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The Comprehensive Peace Agreement in the Sudan: Institutional Developments and Political Trends in Focus Areas

Samson S. Wassara

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The Comprehensive Peace Agreement in the Sudan: Institutional Developments and Political Trends in Focus Areas

Samson S. Wassara (PhD)¹

Introduction

The Sudan is a vast and varied country in terms of its geography and people, defining its social and political relations from the colonial era through independence. The history of Sudanese conflict has been shaped by the country's geographical setting, social diversity and poor governance. Public policies in the Sudan are as varied as the political structures, constitutions and institutions of governance that have risen and fallen. History reveals that the socio-political structure is dominated by the struggle for power and rights between the centre and periphery. Political disharmony, ethnic distrust, and economic and educational disparity have been the norm in Sudanese society. These factors have contributed to weak political institutions, which could not withstand the challenges of national cohesion and democracy. It is from this background that the ideology of marginalization has gained strength in the Sudanese political landscape. The Comprehensive Peace Agreement (CPA) was written and concluded in this context. The CPA focuses mainly on relations with the federal government in Khartoum with special reference to the Southern Sudan, Blue Nile, Southern Kordofan and Abyei states.

The signing of the CPA in January 2005 raised the hopes and promise of a new era in the Sudan. This agreement has made the Sudan the focus of peace research during the last few years in Africa, with researchers eager to understand the possibilities of transcending war-time structures, cultural obstacles and partial institutions in the country. Encouraged by the possibilities of political change in a post-conflict Sudan, these researchers are interested in observing the political institutions as stipulated in the CPA. This research attempts to examine the normative ideals of the agreement and the realities of implementing the CPA at both the macro and micro levels of political engagement and administration.

The CPA, which ended Africa's longest civil war, is an agreement between two parties, the Sudan People's Liberation Movement/Army (SPLM/A) and the ruling National Congress Party (NCP). The CPA has created a number of institutions that are in the process of being established, and waiting for operational mechanisms to take effect in a situation that is more intractable in areas where these institutions were almost completely destroyed by the civil war. The purpose of this study is to place the CPA within the federal system of government that existed before 2005, and to present and harmonize the political institutions stipulated by Sudan's Federal Act with their autonomous statuses. This study focuses equally on certain geographical areas included in the CPA. Scholars have fertile ground from which to examine the marriage between the existing political institutions, and the other layers of political institutions established by virtue of the peace agreements.

The proliferation of political institutions and an understanding of their level of operation are essential in understanding the processes of adaptation at both the macro and micro levels in the management of public affairs. The interaction between established institutions and the new structures of governance create emerging issues that help to define the new relationship between institutions and their

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incumbents. These interactions demonstrate the uncertainty in the process of implementing the CPA, which requires scholarly inquiries.

The CPA contains key principles that serve as a guide to the implementation of the programmes that could make peace attainable. For the machinery of peace implementation to operate, there must be institutions that function to help the State, its partners and interested stakeholders in achieving peace. The provisions of the CPA stipulate institutions that have been partly established, although many of them may be dysfunctional. Partners are experiencing difficulties in coping with effects of the prolonged civil war that are compounded by the resurgence of new civil wars with extra-national dimensions. The sluggishness of institutional development is characterized by nominal institutions, poor performance of the existing institutions, and weak operational mechanisms.

1. Research questions

Political developments in the post-CPA period raise a number of issues concerning the institutional relationships between the Government of National Unity (GONU), the Government of South Sudan (GOSS) plus the governments and administrations of the three states in the North, namely the Blue Nile, South Kordofan and Abyei. The major challenge is to address the larger and second-tier conflicts that impede the operations of functional institutions. Yet GOSS is also facing some serious threats, most noticeably from the lack of progress of security arrangements, and the re-integration of Other Armed Groups (OAG) into the armed forces. However, there are signs that the partners of the CPA are beginning to overcome some of their internal challenges and refocus their efforts on the implementation of the agreement. Thus, the leading research questions are:

- (1) What are the political institutions related to the implementation of the CPA, and to what extent are they functional?
- (2) What are the other factors that affect the performances of the CPA's political institutions?
- (3) What other events or situations can disrupt the politics of partnership?

These questions serve as a guide in understanding the state and social structures, the levels of analysis in post-conflict Sudan and the effectiveness or ineffectiveness of the existing structures after the peace agreement of January 2005.

2. Methodology of the study

Causal-comparative research was used to explore the relationship between the variables that determine the performance of institutions in the process of the implementation of the CPA. There was a need to design the research to include the current status of the institutions and the cause-and-effect relationship of the factors that influence the attitude and behaviour of partners. This is an example of the usefulness of both correlative and historical methods in explaining the phenomena under observation. This study relied on content analysis, and used primary documents such as the CPA texts, the declarations of partners, and documents containing the opinions of the observers. In this regard, three field trips were made to Juba during the period from January- July 2008 for in-depth discussions and interviews with policy makers including the Chairman of the Southern Sudan Local Government Board, leaders of civil society organizations and law makers in both the National Assembly and the Southern Sudan Legislative Assembly (SSLA).

This method of causation enabled us to redefine the relationship between the partners of the CPA, NCP and SPLM. Causation implies that the manipulation of one event produces another event. This

situation brings into action the concept of cause and effect.² This method of concomitant variation helped us to understand the actions and reactions of the partners in the CPA and is also useful in identifying parallel changes in two variables under problematic situations. Conflicts between partners in the interpretation of the CPA and its implementation were examined in the context of parallel changes in power distribution and political control.

Causality is an effective tool for analysis as it serves as a means of measuring the extent to which a society is more or less peaceful. It enabled us to understand the varied relationships between social change, consolidation of peace, deterioration of peace and a wide range of factors that explain the conduct of the post-conflict society in the Sudan. The other related issue in methodology is the link between causality and correlation. Correlation measures two or more variables with either causal links, mutual causality, interactive causality and/or a combination thereof.³ So, this study examined interactive variables with overlapping influences that determined the trend of events in the Sudan as a post-conflict society.

Finally, validation methods were applied to ensure the accuracy of inferences obtained from an analysis of the variety of information concerning the behaviour of the partners of the CPA. There were three types of validity which were relevant to this study: construct validity, content validity and criterion-related validity. The latter refers to the use of measures to assess the subjects' behaviour in specific situations.⁴ In relation to the method of criterion-related validity, the study attempted to assess the behaviour of the NCP and SPLM within the framework of the national politics of peace and links to the political conflict.

3. Conceptual explanation of political institutions in federal systems

The idea of political institutions can only be understood in the context of a political system which is broadly defined as "any persistent pattern of human relationships that involves, to a significant extent, control, influence, power, or authority."⁵ A political system is only one method for human beings to pursue power and authority. The organization of a political system can be in the form of a unitary government, a federation or a confederation. The political institutions that this study explores relate to an emerging federation in the Sudan from the remains of a protracted armed conflict. The CPA and the Interim National Constitution (INC) provide for the establishment of institutions that would facilitate the running of the political system in a federal context.

Scholars argue that the political institutions at the centre of a federal system define and shape the structure of governance. Institutional arrangements within the constituent units of a federation follow the structure at the national level. Central governments in federations are comprised of formal institutions such as the executive, legislative and judiciary branches supported by informal institutions and practices of governance. Federations can operate using parliamentary and presidential systems of government, while in parliamentary regimes the cabinet is drawn from the legislature with presidential regimes requiring the election of the president and governors. Other characteristics of federations include the proportionate representation of regional or special groups; one, two or more dominant political parties and multiple parties of different size with varying degrees of influence.⁶ Political parties affect the functioning of federal regimes and are linked to constituent units of a federation such as states.

² Larry B. Christensen (1994). *Experimental Methodology*, 6th edition. Allyn and Bacon, Boston, pp.75-77.

³ Ken Menkhaus (July 2004). *Impact Assessment in Post-Conflict Peacebuilding: Challenges and Future Directions*. Interpeace, Geneva, pp. 6-10. Full document can also be accessed at <http://www.interpeace.org>.

⁴ Olive M. Mugenda and Abel G. Mugenda (1999). *Research Methods: Quantitative and Qualitative Approaches*. Acts Press, Nairobi, pp. 99-103.

⁵ Robert A. Dahl (1991). *Modern Political Analysis*, 5th ed. Prentice-Hall Inc, Englewood Cliffs, p.4.

⁶ George Anderson (2008). *Federalism: An Introduction*. Oxford University Press, Forum Federations, pp.41-52.

Federations use various institutions and processes for intergovernmental relations which can be constitutional, formal or informal, and managed through political instruments. For example, in Southern Sudan the link between GOSS and the 10 states is formalized through the Governor's Forum, which is not a constitutional institution. The main focus of intergovernmental relations is the vertical integration of the central and constituent parts, which in the case of the Sudan are states. In some federations the constituent units establish mechanisms to coordinate their activities and promote the development of common positions in dealing with a central authority. This is a horizontal relationship, which is regarded by some central authorities with suspicion. However, the attitudes of the central authorities differ towards the states and other lower level institutions. In some federations the central government is dominant and can be coercive in relationships with the constituent units. In others, there is the tendency to emphasize consultations and negotiated agreements to resolve contentious issues. The usual practice is for federations to combine both the coercive and the consultative approaches in the business of governance.⁷ Therefore, this brief explanatory note on concepts in institutional processes helps us to move forward in examining the institutional processes of the CPA in the post-conflict Sudan.

4. Political setting: Autonomies in the Sudanese federal system

Scholars argue that every political system has had, in some respects, a unique past. This same argument indicates that history leaves political systems embedded in societies at different stages of development or modernization.⁸ This situation is true of the Sudan. The political system of the country has been marred by political violence and armed conflict that started before independence in 1956. The past is associated with bloodshed and the wanton destruction of property, infrastructure and basic services in the various war zones. The past is also associated with the mediation of conflicts, dialogues and agreements not kept, i.e. the Addis Ababa Agreement in 1972 and the Khartoum Peace Agreement in 1997. The former established autonomous institutions in Southern Sudan formed a unitary system of government that worked only for 10 years; the latter called for the stipulation of institutions, the result of which worked imperfectly within a newly announced federal structure in the Sudan.

The CPA is another stage in the political development of the Sudan, though not restricted to Southern Sudan like its predecessors. The agreement was hammered out when a federal constitution was adopted in 1998 with federal institutions already in place. The CPA differs, however, from previous agreements in that it is predicated on one country with two systems. For example, the government in the North maintains institutions that operate within the values of Sharia law, while the government in the South claims to operate in a secular system. Another unique characteristic of the agreement is that each party is allowed to maintain its own army, in addition to a third army referred to as the Joint Integrated Units (JIU).

The post-conflict political system operates in a complex federal system that is being continually tuned to face the realities in the Sudan. This complexity also shapes the way institutions are established and operated by the signatories of the CPA. The question is why adopt a federal system of government and create additional autonomies in a federal system? George Anderson provides clues to these questions when he reflects on the origin of federations by saying they have arisen in different circumstances and are the unique result of choices by its political leaders and larger historical forces.⁹ This argument demonstrates that federations have emerged within the larger processes of country formation and evolution in a variety of ways of which three are of note:

1. Previously separate entities or independent states concluded that they had enough common interest and shared identity to join together in a federal arrangement. However, a federal

⁷ Ibid. pp. 67-69.

⁸ Robert Dahl, *Op. Cit.*, p. 61.

⁹ George Anderson, *Op. Cit.*, pp. 6-10.

structure permitted each unit to preserve some of its autonomy while pooling other aspects in the new community.

2. In other cases, the country may have originally been created with a unitary and highly centralized structure. The eventual choice of federalism was in response to political pressures for devolution because of the country's multiple languages, religions, ethnicities and perhaps the major economic disparities between regions.
3. In yet other cases, these two processes are combined.

The emergence of a federation in the Sudan falls under the second process named above. The Sudan was ruled as a highly centralized country from colonialism through independence. Southern Sudan claimed a different identity and requested federation before independence with economic disparities strengthening the call for a special arrangement. It took the country more than forty years to recognize that diversity and devolution of power in the form of a federation adopted in 1994. The period from 1994 to 1998 witnessed an experiment in federalism in the Sudan which did not adhere to the norms of federal governance. Elements of centralization were best exemplified by institutions such as the Federal State Support Fund, which was established to channel finances to the states.

The CPA was framed to fit into an existing federal system, but the peculiarities of the regions led the signatories of the agreement to adopt an interim hybrid arrangement consisting of regional governments. For this reason, we have GONU which is not fully exercising its authority over all the states in its federation, while GOSS is exercising full authority over the 10 states in Southern Sudan. The CPA stipulates autonomous governments and administrations in Blue Nile, South Kordofan and Abyei with additional political authorities emanating from other peace agreements in the West and East of the country. This is not the focus of our study, which concentrates on Southern Sudan and the three areas covered by the CPA. It is safe to emphasize here that the autonomies within the federal system of the Sudan are the result of a combination of the historical forces, multiple social diversities and economic disparities between regions and the centre.

Federalism and autonomy differ greatly in their composition and institutions. Some federations are highly centralized while others are decentralized with extensive autonomy and discretion allocated to constituent units. The division of powers between the central government and territorial governments may be clear, but in many cases there are overlapping powers, referred to as concurrent powers. For example, the Russian federation has regions, autonomous areas, territories and cities. There are both regions and communities in Belgium and autonomous communities in Spain.¹⁰ All these political arrangements are an attempt to neutralize the possibility of a disintegration of these countries within the framework of social diversity.

The Sudan opted to recognize the importance of federalism, autonomy and territorial administrations in the form of agreements instituting two or more political structures. It is in this context that the idea of the Southern Sudan, Blue Nile, Abyei, Darfur and Eastern Sudan territorial authorities was conceived and agreed upon by the signatories of the agreements. Nevertheless, the severity of conflict over time and the use of weaponry have left their marks on the CPA and similar agreements. The process of forming self-governing units is to measure the political temperature of the protracted conflicts and to ensure a reasonable length of time for confidence building and reconciliation. Naturally, the CPA is an interim arrangement and so are the institutions that emerge from it. It is not certain that the institutions in question would survive after the elections and the referenda contained therein. It is too early to determine what directions or orientations the institutions would take if they survive. Therefore, it is imperative that the author examines the contexts of CPA related political institutions within the arena of constitutional and political developments.

¹⁰ Ibid. pp. 2-6.

5. Contextualization of political institutions and governance

The Interim National Constitution (INC) signed into law on 9 July 2005 is based on the CPA and the 1998 Constitution of the Sudan. It stipulates the levels of government and the corresponding institutions. At the national level the Constitution prescribes the roles, functions and powers of the three branches of government: the national executive, national legislature and national judiciary. The INC empowers the Southern Sudan to prepare its own constitution. Besides the 25 states, the INC authorizes territorial governments in the Blue Nile, Southern Kordofan and Abyei administrations to prepare their respective constitutions in accordance with the model constitutions provided by GONU and GOSS for that purpose. The model constitutions for states were prepared to avoid contradictions in power sharing between federal government institutions, GOSS institutions and the state governments. The three branches of government at the national level are replicated in the 25 states in accordance with the CPA and INC, and are the vehicles of power sharing as stipulated in the CPA. The institutions that have emerged as the result of the CPA must conform to the normative values of the CPA and INC, which serve as the guideline for a peaceful co-existence after the protracted civil war fought in the Sudan.

Since the adoption of the INC in July 2005, GONU concluded additional peace agreements. They are the Darfur Peace Agreement (DPA) and the Eastern Sudan Peace Agreement (ESPA), neither of which added any amendments to the INC. The agreements have compelled the NCP to manipulate its representation in the executive and legislative organs of the government to accommodate its new political partners. Political positions were created and appointments made to accommodate the newcomers, while the institutions established by virtue of the CPA have not undergone any mutations as a result of the new yet uncertain agreements.

5.1 Issues in the post-conflict executive structures

Leadership of the national executive was inaugurated on 9 July 2005 and vested in the presidency, which was comprised of the incumbent President John Garang de Mabior as the First Vice President and Ali Osman Taha as the Vice President. However, the tragic death of John Garang de Mabior brought Salva Kiir Mayardit into the presidency in August 2005. This institution, together with the federal ministries, continued to manage GONU and oversee the sub-national institutions created by the CPA. The composition of the national executive remained dynamic as per the other post CPA agreements. More appointments were made in September 2006 and May 2007 to accommodate the signatories of new agreements concerning Darfur and Eastern Sudan. The positions of Senior Assistant to the President under the DPA and Assistant to the President under the ESPA as well as advisory positions were created for the respective top signatories of the agreements, which reflect the commitments made under the agreements.

The Interim Constitution of Southern Sudan (ICSS) became law approximately six months after the INC was adopted by the National Assembly in July 2005. While it was relatively easy to enact the ICSS, the process was more difficult for the state governments of Southern Kordofan and Abyei. The state constitution of Southern Kordofan was not signed until 21 November 2006, thus causing a delay in the establishment of state institutions for a considerable period of time. The process of the constitutional development of the Abyei Administrative Area remained in limbo, and an acceptable Administrator of Abyei was only appointed in August 2008 after a bitter political struggle and violent confrontations between the SAF and SPLA. Wrangling over power in the states and the conformity of sub-national constitutions within the INC resulted in a slowing in the implementation of the CPA. Implementation of most of the activities envisaged in the CPA fell behind schedule, especially in Southern Kordofan and Abyei.

At the state level the adoption of constitutions depended on the politics surrounding the model constitutions for the Northern and Southern States. All the model constitutions were ready between

October and December 2005, but a dispute emerged between the Southern States and the Federal Ministry of Justice over the compatibility of the Southern States' constitutions within the INC. The dispute dragged on until June 2006 when GOSS's Ministry of Legal Affairs issued certificates of compatibility to the Southern States, disregarding the authority of the Federal Ministry of Justice. This dispute was only resolved when some ministerial changes took place in Khartoum. The new GONU Minister of Justice made a declaration that his ministry would issue a certificate of compatibility for the state constitutions in Southern Sudan within the INC. Despite all these differences the state executive institutions were put in place by the presidents of GONU and GOSS in August and October 2005 respectively, with a restructuring in the state governments of the North and South during the period from 2005-2008.

5.2 Legislatures and the implementation of the CPA

Political legitimacy is always reflected in legislatures where people's representatives conduct their business for the common good of national, regional, state and local governments according to the needs of territorial subdivisions. Scholars uphold the belief that governments and political systems are legitimate when people believe that the structures and governance are working to their satisfaction, which implies that policies should be based on the political behaviour that represents the wishes of the people and takes their welfare into consideration.¹¹ In the case of the Sudan after the CPA, the legislatures at different levels were constituted to ensure that the principles and values of the CPA were upheld, particularly in the interrelated areas of power sharing and security arrangements. This paper concentrates on both the national and Southern Sudan legislatures.

The legislature is one of the political institutions which shapes and defines the character of a federation. Reflections of George Anderson may help us in the clarification of this constituent unit of a federation. In this respect, central governments in federations are made up of formal and informal institutions and practices. These in turn affect the nature and functioning of the federation as a whole.¹² The characteristics of the legislature in a federal government can:

- a. be parliamentary and presidential in form;
- b. give considerable weight to regional and special group representation;
- c. use majoritarian or proportional electoral systems;
- d. feature one dominant political party, two alternating parties or multiple parties of different sizes; and
- e. consist of a partisan political culture of winner-take-all or one of a consensus with broadly based government decision making.

Many of the characteristics shown above are part and parcel of the post-CPA governments in the Sudan. The first four elements are representative of GONU and GOSS with their legislative regimes consisting of a mixture of these characteristics. It can be asserted that the function of both the National Assembly and SSLA is to make laws that ensure a socio-economic and political environment that conforms to the spirit of the CPA. Parties to the conflict in the Sudan have acknowledged the social, political and economic problems which led to armed conflict in the country. The role of the National Assembly is to legitimize government authority by reviewing the normative values that embody an infringement of people's rights in the Sudan. The CPA envisages the identification of laws that contradict the principles, spirit and values of the CPA and its role in unifying the country to promote an environment in which there is a durable, peaceful post-conflict coexistence.

Practitioners and scholars argue that three years is too short of a time period to establish functional institutions, but long enough to ensure a significant break from the past, which can clearly be seen as is the case in Southern Sudan. Fundamental changes in formal institutions, rules, practices and modes of thinking have been slowly introduced through externally supported interventions that work closely

¹¹ Robert A. Dahl, *Op. Cit.*, pp. 54-57.

¹² George Anderson, *Op. Cit.*, pp. 42-54.

with the political elite in Southern Sudan in a continual process.¹³ Nevertheless, as has been outlined in this discussion, the new institutional structures are beginning to work slowly in a situation of normative formation. Events observed over a wide range of areas suggest that the new institutional framework is gathering momentum, which over time is likely to ensure that these institutions will become self-enforcing.

The situation in Southern Sudan is unique in its political, economic and social structures, thus requiring an adaptation to the principles and values of the CPA and the adjustments necessary to meet the expectations of the people and their national and sub-national governments. The government of Southern Sudan started to operate in a vacuum of legal instruments, causing SSLA to enact as many bills into law as possible to ensure the legal foundation needed for the operation of its institutions of governance. This study has focused on the bills enacted by the National Assembly and SSLA to ensure their conformity with the CPA during the three-and-a-half years of operation beginning in 2005 when the agreement was signed.

Table 1: Post-CPA bills passed by the legislatures in the Sudan

Year	National Assembly	SSLA	Total for NA & SSLA bills passed
2005	4	1	5
2006	3	4	7
2007	6	-	6
2008(until August)	8	11	19
Total	21	16	37

Source: Constructed by the author.

The principles of governance are split between two underlying ideologies in the post-CPA period; the upholding of institutions based on Islamic values for the North and secular values for the South. This is what is referred to as one country, two systems. The implications for national and regional administrations suggest that laws need to be reviewed at the national level, while revamping the old legal system and establishing a new one to support the institutions in Southern Sudan. All parties to the CPA affirm the need to recognize the sovereignty and unity of the nation amidst diversity, and national laws based on Islamic principles that affect the lives of people in Southern Sudan are subject to review. There are some 60 laws of this type being worked on by GONU and the National Assembly. Table 1 shows these processes as ongoing although the SPLM members of the National Assembly complain that the NCP is slow in reviewing sensitive laws such as those that govern the press and media, national security, the code of criminal procedure, the referendum and many other legal instruments. It is certain that laws are in place to regulate institutions in the North no matter how imperfect they are deemed to be by non-NCP political forces. The laws in question are regarded as repressive and do not conform to the CPA, the Interim National Constitution or legal instruments in connection with principles of fundamental universal human rights.

The figures in Table 1 above for the National Assembly are insufficient for understanding the nature of the politics of legislation. They can be better understood by reviewing the list of bills passed as shown in Tables 2 and 3 below, which contain the specific bills passed and distributed by the year of legislation after the CPA.

¹³ Ashok Chakravarti (2007). *A Theory of Discontinuous Change*. Unpublished working paper by the Democracy and Governance Team. USAID/BearingPoint South Sudan Programme, pp. 43-44.

Table 2: List of the CPA-related bills passed by the National Assembly

Year	Name of bill	Effective date
2005	-Joint Integrated Units Act	17/01/2006
	-Organization of Voluntary and Humanitarian Work Act (NGO Act)	21/02/2006
	-Constitutional Court Act	11/2005
	-National Judicial Service Act	11/2005
2006	-National Civil Service Commission Act	10/01/2007
	-Political Parties Act	22/01/2007
	-National Civil Service Bill	23/01/2007
2007	-National Audit Chamber Bill	6/2007
	-The Electronic Deal Bill	"
	-Electronic Crime Bill	"
	-Auditing and Finance Procedures Bill	"
	-The Armed Forces Bill	04/12/2007
	-Government purchases Bill	12/2008
2008	-National Police Bill	06/2008
	-National Council for Developing & Promoting the National Languages Bill	"
	-The National Council for Population Bill	"
	-National Council for Child Welfare	"
	-National Tourism Bill	"
	-National Elections Act	14/07/2008
	-National Council for Languages	07/2008
	-Public Health Bill	"

Source: Extracted from various issues of the CPA Monitor 2007-2008.

In the South many institutions operate on the basis of presidential decrees and ministerial and local orders due to the enactment of laws progressing at a slow pace. Figures in Table 1 show the scarcity of bills passed in the SSLA during the last three years or so. Strangely, the SSLA did not pass a single bill in 2007. The author held interviews with some lawmakers and senior civil servants in Juba concerning the reasons for the lack of legislation to regulate institutions. They put the blame on the Ministry of Legal Affairs and Constitutional Development. Members of Parliament and the Legislative Committee stated that they act on all the bills tabled before them by that ministry.¹⁴ The reason given for the slow progress in enacting legislation is that the pursuit of good governance, accountability and the rule of law are at stake at all levels of government in Southern Sudan. Table 3 contains a list of bills passed by the SSLA during the last four years.

¹⁴ Discussions with the Chairman of Local Government Board, Mr. Caesar Arkangelo in Juba, 21-24 July 2008.

Table 3: List of the post-conflict bills passed by the SSLA

Year	Name of bill	Effective date
2005	-Interim Constitution of Southern Sudan	26/09/2005
2006	-Code of Evidence -The Interpretation of Law and General Provisions Act -Public Premises Eviction Act -Investigations Commissions Act	NA " " "
2007	-None	
2008	-Code of Civil Procedure Bill -Southern Sudan Research Council Bill -Personal Income Tax Provisional Order Bill -Appropriation Bill -Judiciary Bill -Judicial Service Council Bill -Kush Institution Bill -Penal Code Bill -Code of Civil Procedure Act Bill -Code of Criminal Procedure Act Bill -The Child Bill	NA " " " " " " " " " " "

Source: Extracted from various issues of the CPA Monitor 2007-2008.

Pressure is building on GOSS to accelerate legislative process in Southern Sudan to advance the implementation of the CPA. There are 11 bills in the GOSS Council of Ministers that will soon find their way to the SSLA. The dialogue between the SPLM and other southern political parties which took place in Juba in November 2008 addressed the problem of the sluggish pace of law-making in Southern Sudan. Participants at the conference requested that GONU and GOSS legislate the referendum law at the national level and in Southern Sudan before the end of their tenure of their respective legislative institutions. The conference stressed the need for the SPLM and the Southern political parties to form a committee to assist in drafting the referendum law.¹⁵ In summary, the slow pace in the passing of legislation in the National Assembly suggests that GONU still manages public business on the basis of the status quo. For GOSS, most institutions are operating without a legal basis, which allows for speculation that there is corruption in the management of public institutions.

6. Commissions at the national and sub-national levels

Interdependence and interactions between institutions are significant in the performance of federal institutions. Interdependence is dealt with through institutionalized structures and operational mechanisms. In the case of the Sudan after the CPA, another level of institutions comprises the commissions and committees at the national and sub-national levels. It is important to track some of these institutions and to examine those with political functions. There are commissions that originate from the CPA while others are created by decrees. The main issue to reflect upon in this section is how these commissions function at their appropriate levels. And if they are functioning, to what extent are their powers streamlined into their constituent acts to avoid overlap and conflict. The CPA stipulates the establishment of commissions in the political domain at the national level, which are as follows:

- The National Constitutional Review Commission;
- The National Judicial Service Commission;
- The North/South Border Commission;
- The National Civil Service Commission;

¹⁵ The Resolutions and Recommendations No.5 and No. 6 resulting from the dialogue between the SPLM and the Southern Political Parties held in Juba on 8-13 November 2008, pp. 4-6.

- National Elections Commission; and
- The National Human Rights Commission.

Some of these institutions became operational after appointments were made. All the commissions are subject to legislation with the exception of the National Human Rights Commission. However, the bill for the establishment of and appointments to the National Human Rights Commission is yet to be tabled in the National Assembly. This long delay is attributed to the contradiction in perceptions by different stakeholders, which requires a consensus among the different political parties concerning the law itself. There are still differences among the partners of the CPA and between the CPA as a whole and civil society organizations (CSO) regarding the establishment of the National Human Rights Commission.

Hence, there is the need to examine one commission at the national level and one in Southern Sudan in regard to institutional and relational issues in the post-conflict Sudan. This study highlights political issues related to the North-South Border Commission at the national level and the Anti-Corruption Commission of South Sudan. These commissions were formed on the basis of presidential decrees as opposed to formal legislation. The two commissions are extremely important to this study as they serve to measure the political temperature in North-South relations and the intra-South perception of each other.

The North-South Boundary Commission operates through the Technical ad hoc Border Committee. This committee was established by presidential decree in late 2005 to map the 1956 border between Northern and Southern Sudan, but did not undertake this project until January 2007. The committee consulted with local communities and local authorities to collect data based on their indigenous knowledge of the geography of the transitional areas between North and South. Since 2007, a number of fact-finding missions were sent to the capital cities of the former colonial masters Britain and Egypt. The committee visited British and Egyptian archives with the intent of finding relevant documents pertaining to the border between Northern and Southern Sudan as it existed on 1 January 1956, but has yet to submit its final report.

The North-South border is a sensitive issue in the implementation process of the CPA. It is the litmus test for the various relationships between the NCP and SPLM. All forms of political disagreements between the CPA partners are reflected in the security situation along the non-demarcated border in the transition areas between Northern and Southern Sudan. Increased insecurity in Southern Kordofan and Abyei can be attributed to boundary problems as witnessed by the violent clashes between the Misseriya and SPLA in May 2008, resulting in many casualties. Also, conflict over a common border affects the security arrangements stipulated in the CPA. It is responsible for tensions between the NCP and SPLM over the redeployment of forces from various locations in Northern and Southern Sudan. SPLA forces remain in areas which they claim are part of Southern Sudan. These areas are:

Karsana/Lake Abyad between South Kordofan and Unity State;
Safaha in the border area between Northern Bahr el Ghazal and South Darfur; and
Quffa-Samari between the Blue Nile and Upper Nile States. The Abyei border problem will be examined under the Three Areas of the CPA.

GOSS is the sub-national government described in the CPA and the National Constitution as an autonomous political structure with all the traits of a sovereign state, and parallels GONU in many respects. For example, it controls the executive, legislative, judicial, military and related organized forces. The Interim Constitution of Southern Sudan authorizes the president of Southern Sudan to establish institutions, which has resulted in the issuance of decrees and terms of reference to establish and appoint members to 14 commissions in June 2006. The most important task for the leadership of the commissions was to work out the legislative documents and submit them to the Ministry of Legal Affairs and Constitutional Development for review before they could be tabled in the Council of Ministers and finally the SSLA. This process illuminates the legal profile and operational mechanisms of these commissions. The commissions with important political functions include the Commissions

for Peace and Reconciliation, Civil Service, Anti-Corruption and Human Rights, all of which operate on an *ad hoc* basis in the absence of legislation.

The Southern Sudan Anti-Corruption Commission (SSACC) was established on 26 June 2006 by presidential decree in accordance with the provisions of the Interim Constitution of Southern Sudan (ICSS).¹⁶ Its purpose is to fight corruption throughout Southern Sudan. As this commission is the first of its kind in Southern Sudan, it is faced with the enormous task of not only establishing itself and identifying the status of corruption, but also with combating corrupt practices and administrative malpractice that could arise in a new nation. The SSACC was established to protect public property, investigate cases of corruption and combat administrative malpractice in public administration such as nepotism, favouritism, tribalism, sectionalism, gender discrimination, bribery, embezzlement and sexual harassment. The SSACC is guided by the principles of upholding a high standard of professional ethics, transparency and accountability.

The SSACC commissioned a baseline survey conducted between October and December 2007 to gather information on corruption in Southern Sudan. The survey results provided useful information that may contribute to the design of strategies for dealing with this insidious problem. More specifically, the survey helped the commission and the general public to understand the nature, form and extent of corruption and the places where it occurs. The survey was conceived as one way of widening the views and perspectives available to policy makers and those taking part in this fight.¹⁷ The report contains some interesting results, including the following:

1. The culture of corruption in Southern Sudan is mainly attributable to poor management skills and the lack of operational procedures and guidelines for civil servants in managing public resources and offices.
2. There is a high level of frustration expressed amongst the respondents with regard to GOSS's fight against corruption. Respondents feel that the government officers are not only participants in perpetuating corruption, but also lack the capacity to rein it in.
3. GOSS is still perceived as a movement and not as a government with clear systems for officers to follow. Power is mainly abused by those who have participated in the struggle and feel they deserve to be rewarded for the time they spent in the war regardless of the consequences.
4. There is lack of a clear legal framework to combat corrupt activities in the country, and it was felt that the perpetrators in Southern Sudan have consciously exploited this fact.
5. Corrupt practices are also associated with political and party leaders as well as army commanders in positions of influence. Accountability and transparency are almost non-existent due to the lack of systems and an absence of checks and balances throughout government structures.

These results confirmed the findings of research undertaken previously by the Washington, DC based National Democratic Institute (NDI) and the Southern Sudan Commission for Census, Statistics and Evaluation (SSCCSE) during the period 20 February-30 March 2007.¹⁸ The report describes corruption in Southern Sudan in this way: "*In the context of Southern Sudan, corruption has two definitions – misuse of public money and tribalism- and is a problem that permeates all levels of government.*" According to the report, there is near unanimous agreement among people in focus group discussions that corruption in Southern Sudan is a widespread problem and one that is having a detrimental effect on them and their communities. It went on to identify the top level of government as the source of corruption, which is imitated at the state and local levels. There is a direct relationship between the misuse of public funds, tribalism and quality of their daily lives. People identified the

¹⁶ Section 147, Interim Constitution of Southern Sudan, 2005.

¹⁷ Southern Sudan Anti-Corruption Commission: *Perception Survey on Corruption* (Report's Executive Summary), Juba, December 2007, pp.11-15.

¹⁸ Traci D. Cook (2007), *A Place to Call Their Own: Findings from Focus Groups with Men and Women in Southern Sudan*. A Report Prepared for the National Democratic Institute for International Affairs. Washington: NDI and SSCCSE p.13. Can be accessed at <http://www.ndi.org>.

negative impacts of corruption on their lives as opportunities lost, delayed development, diversion of capital to other areas and increasing division among southerners. The core of this problem is the virtual absence of laws and regulations for managing finances, development and other public services. Institutions operate on the basis of individual judgments, resulting in dysfunctional perspectives. The dearth of legislation to normalize the operations of political institutions contributes to institutional conflicts, which occur due to an overlap of duties and a shortage in the mechanisms of coordination.

7. Problems of political institutions in the Three Areas

Functional institutions in the three areas of Blue Nile, South Kordofan and Abyei present another set of problems related to the implementation of the CPA. The executive, legislative and administrative bodies were established in 2005, but their operations were affected by quarrelling among the partners of the CPA, especially in South Kordofan and Abyei. The common problem affecting the CPA institutional processes in the latter is determining the geographical boundaries between the three administrative units and between these and Southern Sudan in the context of the January 1956 boundary.

7.1 Abyei

Institutional processes are at stake in this area because the NCP and SPLM did not agree on many outstanding issues, but promised the mediators that they have the political will to deal with the administrative status of the area. It was agreed that that an international boundary commission will study the problem and submit its report to the partners of the CPA. It was on this basis that the Abyei Border Commission (ABC) was formed with the mandate to define and demarcate the area of the nine Ngok Dinka clans, which was transferred to Kordofan in 1905. The ABC carried out this task promptly and submitted its report to the Presidency on 14 July 2005. The Presidency failed to adopt the report and referred the disagreement to the NCP/SPLM Joint Leadership meeting, and then to its political sub-committee in May 2006.

The disagreement among CPA partners took a violent turn when the GOSS President made a unilateral decision to issue a decree appointing Edward Lino as the chairman of the SPLM in the Abyei Area in December 2007. The aftermath of the decree was marked by a series of violent clashes between the SPLA and the Sudan Armed Forces (SAF) together with their allied militia forces. The worst violence occurred in May 2008, which led to the destruction of Abyei Town and the displacement of the population, including returnees and the temporary evacuation of UNMIS and NGOs. The Abyei Area was left without any formal political or administrative institutions until June 2008 when the matter was taken to the International Court of Arbitration in The Hague. This is what the partners of the CPA referred to as the "Abyei Road Map Agreement", finalized on 8 June 2008. A Presidential decree issued on 15 June established the administration within agreed provisional geographical boundaries.¹⁹ The Presidency appointed the administrator for the Abyei Area and his deputy on 8 August 2008, which was followed by the appointment of the remaining members of the Abyei Executive and Area Council on 6 October 2008.²⁰ The new administration has yet to establish the relevant political institutions, and therefore it is still too early to speculate how well these institutions will work in this volatile area.

7.2 Southern Kordofan

The geographical boundaries of this political area were defined by Presidential decree on 16 August 2005, which referred to the 1974 Act concerning the division of provinces. This is defined in the CPA as follows: *"The boundaries of South Kordofan/Nuba Mountains State shall be the same boundaries of*

¹⁹ UN Security Council document No. S/2008/485. Report of the Secretary-General on the Sudan, 23 July 2008, pp. 1-6.

²⁰ UN Security Council document No. S/2008/662. Report of the Secretary-General on the Sudan, 20 October 2008, p. 3.

the former South Kordofan Province when Greater Kordofan was sub-divided into two provinces."²¹ Some parts of West Kordofan were merged into Southern Kordofan. The boundaries between Southern Kordofan and Abyei remain undetermined pending results of the ABC. Nevertheless, boundary problems did not hamper the establishment of political institutions in Southern Kordofan.

Although the Legislative Council of Southern Kordofan was established in December 2005, the formation of the government fell behind schedule, and a caretaker government was eventually constituted on 7 March 2006. The Council remained dysfunctional because of disagreements over its chairmanship, while the NCP and SPLM in Southern Kordofan wrangled continuously on the modalities of the regular rotation of the Council chairmanship. The inertia of institutional development in Southern Kordofan was broken only when the Presidency decided to place the chairmanship with the NCP, the deputy chairmanship with the SPLM and create a new position of "Leader of the Council" to be occupied by the SPLM. The Legislative Council adopted the Constitution on 19 December 2006 in the presence of Vice President Ali Osman Taha, and convened its first session on 13 March 2007.

However, the government of Southern Kordofan faced the problem of integrated institutional development, and the modality of government operations was fragmented between Kadugli, El Fula, Kauda and Julud. The existence of parallel institutions in the former SPLA-controlled area obstructed the smooth running of political institutions in Southern Kordofan for more than three years. This dichotomy between political institutions was the source of increased insecurity in Southern Kordofan. There were frequent clashes between armed members of the Nuba and elements of the Hawazma and Misseriya tribes of the Baggara group, with logistical support provided by either the local Popular Defence Forces (PDF) or the SPLA. The South Kordofan Area has experienced a decline of inter-ethnic violence in 2008, which can be attributed to the positive developments of territorial integration in the Southern Kordofan/ Nuba Mountains Area. It was reported that senior officials of the Southern Kordofan State formally integrated the former SPLA-controlled areas around Kauda and Julud into the State administration on 4 August 2008.²² This involves the integration of SPLM workers and police personnel into the civil service and police structures.

7.3 Blue Nile

Although the first post-CPA administration of the Blue Nile was in the hands of an NCP governor, the government faced fewer problems as compared with the situations in both the South Kordofan and Abyei Areas. The Blue Nile Government was formed in December 2005. The Legislative Council of the Blue Nile was instituted and seats were allocated according to the formula stipulated in the CPA. Political institutions remained divided between Damazine and Kurmuk, with the latter remaining as the administrative centre of the SPLM administration. This posed the problem of parallel institutions, especially at the local level. The appointment of Malik Agar to take the reins of state authority in accordance with the CPA rotational arrangement of governorship opened a small window of opportunity for improved relations between Kurmuk and Damazine. Governor Malik Agar instituted the shift in the seat of the State headquarters between Kurmuk during the dry season and Damazine during the rest of the year. The major problem that arises from time to time is the complaint from the Ingasana and Arab tribes in the western Blue Nile about their exclusion from the government. Therefore, the media silence about the Blue Nile suggests that the political institutions are functioning relatively well in the autonomous areas of Abyei and South Kordofan.

The future status of the Blue Nile and Southern Kordofan States is subject to the possible misinterpretation of the expression "popular consultation" in the CPA. Unlike the Abyei Protocol, which stipulates a referendum to decide where the people belong, Article 3 of Conflict Resolution in the Blue Nile and South Kordofan states that the popular consultations of inhabitants of the two areas

²¹ Article 2.1 of Chapter V, "The Resolution of the Conflict in Southern Kordofan and Blue Nile States." Definition of the Two Areas.

²² Ibid. pp. 1 & 4.

after the "Assessment and Evaluation Commissions" will submit their reports on the implementation of the CPA to their respective Parliaments at the end of four years. The term "popular consultation" is vague and liable to be misinterpreted. The understanding of the average person in the two areas is that the consultation will be conducted to decide whether the two regions will become part of Southern or Northern Sudan. This perception creates a problem for the implementation of the CPA, and it will be necessary to clarify the issue and enlighten the people, especially in the former SPLM-controlled areas of the Blue Nile and Southern Kordofan.

8. Issues in institutional coordination mechanisms

Partners of the CPA seem to have difficulty in building the coordination mechanisms needed to avoid structural conflicts at the national and sub-national levels of government. Public support for the CPA can only be assured through the establishment of structures that could harmonize functional relationships that would enhance democratic governance. The failure to establish rules of public administration and accountability by the governments of GONU, GOSS, the Three Areas and the state governments in Southern Sudan could easily lead to cycles of political and communal violence. GONU and GOSS have developed the core institutions of governance, but are slow to build the systems needed to ensure harmony in government structures. Structural conflicts exist between two or more levels of government at the national and sub-national levels.

For example, the CPA stipulates the participation of all political forces in the structures of the nation's capitol. An *ad hoc* committee composed of members of the NCP and SPLM discussed the modalities of administration as early as October 2005, but the meetings became deadlocked because of disagreements over the implementation of the CPA provisions concerning national representation and the establishment of mechanisms to guarantee the rights of non-Muslims. It was only after the intervention of the Presidency on 3 March 2006 that the structure of Khartoum State was announced. Membership in the cabinet included the NCP, SPLM, other northern political parties and one seat reserved for the Darfur representative. This arrangement paved the way for the adoption of the Khartoum State Constitution in May 2006 which was signed into law the following month.

The operation of sensitive political institutions, however, was affected by different aspects of coordination between national and state authorities such as the delicate issue of choosing officers for the Khartoum State police to reflect the national character. The Khartoum State Government superseded GONU in legislating the Khartoum State Police Bill in February 2007, but progress was halted by the National Police Directorate in the Ministry of the Interior. The argument used by the directorate says that the state law on police should go into effect after the adoption of the National Police Bill, which was tabled in the National Assembly in October 2007, in order to avoid a potential conflict between the two laws. Though political parties in the national legislature continued to wrangle over the provisions of the bill it was passed in June 2008, but the Khartoum Legislative Council has suspended discussions until it is signed into law. This case is an excellent example of the grey area among the coordination mechanisms where the various levels of governments intersect, as Khartoum is the seat of GONU, the Government of Khartoum State and its localities.

GOSS and the Central Equatoria Government have some serious issues as well, not unlike the situation in Khartoum as illustrated by the dispute over the exercise of authority in Juba Town, a situation that hampers the implementation of decentralization as stipulated in the CPA. The desire of GOSS to control land is a contentious point in the relationship between the two governments. Central Equatoria has challenged GOSS over its order to transfer its headquarters to Yei Town at the border of the Democratic Republic of Congo (DRC), and the proposal to move GOSS's seat to the White Nile island of Gondokoro has created a backlash from the Bari community in Juba. Additionally, GOSS felt that there should be a separate administration in Juba Town, and appointed a mayor for Juba Town without the approval of Central Equatoria. This action has reinforced the perception among the communities around Juba and Central Equatoria that GOSS wants to take their lands by any means necessary. The refusal of Bahr-el-Jebel State to relinquish Juba Town to GOSS, so it can become a

centrally administered capital, is a good example of the inability of GOSS to control state governments. The term "land grabbing" was coined by residents of the state to define the escalating dispute over land ownership.²³

The real issue in such disputes is the drawn-out process of legislating laws in regard to the governing of land for municipal authorities and the surrounding rural areas. There is a belief in Southern Sudan that the community owns land, thus complicating relationships between GOSS and Central Equatoria. This vague perception could be made more explicit by mutual negotiations concerning the seats of governments, the demarcation of boundaries between municipalities and surrounding rural areas, and the legal boundaries of authority at the various levels of government institutions. GOSS went so far as to appoint a mayor for Juba Town without consulting Central Equatoria and there is no legislation to support this new appointment. Hence, the appointee, a citizen of the State, is redundant with no official duties to perform.

Other state governments are facing similar disputes with host counties about the limits of their authority over land and other resources. Tensions are mounting over the issue of land ownership between the community and municipal areas of Southern Sudan due to an absence of SSLA guidelines which has become a source of dispute. In many cases, these disputes can develop into active conflicts as clashes between tribal groups rise over land boundaries between counties and payams, causing civilian deaths in many parts of Southern Sudan.

9. Discussion of spoiling factors in institutional and peace processes

The process of institutionalization is governed by political developments in the Sudan. The implementation of the CPA depends on several political benchmarks as specified in the agreement. Lapses in meeting deadlines retard the progress of political institutions, which creates a situation that is rife with conflict between the NCP and SPLM. Scholars argue that many peace processes become interminably protracted as key signatories get bogged down in lengthy and repetitive negotiations in which concessions are rare and agreements can stumble as they reach the implementation phase. The factors that obstruct progress in peace negotiations are referred to as spoilers.²⁴ The lack of adequate political institutions and their poor performance become spoiling factors, which can invite sporadic or sustained violence.

Political institutions emanating from the CPA are the victims of disagreements between the peace custodians, namely the NCP and SPLM. They are the insiders in this process, but their lack of loyalty manifests itself in the way they conduct business in relation to boundary issues, which can affect institutions and legislation that help to move the peace process forward. The partners of the CPA play roles which result in recurring insider crises and violence, the latter being a situation where partners in the process favour their vested interests over the general objective of peace for the good of society. Power-sharing in accordance with the CPA is failing to defuse insecurity in institutions as well as in communities. Detractors of political instability argue that those who interrupt the peace process tend to be war elites who would like nothing more than to impose their parochial terms on the implementation of the agreement.

Disagreements between the partners of the CPA who destroy institutions or retard the process of institution building in the post-conflict period show this to be the case in the Sudan, as witnessed by the incidents of violence in Abyei and the border areas between South Kordofan and Unity State. The

²³ It should be noted that the issue of land ownership was not addressed by the CPA. See Article 2.1 on "Ownership of Land and Natural Resources" under the Wealth Sharing Agreement signed at Naivasha, Kenya, on 7 January 2004.

²⁴ Edward Newman and Oliver Richmond. "Introduction. Obstacles to Peace Processes: Understanding Spoiling." In Edward Newman and Oliver Richmond, eds., (2006). *Challenges to Peacebuilding: Managing spoilers during conflict resolution*. United Nations University Press: Tokyo, pp. 1-19.

shortage of legislation to enhance the performance of institutions in Southern Sudan leads people to label GOSS as corrupt, and scholars to wonder whether it is corruption, mismanagement or the lack of laws and regulations that guide the performance of these institutions. Nevertheless, the lack of regulatory mechanisms for institutions has given rise to increased insecurity and clashes between tribal communities in more than half the states in Southern Sudan, with casualties in the hundreds in 2008 alone.

The agenda for implementing peace agreements requires good faith between the partners in peace and transparency in their dealings. These core values determine the amount of trust between former belligerents, though the uncertainty of the CPA partners' belief in these values can be the cause of problems. Both sides started the implementation of the agreement based on maintaining wartime superiority over the other in the areas where they dominate on the ground. GONU exerts its authority by going to areas controlled by the NCP to show the SPLM that they should not tamper with their authority by calling for the changes stipulated in the CPA. Similarly, the SPLM consolidates its grip on GOSS by reducing the influence of the NCP in the former garrison towns controlled by the government before the CPA, demonstrating yet again that traditional North-South geopolitics penetrates the political setting of the "New Sudan". This competition is further accentuated in the three areas of the CPA, specifically, Abyei, South Kordofan and Blue Nile, showing that the NCP and SPLM are competitors in the Sudanese peace process.

The CPA provides for the establishment of commissions to oversee the implementation of the agreement. Functional arrangements for their operations are subject to controversies that cause tensions in the relationship between the NCP and SPLM. Among these commissions are the North-South Boundary Commission and the Abyei Boundary Commission. The functions of these commissions have a direct bearing on subsequent political developments during the transitional period such as general elections, the referendum on unity or secession of South Sudan, and the referenda on the statuses of the three areas in the traditional north. There are grievances over the management and activation of these commissions.²⁵

Most of the problems regarded as sources of violence are entrenched in the attitudes and behaviour of the CPA partners, with the media further agitating the situation during the post-CPA period which manifests itself in latent conflicts. Arrangements agreed on in the CPA concerning representation in the National Assembly and the State Councils in Blue Nile and South Kordofan made it difficult to revise the laws established by the NCP before the agreement, which the SPLM and other political parties interpreted as a sabotage of the peace process.

In October 2007, the intensity of mistrust was inflamed when the SPLM ordered the suspension of participation of its members in GONU, which generated fear both in the Sudan and throughout Africa. As a result, many observers contemplated the resumption of the SPLA-led armed conflict in the Sudan.²⁶ The Interim Political Bureau of the SPLM convened in Juba under the chairmanship of Salva Kiir Mayardit, the First Vice President of the Republic of the Sudan and President of GOSS, to express their frustration over the pace of implementation of the CPA. A list of grievances related to the implementation of the peace agreement was drawn up, which the SPLM considered as violations of the CPA. These grievances included the obstruction of democratic transformation, the lack of initiation of national reconciliation, the non-implementation of the Abyei Protocol, and the delay of the North-South border demarcation.²⁷

Further peace was threatened by Abyei armed violence in May 2008 as the area became an arena for the continuous build-up of armed groups allied with SAF and SPLA. It is widely known that the

²⁵ United Nations Mission in Sudan (2007) *The CPA Monitor: Monthly Report on the Implementation of the CPA*, Khartoum, September, pp. 27-31 Available at: <http://www.unmis.org/> Accessed on 5 February 2008.

²⁶ John Asworth (2007). 'Between Brinkmanship and War' in *Horn of Africa Bulletin*, Uppsala: LPI, Vol. 19, No. 7, pp.1-2.

²⁷ SPLM (2007). *The SPLM Interim Political Bureau (IPB) Communiqué*, Meeting No. (2)/2007, Juba, 4-11 October, Available at: <http://gurtong.org/> Accessed on 15 January 2008. Also, see the same website for: Suspension Letter GOSS/MOPA/MO/J/20.C.2/038, dated 12 October 2007 from Salva Kiir to Omer al-Bashir.

partners continued to deny relationships with the armed groups in the contested areas while UNMIS observed the situation awaiting a violent confrontation. The solutions sought remain fragile pending the outcome of the case of Abyei brought by the participants of the conflict to the International Court of Arbitration in The Hague. This approach indicates that the partners of the CPA are unable to find an amicable national solution to the problem of Abyei, and these developments remain under close scrutiny by scholars, researchers and other interested parties in the post-CPA peace process in the Sudan.

The disagreement between the NCP and SPLM to secure Abyei under their respective geographical spheres of influence is part and parcel of the boundary dispute. The partners are constantly at odds over the redeployment of troops as put forth in the CPA, causing difficulty for researchers to determine with any clarity whether the source of the dispute concerns power or natural resources. However, it can be deduced from the behaviour of the NCP and SPLM that the aggressive competition between them is the result of a combination of territorial and natural resource factors. These two elements have unquestionably contributed to the uncertainties surrounding the implementation of the CPA.

Finally, the perceptions of non-signatories of the CPA cannot be dismissed as a cause of disruption in the implementation of the agreement. According to major political parties such as Umma, the CPA is not as comprehensive as its name suggests. They argue that solutions to the problems of the Sudan cannot be entrusted to the NCP and SPLM alone. The parties excluded from the agreement also have a stake in national politics of the Sudan and are valuable allies in finding a lasting solution to the multitude of grievances within Sudanese society. The other political parties consider themselves to be mere spectators in the political developments in the Sudan and are dissatisfied being on the “sidelines” in terms of their representation in the legislature and executive organs of the federal system. It is argued that the recurrence of post-CPA violence is a consequence of political marginalization, which would entail a proliferation of agreements to demonstrate that the CPA is not comprehensive.

10. Prospects for institutional development in post-conflict Sudan

The CPA could be consolidated by building effective regulatory mechanisms to ensure a legitimate and democratic governance of the post-conflict society. This means that GONU, GOSS, state governments and the governments of the Three Areas need to establish political institutions that will embrace participatory approaches and good governance that serve the needs of the people after the civil war. Clinging to the status quo at the national level, coupled with a lack of infrastructure at the sub-national level and inexperience in the formulation of public policy and administration can make the situation difficult for the various levels of governments in working with constituent units in the delivery of services. Strengthening institutions is a must to ensure social and economic development through political participation in governance and policy making. Consolidation of institutional arrangements implies the participation of civil society organizations (CSO), political parties and media to promote dialogue between government and various citizen groups. The following elements are essential for institutional developments in post-conflict Sudan.

10.1 Good governance

The incorporation of democratic structures and principles into political institutions could contribute to a stable and legitimate democratic rule at all levels of the post-CPA government thus helping to reduce the incidence of corruption in both the public and private sectors of the country. Good governance implies reforms that should strengthen transparency and oversight through programmes of capacity building, for both the executive and legislative branches of government.

10.2 Political process and consensus building

Political processes are key elements in creating and stabilizing a legitimate and democratic government, with political parties being the agents of stability or instability depending on the mechanisms of participation. There should be a just political system to ensure the establishment of viable political parties that represent the citizens' interests and govern responsibly and effectively. The role of the opposition parties should be spelled out explicitly in organic documents and should include the rights to basic freedoms as enshrined in the INC. The participation of political parties poses a potential hazard when discussing the implementation of the CPA. Political parties accuse the NCP and SPLM of monopolizing the political system, and the latter is accused of escalating unnecessary crises which deter the pursuit of peace. Therefore, the CPA partners can achieve a consensus in the political process by the inclusion of other political parties and CSOs to ensure stability by fostering a dialogue in the management of post-peace conflicts in the Sudan.

10.3 Civil society

Enhancing civic participation is the key to creating a political environment that will support a civil society that contains different types of institutions. The post-conflict Sudan lacks such a vibrant civil society, which also helps to determine institutional accountability. Civil society organizations work in the economic, political and social sectors, and target youth, women and returnees among others. It should be noted with concern that CSOs in Khartoum State and Juba enjoy government and NGO support while those in the states, counties and localities are frequently neglected due to a lack of exposure. CSOs in Abyei, Blue Nile State and South Kordofan State are at a disadvantage as far as exposure is concerned, which accentuates the need to avail equal opportunity and support for CSOs at the lower echelons of sub-national institutions.

10.4 Media freedom and freedom of information

Both the freedom of the media and information perform an integral role in constructing institutions, though unfortunately the Sudan lacks these freedoms as a consequence of the CPA. Khartoum has a rich media sector that is controlled by a political system dominated by the NCP and SPLM, which as a result has denied access to independent information for the citizenry of Southern Sudan and the Three Areas. There are many events happening within GONU and GOSS that go unreported, thus hampering the development of institutions by a lack of knowledge about current issues. Citizens can influence the management of institutions if they are aware of the nature, purpose and activities of established media outlets.

Having noted these elements, the way forward for GONU and GOSS is to introduce regulatory mechanisms that embody the principles of participation and transparency to make CPA-related institutions viable. The politics of partnership should be revisited to ensure new thinking and actions that could invigorate political institutions which are barely surviving because of the interminable disputes related to the process of implementing the CPA. The competition that has ensued following the conclusion of the peace agreement is detrimental to the purpose of the agreement. This can be seen in the undesirable outbreak of violent confrontation between the partners of the CPA, weakening the already precarious agreements and demonstrating the necessity for the NCP and SPLM to learn the art of dialogue to prevent further violence.

Conclusion

It can be concluded from this study that the CPA has provided the basis for the creation of the Interim National Constitution, the Interim Constitution of Southern Sudan and various state constitutions. These organic documents provide for the establishment of institutions to represent all branches of government and empower the government to build mechanisms of administration to assist in the management of the state apparatus. Both the CPA and the federal system of government complement

each other in the business of conflict resolution and peace building. The function of a federation is to decentralize power as a means of defusing conflicts in societies that are diverse in their compositions, and to enhance social and political development within this diversity. This is particularly relevant to conditions in the Sudan, a nation that experienced protracted conflict and violence before achieving independence in 1956.

The CPA provides for the institutions which are crucial in creating a new political environment after a prolonged period of social disharmony in the Sudan. This study has shown there is no shortage of institutions to make the political system work. However, it is the problem of attitudes that has hindered progress in establishing the necessary political institutions. The main challenges are to banish distrust and fear among the custodians of the CPA in the competition for the influence and control of territories where they prevail. These are all psychological barriers in the implementation of the agreement, which contribute to the underdevelopment of functional institutions.

Furthermore, the political will needed to implement the CPA is lacking in the behaviour of the partners in the agreement. This fact is demonstrated by the deadlocks in the governance of the Three Areas, and in the recurring spiral of violence in the border areas between Northern and Southern Sudan, particularly in South Kordofan, Abyei, Unity State and Northern Bahr el Ghazal State. The parties to the CPA pay scant attention to the empowerment of institutions that could settle these disputes as can be substantiated by the cases of the Abyei Boundary Commission and the North-South Boundary Commission.

In addition, this study has found that GOSS is suffering from a lack of experience in the business of government, which is reflected by the fact that institutions were created without the laws necessary to govern their operations. Progress in enacting relevant legislation and regulatory mechanisms has lagged behind, which this study treats in the section dealing with legislatures and the implementation of the CPA. It is this issue that allows people to think that corruption is rampant in GOSS and the lower levels of government. Nevertheless, this study has focused on mismanagement, which can be attributed to the absence of substantial laws and regulations that govern institutions in Southern Sudan.

There were many research constraints that need to be acknowledged, the most important one being the question of anonymity for the respondents. This problem was most keenly felt in Juba, though officials in Southern Sudan were eager to speak about the problems they face regarding institutions and governance.. However, most of the people interviewed declined to allow their names to be mentioned in any written material. Given the magnitude of analysing political institutions in Southern Sudan, it was not possible to gain access to their affairs at the state and county levels, except in Juba. The institutions in Juba presented a unique opportunity to examine the conflicts resulting from an overlap in the inner workings of the institutions of GOSS and the Central Equatoria State headquarters in Juba and Juba County.

Finally, the overall problems of institutional development in the context of the CPA are closely linked with the political attitude and behaviour of the NCP, SPLM and the other political parties that are spectators of the political machinations taking place between the signatories of the agreement. The lack of progress in the development of political institutions is therefore attributable to the unpredictable relationships between these partners, who are the custodians of the peace agreement. It remains to be seen how the partners will overcome these shortcomings in the process of pursuing peace in the Sudan.

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