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South Sudan: Seeking a Formula for Peaceful Coexistence and Sustainable Development

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State reconstruction: an imperative

South Sudan came into existence as a sovereign nation on July 9, 2011. Its separation from the Republic of Sudan was made possible by a UN-supervised referendum held in January 2011; the latter was a requirement of the Comprehensive Peace Agreement signed in 2005, which ended what had been an extremely brutal and prolonged civil war. The new country that emerged on July 9, 2011 came into being with extremely weak institutions, virtually all of which were incapable of effectively delivering on the aspirations of the peoples of South Sudan—those aspirations, included, inter alia, peaceful coexistence, rapid economic growth to generate the wealth needed to fight poverty and significantly improve the people's living conditions, and opportunities for self-actualization for all South Sudanese, regardless of their ethnic or religious background. In addition to the fact that the institutions inherited by the new country were not suited to the effective management of ethnic diversity, they could not provide the wherewithal for sustainable economic growth and development. Of course, the southern Sudanese provinces that later became South Sudan on July 9, 2011, were united in their struggle against the tyranny directed at them by the Khartoum-led regime. However, presently, there is a lot of disunity and destructive ethnic mobilization as groups seek ways to maximize their values, aspirations, economic and political interests, and customs and cultures, a process that has made it very difficult for the central government to achieve national integration and maximize national objectives. A high priority for South Sudan, then, is institutional reforms to secure a consensual and productive state, one that can significantly enhance peaceful coexistence of the country's diverse ethnic and religious groups; encourage and promote entrepreneurship, and hence, the creation of wealth; and adequately constrain civil servants and politicians so that they do not engage in such growth-inhibiting behaviors as corruption and rent seeking (see, e.g., Mbaku and Smith, 2012; Mbaku, 1997, 2004).

South Sudan is endowed with significant amounts of natural resources, including large deposits of oil, rich farmland, and abundant water from the Nile River. However, in order for these resources to be transformed into the wealth that the country needs to confront poverty and deprivation, the state must work with all of the country's population groups to provide an effectively functioning framework of law and order. Such an institutional framework must, at the very least, enhance peaceful coexistence, adequately constrain those who serve in the public sector, promote and nurture entrepreneurial activities and hence, wealth creation, protect the person and property of individuals and enhance their ability to utilize their talents, acquired skills, and resources in productive ways, and provide an enabling environment for the sustainable management of resources (Mbaku and Smith, 2012a).

Securing the consensual and productive state in South Sudan must begin with constitution making. Today, many Africans live in countries governed by rules that they do not understand, respect or accept. In addition, most of these peoples do not understand how and why these constitutional rules were selected. For, constitution making in these countries was dominated and controlled by politically well-connected interest groups, primarily the ethno-regional groups that captured the evacuated structures of colonial hegemony at independence (see, e.g., Mbaku and Ihonvbere, 2003a, b; Mbaku, 2004). South Sudan must not adopt such a top-down, elite-driven, non-participatory approach to state reconstruction. Otherwise, it would end up with a set of institutional arrangements that is irrelevant to the lives of its citizens and the problems that they face and hence, cannot enhance governance and deal

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effectively with the problems that confront citizens. Thus, constitution making in South Sudan must be bottom-up, people-driven, inclusive and participatory. All citizens, regardless of their educational achievements, wealth status, ethnic origin, or religious affiliation, must be granted the facilities to participate fully and effectively in constitution making.

Participation of all of South Sudan's relevant stakeholder groups in constitution making must be maximized so that the outcome of the rules selection process is a set of constitutional rules that is relevant to the lives of the peoples of South Sudan and hence, reflects their desires, values, aspirations, traditions, customs and worldview and enhances their ability to organize their private lives, live together peacefully, and engage in those activities that maximize their values. Of course, such a constitution must also be consistent with the Universal Declaration of Human Rights, as well as with the provisions of other international treaties and conventions that were agreed after the UNDR (e.g., the International Covenant on Civil and Political Rights).

Effective management of ethnic diversity critical for development

South Sudan, like most other African countries, is ethnically very diverse. While inter-ethnic conflict was made subservient to the struggle against Khartoum during the fight for independence, violent confrontations between groups have now re-emerged and have become a major constraint to trade and investment, and the types of cultural exchanges that are critical for national integration. In a January 12, 2012 article in *The New York Times*, Jeffrey Gettleman argued that although "born in unity," South Sudan "is plunging into a vortex of violence. Bitter ethnic tensions that had largely been shelved for the sake of achieving independence have ruptured into a cycle of massacre and revenge that neither the American-backed government nor the United Nations has been able to stop."

As is evident from the failure of the UN to stop the destructive mobilizations by groups such as the Lou Nuer and Murle in South Sudan's Jonglei State, the solution lies not in external intervention but in the provision of institutional arrangements that can enhance peaceful resolution of conflict. For example, much of the inter-ethnic conflict in Jonglei State is related to cattle raids and the search for grazing lands. Obviously, there is a property rights issue here—the Government of South Sudan, working in consultation with local communities, should engage in reforms to produce effective property rights regimes, that is, "those that are well defined, are context-specific, enforceable, and reflect the values of the societ[ies]" involved (Mbaku, 2004: 220). Involving all the various stakeholders in the design of such a property rights regime would ensure that the outcome is a set of rules that "reflects the goals and objectives" of the groups involved and enhances their ability to meet "such goals as equity in the allocation of resources; economic performance; efficiency in the management of the ecosystem; and sustainability in the use of [each group's] resources" (Mbaku, 2004: 221). The provision of such a set of legal institutions—that is, one that effectively defines ownership of resources and provides the mechanism to enforce and protect these rights—should significantly improve resource allocation, encourage investment in resource productivity, minimize overexploitation, and perhaps, more importantly, discourage resort to the type of destructive and violent ethnic mobilization that has characterized post-independence resource allocation in many parts of South Sudan.

Constitutional federalism is recommended for ethnically diverse societies

Since independence, South Sudan has struggled with how to effectively manage the demands of the various competing and conflicting groups that exist within the country. Since they were part of a Khartoum-dominated Sudan, the provinces that are now South Sudan have recognized the superiority of constitutional federalism as a model of government that can ensure peaceful coexistence and enhance the ability of each group to maximize its values without infringing the ability of others to do the same. Hence, when Sudan gained independence from Britain and Egypt in 1956, the southern provinces demanded a federal system of government, which they saw as enhancing local development and minimizing domination by the central government in Khartoum. However, the Muslim-dominated Northern political parties, which had hijacked the decolonization project and now controlled the process of constitution making and institution building, opted for a unitary system of government with power concentrated in the center in Khartoum. In addition, the northerners wanted to establish an Islamic state, which would enhance their ability to force their Arabization and Islamization programs on southerners (*see generally* Holt and Daly, 2000; Lesch, 1998; Lyob and Khadiagala, 2006).

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South Sudan's interest in a decentralized form of government was, again, asserted in its transitional constitution—*The Transitional Constitution of the Republic of South Sudan*—which became effective in 2011 (see Chapter III, Articles 47, 48, and 49). This constitution establishes three levels of government—national, state, and local. What is critical about this approach to governance is that it brings government closer to the people and makes it more relevant to their interests, values and the problems that they face. Despite the fact that such a decentralized form of government is more likely to broaden citizen participation in governance and hence, enhance accountability and minimize corruption, some South Sudanese continue to argue in favor of a centralized system, with power concentrated in the center in Juba. For example, Isaiah Abraham (2012) has argued that “[e]conomically, federalism hurts poor states and most of the time, it encourages unnecessary competition and selfishness.” These are the same arguments that were given by many African heads-of-state when they opted for unitarism in the early days of independence. In the end, unitary forms of government in various African countries produced the same types of ills that had been attributed to federalism—significant inequalities in the distribution of income and wealth; high levels of corruption, especially among civil servants and political elites at the center; systematic exclusion of various groups (e.g., women, rural inhabitants and minority ethnic groups) from participation in political and economic markets; the conversion of the values of the ethno-regional groups that had captured the government at independence into national values and their subsequent imposition on the rest of society; and the emergence of corruption and rent seeking as major constraints to national development (see, e.g., Kimenyi and Meagher, 2004).

Decentralization can provide South Sudan with many benefits. It brings government closer to the people and makes it relevant to their lives and the problems that they confront on a daily basis; provides people at the local level with the opportunity and wherewithal to participate in the design and implementation of policies that affect their lives; significantly increases government competition, resulting in more efficient public provision; forces accountability in government and hence, minimizes corruption and other forms of opportunism; and provides opportunities for local communities to make certain that public policies reflect their values, a process that can significantly minimize the desire of groups to resort to destructive mobilization in an effort to assert themselves and avoid being marginalized politically and economically.

Escaping the natural resource curse

South Sudan has a large endowment of natural resources, which include significant deposits of oil, rich farmland and water from the Nile River. Generating the wealth that the country needs to fight mass poverty and deprivation requires efficient management of these resources. We note that the Government of South Sudan wants to pursue a development strategy that would turn the country into a major supplier of foodstuffs to the East African community. This objective, unfortunately, cannot be achieved by reliance on rain-fed agriculture alone. While it is critical that the country restructure property rights, especially in land, and make them more secure, as well as provide opportunities for future farmers to gain the necessary human capital, and provide critical social overhead capital (e.g., farm-to-market roads), access to reliable sources of water for irrigation is likely to be the most important factor determining the country's ability to turn itself into an important supplier of food to its neighbors. South Sudan is a riparian State to the Nile River and should be able to exercise its legitimate rights to the waters of the Nile River so that it can develop an effective irrigation system for its agricultural sector.

Presently, there is no all-encompassing legal agreement among all the Nile River riparians to govern the allocation of the river's waters. The main legal agreements that exist on the allocation of the waters of the Nile River are the so-called Nile Waters Agreements—the 1929 Anglo-Egyptian Agreement and the 1959 bilateral Agreement between Egypt and Sudan (see, e.g., Kimenyi and Mbaku, 2010; Mekonnen, 2010). All the Nile Basin countries, except for the Republic of Sudan and Egypt, have rejected these agreements as colonial anachronisms—part of the reason for the rejection comes from the fact that they were designed without the participation of the upper riparian States and that they assign virtually all of the waters of the Nile to Egypt and Sudan. South Sudan would do well to also reject these agreements and seek membership in the Nile Basin Initiative (NBI), which is currently attempting to develop a regionally-based legal and institutional framework for Nile governance (Mekonnen, 2010).

South Sudan must face the possibility that it, like other resource-rich countries, is likely to become a victim of the so-

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called “resource curse.” The latter refers to the paradox that is faced by countries that have significant endowments of non-renewal resources. Usually, public policies in these countries are geared towards the exploitation and development of the abundant non-renewable resources (e.g., oil in the case of South Sudan) to the near total neglect of other sectors of the economy, which are critical for balanced economic growth and development (Mbaku and Smith, 2012b). Many resource-rich countries, like South Sudan, believe that the most effective way to avoid the resource curse is to adopt an opaque policy for the management and allocation of all non-renewable resource revenues. Unfortunately, such a policy breeds corruption and public financial malfeasance, especially in countries with extremely weak institutions. In order to minimize resource-curse related problems, South Sudan should, instead, follow a policy of *openness and transparency* in the management of its natural resources. As stated by Mbaku and Smith (2012b), the “overarching policy suggestion for managing extractive resources has been for South Sudan to commit to the Extractive Industries Transparency Initiative (EITI), which is the global standard for openness and transparency in the management of natural resource revenues.”

Openness and transparency in government operations is critical for good governance. First, it minimizes engagement in corrupt behaviors by civil servants and political elites. Second, it significantly improves the ability of individuals who are interested in a decision or believe that a public policy might affect them to understand and appreciate the way in which the decision was made and why (Drew and Nyerges, 2004: 33). Finally, transparency enhances acceptance and respect of the government and the decisions that it makes. In South Sudan, where the central government may not be fully representative of the country’s diverse population groups, making policies through an open and transparent process can minimize the distrust that some ethnic groups, especially those that are not represented in government, would have for the latter. Thus, if a minority ethnic group argues that government policies are dominated and significantly influenced by the ethno-regional group that controls the central government in Juba, adopting an open and transparent approach to policy design and implementation would (i) provide opportunities for such disgruntled groups to participate; and (ii) also allow them to watch, understand and appreciate how decisions affecting their lives are made (Drew and Nyerges, 2004: 33). Thus, openness and transparency should be the model, not just for the management of natural resources, but also for all government operations in South Sudan.

Relating to each other after the divorce

Although South Sudan is officially and legally divorced from the Khartoum-dominated Republic of Sudan, the two countries still have issues that bind them together and invariably would require that they work together for their mutual benefit. The first issue concerns the proper and full adjudication of the border. The CPA made allowance for the demarcation of the border, unfortunately, that issue was not fully resolved before South Sudan attained independence. Today, both South Sudan and the Republic of Sudan continue to fight over their common border, especially in areas such as Abyei, South Kordofan (which contains the rich Heglig oil field) and the Blue Nile region, which are endowed with significant deposits of oil and minerals, as well as an abundance of arable farmland (Kimenyi, 2012). Both South Sudan and the Republic of Sudan must utilize the resources placed before them by the international community (i.e., the offices of the United Nations and African Union) to resolve all border-related conflicts and amicably agree on their common border in order to provide the enabling environment for peaceful coexistence, cross-border trade and exchanges, and good relations. As argued by Kimenyi (2012), “[u]nless the issue of fully adjudicating the border is resolved in the near future, the prospects of moving South Sudan toward a positive developmental trajectory are dim.”

The second issue concerns nationality—there are still many nationals of South Sudan resident in the Republic of Sudan. In March 2012, the Juba and Khartoum governments signed the Four Freedoms Agreement (FFA), which “covers the rights of Sudanese and South Sudanese residing on the wrong side of recently created borders” (Ali, 2012). Although the FFA grants citizens of both countries the “right to own property, move, live, and work” in either country, officials from Khartoum have argued that this “does not mean” that these people are granted “full citizenship rights” (Ali, 2012). For there to be peaceful relations between the two countries and in order to foster more mutually beneficial trade and cultural exchanges, the two countries would have to resolve the issue of nationality and do so, soon.

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Finally, the issue of how to transport South Sudan's oil to overseas markets remains unresolved. Since independence on July 9, 2011, South Sudan's oil, which accounts for as much as 98 percent of public revenue (see, e.g., Kimenyi, 2012), has been transported to overseas markets through pipelines belonging to the Republic of Sudan. However, in January 2012, South Sudan abruptly suspended oil production, supposedly to protest what Juba argued "were exorbitant transport fees charged by the Republic of Sudan to prepare and ship [the] oil to overseas markets" (Kimenyi, 2012) and also in response to a claim that the Republic of Sudan was illegally appropriating oil belonging to South Sudan. As a result of the loss of revenues from the sale of oil, the Government of South Sudan has been forced to impose austerity measures on its various ministries and departments, significantly hampering the ability of the latter to deliver critical services to citizens. Thus, it is of critical importance that the oil pipeline issue be resolved quickly.

Quality of institutions and development

South Sudan, as was the case with virtually all countries in Africa, gained independence with hardly enough skilled manpower to effectively manage its private and public sectors. This unfortunate situation, in the case of South Sudan, is due to policies of deliberate underdevelopment imposed on the southern provinces by Khartoum when they were part of the Republic of Sudan. It is true that South Sudan does not currently have enough human capital to manage its institutions. However, economists (see, e.g., Oslon, 1996) have long argued that "economic success is not determined by endowments in natural resources or access to both human and physical capital" (Mbaku, 2004: 4). On the other hand, "availability of resources such as skilled and well-educated labor, as well as machines, equipment and buildings (i.e., physical capital) are not a necessary precondition for development—these can be created in the process of development" (Mbaku, 2004: 4). As argued by Olson (1996: 6), the quality of a country's institutions sufficiently explains why some countries are rich and others are poor. Those countries that have economic and political institutions that adequately constrain civil servants and politicians, enhance entrepreneurial activities, and significantly minimize government takings, are usually able to achieve their growth and development potential. Hence, even if a country is able to provide itself with the necessary physical and human capital, it may still not be able to generate the wealth that it needs to deal with mass poverty if it fails to provide itself with the appropriate laws and institutions.

Poor and/or weak institutions promote growth-inhibiting behaviors such as rent seeking and corruption. The ability of South Sudan to achieve its development potential will be determined by how well the government facilitates and makes possible the introduction into the country of institutional arrangements that properly constrain the state, enhance entrepreneurship and the creation of wealth, and promote the peaceful coexistence of the diverse ethnic and religious groups that inhabit the country.

Policy recommendations:

How well South Sudan is able to realize its full economic potential will be determined by what the government does during the next few years in respect to institutional reforms and state reconstruction. For, although the new country is endowed with a significant amount of resources, this "natural wealth" can only be translated into the revenues that the country needs to meet its public and private obligations if the "right" institutional environment is established in the country. Such an environment, which can be secured through democratic (i.e., participatory, inclusive, bottom-up and people-driven) constitution making, consists of laws and institutions which (1) adequately constrain civil servants and political elites and prevent them from engaging in corruption, rent seeking and other growth-inhibiting behaviors; (2) enhance the peaceful coexistence of the country's diverse ethnic and religious groups; (3) provide the right incentives for investment in productive activities; and (4) generally provide the wherewithal for citizens to maximize their values.

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