any meaningful DRG promotion efforts will likely succeed, limiting the options available to USAID and other donors. Nevertheless, a unified and strong donor voice on DRG issues, something that has been largely missing to date, remains critical because, in its absence—given the weakness of domestic voices—the power elite has no self-interest in promoting DRG ideals and practices that would only diminish its own power.

With that in mind, we recommend four DRG-specific and three cross-sectoral areas for investment that could work together to promote better DRG outcomes in South Sudan. The areas for potential investment include the following:

- Media and civil society organizations (CSOs) that can promote accountability in government functions, and help diminish corruption by raising awareness among the people in South Sudan and through their "naming and shaming" function;
- Focused ROL activities that can lead to enhanced accountability and better governance, and lay the legal framework for greater democracy in future, specifically a) promoting a good Constitution and legal frameworks, b) strengthening the judiciary, and c) training civilian police;
- Executive and legislative governance performance programs to improve service delivery capacity and responsiveness to citizen needs with a strong focus on sustainability;
- Certain election activities surrounding the 2015 national elections if those elections are shaping up to be truly competitive;
- Private sector development, which (if successful, over time) would help deconcentrate resources and thus help deconcentrate political power;
- Increased access to public services by assisting cross-sectoral grassroots initiatives to include DRG principles, such as citizen participation, transparency, accountability, and oversight; and
- Promotion of civic education about rights and responsibilities, especially linked with the media programming and basic education curriculum.

The findings of this assessment do not portend optimism that the power elite will fully endorse the incorporation of DRG ideals and practices in South Sudan. That being said, it is critical to understand that the basic elements of the state will be constructed and institutionalized in the coming two years or so, creating a window of opportunity that is unlikely to reopen once closed. If democracy, human rights, and good governance stand a chance in South Sudan, it will become apparent sooner rather than later. Therefore, USAID must make a strategic decision regarding whether, at this stage in the country's history, it should approach development through the lens of short- and medium-term stability at the likely expense of real progress toward democratic governance in South Sudan, or it should take advantage of this short window of opportunity to invest in DRG programming to influence the governmental foundations of the new nation and support long-term stabilization while balancing short-term stability concerns.

1.0 STEP ONE: DEFINING THE DRG PROBLEM

1.1 INTRODUCTION

The Republic of South Sudan (South Sudan) faces enormous challenges in virtually all sectors of society, economy, and governance. It is among the poorest and least developed countries in the world. Consider[6]:

- Over half (51 percent) of the population lives below the poverty line.
- Over three-quarters (78 percent) of households live at subsistence levels, relying on farming or animal husbandry.
- Eighty-three percent of the population is rural, and many have no regular access to towns, particularly during the long rainy season.
- Almost three-fourths (73 percent) of the adult population is illiterate (a figure some argue is low).
- Over half (51 percent) of the population is below the age of 18 years.

In addition, the International Monetary Fund ranks South Sudan's per capita income as 149th in the world, out of 185 total countries. This figure is actually misleadingly high due to the impacts of oil exports on economic figures in recent years.

The respected Fund for Peace's (FFP) *Failed State Index* unofficially includes South Sudan as a top 10 failed state in its 2012 report. While it only had half a year for official statistics given its independence date of July 9, 2011, South Sudan would have ranked the fourth worst failed state in the world according to the FFP if it had a full year's worth of data. Here is the FFP summary of South Sudan's current state of affairs:

> *South Sudan's unranked first inclusion in the Failed States Index sheds a light on the dire condition of the fledgling nation. South Sudan has inherited its parent country's social and political problems after independence in mid-2011. With only five months to introduce sweeping reform, the country faces some of the worst health and education indicators worldwide. Widespread violence has brought politics, the economy, and transportation and public service infrastructures to a halt. Indeed, South Sudan's rampant insecurity has forced the government to spend its resources combating threats instead of promoting overall growth and development. In December 2011, escalations in cattle raids led to violent border clashes in the Jonglei state. The government was forced to declare the region a disaster zone after tens of thousands were killed or displaced. In sum, South Sudan's poor indicators for the last five months of 2011 point to a troubled future for the young nation.*[7]

The journal *Foreign Policy* likewise recently dubbed South Sudan the world's most likely failed state of 2013, saying,

> *…the fledgling South Sudan, a ward of the international community despite its oil revenues, immediately faced challenges: Millions of displaced people hoping to return home, 50 years of neglected infrastructure, and massive food shortages. Add to that a severe malarial epidemic, an ongoing showdown with Khartoum, and continuing violence in*

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[6] Government of the Republic of South Sudan (RSS). National Bureau of Statistics, www.ssnbs.org/.

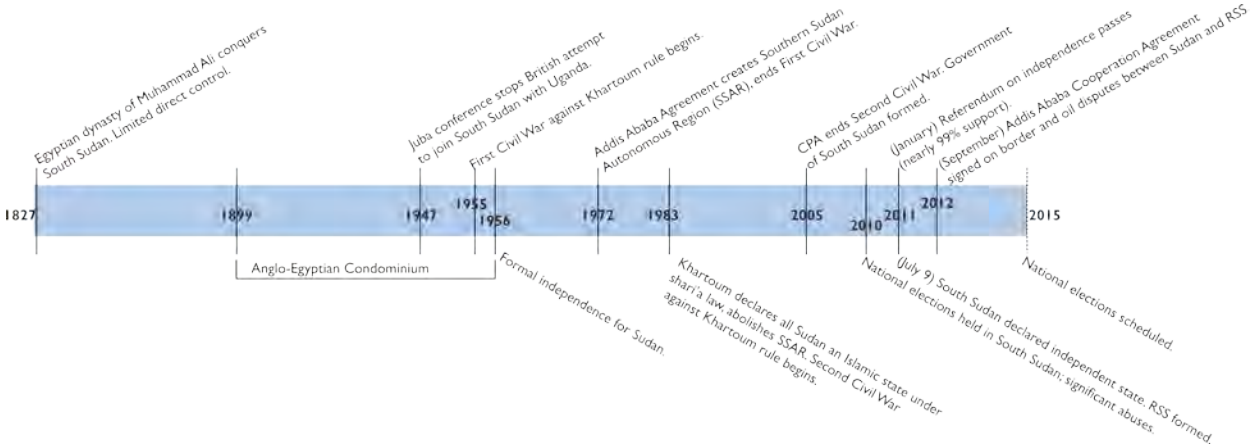
[7] The Fund for Peace, http://www.fundforpeace.org/global/?q=node/238.

nine of its 10 states, and it's no surprise South Sudan has become what many have dubbed the world's first pre-failed state.[8]

As explained in the following pages, this assessment does not anticipate that South Sudan will fail, in the sense of Somalia, for example, which has not had a central government to speak of in decades and whose regions are either essentially independent states (i.e., Somaliland, Puntland) or without any form of legal government. Rather, the more likely scenario is a continuation of its devolution into an authoritarian state, albeit with significant territory outside the reach of Juba or sub-national government control. Nascent authoritarianism has been evident since South Sudan won autonomy in 2005, but clearly intensified in 2012, its first full year of independence.

Much of the pessimism regarding South Sudan revolves around the impacts of the bloody civil war for independence from the Government of Sudan, based in Khartoum, an effort that began with Sudan's independence in 1956.[9] The most recent and sustained violence lasted from 1983 to 2005 and claimed the lives of an estimated two million people, making it the bloodiest conflict since World War II. The social trauma likewise included the forced conscription of children and women as soldiers and sex slaves. The long and bloody bush war (mostly) ended in 2005 with the signing of the Comprehensive Peace Agreement (CPA). A referendum held in January 2011 found nearly 99 percent support for southern independence, which was declared and recognized six months later. The lack of a clear border demarcation and agreement on sharing oil revenues, among other unresolved CPA issues, generated further violence between Sudan and South Sudan in early 2012, after South Sudan shut down oil production. Following the separation of the two countries, most crude oil reserves lie in South Sudan, which must rely on refineries and the pipeline in Sudan to export crude oil and generate revenue. Therefore, the continued economic interdependence of Sudan and South Sudan remains a critical dynamic for the viability of South Sudan and will do so until it develops its own refineries, export capabilities, and other revenue sources. A broad set of agreements on most remaining issues signed in September 2012 did not entirely end border violence between Sudan and South Sudan. Sudan has used unresolved issues such as border security to create an impasse to implementation of the September 2012 agreements—in particular, the Agreement on Oil and Related Economic Matters, which has delayed the restart of oil production and therefore oil revenue flows into South Sudan's government coffers. This again highlights the extreme vulnerability of state building in South Sudan, which is so heavily dependent on oil revenues and Sudan-South Sudan transboundary relations.

FIGURE 1.1. SOUTH SUDAN TIMELINE



[8] Foreign Policy, "Next Year's Failed State," http://www.foreignpolicy.com/articles/2012/06/20/south_sudan_next_years_failed_state.

[9] For an accessible and recent account of the troubled history of the greater Sudan region, see Andrew S. Natsios, *Sudan, South Sudan, and Darfur: What Everyone Needs to Know* (Oxford and New York: Oxford University Press, 2012).

Wars and other forms of broad social dislocation and disruption can often be helpful in state- and nation-building processes. Third World countries that achieve independence through non-violent decolonization often experience worse political outcomes decades later than countries that earn independence in more violent and disruptive fashions. For better or worse, violence has often been a necessary but insufficient condition for political (and economic) success in the Third World.[10] Such social disruption tends to enhance national identity against a common foe and to create strong ties between emerging states and society, a relationship that often forges states with greater capacity to get things done—at least for a generation or two. By these standards, one might argue that South Sudan is well situated to succeed in the years ahead. Indeed, the long war against Khartoum, and the marginalization of southern Sudan by the Government of Sudan that led to the war, still appears to be the most solid basis of national identity in a country that would otherwise have little in common among various tribal or ethnic groups. While the anti-Khartoum basis of national identity likely cannot be sustained indefinitely, it certainly can have a relatively powerful impact for years to come, particularly if exploited by the Government of the Republic of South Sudan (RSS) or other actors. Likewise, the long war also forged strong ties between top state leaders and important social forces, especially via the once conjoined Sudan People's Liberation Army (SPLA), now the Armed Forces of the Republic of South Sudan, and the Sudan People's Liberation Movement (SPLM), the dominant political party in the country. Indeed, the SPLM—more than the institutions of formal government—often acts as the enforcement mechanism for national decisions. Thus, the impacts of South Sudan's long war for independence likely will help prevent the collapse of the new state, contrary to the prognoses quoted above.[11] According to this analysis, it is not state failure, per se, that is the most pressing DRG issue in South Sudan, but rather the clear march toward authoritarianism by the emergent state and structural factors paving the way toward that end.

1.1.1 METHODOLOGY

This report follows the revised DRG Strategic Assessment Framework (SAF) methodology developed by USAID/DCHA/DRG, which USAID uses to help ensure consistency across assessments and better enable longitudinal and cross-country comparisons.[12] Among the refinements to the methodology since 2000 has been a stronger consideration of how politics and governance impact basic human rights. As well, the revised DRG assessment methodology seeks consistency with USAID's Gender Equality and Female Empowerment Policy. Such considerations inform both the assessment analysis and the subsequent recommendations for DRG strategy and areas for programmatic emphasis.

In addition to review of background materials, the assessment team conducted fieldwork during 3.5 weeks of field research in October and November 2012 by a team of 11 people (three analysts from USAID, one analyst from the Department of State, five analysts provided by Tetra Tech ARD, and two logisticians). The team interviewed close to 300 people in Juba and in five states (Eastern Equatoria, Western Equatoria, Northern Bahr al-Ghazal, Unity, and Upper Nile). Interviewees ran the gamut of representatives of the national, state, county, *payam* (district), and *boma* (village) levels of government; political party, civil society, and community leaders at the national, state, and county levels; U.S. Government officials; donors and implementers; and academic and other independent analysts. Table 1.1 provides an indicative categorization of the types of organizations and individuals the team interviewed. In addition, extensive use of both primary

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[10] See Joel S. Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World.* (Princeton University Press, 1988).

[11] Communal and ethnic tensions act as a counterbalance to the anti-Khartoum-based national identity, and could lead eventually to pressure to geographically fragment the country. While this is a real possibility in the future, this analysis suggests it is not a near-to-medium term threat. What is more likely in the years ahead is a degree of *de facto* ethnic autonomy here and there that is tolerated by Juba. It is likely that Juba will take a mixed approach to autonomy demands: Where there is oil, Juba will demonstrate less tolerance of autonomy; where there is no oil, Juba will demonstrate a more relaxed approach.

[12] The original Strategic Assessment Framework was designed by USAID in 2000 and revised in 2011. See *Conducting a Democracy, Human rights and Governance Assessment: A Framework for Strategy Development.* Office of Democracy, Human Rights and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance, U.S. Agency for International Development. December 2011.

and secondary documents informs this assessment, a select representation of which is presented in the bibliography to this report.

TABLE 1.1. INTERVIEWS BY CATEGORY TYPE

Category	Numbers-organizations	Numbers-individuals
Civil Society	31	65
Government of South Sudan	14	24
State Governments	11	53
Rule of Law	14	27
Military	1	1
Media	12	19
Political Parties	13	28
International Organizations and Donors/Partners	25	44
U.S. Embassy	3	7
USAID/South Sudan	4	15
TOTAL	128	283

The detailed analysis is presented in the following interrelated sections:

- In **Section 1: Defining the Key DRG Problems**, the assessment team analyzes the overall political context and political trends in South Sudan and develops concise statements of the key DRG problems. Issues of consensus, rule of law, competition and political accountability, inclusion, and administrative effectiveness and accountability are examined.
- In **Section 2: Key Actors and Institutions**, the team more closely discusses key actors and institutions (i.e., in the separate branches of government, political parties, the media, and non-governmental sphere) to identify how actors and institutions may be supporters or obstructers of democratic and governance reforms.
- In **Section 3: Considering USAID's Operational and Programmatic Environment**, the team considers the U.S. and USAID interests, programs, resources, and comparative advantages in South Sudan as well as those of other donors and international organizations involved in DRG assistance. The goal is to develop filters for, and to prioritize, strategic and programmatic options that are a good fit for the Mission.
- In **Section 4: Outlining the Proposed Strategy**, the team offers a strategy for DRG programming based on a causal logic, or development hypothesis, as to how possible DRG programs can help address the key DRG problems confronting South Sudan.

1.1.2 THEMES

Several broad, interrelated themes that centrally impact democracy, human rights, and good governance have become apparent even in the short period of South Sudan's independence. The first theme, which emerges in Step 1 of the assessment as the underlying problem in the realization of DRG ideals and practices, is the growing concentration of power and resources in the hands of a power elite in South Sudan. This assessment will detail the concentration, but by way of introduction, this refers to the rise of governmental, military, and party elites that are increasingly powerful and able to act with little meaningful accountability. These power elites are concentrated primarily in Juba, especially at the top levels of the executive branch of government, and within the upper echelons of the SPLM. The SPLA technically falls under the executive via the Ministry of Defense and Veteran Affairs, but powerful SPLA officers can and have acted independently of the president and broader executive branch. Interestingly, the SPLM often appears to be a more powerful enforcement mechanism by the center of the periphery than formal governmental bodies.

South Sudan is hardly unique in witnessing a concentration of power and resources in the hands of a shrinking number of power elites at the center. Indeed, the cause of the civil war in Sudan, as well as uprisings

in what is now the "new south" of Sudan (Southern Kordofan and Blue Nile states), the Abyei Area, Darfur, and eastern Sudan, has often been discussed in terms of center (Khartoum) versus periphery dynamics. As this assessment was being written, the International Crisis Group issued a report that argued this same phenomenon remains the driving political problem in Sudan, leading to extensive conflict and political dysfunction. Though the SPLA/SPLM led the second civil war against the domination of the center (Khartoum) over the periphery (especially southern Sudan and the Three Protocol Areas of Southern Kordofan State, Blue Nile State, and the Abyei Area), it is becoming undeniable that power concentration is one in a long list of bad practices that Juba has learned from Khartoum.[13]

Two structural realities substantially assist the concentration of power and resources in South Sudan. First, South Sudan emerged from its long war of liberation as essentially a one-party state led by a liberation movement rather than a true political party. South Sudan has no meaningful political parties outside of the SPLM, which has a strong presence throughout the country, and in general, acts as an enforcement arm for national government decisions. The SPLM is not a Leninist party with near-absolute party discipline; rather it is 'lumpy' with many power centers within the party, all of which revolve around individuals, and in some cases, communal loyalties, not so much around competing visions or ideologies. Since before independence, there has been speculation that the SPLM will split, and this possibility remains, but until one sees serious and open political contestation within the ranks of the SPLM, it will continue to serve its role as an institution of centralizing power and resources in a one-party state.[14] While the SPLM is not a highly disciplined party, it does remain a relatively effective enforcer of national will in the states. Indeed, interviews conducted outside of Juba found a higher than expected enforcement mechanism of decisions taken within Juba—not so much by institutions of formal government, but rather by the party itself. Contrary to expectations that there would be minimal enforcement of central decisions in the states, given the weakness of institutions, ethnic and tribal diversity, a history of conflict, and the sheer newness of the state, this assessment found generally robust levels of enforcement of central decisions in the states visited.

The second and even more consequential structural determinant of authoritarianism is oil. South Sudan is an emerging *rentier* state (one in which the exportation of oil is the major source of government revenues), as its major (indeed, virtually only) source of wealth is oil, which accounted for approximately 98 percent of all state revenues prior to the government's decision to shut down oil production in January 2012. There is a well-established, strong correlation between *rentier* states and political authoritarianism, which one can view as approaching a law of social science.[15] There are very few exceptions to this rule, the most notable of which is Norway, which had well-established and functioning democratic institutions decades prior to the exploitation of North Sea oil. While the correlation is beyond reproach, the exact causal mechanism is still under some debate. The primary causal argument focuses on the balance of resources between state and society; that is, oil revenues give the state significant resources vis-à-vis its own society, allowing the state to remake key institutions of society.[16] Awash with oil revenues, states no longer need their own societies as a source of revenues to run the institutions of power and governance, and thus societies lose their key leverage to force political openness on the state. The old American adage of the relationship between taxation and representation holds, although this time in the negative: With no real taxation of society, there will be no meaningful representation of society's interests within the state. Given this imbalance of resources between state and society, any political actor will tend to tone down criticism of the state in the hope of retaining patronage payments from the state. In *rentier* states, the state is nearly always the largest employer in the

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[13] International Crisis Group, *Sudan: Major Reform or More War*, Africa Report No. 194, 29 November 2012.

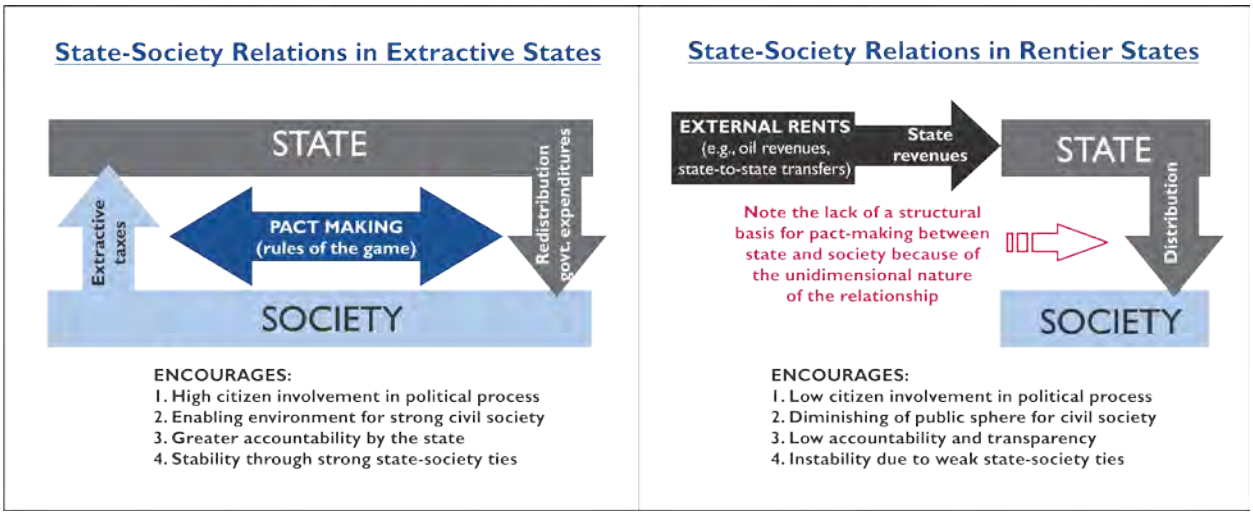
[14] A split within the SPLM could aid democracy, if that split were to happen along ideological lines, or it could further threaten democracy and stability if an SPLM split were to occur along ethnic lines. Considering historical trends within the SPLA/M, an ethnic split is more likely.

[15] There is a vast literature on the close relationship between oil and authoritarianism. The most recent seminal book on the topic is Michael L. Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press, 2012). Ross's argument is summarized as follows: "Countries that are rich in petroleum have less democracy, less economic stability, and more frequent civil wars than countries without oil."

[16] F. Gregory Gause III explores the ways in which oil monies allowed Saudi Arabia to remake Islam and tribalism in the interests of state authority. See his *Oil Monarchies: Domestic and Security Challenges in the Arab Gulf States* (New York: Council on Foreign Relations, 1994).

country by far, and those people not directly employed by the state are often indirectly employed through tendering processes that favor loyal companies.

FIGURE 1.2. STATE-SOCIETY RELATIONSHIPS IN EXTRACTIVE VS. RENTIER STATES



It is likely, therefore, that South Sudan will quickly become a *rentier* state with concomitant political authoritarianism, at least for a generation (assuming that the shutdown of oil production does not continue indefinitely).[17] South Sudan's oil is estimated to last about 15 years as the major source of government revenues, and then another decade thereafter as still a significant source of revenue.[18] In other words, institutions and practices formed now will likely be "cemented" into place for a generation or two while relatively significant oil flows last. Though South Sudan's oil production is never expected to reach the top end of all oil producers, the fact that oil revenues are likely to continue to account for well over 90 percent of government revenues for the foreseeable future will make South Sudan among the states most dependent on oil, something approaching a "pure" *rentier* state. During this generation or two of important oil flows, South Sudan will no longer need international donor monies as much as it has in past years, thereby decreasing the international community's leverage, which has already begun to wane since independence. Many respondents noted that by not consistently and with one voice holding the regional, semi-autonomous Government of Southern Sudan accountable for its actions in the six-year CPA Interim Period, as well as during the immediate post-independence period, the international community missed its best opportunity to leverage assistance to enshrine the foundations of democracy and good governance in South Sudan. Donors will remain important in the next decade, just less so.

A major finding from virtually all of the interviews conducted for this assessment is the narrowing political space in South Sudan. Given the dominance of the SPLM in South Sudan's political life, and its emergent oil political economy, such a narrowing of political space is to be expected. This likely means there is a closing window of opportunity for meaningful DRG ideals and practices to take hold in South Sudan.

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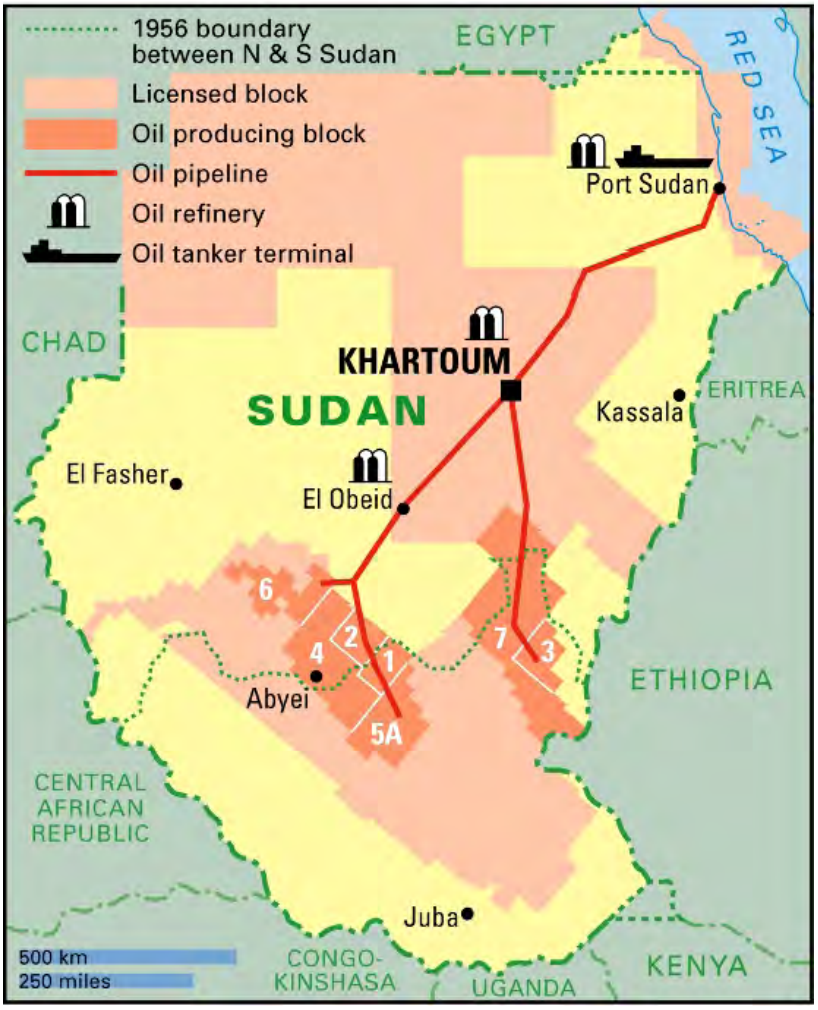
[17] The recommendations contained in Step 4 in this assessment are designed, in part, to mitigate against the worst political practices found in growing *rentierism*.

[18] See Jill Shankleman, *Oil and State Building in South Sudan: New Country, Old Industry* (Washington, D.C.: U.S. Institute of Peace Special Report, July 2011).

FIGURE 1.3. OIL FIELDS AND PIPELINES IN SOUTH SUDAN AND SUDAN[19]



A second theme throughout this assessment concerns the need for the emergence and consolidation of a strong South Sudanese national identity beyond its waning definition as being in opposition to Khartoum. A conflict assessment conducted by USAID immediately prior to this assessment found that communal identities play a central role in conflict in South Sudan, which is consistent with this DRG assessment in that where there is conflict, ethnic and other communal identities play a major role; fortunately, there is not conflict everywhere in South Sudan.[20] With regard to DRG issues, this assessment often (but not always) found communal identities to be an overlapping cleavage—particularly at the national level—that tended to exacerbate problems of power concentration and constrain the development of a sensibility of responsibility by both government and citizens that the state should serve the best interests of all South Sudanese.[21]

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[19] Source: http://insidekenyatoday.wordpress.com/2011/07/09/kenya-chosen-to-be-key-oil-business-partner-as-south-sudan-gets-independence/.

[20] For a more detailed treatment of the drivers of conflict in South Sudan, see USAID's South Sudan Conflict Assessment (hereafter "the USAID Conflict Assessment."

[21] For a good discussion on identity issues in South Sudan, see Jok Madut Jok, *Diversity, Unity, and Nation Building in South Sudan* (Washington, D.C.: U.S. Institute of Peace Special Report, October 2011). For a good discussion of how clientelist networks help undermine state institutions in South Sudan, see Wolfram Lacher, *South Sudan: International State Building and its Limits,* found at http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2012_RP04_lac.pdf.

A third theme is the role that neighboring Sudan plays in the ability of the power elite to concentrate power and diminish loyal dissent. There is a long history of Sudan playing games of divide and conquer inside South Sudan, so allegations of treason or dual loyalty can carry great historical weight. Given the ongoing tension along the border, such issues remain critically important. The political result is to stifle legitimate criticism of RSS actions in the name of national security.

Related to the Sudan issue is a fourth theme of prevailing citizen insecurity. South Sudanese society has been so traumatized by decades of bloody civil war that relationships of trust are hard to come by. Beyond social interactions, the lack of trust appears also to have undermined most levels of authority, including, in some cases, the influence of traditional tribal chiefs. The prevalence of and reliance on guns in every facet of society has often replaced traditional lines of authority, further helping to erode the authority of traditional chiefs, a dynamic that dates back to colonialism and the historical establishment of puppet governments.[22]

A fifth theme that likewise acts to exacerbate the concentration of power and resources is a sense of entitlement among many in the SPLA and SPLM. There is a perception that SPLA/SPLM members exhibit an attitude of "we liberated the country," so jobs and other resources "rightfully" belong to them.

1.1.3 A WINDOW OF OPPORTUNITY?

South Sudan is now heading toward political authoritarianism in the years ahead, unless major changes are made very soon. This is in spite of the fact that the RSS continues to say all the right things in terms of its commitment to democracy and good governance. However, its actions over the past year indicate a lack of political will to actually move toward democratic rule through effective, transparent, and accountable governance, and instead show in sector after sector a desire to concentrate power in fewer and fewer hands. However, while political space is diminishing, it is not gone; there is still some room for politics, criticism, and dissent in South Sudan. National elections scheduled for 2015 loom large in terms of cementing in place the future direction of South Sudan. While it is possible that the country could delay these elections indefinitely, if they do occur, the likelihood of interference in the process in one form or another is high. From the conduct of the elections themselves and based on the immediate post-election period, the political path RSS has chosen will be clear. Thus, the period between now and the 2015 elections represents a window of opportunity to nudge the RSS ship of state toward the direction of democratic governance and away from authoritarianism.

South Sudan's decision in 2012 to shut off the flow of oil to the economic disadvantage of both South Sudan and Sudan due to ongoing border tensions with Khartoum also keeps this window of opportunity open. While it was widely expected that oil would start flowing again by the end of 2012 or early 2013, at the time of report writing, it still has not done so. The reserves from oil revenues that the RSS used for much of 2012 during the austerity budgets are reportedly running dangerously low. Thus, the RSS will almost certainly need to turn to the donor community to help keep it afloat financially during 2013. This opportunity to leverage financial assistance for meaningful DRG reforms should not be missed.

Three things must happen during this window of opportunity to maximize leverage for democratic governance in South Sudan. First and foremost, the international donor community must speak with one voice to hold the RSS accountable to back its rhetorical commitments to democratic governance with actions (by the president and other top leaders). The RSS must also be encouraged to prioritize the pressing needs and brief window of opportunity to put in place democratic structures (e.g., a strong Constitution forged through an inclusive and participatory process, a foundational legal framework, and transparent and accountable institutions). The September 2012 op-ed by U.S. Ambassador to South Sudan Susan D. Page on the fragility of democracy in South Sudan should serve as a wake-up call for concerted action by both donors and South Sudanese to save democratic prospects in South Sudan, something that is "hard earned, but easily

[22] Observation on the role of guns in eroding traditional authority was made in numerous interviews during fieldwork in the states.

lost."[23] Donors will need to connect appropriate forms of assistance in key areas to political outcomes if leverage is to be maximized. Second, there must be concerted efforts by democrats in South Sudan to create incentives for good political outcomes and disincentives for poor outcomes. We discuss such possibilities in more detail in Section 4. Third, power centers within the RSS, SPLA, and SPLM will need to attach to democratic governance as a means to advance their own political interests. If the power elite unify in opposition (spoken or unspoken) to democracy, it will be stillborn in South Sudan. However, if elements within the power elite or on its near margins see gains to be made through the promotion of democracy, then democratic governance becomes a much more plausible outcome in South Sudan.[24] We believe internal SPLM politics is the most likely place for such arguments to emerge.

For democratic governance to take hold in South Sudan, the focus during this window of opportunity must be on the high politics at the very center of national power. Acting within this short window of opportunity and understanding the complex dynamics and actors at its center is essential for USAID, the U.S. Government, and the broader international community to help create the foundations for and consolidate democratic governance in South Sudan. If constitutional, legal, and political structures that will govern South Sudan for many years to come are constructed and fostered in their nascent stages properly, then there is at least a fighting chance for democratic governance to take root in South Sudan; if they are not, then the prospects of South Sudan constructing a functioning democracy are slim.

1.2 DRG ELEMENTS

There are many ways to analyze democratic performance. USAID's analytical framework begins with five core elements designed to be parsimonious, yet in the aggregate, reasonably comprehensive. They are self-explanatory except for the first, consensus, and the fourth, inclusion.

To work as a democratic state, there must be some basic ***consensus*** about certain fundamentals. These fundamentals include, for example, the nature of the state and its relation to individual citizens and groups; the fundamental rights of citizens and groups: who has what rights and responsibilities, who is a citizen and who is not; and the basic rules of the political game regarding the acquisition of power and authority, and when and how it must be gained and relinquished. There need not be, and almost never is, consensus about many policy issues. Indeed, sorting out policy preferences is one reason for competition. However, absent consensus about the very fundamentals of the nature of a state and society, almost nothing will be sorted out peacefully and democratically.

In DRG terms, ***inclusion*** refers to the *systematic* inclusion or (more likely) exclusion of certain groups, mostly based on their identification (whether self- or external) in a group based on characteristics such as gender, race, religion, and ethnicity. It does not refer to the inclusion of electoral winners and exclusion of electoral losers in government. It sometimes relates to consensus, in the sense that excluded populations may opt out of the system entirely. However, no state is perfectly democratic and if exclusion is defined too broadly, one may find a litany of minor exclusions and imperfections that do not really get to the heart of whether the state can, indeed, be called a democracy. So, for example, differences in class and socioeconomic status would normally not be classified as exclusionary, although they may well give rise to complaints about the system.

1.2.1 CONSENSUS

Identity. Traditional conflict and low-grade warfare, especially among the pastoralists of the north and northeast, have played and continue to play a significant role in social and political dynamics in South Sudan. Internal fissures and skirmishes were, to an extent, put aside for the sake of unity against the common enemy of Khartoum, as the civil war of nearly 25 years and two generations collected traditional enemies into a

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[23] Ambassador Susan Page, "Democracy is A Fragile Thing," found at http://www.ndi.org/files/Op-ed%20Democracy%20Is%20a%20Fragile%20Thing.pdf.

[24] For an excellent discussion of how political entrepreneurs can take bold policy steps under auspicious circumstances—linking policy breaks to personal political interests—see Ian S. Lustick, *Unsettled States, Disputed Lands* (Cornell University Press, 1995).

common cause of separation and independence.[25] However, the conflict did not stop as not all communal groups supported the liberation agenda, and the north stoked conflict wherever it could, funding mutinous leaders, arming rebellious militias, and causing defections. In the end, to stop the war, Khartoum accepted the inclusion of a self-determination referendum for southern Sudan in the 2005 CPA, following an interim period during which a Government of National Unity would work to "make unity attractive." In the January 2011 referendum, southern Sudanese voted nearly 99 percent in favor of independence, which became formal six months afterward on July 9, 2011.

Of course, the struggle for and realization of independence did not extinguish the separate communal identities within South Sudan. For the new RSS, the existential question is whether and to what extent it is able to supersede those communal identities with a new South Sudanese identity, at least enough to foster a sense of national identity that can mitigate the tensions and conflicts between these groups. Put differently, under what conditions will the writ of the RSS be stronger than the communal loyalties, when inevitably, it seeks to prevent or respond to traditional, sub-national conflicts or to enforce national policies on reluctant communities. In short, to what extent is there now or will there be a primary national identity that transcends the various communal identities? If the sub-national identities remain strong enough to challenge the national identity, and therefore the national government, in areas fundamental to the integrity of the new state, those challenges and struggles will threaten not only the viability of the state (particularly if Khartoum or other external actors encourage its failure or dissolution through sub-national conflicts) but also the viability of democratic governance.

Sub-national conflict continues to bedevil South Sudan, particularly in Jonglei, Lakes, Unity, Upper Nile, Warrap, Northern Bahr el Gazal, and Western Bahr el Gazal states, and when and where conflict erupts, it is almost always along communal lines. Defections continue as well, as one or another commander either in the government or outside returns to the bush with his militia, often (it is alleged) with support—especially weapons and ammunition—from Sudan.[26]

Still, the prominence of national over sub-national identity is weaker than it appears. It retains the residue of the waning euphoria over independence, a residue that has a limited lifespan. Moreover, it will be severely tested unless governance performance improves markedly and if the benefits of oil revenue (once it resumes) are unevenly distributed, especially if it goes or is perceived to go disproportionately to certain communities such as the Dinka or Nuer or to a small group of corrupt officials.[27]

Though the risks are real that sub-national identities and fissures could become prominent obstacles or even a major challenge to democracy, so far they are not, though they are a challenge to governance.[28] South Sudan is not like Lebanon or Sri Lanka where every fact and nuance is interpreted in communal terms; where politics and economics are viewed as zero-sum games with every perceived benefit to one group considered a perceived loss to the others; and in which a general communal war sometimes seems a mere incident away.[29] Still the perceived domination of northern pastoralists, the Dinka and Nuer, in government jobs, in government contracts, and in patronage generally has the potential to ignite communal tensions and conflicts, threatening both governance and security.

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[25] This analysis uses the term "communalism" rather than "tribalism" (as is common even in South Sudan) to locate the problem of potentially primary sub-national rather than national identity and as a source of conflict. For a more detailed analysis of conflict in South Sudan, see the recent USAID Conflict Assessment.

[26] The USAID Conflict Assessment concentrated on three large areas of conflict: the Wunlit Triangle (parts of Unity, Lakes, and Warrap states); parts of Upper Nile and Jonglei states; and the border between Sudan and South Sudan.

[27] Perhaps not surprisingly, the perception of Dinka and Nuer domination (and resentment against it) were more pronounced in the southern and western states where the two groups represent a smaller proportion of the population but where the other groups experience the Dinka and Nuer domination in politics and government more sharply.

[28] See the USAID Conflict Assessment.

[29] One of the points of the USAID Conflict Assessment is that communal conflict in the focus areas of the assessment could result in national destabilization.

Rules of the game. More challenging by far to a successful democratic transition in South Sudan is the weakness, almost absence, of consensus about the rules of the democratic political game. This is seen both in the lack of consensus about the rules, and the willful disregard of democratic practice by elements of the power elite who are clearly familiar with how democracy functions in other countries but choose not to be bound by such rules. Democratic politics is inherently peacefully contested politics. To remain democratic, the rules for that contest must be clear, fair, followed, and accepted by all stakeholders. Otherwise, the risk is a de-legitimization of peaceful processes, ultimately resulting in violence, as in cases in which electoral outcomes are disputed through violence. In such cases, the results are likely to be rejected, most importantly by the losers. Democracy depends on the acceptance of the contest outcomes by the public and all participants, especially by the losers.

The rules of the democratic game are weak at best in South Sudan. The rules of the democratic game are mainly a subset of the legal system, which is also weak, although there are also informal, unwritten rules unenforceable in a court of law but enforceable on permanent competitors through years of regular electoral and other contests. So far, there have been no elections in independent South Sudan. The last political election, held in 2010 during the CPA Interim Period, was the first in which the entire eligible population had an opportunity to participate; however, that election was colored primarily by the understanding that it was a required prerequisite for the 2011 self-determination referendum and independence. The overwhelming desire for independence and the absence of strong alternatives provided certain victory for the SPLM as the leader of the liberation movement. Nevertheless, there were violent reactions to electoral results in some locations. Those non-SPLM parties that did field candidates—a small number in any case—were mostly defeated, resulting in a reduction in non-SPLM representation in the Southern Sudan Legislative Assembly and state legislative assemblies over the percentages enshrined by the CPA in the pre-election appointed assemblies. However, several of the small "other parties" intend to contest the planned 2015 elections more vigorously, and they will almost surely be less compliant about the infractions they claim the SPLM has engineered with the cooperation of government officials. If they are seriously threatened or harassed by the SPLM and the RSS which it controls (as some now expect), they may, of course, reconsider their intent to participate at all, first as a matter of personal safety and second as a matter of fairness about the rules of the game as they see and experience them.

Compounding the post-independence legitimacy credentials of the SPLM are its ties with the SPLA and its conflation with the RSS. The SPLA and SPLM were virtually identical during the liberation struggle and are even now hard to distinguish in practice if not in formal structure. Officials with interlocking titles and parallel structures bound the two together. Most SPLM officials, particularly the important ones, were and still are SPLA officers and vice versa. Today, the government is dominated by the SPLM, and therefore, SPLA and former SPLA officials, creating a power elite with an overlapping military (SPLA), political (SPLM), and governmental (RSS) identity.

In fact, the interconnected political, military, government, and most recently economic structures and personnel are really the defining character of South Sudan's emerging political economy. It is not even the full leadership of the SPLA, the SPLM, or the RSS that identifies the decision makers in South Sudan; rather, it is a smaller, interconnected circle within each that does. Like a Venn diagram with four intersecting circles, the small circle in which they overlap contains the power elite. However, unlike the Venn diagram with its discrete if overlapping circles, almost every member of the inner circle holds a position in each of the four circles, not just in a single circle, and not all who are in that overlapping circle are also members of the real inner circle. Although the cabinet meets regularly and takes formal decisions, the real decisions are taken by an "inner cabinet" of selected ministers close to the president and (for some decisions) the vice president, but they do so in conjunction with the other wearers of the inner, inner circle hat outside of the RSS executive. Similarly, the SPLA has its inner circle, as does the SPLM. Already a complementary small group of business leaders with close ties to the inner core—and lucrative government contracts and licenses—is also forming and emerging, and will likely become more powerful once oil revenues resume. Whether and how long the inner-inner circle can stay coherent notwithstanding their own different and diverging interests, and how long they can maintain control even if they do stay together, will be one of the important factors in political stability, but also a problem for democracy.

1.2.2 RULE OF LAW AND HUMAN RIGHTS

The law and the courts. In a sense, there are really two kinds of law in South Sudan. First is the formal system of courts and laws, which is nascent to the extent it exists at all and is a mixture of old Sudanese civil and Shari'a law, and the post-independence adoption of the British common law. The majority of statutes and accompanying regulatory frameworks remain to be enacted, procedures need to be adopted, and the entire edifice of a legal system remains to be constructed.

The second system is really no single system at all, but rather the collection of various traditional systems, differing from place to place and community to community. These systems have been developed in and by, and therefore govern sets of relatively small communities.[30] As such, these traditional systems include rules governing property, marriage, estates, conflict, and the like, all designed primarily to solve the immediate problems of small groups but not to govern the kinds of issues a state with a complex economy, international investors, regional interests, and so forth will inevitably face. These two "systems" (a word too formal for either of them) are complementary in many ways, overlapping in some ways, inconsistent in others, and therefore, in some tension with one another where the overlap is not complementary and the rules differ. Some of the contradictions created by the inconsistent ways in which traditional versus statutory systems are enshrined in the laws that do exist complicate this.

Like so much else in South Sudan, the formal system of courts is nascent at best, particularly outside of Juba. Even in many state capitals, there are almost no courts, judges, or lawyers; and in the counties, *bomas*, and *payams*, judicial officials and courtrooms are almost entirely absent. Courtrooms that do exist are woefully understaffed and without basic materials. There is a limited pool of educated from which to pull judges and lawyers, with most concentrated in Juba. Most judges and lawyers in South Sudan were trained in Khartoum (because there was no Sudanese law school in southern Sudan) in Shari'a law and Arabic language, and are struggling to comply with the government's decision to switch to a common law system and to conduct legal proceedings in English, the official language of the RSS, after independence. It is important to note that many continue to conduct business in Arabic. However wise those two decisions may be for the future, they are exacting a considerable cost in the present.

More important even than capacity, however, are the interests of the power elite, which is often adverse to the establishment of a democratic ROL system in which no one is above the law, and comparable cases would be treated in a similar fashion. While the vast bulk of cases and conflicts do not touch the elite, in cases when they do (and certainly those that may count the most), the power elite is not constrained by the ROL, and more importantly, has no interest in being constrained. This is a "new class" with little accountability. It enjoys its legal and political impunity and is not eager to give any of it up.

As a result, the independence and capacity of the courts are notoriously low and the writ of the state is very limited outside state capitals where its officials hardly go. The temptation is to provide capacity-building assistance, especially in the form of training. No doubt such assistance is badly needed, yet training will rarely contribute to and almost never create political will. Of course the vast bulk of cases and conflicts do not touch the elite, and those ordinary cases that do not touch the interests of the elite could be dealt with more competently and fairly if capacity were improved. If anything, the elite would prefer a more orderly legal regime as long as the litigants are poor, distant, and do not engage in or threaten the interests of the elite.

Police. There is growing concern about the increasing crime rate within and outside the power elite. Personal insecurity is growing, not just in Juba but also in state capitals and even in rural areas. Unemployed males are the primary drivers of crime. The state has not kept up with increasing crime and will soon be criticized even

[30] Although the Azande and the Shilluk, for example, were once large, powerful kingdoms with internal bureaucracies and other institutions.

more vigorously on that account than it is now. One very undesirable reaction to the lack of state response is "community justice" squads, otherwise known as vigilantes.[31]

The ideal response by the state is increased policing, and perhaps more attention to courts and the ROL. However, the police force consists too often of soldiers the SPLA wanted to retire after the war but whom the state was unwilling (in part because of their militia patrons) to decommission, especially given the paucity, even absence, of private sector jobs and the corresponding extremely high rate of unemployment. Not willing to dismiss them outright but not wanting them in the SPLA, many have been absorbed by the police at least pending their retirement. The poor levels of capacity throughout the government are even worse in the police. Low and sometimes uncertain pay does not attract highly capable people. Moreover, some charge that the police take communal sides in some areas, particularly when deployed to their own communities. Where reprisals become personal, crime turns into communal conflict, and if the police are unable to contain it—or take sides in it—the government turns to the SPLA, as it has in parts of Jonglei, Lakes, Warrap, Western Bahr el Gazal, and Unity.[32] Untrained and worse (corrupt), the police and SPLA are accused of preying on the public they are supposed to be protecting, including extra-legal detention, beatings, robbery, rape, and reportedly even extra-legal killing.

Human rights. Although South Sudan has not yet acceded to any of the international conventions on human rights,[33] Part Two of the Transitional Constitution of South Sudan (TCSS), 2011 (the first substantive part) consists of a Bill of Rights comprising sections 9-34. However, human rights are almost always a casualty of conflict, and by definition, of an inadequate ROL as human rights are abused both by the authorities and by the parties in conflict. The situation is no different in South Sudan. For example, in its attempt to suppress insurrections among the Shilluk and Murle, the SPLA has been accused of significant atrocities, including murdering and torturing civilians (for example, pulling out fingernails), burning villages, and raping women. The insurgents are also accused of committing atrocities. For example, the so-called Nuer White Army reportedly intends to "wipe out the entire Murle Tribe on the face of the earth as the only solution to guarantee long-term security of Nuer's cattle."[34]

The leadership in Juba insists that, as presaged in Part Two of the TCSS, South Sudan intends to sign all of the major human rights conventions and abide by all of them. It argues for time, noting how recently the country won its independence and how many priorities it must further reprioritize and how many internal and external threats it still faces. Still the results are mixed at best. Formally, freedoms of speech and association are guaranteed by the TCSS—though not by necessary legislation—but informally, they are not so secure. Similarly, the security forces harass critics of the government, especially in the media and civil society sectors. For example, they visit the media regularly and sometimes call the media houses to the National Intelligence and Security Services (NSS) headquarters to encourage them not to take disloyal positions.[35] The police or the

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[31] For an extensive discussion of the growing crime rate, the failure of the state to provide security, and the resulting exacerbation of divisions within South Sudanese society and the growing disillusionment with the government, see Jok Makuk Jok, *Mapping the Sources of Conflict and Insecurity in South Sudan*, January 12, 2013, Sudd Institute.

[32] Approximately a dozen civilians died and many others were injured, allegedly as a result of the SPLA response to citizen protests in early December 2012 over the unilateral decision by the governor to move the capital of Wau state to Bagara Payam. The SPLA denies the allegation that its troops were responsible. http://www.internationalorganizationsdesk.com/uruknet-93362-2012-2321-south-sudanese-army-shoots-dead-protesters-g535228239?language=en.

[33] South Sudan clearly faces serious political, economic, and security challenges, but there are many human rights reforms that require only political will, not resources," said Daniel Bekele, Africa director at Human Rights Watch. "South Sudan should sign on to human rights treaties and take other low-cost steps to respect and protect human rights." Human Rights Watch; "South Sudan: Step Up Urgent Human Rights Reforms"; 5 July 2012; http://www.hrw.org/news/2012/07/05/south-sudan-step-urgent-human-rights-reforms.

[34] Quoted in the *Upper Nile Times*; un-retrievable 18 November 2012.

[35] RSS officials *may* be going further than mere harassment in light of the murder on December 5, 2012 of Isaiah Abraham, a blogger, commentator, sometime critic of the government, and a major in the SPLA. He was allegedly lured out of his home in Juba and shot. Several commentators suggest that the assailant was operating at the instructions or at least request of SPLM/RSS [officials]. See "Isaiah Abraham's Murder: the Wider Implications to South Sudanese Society." *Sudan Tribune*, December 10, 2012, http://www.sudantribune.com/spip.php?article44800, recovered January 3, 29=013. One commenter, under the banner of the South Sudan News Agency, reports that "There are people who say they have received anonymous phone calls ordering them to cease making critical

security services have also detained critics of the government without due process of law, and conditions in the prisons are very bad.[36]

Nevertheless, South Sudan is no police state. Members of the elite, including dissenting journalists, civil society activists, and academics, generally know one another, have interlocking ties, and are generally detained only for a short time, if at all. Still, for most citizens, the human rights record of what was to be a model democracy in Africa is disappointingly poor, including (according to the Department of State's 2011 Human Rights Report) extrajudicial killings, torture, rape, politically motivated abductions by various groups, harsh prison conditions, arbitrary arrest and detention, "and an inefficient and corrupt judiciary. The government seldom took steps to punish officials who committed abuses, and impunity was a major problem."[37]

Ordinary citizens, especially women and children, do not fare as well as connected members of the elite. Women are hardly equal to men in practice, although formal legal discrimination does not exist in South Sudan. Young girls are often "given" in marriage for the right bride price or as compensation in cases of theft or even murder, all without their consent. Children and young adults suffer economically and legally. Although children (especially orphans and other vulnerable children) are theoretically accorded legal protection under Section 17 of the TCSS,[38] they are completely dependent for protection on their adult relatives.[39]

Land is emerging as a major area of contention, with huge areas as potential prime targets for investors in timber extraction, minerals, large cattle ranches, or extensive industrial farms. Urban land is becoming more valuable as well. Many of these areas are "owned" communally but accorded to private hands by traditional leaders or government officials with few legal protections for the original users. These transactions in which communally owned land is sold and transferred to private hands are often protected by the formal legal system, and there is no systemic consideration of the various rights holders. Valuable land is going to be or is

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comments on the Internet about the death of Isaiah Abraham. Those receiving these death calls from hell are told to shut up or face the consequences." Martin Garang Aher; December 11, 2012, http://allafrica.com/stories/201212120051.html?page=2; recovered January 3, 2013.

[36] "Flawed processes, unlawful detentions, and dire conditions in South Sudan's prisons reflect the urgent need to improve the new nation's fledgling justice system," according to Human Rights Watch in its report "Prison Is Not for Me: Arbitrary Detention in South Sudan." The report documents violations of due process rights; patterns of wrongful deprivation of liberty; and the harsh, unacceptable prison conditions in which detainees live. The research was done during a 10-month period before and after South Sudan's independence, on July 9, 2011." http://www.hrw.org/news/2012/06/21/south-sudan-arbitrary-detentions-dire-prison-conditions. The full report is at http://www.hrw.org/reports/2012/06/22/prison-not-me.

[37] "The most serious human rights problems in the country [in 2011] included extrajudicial killings, torture, rape, and other inhumane treatment of civilians as a result of conflict between the SPLA and Sudan Armed Forces (SAF), Rebel Militia Group (RMG) attacks on SAF and SPLA security forces, government counterattacks, clashes between security forces and civilians, interethnic and inter-communal conflict, and civilian clashes related to cattle rustling. Conflict also resulted in approximately 250,000 internally displaced persons (IDPs) during the year. Other human rights abuses included politically motivated abductions by ethnic groups; harsh prison conditions; arbitrary arrest and detention, including prolonged pretrial detention; and an inefficient and corrupt judiciary. The government restricted freedoms of privacy, speech, press, assembly, and association. Displaced persons were abused and harassed. Official corruption was pervasive. The government restricted the movement of nongovernmental organizations (NGOs), and NGO workers were attacked and harassed. Violence and discrimination against women were widespread." Department of State, Country Report on Human Rights Practices for 2011, South Sudan; http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper.

[38] Section 17 of the Transitional Constitution ("Rights of the Child") provides "(1) Every child has the right: (a) to life, survival and development; (b) to a name and nationality; (c) to know and be cared for by his or her parents or legal guardian; (d) not to be subjected to exploitative practices or abuse, nor to be required to serve in the army nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being; (e) to be free from any form of discrimination; (f) to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions; (g) not to be subjected to negative and harmful cultural practices which affect his or her health, welfare or dignity; and (h) to be protected from abduction and trafficking; (2) In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the paramount consideration shall be the best interest of the child; (3) All levels of government shall accord special protection to orphans and other vulnerable children; child adoption shall be regulated by law; (4) For the purposes of this Constitution, a child is any person under the age of eighteen years."

[39] "Violence and discrimination against women were widespread [in 2011]. Violence against children included child abuse, child abduction, and harmful traditional practices such as "girl compensation." Police recruited child soldiers prior to independence in July, [2011] and [rebel militia groups] recruited child soldiers throughout the year. Trafficking in persons; discrimination and violence against ethnic minorities and homosexuals; governmental incitement of tribal violence; and child labor, including forced labor, were problems." Department of State, Country Report on Human Rights Practices for 2011, South Sudan; http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper.

being appropriated and distributed by the power elite. While communal lands appear to be most at risk, we did hear complaints as well that elements of the power elite do not always respect individual property rights, with little redress available to the common person. RSS did adopt a Land Act, but no actual land policy.[40] Disputes over land are likely to grow and, without some fair treatment of various claimants, the disputes could easily erupt into violent conflict rather than adjudication.

Traditional law. There is no single traditional law system for all of South Sudan. Rather, the traditional system comprises many different and changing sets of rules that do not govern the entire country or even necessarily the groups in conflict. Certainly they differ from one community to another.

The rules and officials that are supposed to mitigate or resolve conflicts often do the opposite: They are used to urge the conflicting parties into conflict, for example, as a way to obtain compensation for perceived or actual crimes, injuries, other offenses, or claims. For example, there do not appear to be many instances of traditional leaders compelling their members to return stolen cows and women to competing tribes without some additional exchange. It appears that traditional leaders often incentivize theft and abduction by extolling the thieves and kidnappers and welcoming their "booty" as part of the traditional cultural practices. Under most of the traditional systems, the attempt is not so much to punish the "criminal" but rather to make the victim whole, avoid wider conflict, and if possible, restore some level of comity, often through compensation. Young women frequently pay the price as the offending group offers one of its young women as a bride to the injured group. The women are then often officially married to their kidnappers, and their children are part of the abductor's kin group. As a theoretical example, the children of these unions would grow up as Nuer, even if they were the offspring of an abducted Dinka.

Some effort will certainly be needed to account for traditional and customary law in any integrated formal legal system. There is no compendium of the various legal traditions and customary laws throughout South Sudan, let alone any systematic consideration of which to absorb into a national statutory structure, what to delegate to the local level, or how much deference formal courts should give to traditional courts or traditional laws. At the very least, the parallel institutions and procedures need to be linked and coordinated.

The Constitution. One ideal place to begin dealing with some of these legal issues is the constitutional process that officially began in January 2012, but has been significantly delayed. South Sudan has a unique opportunity as it develops its new constitution to lay a legal foundation for democratic good governance. This is also a chance for the people to begin to define what it means to be South Sudanese through an inclusive and participatory process that reflects the diversity of cultures and voices that comprise the new nation. South Sudan is currently governed by the TCSS, which was signed by the president on Independence Day, and outlines the process for the development of the country's permanent constitution. The National Constitutional Review Commission (NCRC), currently composed of nine full-time and 46 part-time members, leads the first step. Though established in January 2012, it formally became active upon the swearing-in of commission members beginning in June and (because of its expanding membership due to political accommodation for inclusion of varied stakeholders) completed in August. The NCRC has rarely met, and at the time of report writing, has yet to begin reviewing the TCSS or drafting the new constitution, let alone conducting public consultations despite offers of significant international technical and logistical assistance. There is some concern that the TCSS will be recommended as the permanent constitution with a few minor, cosmetic revisions made behind closed doors by an elite group that seems to eschew public knowledge or participation, rather than a new constitution with strong guarantees for human rights and democratic procedures. Furthermore, it seems likely that South Sudan will forego its unique opportunity to begin as a new nation by forging a constitution that enshrines its national values and identity.

[40] See the USAID Conflict Assessment for a fuller discussion about land and its relation to civil unrest.

1.2.3 COMPETITION AND POLITICAL ACCOUNTABILITY

If there is a single essential element in a democracy, it is competition for power, authority, and policy. The most obvious form is electoral, with contests between individual candidates and political parties. However, competition takes other, broader but critical forms as well: The contest of ideas and public policies in the media, universities, and broader civil society; and the tension between different branches of government (at both national and sub-national levels) and between national and sub-national government. Unless the competition is conducted under consensual rules that are considered fair, the contest may not be peaceful and its outcomes are unlikely to be accepted by the losers.

Electoral competition. Competition is at the heart of democracy, primarily (but not exclusively) through elections. Apart from its centrality to democracy, true competition is also the primary, if not the only, antidote to the concentration of power. Put differently, centralization, concentration, and monopoly over the political space are the antithesis of competition, and vice versa. If there were more—some say any—competition in South Sudan, the concentration of power and resources would be reduced and limited. A single power elite would not be possible in a more competitive environment, or at least there would probably be another, competing elite, a duopoly rather than a monopoly. However, South Sudan and the RSS are under the political monopoly of the SPLM and its sister military organization, the SPLA, which is, as discussed previously, the core of the power elite.

The SPLM was all but completely unchallenged in the 2010 elections in contests for southern Sudan-level positions, as well as in every state-level contest, in part due to people's faith that it would ensure the country's independence from Sudan. To be sure, a smattering of "other parties" made feeble attempts to run, but they could not and did not pose any real challenge to the SPLM, with a few exceptions. In addition, a number of "independent candidates," mostly members of the SPLM who left after they were not named as party candidates ran, and in a handful of notable cases, won. Moreover, in those few cases where they won, the SPLM leadership soon co-opted many into the state or national legislatures. They soon announced that they were joining (or re-joining) the mother party. Those "defections" gave rise to legal and political challenges based on the theory that they had been elected from another party which therefore had won that parliamentary seat.[41]

More insidious, and notwithstanding constitutional guarantees of assembly and association within certain limitations,[42] was the SPLM's use of government officials to harass these parties during and after the elections. As already noted, they were denied permits to rally or even to meet; they were hounded by the police, sometimes even the army; they were charged with petty offenses; they were detained; they were denied access to the public media; and the like.[43] The preferred vocabulary exposes the underlying rationale: The minority parties, with the exception of the SPLM-Democratic Change (SPLM-DC), self-identify as "other parties" not "opposition parties." If they were opposition parties, it would apparently mean that they were (and had been) opposed to independence. In part, because of the SPLM's political dominance, the absence of

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[41] Although more complicated because of various subdivisions and regulations, like the allocation of seats for women (for whom 25 percent of the seats are reserved as a minimum), the elections are legally structured as a first-past-the-post contest of individuals in part, party lists in part, and other features, not just proportional representation by parties. The SPLM has asserted its right to "own" any seat held by one of its members, so if an elected SPLM member changes parties, the SPLM contends it has the right to put someone else from its membership in that seat.

[42] Section 25 of the Transitional Constitution (Freedom of Assembly and Association) provides: "(1) The right to peaceful assembly is recognized and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests; (2) Formation and registration of political parties, associations and trade unions shall be regulated by law as is necessary in a democratic society; (3) No association shall function as a political party at the National or state level unless it has: (a) its membership open to any South Sudanese irrespective of religion, gender, ethnic origin or place of birth; (b) a programme that does not contradict the provisions of this Constitution; (c) a democratically elected leadership and institutions; and (d) disclosed and transparent sources of funding."

[43] Peter Abdul Rahaman Sule, the leader of the United Democratic Forum (perhaps the largest of the "other parties") has been under arrest since early November 2011 over allegations linking him to an insurgent group. Harassment appears to be more prevalent in the states where there are fewer institutional or legal mechanisms to discourage such actions.

real political competition (both now and historically under Sudanese rule), and the weakness of other parties and their association (correct or not) with Sudanese unity rather than South Sudanese independence, the idea of a "loyal opposition" remains foreign to the South Sudanese political landscape, much to the benefit of the SPLM.

Interestingly, the SPLM need not resort to such behavior to hold commanding power, given its national support. Had the 2010 elections been completely free and fair, the SPLM would still have swept the electoral board with very handsome margins. To a certain extent, the attempt to co-opt the opposition lies in the fragility of peace and unity in South Sudan, as well as general inexperience with electoral democracy. The alternative to the policy of SPLM accommodation/cooptation of opponents has often meant not peaceful electoral competition but opting out of the political process and returning to the bush. A series of discontented political aspirants have done so, some with support from Sudan.[44] No small amount of the conflict in South Sudan is the result of disgruntled power-brokers who take to the bush when their political expectations are disappointed. To mitigate against opting out, the SPLM and SPLA leadership seek to accommodate these figures and some number of their followers with party, military, and government positions. This, of course, contributes to the problematic quality of the government since these patron-client networks would probably not prevail in a meritocracy. Government and SPLM leaders argue, however, that it is a price worth paying for peace in South Sudan and continued unity against Sudan.

Considering the natural strength of the SPLM, the accommodation of its potential opponents, and the harassment of its actual opponents, electoral processes are not very meaningful beyond the role they have played primarily as rituals of independence. Power and authority are not at stake.

The other parties plan to contest the next elections, scheduled for 2015, and some intend to field candidates in many if not all the states. However, the National Election Act of 2012 requires that any party intending to contest be registered, and to register it must have 500 sponsoring signatures in each of eight states per the Political Parties Act of 2012. It is expected that only a handful of parties will be able to meet this registration requirement. Party registration has yet to begin, but is expected to take place in early 2013. The SPLM says the requirement is necessary to avoid sectional parties and a splintering of South Sudan. The other parties say the requirement is designed to prevent them from limiting their challenges to their areas of strength or even to prevent them from registering. No matter the requirements, some of the other parties intend to enter into seat allocation agreements in which they will not contest against one another but rather will leave one of their numbers to contest against the SPLM. Moreover, unless the harassment increases, they believe they have some better prospects in 2015 than in 2010 because voters will not be voting for independence as in 2010, so there will be no necessity to vote for the "independence party." Instead, voters will be asked to ratify SPLM's actual governing track record. That may be wishful thinking.

In fact, the main hope for injecting serious competition into the political process at this stage of South Sudan's political development lies not with any challenge from the other parties but with the potential for competition within the SPLM itself. Intra-SPLM struggles are far from theoretical as there are serious factional differences within the party. Some are personal: For example, the "Garang boys"[45] versus those that support President Salva Kiir Mayardit or Vice President Riek Machar Teny. There are also ideological splits: Those who want a more democratic South Sudan and a more open, transparent, and democratic SPLM; and those who condemn the increasing corruption and nepotism of the SPLM and the government and who criticize the poor performance of the SPLM-run government in providing essential services. The critics are calling for meaningful introspection and subsequent reform at the upcoming SPLM conventions. The first such convention was originally planned for 2012 but has been postponed. It is supposed to be centered on the SPLM's internal constitution and the rules of the SPLM's internal game, including possible term limits for the party presidency. The stakes in that convention are not merely theoretical or ideological. The rules,

[44] Notable among these is David Yau Yau, who, after losing an electoral bid to become MP, took to the bush and contributed to the recent flare-up of violence that resulted in over 100 deaths in February 2013.

[45] "Garang Boys" is a local phrase that refers to close political associates of the late founder of the SPLA, Dr. John Garang.

however justified or unjustified, will create advantages and disadvantages for various party contenders and factions. Most people believe the convention will be further postponed and that attempts will again be found to create comity and unity, including accommodations of various party factions. Speculation is that the conference has been postponed precisely to provide time for resolving or at least diminishing some of the internal, factional disputes before they become public at the convention. The second SPLM convention will include elections for party officers. Less theoretical than a contest about rules, it will probably pit person against person and faction against faction for control of the party, and therefore, the RSS and perhaps the SPLA. Unless a deal is struck beforehand, these conventions offer the possibility of significant intra-SPLM competition.

The danger is that any internal SPLM competition will be communal, not ideological, material, or even personal, which could easily ignite inter-communal conflict across the new nation, and possibly, a civil war, rather than a peaceful, disciplined intraparty competition. The most obvious such split would pit the Dinka president against the Nuer vice president, a continuing fault-line within the party. This would not be the first time Vice President Machar split from the SPLM/A establishment; he most famously broke away in 1991 during the long struggle against Khartoum.

Non-electoral competition. Unfortunately the less direct, less potent forms of competition characteristic of a thriving democracy are also weak in South Sudan, so they do not pose a substitute for electoral competition or a material threat on the closing political space and the growing concentration of power. The independent media is frail. A few newspapers, such as *The Citizen*, have carved out a niche in which criticism is tolerated, although the editor has been sued for defamation and detained multiple times. However, he is well connected, there remains support for an independent medium, newspapers have limited effect in an illiterate country, and he is himself a part of the elite. More disturbing, another well-known journalist and blogger, Isaiah Abraham, was murdered in December 2012, reportedly by individuals connected to the government. As well, recent hosts of the most politically active radio program in South Sudan, *Good Morning Juba*, have resigned, reportedly due to threats by government security forces.

The state has a network of radio stations, some FM and some shortwave, but their footprint does not cover the entire country. More importantly, they are under the control of the government and although some of their staff try to produce talk shows with a variety of views, the proposals to do so and their content after production often pass through a politically appointed chain of editors who, in effect, often censor programs that contain pointed criticism. A draft bill to turn these stations into a kind of public broadcasting system similar to the BBC is being considered, but the BBC standard of independence is far from the prevailing one in South Sudan, and most media observers believe the result will be more like the present system than anything approaching the BBC.

There are some independent radio networks, including Bakhita (owned and operated by the Catholic Church), Miraya (run by the United Nations Mission to South Sudan [UNMISS]), and a small one supported by USAID. There are also several small commercial stations. Radio is widespread albeit with spotty coverage and it is still the only avenue available for any meaningful competition of ideas. Three bills (Right to Information, Media Authority, and Public Broadcasting) often referred to in general as the "media bills" were with the National Legislative Assembly (NLA) for review at the time of the assessment. However, in various versions, these bills have been in circulation since at least 2008 with no discernible sense of urgency by the government to prioritize their finalization and passage, let alone implementation. In addition, the recent versions used for the public comment process and the NLA review are different from the version held by the Ministry of Justice. Media practitioners look forward to liberal laws that will protect them against government intrusion, but it is unlikely that the guarantees they seek will be extensive either in form or practice.

As noted, in general, civil society is weak, in part because of financial constraints, but also because the power elite discourages alternative, competing voices and organizational mobilization outside the SPLM. Lost to the South Sudanese is a robust set of CSOs (including religiously affiliated ones) with analyses, programs, and organizational forms not only as alternatives to the SPLM and the RSS but also to one another. The give and

take and debate between different groups and perspectives are feeble in South Sudan, much to the advantage of the power elite.

Separation of powers. For different reasons, neither the judicial branch nor the legislative branch offers any real check on the continuing concentration of power in the hands of the executive branch. As noted above, the judiciary lacks capacity and the independence to check the executive, and is itself centralized in Juba under the chief justice. The legislature is almost entirely in the hands of SPLM members, who themselves cannot stand as candidates in the 2015 elections without the consent of the SPLM's central Political Bureau. Indeed in the last election, the Political Bureau, appointed by the party's (and the country's) president, reversed several local-level party decisions about candidates, substituting its own. The SPLM is hardly a Leninist instrument of an all-powerful Politburo Standing Committee exercising democratic centralism, but the Political Bureau does discipline the party's branches, and as noted, reverses some of their decisions.

Finally, the private sector is small and struggling. It provides few employment opportunities, and many of the opportunities that do exist are in the hands of foreigners. Even the lowest end of the market—small stands or shops, little restaurants, a limited taxi service, mechanics, carpenters, plumbers—is dominated by Kenyans, Ugandans, and Ethiopians. Indeed, it is the virtual absence of private sector employment that makes public sector employment (and hence political patronage as one of the few roads to making a living) so critical and the competition over those jobs so fierce and important.

1.2.4 INCLUSION

South Sudan does not formally exclude any group of its citizens from political participation and, in fact, has formally set a 25 percent lower limit for women in government positions; in addition, at least 25 percent of all candidates fielded by a party must be women.[46] Neither is there any formal exclusion of other parts of the population, and there are no signs that the leadership intends formally and legally to exclude any group of South Sudanese, although this must be understood in the context of a legal framework still in its infancy. Section 14 of the TCSS provides that "all persons are equal before the law and are entitled to equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status." If anything, the accommodationist tendencies are strong as is the fear of disunity.

Women. Although section 16 of the TCSS enumerates the principle of equality for women and provides for protection of women's rights,[47] in actual practice, their families often treat women as property (e.g., when compensation is due for the theft of cattle or even murder by male members of a family). As already noted, young women and girls, often as young as 10-12 years old, have no voice in their fate and have traditionally been given (usually in marriage) to the damaged party as compensation for the crimes (such as cattle raiding) of a group's young men.

Women as a whole are unequal in many other respects, especially in the economy and the home, although they do have voting and other political rights. Their inequality has generally been accepted as inevitable in the past, but not without resentment. A women's caucus exists within the NLA, but it is not a major political force. A number of female members of the NLA and SPLM are quite prominent and have political clout, though it is doubtful that any belong to the inner core of the power elite. There are also women's groups in

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[46] Section 16 of the Transitional Constitution provides that "[a]ll levels of government shall (a) promote women participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs, and Traditions...."

[47] Section 16 provides: "(1) Women shall be accorded full and equal dignity of the person with men; (2) Women shall have the right to equal pay for equal work and other related benefits with men; (3) Women shall have the right to participate equally with men in public life; (4) All levels of government shall: (a) promote women participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs, and traditions; (b) enact laws to combat harmful customs and traditions which undermine the dignity and status of women; and (c) provide maternity and child care and medical care for pregnant and lactating women; (5) Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased."

civil society (for example, a group of women leaders organized around the constitutional review process), but they are also not yet a major political force. As in other countries, South Sudanese women mobilize around social issues, such as health or education, though not significantly around gender equality.

Youth. South Sudan has a very young population. Some 51 percent of the population is estimated to be below the age of 18, and 72 percent below the age of 30.[48] Many are without education, jobs, or prospects. As in other countries with a youth bulge, growing numbers of South Sudanese youth are turning to gangs and even crime.[49] A prominent youth gang in Torit, for example, calls itself "California West," and wears distinctive clothing, much like gangs elsewhere. They are not excluded formally, but for economic reasons (i.e., their unemployment), they cannot truly become adults and are excluded socially from adult roles as a result.

Communities. As already noted, the political system is dominated primarily by Dinka and Nuer (together constituting about two-thirds of the population) whether the SPLM, the SPLA, or the RSS. The other groups—for example, the sedentary farmers or other pastoralists such as the Murle or the Shilluk—are effectively excluded and resent that domination. The essential political exclusion of one-third of the population has not yet become a political crisis even though it is increasingly a social one, but it is likely to do so in the future once the legitimacy of the independence struggle wears off. It is also conceivable that if power narrows further, even Nuer members will feel excluded from a political leadership that is largely Dinka (as a general rule, Dinka represent the political side of the power elite, and Nuer form the SPLA part of the power elite, although there are many exceptions).

Muslims and Arabic speakers. Muslims also feel excluded, particularly (but not exclusively) those who have returned from predominantly Muslim Sudan and are suspected of harboring continued sympathies. Returnees from Sudan, Muslim or not, as well as many of those who "stayed behind," especially in the northern states of South Sudan, face challenges in regard to language. Most of these individuals speak classical Arabic (rather than the simple Arabic spoken in Juba and other parts of South Sudan) and/or local languages only, and the government's decision to use English in South Sudan has, in effect, disenfranchised them.

Returnees. South Sudan has a large population of returnees from abroad and an even larger number who were resident in the north, now Sudan, over the decades when the two were one country. Many, probably most, of the South Sudanese resident in Sudan are no longer welcome there. Some have been expelled; others have chosen to "self-deport" as a result of pressures on them or in anticipation of being formally deported. Some estimate that the total "returnees" number 2.5 million, or as much as an additional 25 percent of the current estimated population of South Sudan. The absorption of such a large population by a poor country would be a problem itself. In South Sudan, this is exacerbated by resentment of these returnees by those who remained in the south during the war. Those who remained in the bush to fight often resent those who did not, who instead lived in Khartoum working professionally or were in exile abroad. These returnees have not, as yet, been fully absorbed in the political, social, and economic order of South Sudan, as resentment persists.

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[48] RSS National Bureau of Statistics, www.ssnbs.org/.

[49] Although it did not directly address the youth bulge, unemployment, and gangs, the USAID Conflict Assessment also noted the large youth population; the use of guns by youth to "take what they want"; the recruitment by competing leaders of youth into their militias; the potential for an explosion of youth, as when the 8,000 Nuer youth mobilized into the December 2011 "White Army" for a revenge attack against the Murle and the inability of the traditional leaders to exercise effective influence over them; and the importance of paying attention to these marginalized, (i.e., unemployed and unanchored) youth.

1.2.5 GOVERNMENT EFFECTIVENESS

Ultimately citizens will judge a democratic state not just on procedural grounds but on whether it works: Whether it delivers essential public goods, such as public safety; law and order; reasonable justice; basic infrastructure; basic social services such as education, water, and health care; and the instruments and policies for economic growth and some measure of prosperity. If grievances are not addressed, these governments will be replaced through competition if the state is democratic. In democratic settings, good governance includes some basic procedural guarantees: Transparency, accountability, efficiency, effectiveness, and the ROL.

It is also an open question whether sufficient political will by top leaders in Juba exists to promote true government effectiveness. Government effectiveness is not just a matter of making the trains run on time but also implementing transparent bureaucratic rules with clear accountability. Such best practices of governmental effectiveness will deliver better services to the citizens, but can also place restrictions on the ability of the power elite to use government for their personal agendas. The lack of political will can be a major hindrance to government effectiveness, and that appears to be the case in the RSS today.

Donors, mostly through international NGOs (especially those connected with churches in Europe and the United States over the long years of war) have provided basic social services in South Sudan since long before independence. Many South Sudanese believe this will continue and that it is the responsibility of the international community rather than the government to do so. This legacy of dependence on foreign donors is a significant material and psychological challenge to overcome.

For most South Sudanese, the greatest challenge and the most important post-independence deficiency is poor governance. No doubt, expectations were unrealistically high, stoked by the SPLM and the SPLA to maintain support for the struggle, including the SPLA's "requisition" of rations—preferably voluntary but forced if necessary. After independence, people believed Sudan would no longer persecute South Sudan or siphon off its wealth, while South Sudan would be free to execute its own plans and decide its own bright future: Roads, education, health, economic growth, and democracy. Full control over oil following independence would provide additional means for doing so.

The legitimacy of SPLM, and therefore the RSS, for delivering independence and the fear of counterattack by Sudan have provided a honeymoon of general patience with the government's record to date. A common sentiment in South Sudan since the shut down of oil production can be summarized as: "We are still young. The government is still learning. Sudan is just waiting for us to fail. Austerity prevents the government from sending us money." Independence is less than two years old, yet there are signs, especially in Juba, that patience is already beginning to wear thin. The (unrealistic) expectations have not even received a tangible down payment. One of the reasons that the austerity budget, imposed after oil production was shut down, has not created more discontent is that South Sudanese can see little obvious difference between the current austerity budget and the budget during times of supposed abundance when the oil was flowing. That may be good news for the decision on oil and austerity, but not for the longer-term expectations of the people of South Sudan. If the still-nascent feeling that the government is not delivering or performing continues to grow, the RSS, the SPLM, and the SPLA will all be in trouble.

A significant part of the problem is capacity. The threshold level of capacity in South Sudan is very low. Illiteracy levels in the public are high and mirrored in the government itself, although not as starkly. The quality of the bureaucracy is extremely low, especially below the director-general level and at the state and local levels, becoming weakest at the lowest levels of the hierarchy. Computerization is impossible at the lower levels, even if it was desirable and electricity and Internet were available to power the machines (a challenge even in Juba and the state capitals). Moreover, the basic infrastructure of South Sudan (roads, electricity, water, telecommunication, etc.) is almost nonexistent outside the core areas of Juba and a few towns, so even a personally capable bureaucracy would be severely challenged.

A second part of the problem is nepotism and patronage. No doubt South Sudan suffers from broad levels of illiteracy having had no functioning schools in much of the country for two or even three generations and selective schooling before that. There are, however, literate and capable South Sudanese, including returnees. In a country with little private sector employment, the government, including military and security services, has a monopoly on employment, and therefore, government jobs are highly prized. Most jobs have gone almost exclusively to discharged members of the SPLA, the SPLM, and in general, to people with connections or those whom the elite wish to accommodate. The government faces a quandary over disarmament and reintegration. It cannot afford a huge standing army, and at present, the SPLA is larger by far than its needs warrant, even given the threat from Sudan and from internal conflicts. Yet the government faces huge resistance, possibly mutinies, and increased crime and conflict if it discharges these troops into structural unemployment since they have no skills, even if there were a private sector ready to absorb them. Therefore, the solution is to discharge the unemployable into the bureaucracy.

A third part of the problem is the growing economic, political, and social gap between the power elite and the rest of the country. While the gap is not so salient outside Juba because it is less visible there, especially below the state capital level, and the state media do not broadcast that story, it is clear in Juba and becoming clearer. Ordinary citizens, for example, notice the large number of 8-cylinder sport utility vehicles on Juba's roads, and they understand well that many ministers or generals own several of them either by self-purchase or allocation from the government. Similarly, the large homes contributing to Juba's sprawl are known to belong to influential members of the power elite. Meanwhile ordinary citizens see, or live in, the tukels and shanty-towns, and they experience and hear about continuing, even growing, poverty. None of this is unique to South Sudan, but traditional South Sudanese society is not accustomed to that kind of gap. Pastoralists, in particular, do not experience a substantial difference in lifestyle, one to another. No doubt some build large herds of cattle with which to buy wives and which certainly convey wealth, prestige, and local power. However, even those rich in cattle live more or less like the rest in their (often only temporary) settlement. The discontent emanating from poor governance is aggravated by the way in which the elite has managed to avoid all of these hardships notwithstanding the rhetoric of mutual suffering for independence (including broad support for the oil stoppage). So the discontent is growing in Juba and in time will spread, as will the already extended feeling that the government is not delivering or performing. If the government were seen to be performing well, perhaps there would be less resentment.

A fourth part of the problem is the imbalance in the economy, specifically the disproportionate costs of a bloated military budget, now around 66 percent of the 2012 budget. As noted above, the SPLA is far larger than South Sudan needs for its defense against both internal and external security threats. Rather, it is sized to accommodate the desire for employment by former combatants in an economy with high civilian unemployment and few private sector opportunities, at least for jobs that the former combatants want. Instead, to accommodate potential defectors, the Army has become the sponge for the otherwise unemployed and partially disarmed, demobilized, and reintegrated former combatants. The drain on the budget and distorted allocation of public resources is significant. Certainly it reduces the funds available to RSS for infrastructure and social services.

Indeed the fiscal imbalances and the large debt burden resulting from the bloated civilian bureaucracy (swollen for the same reasons as the Army) affect all donor programs. The assumption that basic human services will be delivered by donors, including international NGOs, is driven in no small measure by the limited RSS resources available for them, even if one were to assume that those from a resumed sale of oil were allocated to these purposes rather than consumed by the political elite. Naturally, NGOs and informed citizens resent these distortions and could provide some limited leverage in reducing public sector employment, reallocating the bureaucratic shares, and rectifying the imbalances and public sector.

A fifth part of the problem is the amelioration provided by donors who have delivered food and medicines throughout two or three decades of struggle, and continue to do so, although at a reduced level. South Sudanese have not felt the full privation of poor government services in these areas because the donors have stepped in, which is good news for the otherwise starving South Sudanese, but continued reliance on

international assistance rather than on themselves is bad news for the long-term governance and self-sufficiency of the country. Worse yet, some (perhaps much) donor assistance is siphoned off through patronage, corruption, and even outright theft. While the government is in no position yet—and especially until oil production resumes—to deliver the same level of services, a realistic plan for the future would be the beginning of better governance.[50]

Because there is so little accountability, political or institutional, the elite has relatively little to fear. As already noted, there is limited political competition so elections provide no discipline. Similarly, the branches and levels of government do not check one another if only because they are controlled by the fairly small and overlapping power elite. The lack of systems, procedures, norms, and rules adds to the structural impunity that shields the elite from popular discontent, at least so far.

Fundamentally, South Sudan faces a kind of governance conundrum: A growing concentration of power in a government that itself has little capacity to meet its own objectives or to perform the tasks it has set for itself. Instead, an erratic and idiosyncratic exercise of authority, spotty and inconsistent, good in some places but not in most, characterizes the growing concentration of power in the political elite.

1.2.6 DISTILLING THE DRG PROBLEM

Taking these five elements together and weighing their respective effects, the single most important impediment to the promotion of democracy, human rights, and good governance in South Sudan is the growing concentration of power and resources by a new power elite. The concentration of power and resources in fewer hands undermines the prospects for democracy; makes the abuse of human rights more likely; and diminishes political accountability, the *sin qua non* of good governance. The concentration of power exists in four related phenomena: The increasing dominance of Juba over the states, indeed over the rest of South Sudan (center versus periphery); the executive branch of government vis-à-vis the legislative and judicial branches; the SPLM vis-à-vis other political parties; and the power elite within the top echelons of the SPLM vis-à-vis rank-and-file SPLM members. This growing concentration of power and resources is creating a power elite that can increasingly act with impunity and little if any accountability. Such impunity of action is generating much ill will among the South Sudanese population, who expected a much better fate following independence, and not the same sort of politics they witnessed under Khartoum.

The direction of change is also negative. These are not the growing pains of an emerging democracy, but rather the slow shrinking of political space that suggests emerging authoritarianism.

Lacking a national identity different from opposition to Khartoum, we also conclude that overlapping cleavages reinforce the concentration of power, exacerbating the problems. These factors include most importantly communal differences that suggest a northern/pastoral (Dinka and Nuer) domination over settled agrarian populations.[51] Any perception of a differential communal capture of oil revenues in the years ahead will only exacerbate these communal divisions. Other exacerbating factors include a general sense of entitlement among SPLM/SPLA members; a traumatized population, and therefore, political culture; and the political use of the threat from Sudan—a legitimate fear—to quash critical political engagement by the people of South Sudan.

The window of prime opportunity to shape the weak institutions of the RSS toward democratic governance is fast closing, but is not yet gone. From now until the 2015 national elections represents the last, best opportunity for USAID and the donor community—and the people of South Sudan—to put in place the necessary foundations of democratic governance. The task will grow considerably harder once oil revenues resume and lock into place bad practices within the RSS, and empower an increasingly flush centralizing state and power elite.

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[50] See Lacher, 2012.

[51] Dinkas tend to dominate national political officers, including President Silva Kiir, while Nuers are most prominent in the top officers of the SPLA.

If USAID, the U.S. Government, and the broader international community are to meaningfully promote DRG ideals and practices in South Sudan, they must prioritize interventions that address the concentration of power and resources in their programming and political messaging, and they must do so in an expeditious manner. Time is of the essence in salvaging DRG best practices in the face of looming authoritarianism.

2.0 STEP TWO: KEY ACTORS AND INSTITUTIONS

If the single most important obstacle to strengthening and consolidating democratic governance in South Sudan is the growing concentration of power and resources in the hands of the political elite, the single most important strategic objective is to strengthen countervailing forces, actors, and institutions. Clearly some political actors and institutions benefit from that concentration, indeed have been instrumental in organizing it as discussed previously, and they are unlikely at best to be willing to help dilute it. Unfortunately, the proponents of greater pluralism and competition are weak, but any strategy to strengthen democracy, human rights, and good governance must assist South Sudanese actors and institutions that support such political change. USAID can assist those actors, but it is a foreign donor and cannot itself be one of them. The success of its strategy of assistance depends on the balance of South Sudanese forces that support and oppose democratic reform.

2.1 THE EXECUTIVE

The concentration of power in South Sudan is particularly apparent in the executive branch of government. This presents a conundrum for donors: Assistance to the executive branch will increase its institutional capacity, making the executive more efficient in its ability to concentrate power, potentially further limiting democracy; however, a more effective executive branch would be better able to deliver services to the people of South Sudan rationally, thus enhancing governance.

The lack of institutional processes and the dependence on the political will of a "big man" in the executive branch puts all reforms in jeopardy of not being sustainable. The lack of political will to build bureaucratic reforms in many parts of the executive branch seems to come from two sources: Ignorance and rationality. Many top figures in the executive branch are poorly educated, though highly effective commanders from the bush army rewarded with high posts and who simply do not understand how a modern civilian bureaucracy works. More troubling than ignorance is the reality that many in the power elite do not see their interests as served by a rational, transparent bureaucracy. The more rational and transparent a bureaucracy, the harder it is for the powerful to misuse it for personal purposes.

FIGURE 2.1. POWER STRUCTURE IN THE GOVERNMENT OF SOUTH SUDAN[52]

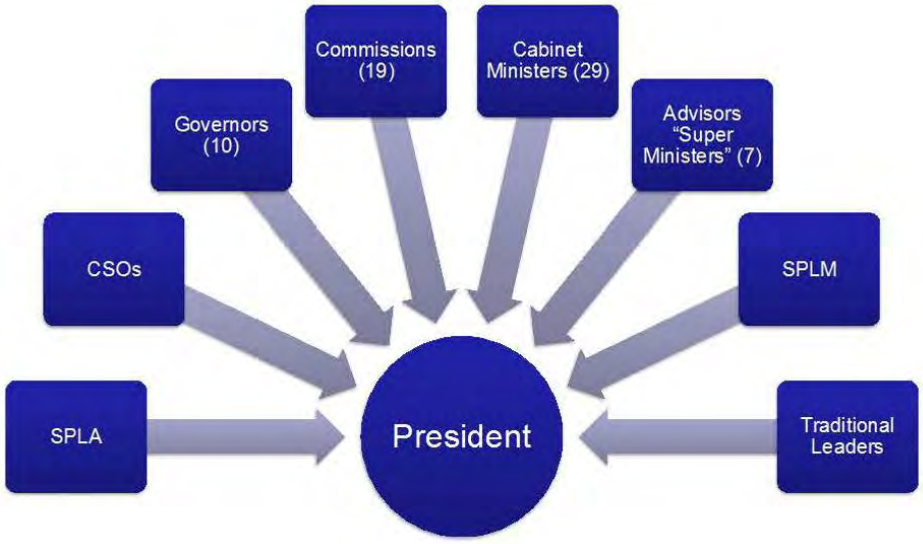

Figure 2.1 above is a representation of the key influences on the president, to demonstrate the power structure within the RSS. Please notice that at least five (governors, commissions, cabinet ministers, advisors/super ministers, and the SPLA) of the eight institutions that influence the president are within the executive branch, and in reality, the SPLM leadership is for all intents and purposes also an executive body. Even the traditional leaders are formally organized within the executive branch of government at the state level. The only non-executive source of authority to which the president must pay some heed (mostly because of donor community pressure) is a handful of CSOs. The president's inner circle of true power brokers would include some of the presidential advisors, a few ministers, and top SPLM/SPLA figures.

While the executive branch is not monolithic, it may be anticipated that this group of actors will tend to oppose the establishment and consolidation of checks and balances. Indeed, since most members of the power elite are in the executive branch of government, it would be in their own rational self-interest to oppose meaningful reform, since they benefit materially, socially, and politically from the status quo. While individual reformers exist, there appears to be no substantial movement within the power elite to promote significant DRG outcomes within the RSS seriously. Although some improvement in areas such as service provision is possible, the increasing domination of the executive must be checked for South Sudan to meaningfully transition toward democracy.

2.2 SECURITY SERVICES (INCLUDING MILITARY, POLICE, AND INTELLIGENCE SERVICES)

The security services, broadly defined, have been a major impediment to DRG in South Sudan, in particular the protection of human rights. The SPLA, police, and intelligence services (under the umbrella of the Ministry of National Security) have been major violators of the human rights of South Sudanese (and foreign nationals). Such abuse includes murder, rape, beatings, the extraction of bribes, and arbitrary detention.[53] When it comes to major human rights abuses, the Army and the intelligence services have been the principal offenders. The police are certainly guilty of abuse, but not in a systematic or politically motivated way.

Founded in 1983 and led by John Garang de Mabior until his death in 2005, the SPLA was the major army of national liberation in South Sudan. However, while the SPLA remains a reasonably coherent institution now

[52] The SPLA box includes the other powerful coercive elements of the national government, including the national security services.

[53] See various letters and reports by Human Rights Watch at www.hrw.org/.

that it is the formal army of the RSS, it is a different organization than it was in 2005 at the signing of the CPA. The SPLA was compelled as part of the peace agreement to absorb tens of thousands of armed members who had belonged to competing militias during the war. An estimated 50 percent of current SPLA fighters were not historically part of the organization. The SPLA is believed to have between 180,000 and 200,000 soldiers today, although many thousands are believed to be "ghost soldiers" drawing salaries pocketed by local commanders.

The SPLA has been responsible for major human rights abuses, particularly as part of its Disarmament, Demobilization, and Reintegration campaign in Jonglei State in 2011-2012. While the SPLA is likely the most organizationally coherent body in South Sudan, it still has major command and control problems and relatively low institutional capacity; a large majority of its soldiers are illiterate. As well, the formal separation of the SPLA from the SPLM remains more myth and goal than actual reality, with the two bodies acting essentially in unison on big political issues.

A philosophical challenge facing the SPLA is its name. Some question why it is still called the Sudan People's Liberation Army rather than the Armed Forces of South Sudan or something similar. This is not a minor issue, as it captures the essence of a very hard transition from a national liberation army to an army of a state under civilian rule.[54]

The National Police in South Sudan is likewise a major contributor to human rights abuses and the loss of trust in law enforcement in South Sudan. Typically illiterate, with little if any professional training, police are often recruited among the "dropouts" of the SPLA, including decommissioned forces that need to be accommodated. Police have become well known for arbitrary beatings and the extortion of bribes. The police do not appear to be acting intentionally on behalf of the power elite to sow fear among the general population; rather, the lack of training and knowledge about proper police behavior, and a post-traumatic stress disorder culture of permissiveness of violence among those in uniform are more likely explanations. Thus, the civilian police represent an opportunity for the donor community for relatively quick improvement in human rights and good governance with appropriate intervention.

The abuses perpetrated by the police are perhaps best attributable to poor recruitment, training, and lack of command and control. Most worrisome today are the security services under the control of the Ministry of National Security, including the NSS and National Intelligence. Unlike the police forces, the NSS is well trained and funded, with good command and control capabilities. The NSS has already intimidated political enemies of the power elite, including many members of the media during the fieldwork portion of this assessment. Abuse by police appears to be mostly local and non-political, while human rights abuses perpetrated by the Ministry of National Security appear to be organized and primarily directed at political targets. As the SPLA becomes more of a professional army, it is likely that the Ministry of National Security will play a primary role as a Praetorian Guard protecting the interests of the power elite as authoritarianism consolidates in South Sudan. The Ministry of National Security, especially the NSS, will certainly act as major opponents of DRG progress in South Sudan, acting on behalf of the power elite.

2.3 THE LEGISLATURE

The essential role that legislatures play in a democracy is much diminished, almost absent, in South Sudan. The SPLM dominates the National Legislative Assembly and all of the state assemblies. The SPLM holds at least 90 percent of the seats in the National Assembly and in each of the 10 state assemblies. Consequently, members chosen by the SPLM leadership occupy all committees, most committee chairs, and all leadership positions. There are some minority party seats, and some SPLM members of the NLA hold dissenting positions within the SPLM consensus and differ from its leadership. They use the NLA to voice their concerns and dissenting positions. Most are concerned about the growing wealth and corruption of the

[54] The Transitional Constitution does refer to a transition to a national armed force at 152(2), but elsewhere maintains references to the SPLA.

power elite and about the dissonance between the lofty ideals, intentions, and plans of the SPLM during the independence struggle and its performance afterward.[55] They fear that the SPLM has lost its way, and they will be among the dissenters in any SPLM convention struggle for leadership and platform. However, they are a distinct minority within the Assembly and have been marginalized from most meaningful participation, let alone leadership, within it.

Similarly, most of the state assemblies are not promising as arenas for democracy. Minority parties are often even less well represented in the states and the SPLM Assembly members are more compliant, less troublesome, and less articulate than in Juba. The governors, together with the speakers of the assemblies and the SPLM secretaries general (often, as elsewhere, overlapping), make most of the decisions. Often they do not tolerate dissent, even from members of one of the "other parties."

In addition to the lack of real political contestation within the national and state assemblies, there is an utter lack of capacity among all members. Only top leaders have any staff to speak of, and usually they are not well trained. Most Members of Parliament (MPs) have no staff, no office, and few resources at their disposal. The NLA has no Internet connectivity for its members, and computers are rare.

Absent greater political space in the states, the state legislatures are not good candidates for DRG assistance if the intent is to achieve measurable results before the 2015 elections, though long-term engagement over several electoral cycles could yield positive results. Should the political complexion of any of the state legislatures change and become less controlled, or should the timeframe for impact be much longer, that conclusion should be revisited.

2.4 THE JUDICIARY AND LEGAL PROFESSIONALS, INCLUDING TRADITIONAL/CUSTOMARY JUSTICE MECHANISMS

Investment in the ROL sector can often provide a good DRG return, although usually not rapidly. Such investment often makes the most sense in countries where soft authoritarianism is practiced, as enhancing the legal sector rarely provokes undue executive branch opposition; improving the ability of average citizens to seek legal redress and get problems solved can be supported by virtually everyone, including a power elite. Some ROL activities, however, such as empowering a constitutional court, can raise political questions in such authoritarian environments, so selecting the proper ROL activities is critical.

Similar to other branches of the government, the Judiciary of South Sudan (JOSS) lacks capacity at every level and thus only plays a marginal role in adequately settling disputes. This is true for both professional and traditional justice mechanisms. The long war broke down nascent legal institutions throughout southern Sudan, prompting an even greater role for customary law.

Both the 2005 Interim Constitution of Southern Sudan and the 2011 TCSS provide the legal framework for the establishment of the judiciary and related legal institutions. The list of shortcomings and problems within the judicial sector is long and daunting. The RSS's decision to adopt common law as its dominant legal tradition has created a number of problems. Most legal professionals in South Sudan, and especially most judges, were trained in Arabic in Khartoum and have expertise in both civil and Shari'a law, not common law. There is also not much in the way of case history and precedent, which are critical to common law. Thus, lawyers trained in the common law systems that prevail in East Africa are often far more informed about the rules of common law than the judges hearing the case. Moreover, the decision by RSS to have English be the official language of the state, including in all legal matters, has in some cases reduced the efficacy of qualified judges simply because their legal training is in Arabic, not English. What actually happens in court (to the degree courts actually exist) is a jumble of civil law, common law, Shari'a, and/or customary law, and the proceedings may take place in English, Arabic, and/or local languages depending on the circumstances.

[55] For a short discussion of some of the ideals and premonitions of performance shortcomings of the SPLM/SPLA leadership, see Robert Klitgaard, "Making a Country: South Sudan's Leaders Struggle to Avoid the Mistakes of their Predecessors" *Foreign Policy,* January 7, 2011, http://www.foreignpolicy.com/articles/2011/01/07/making_a_country?page=0,0.

In any case, there is little sense in South Sudan that the judiciary is or should be an independent branch of government. Judicial independence is provided for on paper, but is not systematically honored by the executive or practiced by the judiciary. While individual judges will periodically assert judicial independence from the executive branch, it is rare, dependent on individuals, and not institutionalized. Periodically, a governor will simply dismiss a judge if he does not care for his rulings. Executive branch interference within the judiciary is common. Furthermore, although the chief justice also wields considerable influence, the prime mover in the judicial sector is the Minister of Justice, a member of the executive branch, not a judicial council (as one would expect in a common law system).

A third set of problems revolves around institutional capacity and knowledge. There is a shortage of qualified judges in South Sudan, although there is a current program underway to recruit more. Court administrators of every kind, from clerks to secretaries to record keepers, are virtually absent. This is a particularly acute problem at the state level, where a judge often runs the entire office. As well, often there will be no police investigator to investigate a crime or state attorney to prosecute one. Enforcement of judicial decisions is spotty, sometimes for lack of capacity, and sometimes for political reasons (e.g., if a decision went against a member of the SPLA). Knowledge of proper roles and responsibilities within the legal sector is often lacking, to include familiarity with proper proceedings. Juveniles are often treated as adults within the legal sector, both because of inadequate facilities and inadequate knowledge.

Access to justice is likewise problematic. As always, access to justice is most problematic for marginalized sectors of society, especially women and youth. Access to justice can be impeded for cultural reasons (e.g., the logic of patriarchy), for physical reasons (e.g., villages cut off from the rest of the world during the long rainy season), or because of a lack of knowledge about legal rights in the general population. A lack of resources further compounds these problems.

Traditional or customary justice mechanisms are often romanticized in Western minds, but are often more problematic than formal justice mechanisms. The same holds true in South Sudan. The TCSS provides that customs and traditions are a source of legislation and law. Some traditions in South Sudan, however, are clearly not in the interests of justice and human rights. For example, "girl compensation" is widely practiced in Eastern Equatoria and some other areas of South Sudan: When a killing occurs, it is customary for the offending family to offer up a young girl to the family of the victim to settle accounts. While typically married off to a brother of the victim, that female will go through life a hated reminder of a death in the family. Such "blood compensation" is enshrined in RSS law, specifically section 206 of the Penal Code Act of 2008.[56] It is also customary throughout South Sudan to marry off daughters at puberty (typically 12-13 years old) in spite of its illegality under the law, yet another example where customary law contradicts modern sensibilities of justice. Customary justice mechanisms tend to have the worst record in terms of access to justice: The more locally powerful you are, the more justice you get. Women, low-status clans, and other marginalized members of society get comparatively little access to justice and due process in traditional justice mechanisms.

Interestingly, the legal framework governing traditional justice in South Sudan falls under the Local Government Act, not the Judicial Act, thus raising some question as to the formal place of traditional justice within the judicial sector. Indeed, these two laws contradict each other in part. For example, the Judicial Act centralizes the appointment of judges at all levels, while the Local Government Act decentralizes this authority.

A South Sudan Interim Bar Association as well as a handful of CSOs deals with ROL issues. While there are some impressive and competent individuals, these groups appear to be quite weak and without significant influence.

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[56] The Penal Code Act of 2008, along with other statutes, was enacted by the semi-autonomous regional Government of Southern Sudan (GOSS) during the CPA Interim Period from 2005-2011.

2.5 SUB-NATIONAL GOVERNMENTS

The same dynamics that make state legislatures unpromising arenas for DRG investments and results make the sub-national executive branch even less promising. While state governors are elected, the president may dismiss them without legal justification. This happened most recently in January 2013 when President Kiir dismissed Governor Chol Tong Mayai of Lakes State from his post without explanation.[57] As a result, governors can be kept on a short political leash by the president.[58] County commissioners are due to be elected in the future, if and when the Local Government Act is fully implemented, but up to this point, have been appointed by state governors. Consequently, all of the major executive positions at the local level are either directly answerable to presidential power or appointed by those who are in power, and thus cannot be reasonably seen as a type of check or balance on national executive power. In general, therefore, they have little latitude for independence, let alone for taking positions at variance with Juba's.

As long as they do not displease Juba, most governors have a free hand within their states. Sitting at the apex of the state executive, most governors enjoy their own untrammeled authority. Most are not seeking countervailing powers such as pluralistic and energetic state legislatures, independent and outspoken media, or lively and potentially critical CSOs to limit their authority or their space to maneuver. They are far more likely to want to consolidate their control over the state and its politics. Unsurprisingly, a number of governors are locally autocratic and run their states with discipline, including control over county commissioners, even *payam* and *boma* officials. Together with the senior state SPLM officials (often one and the same with governors), the police chief, and the state legislature leadership, they often form a state-level power elite similar to the one at the national level, except without the constraints of dissenting members of the legislature, media, and civil society, or dozens of donors.

In short, if South Sudan has a closing political space and a concentration of power at the national level, these challenges for democratic governance are greater yet at the state level. However, democracy is a national project, not a local one. That is, if authoritarianism does indeed get entrenched at the national level, it would be implausible and without historical precedent to expect a thriving democracy in one or more of South Sudan's states. By contrast, poor DRG practices at the state level would be much easier to reverse over time if the national government has meaningfully embraced democratic governance.

No doubt there are some reformers at the state, county, and local levels. It appears President Kiir does not involve himself in the vast majority of local appointments but only the ones in problematic counties or where larger political stakes are engaged, especially if there are vying factions. Some county commissioners appear to be reform-oriented, but most are allies of the governor who appointed them, and most view it as a paying job in a world of unemployment, so the positions often have the color of patronage. Since their governors can remove the county commissioners, they are generally on a short leash unless, like the governors, they have some personal political support that makes appointing or retaining them worth the cost of their independence. Those who are reform-minded have several structural hurdles from the perspective of general DRG goals. First, they are by far the exception to the rule. Therefore, second, they are islands in the larger sea of colleagues. Third, if they try to implement serious reforms, they are likely to find themselves at odds with the governor who appointed and can dismiss them, unless the governor is also a reformer. Fourth, few and somewhat isolated, they are unlikely to have *systemic* effects unless their reforms attract enough political support to provide leverage in an increasingly centralizing power dynamic. In that respect, they are like pilot projects but with low chances of replication or "rolling up" into systemic change. Still, large changes can start from small ones given enough time and nurturing, but the odds are not in their favor politically and not

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[57] http://www.newsudanvision.com/index.php?option=com_content&view=article&id=2681:will-the-sacking-of-elected-governor-mark-the-unraveling-of-south-sudanese-constitution&catid=1:sudan-news-stories&Itemid=6.

[58] Some governors do buck Juba in general and the president in particular, because they have their own political bases in the state, in the SPLM, in the SPLA, or in Juba generally. Conversely, Juba political brokers sometime back the opponents of prominent political figures; for example, in the last gubernatorial race in Unity State where Angelina Teny, the wife of Vice President Riek Machar Teny, lost her gubernatorial bid to an opponent supported by President Salva Kiir. However, in general they toe the line.

without substantial and sustained support from beyond their counties. Reform is more likely to come from splits at the center (for example, within the SPLM) than to roll up from the countryside. The 2009 Local Government Act would, if fully implemented, decentralize some authorities and strengthen sub-national governments, for example, through local elections. However, the ability of sub-national governments to perform their contemplated roles is in doubt. More importantly, it is unclear whether the central government is committed to the implementation of the Act or, by extension, to decentralizing authority, though sub-national governments are implementing the Act however imperfectly or incompletely. Should RSS actions demonstrate true commitment to the implementation of the Act, an investment in building local capacity might be warranted, but only in those states and localities where there is good reason to believe that it will not merely provide resources to local autocrats and semi-authoritarians, and that improved capacity will bring improved democratic governance.

Though working at the local level cannot in isolation mitigate against the concentration of power and resources in South Sudan, those analyzing conflict dynamics argue that expanding government presence to the county, *payam*, and *boma* levels, while building the capacity of those institutions to deliver services, is critical to reduce the prospects for conflict. Some of the poor governance at the sub-national level is undoubtedly due to the general incapacity at all levels of government; improving literacy, numeracy, and basic public administration skills perhaps could ameliorate that cause of the poor performance at the sub-national (and national) level. However, persistence of patronage- rather than merit-based recruitment at all levels of government merely exacerbates the capacity problem, especially when there are job seekers with much better qualifications and skills than the ones recruited into government for political reasons. For other reasons, social sectors such as health, water, or education are constrained by poor local governance that has its roots in a lack of transparency, accountability, and capacity, both human and resource. However, while working at the sub-national level to improve social services may bring short- or even medium-term benefits to the people of South Sudan, in the absence of focused attention on mitigating the concentration of power and resources, these gains would likely improve the efficiency of authoritarian governance and almost certainly have long-term costs in terms of DRG ideals and practices.

2.6 POLITICAL PARTIES AND ELECTIONS

As has already been indicated, a robust political competition would provide the greatest antidote to the concentration of power, but power has already been so concentrated in South Sudan that there is now no obvious political challenger or even set of political challengers acting together. As discussed previously, independent South Sudan has not yet held elections. The only election held was during the CPA Interim Period, and it was so colored by the anticipation of separation that there was no doubt about the victory (within southern Sudan) of the SPLM as the party that (with the SPLA) brought success. The "other parties" are weak and unlikely to mount a serious threat to the SPLM in 2015, but they intend to try. Though they do not believe the elections will be credible, they believe that if the elections were more free and fair, they would win more contests, especially as the discontent with the SPLM's governance increases and as the independence euphoria recedes in the public mind. For the moment, these "other parties" are trying at least to get organized for the 2015 elections, unburdened by the desire to show unity in the struggle for liberation. The "other parties" could now become contesting parties, true opposition parties, free of the accusation that by opposing the SPLA they would be abetting the north and undermining the struggle for an independent South Sudan. In that new context, some are discussing electoral agreements under which they would divide constituencies among them so that only one will challenge the SPLM in a given constituency. They also hope—unconvincingly—to change the rules so that any successful candidate crossing the aisle would lose the seat back to the party, i.e., to turn the elections into party contests with party seats not individual races.

In part, any electoral strategy comes up against the past complexities of the electoral system and the still un-promulgated rules for the next election. Without transparent rules of the electoral game, so to speak, it is almost impossible to devise a strategy for playing in it. Eight of the nine members of the National Elections Commission were chosen in August 2012. Existing and possibly new parties are awaiting the anticipated changes, including the possibility of revising the number of seats subject to party list versus individual

contestation, which would presumably mitigate the practice of Assembly members at national and state assemblies crossing over from the parties with which they were identified after the elections.

Still, given the SPLM's overwhelming majorities in all of the legislatures and its dominance of the political space in South Sudan, the more likely arena of meaningful political competition is not in the formal national or local elections but in the elections within the SPLM itself. Factions within the SPLM are likely to mount challenges to the leadership at upcoming party conferences. They are currently in an uneasy truce with one another. SPLM leaders are constantly concerned that rivalries and tensions will turn into defections to the bush. The concerns are not unfounded; for various reasons, some have already defected and others threaten to.

Except for the SPLM's monopoly, this arena would be a high priority. However, without meaningful competition, there is little leverage in this arena to arrest the concentration of power. Work with the "other parties" as well as the SPLM might theoretically improve the competitive environment. A non-communal competition within the SPLM could dramatically change the arena, depending on how that competition was structured.

Rather than any obvious opportunity for democratic gains (absent some unexpected developments within the SPLM), the 2015 elections do pose some hazards, primarily in the form of inflaming communal tensions. That danger could increase substantially if there are parties that identify themselves explicitly with one or another community or make a communal rather than a national appeal. A party based in Equatoria, for example, or a Dinka party that presses for the interests of one part of the country or one community against the others would have a different effect than a party based on, say, more socialization of assets in public hands or the reverse, a party that argues for privatization and small government. The parties and communities understand that risk, and to date, do not plan for sectarian, geographic, or communally based parties or appeals. There is always the possibility, however, of a new party or party leader willing to take the risk of conflict through demagogic appeals to one or another community. Perhaps some attention should be paid to that possibility before rather than after it occurs. Warning signs should be evident early on.

2.7 CIVIL SOCIETY

South Sudan has an exceedingly weak civil society, most of which appears to be located primarily in Juba where it can enjoy some protection from egregious crackdowns by officials. The reasons for this weakness are numerous, but primarily have to do with two facts: Much of South Sudan is still a traditional society organized by vertical, not horizontal, social cleavages; and decades of war did not make for fertile grounds for the development of CSOs. CSOs in South Sudan are almost entirely dependent on the donor community for their financial survival. In short, they have not generally arisen and been sustained organically within South Sudanese society.

As elsewhere, a number of stakeholders, both domestic and international—no small number are, or would be, its beneficiaries—argue for a general civil society program to stem the tide of power concentration. They argue that the "demand side" of public pressure should be the basis, or an important part, of any strategy to diminish it and that support to NGOs, especially advocacy organizations, would provide some of the countervailing power to accomplish that task.

In part because of the massive spending by donors in South Sudan, there are a fair number of national NGOs, based primarily in Juba, with the majority focusing on service delivery. Almost all of them are primarily dependent on donor funding except perhaps for some volunteers (particularly in associations of women) and some almost trivial amount of domestic revenues.

As oil revenues increase, however, CSO leverage will diminish relative to the government revenues. Even without those revenues, the accretion of power by the elite will usually outweigh the pressure of CSOs unless they are buttressed by international support, especially by the donors (whose influence will also likely wane during the oil-pumping years). Consequently, the limited ability of civil society will decrease even further once the oil revenues to South Sudan's treasury increase.

Complicating those weaknesses, civil CSOs in South Sudan are not well coordinated. Certainly they are not a unified political force. Each is consumed primarily in making its budget work. Since most donors do not provide general, all-purpose grants, CSOs must appeal to the donors for projects that would also finance salaries and administrative expenses and keep the organization, its officers, and staff solvent.

In the current climate, the ability of civil society to limit the concentration of power is likely to be very limited. Perhaps that standard is too high. Certainly CSOs will meet with government officials, especially in the Assembly. Many know one another. In fact, during the war, the SPLM was active in mobilizing CSOs, both in South Sudan and among the diaspora, to support the independence cause, and many government officials were hired from the ranks of civil society following the signing of the CPA.[59] Moreover, the government is not so authoritarian that it avoids or opposes the CSOs entirely; in fact, it includes them on various commissions. The NCRC, for example, was enlarged to an unwieldy 55 members from an initial 25 because of civil society pressure for greater inclusion.[60] However, because power has become so concentrated and insulated from competition and external pressure, these CSOs have had only marginal effect, and a declining one at that.[61]

2.8 MEDIA

While the media is categorized by itself in this assessment, it may more accurately be seen as a slice of civil society. Media represent an organized but unofficial element of South Sudanese society (like other civil society institutions, ones that mediate between citizens and the state), and can play a significant role in promoting DRG under the right circumstances.[62]

Media in South Sudan is limited but growing. There is a small but expanding print media that will likely remain limited in its reach for some years to come given that only one adult in four is literate. Essentially the

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[59] Not uncommonly, leaders of various insurrections try to mobilize their respective diasporas to raise funds and to pressure their adopted countries for political support. The diaspora populations of many countries often become more hardline than those who have to live with the consequences, so they often oppose the compromises necessary for successful negotiations. Some return with the promise that they will play meaningful roles in the liberated country. Many are disappointed for a variety of reasons: Sometimes their families remain in the countries of emigration; sometimes they are disappointed that their salaries and standards of living would decline substantially once they return; sometimes they are subjected to criticism for leaving and abandoning the fight or for living "cushy" lives abroad while the bulk of their fellow countrymen suffered; sometimes because new actors have moved into the economic or political space they might have occupied had they remained; and so forth. Too many others remain where they emigrated but create political blocs more extreme than the country can afford. Of course, some do return and play meaningful roles.

[60] A cause for disquiet is the draft "Voluntary and Non-Governmental Humanitarian Organizations Bill, 2013" (Bill No. 63), dated November 26, 2012. Although in theory limited to "humanitarian organizations," some civil society actors are concerned that the law would be applied to all NGOs. The draft bill contains some troubling provisions, especially if interpreted in ways adverse to a pluralistic and independent civil society sector. It provides for a Co-ordination Board consisting of seven members from various *government* agencies (including the Director General of Internal Security and the Criminal Investigation Department both of the Ministry of Interior) along with two representatives of national and international NGOs. The Co-ordination Board would provide "policy guidelines" for "harmonizing their activities to the National Development Plan"; "supervise [their] electoral process"; provide "principles" governing their work; maintain a registry of these NGOs "with precise sectors, affiliations, and locations of their activities"; "receive, discuss and approve the code of conduct" for their self-regulation; issue a certificate of registration "which may contain such terms and conditions as the Board may prescribe"; review their registrations annually; "reject or revoke [their] registration"; "receive and consider work permits" for their prospective employees"; and set "such terms and conditions as the Board may prescribe." It contains some problematic provisions for foreign organizations as well, but the ones for domestic organizations are the more worrying. Given the narrowing political space and the concern in civil society circles about semi-authoritarian tendencies of a growingly centralized state, these are the kinds of provisions which have been used elsewhere to contain and constrain the non-governmental sector.

[61] No doubt, civil society plays an important role in a free market democracy (especially a relatively prosperous one) where there are competitive elections, balance of power between branches, a rule of law, an active media, a substantial private sector (so citizens are not dependent on the state for their income), and the like. Its effect in poor countries, especially authoritarian or semi-authoritarian ones, and even more especially those whose economies are based on resource extraction is far less. They are often almost entirely dependent on donor funding. The government has a disproportional amount of power, which it often uses to constrain them or even eliminate them. They have far fewer systemic protections. They can assert fewer checks on the government. Government does not really need them for its own operations. Many do not have deep social roots and those that do are often devoted to providing social service rather than political advocacy. Perhaps most important, advocacy is likely to have impact where there are significant consequences for ignoring the public, but the views of the public are precisely what authoritarian governments have insulated themselves from.

[62] For a brief overview of the media sector in South Sudan, see Lisa Cliffod and Martine Zeuthen, *Empowering the Media: a Study of the Role of the Union of Journalists in South Sudan,* Integrity Research and Consultancy, September 2011.

print media is geared toward informing Juba elites, both inside and outside of government. In this regard, print media plays an important but limited role. A new general use printer should assist in diminishing print costs, which up to now has entailed having newspapers printed outside of South Sudan and then imported. Television is even more limited, with minimal television presence outside of Juba and state capitals, and the most widely watched stations are all external (Al-Jazeera Arabic and English services are popular).

The most important form of media in South Sudan is radio, as noted previously. Government radio is available in Juba and all state capitals, as well as a few other locales. Important non-governmental radio in South Sudan includes primarily Bakhita and Miraya FM, as well as several other small independent radio stations and networks, including a network funded by USAID. The USAID-supported network is expected to reach most of the population of South Sudan. Given the vast poverty of South Sudan, making radio stations 100 percent commercially viable, even in the medium term, is difficult. It is likely that radio will need donor subsidies for many years to keep stations on the air.

Media capacity, as with every other sector, is quite low, and media professionalism is often lacking. Deficiencies include inadequate training for government and journalists and a lack of translation capacity, which means that locally driven news reporting is not always accessible to the relevant communities. There is enthusiasm among the media to be able to do more and do it better. There is some donor support to help in this regard, and the Japanese are apparently planning a significant intervention in media. The Norwegian People's Aid has also been funding systems and associations.

A further problem is that RSS lacks a fundamental understanding of the role of media in a democratic society. The RSS tends to regard the media with some suspicion. Although section 24 of the TCSS guarantees Freedom of Expression and Media,[63] government harassment of media has increased in recent months, including a recent compulsory meeting at the Ministry of National Security headquarters designed to intimidate all local journalists. State security personnel have beaten some journalists, and imprisoned others for short periods of time. Most disturbingly, one journalist was murdered in December 2012, reportedly by individuals connected to the government. Some of the media intimidation appears to be centrally controlled by top members of government for political reasons, while other times it appears more of a heavy-handed event orchestrated by individual government officials who may have been embarrassed. The currently proposed media press law (The Media Authority Bill, 2012) is good in general, but has problematic features that put far too much control over the media in the president's hands.

There is some question as to whether there has been a political decision to repress the media systematically in South Sudan, especially in light of the recent murder of Isaiah Abraham and the forceful detention of others in Jonglei. Radio in particular seems to have mostly escaped untoward attention, and the licensing of radio stations has not been a problem thus far.[64] The most popular talk radio show, "Good Morning, Juba," often features call-in conversations that can be quite critical of certain government actions.[65] While far from perfect, the ability of media, especially radio, to create some transparency, some accountability—the "name and shame" function of media—is still present and has potentially significant room to grow. If the power elite

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[63] Section 24 provides: (1) Every citizen shall have the right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law; (2) All levels of government shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society; (3) All media shall abide by professional ethics.

[64] However, in addition to the murder of Isaiah Abraham, the office of the Juba Bureau of Al-Jazeera burned down around 4 a.m. January 15, 2013." Hotel Fire Burns Al Jazeera Media Offices" Gurtong, January 16, 2013, http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/9174/Hotel-Fire-Burns-Al-Jazeera-Media-Offices.aspx. Some speculate that the fire, caused by an explosion, was retaliation by the RSS for Al-Jazeera's release of a video of the SPLA firing on and injuring a dozen or more civilian protestors in Wau the previous month. The Wau demonstrators were protesting the earlier death of 26 civilians. "S. Sudan army acts to contain Wau protests - 12 further civilian deaths alleged" *Sudan Tribune*; December 20, 2012; http://www.sudantribune.com/spip.php?article44926.

[65] It should be noted, however, that two hosts have quit the show recently due to threats from national security personnel.

does succeed in consolidating authoritarianism in South Sudan, it is likely that the degree of freedom currently enjoyed by the media will be significantly curtailed.

The ability of the power elite to curtail ***any*** sector it wants to strikes at the heart of the donors' conundrum. There is no significant DRG improvement to be had if RSS does not buy into it. The media are no exception. The media can be a powerful tool to promote political accountability, national identity, civic education, human rights, and good governance. The fact that the media have not been, for the most part, a central political target of the RSS to date, indicates it can be an investment area that can provide both substantial and relatively quick results for DRG in South Sudan. That can change quickly in the absence of political will.

2.9 PRIVATE SECTOR BUSINESS

Growth in the private sector would have a number of critical benefits, including support for democratic governance. Most importantly, it would support sustainable economic growth without which the future of South Sudan is dim. The oil revenues will all but run out in 10 to 15 years. The interim oil revenues could help finance some kind of non-oil sustainable growth strategy. The government has its eye on agriculture, timber, and cattle as well as some kind of industry, but plans are still vague. The danger, as already noted, is the "resource curse" which in other countries has typically resulted in the capture of extractive resource revenues by elites through contracts with the international extraction industry, thereby bypassing taxation and other more transparent methods for funding the government (and corrupt officials). The plans for sustainable growth would need to be based on a realistic assessment of South Sudan's comparative advantages and prospects and those plans would need to be funded. The oil revenues would provide the funding if they were not expropriated by the elites in hidden agreements with the extractors. Unless the plans are economically sustainable, however, they will die with the end of the subsidizing oil revenues.

From the DRG perspective, a truly independent private sector would break the governmental monopoly on employment and therefore the dependence of the population on government jobs, an important source for the concentration of power. Depending on the complexion of the resulting economy, the private sector could also provide business interests which would not be dependent on government but which, for reasons of local and international competitiveness, would be interested in an open, transparent environment; free flow of information and analysis; and a competitive environment in which the power elite does not have a stranglehold. To date, however, a disproportionate number of the successful or succeeding entrepreneurs are doing so through connections for licenses, government contracts, financing, partnerships, and access.

2.10 RELIGIOUS AND TRADITIONAL/CUSTOMARY/TRIBAL LEADERS

It is tempting to look to traditional leaders as a source of conflict mitigation and nation building in South Sudan. No doubt, their positive contribution would help to deal with the development of South Sudan, especially with the desire by government for patience with its performance, and of course, with the resolution of inter-communal conflicts. Both are of growing concern. Many traditional leaders have already been very helpful in calming the demands of the public for government services that, in the absence of a robust private sector, includes jobs and a full range of services. The traditional leaders are themselves becoming more impatient, however, and even if they were not, may not have the ability to assuage increasing public irritation.

Moreover, traditional leaders may as well spark and promote inter-communal conflict as dampen or resolve it. After all, inter-communal conflict is part of the tradition of some communities, especially the Nuer, Dinka, and other pastoralists.[66] Some leaders in these communities may well be willing to change their traditions but others are not. Expecting traditional leaders to dampen their traditions is, in general, not likely to be productive. No doubt, some will do so. They recognize the enormous costs that conflict, now much more

[66] The USAID Conflict Assessment also noted the traditional role of warfare, especially for cattle raiding and taking women, the complicit role chiefs play in raids, and the benefits they may gain.

violent than traditionally, is imposing. The large increase in casualties and deaths must be of concern. Whether they override other incentives, including the natural desire of traditional leaders to uphold traditions, is an empirical question.

Finally, given the large variation in the kinds of traditions in South Sudan (most people think of the pastoralists, but large numbers of South Sudanese in the southern parts of the country come from very different traditions), traditional leaders may well have different outlooks and dispositions. Even in northern area, the Azande and the Shilluk come from a tradition of kingships and structured bureaucracies, unlike the Nuer and the Dinka.

Religious leaders also come from very different religious beliefs. By far those with the greatest influence over the largest number of South Sudanese are from "establishment churches." They are Catholic, Protestant (especially Evangelical), and Muslim. Leaders of more indigenous religions remain as well, but they are most likely to be part of what is usually considered traditional leaders. Evangelical churches and NGOs associated with them were among the staunchest supporters of the south throughout the struggle against Khartoum, and many provided food and medicine throughout the south. Therefore, many of these religious leaders are influential, although perhaps not as much as they once were or as militia commanders are now. With the reservations noted above for traditional leaders, many of these religious leaders are likely to oppose conflict and almost unanimously to be supportive of a successful and independent South Sudan. In that respect, they could be actors for positive change in South Sudan.

Some leaders may well have been accommodated by the power elite and may have no interest in opposing the concentration of power, or perhaps, even in establishing a true rule of law with respect for human rights. Some of the human rights inscribed in the international conventions may even be anathema to some of them. Again, these are empirical questions for further exploration. If so, a more thorough assessment of the kinds of traditional and religious leaders, the pattern of their views, their interests, the extent of their willingness to engage in the political arena, what positions they would take, what dangers that might pose for them, what risks they would be willing to run, and similar questions would need to be surveyed.

2.11 INTERNATIONAL ACTORS

As indicated in the discussion on civil society, international donors have played an unusually large role in South Sudan, even by African standards. South Sudan represents a disproportionate share of the U.S. assistance budget for Africa. In the DRG area alone, approximately one-third of the budget for Africa goes to South Sudan. Throughout the conflict with Sudan, humanitarian NGOs completely funded by international donors have supplied food and medicine to a large part of the population of South Sudan. They continue to do so, albeit to a more limited extent. South Sudanese have become accustomed to that role; indeed they now think it is natural, and in fact the responsibility of the international community. They (wrongly) believe that the donors will continue to do so, and those in civil society assume donors will fund their NGOs.

Those assumptions are almost certainly wrong. First, assistance budgets are most likely falling. The financial crises among the donors and their need to cut their budgets across the board are unlikely to spare foreign assistance. The decision by the British government to keep its level of foreign assistance stable while decreasing government spending in other areas is likely to be unusual, if not anomalous. Second, South Sudan is not likely to continue to be treated as a special case. Part of that is for DRG reasons. South Sudan was supposed to be a democratic exception to much of Africa. Instead, it is moving in the opposite direction. A reassessment after independence was probably inevitable as was perhaps the disappointment with the performance of the new government. South Sudan is unlikely to warrant the large amounts of foreign assistance it is currently receiving, certainly compared with the rest of Africa; particularly once oil revenues once again start flowing to South Sudan. The needs elsewhere and the diminishing aid resources will call for lower assistance levels for South Sudan.

Still, the donors continue to provide substantial resources. Even at a diminished level, they continue to play a major role in the policies and procedures in the country. The World Bank, for example, will remain engaged,

probably at a reasonably constant level. It could be important in advising on and financing reforms in areas such as the ROL, public service, and sub-national governance, but it is not likely to initiate or press for serious political reform given its prohibition on engaging in the internal affairs of its member states and borrowers. More importantly, for the same reason and others, the World Bank will not take on the central issue of power concentration. It will provide technical assistance and financing for specific reforms, which may certainly affect reform, and hopefully greater de-concentration of power, but it is not likely to take on the concentration of power directly.

Assistance aside, most of the inner political elite went to school in one of the donor countries, most retain ties abroad, and most travel abroad regularly (some say far too regularly). If the donors were to express a consistent message, it would definitely have an effect. The strength and effect of the donor voice, however, will also diminish over the coming years. For that reason, it is important to act purposefully now when the donor voice is strong and when it can still influence the path of South Sudan. If that future path enriches and empowers the inner elite, it will be even more difficult to change as their personal interests stand at odds with the public interests in democracy and good, open, transparent, and accountable governance. As well, a number of countries and international organizations affect democracy and governance in South Sudan. The most important is Sudan. Sudan is a constant problem for stability in South Sudan, and therefore, for DRG. Even discounting some of the public blame assigned by the RSS to Sudan for almost every outbreak of communal violence and every defection to the bush by disgruntled commanders, there is a case to be made that Sudan has an interest in instability within and the failure of South Sudan. If South Sudanese begin to look on the past benignly, even longingly, Sudan could hope (however unrealistically) to reintegrate South Sudan and recapture its lost appendage. Each country accuses the other of supporting armed rebellions within the other. The RSS sees this support as constant and ubiquitous, while Khartoum accuses Juba of supporting the SPLA North (SPLA-N) rebel group in Southern Kordofan and Blue Nile States to carry on an armed rebellion that has waged for more than a year. The latter is an issue that has helped keep oil from flowing again for either country.

South Sudan's other neighbors are more benign, but at least two—Congo and the Central African Republic—are essentially failed or failing states bedeviled by their own internal insurrections and civil wars. Neither of them is democratic. Kenya and Uganda are arguably more democratic, but Kenya suffers from deep ethnic, religious, and tribal antagonisms, which almost erupted into a civil war after the last election and resulted in large population shifts. Uganda is more stable but not as democratic. Neither has any interest in destabilizing South Sudan, or notwithstanding their own democratic shortcomings, undermining the consolidation of DRG in South Sudan. There are growing numbers of Kenyans and Ugandans in South Sudan, populating the lower end niches in the economy, which they argue the South Sudanese will not touch. South Sudanese argue that the Kenyans and Ugandans are displacing them, which they resent. Tensions over the role of foreign labor in South Sudan are almost certain to grow. Both Kenya and Uganda played roles in the birth of South Sudan so these tensions are likely to weaken their heretofore close relationship.

Ethiopia has perhaps played the most significant role in supporting the SPLA and SPLM, although that support was subject to periodic reversals. For many years, Ethiopia provided safe haven for the SPLA in its guerilla struggle with Sudan, but Ethiopia is a highly authoritarian state and when relations turned bad, President Meles would withdraw that sanctuary. As in the cases of Kenya and Uganda, Ethiopia has no interest in actively undermining stability or DRG in South Sudan, but neither is it likely to contribute to DRG success.

The United States and Norway have been the longest, most constant supporters of South Sudan and of DRG in it. Norwegian People's Aid has provided humanitarian assistance for decades, as have U.S. NGOs, particularly those connected to various Christian denominations. Also for decades, both the Norwegian and U.S. Governments have been close to the SPLM and SPLA leadership, and both provided critical diplomatic support in negotiating and development support in implementing the CPA, and through it, the independence of South Sudan. Many current leaders of South Sudan studied and lived in the United States and are very familiar, and theoretically, compatible with its views on DRG. A break with either country or with Europe

more broadly would represent a tectonic shift in how South Sudan, particularly the leadership, sees itself and its geostrategic position. That provides both countries leverage on DRG. The question is, first, how much leverage do they really have in light of the other interests of the leadership, vis-à-vis in their growing concentration of power and resources? Second, how much leverage are they willing to expend to support DRG in light of their own other interests?

Among those other interests, and the resources for the leadership of the new, independent South Sudan are countries interested in South Sudanese oil, mostly China but also Malaysia and India. Both China and Malaysia have primarily financial and resource interests in South Sudan. They want to explore and extract. They will not interfere much in the internal affairs of South Sudan as long as they can profit from the oil extraction. However, to advance that interest, both find corruption congenial (within bounds) and neither will provide support for democracy; human rights; or clean, efficient, effective governance. If anything, they would prefer a modestly corrupt, semi-authoritarian state in which their oil concessions would be guaranteed, expanded, and protected.

Finally, the African Union, in theory, could be an international actor. However, the African Union is also extremely reluctant to engage in the internal affairs of its member states, more so even than the World Bank. Most often, it engages at the request of a member state and in areas of conflict or civil war. It is hard to imagine the African Union engaged on DRG issues such as concentration of power.

3.0 STEP THREE: CONSIDERING USAID'S OPERATIONAL AND PROGRAMMATIC ENVIRONMENT

Perhaps anomalously, the United States has only limited geostrategic interests in South Sudan. Yet it has provided extremely, indeed disproportionately, large amounts of assistance over the past two to three decades. In that respect, South Sudan is unlike, say, Egypt or even Afghanistan (with which the United States currently has a strategic partnership and a large airbase). Nor has South Sudan been a model of sustainable development. Yet the current USAID program, including development and humanitarian assistance, is $500 million per year, exclusive of the assistance provided by other U.S. Government agencies, including the Department of State, Department of Defense, and Centers for Disease Control. Currently, USAID/South Sudan's annual DRG budget is approximately $80 million per year, or 16 percent of the Mission's total $500 million budget. It also represents about one-third of the total DRG budget for all of sub-Saharan Africa.

There is a good amount of overlap between UNMISS's mandate and what USAID is doing in the DRG realm. UNMISS was created by the UN's Security Council in July 2011 to provide support for peace consolidation and longer-term state-building and economic development, to support RSS in exercising conflict mitigation functions and developing its capacities to provide security, to establish the rule of law, and to strengthen the security and justice sectors. Yet UNMISS does not have programmable resources in the way USAID does. It must rely on its own staff to implement specific projects, as it does not have the same type of facilities USAID has to bring on contractors. Where UNMISS has displayed a comparative advantage in regard to the DRG sector, is as the voice of the international community writ large. While there are times that it makes sense for a bilateral donor/mission to make a statement or for multiple donors to make similar but separate statements, there are times when it is most appropriate for the UN to serve as the representative of the combined international community. For example, when it came to supporting the constitutional process, the UN served in a coordinating role to ensure that no one bilateral donor/mission was driving the process.

The anomaly of such a large assistance program in a country with such limited geostrategic importance lies perhaps in the long emotional attachment of U.S. NGOs (primarily religious-based NGOs), law- and policy-makers, the struggle for independence based on abusive treatment by Sudan (especially human rights abuses), and the vision of South Sudan as a model for the rest of Africa: Democratic, uncorrupted, and committed to free markets. This was the SPLM/SPLA vision, driven primarily but not exclusively by John Garang. In short, U.S. support was largely a humanitarian mission aimed at addressing basic human needs of people under the direct attack of the north and of buying hope for the future.

While the necessity for support of basic human needs has diminished since independence in July 2011, the importance of maintaining stability in South Sudan and between South Sudan and Sudan (and, thus, the East Africa region) remains. South Sudan is no longer under direct ground assault from Sudan, notwithstanding

the regular but still fairly contained conflict in the border regions and the unresolved boundaries which are characterized by aerial bombardments by Sudan. The pervasive expectation in South Sudan that food and medicine are the responsibility of the international community will soon come up against the reality that the donors do not share that expectation. The disproportionately large amounts of assistance for basic services that went to southern Sudan during the civil war will likely diminish or be reprogrammed as the basic needs of South Sudan increasingly become the responsibility of the people and government of the now independent country. However, FEWSNET early warning systems predict that hunger and food insecurity will likely worsen over the first six months of 2013. In such a context, tensions between transitioning from humanitarian assistance to development remain as some donors have shifted toward basic food and medical assistance.

Moreover, as it becomes critical for South Sudan to assume more responsibility for its own future, it is not the shining light it promised to be. Almost certainly the hopes for South Sudan's future were exaggerated by the South Sudanese because many of them believed it, but also to convince donors of the rectitude of its struggle; and by donors, who almost desperately wanted more success stories in Africa. Still, a country with diminishing political space, harassment of dissidents, diminishing room for dissent and competition, growing levels of what is already extreme and almost unrestrained corruption, and increasing concentration of power is hardly a new model for Africa. It is all too familiar.

For its part, USAID is operating under a Transition Strategy, which takes instability and conflict as the primary problem facing South Sudan and their reduction as the primary goal for USAID: "Strategy is based on the premise that increasing stability in the immediate post-CPA period will depend on a combination of strengthening core governance institutions and processes and making them more inclusive, responding to the expectations of the population for essential services and improved livelihoods, as well as containing the conflicts that are likely to erupt and addressing the grievances behind them."[67]

With a goal of stability, conceptually the strategy considers all development challenges from a conflict lens, such that mitigating and managing conflict, which is primarily a sub-national issue in South Sudan (though some sub-national conflicts have the potential for national-level destabilization[68]) underpins all USAID program activities. For example, it is critical to strengthen effective, inclusive, and accountable governance to mitigate increasing citizen dissatisfaction and grievances, which are drivers of conflict in South Sudan. Though not explicitly considered DRG programming, USAID's approach to service delivery as articulated in the strategy and in discussions with USAID leadership, emphasizes building human and institutional capacity, developing and strengthening government service delivery systems, and improving the enabling environment, all of which are fundamental components of governance, though not necessarily *democratic* governance.

USAID's overall priorities in South Sudan will likely remain on conflict mitigation, and improvement of basic development indicators such as literacy, infant and child mortality, and food security. In the short term, possibly longer depending on when oil production resumes, USAID is likely to prioritize interventions to ensure citizens continue to receive services, even if this means a continuation of the status quo in which donors fund and NGOs deliver services to citizens. If the RSS truly becomes dependent on donors again for survival, this arrangement could have a positive impact on USAID's leverage. Furthermore, because long-term, sustainable progress is dependent upon the degree to which the RSS is able to function effectively and deliver services to its citizens at all levels, USAID will likely continue its support for DRG activities, which remain fundamental to USAID's vision for South Sudan's development.

Though significant, conflict is unfortunately not the only major challenge for South Sudan to overcome. As noted, South Sudan has depended on the donors even for basic subsistence. Its illiteracy rate is extremely high with the basic education of two to three generations already lost to the conflicts and the current generation falling well behind. The unemployment rate is extremely high with very few opportunities even for

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[67] USAID. South Sudan Transition Strategy, 2011-2013. June 2011, p. 4.

[68] See the USAID Conflict Assessment for greater discussion on this point.

those who are educated. Moreover, the democracy the South Sudanese were promised is falling short, to say the least. The growing concentration of power in a relatively small elite is creating dissent even within (perhaps most importantly within) the SPLM itself, and that concentration includes economic—not just political—power. Conflict remains a serious problem for South Sudan, but it is not the sole cause of the disturbing political trends currently taking place.

The concentration of political and economic power is itself likely to lead to conflict if left unaddressed or, more likely, should it become more acute. Inter-communal conflict is not the only possible source of conflict. Even in the recent past, inter-communal tensions have not been alone in generating conflict. The defections of George Athor, David Yau Yau, or Lam Akol, for example, had communal dimensions but roots in conflicts over power and authority, although they certainly attempted (with some success) to mobilize inter-communal tensions in their own interests in power and authority. Ironically, the development with the greatest likelihood for increasing competitiveness and reducing the accumulation of power—a split within the SPLM—does also contain the highest risk of spinning out of control into physical conflict. Conflict is a risk of political competition, but that is precisely the reason why consensual rules of the game are so important. Truly democratic competition is ordered and peaceful. If the rules are clear and consensual, if they are fairly administered, the losers usually accept the current results and live to fight another day, bound by the same fair and consensual rules. The potential alternative is competition unbound by rules and procedures, and therein lies the potential for violent rather than peaceful competition. There is a decreasing window of opportunity for the international community to help build the mechanisms for limiting the concentration of power and building systems of fair, accountable, democratic competition in South Sudan. In that respect, support for democratic governance, inherent in which is competition, does not contradict a goal of stability. It would contribute to long-term stability rooted in consent.

That said, long-term DRG successes in South Sudan, even those designed to address the concentration of power and resources, would not succeed without progress toward fundamental development achievements. For example, until children are able to achieve a standard level of education in South Sudan, the capacity constraints that exacerbate the challenges caused by the lack of political will continue to hinder effective governance at all levels and will not be overcome. Even if funding levels remain steady and there are sufficient resources to provide the same basic skills training for government officials (including literacy, numeracy, and English) for years to come, the lack of a developed educational system will hinder the government's transition to increasing self-sufficiency. With each new generation lacking basic skills, donor or government resources will be spent to repeat the same trainings until the educational system is in place to ensure that students graduate with a basic knowledge and skill base. A side benefit of strengthening the educational system would be the inclusion of civics, South Sudan history, diversity, etc., that could begin to inject a sense of civic and public service responsibility and national identity into the cultural identity of South Sudanese youth (and possibly indirectly their parents/families).[69] In addition, the capacity issues facing South Sudan and the RSS cannot be fully overcome as long as the population lacks access to basic health care and clean drinking water. Preventable and treatable illnesses kill people needlessly, and if recurrent or chronic, impact the productivity of public and private sector workers, as well as students.

In summary, USAID has a broad, well-funded DRG program based on a large and broad Mission portfolio and strong historical commitments by the U.S. Government to the people of South Sudan. Those U.S. commitments have rested on empathy for South Sudanese in their decades-old struggle against discrimination, even oppression, by Sudan. With the independence of South Sudan, that struggle is now

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[69] Currently many, perhaps most, students do not complete even a full primary education but only a few years. The inclusion of civics and other national identity elements in a curriculum that is probably already overambitious is problematic, especially with the shortage of trained teachers and the assignment as teachers, for patronage reasons, of untrained (and often unskilled and inept) decommissioned SPLA cadres. Moreover, the need for rudimentary education, for example, in basic literacy and numeracy, may tax the existing resources of the public schools and the attendance record of most students. These rudimentary skills are almost certainly more important than civics, if a choice needs to be made, but the desirability of civics and a common identity is also a fairly high priority in a country of high and potentially explosive inter-communal conflict. NGOs (including churches and other civic groups) and the media could play a very useful role in promoting civics and a common civic discourse.

largely over, notwithstanding continued tensions between Sudan and South Sudan. U.S. commitments also rested on the common vision of South Sudan's various leaders to a democratic, free-market, corruption-free country that might be a model for the region.

Apart from the likelihood of lower assistance levels globally (and the improbability that South Sudan would entirely escape some reductions), a number of issues may well test that U.S. support: The growing concentration of power and authority in the hands of a relatively small elite; the increasing capture of state and private resources through nepotism, corruption, and patronage; the growing use of state and non-state institutions to reduce the political space for dissent and pluralism; and the continued high rates of unemployment and poor governance performance. More importantly, they will test the commitment of South Sudanese to their own post-independence dispensation. At the least, strains are becoming stronger and more evident. Finally, as the consolidation of power and authority proceeds, the window of opportunity for domestic actors diminishes, as does the opportunity for USAID to support the kind of open, pluralistic, democratic, free-market vision that inspired the independence movement and U.S. support for decades.

South Sudanese and U.S. interests coincide in finding ways to support that original vision. The current DRG portfolio and the Mission Transition Strategy are completely consistent with increasing assistance to actors and institutions that would reverse the drift toward concentration of power. Moreover, addressing the main DRG challenge would also contribute to, not detract from, the rest of the Mission's portfolio. The goals of that portfolio will be impeded by any continued reduction of political and economic space in favor of their capture by a narrow political elite characterized by lack of accountability, poor governance, and growing corruption, which will only serve to increase conflict rather than mitigate or resolve it.

4.0 STEP FOUR: OUTLINING THE PROPOSED STRATEGY

4.1 MAIN DRG PROBLEM

To reiterate, the primary DRG problem in South Sudan today is the growing concentration of power and resources in the hands of a small power elite who increasingly act with impunity and without significant accountability. The concentration of power is largely a result of dynamics of the long war of independence, including the creation of essentially a one-party state (SPLA/SPLM), as well as learned behaviors from South Sudan's "parent state," Sudan. South Sudan's oil revenues, accounting for about 98 percent of all government revenues when oil is flowing, have acted and will continue to further concentrate resources in the hands of the government and likely in the pockets of the power elite. Oil in South Sudan, as in virtually every other country with this resource curse, will almost certainly act to entrench growing authoritarianism in South Sudan. In academic terms, South Sudan is becoming a *rentier*, or distributive state. It is likely that a decade from now South Sudan will be a consolidated authoritarian state, much like many of its neighbors.

The concentration of power is expressed in four primary ways: Geographically in Juba vis-à-vis the remainder of the country, within the executive branch of government vis-à-vis the legislative and judicial branches, within the SPLM vis-à-vis other political parties, and within the upper echelons of the SPLM vis-à-vis the rank-and-file membership. Not surprisingly, the power elite are based primarily in Juba (with a thin veneer as well in state capitals), within the executive branch, and within the top leadership of the SPLM.

A number of other dynamics within South Sudan exacerbate the concentration of power. The lack of a strong national identity and the strength of communal identities lead in some cases to political complaints being framed as Dinka and Nuer domination. Dinka and Nuer make up about 60 percent of the total population, and appear to be disproportionately represented in top SPLM and SPLA leadership positions. The reinforcement of concentrated power with ethnic cleavage is a potentially very dangerous situation, although South Sudan is nowhere close (yet) to Rwanda, Kenya, Lebanon, Syria, Sri Lanka, and other communally divided countries where politics is viewed through the lens of ethnicity and tribe. Attitudes of SPLM/SLPA entitlement also exacerbate political tensions, as do the general insecurity and post-conflict culture in South Sudan.

While there is every reason to be pessimistic about the chances of overcoming the primary DRG problem in South Sudan, a critical window of opportunity may exist for donors and South Sudanese to temper the slide toward authoritarianism while strengthening broader participation in governance by citizens outside the power elite and Juba. The findings of this assessment suggest that the conflict lens and resultant local-level focus that drives the Mission's overall strategy is a necessary but insufficient element in establishing the basis for a move toward greater democratization. Without a concomitant focus on nudging the RSS toward democratization at the big picture level, any improvements at the local level are likely to eventually be overcome by problems typically associated with authoritarian petrol states. Hence, the strategic approach recommended here is to diversify the DRG portfolio such that better governance at local levels can better address basic needs at the community level, while USAID also assists South Sudan to shape the structures and practices of the national state in solidly democratic directions. If a solid DRG foundation is not created now, South Sudan has no realistic chance to be a functioning democracy a decade from now. While resources

from other sectors can be usefully programmed to improve the administration of public services at local levels, the most pressing needs from a strictly DRG perspective would be to address the concentration of power occurring at the national level.

Stability and DRG: Conflicting Goals? The Mission's overriding goal in its programming since 2011, as outlined in Step 3, has been the promotion of stability in South Sudan. This concept of stability stems from a focus on mitigating conflict through a mixture of interventions designed to enable legitimate political order. While a context of security is considered a prerequisite for achieving this stability, the Mission's transitional strategy is not premised on counterterrorism. Rather, the strategy of stability promotion has with it several logical, tactical steps, including improving the provision of social services to respond to population needs, addressing root causes of social conflict so that such conflict does not metastasize and engulf the country, and strengthening elements of government necessary to promote basic political stability.

However, from a DRG perspective, a strategy of short- and medium-term stability promotion is best suited to extreme cases, such as Somalia, where the alternative is state collapse. Indeed, stability promotion could come at the expense of DRG. An overriding concern for short- and medium-term stability could undermine democracy were meaningful, contested elections to be seen as cause for alarm because they can often lead to some violence and social tension between or among ethnic or geographical groups. Support for stability in the short to medium term would suggest downplaying political contestation in favor of survival of the known status quo. As well, good governance relies on the notion of accountability; meaningful accountability, however, could well embarrass and thus weaken the very political leaders needed to ensure stability. Thus, a central concern for short- and medium-term stability could weaken a free press and other institutions of governmental accountability. The cause of stability may also actually undermine human rights for the same reasons. The ability to act with impunity—and not be held accountable—often leads to gross human rights abuses, as was seen, for example, in Jonglei at the hands of the SPLA. At the same time, some DRG interventions can be helpful to conflict mitigation strategies in pursuit of stability in the short, medium, and long term. For instance, rule of law is one of the most fundamental conflict mitigation strategies—when there is a system in which people have confidence and use to mete out justice, they do not need to pursue their own strategies to solve problems.

Therefore, a focus on short- and medium-term stability is typically the ally of authoritarian rule and the enemy of DRG, except in the most extreme cases of state failure. If that was the Mission's conclusion in 2011—that South Sudan was so fragile that state collapse was a very real concern—then it could well be argued that stability promotion was necessary for there to be any reasonable chance for DRG promotion in the future. This assessment makes no judgment on this 2011 conclusion; however, as this assessment argues, the fear of state collapse in South Sudan will no longer be reasonable when oil revenues begin to flow again, likely later in 2013.[70] Then the regime will have the resources again to ensure its, and the state's, survival for at least two decades (and probably much longer). For USAID or other donors to continue to privilege short- and medium-term stability under these circumstances will come at the direct expense of meaningful DRG promotion.

We expect the regime in Juba to likely argue against meaningful DRG reforms, in part on the grounds of stability; real elections, real opposition parties, and real accountability can all threaten stability. As we have noted, it is in the interests of the power elite not to adopt meaningful DRG ideals and practices, and it is only logical to try to frame such actions on the grounds of stability promotion. However, even here the argument is not historically correct. Democracies have proven to be far more stable over the long term than authoritarian governments.

Therefore, this assessment recommends that the Mission revisit the stability goal as its prime driver in South Sudan. To do so would mean not only departing from its Transition Strategy (due to expire in 2013 in any

[70] As we have argued elsewhere in this assessment, this period of oil shut off is now threatening to deplete remaining governmental reserves, meaning there is likely to be a golden opportunity of maximum leverage during the first half of 2013 to push for DRG reforms.

case) but also looking critically at some of the conclusions of the recent conflict assessment. The Mission may well determine that stability best suits the overall policy objectives of the United States vis-à-vis South Sudan, but it would then need to accept the reality that such a conclusion and the promotion of short- and medium-term stability first, would retard DRG objectives. That may be a fair trade-off, but it should be done in a clear-eyed manner.

As already indicated in the discussion of sub-national governance, aside from supporting DRG-specific objectives to address the concentration of power, the DRG program could work on more effective governance (especially at the sub-national level) to improve the impact of other programs in the Mission's portfolio and to address secondary and tertiary DRG problems in South Sudan. For example, there are a myriad of capacity problems (not the least of which are basic literacy and numeracy, English, computer skills, etc.) that could improve government effectiveness. However, such interventions would have, at best, an indirect impact on the primary DRG problem.

Still, the poor quality of governance does have substantial effects on, for example, the delivery of basic health and education, especially if (as the RSS intends) they are no longer going to be provided by NGOs (or the private sector) but by the responsible RSS ministry. The Mission could include programs or projects to improve governance in the relevant line ministries and/or at the sub-national level as part of a Mission portfolio in, for example, health or education, with results measured in terms of efficient, effective delivery of these other services—though not in terms of addressing the core DRG challenge or even in terms of DRG objectives, which might gain some incidental or indirect benefit.

To put it in terms of this assessment, implementing these types of programs without complementary work to address the concentration of power and resources would be to support an increasingly authoritarian government that would provide its services more efficiently and effectively. More effective delivery of health programs, for example, might be desirable, but would, in and of itself, do little to promote DRG. The Mission could also create one or more crosscutting objectives, including more effective, efficient governance. Again, however, the gains to DRG itself would probably be modest, at best, unless, as a core objective, they address the major DRG problem. Moreover, to repeat, if the central problem for DRG is the concentration of power, enhancing that power by making it more efficient and effective may have benefits for other purposes and sectors but is likely to be counter-productive from a DRG perspective. None of this contradicts the benefits of integration between sectors. However, to be mutually beneficial, the integration should support the purposes of the various contributing sectors. One sector may also serve the purposes of other sectors, but that would not be real integration or cross-sectoral programming.

As previously discussed, while local-level issues are a critical component and consideration of development and stability in South Sudan, focused DRG efforts at the local level in the absence of focused attention to top-down, central government-focused interventions cannot succeed. So while the DRG program may maintain or even increase its focus on effective governance (especially at the sub-national level) to improve sub-national government effectiveness, service delivery, and therefore the impact of other USAID development programs over the long term (or even in the short-term given the limited window of opportunity to influence South Sudan's governance trajectory), this work cannot succeed unless USAID also prioritizes work at the central level to mitigate the concentration of power.

Of course, without a change in incentives and political will, even in the service of other Mission objectives, the impediments to better governance for DRG will likely hinder better governance in all sectors. The nepotism, cronyism, and corruption that accompany the concentration of power would also need to be addressed before any marked impact would be seen. The bureaucracy at both the national and sub-national levels is not performing well for a myriad of reasons—recruitment, discipline, promotion, demotion, assignments, as well as capacity—all of which are related to the primary DRG problem. Still, some assistance could almost certainly improve governance, particularly if sub-national interventions were linked to interventions designed to address these issues in national-level institutions and through national-level systems and processes. In addition, if the trend toward authoritarianism continues, governance assistance directed

toward non-DRG (which is to say non-political) objectives, may diminish resistance by political stakeholders while benefiting the people of South Sudan.

4.2 STRATEGY OBJECTIVE

The space for political activity in South Sudan is narrowing, but has not disappeared. The essence of the recommended DRG strategy is designed to push open that political space as much as possible because this is the best counter to authoritarianism, and therefore, the concentration of power, and to do so in a way that is primarily structural and thus may be more sustainable. On the democracy side, USAID's focus must be on the big picture of shaping fundamental documents and institutions of the emerging state. This is where the battle for DRG in South Sudan will be won or lost in the next few years. Shaping those documents and institutions, and helping to limit the ability of the power elite to close down political space through greater transparency (at various levels) are the keys to a successful DRG strategy during South Sudan's window of opportunity. On the governance side, the conflicts that continue to undermine the emergence of a national identity needed for a stable state can be addressed in part through improvements in local governance that lead to the greater transparency, accountability, and participation needed to make the state more responsive to the large number of marginalized South Sudanese whose interests are not prioritized by the power elite. Hence, the inclusion of a focus on big issues at the national level does not mean to suggest that the Mission abandon DRG work at the grassroots level, but rather to balance its support such that assistance to address the concentration of power becomes the primary focus.

DEVELOPMENT HYPOTHESIS

The development hypothesis is therefore:

> *If* concentration of power can be tempered by checks and balances at a national level, and
>
> *If* citizens at the grassroots are better able to access improved public services,
>
> *Then* foundations can be laid for a more stable and democratic South Sudan.

4.3 RECOMMENDATIONS

To gain traction on linking democracy objectives to governance objectives, it will be essential that donors speak with one voice and at the highest political levels about the importance of DRG in South Sudan. By all accounts, RSS has gotten a "free pass" on DRG issues since the CPA was signed in 2005. The severe humanitarian crises in South Sudan, combined with sympathy for the traumas coming out of the long and bloody war for independence, diminished the willingness of the donor community to really press for progress toward DRG ideals and practices in South Sudan. That donor acquiescence in the emergent authoritarian practices of South Sudan must end now for DRG reform to have a chance. Initial steps in this regard have been taken, including a high-level political coordination committee that has now been established, and importantly, a willingness to speak out more boldly to the South Sudan public on these issues (e.g., Ambassador Page's op-ed on the fragility of democracy in South Sudan). More must be done, however, not only by the donors inside South Sudan, but at higher political levels in Washington, D.C., as well. Thus, the overarching recommendation of this assessment is for the donor community to work together to exert political pressure on RSS for meaningful progress toward DRG ideals and practices. Only such high-level engagement on this issue ***might*** be able to create the political will in Juba necessary for DRG reform. In the absence of such balancing pressures, the self-interests of the power elite will continue to preclude steps toward meaningful democracy, human rights, and good governance.

Below are the six recommendations, in order of priority, to increase the chances of good DRG outcomes in South Sudan in the next few years.

RECOMMENDATION #1: MEDIA AND CIVIL SOCIETY PROGRAMMING

Why? For the increasingly dominant power elite to be more accountable, mechanisms of transparency, access to information, and advocacy (and watchdog functions) of media and other CSOs can help highlight trends

toward corruption and increasing authoritarianism to ensure high visibility by the international community and increased awareness by the South Sudanese people. The opportunities are particularly pronounced in regard to the media (which constitute a part of civil society). Healthy media do two things that directly impact the concentration of power and resources. First, media enhances transparency and accountability in government functions, letting citizens know what their government is doing, often directly covering important government activities. Power is more easily concentrated in fewer hands when processes are opaque or even entirely unreported. There is a logical reason why authoritarian governments censor media. Second, media and CSOs serve an important watchdog function that can prove valuable in discouraging corruption by the power elite. Even in cases where corruption does not actually get someone fired (there are numerous examples of corruption not impacting job security in South Sudan), most members of the power elite are likely at least to think twice before engaging in blatantly corrupt behavior if they know that the media and civil society are watching. Thus, a free media makes both the concentration and the abuse of power more difficult.

Current Difficulties. The most important current problem in the media sector is the lack of a legal framework, so those engaged in critical media programming cannot be sure of their legal protections. A package of three media bills was under consideration during the fieldwork stage of the assessment. The proposed laws contained provisions that would give the president and executive branch of government too much potential authority over the media and thus could be used to limit free media if passed in their current format. However, there was also significant and healthy pushback by the media and their supporters to make changes in the proposed legal framework. A second difficulty is the growing harassment and attacks against journalists. Third, while radio has decent coverage in the country (although far from universal), the print media is heavily restricted due to infrastructure limitations and low literacy. Television likewise has very limited domestic content production and reach. Finally, stakeholders in media tend to be weak as well.

How? We have three initial recommendations in how media programming might be expanded, building on the successful Community Radio Network and Eye Radio (Internews) examples, all of which focus on strengthening independent radio in South Sudan. First, programming should focus on increasing capacity of existing radio, both in technical and journalistic training aspects. More professional journalism will diminish legitimate complaints by the government of irresponsible reporting. Second, USAID should set a goal of near-100 percent coverage in South Sudan by independent radio, and programming should focus on dramatically increasing the footprint of independent radio in South Sudan, building similar expansion of the Eye Radio footprint. Third, in terms of content, include civic education as part of the radio programming. The more knowledgeable citizens are of their rights and responsibilities in a democracy, the more solidly democracy may take hold. We encourage USAID to coordinate broadly with other donors working in the media such as Japan, which is considering significant support for government media, Norwegian People's Aid, and with media advisory groups and associations.

Risks. Donor investment in media runs two primary risks. First, if authoritarianism continues to consolidate, the RSS may decide to simply crack down on independent media, leaving little if any room for critical journalism. Second, donors must recognize that independent radio will likely not be commercially viable for many years. Significant markets that advertisers might wish to target simply do not exist in South Sudan, limiting the commercial viability of radio. USAID should consider this a long-term investment with immediate and long-lasting impact, rather than a short-term launch of commercially viable independent radio in South Sudan.

RECOMMENDATION #2: RULE OF LAW

Why? The greater the institutional foundation for the ROL in South Sudan, the less space there is for unaccountable and arbitrary abuse of power. Thus, targeted ROL programming can directly impact the concentration of power and its concomitant abuses.

Current Difficulties. Four current ROL problems assist in the concentration of power. First, there is a limited constitutional and legal framework in South Sudan. The move toward drafting a permanent

constitution has ground to a halt, although there may be movement again in the months ahead, and few robust legal frameworks have been drafted and adopted, let alone implemented. Second, the judiciary cannot be said to be a truly independent branch of government as it is still very much controlled institutionally by the executive branch. Third, the judiciary lacks institutional capacity, quite dramatically in the lower courts. Fourth, the utter lack of professionalism by the civilian police is a cause of instability in South Sudan.

How? We envision ROL programming to have three legs. The first and most immediately important work should be done in helping South Sudan construct and adopt a top-notch constitution and legal frameworks in key sectors (such as media, CSOs, procurement). The importance of South Sudan "getting it right" on paper cannot be overestimated. Even most authoritarian states are bound at least somewhat by constitutional and legal structures, so the importance of these documents is highly significant. We expect political intervention at high levels may be needed to ensure these documents reflect best DRG practices. A second leg of programming should focus on judicial strengthening, perhaps starting at state-level courts where the need is greatest. We use this term broadly to include not just work with the jurists themselves, but also a host of related phenomena: Recruitment and training of competent staff, court administration modernization (often in the absence of any recognizable court administration), and the physical modernization of court infrastructure. Support for mobile courts would also enable greater reach to sites being treated by USAID's cross-sectoral interventions at the grassroots level. In terms of sequencing, we recommend this second leg of programming only after the constitution and legal frameworks adopted suggest that the judiciary may actually play its proper constitutional role as a third, independent branch of government. A third programming opportunity in ROL involves professional training of the police, which could be treated by other agencies at Post, such as the Bureau of International Narcotics and Law Enforcement (INL), which could also provide guidance on how to incorporate USAID's comparative advantage in this regard. In addition to limiting the general insecurity in society, a more professional police force is less likely to be captured as an instrument of executive abuse.

Risks. None of these interventions may actually work in the short to medium terms to diminish the concentration of power. The power elite may capture the constitutional writing process as well as the drafting of important legal frameworks. The executive may continue to dominate and marginalize the judiciary for years to come, preventing its independence and its proper role as a check on executive power. Additionally, a more professional police force may just become a more effective force at implementing executive authority and its abuse of power.

RECOMMENDATION #3: EXECUTIVE AND LEGISLATIVE GOVERNANCE PERFORMANCE

Why? USAID already supports a program on executive capacity strengthening. These sorts of programs do not directly address the concentration of power problem. However, there are two related DRG benefits to such programming. First, such reforms impose transparent rules on those with power in the bureaucracy that should limit their ability to abuse power. Opacity and irrational processes serve the interests of those who already have power. Second, enhanced capacity in the executive and legislative branches of government may improve governance and the delivery of services to the general population. Better and more efficient governance should instill higher levels of confidence in the overall project of building South Sudan.

Current Difficulties. There is seriously low capacity at all levels of government in South Sudan, and those who are competent are overstretched, so the need is truly monumental. However, two significant problems have undermined current capacity-building projects in the executive branch. First, there is little sustainability of implemented systems. As soon as a new minister takes over, most systems in that ministry may be jettisoned. A second and likely closely related problem is the lack of demonstrable political will to actually implement significant bureaucratic systems and processes. As noted earlier, creating a rational, Weberian bureaucracy limits the ability of those with power to abuse the system to their own private advantage. Thus, it simply may not be in the interests of the power elite to see such programs succeed.

How? Support in this area would consist of the continuation of existing programming in the executive branch and its expansion to elements within the legislative branch of government. It would focus on technical

assistance and embedded advisors. The advisors would need to focus on training and mentoring South Sudanese as opposed to simply doing their jobs for them. Because of germane questions of sustainability, the Mission would need to closely monitor these types of programs and be prepared to end them if sustainability is not apparent.

Risks. There are two main risks with such programming. First, it could actually exacerbate the concentration of power problem by making the executive branch more efficient in power consolidation. Second, as noted, the power elite may not have an interest in such programs succeeding to a high degree, as it would limit their room to maneuver to privatize public resources and power. They may simply not want a rational, transparent bureaucracy.

RECOMMENDATION #4: ELECTIONS

Why? The electoral structure and framework in South Sudan is underdeveloped yet already overly complex. This poses a challenge regarding the concentration of power since the electoral system is more subject to potential manipulation because of its current weak state. Given the importance of the 2015 elections, the Mission should stay engaged and look for opportunities in this arena.

Current Difficulties. Progress on the electoral front is contingent upon improvement in the election legal frameworks, administrative and operational systems/commissions to ensure fair elections, and improvement in political parties. Working with political parties does not appear very promising at this time given the dominance of the SPLM, but there are possibilities to consider in regard to election preparations and election monitoring.

How? Contingent upon an examination of the absorptive capacity of the National Election Commission, they would be an obvious target of opportunity. Secondly, USAID could consider supporting international and domestic election monitoring. The latter is the more instructive and the former the more expensive. The amount of investment in this area should be balanced by the degree of contestation likely to characterize the elections. If there are real contests (and there might be in certain constituencies or if the SPLM splits), monitoring might be more important and less of a ritual.

Risks. The primary risk is one of ineffectiveness. That is, if the authoritarian trend consolidates further, we would not expect the 2015 elections to be meaningful contestations for real authority. If, on the other hand, a genuine election were in the offing, we would expect some level of localized violence between supporters of different candidates.

RECOMMENDATION #5 (CROSS-SECTORAL): PRIVATE SECTOR DEVELOPMENT

Why? Creating a more robust private sector would disaggregate political and economic power, thus helping to deconcentrate power. Currently the state is not only the source of political power, but as the largest employer by far in South Sudan, it is also the largest source of economic power. Creating a greater balance of resources between state and society, instead of the one-sided current reality, would bolster DRG outcomes over the medium to long term.

Current Difficulties. South Sudan does not have much of an indigenous private sector, as entrepreneurs from neighboring countries dominate the small private sector that does exist. More importantly, as already noted, an increasingly greater share of the really lucrative private sector depends on resource extraction or licensing and other state-granted quasi-monopolies which are being awarded to members, relatives, partners, and friends of the power elite. That dynamic simply compounds the concentration of power into a political/economic elite and crowds out or contains small entrepreneurs who, in addition, have problems getting access to capital to finance their ventures.[71] Given the uncertain political and legal situations, the

[71] There are local lenders, including some large banks and DFID's challenge fund, but often they too (1) are dependent upon and tied to the power elite; and (2) have more complicated loan application and other procedures that local small-scale or aspiring entrepreneurs have difficulty in navigating, even assuming they are literate and/or understand. They will of course also need to understand the concepts of borrowing, interest, carrying costs, and other basic business principles applicable to small and large enterprises alike. One possible program might try to address these problems, working with the banks and other lenders on the one hand and some public courses on the other

economic opportunities become cloudy and uninviting. Still, supporting a vibrant, independent private sector could provide some countervailing interests to those of the centralizing elite.

How? In general terms, we see several possible productive interventions. First, microfinancing of small entrepreneurial opportunities appears to be currently absent and thus a potential significant growth area. Second, there is a much greater need for more vocational schools and non-school vocational training (e.g., apprenticeships) than for general, liberal arts university education in South Sudan. For example, public-private partnerships in such areas as construction, especially in zones of rapid urbanization, could help train laborers in immediately relevant skills, but the public part of the partnership would again probably be concentrated in the hands of the political/economic elite. Still, vocational skills can add to private sector growth in a way that university education cannot. Third, as is widely discussed, the potential for agricultural growth is significant, particularly in the Equatorias. Economic diversity through agriculture should be accompanied by growth in agriculture-related light industry.

Risks. The power elite are in the best position to grab the best economic opportunities, and would likely move to squelch competition. Government-sanctioned monopolies could well result from such a dynamic. As well, the government may simply not want a robust (and thus competitive) private sector and may work to squeeze it out.

RECOMMENDATION #6 (CROSS-SECTORAL): INCREASE ACCESS TO PUBLIC SERVICES

Why? The Mission's overall strategy envisages using a cross-sectoral approach to improving grassroots access to basic services provided by the state. DRG interventions in both the supply and demand side of local governance could provide critical complements to improvements in such areas as health, education, and social infrastructure.

Current Difficulties. Current difficulties include the focus of petro-resources in Juba and the development of a power elite risk sowing the seeds of alienation in a multi-ethnic country with weak national identity. State/society relations are most immediate at the local level, precisely where the state has not yet been able to abide by its side of the social contract. However, it will not be enough to maintain political legitimacy and order just to more efficiently provide public services. Rather, the state must become more responsive, transparent, and accountable in local governance as well.

How? Focus DRG assistance in the cross-sectoral grassroots initiative through greater citizen participation, transparency, accountability, and oversight. Communities need citizen participation to render the state more responsive to perceived priorities. To be effective participants in decision-making processes related to public services, transparent provision of information is needed, especially in such areas as budgeting. Mechanisms of accountability, both political and administrative, are critical to vesting ownership over public processes in communities. DRG provisions for oversight in the delivery of public services can be done through such mechanisms as citizen oversight boards.

Risks. By themselves, such improvements are not likely to change the power dynamics at the national level. However, they will support elements of nation building that will be needed for the degree of stability necessary to move more forcefully toward democratization.

RECOMMENDATION #7 (CROSS-SECTORAL): CIVICS EDUCATION

Why? Programming civics education in primary and secondary school education would not directly and immediately address or impact the core problem of concentrating power in South Sudan. However, it should

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(perhaps through the South Sudan Chamber of Commerce, which, however, is also quite connected to the political/economic elite, or an educational institution). This could advance the DRG goal of deconcentrating power or at least reducing the rate of concentration. Similarly, the details of any micro-lending facility should include the lessons—successes as well as failures—of many micro-enterprise initiatives around the world. For some years, microfinancing was all the rage among donors, as was the Grameen Bank as a model, but the costs of lending, failure rates of payments, and the like provide important lessons and caveats for any project in South Sudan.

have a longer-term positive impact in educating the citizenry on their rights and responsibilities in a democracy.[72]

Current Difficulties. Illiteracy is rampant in South Sudan—officially at 73 percent among adults, and probably higher—so it will be generations before such a civics education will have an appreciable impact. In addition to actual illiteracy, there appears to be broad cultural illiteracy when it comes to issues of civics.

How? Help construct civics education units to be included in primary and secondary schools throughout South Sudan. The spread of community radio provides another vehicle through which illiterate members of society may be reached.

Risks. Raising public awareness of rights and civics will not by itself check the behavior of the power elite. An increasing demand for such rights, however, will be needed to temper the trend toward authoritarianism.

The prioritization of these seven recommendations necessarily means other potential programming was not addressed. In particular, programming with political parties is not an immediate priority. Given the essential irrelevance and weakness of all non-SPLM parties, they are in no position to matter during the window of opportunity. However, this conclusion could change if the SPLM splits into two or more political parties—a very real possibility. If such a split occurs along ideological lines, that would be a hopeful DRG sign and would warrant a reconsideration of political parties' work. If such a split occurs along ethnic lines, it would likely usher in the first stage of a civil war.[73]

4.4 SCENARIOS

We expect two primary variables to impact future DRG scenarios in South Sudan. The first and most important variable is whether RSS changes course and implements meaningful DRG reforms, or whether it continues down the authoritarian path. The second variable concerns the level of donor funding and engagement with South Sudan: Will South Sudan continue to receive high levels of funding and significant donor promotion of democracy and good governance goals, or will donor fatigue and disappointment with RSS outcomes substantially reduce engagement and resource flows?

The combination of these two variables allows for the identification of four outcomes, as follows:

		DRG in RSS	
		Closing space	Opening space
Donor Engagement in RSS	Significant Decline	***Consolidating Authoritarianism***	***Consolidating Democracy***
	Relatively Constant	***Mixed Authoritarianism***	***Dependent Democratization***

[72] As noted above, many, perhaps most, students now complete only a few years of primary education, so the inclusion of civics and other national identity elements may be overambitious, especially with the shortage of trained teachers. In addition to addressing the desirability of some kind of basic civics in the public schools and the formal education system, NGOs of various kinds—including churches and other civic groups—might be able to take on some of the civics and other civil education problems in more informal settings. Of course, the likely attendance in such programs is likely to be problematic as well. More promising perhaps is the role of media, which could play a very useful role in promoting civics and a common civic discourse. The Ministry of Education may find that in the long list of needs, the incorporation of civics into education programming, such as curriculum development, is too low a priority. However, a Mission-supported media program might well include grants to the media for civic education. If so, funding for state media, which has by far the greater reach, should also be considered, but only if the civics programs on state media are real civics programs, including interaction with the public and dissenting voices, not just disguised advertisements or public service announcements lauding the government and its ministers. They would need to be real civics programs with discussions of South Sudan's challenges and tensions as well as the principles of democracy, common identity, the constitutional principles, and the actual operations of the politics and institutions of South Sudan.

[73] If positive DRG reforms have been adopted by the RSS in the lead up to the 2015 elections, then it would also be appropriate to fund some electoral programming in support of those elections. We see the direction of change to be currently narrowing, so we cannot make that recommendation in the absence of real reform.

These scenarios can be described as follows, with the first scenario being the most likely:

- *Consolidating Authoritarianism*. In this scenario, RSS continues to close political space as its current authoritarian tendencies become further institutionalized and consolidated. Such a development would almost certainly lead to declining levels of donor support for DRG (and other) assistance to South Sudan. We believe this is by far the most likely future for South Sudan. In the context of consolidating authoritarianism, significant DRG reform in RSS becomes less and less likely. In these circumstances, not only could USAID do little to positively impact DRG in South Sudan, but the turn toward authoritarianism would almost certainly convince Congress to significantly cut the Mission's budget for all but humanitarian work. We would expect an outcome of consolidating authoritarianism to reduce the aid engagement by other donors significantly in South Sudan as well, apart from immediate humanitarian assistance.

  USAID Response: In such a scenario where DRG improvement becomes highly unlikely and resources scarcer, USAID may well consider taking a "defensive posture" with regard to DRG in South Sudan. In this scenario, expenditures focusing on electoral democracy (e.g., political parties, elections) or high-profile accountability sectors (e.g., media, DRG civil society groups) would likely be for naught. A defensive posture would focus on areas that could improve elements of DRG in South Sudan without provoking a central government crackdown. Such activities might include an enhanced focus of strengthening local government capabilities, strengthening ROL institutions (especially at the state and local levels), and professionalizing the police force. The power elite would likely not object to such programming; thus, the chances of having some success would increase.

- *Dependent Democratization*. In this scenario, the RSS is successfully pushed by both local democracy forces and by a united donor community to engage in serious DRG reform, including conducting a meaningful national election in 2015. The good news is that South Sudan may have turned a corner in a democratic direction; the bad news is that democracy remains weak and dependent, in significant measure, on the continuing watchful eye and resources of the donor community. The key variable in this scenario is the restarting of oil flows from South Sudan. The longer it takes for the oil spigot to be turned back on, the more leverage local and international actors will have in promoting DRG reform. The central government would likely have to show more willingness to reform as a result of the centrality of donor funding in such a scenario.

  USAID Response: In such a scenario, the U.S. Government and the donor community would be in a powerful position of leverage, if even for a limited period of time. In this scenario, USAID and other donors would be well advised to take an aggressive DRG posture as they would have maximum leverage with the RSS. The kinds of recommendations outlined in this assessment would have the greatest potential for success under the conditions of this scenario.

- *Consolidating Democracy*. In this scenario, the forces of democracy in South Sudan succeed in nudging the RSS ship of state toward a more DRG-friendly future. The power elite are weakened through greater accountability dynamics. However, because of donor budget constraints not linked to RSS developments, aid diminishes substantially in the years ahead from present levels. In fact, the combination of reduced donor assistance and meaningful, ideological splits within the SPLM where some powerful actors use declining aid as an argument for greater internal democracy ("we are no longer wards of the international community and must stand on our own as a respected democracy in Africa") would likely trigger internally generated democracy in South Sudan. Because this dynamic is driven internally, the chances of consolidating democratic institutions are greater. This scenario is also more likely under conditions of limited oil revenues coming to RSS coffers.

  USAID Response: In this scenario, USAID dollars would go much further, even though there are fewer of them. Investment in most DRG sectors would produce a good return because of the consolidating nature of South Sudanese democracy, and the general lack of resources—given the lack of oil

revenues—would enhance the leverage of even scarcer donor investments. Focusing on enhancing the institutional basis of DRG would have the most long-term benefit.

- ***Mixed Authoritarianism***. In this scenario, donor funding remains relatively high, although it likely reflects suboptimal coordination and united political engagement on DRG issues. Still, the relatively high levels of donor engagement in South Sudan protect some small political space for local DRG reform advocates to survive, if not prosper. The return of oil revenues empowers the RSS to resist both donor and indigenous pressures to open up the political system more than the small political space affords. This scenario is essentially a continuation of the current status quo.

  USAID Response: In this scenario, USAID has abundant resources but only a limited number of areas of investment that could improve DRG outcomes. Under these conditions, USAID may wish to consider taking a two-pronged approach. First, select the most fruitful elements from the "defensive posture" outlined above, essentially settling in for the long haul. Second, invest in a few areas of more immediate DRG impacts (as detailed in this assessment) where the Mission concludes a return on investment has some likelihood of success. In this scenario, expectations for significant DRG improvement must be kept low. Indeed, if the Mission concludes that this scenario has little prospect for evolving into real democracy over a reasonable period of time, it should seek to transfer such funds to other missions where more hopeful DRG possibilities exist.

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ANNEX A: PEER REVIEW OF THE SOUTH SUDAN DRG ASSESSMENT FINAL REPORT

As part of the DRG Assessment process, USAID commissions an independent expert on the democratic transition in the subject country or region to undertake a peer review of the Final Report. The purpose of the peer review is to provide external commentary on how well the DRG Assessment captures the essential political dynamics of the subject country and the soundness of its analysis and recommendations. The review offers expert opinion on the overall quality of the report; it identifies any innovative findings that may have emerged in the up-to-date DRG Assessment; it points out any key gaps in the analysis as well as noting differences of political interpretation; it evaluates the extent to which the recommendations are logically derived from the analysis; and it provides an occasion for the reviewer to comment on the overall appropriateness of USAID's DRG methodology for elaborating a DRG strategic approach that is rooted in a clear and compelling understanding of a country's political dynamic.

REVIEW OF DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT OF THE REPUBLIC OF SOUTH SUDAN

Review submitted by Dr. Goran Hyden, Distinguished Professor Emeritus, University of Florida

Writing this assessment report must qualify as one of the toughest assignments in the DRG field. With South Sudan being the youngest nation in the world (only 20 months of political independence as of now) and lacking an institutional infrastructure that supports meaningful governance reforms and improvements, finding something to say with a degree of certainty or conviction is extremely difficult. There is little relevant history to fall back upon for what needs to be done now and few clear-cut lessons learned from the brief post-independence institutional experience—other than what in a DRG perspective clearly appears as regression rather than progress.

In this situation the authors have done a good job in trying to identify the DRG challenges that the country faces and the possible support strategy that USAID may wish to consider. The Tetra Tech Team has come up with a well-argued and well written report that should serve as a valuable input into how USAID and its Mission in South Sudan arrives at its next program strategy.

I would like to add my own comments on the report relating to the main issues that it is supposed to raise: (1) how was the data collected (methodology), (2) how is the DRG problem defined and interpreted, (3) what are the key institutions and who are the main actors shaping the country's governance, and (4) what would a future program strategy look like.

METHODOLOGY

Having been able to interview 300-plus people during a three-week fieldwork interlude indicates that the Team has done a good job given the physical infrastructural constraints that exist in South Sudan. The interviews cover people from senior political leaders in the capital, Juba, to traditional and community leaders in the rural areas. It would have been helpful, however, if there had been some disaggregation to indicate how many people in key categories of respondents were interviewed. One can assume that the majority of interviews took place in Juba and the state capitals that were visited, but as a way of proving that the Team has really reached out as far as it seems to have done beyond these urban areas, some additional information about how information was collected would have helped the reader. Everyone who knows South Sudan is aware that there is a "Juba bias" in how things are interpreted and the report could have been clearer in showing how the Team has dealt with this issue.

The Team has provided a useful historical calendar (p. 2) indicating the landmark decisions or events that shaped the territory of southern Sudan before it became politically independent as the Republic of South

Sudan (RSS) in 2011. In addition, I would like to have seen a political or administrative map of state boundaries (possibly also other lower-level ones) inside RSS and showing the location of the various ethnic groups that are mentioned in different places in the report.

THE DRG PROBLEM

The report discusses this issue in both general terms and with reference to the specific DRG elements that USAID uses (pp. 4-24). It does so in a clear and thorough way drawing on relevant U.S. and RSS official reports and government documents and a spattering of academic books.

The authors argue that because of its heavy reliance on oil, it is a *rentier* state, a characterization that will be further enhanced as oil production (currently at a standstill) is started again. It is also a country where political power is excessively concentrated in the hands of a small political elite with President Salva Kiir as an arbitrary, if not autocratic ruler. The report attributes this feature to the legacy of the independence struggle by the Sudan People's Liberation Army (SPLA) and its political wing—SPLM—as tight-knit and closed organizational entities. Together, these two features of the RSS have contributed to a decline in respect for DRG issues in the past 20 months and a growing concern that it will be difficult to reverse this backward trend.

The authors believe that the first post-independence election in 2015 is going to be a landmark event at which the people of RSS will for the first time have a chance to choose leaders other than on the basis of resistance to the Khartoum Government's continued control as was the case in the pre-independence election of 2010. USAID and the international donor community must treat the remaining three years to 2015 as a window of opportunity to put in place the basic institutions that can promote DRG in the future. The assessment that the authors make is quite somber, but they do suggest that RSS is not Somalia and that it will not turn into a completely failed state – i.e., it will not fall into a civil war that will render central power irrelevant and incapable of controlling territory. The grip that SPLM and the South Sudanese Army (largely the former SPLA plus other militias that have been incorporated) have will preempt such a doomsday scenario. The real threat is growing autocracy.

I agree with the basic points that the report makes: The *rentier* state, the liberation movement legacy, the "Big Man" rule, and the probability that RSS will not turn into another Somalia. At the same time, I believe that the analysis may be the result of too much focus on the present and too little comparison with other African countries. Let me elaborate.

TOO MUCH FOCUS ON THE PRESENT

There are two institutional factors that contribute to this excessive focus on the present. One is the lack of lessons to be learned from a short period of independence; the other is that the report is written for a principal interested in knowing what to do now and in the next few years. This is understandable, but I believe that a broader consultation of the academic literature (or other country reports, for that matter) could have enriched the discussion and provided a more realistic and possibly also less pessimistic account of DRG in RSS.

RSS is not a unique African case; it is just not yet known very well. In a wider African perspective, it is a "classic" example of what happens with governance in the years immediately after independence. Because the country tends to lack an indigenous middle-class of professionals and business people, the struggle is led by people for whom capitalist and democratic values matter little at best. They come to power after independence with the biggest challenge being how to hold multi-ethnic societies together. African countries in the past have been variably successful in this effort. Ghana, Tanzania, and Zambia may be cases of success in the first wave of independence in the 1960s; Namibia is among those that gained independence in the second wave in the 1990s.

The early achievers of independence turned their political system into one-party states, but in many countries, with one important qualification: They introduced political competition within the ruling party. Thus, there

was a modicum of accountability because elected representatives who failed to look after their constituents were often thrown out. This governance model was generally endorsed in the 1960s and 1970s not only locally but also by the international donor community. Stability was the preferred principle. Democracy was seen as a product of development and in the circumstances of poverty and ethnic diversity, pluralism within a one-party system was the best to ask for.

The situation in the RSS, according to the report, faces the same challenges. Concentration of power is a natural result of trying to hold the country together. In the early days of African independence, these autocrats were all respectfully referred to as "charismatic" leaders. This Weberian reference suggested that they were leaders with the ambition to bring about a transformation in the direction of modernity. This has not happened in the 50 years since independence. The charismatic leaders have instead used their power to reinvent tradition creating political systems that today may be formally democratic, but in which non-democratic values continue to persist. Thus, most African polities are "hybrid" entities, some "free," others "partly free," and yet others "not free," according to the Freedom House Index. The point is that over the years, despite little interest in the early years of independence, democratic forces and institutions have gained ground in many countries. Democratization typically goes through many phases – some progressive, others regressive. There is nothing inevitable about democracy, but the evidence from Africa suggests that it is finding its way there as it has in other regions of the world.

The early 2000s, however, is not the 1960s. RSS was born in a different era in which the Weberian reference no longer is charisma but "neo-patrimonialism" or, as the authors put it, the rule by "Big Men." While 50 years ago nobody used the DRG lens to assess countries, today there is no way around it. This means that the expectations of what a country's rulers should be able to accomplish are much higher. What is more, there is no readiness to wait for democracy to materialize until the country has reached a certain level of development.

These paragraphs may read like a diversion, but it is highly relevant for the tone and orientation in the report. There is a degree of impatience with the situation on the ground. As a result, there is also a tendency to dramatize the need for seizing the pre-2015 opportunity as the "last chance." My own sense is that the report ends up with a more dismal picture of the chances that RSS has to pursue a DRG agenda.

With a longer-term perspective and recognition of what happened in virtually all of Africa's other multi-ethnic countries immediately after independence, the pre-2015 window appears less imminent and important. Building democracy beyond elections takes time. The country's democratic future does not stand and fall with what happens before or at 2015. Countries learn from their experience. One fall does not mean total disability.

I also believe that the almost deterministic interpretation in the report of RSS as a *rentier* state is overdone. Yes, it is tempting to rule without having to tax citizens or to ask for their votes on a regular basis, but few leaders today—thanks to globalizing DRG concerns—can continue autocratic rule for long. External and especially increasing domestic pressures, even in non-democratic societies, are making a difference—admittedly faster in some places than in others. There is more room for democratic reforms in *rentier* states than what is suggested in this report. Although populism has its own problems, it is as common a response in such states as autocracy is and it has been combined with democracy in places like Venezuela, Nigeria, and Iraq, albeit in ways that do not meet the highest standards. The point, though, is that high dependence on oil production does not doom a country to autocracy forever. Even RSS has a chance to escape this – if not before 2015, certainly thereafter.

In sum, the authors could have looked around the African experience more widely. References to other countries are confined to the neighbors: Sudan, Ethiopia, Kenya, Uganda, DRC, and CAR. These references are very brief and largely written to indicate that there is little help to come from them. I think their role is underplayed as it refers to the years to come, not only as "spoilers" but also as "partners." Although the Nilotic cousins of the Dinkas in Kenya (the Luos) and Uganda (the Acholi and Lango) are not on the inside in the politics of those countries, both Kenya and Uganda have a role to play in bringing RSS along the

democratic path. In this context, the report is silent on the country's possible membership of the East African Community and its potential governance implications.

KEY ACTORS AND INSTITUTIONS

This section is an elaboration in greater detail of the issues raised in the previous one. It is informative and Figure 2.1 on p. 26 is very helpful to summarize the close relations virtually all institutions in the country have directly to the president. Some of the highlights are the discussion of the paralysis of party politics, and the weakness of institutions that may be able to hold the executive to account.

Political parties have not been able to be effective because in the 2010 election preceding independence, all parties (and there were many) had the same platform: To get independence from Sudan. Parties other than SPLM – that had pioneered and led the struggle – could not afford to call themselves opposition parties and instead opted for the "other parties" label to prove their legitimacy. The authors provide information indicating that they are ready to become genuine opposition parties in the run-up to the 2015 elections and that they intend to run candidates in all constituencies. However, as the authors also write, it is too early to tell whether they will.

A reason for the caution – if not pessimism – about the future of RSS, which I totally agree with, is linked to the general weakness of key institutions and perhaps, in particular, the frailty of non-state institutions such as the media, civil society, and the private sector. There have been attempts to muzzle the print media and even though their outreach in the country is limited, investigative and critical journalism is seen as a threat by those in power. Civil society organizations, including some church-based international ones, do exist but most are focused on service delivery even though, under their humanitarian mantle, they try to do some civic education.

A paradox that the report also covers is what happens in the judicial sector where there are plenty of qualified lawyers but most of them trained in S*hari'a* rather than common law making them of little use in the new system that is based on common law. The shortage of lawyers ready to serve on the bench (i.e., as justices) is apparently such that, according to RSS print media, one of the justices recently appointed his own son to serve as justice although he did not have the qualifications.

Overall, the report conveys a good picture of how desperate the situation is with regard to key institutions in the country that participate in governance of the country.

FUTURE PROGRAM STRATEGY

USAID has a big program in RSS that covers many sectors. It is as much about development and conflict resolution as it is promoting DRG. The question is what place the latter should have in the overall program. How does it relate to the other program parts? How big a profile should it have? The authors discuss these and related issues at length and with a good assessment of the risks associated with various options they present as recommendations.

They believe that the emphasis that has been given in its current Transition Strategy on stability as a precondition for the viability of its program may be at loggerheads with the DRG agenda. They make the point that stability is a "friend" of authoritarian rulers. This may be true in many instances but, again, it is hardly a scientific law and it is difficult to see that DRG would fare any better in a country plagued by political instability, especially in the form of communal violence (the most likely scenario). I do not disagree with the authors' argument, but I think that it is a bit one-sided.

The other point is how big a profile the DRG component should have, given the political situation in the country. I read the authors as saying that it needs to be given greatest possible prominence in a context where USAID and other donors speak with a unison voice. This seems to be premised on the continued donor dependence that exists for now as long as the oil fields remain dormant. This may work, but a vocal and insistent approach to engage in DRG reform if combined with too little attention to context may have its

own backlash. The probability of such a backlash has increased in recent years as Western donors have lost some of their leverage because other countries, notably China, have entered as new "partners."

I believe that the idea that DRG is important at this point in time is valid (despite being possibly exaggerated in the report) and a reason why this component should be given highest possible priority. How it is being applied, however, may be varied, including, as also mentioned in the report, "indirect" DRG support within other program components that focus on servicing women and local communities. Another possibility that is not really developed in the report is how far existing local institutions may serve as bases for promotion of DRG. Given the weakness of institutions on the ground already, including traditional authorities, this may involve more careful research than this assignment permits. The point, however, is that people often tend to be more motivated to engage in change within contexts with which they are already familiar. The abstract model of liberal democracy may be the ultimate goal or aspiration but trying to put it in place just at any point regardless of how the society operates may only lead to frustration.

Finally, the authors provide a matrix indicating four scenarios based on the role of DRG in RSS and the likelihood of donor funding. Although they are wrong in suggesting that Prime Minister Cameron's decision to leave foreign aid untouched despite deep cutbacks elsewhere in his government's budget is "anomalous" (the Nordic countries have continued to keep their aid intact despite budgetary cutbacks, albeit less drastic than in the UK), it is likely that donor funding in RSS will decline in the next few years. The question is whether this will depend on whether it is because authoritarian or democratic rule is consolidated, as the report suggests. This is an interesting point, but I believe that the final section of the report could have made better use of this matrix and integrated it more closely into the discussion about what USAID should do.

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