



Report

# Considering the state

## Perspectives on South Sudan's subdivision and federalism debate

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Page 14 image: 28 states of South Sudan, (c) ODI

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# Acronyms

<b>ARCSS</b>	Agreement on the Resolution of Conflict in South Sudan
<b>CPA</b>	Comprehensive Peace Agreement
<b>CDF</b>	Constituency Development Fund
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EPRDF</b>	Ethiopian People's Revolutionary Democratic Front
<b>GoS</b>	Government of Sudan
<b>ICSS</b>	Interim Constitution of South Sudan
<b>IFRWG</b>	Intergovernmental Fiscal Relations Working Group
<b>IGAD</b>	Inter-Governmental Authority on Development
<b>JMEC</b>	Joint Monitoring and Evaluation Commission
<b>LGA</b>	Local Government Act
<b>LSSAI</b>	Local Service Support to Aid Instrument
<b>NGO</b>	Non-government organisation
<b>SPLM/A</b>	Sudan People's Liberation Movement/ Army
<b>SPLM/A-iO</b>	Sudan People's Liberation Movement/ Army in Opposition
<b>TCSS</b>	Transitional Constitution of South Sudan
<b>TPLF</b>	Tigrayan People's Liberation Front
<b>UNMISS</b>	United Nations Mission in South Sudan

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# Part 1: Introduction and background

## 1. Introduction

In October 2015, the president of the Republic of South Sudan, Salva Kiir Mayardit, decreed a change in the country's administrative structure, and increased the number of states from ten to 28.

The Sudan People's Liberation Movement/Army in Opposition (SPLM-iO) had previously suggested a division of South Sudan into 21 states, based on the 21 districts created by British colonial administration in what was then southern Sudan. In parallel with this proposal, the SPLM-iO even appointed governors, including for states that had not been under the territory of the SPLM-iO during the civil war waged in South Sudan since December 2013.

Some wanted to keep South Sudan's ten states intact from when the country attained independence in 2011. Others argued that it would be better to reduce the structure to three provinces (the 'Greater') that existed when Sudan became independent in 1956.

A few weeks later, in December 2015, President Kiir appointed governors to head the newly created 28 states. The entire process had been accompanied by much political speculation and confrontation. What were the reasons for this decision? Was it a good decision for South Sudan? What interests did it serve? Why did it happen at this time? Was dividing South Sudan into 28 states legal and constitutional? What would the consequences be? How would the subdivision into 28 states relate to what had been agreed in the Agreement for the Resolution of Conflict in South Sudan (ARCSS) that was signed in August 2015? Considerations of what prompted the October 2015 presidential decree will continue to be of political significance and research interest.

A '28 states committee' was proposed, although its exact terms of reference are not clear – whether to consider only boundary issues or to review federal states in general remains to be seen. The Inter-Governmental Authority on Development (IGAD) Council of Ministers stated that broader terms of reference were that the committee should reach a conclusion on the 28 states within 30 days of its formation or the administration should revert to ten states. Any new structures would in that case be established through a constitution-making process.

International actors, namely the Joint Monitoring and Evaluation Commission (JMEC) and the United Nations Mission in South Sudan (UNMISS), announced that they would not recognise the 28 states, adding to the confusion of how they might engage with the new structures, which in many cases existed only on paper.

In early June 2016, the South Sudanese government signalled that it might be willing to review the 28 states, despite the fact that new political positions had already been created and the structures of the old states had been dissolved in some areas. Calls for a referendum on the matter of South Sudan's subdivision became louder.

Despite this brief moment in which the government seemed to reconsider the decree, it now seems unlikely that it will be altered. The government has at times suggested that there is room to increase the number of states, while the opposition sought a more in-depth discussion on federalism in South Sudan. Whichever way the debate goes, it is unlikely that all new states will agree to revert to the previous structure. While there are violent tensions in some parts of South Sudan that can be linked to the new structures, other areas are very vocal in their delight about having their own state. The outbreak of violence in Juba in July 2016 and subsequent political changes make the future even less certain.

The creation of 28 states and the aftermath are only the latest events in a long history of debate and practice on how to divide South Sudan administratively. Recent steps have further invigorated a discussion that has been at times acrimonious, at others exploratory. It is intensely political, as the latest events have shown.

The purpose of this report is not to comment extensively on the latest events, or to recommend what might be the best structure for South Sudan. Rather, its starting point is the persistence of the debate in South Sudanese history. It acknowledges that, regardless of the next developments, there is a need for a structured and informed review of the myriad challenges and opportunities that arise from different administrative structures. The challenges, opportunities and knowledge gaps are vast and varied; pulling these together in an accessible way is in itself a daunting task.

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## 1.1. The four factors in South Sudan's decentralisation debate

In different ways, four interlinked factors have a long history in debates on decentralisation and subdivision. Each of these factors, briefly presented here, represents a part of a complex reality. The extent to which these factors overlap makes it impossible to isolate elements of the subdivision debate. Each factor contributes to tensions and disputes, but also informs most of the arguments for or against further subdivision. The arguments are often factual, but sometimes reach deep into established narratives of marginalisation or advantage. These narratives often closely link power, territory and confrontation. Both historical and current conflict is thus closely related to the territorial administration of South Sudan, and the four factors outlined here highlight aspects of importance.

1. Political rights and political authority are increasingly based on claims of ethnic and territorial belonging. These are not recent developments, but are rather the continuation of long-term processes that have had varying degrees of visibility in South Sudan. We consider these processes in the section '**Rights and authority**'.
2. Boundary changes both create and reflect changing definitions of identity. The second factor is thus how ethnic and communal identity is shaped in response to and also drives changes in territorial administrative boundaries, which is outlined in the section '**Boundaries and conflict**'.
3. Land rights in South Sudan can be summarised by the assertion that 'land belongs to the community', which is in tension with emerging, more exclusive, definitions of land rights. Some developments are driven by contestations over both land and subsoil resources. The section '**Land, boundaries and identity**' discusses this factor in more detail.
4. The efforts to pay for government salaries and other prerequisites of administrative office, together with expectations of service provision and development, have created pressure to create and control new administrative units. This can be called the political economy of decentralisation and it is a major contributory factor in subdivision and the associated debate. We consider this factor in the section '**The political economy of decentralised government**'.

Each of these factors helps explain the multi-layered relationship between territory, identity, politics, administration and conflict. These layers are seldom acknowledged in making decisions on subdivisions. While South Sudan's subdivision seems to be driven both in practice and in narrative by an understanding that the separation of territories, identities and ways of life is the best way forward for the country, the reality is that the four factors outlined above intersect in ways that do not fall along neatly separate lines. Thus considering the

subdivision debate through the lens of belonging, political economy, changing understanding of land rights and the interplay between boundary changes and identity is a way to delink it from most immediate political considerations and to shape it towards one that acknowledges South Sudanese history, reality and concerns.

This report starts with a brief overview of commonly used terminology in order to clarify our working definitions. This is followed by a discussion of the four factors mentioned above. The next section engages with existing administrative challenges that have been brought into sharp focus through the subdivision debate and current events – such as revenue collection, service delivery, provision of security and implications of subdivision for the provision of humanitarian aid, as well as other types of international engagement. A final section offers some comparative perspectives from Ethiopia, followed by a conclusion.

## 1.2. The spirit and evolution of this report

This report seeks to summarise considerations and factors in order to contextualise the subdivision debate and contribute to moving it away from somewhat polarised political stances. It is based on a collaborative reflection by a group of scholars and practitioners who have worked on issues relevant to debates on the subdivision and federalism. The group developed the considerations presented here, which the editors subsequently compiled in the form of the present report.

This bringing together of many different voices has two objectives:

- To combine different perspectives and knowledge for a discussion that fosters a broader, holistic perspective on what processes of subdivision might mean for South Sudan.
- To provide accessible and nuanced information on a number of topics of concern in creating administrative units in South Sudan.

The report is the outcome of a three-day workshop held in early 2016, attended by most of the contributors. During this workshop, we discussed at length many different perspectives and considerations regarding the then-recent creation of 28 states. One striking realisation was the difficulty in establishing a shared vocabulary. Terms such as federalism, decentralisation and subdivision clearly needed clarification.

After the workshop, the collaborators wrote short briefing papers on their particular area of expertise, focusing on the histories of their areas of concern, knowledge gaps and the possible implications of the potential further subdivision. The two editors then compiled these briefing papers in a form that would allow the various considerations to speak to each other. The report is thus a joint effort that represents the collective knowledge of this group, including contradictions and

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differences of opinion. We hope it can help to guide debate and inform decision-making in a constructive way.

## 2. Terminology: federalism and decentralisation

When South Sudan became independent in 2011, there had been no conclusive preparation for the system of governance the country might adopt. Federalism was among the options discussed (Johnson 2014), and has been a much-debated possibility for governing South Sudan. The political backlash against the 28 states proposal – and against previous attempts to discuss federalism – also highlights the fact that the multi-faceted and long-running debate about administrative structures in South Sudan has blurred definitions. Some regard the creation of 28 states as an attempt to become federal, while others consider it a move to strengthen centrally held power. This points to the need to clarify the terminology.

Although the central concepts of territorial subdivision continue to be debated, we adopt some commonly agreed basic definitions. A federation is characterised by a constitutionally guaranteed devolution of power from the centre to regional units and representation of these units in the central government. These features create a shared sovereignty between federal and national entities that is not found in unitary states. Federalism is not, however, mentioned in the Transitional Constitution of 2011, which in fact indicates that South Sudan should follow a decentralised system (Chapter 3 section 47).

Decentralisation can be defined as transfer of power, responsibilities and finance from central to subnational levels of government, such as the provincial or local level. This transfer of power does not have to be constitutionally defined and protected, and the subnational units do not necessarily have their own representation at the national level, as in a federal system.

Both federalism and decentralisation promise to allow a broader range of groups to participate in decision-making processes and thus give them reasons to invest in the political system, rather than to undermine it. Effective federal systems also place significant checks on the abuse of power at the centre by giving constitutional power to regions. At the same time, decentralisation promises to bring decision-making power closer to ordinary citizens, which may increase the level of political participation and lead to more responsive government.

There are many ways to classify and categorise decentralised and federal systems. One is to look at the division of powers and resources between the central and the regional or local level. Some systems remain more centralised, with national governments largely retaining power, responsibilities and resources. Others devolve a larger share of resources and powers to subnational levels.

Federal systems are often classified according to how they came about. Did they result from the subdivision of a formerly unitary state in order to unify a fragile and diverse territory – a ‘holding-together’ federation? Or did they arise from formerly independent states coming together and sharing the responsibilities, for example, for defence and other areas that can best be met through a centrally coordinated body than through separate states – typically known as confederation, or a ‘coming-together’ federation? In holding-together federations, central governments tend to be more powerful, while in coming-together federations, the constituent units usually have formally equal power.<sup>1</sup>

The various forms of federal and decentralised systems underline the fact that institutional and legal frameworks of federal or decentralised systems do not exist in a vacuum, but are determined by the interplay of political and economic structures. Evidence on the impacts of decentralisation on development is therefore ambiguous because many other factors shape the way in which decentralisation is initiated, designed and implemented (Local Development International 2013; Faguet and Poschl 2015).

Fiscal issues are essential parts of intergovernmental relations, and reflect the relationship between structures (the provisions in the law and the constitution), processes (the fiscal policies that are implemented), and society (the economic realities of the state). Another essential issue is the way the ruling political parties are organised. Decentralised party systems will create decentralised federations. Similarly, centralised party systems will create centralised federations. Informal political structures also matter, which means that personal relationships influence how structures are used.

A premise of this report is that neither federalism nor decentralisation alone can resolve any country’s problems. The impact and possible outcomes of a territorial subdivision in South Sudan cannot be understood without considering the context in which the reforms are being implemented – how major political, economic and social realities interact with the new structures, powers and responsibilities introduced. Territorial subdivision cannot resolve governance challenges at the centre. On the contrary, effective central governance is essential for a decentralised or federal government to function, as the interplay between the central and constituent (state and lower tiers) governments is crucial.

### 2.1. Institutional features of a federal system

While a decentralised system may take many forms, federations have some institutional characteristics in common (see Elazar 1987; Watts 1998). These are:

1. A central bicameral system combining regional and central representation.

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1. The Soviet Union was a notable exception to this description, which despite its federal structure held strong central power.



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The first or lower chamber usually serves to represent the interests of the federation as a whole and as a power base for the central government. The second or upper chamber serves as representative institution for the constituent units of the federation. In federal systems, like that of the United States, the second chamber serves to check the power of the other federal institutions and plays an essential part in the separation of powers. In parliamentary federal systems, such as those of Australia or Canada, the second chamber ensures that the national government consults with regional units on all legal actions.

## 2. Constitutionalism and an independent constitutional interpretative body.

The emphasis of constitutional guarantees in federations implies that the government is subject to the law and must be committed to the principle of constitutionalism, which effectively means limiting its powers. These self-imposed constraints are intended to make the rulers accountable to the law and prevent arbitrary actions. An emphasis on the rule of law in regulating the relationship between central and regional level makes the interpretation of the constitution of great importance. Those who interpret it should be independent of political influence, which is why most federations rely on the courts to play the main adjudicating role in interpreting the constitution and adapting it to changing circumstances. In most federal systems, an independent constitutional court has the same function. It is essential that this court is autonomous of political forces, so that all parties can regard it as impartial and trust its decisions.

## 2.2. Decentralisation: devolution and deconcentration

Ribot (2002) outlines the complexities of implementing decentralisation policies in the African context, defining decentralisation as when ‘central government formally cedes powers to actors and institutions at lower levels in a political-administrative and territorial hierarchy’.

The literature distinguishes between two main kinds of decentralisation. The first is essentially an administrative process, often called deconcentration, where power and resources are transferred to local branches of the central state. The second type is devolution or political/democratic decentralisation, which means that power and resources are transferred to locally elected authorities representative of and accountable to the local population. This type of decentralisation implies that devolved responsibilities have an element of downward accountability, whereas deconcentrated ones remain primarily accountable to central institutions. Ribot and others see deconcentration and devolution as weaker or stronger forms of decentralised government – see Bizet (2002) on the same issue in France for instance.

Delineating the exact differences between forms of decentralisation, the devolution of powers and deconcentration, is the subject of major discussions in

the field of public administration. The key distinction is between ‘deconcentrated’ and ‘devolved’ state agents. Both categories have separate but often (partially) overlapping tasks, but belong to different accountability and reporting structures. Often deconcentrated bodies are accountable to superiors in the same institution, who are based at the central level. As Ribot further points out, ‘they may have some downward accountability built into their functions, but their primary responsibility is to central government’ (Ribot 2002: 2).

In newly decentralising systems there is commonly some form of confusion or ‘dual subordination’ of combinations of deconcentrated and devolved organisations.

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# Part 2: Four factors in South Sudan's decentralisation debate

## 3. Rights and authority

When the president issued the decree on the 28 states, it was not the only proposal for subdividing (or re-dividing) South Sudan. Nor was it the first time that issues of internal boundaries, belonging, security and revenue collection had become primary administrative concerns. The historical relationships between structural and administrative concerns and the people living under these structures highlight long-standing challenges. To understand these, it is useful to look at the history of provinces and districts in South Sudan, which continues to shape reality and debate today.

### 3.1. The evolution of provinces and districts<sup>2</sup>

At Sudan's independence in 1956, the southern Sudan was divided into three large provinces: Upper Nile, Bahr el-Ghazal and Equatoria. This division was not arbitrary, but reflected prevailing circumstances since the composition of the provinces had changed over time.

One major factor in how the provinces looked in 1956 relates to security. It had been common in southern Sudan to place neighbouring communities who were in conflict under the administration of the same province so that conflicts could be more easily resolved. This was based on the view that proximity was a way to resolve conflicts, one of the two approaches to conflict resolution.

Security was the initial concern of the Anglo-Egyptian government in creating provinces. Before 1930, the focus was on preventing the different southern Sudanese peoples from fighting the government. After 1930, the colonial rulers were keen to prevent southern Sudanese peoples from fighting each other. The prevention of inter-communal fighting, often leading to anti-government uprisings, was the main reason why the Nuer, Anuak, Murle and Dinka people of Jonglei were placed under the single administration of Upper Nile.

The Dinka people of the two Duks, Kongor and Bor were at one time part of Mongalla Province – Mongalla being the capital of Equatoria until 1930 – and the tribal boundary between the Dinka and their Nuer neighbours became the provincial boundary. This simply meant that local disputes escalated to inter-province disputes and were more difficult to resolve, and the Dinka people were amalgamated with Upper Nile (Johnson 1982). As early as 1905, the Dinka of northern Bahr el-Ghazal were incorporated into Kordofan so that a single administration could deal with their complaints against the Humr Baggara (Johnson 2008: 4). Later the Ruweng Dinka and their Nuer neighbours in Bahr el-Ghazal became part of Upper Nile as the Western Upper Nile District (Johnson 2010: 57-58).

Not all districts comprised a single ethnic group. The so-called 'tribal confusion' around Wau defeated any possibility of administration based on purely ethnic lines, and not all ethnic groups retained their territory in a single district. The annexation of the Malual Dinka grazing lands south of the Kiir/Bahr el-Arab to Darfur in 1918 laid the foundation for the contemporary 'Mile 14' dispute about one of the most contested parts of the border between North and South Sudan (see, for example, Frahm 2015).

After the introduction of Native Administration in the 1920s and 1930s, the government's chief interest was the creation of native courts whose main function was to administer customary law and organise work parties and the collection of taxes. This led to a further reorganisation of districts. The Nuer people of Bahr el-Ghazal were incorporated in Upper Nile so that all Nuer-speaking administrators and all Nuer courts were under one administrative jurisdiction. The Dinka of Yirol District were re-transferred from Upper Nile to Bahr el-Ghazal and amalgamated with the Dinka of Rumbek District to become Lakes District.

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2. This section is largely based on Johnson (2016).

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Some transfers were driven by improvements in transport and communication. The Zande kingdoms had originally been connected to the nineteenth-century Turco-Egyptian province of Bahr el-Ghazal by the caravan routes of the zariba system, and were re-incorporated into the Anglo-Egyptian province of Bahr el-Ghazal after the defeat of King Gbudwe, the last Azande king, in 1905. A new road system linking the Azande more closely with their eastern neighbours made it possible to detach Zande District from Bahr el-Ghazal and incorporate it into Equatoria in the 1930s. The Uduk and other Koman-speaking peoples had been transferred from Blue Nile to Upper Nile at the end of the 1930s, but a new road running parallel with the Ethiopian border constructed during World War II made them more accessible to Kurmuk and they were sent back to Blue Nile in 1953 (Johnson 2010: 75-78).

### 3.2. South Sudan's subdivision debates<sup>3</sup>

Debates about federalism and self-rule shaped the political struggle of people in South Sudan before and after the independence of Sudan in 1956, highlighting the close connection between territory, political rights and belonging on which this section focuses.

During the 1947 Juba conference there was no mention of any structure of government, although it is often claimed that the first demand for federalism was voiced then. In fact, Buth Diu, the leader of the Liberal Party, first proposed federalism in 1951, when he was a member of the Constitution Commission, and it was the rejection of that proposal that led to the adoption of federalism at the 1954 Juba conference. The 1954 vote for federalism was overwhelming among political leaders of southern Sudan, but the establishment of a centralised government in Khartoum ended this debate. The central government regarded southern leaders who had demanded federalism as traitors.

The call for federalism came up again during the period of the 1972 Addis Ababa Agreement. In the 1970s and 1980s, local government officers were still regularly rotated to different districts and provinces. Since then, however, it is increasingly assumed that the staff in local government administrations should be from the area of the administration's jurisdiction.<sup>4</sup> In a sense this has brought local government closer to the people, strengthening citizens' identification with the local administration. But it has also produced political rivalry and tensions within local government units, particularly when administrators are suspected of bias towards their own ethnic or sub-ethnic group. In the history of southern Sudan, such community-level conflicts often led factions to break away

and settle elsewhere. Currently, the same tendency has led to the subdivision of administrative units or chiefdoms.

During the second civil war, the Sudan People's Liberation Movement Army (SPLM/A) pushed for a unitary state with some elements of decentralisation. Dr John Garang's vision of a 'New Sudan' supported a unitary, united Sudan against the idea of an independent or federated South Sudan. Nevertheless, the SPLM/A supported devolution of power from the centre to local communities – expressed in wartime slogans like 'the land belongs to the community' and 'taking the town to the people' (see, for example, Badiy 2013; Hirblinger 2015).

The federalism debate re-emerged strongly after South Sudan gained independence in July 2011, but was similarly controversial. The 2011 'Equatoria Conference' (and subsequent conferences in 2013 and 2014), convened by intellectuals and political elites from the Equatorian region, demanded federalism. The first conference was followed by renewed war in 2012 between South Sudan and Sudan because Sudan's alleged theft of South Sudan's oil, leading South Sudan to stop oil production. States' tax collection from non-oil revenues became centralised by the government in Juba to make up for the lost earnings. These developments in turn led to criticism of the government and a repeated call for federalism, particularly from states whose revenue did not depend on oil.

By 2014, discussions of federalism were considered a national security concern, partly because of the perception that a request for decentralised government also implied a wish to diffuse centrally held power. Others interpreted the debate as a push towards a renewed *kokora* – the 1983 division of the south into three regions that translated into excluding non-Equatorians from Equatoria. In addition, South Sudan's experience of a very powerful central government has contributed to the belief among those living outside Juba that a federal system might be able to address such challenges. Whether indeed federalism can offer solutions to the problems of governance associated with centralisation of powers remains, however, a major question.

## 4. Boundaries and conflict

Local and national violent conflicts are often the lens through which outsiders look to understand how stable South Sudan is, or how well it functions. It thus makes sense to look at violent conflict specifically in relation to administrative structures. In the first few months following the creation of the new states, there have been further tensions and conflict over some of their proposed or assumed new boundaries.

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3. This section relies heavily on Johnson (2016).

4. Rotation still happens in some areas, for example in Northern Bahr el-Ghazal, but administrators are usually from the same state/county or the same ethnic group or subgroup.

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In addition, if decentralisation is experienced in practice as the tightening of government control over local lives, this increases the likelihood of conflict against the state or other authorities. People may face and imagine new security threats from newly constructed communities, political disputes and new forms of government. Either way, real and continued possible division of the states brings heightened uncertainties as well as hopes. It is therefore likely that there will be a growing demand for reassurance through adequate security provision.

Conflict and violence are usually expressed in South Sudan in three ways, all of which are in some way connected to identity, political economy or boundaries. The three ways are, first, through violence that arises from identity, territory or access to resources. Second, conflict emerges in its resolution, that is, by agreeing on a peace settlement in which the causes of conflict are openly or inadvertently identified and can in that way become the conflict narrative. Examples of this retroactive identification of the causes of conflict include the anchoring of political power or wealth sharing in a peace agreement, or regulating the presence of armed troops, or indeed the identification of ethnicity in assignment of positions. A third way that conflict is seen is in the narratives of possible conflict scenarios, which are a way to indicate levels and types of tension between communities or individuals.

The conflict since 2013 has made violence of different types highly visible. The ARCSS has identified elite access to power as well as presence of troops in close proximity to the seats of political power as drivers of conflict, and conflict narratives of confrontation and division have created further tension. It is primarily in these conflict narratives of potential, as well as the identification of problems through peace agreements, that we can seek a link between administrative subdivision and possibilities for violent conflict.

The intractability of conflicts in South Sudan derives from their complex local dynamics and the frequently changing linkages with national politics and developments in the larger region. Land issues have played a particularly important role both in generating poverty and in driving and sustaining protracted conflict. Conflicts over land may be communal and strictly local, but they have increasingly become entwined with political rivalries on a larger scale. They are also ‘ripe for political manipulation, as unresolved land disputes have consistently underscored wider conflict’ (Pantuliano 2009: 167).

#### **4.1. History of boundaries and conflict**

The connection between administrative structures and violent conflict is most visible in the limited repertoire of outside interventions for resolving violent conflicts in South Sudan. There are essentially only two approaches reflected in current and past attempts to resolve or control violent conflict. The first approach is enforcing separation

of groups that are in conflict. This has been the approach mostly – but not always – taken by outsiders, as the brief history below shows. Separation is achieved through strict lines of division, which can be drawn administratively, through leadership or through social norms that make interaction difficult, broadly mirroring theories of consociationalism – a form of power sharing based on the assumption that the segmentation of society can become the building block to overall stability (McGarry and O’Leary 2005). At times, communities simply choose their own separation by fleeing conflict to seek safety elsewhere.

The second approach to the resolution of violent conflict is to enforce proximity. This means in practice that communities are brought together through intermarriage, the need to share territory or resources or through trade. Proximity and the need for cooperation make violence too costly. This broadly follows integrationist models of administration and is most often pursued if conflicts are resolved at the community level.

Those administering South Sudan have not always strictly applied only one approach. At times policies have been mixed. Administrators during the Anglo-Egyptian Condominium used both separation and proximity – the history underlines that the western Nuer people, for example, were initially in Bahr el Ghazal so that they could be administered together with Dinka people in order to pre-empt raiding.

These two approaches to managing community relations and avoiding violent conflict broadly describe the history of thinking on how to best govern Sudan and South Sudan. Both are tightly linked with finding administrative structures that can control violence. Enforcing proximity is the idea that underpinned theories of a New Sudan. Enforcing separation manifests itself at the national level in South Sudan’s independence. Yet even before independence, enforcing separation as a way to deal with conflict could be seen in the attempt to demarcate counties along lines that separated communities.

Further fragmentation can be seen as another manifestation of an attempt to pacify or resolve conflict through separation. This sets up conflicting dynamics, however, as in the past conflict in South Sudan was often mitigated by keeping the dividing lines between communities blurred through intermarriage or seasonal agreements regulating interaction.

#### **4.2. Subdivision and violent conflict**

It is not clear whether violence causes administrative division or division causes violence. The proliferation of local violence often seems to be in parallel with the expansion of administrative structures, the quest for further expansion, or the experience of power being consolidated at the centre. Recent violence in Yambio, Raja or Wau, for example, seems to have increased with the assertion of central power over the matters of the state,

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including the dismissal of officials and the presidential order that has divided the previous states.

There is no reason to believe that division into 28 states (or any other number) will do away with local conflicts, but they are likely to be re-configured. There will be new majorities and new minorities within the new states and differences between them may be sharpened. As conflicts evolve, what may appear to be the root causes are also likely to change over time.

Does violence lead to administrative fragmentation? The most obvious manifestation of violence as a driving force for administrative fragmentation is South Sudan's civil war, which created the momentum towards the ARCSS, the opposition's call for 21 states, the presidential decree for 28 states and the ensuing debate on further subdivision. Both government and opposition have made decentralisation a central issue, although they word it in different ways and have suggested a different type of expansion of administrative units. Implicitly, the suggestion that further fragmentation offers a better administrative structure for South Sudan also makes clear that the government and opposition alike interpreted the structure of the ten states as possibly being more conducive to violent conflict than other structures.

It is in the way the debate on subdivision and the national peace agreement has been conducted that a direct link emerges or is created. Peace and administrative structures go hand in hand, as does the widely held expectation that close access to administrative structures is a way to preserve interests. Considering that the South Sudanese experience has been one of 'administrative-division-follows-violence', interests in further subdivision could potentially create more violence, replicating what has been the most efficient way to have interests of administrative division acknowledged and achieved.

### **4.3. Violent conflict and administrative challenges**

One of the great challenges in South Sudan's administration is the existence of parallel and often conflicting structures, which create murky relationships of authority and accountability, as discussed above. One could argue that the different types of violent conflict in South Sudan mirror the existing administrative structures. It is a further indication that political power is exercised or established through violence.

The complicated relationship between devolution and deconcentration is also visible in the way that conflicts develop and evolve. There are what might be called 'devolved conflicts', which are locally driven, for example through personal or land disputes.

There are also what could be considered 'deconcentrated conflicts', which have a strong link to or even originate in the centre and it is only the visible violence that shifts to the local level, while the 'command centre' sits elsewhere. Deconcentrated conflicts are extremely difficult to tackle since their manifestation is local although the impetus

comes from the centre, thus bypassing local structures.

A good and often cited example of the difficulty of addressing deconcentrated conflicts is the tension regarding the movement of cattle. While local structures to manage cattle movement worked for decades, this becomes more complicated if the cattle owners do not themselves tend their herds but rather hold powerful positions at the centre.

### **4.4. Lessons about administrative structures and violent conflict**

A number of lessons can be drawn from existing knowledge on how violent conflict links to the expansion of administrative structures in South Sudan.

It is clear that the establishment of structures does not guarantee their function. For example, the establishment of a state government over smaller territory does not necessarily mean that it is more accessible to citizens if there are no local structures to hold state government to account. Similarly, the signing of a peace agreement and the establishment of new administrative structures does not equal peace. Thus there is a lesson to be drawn from how we think about peace agreements and decentralisation.

Peace agreements are usually seen as a written record that reflects a state of negotiations, and of political power, indicated by who was at the negotiating table. South Sudan has seen many national-level or local-level peace agreements that set out various principles about how people want to engage with each other, followed by concrete steps that are expected to change how they will interact in the future. A central idea that has been reflected in a number of peace agreements is that of power sharing, often accompanied by finding ways to implement it through devolved structures. To a lesser extent, peace agreements have highlighted the need for all South Sudanese to benefit from such agreements, including people living far from the seats of power. A direct link between processes of decentralisation and attempts to solve violent conflicts is thus firmly established in assumptions about conflict resolution.

Although the signing of a peace agreement usually generates enthusiasm about the possibility for change, experience has led to widespread disillusion. It is thus important to analyse the reasons for such disillusion and how these might link to a process of decentralising South Sudan.

One way to think about the link between decentralisation and peace agreements is to identify what the implementation of a peace agreement means to different people. People might support peace agreements for very different reasons, which at times can become conflicting incentives. Some might see a peace agreement as a starting point that allows for the expected benefits of peace to reach the local level. In these expectations decentralisation is probably a good thing as it might facilitate the translation of the benefits of peace if the

administrative units are more directly connected to the centre of implementation.

Others might view a peace agreement signed at the centre of power as the exact opposite: a way to consolidate power at the central level. This view starts from a different understanding of how the centre and periphery in South Sudan are linked. Contracts between elites drafted in the centre make the assumption – or at least imply – that there is a strong relationship between the centre and the periphery, meaning the agreement will have an impact on the periphery. A different view is that the signing of a peace agreement might become a way to centralise real power given that the periphery remains disconnected. This reality plays out regardless of whether administrative structures suggest otherwise.

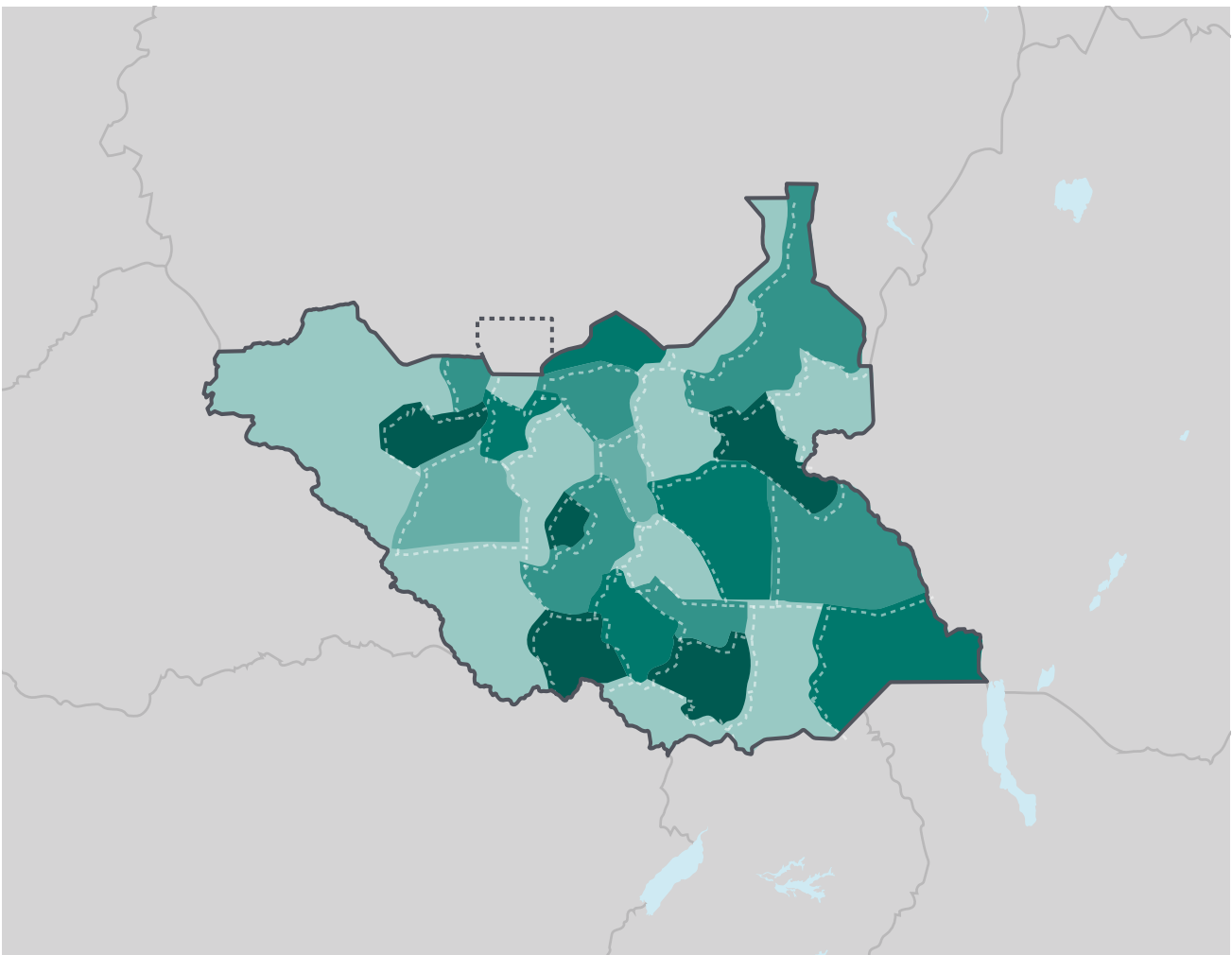
#### 4.5. Conflict mitigation and boundaries

Traditional leaders and particularly chiefs continue to be the main actors in the mitigation and resolution of local conflicts, partly because of the limited capacity of the Ministry of Justice to reach the whole country. A major shift in the role of chiefs in mitigating and resolving

conflicts was the inclusion of the chieftainships established by the British colonial authorities in local government structures, enshrined in the Local Government Act (LGA). The LGA and the Land Act mandate chiefs to be the primary focal points for conflict mitigation, particularly conflicts associated with land. What has not yet been clarified, however, is the exact level of authority granted to different types of chief. Even within the same jurisdictions there continue to be disagreements regarding the authority over land administration between chiefs appointed by the SPLM/A during the war and those who claim legitimacy on basis of the appointment of their forebears by the colonial authority.

This adds an extra challenge to finding ways to mitigate conflicts, particularly those that involve cross-border concerns and different types of chief, for example, management of resources such as grazing land and water points. This particularly affects cattle-herding communities, whose movements have been historically determined by availability of resources rather than borders and whose movement is in some areas particularly contentious.

#### Map of the 28 states of South Sudan



Currently, not all of the newly decreed 28 states have clear borders. In the past, determining internal administrative boundaries has often

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## 5. Land, boundaries and identity<sup>5</sup>

Throughout history, the interplay between people, land and power has been powerful and continues to be a major factor in South Sudan's subdivision debate. One way to look at debates over land is that these follow a gradual trajectory of territorialisation of political concerns, as outlined in the section above on the history of South Sudan's subdivision.

Before the colonial period, the southern Sudanese region was characterised by considerable migration and mobility, some of which was in response to the violence of ivory and slave traders in the nineteenth century. Even when people were relatively settled they still moved around a lot, whether to practise shifting agriculture or transhumant pastoralism. Individuals and families also migrated to escape hardship or conflict, and joined other communities through prior relations, marriage or by becoming the client of a wealthy family. Ethnic groups, sections and clans were therefore not defined in strictly exclusive or clearly bounded terms, but were constantly changing as they absorbed new people, subdivided and migrated. The members of a single clan were frequently scattered across considerable distances, and even across different ethnic or sub-ethnic groups. The British colonial authorities tried to map out the territories and boundaries of ethnic groups, but had to admit that this was impossible due to the intermixing of different groups and lack of clear boundaries between them. Communal boundaries are seldom clearly demarcated but are defined more by particular points in the human and natural landscape – and these scattered points cannot be neatly joined up by drawing a line.

The relationship between people and land is nevertheless deeply important. Spiritual and political authority has often been based on the claim to be descended from ancestors who first settled in a particular place and cleared the land, giving their lineage a special ritual power and responsibility in relation to the health and fertility of the land and its inhabitants. Such beliefs continue to be respected. Sacred sites and ancestral graves are crucial to people's sense of belonging to a particular place and community, while access to arable and grazing land is vital for their livelihoods. Settlement in the same territory has also been as or more important for binding together or even creating communities than more distant relations of ethnicity or kinship.

Nevertheless, pre-colonial political authority was based more on control of people than of territory or land. Colonial officials often complained about their confusion over tax collection, for example, when a particular chief or headman had to travel considerable distances into neighbouring chiefdoms to collect taxes from 'his' people. For this reason, it was probably under the colonial

government that the first efforts were made to create more strictly defined and bounded territorial units of authority and administration, in which all the inhabitants would pay taxes to the same chief. The colonial practice of forcing people to construct and maintain roads within their chiefdom also meant that these formed boundaries between chiefs' territories. It was along the roads that boundary markers were erected between different districts and provinces.

In general the colonial government did not undertake a comprehensive delineation and demarcation of internal boundaries, other than to settle particular grazing disputes or communal conflicts. Even in cases where they did mark a boundary on the ground, such markers have often long since disappeared, other than in the memories asserted by local elders. Even such apparently clear boundary markers as streams or hills are often disputed. The idea that colonial district or chiefdom boundaries provide a clear basis for defining contemporary boundaries is therefore somewhat misleading. Moreover, as discussed above, districts were not based on single ethnic territories, but were multi-ethnic units – sometimes deliberately so, in order to better manage inter-communal relations and prevent conflicts. Even some chiefdoms included people from more than one ethnic group, as in the Maridi area, for example.

The lines drawn to make up colonial districts and provinces thus gradually contributed to the creation of new political identities. The most obvious of these new political identities was the emerging category of 'Equatorians', which is an example of specifically connecting people so that ethnic or linguistic lines do not coincide with territorial boundaries. It is important to remember that administrative structures shape the identities of those who live with them, particularly as South Sudan seeks the most appropriate administrative structure for the country. What seems to be a possibility with its further decentralisation is South Sudan's adoption of a federal model, whereby states or districts are created along linguistic, religious or ethnic lines and assumes their distinctiveness, more in line with a consociational approach (Abbink 2011).

In pursuing different models, it tends to be overlooked that lines make groups just as much as groups can influence where lines are drawn.

### 5.1. Land and natural resources

The more local government administrations become identified with a particular ethnic group or section, the more significant the boundaries of these administrative units become, because they are seen to define communal boundaries and associated control of land and resources. At the same time the widespread assertion that 'land belongs to the community', associated with the SPLM, has

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5. This section relies heavily on some of the central findings of a comprehensive original report (Leonardi and Santschi 2016), which also includes references for further reading.

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contributed to more exclusive and exclusionary definitions of communities and their customary land rights. Land is perceived to have gained new commercial value in the past decade or so with the emergence of new urban land markets. Moreover, people anticipate more commercial agriculture and resource exploitation, as well as leases or compensation for land used by the government or international agencies.

Customary land rights do not imply exclusive ownership, but rather involve multiple layers of rights, from individual usufruct rights to communal control of natural resources and negotiated rights of access to grazing or water in another section's territory. Any attempt to demarcate boundaries is therefore likely to be perceived as a threat to some of these rights, and provoke neighbouring groups to try to assert rights on a more exclusive basis of ownership. In at least some areas, very small clan units hold communal land rights, so the logic of making communal and administrative boundaries contiguous could result in ever smaller administrative entities. In other areas, communal territories are not continuous and their boundaries are not linear. Usually specific points are known as boundary markers. Boundaries and boundary markers are contextually negotiated and defined in the event of a dispute over a piece of land in a contested area (Leonardi and Santschi 2016).

Administrative boundaries are not demarcated either. Given the conflation of community territory and administrative entities and the blurred and contested nature of community boundaries, it is challenging and potentially contentious to define boundaries of administrative entities. With the emergence of new administrative entities so new boundaries will also develop. These may be contested and give rise to disputes. Community members might, for instance, fear that they will lose land rights if an administrative boundary cuts through communal boundaries.

The same tensions might emerge – and have done so in the post-28 states debates – in relation to higher-level state boundaries, and indeed to parts of South Sudan's international borders, where particular ethnic groups or sections argue that the boundary should correspond to their own customary land boundaries, which are at times also disputed by neighbouring groups. Such disputes often focus on particular symbolic sites or developments relating to identity and resources, such as signposts and place-names, new buildings, services, roads or commercial activities, or expanding urban and administrative centres. Town centres were originally alienated as government land, but as towns have expanded in size and economic significance, they are now subject to competing claims to communal ownership of urban land. Even at the most local level, the construction of fences or concrete buildings or the use of tractors for commercial agriculture can spark new disputes over the land concerned, which often escalate

into conflict between neighbouring groups and their respective local administrations.

At the same time, however, people recognise the value of strength in numbers, and some boundary disputes centre on alleged attempts by particular groups to expand their boundaries in both territorial and demographic terms, to ensure recognition as a large population and hence a viable and influential unit. In the past, the division of South Sudan's old provinces into smaller states has not always facilitated the resolution of cross-border conflicts, and even within the ten post-2005 states there were border disputes between counties (Schomerus and Allen 2010; Justin 29 July 2015). This has been because administrative boundaries may prompt conflict over land, boundaries and resources. During the CPA, these occurred mainly in the newly created counties.

There is a recurrent tension here. On the one hand is recognition of the value of larger units that bring together and help to maintain peace between neighbouring ethnic groups. On the other hand there is the danger that minorities feel threatened or excluded within such units, and therefore press to have their own unit to better safeguard their rights. The exclusion of outsiders conflicts with prevalent phenomena such as migration, urbanisation and the development of a nation state. Subdivision of administrative entities based on community entities may also enforce ethnic and community boundaries and foster the exclusion of 'outsiders'.

However small the unit, there will always be majorities and minorities by some definition. The real problem is that, at all levels, local government administrations have become identified with particular ethnic groups or sections, which means that they are increasingly seen as a means of defending communal interests, resources and territory rather than protecting the rights or meeting the needs of all citizens.

## 5.2. Language and identity

South Sudan is ethnically and linguistically diverse. Some maintain that the conflict that erupted into an open war in December 2013 had its roots simply in rivalry between the two largest ethnic groups: the Dinka and Nuer people. Others argue that the conflict was never driven by ethnicity but was caused by a disagreement within the ruling political party. Whichever view one takes, the arguments rarely veer far from the conclusion that the conflict soon assumed an ethnic dimension.

In a multi-ethnic state, one of the key aims of federalism is the holding together of a nation by containing, if not curtailing, the excesses of ethnic and regional aspirations. The two main opposing trends in the debate on federal systems have centred between those who argue that federal subdivision would lead to further integration of the subnational groups and those who claim that it would reinforce both the desire and capacity for groups to separate from the state (Horowitz 1997).



At independence most African countries regarded federalism as anathema. It is thus not surprising that when the president decreed the 28 states, the fundamental problems of ‘ethnic heterogeneity’ and the ‘failure of national integration’ that have been prominent in African countries since gaining political independence almost 50 years ago, did not feature largely (Selassie 2003).

Rights, authority and territory are closely connected to identity. Identity creates what language is used or its use can create identity. Language is a strong element in how identity is shaped, and both are also closely connected with territory. Where is a language spoken and by whom? Where does one language end and another begin? Does a language border constitute a dividing line or a connection?

Language, identity and ethnic diversity will be of prime importance in any administrative structure in South Sudan. Issues of diversity need to take into account past, present and possible future ramifications. It is clear from the debate that ensued after the 28 states were decreed that people’s sense of identity was being challenged. Former group loyalties continue to be tested and then either shed or replaced by new ones that are distinct from the former ones. New ethnic and language minorities have been created within the new states, as new state boundaries create different majorities in smaller administrative units.

This continues a longstanding trend. From colonial times, ethnic considerations have been at the forefront of most political decisions on territorial administration in South Sudan. The colonial administration used language and ethnicity to delineate provincial boundaries and put communities together, exemplified in the Rejaf Language Conference of 1928 (Abdelhay, Makoni, and Makoni 2016). This has surfaced again in recent debates as definitions of ethnicity are mutable, interpreted differently and change in response to other political developments.

There seems to be some uncertainty in South Sudan about whether it is better to acknowledge the country’s ethnic diversity or to ignore, if not suppress, it altogether. Two examples illustrate this ambivalence. First, in the distribution of political offices ethnic considerations never seem to be far from the surface. For instance, the key national positions of the Presidency, the Vice Presidency and the Speaker of the National Assembly, before the eruption of the conflict of mid-December 2013, went to a Dinka (Bahr el Gazhal), a Nuer (Upper Nile) and a Bari (Equatoria) respectively. The situation was no different in the ARCSS. The same set-up was more or less retained: Presidency (Dinka, Bahr el Gazal), the newly created post of First Vice President (Nuer, Upper Nile) and the Second Vice President (Bari, Equatoria). Equatoria is also slotted in for the post of the Speaker of the National Assembly as compensation for being relegated to the second vice presidency.

Following the events of December 2013, the government released a slogan that many interpreted as an attempt to downplay South Sudan’s heterogeneity and diversity:

‘One nation, one people’. The slogan seemed to have been informed by the notion that stressing diversity could encourage divided loyalties and fuel separatist tendencies. Selassie (2003) however, warns that denying ethnic diversity can create tension, disorder or even nationalism that borders on ethnic militancy – the very opposite of integration through diversity.

Ethnic diversity is often expressed through claims on territory. These are, in turn, tightly connected to language use, as we discuss in the next section.

### 5.3. The language dimension

There are about 72 indigenous languages in South Sudan and the country’s various ethnic groups identify and are associated with particular languages. Language is never neutral, as social, personal and other affiliations colour the choice of words and language used. Social prejudices include political, religious, ethnic and familial/clan alliances. These identities are not fixed or rigid but are fluid and dynamic. Language is often the main way that one ethnic group is distinguished from another, and an associated territorial border is often related to linguistic identities. Yet these borders do not accurately reflect the fluidity of language-based identities.

Language also affects the ways in which identities are perceived, articulated and suppressed. The people of the Equatorial states have voiced concerns that the names of newly created states are diluting their identity as Equatorians – an identity that itself is also a remnant of a previous structuring of administrative units. There have been calls for the name Equatoria to be attached to all states located in the Equatorial region.

Any restructuring of the states should not have any significant impact on the development and the use of all languages in education as the Constitution gives the same status to every indigenous language. The fact that some of the proposed new states are now predominantly of one language group should simplify language planning and material production at the state level, or at least invigorate the debate on the link between language, identity and territory.

### 5.4. The value of a name: language and resources

When new territorial entities are created and borders drawn in oil- and mineral-rich countries, the fortunes of individuals or groups are affected in different ways as benefit-sharing arrangements are altered or reshaped. Some communities or groups will gain while others will lose, which in some cases leads to conflicts. Who gains or loses out is often dependent on factors such as identity and connections to political elites.

Many oil- and mineral-rich countries, such as Nigeria, have faced conflicts linked to borders and names (Bobenhorn and Bruck 2006). Often, these conflicts emerge from the national level in cases where leaders are keen to control resources directly or through their ethnic or

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loyal groups. Creating new territories, changing borders and naming places is an established way to control resources. The interests of those thought to be disloyal or untrustworthy may be denied as these measures are implemented.

The creation of new territorial units and redrawing of borders is often linked to changing or introducing new names as a way to alter the identity of places. The actions of leaders of the previous unified Sudan illustrate this. Shortly after the discovery of oil in Sudan in 1978, President Jaafar Nimeiri and other northern elites devised a plan to redraw borders, create new administrative units and rename places as a way of way to bring the oilfields firmly under their control.

In December 1980, President Nimeiri instigated the former Sudan National Assembly to pass a decentralisation bill that included a map indicating 'obvious and even deliberate encroachment upon the territories that were ostensibly part of Southern Sudan' (Badal 1986: 144). The territories that were to be excised from southern Sudan and included in northern Sudan included the copper- and uranium-rich area of Hufirat El Nahas and the oil-rich area of Bentiu. Later, Nimeiri created a new state in the then autonomous southern Sudan region and named it al-Widha or 'Unity' and placed it under his office. Despite this, Southerners continued to use the 1972 Addis Ababa Agreement as a means to delegitimise Nimeiri's actions and agitated for a share of revenues of the soon-to-be produced oil. To deal with this challenge, in June 1983 Nimeiri decreed the re-division of the south into three mini-regions, ending the Addis Ababa Agreement. This weakened the ability of Southerners to collectively challenge central government policies, and was a major factor in the resumption of war that same year.

Other governments have adopted a similar strategy. For example, under Saddam Hussein in Iraq, many Kurdish areas were given new Arabic names as a way of exerting control over these areas, which Kurds had claimed as their own (Natali 2001). Reasserting identity through displaying a minority language has worked effectively, for example in Wales, where road signs are all written in Welsh and English.

Similarly, as elites in Khartoum pushed through naming and other measures to put oil areas under control of loyal populations in the north or under the president, southern Sudanese, especially those living in the oil-rich areas, became determined to oppose the new boundaries and names.

After South Sudan's independence, border conflicts persisted despite international efforts to lessen tensions.<sup>6</sup> It has been very difficult to agree on a border between the two Sudans because the oil wells lie in this border region. Neither of the two countries has been willing to

compromise and in fact went to war over the oil-rich area, which the Sudanese called Heglig and the South Sudanese Panthou, encapsulating the political significance of place-names.

The way in which people respond to decisions regarding names and territory depends on how these were made, for instance whether they were genuinely consulted. It is quite certain that in the present violent context of South Sudan many people who are displaced and face a humanitarian crisis will find it hard to trust centrally made decisions. This in part because of the fear that the changes will adversely affect existing rights in oil or minerals, especially agreed revenue-sharing arrangements. In the ten states, the national, state and local community authorities understood their entitlements to the oil revenues. This is likely to change as the new entities demand their share of the revenues, which might in turn fuel grievances and conflict.

Oil companies will have to deal with new structures, which will be expecting other benefits in addition to revenues. Often communities in the oil-producing areas expect development assistance from the companies, in part to compensate them for the negative consequences of oil exploitation, such as environmental pollution. This creates another layer of complication.

Changes related to control of resources also have an impact on ethnic relations, which in many cases already have been damaged by the experience of violence. When borders are drawn or altered along ethnic lines, the location of resources will become even more contentious. Groups that feel that they have been unfairly treated may invoke their ethnic identity to mobilise and to explain their loss. In this context, the demand for federalism was locally constructed as a way to force communities to return to their ancestral areas in order to reduce competition over resources, particularly land. This could worsen ethnic tensions. These considerations are important to take into account when borders and names are changed.

## 6. The political economy of decentralised government

Government is far more than a way to administer territory and people. It is also its own machinery that comes with its own political economy: with interests, benefits, agendas and incentives. Decentralisation or subdivision should therefore be seen as both the realisation as well as the driver of ambitions and interests. During the negotiations for the 2005 Comprehensive Peace Agreement (CPA), the design of South Sudan's government was influenced by the need to integrate government structures into the peace negotiations and the implementation period.

The IGAD-led mediation for the CPA did not discuss federalism as such. Rather, the negotiations focused on

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6. For a collection of articles on the importance and many interpretations of South Sudan's borders, see Vaughan, Schomerus and De Vries (2013).

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the tiers of government and what powers each would hold, including how the tiers related to the principles of decentralisation and the devolution of powers that were to be implemented at all levels of government. Thus the 2005 CPA provided for the establishment of territorial subdivision in Sudan and for four autonomous tiers of government:

- National
- Autonomous regional for southern Sudan
- State government
- Local government

The decentralised system of government on which the parties to the CPA agreed could in practice have been a federal system as it established its core elements. The national, regional and state tiers of government were designed to act with three branches (executive, legislature and judiciary). The principle of subsidiarity was the basis for allocating tasks to the different levels of government with well-defined exclusive, concurrent and residual powers. In addition, each tier of government was formally granted political and fiscal competence to spend its own revenues.

Southern Sudan's Interim Constitution (ICSS) of 2005 established the structures of government for then southern Sudan. These structures were to remain in place regardless of the outcome of the referendum, with people's vote for either secession or for the structures established through the CPA. Thus the ICSS was drafted to remain in force regardless of secession or unity and the decentralised system established during the CPA period was to continue in the sovereign and independent South Sudan until the adoption of a permanent constitution. The Local Government Act of 2009 (LGA) further stated that local governments have three levels: the county, the payam and the boma (equivalent to city, municipality and town councils in urban areas).

With South Sudan's independence in July 2011, the Transitional Constitution of South Sudan (TCSS) was promulgated to manage the transitional period until the adoption of the permanent constitution. Unlike the ICSS, the TCSS has some of the features of a centralised unitary system. One departure from the ICSS is that the TCSS states that the government's authority is derived from the constitution and the law rather than the 'will of the people' – which is inconsistent with the concept of shared sovereignty that rests with the people in a typical federal system.

Further, the TCSS does not meet some key aspects of a federal system such as the autonomy and political competence of tiers of government. In particular, the TCSS gives exceptional powers to the President of South Sudan to remove an elected state governor and/or dissolve state legislature in the event of a state crisis that threatens national security. The exact mechanisms through which such powers can be exercised are not clear and there is no clear institutional check on them. Moreover, unlike the

ICSS, the TCSS centralised previously decentralised services such as the judiciary, public attorneys, police, prisons, wildlife and the fire brigade, but did not provide for the establishment of a state judiciary as one of the branches of autonomous government.

In comparing the two constitutions, it can be argued that after gaining independence, South Sudan departed from a decentralised federal system. Its current system of government exhibits features of unitary system. These tensions and ambiguities persist despite the reforms introduced in October 2015.

The Presidential Establishment Order Number 36/2015 states the core objective in creating 28 states is the devolution of powers and resources to bring both of these closer to rural people by gradually reducing the size of national government, attracting national experts to work in states and local governments and promoting social and economic development in rural communities. As such, the creation of 28 states is not meant to establish a federal system but to decentralise powers and resources to lower levels of government. It remains an open question whether the creation of 28 or any number of states will indeed decentralise powers and bring resources closer to the rural population.

Order 6 of the Presidential Establishment Order 36/2015 and subsequent amendments in the TCSS have overall affirmed the states' existing powers. The size of national government does not seem to have reduced, nor have the national experts and civil servants been transferred to the states and local government. No additional resources have been allocated for promoting social and economic development in rural communities. Thus the reality is not so much about decentralisation as a proliferation of units driven by the promise of better access to resources and power.

It appears that South Sudan's current subdivision is being pursued in an institutional framework that is neither decentralised nor federated. The division into 28 states has not amounted to devolution, but has strengthened presidential powers to create more states and appoint state governors. At the same time, the number of states and their boundaries remains particularly contested between the SPLM and the SPLM-iO, as the latter seeks to restructure states in a way that would be beneficial to them by providing access to natural resources.

It can be seen that the central executive power undermines the core federal principles of regional autonomy, as many of the local government functions are deconcentrated rather than devolved. Sometimes, deconcentrated power structures are established because political offices are awarded on the basis of loyalty to the centre, which then continues beyond the apparently decentralised appointment. It is anticipated that this will create further challenges and competition as a permanent feature of administering South Sudan – an issue that has little to do with the number of states.

One challenge that the new administrative structures will face concerns the personnel. Capacity is an issue. While many central ministries have struggled to employ the qualified personnel they need, this problem is likely to be still greater at the levels of state and county administrations. With the new subdivision of states, the pool of qualified staff will further dilute. Second, in a situation of subdivision it is likely that staff decisions will be made on the basis of origin. Third, devolved state functionaries, at least in the lower administrative grades, used to work in their home state. Each state had a pool of civil servants who could be employed in the various counties. Does the creation of new states mean that the pools of civil servants for each state will be further subdivided? A fourth concern relates to the unofficial hierarchy between levels of government. With the creation of new states, it is likely that certain states will remain more powerful and more attractive to work in than others. At the same time, the central government will probably continue to attract the best educated and experienced administrators.

### 6.1. Competing hierarchies in devolved and deconcentrated South Sudan

Debates about decentralisation and federalisation often focus on the division of responsibilities and powers between various levels of government. Competition between levels of authority on key issues such as revenue collection, natural resource management or the organisation of security exist in every country and in any system of government.

The distinction and relationship between deconcentration and devolution in a single government system is highly relevant for South Sudan, as it is the system that the country has been following both formally and informally. To fully understand the legal framework that defines the authorities of the various levels of government in South Sudan, the CPA and subsequent legal frameworks such as the LGA and the Transitional Constitutions are crucial. Importantly, the everyday exercise of authority is often more complex than legal provisions might suggest. We distinguish three challenges facing South Sudan:

- Due to inconsistencies between the various legal frameworks, there is room for multiple interpretations of the roles and responsibilities of each level of government. This is particularly clear in relation to the administration of land ownership.
- Various authorities interpret the legal provisions loosely, mainly because unwritten and informal hierarchies are more important. Moreover, different categories of government officials operate under entirely different accountability and command structures.
- In each state there are appointees from the central government authorities. The security

forces, for example, have control over state and lower government authorities because they are directly accountable to the central government. In difficult situations, this central power at the local level could add to strained relationships between representatives of the central and state authorities.

The interim period also highlighted the potential for conflict based on the administrative structures. Specific policies – at times designed to address previous injustices or to ease tension – became counterproductive and at times contributed to conflict, which rose significantly during this time particularly in rural areas (LeBrun and McEvoy 2010). Although conflicts have multi-faceted and often intertwined roots, competition over natural resources and land played a role as communities struggled to position themselves in the most beneficial way under the new structures (Hirblinger 2015; Deng 2015; Deng 2011; (Schomerus and Allen 2010). This resulted in a proliferation of local government structures as local government was the only way for communities to gain access to resources. Although not explicit in the existing laws, ethnic identity seems to have played a central role in the establishment of some governance units, particularly at the county level.

Competition for power and positions in local government has been driven by several factors. After 2005, government salaries formed the main ‘peace dividend’,<sup>7</sup> fuelling the drive for more administrative units and hence positions. Such positions also potentially brought access to income from local trade and taxation, including chiefs’ court fees, market taxes and land allocations. At the same time, non-government organisations (NGOs) and other agencies tended to focus their activities in particular counties, payams or bomas, encouraging the wider perception that development funding and services were more likely to come to a particular area if it was recognised as a unit in its own right. Becoming a new county is seen to establish a stronger relationship with government and the associated development agencies.

Electorate politics added a further layer of significance and contention to these units. They were now also political constituencies, as individual politicians increased expectations of constituency development or used rivalries or boundary disputes to gain support from constituents. This also means that when people want to assert political authority or claim rights and resources, they have increasingly done so on the basis of their membership of a particular community. This in turn can lead to defensive reactions from individuals or groups who fear being marginalised by dominant communities or excluded from rights to land, resources or representation. Increasingly, therefore, people argue that their particular section or clan should have its own county, *payam* or *boma*, defined by communal territorial boundaries.

It is important to keep in mind the extent to which the creation of more counties caused tension and at times

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violence. Likewise, political contestations at the higher political order filtered down to cause social frictions, sometimes along ethnic lines. The civil war that was triggered by the events of December 2013 is an example of such conflation of political and social contestation (De Vries and Justin 2014).

## 6.2. Competition between centrally and locally appointed state officials

Despite what is stated in the TCSS and in the provisions of the CPA, South Sudan's system of government was at all times largely centralised. One reason for this is the inconsistency between command and accountability structures of deconcentrated and devolved government authorities described earlier. Learning from the past means recognising the possibility that the establishment of new states and other administrative units further increases the risk of different and contradictory interpretations of roles and accountability structures, since a new framework of government needs to be developed, and new state boundaries need to be determined.

The process of determining the boundaries and assigning responsibilities is particularly important for revenue collection and security. Both domains have direct impact on people's lives and would appear, therefore, to fall to local government. Formally, governors and county commissioners are the highest public authority in a given territory. They also share responsibilities with deconcentrated state officials employed by the Ministry of Finance, as a taxation inspector or customs officer, for instance. These deconcentrated state functionaries based in a state or county are under direct orders from the capital and are not accountable to the public in the area where they work. Despite the principle that commissioners and governors are the highest public authority in the area, such officials are unlikely to report to local authorities but tend to go directly to the agency's superiors in Juba.

The highly centralised system of governance, combined with a strong focus on internal and external security, has also resulted in situations in which decentralised authorities, even though officially in charge of security within their territory, are overruled by agencies that are under a different chain of command. Some of the police departments are part of such a deconcentrated command structure, such as the traffic, customs, and immigration departments.

The experience of local government in South Sudan, particularly with regard to revenue collection and security, shows that two causes have contributed to potential conflict between the decentralised and deconcentrated forces. The first one is institutional and has to do with the implicit dominance of the central government authorities over local or state government authorities. This hierarchy

is felt not only by officials working in both strands of government, but also experienced in similar ways by people in their everyday interactions with the state. The divergence between upward and downward accountability that deconcentrated and decentralised officials feel towards their superiors and local citizens only exacerbates this sentiment.

Second – a more elusive yet arguably more important aspect – is the significance of the personal background of officials representing the various strands of government. In the first few years after the signing of the CPA, state officials operating in deconcentrated government departments often had a military background with roots in the SPLA, while devolved state agents, including those in the state and county police, were more often formed in the various systems of civilian governance. Most governors had a military background, while this was less true of lower political positions like county commissioners, especially in the second half of the Interim Period. In a country emerging from a liberation struggle, the importance of a military history – preferably in the SPLA and not one of the other military groups – turned out to be a crucial asset in the implicit hierarchy between state officials operating at different levels of government.<sup>8</sup> This little articulated hierarchy of military life histories shaped the reach of central government into lower levels of authority.

The last issue that is likely to come to the fore is the issue of personal trajectories during the war. This used to be a question that referred to the side former soldiers who became state officials had been on during the war against Khartoum – whether they had ever 'switched sides'. The new war that started in December 2013 sharpened and created fault lines at all levels of the administration, among politicians and in the army. With the power-sharing agreement and – at the time of writing – the subdivision of ten states into 28 smaller ones, there is a possibility that administrative and political positions will be awarded to people who were on the 'good' side during the war. This might impede collaboration and trust between various branches of the (deconcentrated and decentralised) government and line ministries in a given region.

## 6.3. Peace agreements, constitution-making and federalism since 2013

The eruption of civil war in December 2013 raises fundamental questions about its causes. Weak institutions and non-compliance with the (weak) constitution probably played a part, as did attitudes towards systems of governance. During the peace negotiations to end the civil war, the government was reluctant to discuss federalism and convincingly argued that this was a topic for the permanent constitution-making process that will

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7. The term peace dividend is now commonly used to describe benefits of peace, and is how it is used here. Originally the term referred to budgetary shifts from the war effort to financing public services.

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involve the people of South Sudan. The IO argued that as a popular demand federalism should be immediately implemented during the transitional period of peace agreement.

In order to resolve these positions, the mediators successfully suggested recognising federalism as a popular demand in the preamble of the peace agreement and making a federal system one of the principles of the constitution. With the signing of the peace agreement, the popular demand for a federal South Sudan was thus explicitly recognised as the system of government to guide the constitution-making process.

The government's decision to create 28 states has raised questions and confusion. It is unclear whether this is intended to establish a federal or a decentralised system and whether it will realise the vision of the SPLM of 'taking towns to the people'. At the same time, the creation of 28 states, including the subsequent doubts and confirmations, has also provided opportunities for South Sudanese to further discuss federalism. Questions were asked about the policy objectives of federalism, whether the aim was to create unity through territorial federalism or to promote self-rule through ethnic federalism or a combination of both. Were states or counties the appropriate tiers of government? Would boundaries between administrative units be decided by ethnicity, territory or economic viability? How would rural people and people with different backgrounds be consulted on the matter?

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8. For a detailed description of the impact of this hierarchy on the everyday governance of the border, see de Vries 2013.

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# Part 3: Addressing challenges

The debate on and practice of subdivision in South Sudan is unlikely to subside, regardless of whether 28 states will remain or another structure adopted. The number of states is less important than understanding the underlying challenges. This section outlines some of these challenges and points towards ways in which these might be debated. These challenges highlight that no number of states or changes of administrative structure will automatically end violent conflict and establish more peaceful realities. There is a need for a deep consideration of the challenges and how to address them in any administrative arrangement.

## 7. Revenue and services

Governing any number of states requires serious consideration of how to fund subnational governments. Revenue collection became a heated issue linked to administrative powers when in 2012 the central government decided to centralise this as a way to cover the deficit caused by the closure of oil production. As a protest against this move, some state authorities (particularly the three states of Equatoria) reactivated the debate on federalism in 2013, which at the political level was seen as a way to regain control of the revenue collection ‘hijacked’ by the central government. Irrespective of the number of states, without attention to the fiscal architecture in general and revenue assignments in particular, no arrangement will be able to leverage the fiscal structure to support peace.

### 7.1. Paying for government and services: 28 states and revenue

Although there is a tendency to view decentralisation as a purely technical exercise, it is a deeply political endeavour and its fiscal dimensions are arguably at the heart of how power will be redistributed. Thus the current decentralisation debate serves as a unique opportunity to reform the country’s revenue system across all levels of government, but requires a close eye on how this will affect the distribution of political power. While there are also a number of ways to decentralise fiscal institutions, there is no blueprint for how to proceed (Smoke 2013: 13). Decentralisation efforts should be based on how to ‘look for ways to improve capacity and coordination among public stakeholders at different levels of government to increase the efficiency, equity and sustainability of public

spending’ (Charbit 2011: 5). Nonetheless, this debate is likely to be shaped by evolving conflict dynamics.

To date, discussions on the creation and potential implementation of a federal system in South Sudan have largely neglected revenue considerations. This omission is problematic for at least three reasons. First, revenue and expenditure determine how levels of government function and relate to each other. Second, the way revenue is collected, the sources of revenue a government depends on and the decision-making processes regarding public spending, collectively shape how citizens relate to government. Third, fiscal systems can play an integral role in implementing peace processes.

In more recent years, oil revenues and international humanitarian and development assistance have been important in supporting government budgets and the provision of essential public services. This has allowed the fiscal considerations that usually form part of decentralisation decisions to be somewhat bypassed. This is not to say that no direct taxes were introduced or collected, as is often assumed, but that their contribution to overall revenue was negligible.

South Sudan’s relationship with international aid began in the 1980s as war was waged against the Khartoum regime and oil dominated Khartoum’s finances by the late 1990s. At a smaller, but still vital, scale, records show that during the civil wars between the Khartoum government and the south, the SPLA collected taxes from the local population. The SPLA’s collection of such taxes might have in part replicated colonial governance patterns, as they included cash and in-kind items, such as food or housing (Johnson 2003; Rolandsen 2005).

The legacy of each of these successive state-building attempts informs South Sudan’s current, at times overlapping, revenue system. For example, both state and the national government have the right to levy taxes according to Part 12, Chapter 4 of the Transitional Constitution, while the Tax Act and the LGA detail separate national and state-level taxation privileges. These legislative ambiguities contribute to on-going disputes between the Ministry of Finance and state ministries of finance. These conflicts especially affect oil-producing states, as well as those that host trade routes, such as the former Eastern and Central Equatoria.

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Traders importing goods from neighbouring countries are also affected. They complain of being illicitly taxed at multiple points, which in turn increases the cost of living in certain parts of the country as most goods come from other parts of East Africa. Disputes over the distribution of finances have also long simmered in South Sudan. For example, conflicts over how oil revenues should be redistributed among Sudan's different regions, including what is now South Sudan, arguably contributed to the vote for independence in 2011 and debates continue today. There have also been longstanding disputes over the intergovernmental fiscal transfer system, with disagreements regarding how block and conditional transfers are made from the central to state governments.

Given its longstanding problem with generating revenue, South Sudan government's current dependence on oil and aid revenue makes sense, although it is still a pressing concern due to the volatility that oil dependence creates in revenue. Furthermore, research on different types of revenue sources and the quality of governance suggests that governments that depend on certain types of aid and oil windfalls might be less capable, accountable and responsive to citizens' demands (Clist 2014; Bornhurst, Gupta and Thornton 2008). Though the relationship between taxation and the quality of governance is complex, the theory suggests that governments that depend on revenues generated from domestic sources rather than from extractives, have stronger incentives to respond to taxpayers' demands, and therefore realise more of the assumed benefits of decentralised governance (Moore 2015).

With all this in mind, efforts to develop other revenue sources, and especially direct tax revenue, must not be neglected. It is therefore troubling that rather than direct taxation, customs revenue constitutes most of the country's non-oil and non-aid revenue. Despite this, contrary to popular opinion, and despite South Sudan's overwhelming reliance on non-tax revenue, there are accounts of some authorities, including soldiers, collecting informal taxes from local communities and traders (Schomerus and Titeca 2012). Some local chiefs, or other types of traditional authority continue to raise revenue from their communities in the form of financial and in-kind taxes. While such efforts have led to conflict over which authority has the right to generate local revenues, both of these patterns arguably reflect the region's history of colonial rule and civil war.

Any fiscal decentralisation in South Sudan will need to address the country's unique political, economic and social factors. These include longstanding difficulties in generating taxes, dependence on oil and aid revenue, and uncertainties regarding how finances should be collected and shared among different levels of government. In addition to respecting longstanding governance patterns, several lessons can be drawn from decentralisation efforts

in other countries. There are at least three ways in which the discussion might usefully take shape:

- 1. Revenue and expenditure inform how levels of government function and relate to each other.**

Much of the existing mistrust between the Ministry of Finance and state ministries of finance is caused by ambiguous roles set out in the Transitional Constitution, the Local Governance Act and the Tax Act. As these are largely matters for central government, there is a need for high-level coordinating institutions to establish clearer processes for how finances should be distributed. Ideally, central government officials will lead in providing political support for changes in consultation with representatives from the states. But rather than introduce a new process, these discussions could possibly be incorporated into the existing Intergovernmental Fiscal Relations Working Group (IFRWG), which already has some experience with these issues. The IFRWG's key roles could be to improve coordination across different levels of government and advise local and central governments. Although the IFRWG was originally limited to the finance ministers from the existing ten states, it could be extended to include inputs from prospective ministers of finance from all 28 proposed states.

To mitigate disputes regarding how oil revenues should be equitably, sustainably and reliably distributed to states, the IFRWG might also continue discussions on the intergovernmental fiscal transfer system. This is an especially pressing concern, given the continued likelihood that states will need to rely on transfers from the central government to cover shortfalls in their ability to generate tax revenue. The present transfer system risks centralising political power in the national government, since information about the volume of revenue generated in the country, particularly from oil, is politicised and often opaque. The formula for calculating the redistribution of revenues from the central government to states, and from states to the central Ministry of Finance, is also disputed. States also complain of frequent delays in conditional and unconditional transfers, which in turn erode their efforts to function and administer local public services.

- 2. The form of revenue collection and decision-making on redistribution shape citizen–state relations.**

How a government decides to collect and spend revenue affects how people relate to it. In addition to efforts to improve the availability of information on intergovernmental fiscal transfers, there is a need to improve the transparency of oil revenues. This might be achieved by resuming stalled efforts to implement existing legislation on the management of oil revenues, which many consider to meet international best practice (Deng 2015). It might also include furthering conversations to join an external oversight initiative such as the Extractive Industries Transparency Initiative (EITI).

While an EITI is a largely top-down process to increase the transparency of oil finances, there is also scope for



bottom-up processes that involve citizens in the oversight of oil revenues. This could potentially be achieved through the creation of an 'oil-to-cash' scheme as proposed by the Center for Global Development. This initiative would complement an EITI and involves distributing oil revenues directly to citizens through cash transfers (Moss 2011). In a country with more than 10 million citizens spread out over a comparatively large territory, where census data is political and of low quality, this would inevitably be a complex process. But at the very least, discussions regarding such an initiative might be worthwhile, perhaps through the IFRWG.

A further issue is that, while international humanitarian and development assistance are critically needed in South Sudan, their provision should not be at the cost of neglecting the mobilisation of domestic tax revenues. It is still wrongly assumed, particularly in the international community, that South Sudan is 'starting from scratch' and that the country collects no local taxes. So while diplomatic efforts are critically focused on the peace process, there is a need to pay more attention to aid programmes to support the development of South Sudan's revenue system. This has been done in other contexts: In Rwanda, for example, the UK Department for International Development focused on strengthening the revenue systems also as a way to foster independence from aid. Beyond efforts focused on its fiscal system, donors might contribute to participatory budgeting initiatives, such as donor-funded Constituency Development Funds (CDFs), which enable communities to decide whether and how a portion of funds is spent. Further, although donors are increasingly reluctant to channel funds through state institutions, especially at the local level, there is also scope to continue discussions on relevant initiatives, such as the Local Service Support to Aid Instrument (LSSAI), in which some donor funds go through the ministries of finance provided they meet performance targets.

There are also lingering considerations as to whether and how states can generate tax revenues. In many developing countries, and particularly other sub-Saharan African states, property taxes, business licenses and market fees are the main sources of local revenue (Joshi, Prichard and Heady 2014). These are also collected in South Sudan, but as noted earlier, there remains confusion, rooted in history, over which type of authority has the right to collect them.

One way to overcome this is by assessing and potentially simplifying revenue-collection processes and fee structures. This is unlikely to be a straightforward process in South Sudan because, as discussed, of unresolved disputes over land ownership in towns and in rural areas. Thus subnational revenue tax-collection efforts might need to take into account how to link such initiatives with land commissions and local justice authorities. Efforts to simplify revenue-collection procedures should also be

harmonised across central and local governments to put an end to multiple taxation points.

There are many ways to collect local taxes and there is no consensus on whether one method is better than another. For example, in other countries in the region, such as Tanzania, local taxes are collected by a several types of contracted authorities such as the central government or semi-private agents such as market cooperatives (Fjeldstad, Katera and Ngalewa 2009). South Sudan might wish to explore or experiment with different approaches to revenue generation. This might be especially important given the country's diversity. For instance, some groups, such as pastoralists, might respond differently to certain tax-collection agents or methods than would other types of community, such as those that rely on agriculture. Approaches might also differ in rural and urban areas. With all of this in mind, and given differences in local government capacity, various approaches might need to be adapted or piloted.

### **3. Fiscal systems can play an integral role in embedding the peace process.**

Fiscal decentralisation initiatives in South Sudan might also play a vital role in embedding peace processes and preventing conflict. This is despite the danger that creating more states risks exasperating existing tensions between and within different tribal or ethnic groups.

One way to potentially mitigate conflict within and among states in South Sudan is to ensure that revenues are accurate and transparent to communities across states and counties nationwide. Given states' historic difficulty in raising taxes, most are likely to remain dependent on transfers from the central government. Of the states that can generate revenue, much of it comes from trade routes from neighbouring countries. The central government might need to monitor this imbalance, ideally through a forum such as the IFRWG, although similar state-level working groups or forums might also be necessary. Ensuring that information on the volume of revenues the central government transfers to states, and vice versa, is accurate and routinely available might also help to dispel concerns that the central government favours any groups.

This in turn increases the importance for each state to generate accurate information about its revenues. At present it is very likely that some states are better equipped to produce robust revenue data than others. For example, states with international borders such as the former Eastern Equatoria and Northern Bahr el-Ghazal are likely to have stronger and more experienced civil service capacity in their state revenue authorities than those with only internal borders. Fiscal decentralisation initiatives might therefore also include nationwide efforts to train revenue officials and establish a clear framework for making state and county budgets available to the public.

Finally, fiscal decentralisation efforts might embed the peace and strengthen links between citizens and the government by ensuring the local provision of public

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services and closer connections between citizens and government authorities. This might be partly tied to the ways in which officials are elected and accountable to citizens, particularly at the local level. It could also be grounded in a clear delineation of roles between elected officials and state-appointed civil servants who are responsible for executing budgets (Smoke 2013: 15). Both of these vital considerations are worth considering and harmonising within and across states.

Another way to potentially strengthen ties between local governments and citizens is by organising bottom-up forums that increase citizens' participation in local government decision-making. This includes participatory budgeting initiatives such as the CDFs mentioned earlier and which have already been used in some parts of South Sudan, and much like donor-led CDFs enable communities to vote on how a portion of public funds should be spent. These are highly technical mechanisms and their application might vary according to local politics. Moreover, the evidence on whether they do in fact strengthen ties between government and citizens is inconclusive. For example, there is a risk that they might be dominated or 'captured' by elites rather than representing wider interests. With these possibilities in mind, user committees might be considered at the state level (Manor 2004).

## 8. Service delivery

The announcement of the further subdivision of South Sudan has introduced new elements to the debate on service delivery. Proponents of 28 or more states argue that the move has brought the government closer to the people. It is hoped that this will facilitate the provision of public services and the ARCSS is providing an opportunity to rethink the division of tasks and power between the tiers of government in order to best ensure service provision and the growth of local institutions.

The failure of state institutions to provide services in South Sudan is well documented. It is less obvious why exactly these institutions failed to fulfil their mandate. The dominant thinking blames the poor delivery of services on three main factors: the nascence of the state institutions, the inadequacy of fiscal transfers to lower tiers of government, and the lack of capacity among South Sudan's public servants, institutions and organisations. This assumption implies that with time, increased fiscal transfers to the lower units of administration, and massive capacity-building programmes, state institutions in South Sudan will be able to perform and deliver. This gives rise to the thinking that donors might assume responsibility for providing public services through projects managed by foreigners until such fiscal transfers and capacity building happen.

There are also challenges in providing services that arise from how authority is spread across tiers of government.

It is useful to consider options for how authority may be better allocated in order to improve the provision of public services. One possibility is that authority could be devolved to allow greater decision-making powers over budgets and staffing. The more skilled more local authorities become, the better they might be able to provide public services. It is through performance that institutions build capabilities and meet their responsibilities.

The provision of public services in South Sudan has been dependent on so-called conditional grants. As discussed earlier, oil has been the main source of revenue for the central government, which transfers a portion of this revenue to state governments through block and conditional grants. State governments use the block grants to finance their own priorities while the conditional grants are used to finance priorities set by the central government. Due to the limited capacity of the state governments to generate their own revenues, they depend on block grants to pay for the salaries and running costs of the state and local governments. This leaves the provision of public services entirely dependent on the conditional grants.

Conditional grants cover the salaries of police officers, teachers, health workers, and agricultural extension officers among others. Donors have so far covered most of other non-salary costs of providing social services. The central government determines the priorities and makes plans that inform the national budget with little involvement of the state and local governments. The state governments employ staff and the counties (working with *payams* and *bomas*) supervise them. While money is transferred by the central government to the states and lower tiers of governments in the form of block and conditional grants, local supervision of public service employees has been largely non-existent. Absenteeism and poor performance have been major problems since the counties and local administrative units lack the necessary supervisory tools – they do not control the finances and do not have the power to recruit and dismiss staff. As such, service delivery has been limited, and local and national institutions have been unable to build capacities.

The approach assumes that capacity improves along a linear path. It ignores that there is also always a dynamic interaction between performance and the development of capabilities. By mimicking the 'form' of institutions that exist elsewhere, South Sudan has become a poorer version of the models it has copied. The ministries of health, education, agriculture, law enforcement – at both the national and state levels – do not perform all of the functions of such ministries. They look like ministries, but do not function in the ways ministries are assumed to function, in the so-called isomorphic mimicry of institutions. Institutions that look like institutions but do not function like them have placed South Sudan on the path of 'capability traps', meaning that state institutions do not have the capability either to fulfil their functions or to build the capabilities needed (see Pritchett, Woolcock and

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Andrews 2012, 2010). The reality is that capabilities build on existing capabilities (Larson, Biar Ajak and Pritchett 2013), which means that performance and capabilities are inherently linked.

### **8.1. Service delivery under a new peace settlement**

Regardless of the current state of political affairs in South Sudan, the ARCSS provides an opportunity to revisit the country's structures of governance with a view to facilitating the provision of public services and to rethink the structure of the state institutions. The ARCSS also offers the chance to rethink the division of authority across tiers of government, and to make an honest assessment of the capability of each tier. Such an exercise is also crucial to developing functional institutions of governance in the country.

In the past, the central government assumed the planning role without necessarily taking into account local priorities. South Sudan's diversity also means that needs are not uniform and that conditional transfers are not necessarily the best approach for everything. In more remote areas, state governments have been unable to deploy and supervise personnel, meaning that local administrators often participated little in the governing process.

So a renewed consideration of the function each tier of government is useful, if it is done with an eye to identifying which government unit can best meet a particular function. For instance, local governments are best placed to understand local priorities and capabilities in their areas and how these can be expanded to handle complex tasks. For this expansion to work, local authorities need to have planning responsibility and authority, including for employing and dismissing personnel.

The new, more numerous state governments may be best suited for ensuring quality control and for working with county-level governments in helping them to meet their local priorities within the overall policy of the state. The national government could articulate the overall vision of the country and ensure quality of services nationwide, and provide fiscal equalisation across various government tiers. This would allow the national government to focus on forging national unity and identity while leaving the direct provision of services to county governments. Its role would be to ensure the quality of public services and develop policies that enhance service delivery. This would allow the functionaries at each tier of government to perform tasks that best match their supervisory capacity. All of these scenarios would depend on the political will to devolve power and responsibilities from the centre to the state level, and from the state to local government. Without this, it is unlikely that further administrative division will lead to improvements in the provision of public services.

## **9. Security**

Security is another service to be addressed. In the past, the government has attempted to ensure security by creating administrative boundaries, divisions and decentralisation. This has been problematic, as discussed above.

Security continues to be a central concern for the South Sudanese public, the government, and the international community, for whom the physical security of persons and property are a priority. Successive constitutions in South Sudan have asserted security as a primary responsibility of the national government (for example, Transitional Constitution of South Sudan 2011, Part 4 53.1.a). Government security arrangements in South Sudan have been shaped not only by national politics and decisions, but also by internationally supported peace agreements including the CPA, the 2006 Juba Declaration and now the ARCSS.

Security provisions have often been highly politicised sticking points in reaching such agreements (LeRiche 2015). The exclusion of military groups from the peace agreements has served to make them feel less secure under the new arrangements and more willing to fight to protect themselves (Young 2012). The wartime experience of the 1980s and 1990s created a range of armed groups in South Sudan, and the CPA demanded that they either be absorbed into the Southern government forces or disarmed (or join the then Joint Integrated Units with the northern army). The SPLA and other government forces became the sole, apparently legitimate, security providers across all of South Sudan – a massive departure from the reality of security arrangements at the time. Many South Sudanese had spent the last two decades fighting the SPLA, which now had legal power to control them. The violence in South Sudan since December 2013 can be traced to the exclusion of some armed groups ten years before at the CPA.

Security is not only an end in itself, but also a necessary condition for the provision of services. For example, many NGOs will not work in an area unless there is a basic level of security. State and local governments often describe their role in service delivery as creating an environment of adequate security for NGOs. In addition, the lack of security also makes it much harder for government officials to function if they cannot travel to more remote areas of their administrative units.

How security is envisaged and what needs to happen to create these visions of security varies significantly. In addition to being a desired end, security practices are also often about building authority (Schomerus and De Vries 2014). The South Sudanese government has, since its creation in 2005, focused on its own security. Since 2005, the SPLA has fought with Sudan and various southern opposition forces including the Cobra Faction and the groups that have their historical roots in the South Sudan Defence Forces of the 1990s. South Sudanese have often been caught up in these government-sponsored wars.

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In this context of its own insecurity, the government has invested less time, political might or personnel in untangling intercommunity conflicts and protecting citizens' security. Government leaders in Juba have even been accused of fuelling much of this violence to promote their own interests. The government has also sometimes failed to give priority to securing national borders (Schomerus and De Vries 2014), although certain areas like Heglig have been protected at a cost.

South Sudanese citizens have made use of a range of security providers to push back against violence and build a sense of security. These security providers include state security mechanisms, but also private security firms and local, community-linked defence forces.

### 9.1. Government provision of security

Since the Anglo-Egyptian government, the provision of security has been linked to state administrative units. The Anglo-Egyptian government brought conflicting neighbouring communities under a common administration as a way to resolve conflict and increase security, as discussed above. A common, strong central authority was assumed to be capable of resolving tensions and enforcing a non-violent settlement. The government often also attempted to create a common substantive customary law within these boundaries in order to ease the resolution of conflict and the provision of security.

The introduction of the ten states of South Sudan did not appear to share this motivation. Rather, since 2005, the government appears to have drawn administrative boundaries (at county and state level) to keep apart conflicting communities. This makes it potentially more complicated for state governments to coordinate security across state boundaries, even when states share common security concerns. Since the CPA, there have been examples of violence across state boundaries that have been particularly difficult to settle. For example, there was frequently large-scale raiding between Unity and Warrap State. Across these state boundaries, there was no routine or accessible means of peaceful judicial redress and less political will for peace-building. Conflicts thus became more violent and people enacted private forms of justice. Even within state boundaries and under a common state administration, the government has often failed to provide security. The violence in Lakes State and in Jonglei State since 2011 is a good example.

Might the further fragmentation of administrative boundaries complicate government security provision? Will the additional state boundaries between communities make it more difficult to coordinate security and control violence over these lines? Does this assume there is a strong central government capable of enforcing security? If this weakens government security, and if the government is responsible

for committing some of the worst offences against South Sudanese citizens, could this increase their experience of security in their daily lives? Will decentralisation keep conflicting communities apart? Will it place people at a safer distance from government?

In attempts to both increase its own security and also move towards a government monopoly on the use of violence, after 2005 the government carried out a series of disarmament campaigns among non-state actors on a state-by-state basis and sometimes through administrative structures. Community-level concerns about having to rely only on government security prompted some communities to violently oppose disarmament. They feared being unarmed in the context of security threats from neighbours and the government. The use of government violence to disarm them only further increased people's perceived need to have other, non-government security providers (Saferworld 2012; Rands and LeRiche 2012; Young 2010). How will fragmentation affect such efforts to construct the government's monopoly on the use of violence?

In the CPA, the government security forces were limited to the army (i.e. the SPLA), police, prisons and wildlife forces.<sup>9</sup> The state level was important in these provisions. The SPLA is not organised by states, but has its own territorial identities and administrative areas, although many SPLA divisions have been based close to state capitals. Recruitment for the SPLA also took place on a state-by-state basis during the war in Heglig and in the current civil conflict, in addition to which soldiers have used their service in the SPLA to invest in their homes and families (Leonardi 2007). Since the CPA, many have moved (often without explicit permission) to join army units nearer to home. Will ideas of family and belonging play a key part in how these security forces operate in practice? How will this change with the fragmentation of the states and the creation of new identities?

The state is important for certain parts of government security provision. International donors have contributed resources and support for capacity-building programmes for state security services. The police service is described by the 2011 TCSS as a 'decentralised' service organised at the national and state levels, but has in reality been a deconcentrated force (Chapter II: 155). The 2011 constitution shifted authority for security towards the centre, which undermined the state governors' role in security provision. Nonetheless, many South Sudanese still held their state governor (and county commissioner) responsible for their personal experience of security. For this reason, the governors often coordinate security in their state and make alternative provisions if local perceptions are that the forces provided by Juba are inadequate. Commissioners have also been physically chased from their counties when they did not uphold security. State

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9. Comprehensive Peace Agreement 2005: 100. The status of the National Intelligence and Security Service was undetermined.

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governors have to date been too far removed in distance and politically to face this level of accountability. Will this change with more states and closer state capitals? Will governors become more approachable? What new security provisions will governors establish (with or without the permission of central government) for their state?

UNMISS has also organised its provision of peacekeepers on a state-by-state basis. Will it provide peacekeepers and protection of civilians in each of the new states of South Sudan? Is this part of the South Sudanese expectation in making smaller states? What would be the impact on what UNMISS can achieve if it remains unchanged or changes to reflect the new state arrangements? What new confusion, plurality and ambiguity will this bring? How will South Sudanese people respond if UNMISS does not have a presence in every new state?

## 9.2. Private / community provision of security

In practice, most South Sudanese rely on local security arrangements and trust local, community-linked, armed groups for defence and protection. These defence forces may be linked to relatively small community groups, such as the families of a cattle camp. Alternatively, they may have been reconfigured through association with a larger political response to government, such as the White Army or Arrow Boys (Rigterink, Kenyi and Schomerus 2014; Young 2007).

The configurations of these community defence forces have evolved, responding to perceived security threats as well as ideas of identity. We know that, after the proliferation of counties in 2005, local security groupings also evolved (Pendle 2015). It will be important to understand how the fragmentation of administrative units is likely to change the configuration of local security arrangements. In some areas, local leaders such as chiefs and spiritual leaders have been figures of authority over these community defence forces. These local authorities have been able to coordinate violence, but have also enforced norms of restraint in combat (Hutchinson and Pendle 2015). They have also shown their ability to provide peaceful security alternatives through dialogue and judicial redress (Hutchinson 2009). If state fragmentation brings government security provision closer to the ground, what space is left for local leaders to construct their own visions of security? Will these local leaders still have influence over the existing defence forces?

While these forces are linked to the community, they are not detached from the sphere of local government. Many local defence forces often have a working relationship with the local and/or state government. The local political authority benefits from their provision of security. In return, some local authorities provide resources, arms or information. In other cases, some local defence forces act as an explicit alternative to local government security provision, and challenge the local government's ability

to provide this service. The further fragmentation of administrative units in South Sudan will change local politics and the spheres of local government to which these defence forces relate. It is unknown what impact this might have on these local defence forces and community-linked security provision.

Although these armed defence groups appear to be decentralised forms of security, many also have close links to the central government and government elites. Politicians often foster deconcentrated patronage relationships so that local armed men can both offer them personal support but also protect their herds or land. Therefore, while security arrangements often already appear to be decentralised and developed at the most local level, national politico-military leaders often still play an active role in their formation and activity. It will be important to consider how the new administrative units might change this deconcentrated relationship of security provision.

## 9.3. Opportunities and challenges for security

The current situation of change has the potential for international, government and central visions of security to become more aligned with local understandings. This is especially the case if decentralisation and an increase in state-level administrative units forces a more accountable and responsive state-level government. Additional states could make governors more accessible to the people and create opportunities for greater accountability, including for security provision.

The subdivision into 28 states also adds ambiguity to how security should be imagined and provided. There may be a further divergence of ideas and fears that security will not be realised, which may encourage individuals, communities and the government to further expand the number of security providers, and turn to increasingly extreme means to guarantee security. Both the government and private/community actors have the potential to assert their control over security through militarised might and brutal violence. In a context of uncertainty arising from decentralisation, security providers might pre-emptively display such violence.

Policy work on security in South Sudan has often started with models borrowed from elsewhere that are not rooted in the daily lives of South Sudanese. In these models, it is generally assumed that the government provides security and is not itself a security threat. Thus these models take no account of the complex networks of relationships and sources of security in South Sudan. Local security arrangements and their link to the centre through relationships and private conversations are often invisible to outside observers. The implications of South Sudan's subdivision for security are unclear, but it is important that the broader structure of security forces (including private and community forces) is taken into account. We need to

better understand how security is happening in practice in South Sudan, and then observe how it is changing.

## 10. Humanitarian aid

Any major political change occurring in the context of the current conflict in South Sudan will have significant humanitarian implications. How the situation will unfold is largely unknown (although Ethiopia had a similar experience in its post-conflict phase), making it difficult to predict the types and scale of these implications. This is perhaps the first important consequence of the change: the uncertainty of how it will be implemented and what it means for humanitarian assistance brings confusion that will hamper the ability of aid agencies to respond to needs.

Based on what has been learned from the current and past conflicts in South Sudan, two types of humanitarian consequences may arise from creating more states:

1. **Increased humanitarian needs:** A possible consequence is an increase in violence, with more localised conflict dynamics that will create human suffering and displacement.
2. **Increased operational challenges:** The creation of more states will have an impact on the ability of humanitarian organisations to provide assistance to people in need.

Since there is little experience of undertaking a drastic administrative subdivision in the midst of conflict, we need to consider what are the most important questions from the perspective of providing humanitarian aid.

### 10.1. Increase in humanitarian needs

The increase in humanitarian needs may result either from people's decision to move from one state to another, creating a large-scale population movement, or from an increase in violence. Humanitarian organisations need to consider both scenarios based on an analysis of the potential impact of new state boundaries and creation of new ethnic minorities in particular areas as well as conflict dynamics. Will people move because of how the boundaries of states are drawn and the ethnic composition of that state? Will the lack of political consensus on the states lead to further violence?

Further violence will have a direct impact on the level of humanitarian needs. Violence has in the past led to mass internal displacement in South Sudan and will do so again. Violence may also take new forms: more localised dynamics, fragmentation of groups according to local interest and power dynamics. This could lead to not one, but dozens of localised civil wars with local armed actors operating under unclear and changing command and control. This may make violence more sporadic and increase violations of international humanitarian law (IHL). It would also make humanitarian engagement with armed actors – to negotiate access or to mitigate violations of IHL – more complex.

In South Sudan, population movement has been instrumentalised in the past to direct humanitarian resources into certain areas. Humanitarian organisations need to be aware of this in the coming months as states may use large-scale displacement as way to obtain much-needed resources.

### 10.2. Challenges to humanitarian assistance

A further administrative subdivision may make it harder to provide humanitarian assistance, whether because of increased bureaucratic and logistical obstacles, higher formal and informal taxation, more negotiations on access based on new contextual and conflict analysis, or more fragmented decision-making processes. All of these would affect the costs and efficiency of interventions.

At present, most international humanitarian organisations have offices in state capitals allowing them to work in that state. It may no longer be feasible to operate from the existing hubs. Sub-offices may be challenged by political sensitivities of new state authorities that make it difficult to have humanitarian agencies effectively operating under the jurisdiction of a different state. Humanitarian organisations will have to consider their own decentralisation: will they set up sub-offices in every state, whether 21, 28 or more? Will they set up warehouse and logistics hubs in every state? Moreover, the creation of new states may increase expectations of decentralised services. Will humanitarian agencies be expected to provide support to new states in building extra health centres, schools, hospitals and water points?

The creation of new states also means that humanitarian convoys will have to cross more state borders, adding possible delays, more negotiations with state authorities, and possibly greater costs in official and informal taxation. The time and effort needed to obtain authorisation for transporting aid items and implementing humanitarian programmes will increase with the involvement of more stakeholders. As the new states will need resources to set up, there is a risk that they assume these will come from humanitarian aid. Pressure on humanitarian organisations to take on more traditional development tasks involving to 'build the capacity' of local governments by equipping them with offices and other means could also increase as the current proposal to create new states has no funding attached to it.

These challenges are increased because new state structures and interlocutors will not necessarily be in place to facilitate humanitarian assistance, thus there may be a need to establish new ways of negotiating. To deal with the new administrative system, it is likely that humanitarian agencies will need to undertake more contextual and conflict analysis to identify the conflict sensitivities and implications of the impartiality, neutrality and independence of humanitarian action.

To complicate matters still further, the relationship between the centre and the new states is as yet unclear.

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Humanitarian organisations may be torn between decisions at the central level and state level. It may become harder to make a comprehensive humanitarian response in South Sudan in the context of a more fragmented institutional landscape of governance.

The bureaucratic and logistical constraints alongside potential increases in taxation and more investment in contextual and conflict analysis and access negotiations will have significant cost implications for humanitarian organisations working in South Sudan in the coming months. Honest conversations with the government and donors will be required to manage any increased costs.

Currently, humanitarian organisations are in a wait-and-see mode. Old structures have been dismantled but new functioning structures are not yet in place. This makes it difficult for humanitarian organisations to know who their interlocutors are. Clarity from the government would help humanitarian organisations plan for the changes. Will the changes be phased in or take immediate effect? The confusion in itself will be costly for humanitarian organisations.

In the meantime, humanitarian organisations need to invest time and effort in understanding the many changing and complex power dynamics that the creation of the new states will imply for their operations. This is necessary in order to design conflict-sensitive interventions, maintain adherence to humanitarian principles, mitigate any potential political manipulation of aid or at least be aware of what and how this might play out. Donors need to understand the costs and operational implications of the creation of further states and support humanitarian organisations in responding to the reality on the ground rather than focusing on whether the change is politically acceptable. This might also require substantial rethinking of international engagement in South Sudan.

## 11. International engagement in conflict resolution

South Sudan has been a focal country for international engagement for the past decades. This engagement has included emergency humanitarian aid, state-building attempts, development aid, reform of the security sector, and democratisation. Since the fighting started in December 2013, international actors have been explicit in condemning all the violence carried out by the warring parties in South Sudan (for example, The White House 2014). The civil war has also thrown up many questions about the future of continued international engagement and about failures or misconceptions of the past.

The international community (including the governments of China, Norway, the UK and the USA) has given priority to its own vision of development, democratisation, security and stability in South Sudan. Promoting security was often considered synonymous with ending conflict in the country. Until December 2013,

most international actors imagined that security, stability and development could be built by strengthening the state. Ensuring the protection of the government was also a concern.

The experience of war has prompted international actors to be more nuanced in their understanding of the role of the government in protecting the people of South Sudan. For the international community, the war itself is the main security threat and human security is now the focus. International reports and statements made since December 2013 have been careful to attribute blame to both warring parties. It is the violence itself that is illegitimate and neither party appears to be more or less culpable. The enemy and threat to security is the war itself, not the South Sudan government or the SPLM/A-iO. Recent events, particularly since July 2016, have also put into sharp focus the perception within the SPLA that the United Nations (UN) and the USA in particular are biased towards the opposition, so the provision of aid needs to be particularly sensitive to the damage caused by such perceptions and developing narratives.

This situation raises some crucial questions for international actors. What can they learn about how their previous engagement as they consider the recent violent developments in South Sudan? Can international actors engage constructively in the newly subdivided South Sudan?

Until the fighting resumed in December 2013, the belief that only development could bring peace, stability and prosperity to South Sudan continued to dominate the aid paradigm, despite a 2010 multi-donor evaluation that pointed to the lack of evidence for this assumed causality. According to the evaluation, power relations, drivers of conflict and causes of vulnerability were poorly understood and a nuanced analysis largely missing from the design and implementation of the most aid programmes (Bennett et al. 2010).

One important element in this was the failure to address local violence. During the CPA interim period, more people died in South Sudan than in Darfur, mostly due to different kinds of local conflicts. As outlined earlier, South Sudan has both 'devolved' and 'deconcentrated' conflicts and it is thus important to approach them with an understanding of whether they are driven locally (devolved) or through extended power from the centre (deconcentrated).

Conflict patterns in South Sudan reflect local and regional peculiarities. Inter- and intra-community fighting has and continues to be a key source of violence and insecurity. Local conflicts have also increasingly become part of complex interconnected conflict systems. Local militias ally themselves with regional and national actors; local agendas provide the latter with local allies who are crucial in maintaining military control, continuing resource exploitation, or persecuting political and ethnic enemies.

The challenge to peace-builders is to take the complexity of conflict patterns into account, not by perceiving local

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conflict dynamics as a mere manifestation of macro-political cleavages, but as being motivated by both top-down causes (regional or national) and bottom-up agendas. An approach to peace-building needs to address multiple arenas and sources of conflict in a much more integrated way than has been the case so far. This is a tall order.

Writing on the Democratic Republic of the Congo (DRC), Autesserre has claimed that the most powerful peace-builders – diplomats, donors and international organisations such as UN and the World Bank – largely ignored the fact that much of the violence in the DRC was motivated by longstanding bottom-up agendas, whose main instigators were villagers, chiefs, or ethnic leaders (Autesserre 2009: 60). Even issues usually presented as regional or national questions had significant local components which fuelled and reinforced the regional and national dimensions. Addressing local issues was key to ending violence in the DRC, but diplomats and UN agencies almost never got involved in resolving local conflict. The main reason, she argues, is that the peace-building discourse, or what she terms the ‘postconflict peacebuilding frame’, shaped the international understanding of violence and intervention in such a way that only macro-political cleavages were addressed. Thus, international actors saw holding elections, as opposed to local conflict resolution, as an appropriate and effective tool for state- and peace-building, and they believed that local violence was innate and therefore acceptable even in peacetime. The ‘frame’ authorised and justified specific practices and policies while precluding others, ‘ultimately dooming the peacebuilding efforts’ (Autesserre 2009: 249).

Peace-building in South Sudan presents some interesting parallels. As in the DRC, for a long time the international engagement focused on the macro-political cleavages between the Khartoum regime and the SPLM, mainly concerning the implementation of the CPA. This implied, among other things, giving priority to elections that were seen as an important step towards political reform and sustainable peace. In this perspective, local conflict was regarded as an ‘inconvenience’ which needed working around rather than embracing a proactive and more holistic engagement and commitment to enhancing security for vulnerable local populations (Pantuliano, Buchanan-Smith and Murphy 2008).

Occurrences of violence were commonly assumed to be ‘tribal’ or related to cattle rustling rather than symptomatic of more structural problems entwined with toxic national politics. Thus, according to a study of reintegration of internally displaced persons (IDPs) and refugees returning to Jonglei State, the structure and process of local conflicts and instability were poorly understood and ‘one-dimensional negative images of pervasive chaos’ dissuaded actors to fully engage with the fundamental issues (Pantuliano, Buchanan-Smith and Murphy 2008: 76).

Among donors, there was a longstanding tendency to blame Khartoum for everything bad, and for cynically exploiting internal divisions in South Sudan. There was also a lack of a joint diplomatic and developmental approach, including a failure to design aid programmes that could help to mitigate rather than exacerbate conflict. Support for state-building was mostly focused on vertical activities, to the neglect of more horizontal nation-building programmes that might have entrenched peace at the community level.

As Jok Madut Jok has argued, a peace agreement reached on the basis of power-sharing alone is most unlikely to lead to genuine peace in South Sudan, ‘especially if it does not have a conception about how to repair the social, ethnic and regional fractures that have been caused by nearly 30 years of conflict among and between communities’ (Jok 2015: 1). A political settlement between elites could bring an end to the fighting between the SPLA and forces belonging to SPLM-iO, but this will not necessarily stop the fighting between opposed communities whose relations have been shattered by decades of conflict.

While real politics in South Sudan have largely seen elite bargains as the only way to make progress towards peace, the present conflict goes far beyond a struggle between rival elites. In some areas, it has devolved into blood feuds and serious ethnic strife. In order to restrain violence, and promote peace and communal reconciliation, it will be necessary to support local efforts. As Hutchinson and Pendle (2015) have shown, writing about two Nuer prophets, there remain local enclaves of civilian security that could lead to a tangible peace in the daily lives of more South Sudanese, but it depends on changing current perspectives in the international community that tend to ignore local, seemingly non-political, actors and so overlook and narrow the range of possible solutions. Despite being key regional peacemakers, people like the two Nuer prophets are often invisible to the international community.

The decision to create more states will add new complexities, re-configure local conflicts and change local politics in South Sudan. It is unlikely that the international community will be able to fully address this complexity, but it is essential to take it into account in designing aid programmes as well as other types of intervention. To argue in favour of more emphasis on local-level efforts and for rebuilding state–society relations through bottom-up processes rather than relying too much on a top-down approach does not mean that it would be advisable to try to deal with each and every micro-conflict in South Sudan. Local peace initiatives have been happening in different parts of the country, and while they deserve more support than they usually receive, external forces, including the government, are undermining many such initiatives. In some cases, there might even be a risk that support for local peace-building may lead to further fragmentation,



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at the expense of support for building national (including judicial) institutions. In South Sudan, loyalties may be bought and sold in volatile client systems, which often makes local interventions unsustainable unless they are linked to macro-political processes. The point to remember is that macro-level processes do not necessarily determine developments at lower levels, and that it is essential to base possible interventions on a micro–macro analysis.

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# Part 4: Comparisons and conclusion

## 12. Comparative perspectives

Most African governments introduced provisions for decentralisation in the early 1990s, as a part of the third wave of democratisation (Dickovick and Wunsch 2014). In the past 15 years, all constitutional reform or new power-sharing pacts in Africa, including in Somalia and South Sudan, have included decentralisation in some form. The ways in which states implement the constitutional provisions for decentralisation vary: some abandon local government structures altogether while others regularly hold local polls and local government structures are empowered both politically and financially. Ethiopia, South Sudan's eastern neighbour, is often cited as having successfully implemented decentralisation and federalisation and is frequently regarded as a possible model for South Sudan. While Ethiopia's model cannot simply be exported, it is still possible to draw lessons from its subdivision process that may be relevant for South Sudan.

Article 39 of the Ethiopian Constitution states that every ethnic group ('Nations, Nationalities, and Peoples') has the right to self-determination up to, and including, secession. In practice, this translates into a federal system with nine regional states and two city administrations. The constitution empowers the regions to have their own legislative, judicial and executive powers and to levy taxes and duties on revenue sources reserved for the states. Since the early 2000s, central and regional power and authority have been devolved to the local *woreda* (county) administrations as part of a decentralisation reform.

Federalism in Ethiopia was introduced after the Ethiopian People's Revolutionary Democratic Front's (EPRDF) military victory in 1991. The EPRDF used its slogan 'liberation of the nationalities' to reach all ethnic communities in the country. Establishing new regional and local governments also created new ethnic elites and loyal party cadres at all levels of the federation. The new cadres, in collaboration and often directed by representatives of the central party apparatus, managed to side-line representatives of the old regime and contain opposition locally.

The EPRDF, a coalition of the two major ethnic groups in the country, was and remains dominated by

the militarily superior Tigrayan People's Liberation Front (TPLF). Despite this dominance the TPLF attempted to co-opt elites of major ethnic groups. This strategy has so far managed to stave off a larger conflict of the kind that has in the past destabilised the Ethiopian state. At the local level, however, disputes have been described and experienced along ethnic lines, and have been particularly contested along regional state borders – or increasingly correspond with boundaries (Asnake 2004). After a referendum to determine the boundary between the Somali and Oromia Regional States, which appeared to have been won overwhelmingly by the Oromia region, the result did not lead to a peaceful sharing of resources and co-existence of the neighbouring Oromo and Somali people. In some areas, the result of the referendum itself became part of the on-going conflict. In other areas previous good social relations between people of differing ethnic identity along the border deteriorated (Abbink 2006; Adugna 2012).

These examples show that sharper lines have been drawn, both within and between ethnic groups. Often this process of ethnicisation has disadvantaged historically marginalised groups. Some conflicts are therefore disassociated from the centre and take place at the local level while others remain firmly connected to dynamics in the centre. This combination has led some observers to describe ethnic federalism as an efficient 'divide and rule' tactic.

Since the early 2000s, the EPRDF's main priority has shifted from liberation of the nationalities to national development with the aim of making Ethiopia a middle-income country by 2030. The ruling party has used this focus on development to contain new ethnic demands and to restrict local regional self-rule by casting dissenting ethnic leaders as 'narrow nationalists' and 'rent seekers' (Aalen 2002, 2011). Conflicts are simmering, especially around the issue of land, where the interests of national development schemes and local ethnic demands collide. Thus the EPRDF is creating something akin to a repressive peace as a way of maintaining stability and promoting aspects of national development. As long as the EPRDF delivers development, the party maintains some level of legitimacy (Aalen and Asnake 2012).

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There is no doubt that devolved governance through a federal system may also have advantages for South Sudan. It has the potential to accommodate ethnic diversity and to enable local governments to reach the population by providing basic services. For this to happen, however, South Sudan must establish stable central power with territorial control and a monopoly over the use of violence. Lessons from Ethiopia show that using ethnicity through federalism and decentralisation requires a fine balancing act between control and mobilisation, which not even a strong party apparatus like the EPRDF has managed to accomplish. While a devolved system can facilitate control at local level in a way a centralised system could not, the administrative subdivision along ethnic lines has sharpened ethnic divides and helped to solidify the previously fluid boundaries between ethnic groups. In contexts like South Sudan, where resource competition is even more acute than in Ethiopia and there is little respect for democracy and individual rights, the process is likely to lead to increased tension between and within ethnic groups and to a continuous stream of demands for the creation of new ethnic units. By its very nature, therefore, ethnic-based federalism may be a source of instability and conflict.

Another major difference between Ethiopia and South Sudan is latter's natural resource wealth. The existence of natural resources, particularly if they are spread unevenly across a territory, significantly influences dynamics of governance, identity and conflict.

### **13. Conclusion: Opportunities and challenges**

South Sudan's subdivision has created new realities while invigorating debate about other new possibilities. It also highlights the lack of trust in government decisions, both in terms of where it is heading and with regard to how far it will be possible to implement them.

It is also important to stress that the renewed debate also offers a major opportunity, particularly as South Sudan continues to face political struggle and violence at the centre. This report has highlighted these challenges and opportunities – many of which turn out to be two sides of the same coin. Something that is clearly a challenge is also likely to provide an opportunity.

It is clear that one prerequisite for improved governance in the new structures is trust between the various levels of government, between different levels of government across states, and between government and citizens. Such trust requires transparent implementation and division of labour and resources between levels of government based on capacities rather than on personal relationships and informal hierarchies between branches of the new system. This is challenging right now, but also points towards what needs to be done to address it – namely, interaction, information exchange, taking small steps towards staffing

government tiers with the personnel best qualified to tackle these tremendously complex tasks.

Any further division of South Sudan's administration – or indeed the reversal of such division, should it come to that – will lead to a period in which the balance of power will need to be renegotiated. This is not only the case between the deconcentrated and devolved systems of government but also within the devolved structures. An example from earlier experiences of such re-adjustment occurred during the interim period, when municipalities were created in addition to the rural counties. Commissioners of rural counties with a big town, Yei for instance, used to be relatively powerful compared to less strategic rural counties. With the establishment of municipalities and thus mayors, the powers of County Commissioners were greatly reduced without the corresponding change of responsibilities. Periods of re-adjustment followed these structural changes. It is likely that a similar process will occur with the establishment of new states, some of which no longer have more than one county. The precise division of tasks between commissioners and governors will need to be partly determined in practice, as will be the division of labour in resolving local conflicts related to land.

Provision of services – including security – is tightly linked to revenue creation and capabilities. New administrative structures require the states to examine their own revenue-generating capabilities – which offers an opportunity to realistically assess what sources of income South Sudan has at the local level – and whether there are other ways of working with citizens to assure the provision of essential services.

All these considerations follow trajectories of South Sudan's subdivision debate. They touch on the connection between authority, rights and territory and highlight the incentives created throughout these trajectories. They link political structures with territory, which in turn affects how communities interact. Changes in identity are both a reaction to this while also pushing it forwards. Any consideration of what administrative structure might suit South Sudan needs to be informed by an understanding of these trajectories.

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