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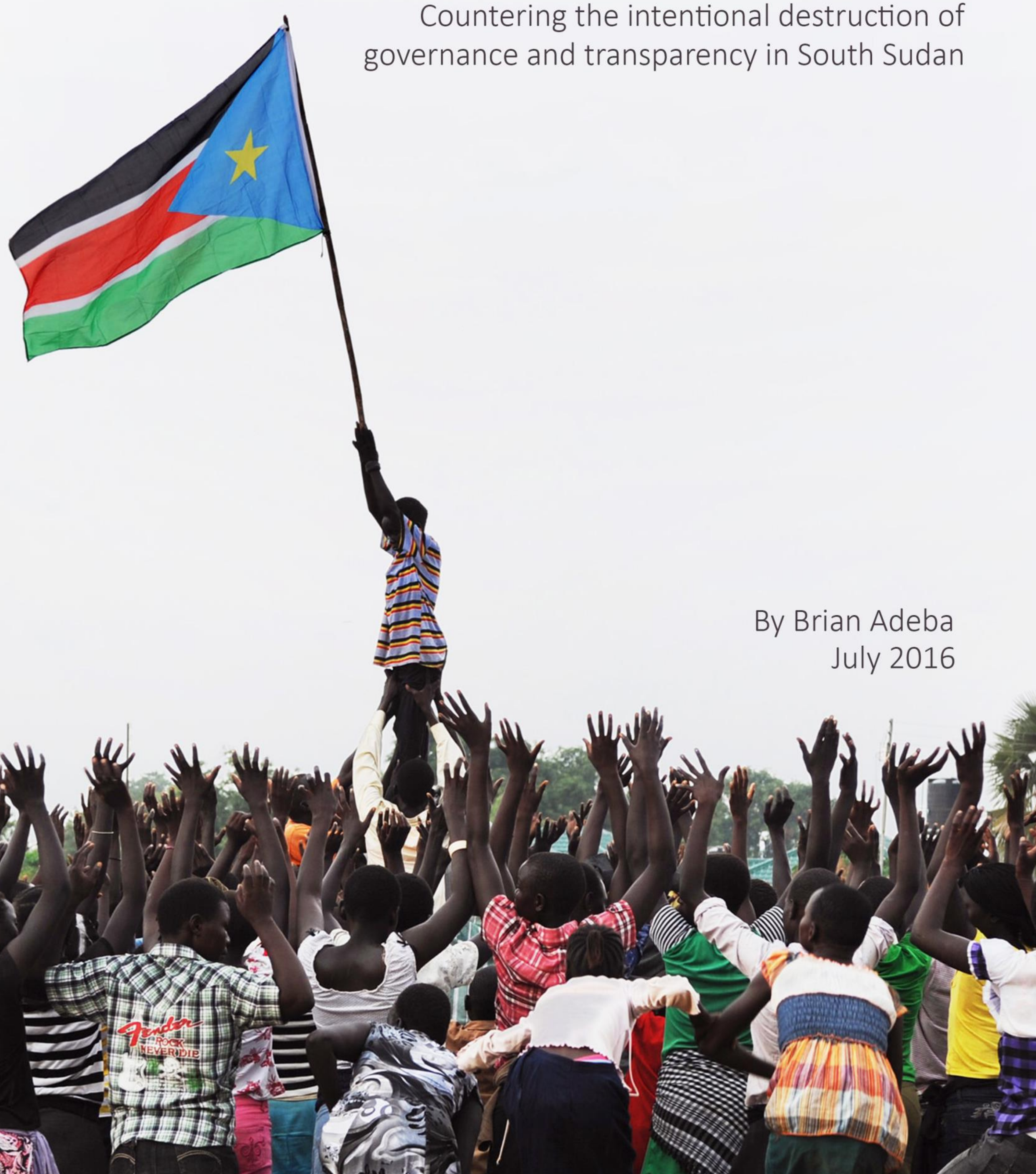
A Hope from Within?

Countering the intentional destruction of governance and transparency in South Sudan



By Brian Adeba

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Cover image: Children in Juba, 2011
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Foreword

The recent outbreak of violence in Juba and in other parts of South Sudan provides a painful reminder of the need to understand how South Sudan arrived at this precarious juncture in its short history as an independent state. As the African Union Commission of Inquiry noted in October 2015, the onset of conflict in December 2013 was sparked in part by the failure of the country's institutions of governance to provide a system of checks to mitigate the power imbalances that contributed to the war.

The August 2015 peace agreement recognizes these institutional weaknesses and recommends profound reforms that are envisaged to uphold accountability, balance the distribution of power, and prevent a repeat of the December 2013 crisis in which elite politicians plunged the country into a civil war as they fought over the spoils of state. The agreement identifies 18 governance institutions that needed to be "reconstituted" within one month of the establishment of the transitional government and to ensure their "independence and accountability." These institutions include the Anti-Corruption Commission and the National Audit Chamber.

This report reviews the weaknesses of three of South Sudan's governance institutions that are most critical to establishing accountability: the Anti-Corruption Commission, the National Audit Chamber, and the Public Accounts Committee in the National Legislative Assembly. All three institutions face considerable operational challenges that have undercut their effectiveness in implementing their constitutional mandates.

At this critical moment, there is an urgent need to move forward on the good governance and transparency provisions of the peace agreement, and it is in that spirit that we publish this report, amid great uncertainty surrounding South Sudan's future.

Executive Summary

In April 2016, after considerable foot-dragging, opposition, and obstacles, the two main parties to the conflict in South Sudan that erupted in December 2013 formed a transitional government* as mandated in the August 2015 peace agreement. Deadly and escalating violence in multiple parts of the country has since raised serious doubts about the future of the country's peace and political process. Sustainable peace in South Sudan will continue to be elusive unless leaders make profound and fundamental changes to establish accountability and end impunity.

Accountability was never built into the governance structure of the violent kleptocratic system that the Sudan People's Liberation Movement (SPLM) established in the aftermath of the 2005 peace deal that ended the 22-year north-south war. By nature, violent kleptocracies hijack governance institutions for the personal financial benefit of those within the ruling network and for the security of the regime. These kleptocracies use extreme violence, including mass atrocities, to maintain their hold on power. In this regard, South Sudan's governance institutions were hijacked and the ability of these institutions to implement oversight functions was compromised. Wanton corruption by the political elite accelerated to unprecedented levels and further stymied the government's ability to deliver services to the populace. In 2012, President Salva Kiir estimated that $4 billion was siphoned from the country's coffers.[1]

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Over the years, many groups and individuals have studied institutional weaknesses in South Sudan. For the elites and their apologists, these weaknesses stem from a capacity shortfall; an affliction that they argue is inherent in processes of establishing new states. The term "capacity building" has become a catchphrase in the donor community, especially in the years immediately following South Sudan's secession from Sudan. Donors spent a considerable amount of money and energy on capacity-building efforts in almost all sectors, including governance institutions.

Yet the perceived lack of capacity in governance institutions in South Sudan is actually the symptom of a much larger problem. Because governance institutions work at the behest of elite politicians, it is in the interest of these politicians to disable these institutions and limit their ability to play their role in oversight, regulation, and providing checks and balances on other parts of the government.

This coercion is manifest in a number of ways. First, elite politicians starve governance institutions of the funds required to enable them to perform their duties. Second, mandates to uphold accountability are undercut through the legal system. Third, elite politicians ensure that allies receive leadership positions in some of these institutions in order to wield control over their activities, and ultimately to undermine and counter the fight against graft.

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* This report refers to the "government" and "transitional government" in South Sudan, using the terms interchangeably and acknowledging the many uncertainties about the status of the government and situation at the time of writing.

This report, based on information collected before the transitional government formed in April 2016 and before violence escalated in Juba in July 2016, reviews the weaknesses of three of South Sudan's governance institutions that are most critical to establishing accountability: the Anti-Corruption Commission, the National Audit Chamber, and the Public Accounts Committee in the National Legislative Assembly. All three institutions face considerable operational challenges that have undercut their effectiveness in implementing their constitutional mandates. Drawing on field research, this paper shows that the weaknesses of governance institutions in South Sudan stem from deliberate efforts by elite politicians to stymie these institutions' capacity to perform their core functions to promote government accountability.

In the right political atmosphere and with the right political incentives for reform, these institutions could, however, exercise their roles effectively. The weaknesses can be addressed; they are not inevitable. The weaknesses are instilled in large part by elite kleptocrats. With genuine political will for institutional effectiveness from top leadership, supported by pressure and incentives from international partners with South Sudanese leaders, these critical governance institutions could fulfill their mandates.

It is imperative for South Sudan's leaders to understand the significance of strong and viable institutions in fostering accountability, and most importantly, credibility for the government. Equally, it is crucial that South Sudan's top political leaders understand that grand, competitive corruption increases the likelihood of conflict and state collapse.

It is therefore imperative that the transitional government take all the necessary steps to reform institutions of governance as stipulated in the August 2015 peace agreement, or else it could find itself presiding over the disintegration of the state.

Recommendations

1. **Fully fund and staff the agencies responsible for governance for long-term economic benefits**

   South Sudan's governance institutions have the potential to counter corruption by promoting economic transparency and accountability. It is critical that the institutions that South Sudan already has in place be able to function properly. They need full budget allocations, sufficient staffing levels, and unobstructed authority to carry out their duties, including enforcement actions.

   Given the extremely fragile state of the South Sudanese economy and low central bank reserves, there are significant hurdles in fully funding these institutions and staffing them with the relevant experts.

   In addition to mitigating severe violence, leaders must now also do what they have not yet done and adopt a long-term perspective in the interest of the public good in order to truly improve the economic future of South Sudan. Non-emergency donor assistance and meaningful private sector investment will continue to be minimal to non-existent unless South Sudan can show that it can become a stable economic environment. The institutions responsible for governance are essential to demonstrating that potential to these critically important external actors.

2. **Boost civil society's role in the public sphere**

   South Sudan has a nascent civil society that faces various challenges, including lack of sufficient funding, lack of technical knowledge in several areas, little infrastructure, and repression by the government. Yet if the fight against the forces that undercut the functions of oversight institutions is to be won, the voices of independent actors who are advocating for transparency and accountability need to be amplified to supplement the work of governance institutions. Support for civic bodies should target diverse groups in various corners of the country and not focus on groups based in the capital alone. Such support should also aim to empower women, youth, and religious civic organizations in order to reach a wide segment of the population. Governments and multilateral bodies that support good governance should intensify their advocacy to open and preserve political space for civil society in South Sudan. The government of South Sudan should also opt in to the Global Partnership for Social Accountability (GPSA), which is the World Bank's arm for providing support to civil society. Although assistance goes to civil society organizations, the government must first agree to the GPSA's framework.

3. **Tie external assistance to strict budget oversight**

   Amid the outbreaks of violence, the South Sudanese economy is at the moment facing an unprecedented crisis and conditions that are deteriorating, with the central bank's deputy governor recently saying that the current levels of currency reserves may cover imports for only five weeks.[2] The IMF expects inflation in South Sudan to hit 300 percent,[3] unless there are economic reforms that curtail government spending and stem the diversion and mismanagement of public funds. The government's overreliance on a single revenue source—oil—in the context of a production decline and in the midst of a glut in the global oil market, resulting in depreciating prices per barrel, means that the government coffers are literally empty. Unfavorable terms for South Sudan on oil transit fees to Sudan in order to facilitate access to international markets via Sudanese territory compound the challenges of the oil revenue stream and have meant that South Sudan is pumping oil at a loss. Empty coffers have contributed to delays in the payments of salaries of civil servants and soldiers, and these delays have prompted strikes by various sectors of the public service.[4]

   Yet it is important to ensure that all essential social services, in addition to the institutions referenced above, receive funding. Public servants must be paid to enable the essential functions of government to continue. Without alternative revenue sources, the government requires donor funding to stabilize the economy and implement the much-needed economic and governance reforms outlined in the peace agreement.

   However, donor fatigue and disappointment has been increasingly palpable due to heightened violence, the delayed implementation of the peace agreement, the previous misuse of aid by the political elite, and missed targets in building the new nation. Many donors are reluctant to offer assistance without seeing significant improvements in peace, security, and the way South Sudanese leaders manage public funds.[5] Most agree that it is crucial to ensure that donor funding is not misappropriated.

   Donors should, therefore, provide support that is subject to "dual-key" provisions similar to those of Liberia's Governance and Economic Management Assistance Program (GEMAP). GEMAP, a partnership implemented in 2006 to 2010 between the government of Liberia and international partners, was designed to ensure transparency and accountability in Liberia's government spending, particularly with natural resource revenues. Embedding advisors in government ministries who have the power to co-sign contracts and other expenditures helped foster accountability in Liberia's financial management. The dual-key system helped ensure that donor money was directed to public projects, not private pockets. For South Sudan's case, designing donor support provisions that consider the GEMAP model and adapt GEMAP-like provisions to South Sudan's unique circumstances could help promote a greater measure of budgetary independence for institutions like the Anti-Corruption Commission and the National Audit Chamber. Such efforts could directly counter the actors and forces that undermine the activities of these institutions. South Sudan's economic vulnerabilities offer an opportunity for donors to press the government of South Sudan to accept provisions like those developed for GEMAP.

The South Sudanese leaders who benefit from the inefficient governance institutions would likely oppose efforts to implement GEMAP-like measures and raise concerns about infringement on national sovereignty. South Sudan's governance institutions, however, already face domestic political interference from leaders and government entities that undermine their independence and ability to execute their constitutional mandates. The GEMAP-like measures, in introducing greater transparency and accountability, would counter this domestic political interference. GEMAP-like provisions need not be in place for a lengthy amount of time, but given the severity of the economic crisis in South Sudan, the extreme levels of corruption, and escalating violence, they are essential to restoring long-term confidence and good budgetary processes.

4. **Develop additional mechanisms for donor coordination and evaluation of decision-making using international standards**

In addition to donor insistence on the implementation of dual-key budgeting systems, the donor community must develop and adhere to a clear system for coordination on priorities and programs for South Sudan. Donor coordination is critical to ensuring that the government of South Sudan receives consistent messages and donors do not duplicate efforts or work at cross-purposes. If one donor opts not to fund a particular program or entity—particularly out of concerns for peace, security, and the integrity of public financial management—then the South Sudanese government must not simply be able to turn to another donor and receive the funds.

It is essential that donors be coordinated and consistent with the deployment of any security sector assistance for South Sudan. Donors should use clear and strictly-implemented anti-corruption benchmarks to prevent misuse of the procurement process or donor assistance related to equipment or training for the military and police. Rewarding corrupt actors in these sectors with further assistance undermines progress across the board.

The South Sudanese government and donors can use a number of objective standards to achieve this coordination and develop clear benchmarks. South Sudan is a long way from becoming a participant in or fulfilling the entirety of the standards of the many global initiatives in this sphere, including the Open Government Partnership, Open Contracting Partnership, and Global Initiative on Fiscal Transparency. Using these objective data standards as a guidepost can help the donor community deliver clear messages in a coordinated manner. Similarly, donors should seek to use data-driven analysis to help assess development priorities and ensure progress on elimination of corruption, such as through the scorecard system implemented by the Millennium Challenge Corporation in the United States.

5. **Support domestic enforcement and external accountability measures**

   On the domestic front in South Sudan, donors should support the establishment of a range of institutions and mechanisms spelled out in the August 2015 peace agreement for open government and holding culpable individuals responsible for their actions.[6] Support for the establishment of the Hybrid Court for South Sudan to prosecute atrocity and economic crimes—as provided in the 2015 peace deal[7]—is essential to the foundation for accountability and transparency and can counter impunity. Institutional support to boost the performance of oversight institutions to enhance accountability is equally important.

   Where domestic measures fail, the international community should use available tools to hold accountable the actors who are undermining progress. The United States, for instance, should use authorities of the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to investigate the ways that the proceeds of corruption are laundered out of South Sudan, whether to neighboring countries or beyond. Most financial transactions in this context involve the use of U.S. dollars. When U.S. dollars move through the international financial system, they eventually pass through the United States, giving the U.S. government jurisdiction to take action, particularly when these dollars are believed to be the proceeds of criminal activity. As a result, FinCEN has the authority to issue advisories to financial institutions and to seek information from foreign governments whose jurisdictions may have been involved in laundering the proceeds of corruption. Information gathered through these investigations can help FinCEN assess the potential for further action. The United States should also lead the international community by imposing additional targeted economic sanctions on individuals responsible for corruption and encourage other donors, as well as the U.N. Security Council, to follow suit.

Background and current context

Introduction

South Sudan's governance institutions have long been saddled with a host of weaknesses and a confluence of personal, ethnic, and national interests, which contributed to these institutions being ineffective in implementing their mandates to promote transparency and accountability. The African Union Commission of Inquiry report released in 2015 notes, "the crisis in South Sudan is primarily attributable to the inability of relevant institutions to mediate and manage conflicts."[8]

The weaknesses afflicting South Sudan's governance institutions stem from one main factor: the hijacking of these institutions to serve the interests of elite politicians. These conditions are rooted in the system that the political and military elite established in 2005 when pre-independent Southern Sudan became autonomous with its own army, central bank, and state and regional legislatures. A violent kleptocracy began to form, with a regime that came to hijack nascent governance institutions for the personal financial benefit of those within the ruling network and for the security of the regime. This regime used violence to maintain its hold on power. South Sudan's institutions of governance, revenue collection, and public expenditure, were coerced to serve the interests of the political elite and their patronage networks. Subsequently, in their incapacitated state, these institutions were unable to mediate or bring to account competing factions of the ruling elite who were fighting over the spoils of the state, plunging the country into a civil war.

The August 2015 peace agreement signed by President Salva Kiir and opposition leader Riek Machar recognizes the institutional weaknesses in South Sudan and recommends comprehensive reforms. According to the agreement, the four areas most urgently needing reform include: (1) governance and the constitution; (2) macro-economic reform and transparency in public finances; (3) security-sector reform; and (4) justice and reconciliation. In particular, the agreement identifies 18 governance institutions, among them, the Anti-Corruption Commission and the National Audit Chamber, as needing to be "reconstituted" within the first month of the formation of the transitional government to "ensure their independence and accountability."[9] These institutions themselves, if fully resourced and operational, can also contribute to the accountability of the government as a whole.

The weaknesses afflicting South Sudan's governance institutions stem from one main factor: the hijacking of these institutions.

South Sudan's transitional government is mandated to last until elections in 2018. There is therefore an urgent need to develop or reform governance institutions before the next political transition. The transitional government, however, faces great economic challenges. Falling prices in the global oil market have ensured that the country's largest revenue earner—oil—is not generating the money needed for spending and offsetting a huge spending deficit that the International Monetary Fund (IMF) says could top $1.1 billion in the 2016/2017 fiscal year.[10] Diversion of funds and poor management of the small amount of revenue from oil that is continuing to come in has meant that little money is available to pay the salaries of civil servants and soldiers or fund the basic services that the South Sudanese public urgently needs. Government coffers are dry, and public servants face considerable delays in receiving their salaries,[11] which are worth less with time as the value of the currency rapidly falls. High inflation, projected to reach 300 percent[12] in 2016, has pushed the prices of basic goods beyond the reach of many people. In the absence of fundamental and credible reforms to improve peace and security, counter corruption, and restrict spending on South Sudan's massive security apparatus, many donors are reluctant to offer significant financial support.[13]

The IMF has said South Sudan's central bank should "regain control over monetary policy by refraining from lending to the government, setting inflation on a decelerating path, and gradually start replenishing its international reserves." The IMF also emphasized that "[d]emonstrating unity and commitment in the coming months to economic stabilization and strengthening public financial management will be key steps to rebuilding policy credibility and regaining access to external financial support."[14]

To more closely analyze the specific challenges to transparency and accountability in public financial management in South Sudan and to determine what specific policy measures could effectively address these challenges and strengthen South Sudan's institutions, this report draws on the insights of numerous individuals interviewed in April 2016 in South Sudan. The interviewees include governance experts, individuals from the donor community, economists, researchers, politicians, civil society activists, and academics. While all efforts were made to seek input on this research topic from the leaders and those most directly involved with the daily operations of key governance institutions, a range of challenges, including lack of transparency and security concerns, limited our access to the full range of authoritative views. The research examines three particular South Sudanese institutions—the Anti-Corruption Commission, the National Audit Chamber, and the Public Accounts Committee in the national legislature—all of which are critical to a transparent and accountable system of government. The research exposes the particular ways that executive overreach undercuts the effectiveness of these institutions to fulfill their constitutional mandates and provide oversight on critically important governance functions.

These governance institutions have experienced immense operational challenges. However, these institutions still have the potential to effectively implement their constitutional mandates. Over the years, South Sudanese leaders have consistently pointed to the shortcomings that stymie institutional effectiveness, and some of these leaders of governance institutions have offered solutions on improving performance. The various sources interviewed for this research, say they believe in the ability of these institutions to effectively carry out their mandates if the political will exists among the country's leaders. This hope prevails among the different South Sudanese political groups, and donors share this sense of hope as well. In essence, the ineffectiveness of these institutions is a temporary affliction and not a terminal condition. The transitional government is obligated by the terms of the peace agreement to reform many of South Sudan's governance institutions. If a combination of pressure and support can shift the incentives of South Sudan's leaders toward making difficult but necessary choices in the public interest, the Anti-Corruption Commission, the National Audit Chamber, and the Public Accounts Committee may yet play the role they were meant to perform.

Failure to reform and strengthen governance institutions increases the potential for brutally violent conflict over the spoils of state.

Introducing the critically important reforms required to establish credible and effective oversight institutions in order to curb pervasive corruption and hold public officials accountable is imperative if South Sudan is to pull itself out of its current morass. Pervasive corruption can precipitate state failure and has driven countries comparable in size, area, and natural resources to the brink of disintegration. Failure to reform and strengthen governance institutions increases the potential for brutally violent conflict over the spoils of state. The absence of effective governance institutions may exacerbate the already worsening economic situation in the country and may facilitate the collapse of the state.

South Sudan's political elites must change their mindset if the country is to remain a viable entity. This change requires rethinking the prevailing political culture and the mentalities and practices that promote a sense of entitlement to illicit enrichment because of the elite's perceived "sacrifice" during the armed struggle for South Sudan's independence. Instead, the elites should recognize the collective sacrifice of the South Sudanese people and honor the imperative of providing services by government as the primary justification for holding public office.

The transitional government, therefore, has an opportunity to distinguish itself from the previous systems of rule in South Sudan. In this regard, it has two choices: either it establishes effective governance institutions to combat corruption or it presides over the possible demise of the state for failing to do so.

Context under which governance institutions operate

South Sudan's governance institutions operate under a constitution that vests a lot of power in the executive branch—despite the 2011 constitution's separation of powers between the executive, legislative, and judicial branches. Governance institutions struggle to counter that strong executive power and fulfill their mandates.

The constitution grants the president of the country the powers to summon or prorogue (discontinue without dissolving) the National Legislative Assembly (NLA), to dismiss or suspend state legislatures, and to terminate the tenures of elected governors ("in the event of a crisis in the state that threatens national security and territorial integrity").[15] These provisions create oversight by the executive branch that undermines these institutions' ability to fulfill their functions. SPLM members dominate the legislature, where the executive pressures it to conform to the dictates of the party chair, which is the president. The threat of punitive actions from the executive—such as suspension, outright dismissal and removal of privileges—creates significant pressure for legislators to conform to the wishes of the presidency.[16] This dominance negatively affects the manner in which governance institutions perform their oversight functions. For instance, the Office of the President routinely ignores the Anti-Corruption Commission and the National Audit Chamber's recommendations for accountability. Members of the cabinet too, decline to answer summonses to appear before some committees, such as the Public Accounts Committee.[17] The national legislature, which is supposed to check the powers of the executive when it does not comply with accountability recommendations, is unable to perform this function.

Domestic oversight mechanisms

Framework for institutions and mandates

The South Sudan Anti-Corruption Commission, the National Audit Chamber, and the Public Accounts Committee derive their legal and institutional authority from the 2011 transitional constitution of South Sudan[18] and the specific legislative acts[19] that further define their mandates and roles. According to the 2011 constitution, these institutions are guaranteed independence and are supposed to implement their functions in an impartial manner "without interference from any person or authority."[20]

The South Sudan Anti-Corruption Commission is still, however, governed by a pre-secession act promulgated in 2009. As described in the act, the commission's mandate, *inter alia*, is to protect public property, investigate corruption cases both in the public and private domains, fight administrative malpractice in the government, and oversee asset and liabilities declarations of senior public officials.[21] In addition, the act requires that the commission report its findings to the president of South Sudan and the national legislature on an annual basis.[22] Lobbying[23] during the drafting of the 2011 constitution compelled the inclusion of an article that granted prosecutorial powers to the commission.[24] However, the provisions of the act deny the Anti-Corruption Commission these prosecutorial powers and stipulate that the constitutional mandate of combating corruption will be implemented in collaboration with the Ministry of Legal Affairs and Constitutional Development.[25] This stipulation has serious implications for the independence and credibility of the commission, particularly if the ministry succumbs to pressure to protect the interests of powerful individuals that the commission seeks to investigate.

The National Audit Chamber is governed by the Southern Sudan Audit Chamber Act of 2011, which grants it the right to audit all government accounts and financial activities, including modalities for revenue collection and expenditure to ensure spending occurs within budget boundaries approved by legislatures at the national and state levels.[26] In carrying out its functions, the National Audit Chamber works closely with the Public Accounts Committee (discussed immediately below) at the national legislature as well as with similar committees at the state level. It has powers to investigate individuals or entities, with the approval of the prosecutor general, who receives directives from the Ministry of Justice. The National Audit Chamber may also make recommendations to any government institution to prevent or minimize wasteful spending of public money, to maximize the collection of revenues on behalf of the public, and to prevent loss through "negligence, carelessness, theft, dishonesty, fraud, misappropriation, and corruption relating to public moneys and resources."[27]

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The Public Accounts Committee is one of the 18 ad hoc committees of the National Legislative Assembly that are established for the "efficient discharge of its [NLA] duties."[28] The Public Accounts Committee has 17 members, 15 of whom are from the ruling Sudan People's Liberation Movement (SPLM) and two from the opposition Democratic Change party. The ruling party therefore dominates the Public Accounts Committee which has only a small minority of political opposition members.

The Public Accounts Committee has the authority to summon any high-level constitutional post holder, except the president of the country.[29] These constitutional post holders include ministers, statutory authorities, government boards, interest groups, academics, department heads, non-governmental organizations and government service providers. The committee's mandate is fairly wide and can be split into three distinct areas: right of access, accounts and operations, and relationship with the auditor general.

Right of access ensures that the Public Accounts Committee has the authority to scrutinize the accounts of a large number of organizations as long as they are cited in the auditor general's report. These include the accounts of government institutions in the finance portfolio, government agencies outside the finance portfolio, statutory authorities, and service providers to the government.

With regard to accounts and operations, the Public Accounts Committee has a range of powers, which include self-initiated inquiries to review budget estimates, review accounts and financial affairs, examine the economy and scrutinize the effectiveness (or lack of therein) of government policy.[30] Technically, the

Public Accounts Committee also is to be consulted to review budget estimates prior to and after budget approval, and it is to examine public expenditure.[31]

The Public Accounts Committee also has a mandate to review reports issued by the auditor general and to recommend that the auditor general conduct investigations. The Public Accounts Committee plays a powerful role in the selection of candidates for the post of auditor general; the committee has the power to approve and dismiss candidates from this position. In addition, it is involved in examining audit office fees, determining priorities of the office of the auditor general, and assigning or relieving some of the auditor general's legislated obligations. The committee also has the right to examine the auditor general's compliance reports and to refer matters to the attorney general for investigation. The committee does not, however, have the power to review the auditor general's performance report.[32]

Current challenges facing the Anti-Corruption Commission, the National Audit Chamber, and the Public Accounts Committee

Anti-Corruption Commission

The fight against corruption in South Sudan has been excruciatingly slow, and it has yielded an insignificant number of prosecutions for cases investigated by the Anti-Corruption Commission. Although in June 2016, 16 officials, including several who had worked in the office of the president and with the central bank were sentenced to life in prison for allegedly misappropriating more than $14 million,[33] many investigations involving high-level corruption still await action by the Ministry of Justice.

Between July 2014 and June 2015, the Anti-Corruption Commission investigated 21 corruption cases. Eleven of these cases were concluded and their files were closed while 10 cases were still under investigation as of September 2015. Most significantly, in 2015, the commission completed a high-profile investigation involving the alleged misappropriation of $12 million earmarked for procurement of military supplies by officials at the Ministry of Defense and Veterans Affairs and the national army, the Sudan People's Liberation Army (SPLA). The case has been forwarded to the Ministry of Justice but there is little public information available about whether the ministry has taken further action regarding these serious allegations.[34] Several cases, involving misappropriation of public funds and abuse of office in the ministries of roads and transport, health, and finance in 2012 and 2014, are also still pending action.[35]

The prevailing sentiment in South Sudan is that powerful and well-connected members of the political establishment will likely never be prosecuted even if the Anti-Corruption Commission indicts them. This lack of faith in the judicial process stems in part from the fact that even when the government publicly accuses high-ranking officials of corruption, often no formal charges are pursued, with no legal proceedings guided by due process that result in a fair verdict—either

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exoneration if those charged are found innocent or conviction if those charged are found guilty based on evidence considered in a court of law.

One of the Anti-Corruption Commission's constitutional mandates is to facilitate the process of wealth declaration by senior government officials. In May 2015, the commission installed software—the Asset Declaration Management system—for this process, and trained seven staff managers to manage it.[36] Although the commission facilitates this wealth declaration process, there is no law that penalizes officials for not declaring their wealth and for disregarding the commission's efforts to promote compliance with this constitutional obligation.[37]

The Anti-Corruption Commission also faces challenges with budgetary constraints from the Ministry of Finance and Economic Planning. In addition to the funds for its budget being delayed, the commission also does not receive all of the promised funds. In 2014, for instance, the commission received only 3.2 million South Sudanese pounds (SSP) out of an operational budget of 10 million that it had requested.[38]

Subsequently, the Anti-Corruption Commission struggles to retain staff because of poor remuneration. This shortage of qualified staff is particularly acute in the Directorate of Investigations and Legal Services. The directorate's capacity to conduct investigations in a timely fashion has been stymied due to lack of expertise in forensic financial investigations and other technical functions required to build credible cases that are able to withstand scrutiny in a court of law.[39]

Poor working conditions for the commission's staff hamper their effectiveness as well. Employees lack adequate office space, transportation, and security. Personal security during and after work is a critical need for staff members, especially given the sensitive nature of the work of the commission in investigating corruption. The outbreak of conflict has also shut down the commission's work in the most severely conflict-affected states, as staff members have been displaced and their offices destroyed.

To mitigate these challenges, it is imperative that the incentives of South Sudan's leaders shift. South Sudan's people and governance institutions need leaders with the political will to support the constitutional mandate of the Anti-Corruption Commission by empowering it with the tools necessary for investigating allegations of corruption by public officials.

Likewise, it is crucial for political leaders to ensure that the commission operates independently and without interference by other government departments. In this respect, it is important that the commission receive its full allotment of funds, according to budget provisions, in ways that are not limited by individuals or entities that may have incentives to undermine anti-corruption mechanisms and initiatives.

An independent, secure, and reliable source of funding for the commission would allow it to retain staff, improve capacities and technology, and facilitate timely and reliable investigations.

National Audit Chamber

South Sudan's National Audit Chamber faces challenges that are similar to those of the Anti-Corruption Commission. Budget constraints[40] create financial and human resource challenges that hamper the chamber's working conditions and operations. Although it has a reportedly competent and committed chair and staff, the National Audit Chamber still faces human resource hurdles.[41] In some cases, the chamber has had to rely on costly external auditors.[42] The shortage of staff hampers the timely production of comprehensive reports that cover all government ministries, departments, and agencies.[43]

The National Audit Chamber faces a serious backlog in reporting. So far, the chamber has only managed to produce audits for the years 2005, 2006, 2007, and 2008,[44] almost all on a multi-year delay. The 2005 audit was submitted in May 2011, the 2006 audit in June 2011, and the 2008 audit in June 2012. In essence, the chamber has yet to complete audits for the pre-independence autonomous government of Southern Sudan that was established in 2005. The chamber has not yet been able to begin auditing the accounts of the government of South Sudan that became fully independent in 2011.[45] With each passing year that financial statements are not provided, the task of collecting information becomes more difficult.

The National Audit Chamber cannot provide reports in a timely manner in large part because government ministries, departments and agencies do not provide the necessary information in a timely manner themselves. For example, the financial statements for the 2008 fiscal year were released to the chamber in January 2012. The auditor general presented the report in June 2012.[46] Sometimes the government agencies resist complying with audit requests altogether. In his 2008 report, the auditor general noted, "The audit of the Financial Statements of 2008 was conducted in 2012. Government Ministries and Agencies were more responsive to [this] audit than in previous years. I thank the President for his helpful phone calls on this matter."[47] In 2012, the auditor general was unable to provide an opinion on the financial statements of the Bank of South Sudan (central bank). Instead, the auditor general provided a disclaimer, which suggests he either lacked the right information on which to base an opinion or he received inaccurate or incomplete information.[48]

Without a secure source of funding, the National Audit Chamber's capacity to conduct its work will remain compromised.

Although the audits that the chamber has produced show gross misappropriation of public funds, an insignificant number of people have been held accountable to date. As one interviewee said, "the government is just like a cow that is milked but not fed. All audits die somewhere."[49] For instance, after public funds were misused in a scandal now known as the "dura saga,"[50] assistance from the Stolen Asset Recovery Initiative (StAR), a partnership between the World Bank Group and the U.N. Office on Drugs and Crime, helped in investigating the case. Despite this investigation, however, there has been no accountability for the misappropriation of public money.

For the National Audit Chamber to operate effectively, South Sudan's leaders must ensure that it has a direct funding mechanism that is authorized by the national legislature. Without a secure source of funding, the chamber's capacity to conduct its work, prevent staff turnover, and build its capacity will remain compromised.

Leaders in South Sudan must also ensure that government departments view as mandatory and comply with requests to provide information to the auditor general. Such a stipulation should be outlined in the legal code with clearly defined punitive consequences for non-compliance.

The Public Accounts Committee

The 17-member Public Accounts Committee (PAC) has only two support staff members, which reflects the committee's overall funding challenges. Committee members and researchers say that doubling the support staff from two to four or even five members would boost efficiency in research and information gathering. There is no budget line, however, to accommodate this need.[51] The committee also needs research and reference materials to conduct its operations, but funds to collect these materials and to expand the office space to accommodate the necessary staff and resources are likewise unavailable.[52]

Public Accounts Committee members, like most legislators, are poorly paid compared to their counterparts in the region. South Sudanese lawmakers, who have not seen a salary increase in a decade,[53] earn the equivalent of $38,000[54] per year, compared to lawmakers in Uganda and Kenya who earned about $73,200 and $75,000 per year respectively, as of 2014.[55]

South Sudan's Public Accounts Committee faces challenges that are similar to those of the Anti-Corruption Commission and the National Audit Chamber in fulfilling its mandate. First, a legislator from the ruling SPLM party heads the committee. This creates a scenario in which the head of the committee has little incentive to call the government to account. The committee often cannot access the information it needs to reach decisions and craft recommendations for holding officials accountable.[56] The auditor general's inability, for reasons described above, to present any reports since 2012 also hampers the committee's effectiveness in carrying out its duties.

The head of the Public Accounts Committee has little incentive to call the government to account.

The Public Accounts Committee has the authority to initiate inquiries, but it has faced considerable obstacles in doing so. Government officials at times resist cooperating with the committee. For instance, the speaker of the national legislature has publicly alleged that the judiciary has obstructed the Public Accounts Committee's efforts to scrutinize it.[57]

The Public Accounts Committee's ability to investigate government spending is also fraught with challenges. For instance, the Ministry of Finance and Economic Planning is mandated to submit quarterly reports to the committee, but it faces obstacles in fulfilling this requirement.[58] Ministers tend to be reluctant in responding to summonses to appear before the committee. Government expenditure may rise dramatically without the committee being updated in timely fashion. At times the committee is ignored altogether. In October 2015, the government decided to redraw state boundaries, increasing the number of states from 10 to 28. The move provoked swift, concerted, and sustained opposition from many who viewed it as wholly unauthorized and a provocation for violent conflict. The initiative also potentially increased the overall cost of running the government with the increased number of appointees and administrators.[59] According to Onyoti Ondigo, head of the opposition in the legislature, the Public Accounts Committee was not updated on how much the new states would cost the government or on how the government intends to generate the revenues needed to cover the added costs.

For critical governance institutions like the Public Accounts Committee to provide more independent oversight to fulfill their mandates, political leaders in South Sudan need to support participation—

membership and even leadership—by political opposition groups in these institutions. The August 2015 peace agreement stipulates the reconstitution of the legislature for the transitional period, a move that would officially erase the party divide in the National Legislative Assembly. In the event that this provision is implemented, independent individuals who are not necessarily adherents to the SPLM, and who would have fewer incentives to directly promote the SPLM interests, should be encouraged to participate in or head this committee to ensure a greater measure of independence in the oversight on the government's management of public finances.

The government should also move to enshrine in the legal code consequences for public officials who disobey a summons by the Public Accounts Committee. The law should require public officials to adhere to the highest standards of transparency in handling public finances and cooperating with the committee.

The government should also ensure that the Public Accounts Committee has the necessary resources, financial or otherwise, to enable it perform its oversight tasks effectively.

How the political elite undermine governance institutions

Creating contradictory legislation

The Anti-Corruption Commission is hamstrung by contradictory legislation that prevents it from prosecuting corrupt officials. The 2011 constitution gives the commission the authority to investigate and prosecute corruption.[60] However, the Southern Sudan Anti-Corruption Act of 2009, which governs the commission's day-to-day operational activities, does not grant the prosecutorial powers enshrined in the constitution.[61] The discrepancy between the two pieces of legislation should have been reconciled when the transitional constitution was being drafted. A new proposed bill, the South Sudan Anti-Corruption Bill of 2014, seeks to reconcile this discrepancy and grant prosecutorial powers to the Anti-Corruption Commission. The bill was drafted and forwarded to the Ministry of Justice ahead of review by the legislature.[62] To date, however, action on the bill is still pending.

> The Anti-Corruption Commission is hamstrung by contradictory legislation that prevents it from prosecuting corrupt officials.

Subsequently, because of these disparate pieces of legislation, the Anti-Corruption Commission's work has stalled on two fronts. First, although the 2009 act requires constitutional post-holders to declare their assets, income, and liabilities, it does not enumerate any penalties for noncompliance with this stipulation. Second, the commission is not able to exercise the power given in the 2011 constitution but not the 2009 act to prosecute suspects or arrest them—even in the presence of verifiable and tangible evidence. In order to facilitate an arrest, the commission has to refer cases to the Ministry of Justice.[63] As a result, although the commission has investigated corruption cases, found millions of dollars in public money that have been misappropriated, and referred cases to the Ministry of Justice for action, a minimal number of individuals have been prosecuted and held accountable. In September 2015, John Gatwech Lul, then chair of the Anti-Corruption Commission, told an anti-corruption conference in Kampala, Uganda, that the commission had finished investigating a high-profile case in which officials at the Ministry of Defense and Veterans Affairs and the SPLA had allegedly misappropriated $12 million slated for the purchase of military supplies. The case has been referred on for further action.[64] Other corruption scandals in recent memory include the "dura saga" scandal, where high-ranking officials conceived a scheme to purchase sorghum (known locally as "dura"), an important staple grain for the population. The grain was purchased but never delivered, resulting in the suspected diversion of some $2 billion.[65] No official has been held accountable to date.

To reconcile the differences between the 2009 act and the 2011 constitution and enable forward movement on cases that have been investigated but not prosecuted, it is imperative that the transitional government expedite a review of the proposed 2014 bill. The legislature should prioritize reconciling this bill and the terms of the committee's power. Given how much time has passed since the bill was first proposed, the current version should be updated to take into account the dire state of corruption in the country and to incorporate any new best practices to combat corruption. Subsequently, the legislature should move quickly to debate and pass the bill, after reconciling any differences with the 2009 Anti-Corruption Act. The president should also sign the bill into law without delay. Once the bill is law, immediate steps should be taken to empower the Anti-Corruption Commission with prosecutorial privileges.

Political expedience becomes the main factor for determining selection of committee chairs in the national legislature.

Patronage and appointments of committee heads

The 2011 constitution concentrates a great deal of power in the executive branch.[66] According to an assessment in an African Union Commission of Inquiry report that was made public in October 2015, the constitution "establishes a powerful Presidency and while the text of the constitution affirms the doctrine of separation of powers, several factors (including weak legislature, lack of commitment to separation of powers and independence of the judiciary and structural links between the legislature and the executive) result in an overly powerful executive. The Commission found that the fact that the President has the power to remove some state officials, often without proper controls is one cause of instability."[67]

This display of excessive power is especially visible in the manner in which the chairs of crucial committees in the national legislature—such as the Public Accounts Committee—are appointed. In this process, regional caucuses of the ruling SPLM select individuals from their regions who they think are best suited, in terms of expertise and experience, for the position. The caucuses then "consult" with the president who is the chairman of the SPLM.[68] Legislators in the opposition believe that the selected candidate must be someone that the executive branch approves before an offer is made. Political expedience rather than merit becomes the main factor for determining selection. Ultimately, this selection process raises questions about the capacity and impartiality of the committee heads in holding officials accountable. Onyoti Ondigo, leader of the opposition Democratic Change party in the legislature, concedes that because the committee is "being controlled by the executive, it has no teeth."[69]

Starving institutions of financial support

Since their establishment, the Anti-Corruption Commission and the National Audit Chamber have been persistently dogged by a shortage of funds. Sometimes the Ministry of Finance and Economic Planning disburses the full amount of money requested in the budgets of the institutions, but sometimes these institutions receive less than their requested or approved allotment. The auditor general has hinted that the ministry's actions are discriminatory, saying, "While some institutions were cash starved, others received on the discretion of the Ministry, more funds than were legally authorized."[70] With particular reference to the National Audit Chamber, the auditor general implored legislators to "free us financially from the control of the Ministry of Finance."[71] In September 2015, the then-chair of the Anti-Corruption Commission, John Gatwech Lul, said that out of a budget of 10 million South Sudanese Pounds requested by the commission for fiscal year 2014, the Ministry of Finance and Economic Planning approved only 3.2 million pounds.[72] These financial constraints create numerous issues that impede the work of these institutions. Poor remuneration for staff members leads to poor retention, which in turn means loss of institutional knowledge and a backlog of cases.

Lack of funding limits the means to address skills shortages in all three institutions. Forensic accounting skills, auditing capabilities, investigative skills and equipment, and technical knowledge, have at various points, been cited as missing or in short supply at these institutions.[73] In the National Legislative Assembly, the ability of some legislators, including support staff, to comprehend the subject matter they are addressing is also an issue. Staff training could mitigate these issues if funding were available and allocated to this purpose. According to the auditor general, the National Audit Chamber has had to rely on external auditors to carry out parts of its work. Limited capacity and skills available relative to the sophisticated and costly investigations needed, insufficient funding to address these gaps, and difficulties in accessing the information needed to carry out investigations collectively create a daunting set of obstacles that have affected these institutions' abilities to produce timely reports. A greater share of assured government funds and a greater measure of control over the management of their budgets to address the most critical internal institutional needs could help these institutions better address some of their core challenges.

Conclusion

The institutional reforms needed in South Sudan are profound and require the same level of investment and international leverage that was deployed in the signing of the peace agreement that has led to the formation of the transitional government.

Structural and operational challenges prevail in most of South Sudan's governance institutions, including the ones addressed in this paper. Addressing these issues requires understanding these particular challenges and the context in which they developed.

For decades, the people in the area that is now South Sudan have been at war. As a consequence, institutions either never fully formed or were weakened or destroyed, and the development of a skilled labor force has been greatly hampered. At independence in 2011, the country had few viable institutions upon which to build a base for the new state.[74] The strength and quality of institutions is still lacking. Overall, capacity development in the country still requires substantial investment, not only by international actors but also by South Sudanese actors especially.

But while some capacity shortfalls are the result of the inherent weaknesses associated with the legacy of decades of war, it is important not to lose sight of the single most devastating and debilitating factor behind the failure of governance institutions to perform effectively: coercion of institutions by South Sudan's political elite.

The reports of the auditor general and the Anti-Corruption Commission show that there has been gross misappropriation of public funds by officials, yet few individuals have been held accountable for their actions. Corruption compromises the government's ability to deliver services to the people of South Sudan and to provide the roads, hospitals, and schools that the South Sudanese people need. The country's social development indicators are some of the lowest in the world. The government has lost credibility in the eyes of a significant portion of the population.

Corruption and lack of accountability have widened the fissures among different ethnic communities in the country, with devastating consequences as violence is frequently used to settle scores and acquire resources. In spite of the August 2015 peace deal, small and localized armed conflicts have been erupting in various parts of the country, including in Juba in July 2016. Large-scale violence is of grave concern.[75]

The peace deal of August 2015 calls for sweeping reforms for the country's institutions. Elite politicians have done little, however, to initiate these institutional reforms. The task of electing a new speaker for the legislative assembly, for example, which would create valuable forward momentum for such a process, has been delayed considerably as a stalemate seems to have taken hold of the parties to the agreement.[76]

Under these circumstances, international leverage with top South Sudanese leaders remains essential to mitigate escalations of violence, promote adherence to the peace deal despite severe challenges, and encourage the necessary institutional reforms.

Endnotes

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