



EUROPEAN
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POLICY BRIEF

Fluid States and Rigid Boundaries on the East Bank of the White Nile in South Sudan

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1. BACKGROUND

"We will go and take our land back"

The debate over the number of states and their boundaries proved one of the most challenging obstacles to the Revitalized-Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) and formation of the Revitalized Transitional Government of National Unity (R-TGoNU). Yet, in a surprising turn of events, on 14 February 2020 President Kiir reversed his position on newly created administrative units and returned South Sudan to 10 states.¹ On the one hand, the return to 10 states and ensuing formation of the R-TGoNU present important and hard-fought steps towards peace and socio-political stability in South Sudan. On the other hand, there is a pressing need for political actors and international partners to recognize that changes to administrative boundaries will not address widespread competition over political and economic resources that have been reduced to and expressed as increasingly exclusive ethno-territorial ‘boundary’ disputes between historically interdependent ethnic and sub-ethnic communities.

In some areas of South Sudan, the introduction of new states in 2015 and 2017 re-organized local power relations around new majority and minority communities, generating conflicts over administrative and land-based resources. In other areas of the country, the reconfiguration of internal boundaries simply altered the administrative scale of existing competition over territory and political control from the county to the state level. Regardless of whether or not disputes pre-date or are a product of the new states, significant changes in political ordering increased the ability and incentives of ethnic groups to deploy competing narratives of autochthony to solidify control of administrative and territorial resources in a fluid but emerging state.² In other words, the introduction and eventual reversal of new states has increased the ability and incentives for historically interdependent and increasingly politicized ethnic and sub-ethnic communities to claim exclusive rights to previously shared administrative and territorial resources.

Although the creation of new states intensified existing disputes and generated others, the return to previous administrative boundaries will not - in and of itself - address grievances linked to debates over power, identity, and political authority that have been exacerbated by conflict, displacement, and political uncertainty. Indeed, recent field data collected during an EIP scoping mission to the Malakal Protection of Civilians (PoC) site in Upper Nile demonstrate that while a return to 10 states *could* provide an important step towards sustainable peace, it will by no means address on-going competition for administrative control between Shilluk and Padang Dinka communities deploy restrictive interpretations of autochthony and historical precedent to justify exclusive access to territory as a proxy for administrative control.³ Rather, on-going disputes over control of Malakal and key areas on the east bank of the White Nile demonstrate how the intersection of ‘top-down’ competition for administrative positions and ‘bottom-up’ fears of marginalization from the real and perceived resources of the emerging state have undermined

¹ According to the ‘Final Resolution on the Meeting of the Presidency on the Number of States and their Boundaries of 14 February 2020,’ South Sudan will return “to ten (10) States and their previous respective counties; plus three (3) administrative Areas namely: i. Abyei Administrative Area (AAA), ii. Ruweng Administrative Area (RAA) and; Greater Pibor Administrative Area (GPAA).” Although this brief focuses on the ‘return’ to 10 states, I also note that the Ruweng Administrative Area is a new administrative unit that did not exist before the creation of new states in 2015.

² Throughout the course of this brief I understand and define ‘administrative resources’ as the institutions, positions, and authorities of state governance. Based on this definition, control of administrative resources is directly correlated with national and regional political constituencies, as well as the natural and financial resources that flow from territorial control and access to the central state.

³ In addition to available white and grey literature and field work in the Malakal PoC (see section 3.3), this brief draws on over a decade of field work and policy research in South Sudan with a specific focus on the intersection of housing land and property rights, boundary disputes, and governance.

incentives for the Shilluk and Padang to invest in regional power-sharing, and have the potential to trigger violence in the immediate ‘post-war’ period.⁴ Simply put, administrative changes in and of themselves will not and cannot address disputes rooted in competition for access to and control over political ordering in an emerging conflict affected state.

On the one hand, this disconnect between administrative changes and local drivers of violence has significant implications for physical and political stability in Upper Nile. On the other hand, changes to administrative boundaries without addressing the root causes and consequences of territorial and political disputes is representative of the larger structural challenges facing the R-ARCSS. Specifically, just as changes to state boundaries will not address competition over administrative resources linked to perceptions of political and economic marginalization, there is little chance that the elite power sharing agreement that does not address the root cause of violence will lay the foundation for long-term peace and political reform.

The remainder of this brief is divided into four sections. The first section provides an overview of the creation and eventual reversal of the 28 and then 32 states in South Sudan. The second section summarizes pre-existing ‘boundary’ disputes between the Shilluk and Padang Dinka, with an explicit focus on how changes to the number of states and their boundaries have intensified competition over access to and control of administrative, political, and economic resources. Building on the ways in which competition over resources are reduced to and expressed as territorial disputes, the third section summarizes key challenges these disputes present to political and physical stability in the short and medium-term post-war and transitional periods. Notably, without first addressing the ways in which competition over administrative resources are reduced to and expressed as ‘land disputes’ between increasingly exclusive ethno-territorial polities, grievances will not only continue to grow, but also have the potential to trigger further conflict. The fourth and final section provides a series of concluding remarks that link the on-going administrative and territorial disputes on the east bank of the Nile to the R-ARCSS peace agreement and opportunities for international partners to support the R-TGoNU moving forward.

2. CREATING AND REVERSING NEW ‘STATES’

On 2nd October 2015, President Salva Kiir Mayardit appeared on state television and announced Establishment Order 36/2015 (EO 36/2015) ‘For the Creation of 28 States in the Decentralized Governance System in the Republic of South Sudan.’ The introduction of new states dramatically altered political ordering throughout the country and undermined the viability of the original 2005 ARCSS peace agreement. At the time, the President and his supporters argued that the new states would allow the GRSS to deliver on the SPLM refrain of ‘taking the towns to the people’ while addressing calls for federalism and greater access to services. Critics viewed the move as an overt attempt to negate the power-sharing arrangements of the ARCSS by gerrymandering South Sudan into a series of ethno-territorial polities designed to further consolidate neo-patrimonial rule in the office of the President and administrative power the hands of a small cohort of political tribalists.⁵

⁴ Although the implementation of the R-ARCSS and formation of the R-TGoNU suggest that South Sudan is no longer at ‘war,’ it is by no means ‘post-conflict.’ Violence and conflict linked to both signatories and non-signatories to the R-ARCSS continue in key areas of the country. The scale of conflict may have shifted from the national to more ‘local’ levels, but political and military actors continue to use violence and displacement to secure control of administrative and territorial resources.

⁵ The (re)organisation of administrative boundaries is not a new phenomenon in South Sudan, but has strong antecedents dating to the colonial and post-colonial periods. Notably, recent and on-going disputes over the number of states and their boundaries cannot be

Given the impacts of EO 36/2015 on the already fragile ARCSS, the SPLA/M-IO, IGAD, and international partners criticized the new states and pressured the GRSS to reverse the order. President Kiir initially indicated that he was willing to suspend the new states, but continued to nominate governors, who used their powers to dramatically increase the number of counties.⁶ Finally, on 15 January 2017, President Kiir unilaterally created another four states, bringing the total to 32.

In many cases, South Sudan's new 'states' were more aspirational than administratively functional or economically sustainable. Yet, despite significant opposition and severe limitations to financial and institutional capital, the 28 and then 32 states were increasingly normalized from 2015 to 2019. Politicians and communities that benefitted from new majority status argued in favour of keeping the 32 states. Conversely, ethnic and geographic communities that lost control over administrative resources viewed the new states as evidence of the Executive's desire to further consolidate control of institutional and economic resources. The large-scale packing and cracking of ethno-political constituencies across new boundaries led to widespread calls for a return to 10 states, or the creation of more states that would better reflect the political and communitarian interests of minority communities.⁷

Beyond the logistical and financial obstacles facing the implementation of the 28 and 32 states in South Sudan, the dramatic re-division of political ordering in the midst of an already fragile peace process contributed to the resumption of large-scale conflict in 2016. Debates over the number of states and their boundaries continued into 2020, and threatened to derail the revitalized peace agreement. Despite increased pressure from international partners to compromise on the number of states, the President and his advisors remained committed to the new administrative units and stated in early February 2020 that they would not "remove any single state amongst the 32 states."⁸ However, on 14 February 2020 (eight days before the deadline for the formation of the R-TGoNU), President Kiir announced that South Sudan would return "to ten (10) states and their previous respective counties; plus three (3) administrative Areas."⁹

Although the President's decision to return South Sudan to 10 states has been welcomed by opposition actors and international partners, the political strategy behind the decision and its timing require further analysis. First, the decision to revert to 10 states (effectively guaranteeing the formation of the R-TGoNU) positioned the President and his immediate advisors as 'peacemakers,' shifting the narrative away from legitimate critiques of human rights abuses and corruption. In other words, the return to 10 states increased the President's political capital without

separated from previous debates (and the legacy thereof) over Kokora. 'Kokora' is a Bari word generally associated with the 1983 (re)division of the semi-autonomous Southern Sudan into the three smaller administrative regions of Bahr el Ghazal, Equatoria, and Upper Nile. Similar to contemporary debates over the number of states and their boundaries, debates over decentralization and Kokora were quickly reduced to and expressed as competing claims to ethnically-homogenous territorial and administrative units. A detailed discussion of Kokora is beyond the scope of this brief; for further reading see Willems, Rens and David K. Deng. "The Legacy of Kokora in South Sudan: Intersections of Truth, Justice and Reconciliation in South Sudan;" and Johnson, Douglas H. "Federalism in the history of South Sudanese political thought." London: Rift Valley Institute (2014).

⁶ The overwhelming majority of these new counties ignored the minimum criteria for a county established by the Council of States and were never demarcated or delimited. The original 10 states were composed of 79 counties; by 2020, the 32 states were made up of over 320 'counties.'

⁷ 'Packing' refers to situations where constituents of a given geographic or (sub)ethnic polity are condensed into a small number of administrative units thereby limiting the extent of their majority status. The remaining members of this polity are then 'cracked' (i.e. spread) across a larger number of administrative units ensuring that they never make up a majority of the voting population in these areas.

⁸ Garang A. Malak, 'No breakthrough on South Sudan's states dispute.' The East African, Monday February 10 2020. Available at: <https://www.theeastfrican.co.ke/news/ea/South-Sudan-number-of-states-and-boundaries/4552908-5450316-63ycvoz/index.html> (Last accessed on 15 April 2020).

⁹ GRSS, Final Resolution of the Meeting of the Presidency on the Number of States and their Boundaries, 14 February 2020: 2.

providing any guarantees that the number of states will not change again in the near future.¹⁰ At the same time, there is little evidence that the return to 10 states will impact the economic and political power of the Executive. The initial 28 states were created at a time when the President's power and support were at their weakest. Since then, president Kiir and his immediate supporters managed to win the war and negotiate a peace deal that will have little impact on their control of economic and military resources.

Second, the decision to revert to ten states effectively forced Dr. Riek Machar and the SPLM/A-IO to join the R-TGoNU or risk being labelled as 'spoilers', while dramatically restricting the ability of opposition groups to contest the creation of the newly created administrative areas. To this end, the last-minute nature of the announcement ensured that opposition actors had little time to react, let alone work with the government to update plans for institutional transitions.

Independent of why the GRSS reversed its decision on the number of states in the final days of the R-ARCSS, it is important for international partners to understand that the shift back to 10 states will not address on-going disputes over administrative and territorial resources.¹¹ Rather, the political, economic, and logistical uncertainties tied to changing boundaries and political ordering in a conflict-affected environment will exacerbate existing competition over administrative resources. In turn, competition for control over access to the central state will increase the ability of (and incentives for) political authorities to deploy restrictive interpretations of autochthony and territorial rights to solidify exclusive access to previously shared resources. In other words, while it is important to celebrate the short term 'win' related to the return to 10 states and ensuing formation of the R-TGoNU, international actors must also understand that disputes over the number of administrative units and their boundaries will not disappear. Rather, without addressing the root causes of administrative and political disputes, existing and future grievances over access to and control of the state will continue to be reduced to and expressed as territorial competition between historically interdependent geographic and ethnic communities.

3. CONTESTED TERRITORIES ON THE EAST BANK

The outbreak of large-scale violence in December 2013 and introduction of new states did not 'create' the disputes between Shilluk and Padang Dinka. Rather, conflict between these historically interdependent communities has materialised at key moments over the past 40 years. Rather than historical or primordial disputes, these claims are

¹⁰ According to the 14 February 2020 'Final Resolution of the Meeting of the Presidency on the Number of States and their Boundaries,' "in the interests of peace, stability and the unity of our country," the Presidency has "decided to defer the matter to the Revitalized Transitional Government of National Unity (R-TGonU) during the implementation period" (GRSS 2020:2). At the time of writing (May 2020), signatories to the R-TGoNU had yet to agree on the division of administrative positions across the ten states. A communique signed by President Kiir on 7 May 2020 concluded that consensus had been reached, with 6 states (Central Equatoria, Eastern Equatoria, Lakes, Warrap, Northern Bahr El Ghazel, and Unity) going to SPLA/M, three states to the SPLA/M-IO (Jonglei, Western Bahr El Ghazel, and Western Equatoria) and one state (Upper Nile) going to the South Sudan Opposition Alliance (SSOA). However, several opposition figures including Dr. Riek Machar rejected this communique, claiming that the decision was not reached by 'consensus' but was made unilaterally by President Kiir. Independent of the nature of this decision, it has led to calls for the creation of new administrative areas. For example, the decision to allocate the governorship of Jonglei state to SPLM-IO immediately led to calls from Dinka-Bor for their own administrative area.

¹¹ This argument can also be extended to the appointment of governors for the 10 states. State governors could play an active role in solidifying physical security and economic development in their respective states, but there is little evidence that their appointments in and of themselves will reinforce key provisions of the peace agreement without first addressing both the causes and consequences of conflict linked to the ways that political actors benefit from and perpetuate economic extraction and political competition.

a direct result of increased competition for access to and control of administrative resources in a conflict-affected and emerging state. Specifically, the gradual emergence of a centralized Juba-based government that increasingly associated sub-state administrative units (i.e. counties and payams) and powers with ethnic and sub-ethnic groups had a significant impact on competition for limited resources throughout South Sudan.

In the western region of Upper Nile, increases in the political and economic power of the Padang in the post-CPA and -Independence periods led to a corresponding decrease in political capital of the Shilluk at both regional and national levels of government. In a context characterized by a lack of services and the association of administrative control with specific ethnic or sub-ethnic groups, changes in political ordering linked to the solidification of neo-patrimonial rule resulted in a positive feedback loop between top-down competition for resources (economic, political, and administrative) and bottom-up fears of marginalization from territory and state institutions. In other words, the widespread lack of services outside of Juba is not interpreted as a failure of governance, but the failure to get representatives from one's ethnic or sub-ethnic group in office to ensure access to the economic windfalls (real and perceived) of peace and Independence. In the western region of Upper Nile, increasing competition over state resources incentivized politicians and local leaders to use restrictive interpretations of autochthony to make ahistorical claims to Malakal town and key areas of Balliet, Pigi, and Akoka counties. Rather than 'historical' conflict over primordial ethno-territorial units, the 'land' and 'boundary' disputes between Shilluk and Padang Dinka are both causes and consequences of South Sudanese state-building and governance strategies directly and indirectly supported by donors over the past 15 years.¹² Increased competition for access to administrative institutions and resources has been reduced to and expressed as exclusive ethno-territorial claims between two communities whose histories are characterized by large-scale migrations and overlapping resource rights.¹³

Building on existing competition for administrative and territorial resources, between 2015 and 2017 the GRSS, National Security Service, and allied Padang militia carried out indiscriminate attacks on Shilluk civilians on the east and west banks of the Nile.¹⁴ Although the GRSS, opposition forces, and their respective militias all targeted civilians throughout the course of the 2013 civil war, the scale and coordination of violence targeting Shilluk were designed to push civilians out of contested areas and into the Malakal PoC. With the entire Shilluk population of the east bank confined to the PoC, the GRSS re-territorialized disputed areas in the hands of the new Padang majority population. Specifically, having displaced the entire Shilluk population, the GRSS used the pervasive denial of humanitarian

¹² Although these territorial claims and disputes are generally expressed as being between the 'Shilluk' and 'Padang Dinka' communities, they are organized and communicated via highly politicized and coordinated narratives that are by no means representative of these politically and socially diverse communities.

¹³ In an environment characterized by significant interdependence and uncertainty, historical precedent emerges as an obvious, but ultimately misleading approach to addressing contemporary 'boundary' disputes. First, as territory becomes the focus of competing claims, participants instill key geographic sites with historic, symbolic, and religious importance, and use narratives of 'historical occupation' to justify contemporary claims. Second, key actors selectively deploy 'scientific' data from fields such as geography, cartography, history, and archaeology in an attempt to 'prove' autochthony or exclusive belonging. In other words, narratives of 'historical precedent' are used to redefine relations to the institutions of state power by creating a hierarchy of rights regarding who can benefit from contemporary state resources. Claims of autochthony and historical precedent are thus effective strategies to justify increasingly exclusive, but contemporary claims to resources. Regardless of the reasons why historical precedent is used to claim contested resources, it is clear that historical boundaries and settlement patterns will not, and cannot, resolve current territorial disputes rooted in attempts to solidify access to political and economic control. Moving forward, there is little value in returning to historical boundaries. Rather, the focus should be on understanding how narratives about the exclusive rights of specific ethnic and sub-ethnic groups to specific resources are constructed, altered, and used to make contemporary claims to the state and its resources.

¹⁴ See United Nations Panel of Experts, Final report of the Panel of Experts in Accordance with Paragraph 187 (d) of Resolution 2206 (2015). S/2015/656, 2016; Amnesty International, "It Was As If My Village Was Swept By A Flood:" South Sudan - mass displacement of the Shilluk population from the west bank of the White Nile. Amnesty International: London, UK. (2017); and UNHRC (United Nations Human Rights Council, 'Report of the Commission on Human Rights in South Sudan. A/HRC/37/71 of 23 February' (2018).

services, creation of new states, and re-population of contested areas to consolidate military, administrative, and territorial control in the hands of the Padang.¹⁵

4. DISPUTED AREAS AND THE RETURN TO 10 STATES

Although the creation of new states by no means caused the administrative and territorial disputes between the Shilluk and Padang on the east bank of the White Nile, significant changes to settlement patterns and administrative power dramatically altered political ordering. On the one hand, given widespread displacement and the fact that the overwhelming majority of Shilluk IDPs reject the 32 states, the return to 10 states *could* present an initial opportunity to address existing grievances. On the other hand, changes to administrative boundaries will not attend to the structural roots of on-going disputes. Without addressing *why* competition over administrative resources is reduced to and expressed as territorial disputes, grievances will continue to grow and have the potential to trigger further conflict.

Changes to administrative boundaries, not power

Disputes over Malakal town and key areas of the east bank pre-date the 2013 conflict and creation of the new states. As such, there is little reason to expect that a return to the pre-war status quo will address this issue. Rather, it is likely that the nature of conflict and on-going political uncertainty associated with the formation and implementation of the R-TGoNU will present additional obstacles to political and physical stability. Moving forward, a return to 10 states and regional power sharing are complicated by the fact that the structural causes of the conflict have not only not been addressed, but have been exacerbated by large-scale violence and displacement.¹⁶

First, given that competition for control over administrative resources has been reduced to and expressed through exclusive ethno-territorial claims, the 2013 conflict quickly degenerated into communitarian interests fought along ethnic lines. Violence in the western region of Upper Nile was severe and characterized by large-scale purposive targeting of Dinka and Shilluk civilians, sexual and gender-based violence (SGBV), and destruction of entire villages. The widespread trauma and displacement caused by the nature and extent of violence present significant obstacles to the social, political, and territorial re-integration assumed by the return to the 10 states.

Second, there is little reason to believe that the return to 10 states will address grievances linked to political ordering and perceptions of administrative marginalization. Most importantly, the reformation of the Upper Nile Legislative Assembly will not necessarily translate into greater political power for the Shilluk or address long-term perceptions of political and economic marginalization. As it stands, both the GRSS and SPLM/A-IO are struggling to re-configure their respective constituencies. The fact that both parties need political, economic, and military support in Upper

¹⁵ For a summary of the denial of humanitarian access in these areas see Craze, ‘Displaced and Immiserated: The Shilluk of Upper Nile in South Sudan’s Civil war, 2014-19,’ Small Arms Survey, Geneva (2019); and the United Nations Panel of Experts, ‘120-day Report of the Panel of Experts in Accordance with Paragraph 2 of Resolution 2353 (2017) Reaffirming Paragraph 12(3) of resolution 2290,’ (2016). S/2017/789 (2017). For an overview of GRSS attempts to repopulate disputed areas with Dinka Padang IDPs, see South Sudan Protection Cluster, ‘Protection Trends South Sudan: January-April 2017 (2017);’ and United Nations Human Rights Council, ‘Report of the Commission on Human Rights in South Sudan.’ A/HRC/37/71 (2018).

¹⁶ There is also a pressing need to recognize that the ‘local’ violence that is often reduced to and expressed as ‘ethnic’ conflict is both a cause and consequence of competition for administrative and political resources at the local, state, and national-levels. Although instrumentalized at the local level, on-going raiding and inter-communal conflicts are driven by regional and national-level competition for access to and control over state resources. This violence should be understood as a direct expression of, rather than separate from, larger-scale political violence.

Nile increases incentives and opportunities for the Shilluk, Padang, and their respective militias to make exclusive claims to administrative resources, thereby undermining opportunities for legitimate socio-political and territorial re-integration.

Moving forward, while the return to 10 states *could* provide an initial opportunity for reconciliation rooted in power-sharing between these historically interdependent communities, the nature of violence and on-going political and physical uncertainty increase the importance of controlling state institutions and contested territories. Without significant and sustained reconciliation between local and national actors rooted in addressing the structural causes of disputes, with a specific focus on the ways that resources allocated by the central government exacerbate local conflicts, this competition will continue. Fears of on-going and future marginalization will reinforce exclusive claims to previously shared resources and increase demands for ‘hard’ ethno-territorial boundaries.

Administrative changes and secondary occupation

In addition to the challenges facing power sharing in a fluid environment, changes to administrative boundaries in Upper Nile will not necessarily address disputes linked to the widespread (government-supported) secondary occupation of contested areas on the east bank.¹⁷ The large-scale displacement of Shilluk characterized by purposive targeting of civilians and destruction of HLP was not a by-product of the conflict; it was the end goal of a population engineering programme designed to re-territorialize disputed areas by solidifying Padang administrative and physical control. Moving forward, the secondary occupation of HLP presents additional challenges to any administrative changes brought about by the return to 10 states.¹⁸ Notably, although administrative power and territorial occupation are inter-connected, a change in one does not necessarily translate into a commensurate change in the other. The re-territorialization of the east bank was achieved militarily and solidified through the creation of new states and government-supported population engineering. The return to previous state and county boundaries *may* impact political ordering, but it is unlikely to provide Shilluk with the political and military capital needed to re-claim disputed territories.

Furthermore, the disconnect between changing boundaries and territorial occupation has been reinforced by the ways in which claims to contested areas have been entrenched over time. Notably, since taking over the east bank, the Padang have begun to reinforce their territorial claims by nominating local authorities (from the Mayor of Malakal town to county commissioners), constructing new buildings, and occupying previously shared or contested natural resources (e.g. grazing lands and water points). At the same time, the continued displacement of the Shilluk has solidified strong symbolic claims to disputed territories, intensifying existing grievances while simultaneously reducing opportunities for reconciliation. The material, functional, and symbolic entrenchment of Shilluk and Padang claims have resulted in a zero-sum game characterized by the hardening of historically flexible boundaries between interdependent communities with overlapping land and resource rights. In other words, statements from Shilluk and Padang Dinka regarding permanent and clearly defined ethno-territorial boundaries between communities have emerged as both a cause and consequence of violence, displacement, and competition for administrative resources.

¹⁷ The large-scale displacement of the Shilluk was followed by the 2015 creation of the new Padang majority state of Eastern Upper Nile (28 states). In 2017, Eastern Upper Nile state was divided into two new Padang majority states of Central and Northern Upper Nile (32 states). The administrative changes introduced by new states were reinforced by government-supported repopulation of disputed areas. Specifically, in 2017 the GRSS chartered aircraft to transport Padang Dinka IDPs from Central and Eastern Equatoria to Malakal. According to a government official cited by UNHCR, these IDPs were “part of 15,000 IDPs to be resettled in the region” (see UNHRC, Report of the Commission on Human Rights in South Sudan:91). The IDPs and new arrivals transported by the government were joined by other Padang IDPs sheltering in the region, who relocated to Malakal and its environs as a result of improvements in physical security and service provision.

¹⁸ Here, ‘secondary occupation’ refers to the physical occupation of not only IDP households, but also agricultural, pastoral, and water resources.

Without addressing the reasons *why* competition over administrative and economic resources are reduced to and expressed as disputes over land, changes to state boundaries will have little impact on territorial occupation.

Land and peace¹⁹

Territorial expressions of administrative disputes in a context characterized by inter-ethnic violence have significant implications for physical security in the immediate post-war period. Given that both the Shilluk and Padang have legitimate claims to contested areas, failing to address the territorial expressions of administrative competition and marginalization could trigger further conflict. Notably, the importance of contested areas to the livelihood security and identity of Shilluk from the east bank has translated into significant support for the Agwelek militia led by General Johnson Olonyi. According to Shilluk in the Malakal PoC, this support is a direct result of the Agwelek's defence of Shilluk lands in Panyikang county and on the east bank of the White Nile.

Even the formation of the Agwelek, it was a formation because of the land. Since then the creation of new states gave more power to the Agwelek and youth. Youth join the Agwelek because of the land issue. If the land is given back to the Shilluk, then the Agwelek will have nothing to do. It is their only mission now.²⁰

Although there is no evidence that the Agwelek are currently recruiting in the Malakal PoC, the militia remains an important outlet for civilians who are frustrated with the peace process. When asked about recruitment - generally a sensitive topic - Shilluk in the PoC tend to laugh and state that land-related grievances are so strong that the Agwelek do not need to recruit, 'people just go and join.' According to a youth leader from sector 4,

There is no recruitment. The Agwelek do not come to the PoC to recruit people; people volunteer. When people [in the Malakal PoC] feel there is injustice over land, they go and volunteer to fight.

At the same time, while most Shilluk in the PoC support the Agwelek, they also note a willingness to 'give the current peace deal a chance.' Specifically, participants note that as of January 2020, people are no longer leaving the camp to join the militia. Rather, camp residents are waiting to see if the R-ARCSS (and now R-TGoNU) can address outstanding grievances and bring 'peace.' When asked what this 'peace' looks like, respondents overwhelmingly highlight the need to address secondary occupation by the Padang. Most importantly, 100% of participants from the PoC note that the failure to address land-related grievances in Malakal town and on the east bank will lead to further violence.

Youth are waiting for the peace to resolve the land issue. If the land issue is not resolved then we are preferring to use our power. We will take up arms and reclaim our land; that is the only alternative. If a peaceful resolution is not reached then we will take up arms.²¹

¹⁹ The data presented in this section were collected as part of a rapid scoping assessment in the Malakal PoC. Over a one week period from late January to early February 2020, researchers performed a total of 64 semi-structured interviews with key informants in the Malakal PoC. For a detailed breakdown of methodology and sampling procedures, see Pritchard, "We Have No Place Now": Solidifying borders and displacement in the Malakal PoC, Norwegian Refugee Council (forthcoming).

²⁰ Interview, female elder sector 2.

²¹ Interview, male youth leader sector 4.

Even if our generation dies now the next generation will take on the issue of land. This is the fight of our generation, like those who fought the Egyptians and the Turkish. This is our fight and the future generations will continue it.²²

In the immediate post-war period, it is clear that land-related grievances place the Agwelek in a difficult position. Despite significant reductions in the flow of funds and arms, the militia remains a powerful actor and could leverage this into positions in the SSPDF and R-TGoNU. Yet, the Agwelek have little to gain from joining regional or national institutions without significant and sustained increases in the political, administrative, and financial resources needed to counter Padang ties to the executive and address the large-scale occupation of contested territories. Most importantly, any agreement that does not allow the Shilluk to return to disputed lands will lead to a significant reduction in material and social support for the Agwelek.

Even if those politicians decide to go in with the government, we as the Shilluk community will not go in with them. We will form a new Johnson Olonyi and a new Lam Akol; we will find new leaders to fight for the land issue.²³

Political and administrative uncertainty

Finally, although the return to 10 states provides an important opportunity to address existing grievances linked to competition for administrative and territorial resources, widespread uncertainty over the nature of peace and political representation pose additional challenges to physical stability in the short-term post-war period. The ongoing return to 10 states and formation of the R-TGoNU present essential, but largely unsustainable moves towards peace. The national and sub-national causes of conflict have not been addressed, and the R-TGoNU is simply an amended version of previous power-sharing agreements that failed in both the lead up to the 2013 conflict and initial ARCSS agreement. Furthermore, the political and economic uncertainty surrounding administrative and territorial reforms between 2015 and 2020 have increased incentives for politicized and militarized ethnic communities like the Shilluk and Padang Dinka to compete for exclusive access to and control over resources.

The process of defining or changing internal boundaries is necessarily a contentious process, as it involves the spatial reconfiguration of power. In South Sudan, the challenges inherent in adjusting state boundaries have been exacerbated by the manner in which new states were both created and reversed. Specifically, the lack of transparency surrounding the creation and implementation of new states intensified existing uncertainty over access to political, administrative, and territorial resources. Although the return to 10 states suggests a return to some level of predictability, the reality is complicated by the fact that political actors are striving to solidify and extend both their constituencies and control over line ministries, regional institutions, and local authorities.²⁴ At the same time, the language in the Presidential Circular makes it clear that the return to 10 states is not necessarily permanent and will be deferred to the R-TGoNU.

The Presidency has taken note of the popular decision of the people of the Republic of South Sudan on the Number and Boundaries of the 32 states plus. However, in the interest of peace, stability and the unity of our country, decided to defer the matter to the Revitalized Transitional Government of National Unity (R-TGoNU) during the implementation period.²⁵

²² Interview, male youth leader sector 4.

²³ Interview, male elder sector 1.

²⁴ The return to 10 states and formation of the R-TGoNU precipitated a number of high-profile defections between signatories to the R-ARCSS but has had little to no impact on disputes over the division of administrative powers and responsibilities at the state level.

²⁵ See GRSS, ‘Final Resolution of the Meeting of the Presidency.’

In a context where community boundaries have evolved over centuries of migration, displacement, and integration, uncertainty linked to the creation and reversal of new states has increased the incentives and ability of historically interdependent communities to compete for exclusive control over the real and perceived resources that flow from territorial resources and access to the central state. As internal boundaries become more politicized and contested, widespread uncertainty has further enhanced the ability of communities with overlapping and seasonal rights to deploy narrow definitions of ‘insiders’ and ‘outsiders’ to solidify territorial and administrative claims.

5. MOVING FORWARD

Disputes between increasingly politicized Shilluk and Padang Dinka communities over administrative and territorial resources on the east bank of the White Nile provide an effective introduction to the impacts the creation and reversal of new states have had on political stability and physical security in South Sudan. Although the return to 10 states will affect communities throughout the country in different ways, it is clear that it will not address disputes that link competition for administrative and political resources to territory and identity. Rather, significant uncertainty over administrative power, sub-state boundaries, and neo-patrimonial relations have re-enforced both top-down and bottom-up incentives to compete for exclusive, ethnically-defined control over governance and territory.

Moving forward, the case study of the ‘territorial’ dispute between the Shilluk and Padang Dinka provides a number of important ‘takeaways’ for international actors working to support the South Sudanese peace process and R-TGoNU. Most notably, international policy makers need to acknowledge and understand that although the return to previous administrative boundaries represents an important step towards peace, it will not and cannot address on-going administrative and territorial disputes linked to competition over economic, political, and territorial resources. As such, future programmes and advocacy need to move beyond an exclusive focus on the implementation of the R-ARCSS and address grievances over access to and control of administrative and territorial resources. Specifically, there is a pressing need and significant opportunity for international partners to move away from the myopic pursuit of boundary demarcation to engage with the key issues precipitating political and physical insecurity: namely, representation and downward accountability. At the same time, while it is essential to engage with local actors and mechanisms of dispute resolution, this will not reduce national-level competition for economic and political constituencies. Simply put, international actors looking to support not only the R-TGoNU, but also physical security and political stability in South Sudan need to move beyond traditional engagement rooted in a false-binary between national-level advocacy and ‘local’ level programming. The main focus moving forward should be on addressing how and why grievances emerge and are instrumentalized by national- and local-level actors to secure access to and control over administrative and territorial resources in a fluid but emerging state.

Finally, the condensed case study of the administrative and territorial disputes between the Shilluk and Padang Dinka provided above demonstrates an important shortcoming of the R-ARCSS peace process that has significant implications for the R-TGoNU in the immediate and medium-term ‘post-war’ and transitional periods. Specifically, although the peace process eventually generated a (problematic) agreement on the number of states and their boundaries, it failed to address the causes and consequences of pre-existing and emerging disputes over political and economic resources. This disconnect between a specific outcome of the R-ARCSS (return to 10 states) and on-going grievances over land and administrative resources can be scaled up to both the structure and outcomes of the

overall peace agreement. Notably, the R-ARCSS was not designed to address the causes and consequences of the 2013 civil war, but to tweak elite power- and resource-sharing arrangements that have failed on two previous occasions. In other words, just as changes to state boundaries have had little to no impact on disputes over administrative and territorial resources, forming the R-TGoNU and transitioning into post-war ‘recovery’ and ‘development’ without addressing the causes and consequences of conflict will have little impact on political instability and physical insecurity.

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