Paper to panel 159: The Boundaries of the State in Sudan: Engaging the Intermediaries between State and Society

To Mend the Broken Contract: Legitimacy and local government in South Sudan during the CPA-period[1]

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(First draft. Not for citation or further distribution)

1. Introduction: The Local Basis of State Legitimacy in South Sudan

Thomas Hobbes is accredited with the idea of a social contract between the sovereign and his subjects where each party had rights and obligations.[2] This idea of a social contract has been the basis of important traditions within political philosophy and the social sciences. Hobbs saw this as a relationship between isolated individuals and the state. This proposition has been criticised for being too abstract and not taking into consideration the dynamic and mostly incremental and diverse governance cultures and foundations of legitimacy. Imagining the introduction of a social contract is, however, more valid with regards to colonialism, where often a radically new and alien governance structure was established over a relatively short time. The people establishing these regimes had in many instance been thoroughly indoctrinated with the abstract idea of a social contract (cf. "the white man's burden"). However, those to be colonised were not living in a "state of war" (i.e. without government structures). Here the new state's legitimacy is brokered and defined in the interfaces between state and existing societies Historians and others have demonstrated that the colonisers in the routine administration of remote outpost had to be more pragmatic and to a large degree settle for amending and extending existing governance structures.

In the case of South Sudan a new system of local governance was established during the Anglo-Egyptian Condominium (1899-1956). It consisted of the introduction of relatively fixed administrative boundaries and a skeletal government rule relying on a system of tribal chiefs to

[2] Thomas Hobbes, *Leviathan*, (Oxford University Press: Oxford, 1998).

take care of its day-to-day business. Its chief purpose was to keep the peace. It was a cruel, autocratic and unjust system that did not facilitated social and economic change, yet it was a new social contract. Since then, the state has basically performed two inter-related services at the local level: policing and rule of law combined with local reconciliation and solving disputes over use of land and natural resources. Over time the main features of this system was "worn in" and reluctantly accepted: the governed knew their obligations and what they could expect from their rulers.

Changes to this system either had to be introduced by persuasion and incentives or by force, possibly in combination. Successive governments since the Sudan's independence has failed to alter the tacit contract between state and society, rulers and ruled. Instead they have broken it. A consequence of neglect and war is that the state has failed to provide its core functions and instead has been – and in some instance still is – an instigator and executor of local violence as well as mismanaged and appropriated land and natural resources. Therefore, even though secession of South Sudan has widespread support, the Government of South Sudan's local state structure emerged from the war as largely illegitimate. The signing of the Comprehensive Peace Agreement (CPA) in 2005, which entailed a six years interim period of Southern autonomy, offered an opportunity to mend this contract. In an area like South Sudan where the process of national integration is on-going, this happens first and foremost at the local level. However, in the eagerness to transcend the existing system of local governance, the basic services expected from the government have not been delivered. In the planning of the post-conflict intervention, this insight was not sufficiently taken into consideration. Instead introduction of representative government and provision of social services were given priority. The problem of lack of local legitimacy is enmeshed with other aspects of establishing an effective sovereignty over South Sudan. Failure to provide these services leads both to conflicts between local societies and resistance towards the state and its representatives.

The paper centres at the state-society relations at the local level, but it also touch upon a number of related topics of relevance for today's situation in South Sudan: strategies for peace building and democratisation, post-conflict violence, the impact of the CPA, sovereignty and degrees of statehood in South Sudan. The first part of the paper identifies important structural factors, process and events that have contributed towards shaping the CPA-period. I suggest that

insufficient attention has been paid to the analysis of South Sudan as a post-conflict society where legacies of the war dominate politics and governance. Instead, politics and policy research has been diverted to the implementation of the demanding agenda set by the CPA. This discussion of the South Sudan post-conflict environment outlines also the contours of an analytical framework for studying the local scene and state-society relations. In the second part of the paper Unity State takes the centre state. I argue that the combination of local oil production and proximity to the north-south border has severely damage state-society relations and has also made it more difficult to mend these relations. The conclusion draws up some wider implications of these analyses for the development of a *de facto* sovereign state in South Sudan.

2. The CPA period: a peace-building environment?

The years from 2005 to 2011 may be named the "CPA-period", and indeed the implementation of the various provisions of the peace agreement has set the agenda for everyday politics in South Sudan and has had wide ranging implications elsewhere in the Sudan. The CPA also implied an agenda for drastic changes in the way in which South Sudan was to be governed. The South was to be democratic and the government responsible for providing a range of social services. These designs were based on an assumption that the South was prepared to make this transition: a presumption of a peace-building environment. Yet, these efforts were doomed to become sub-optimal if implemented without an adequate plane to mend the broken social contract and to provide the basic services of conflict mediation and locally accepted land and resources administration. Such a plan is still necessary, but it requires a better understanding of the more fundamental developments of the CPA period. Not sufficient attention has been devoted to the extent to which South Sudan as a society (or set of adjacent societies) has been engraved with the legacies of war. We also need to know more about how other structural factors such as the oil economy, changing urban-rural relations and the deeper logic of identity politics. Recent strides in the analysis of reforms in the wake of peace agreements may help us in this analysis.

Insights emerging from relevant literature

Christopher Cramer presents a useful analysis of the legacies of war and its consequences for peace-building.[3] He criticises external planning of peace building to be too formulistic and not taking local context into consideration. Berdal takes this further and argues that instead of presenting a general receipt for how peace is to be built; such a plan must be developed based on the local situation.[4] He therefore endeavours to present an analytical framework of four elements (pp. 29-94). Firstly, it is necessary to look at the political context in which the peace was reached and how the conflict was resolved (defeat or negotiated settlement). Secondly, the historical and psychological context in which the peace is to be built must be taken into consideration. Thirdly, one needs to understand the local foundation of violence, crime and insecurity. Finally, it is necessary to unravel the local political economy of war and peace and how it impinges on the post-conflict society. It is only when these factors are sufficiently explored and analysed that effective peace-building measures can be developed. A related outline is followed in my analysis of the South Sudan society in the CPA period below, but with modified analytical categories and with emphasis on the dynamics of local politics and governance.

There is some systematic and comparative research on how these structural factors play out on the local scene in Sudan,[5] and Alex deWaal and Cherry Leonardi's provide more specific parameters for the Sudan context to the more general conclusions of Berdal and Cramer. In 'What Kind of State? What Kind of Crisis', deWaal points out that:

> Much is known about how traditional conflict prevention, management and resolution systems at the local level have broken down, either because the government has deliberately dismantled them, or because of an inflow of automatic weapons that mean that young men are freed from the social control of their elders.[6]

He points out that less focus has been given to the study of the politisation and militarisation of local government structure. During the wars in the Nuba Mountains and in Darfur, chiefs and

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[3] *Civil War*, (Hurst & Co.: London, 2006).
[4] *Building peace after war*, (Routledge, October 2009).
[5] Gunnar M. Sørbø, 'Local Violence', *Review of African Political Economy*, 37 (2010), p. 173.
[6] (Crisis States Research Centre: London, 2007), p. 8.

local administrators have been used as instruments in the execution and administration of local warfare.[7] Leonardi add important insight and empirical material to this perspective in her analysis of the consequences of notions of entitlement from war efforts during CPA-period.[8] She demonstrates the historical and cultural rootedness of the rural –urban divide in South Sudan and she argues that this disparity is more significant than the much discussed ethnic differences. The town people see themselves as a class of modern and more sophisticated people with distinct occupations and a part of a money economy. The rural people see the urban residents as morally corrupted and in an ambiguous role of partly belonging to their community and partly associated with the alien and exploitative state structure. She concludes:

> It is in the common desire to protect the social relations and productive economy of family, village and cattle-camp from the expanding, corrupting forces of predatory government that a shared Southern Sudanese culture and memory is most apparent (p 236).

This above exposition of academic literature amplify the significance of embedded governance cultures, illuminate the consequences of the broken contract and the destructive effect of civil war as well as the difficulty of mending state-society relations in a tumults and unpredictable post-conflict environment. Let us now turn to the anatomy of the South Sudan post-conflict environment. It is then useful to make a distinction between structural factors, one the one hand, and events and processes on the other.

Structural factors in the CPA-period

Important structural factors that influence the political, social, economic development for communities and the different levels of Government of Southern Sudan include: legacies of the past, oil issues and ethnicity/ethnic politics. These structural factors are of special relevance in the analysis of why the social contract is broken and why it has not been mended during the CPA period. The consequences of proximity to the north-south border are of special relevance to the analysis of local government in Unity State and may be regarded as a structural factor in itself.

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[7] See also: Guma Kunda Komey, *Land, Governance, Conflict and the Nuba of Sudan*, (James Currey, December 2010).
[8] 'Paying Buckets', *The Journal of Modern African Studies*, 49 (2011), pp. 215-240.

The first factor to consider is the legacies of governance and war. The above-mentioned literature emphasises that a society is never a *tabula rasa* on to which political reform can be drawn-up. At the time of the signing of the CPA, South Sudan had a considerable legacy of enmeshed governance culture and war dynamics. The issue of governance culture is sensitive within the social sciences and in particular in Africa Studies where it is feared that acknowledgement of cultural differences will be used to explain away African countries' poverty or buttress dictators' claim that their brand of autocracy is a product of an African heritage.[9] However, to take cultural differences into account does not nullify widely recognised normative standards of government; it is simply including an actual phenomenon to the empirical analysis of post-conflict South Sudan.

The Anglo-Egyptian Condominium established a system and culture of governance in South Sudan which has, at least at the local level, persisted in its essence until today.[10] This system of governance consisted of a nodal grid of garrison towns, which dominated the surrounding countryside by force or threat of force.[11] However, in order to avoid a situation of constant rebellion the government had to find a way to provide peaceful relation and voluntary compliance with the new state authority.[12] It provided a two-sided coin: as far as possible to leave the people to their own devices governed by chiefs and, when necessary, provide core services such as arbitration and regulation of the use of land and other natural resources. This tacit contract of minimal government interference in exchange for compliance was enforced by a constant and convincing threat of overwhelming violence. Moreover, these were not completely foreign designs but in most cases adjustments of existing structures and offices. Although popular demands for economic development and social service increased towards the end of the Condominium, available research indicates that it is possible to argue that the system of chiefs' courts and the expectation of government arbitration that this arrangement gradually was accepted in rural areas and gained a certain level of legitimacy.[13] It is however important to be

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[9] Patrick Chabal and Jean-Pascal Daloz, *Culture troubles*, (University of Chicago Press: Chicago, 2006).
[10] Leonardi, 'Paying Buckets'.
[11] M. W. Daly, *Imperial Sudan*, (Cambridge University Press: Cambridge, 1991); Justin Willis, 'Violence, Authority, and the State in the Nuba Mountains of Condominium Sudan', *The Historical Journal*, 46 (2003), pp. 89-114.
[12] Justin Willis, 'Hukm', *The Journal of African History*, 46 (2005), pp. 29-50.
[13] Its resilience up to today is an indication of its acceptance.

aware of the darker sides and limitations of this system. It was cruel, autocratic and unjust system that did not facilitated social and economic change.[14]

In the process of gaining independence this system of governance was handed over to the educated elite in Khartoum. In an unfavourable political climate they attempted unilaterally to alter the tacit contract and it was soon completely broken as violence in South Sudan escalated to civil war in the early 1960s.[15] Politics of the Addis Abeba period did not manage convincingly to re-establish the contract and state – society relations where easily severed once more during the second civil war.[16] Attempts by SPLM/A in the 1990s to established a new Civil Authority of New Sudan was successful only to a very limited degree.[17] Instead, unofficial and largely military structures and networks governed to country-side of Southern Sudan where the main purpose of interaction with local society was the extraction of 'conflict capital' (e.g. recruits, labour, money and food). While the larger garrison towns were under a North Sudanese reign of terror the people were at mercy of SAF military commanders and security personnel. The desire and ability of the SPLM/A to police its territories and to provide justice varied considerably and it is reasonable to assume that most rural societies became more self-reliant during the war (contrary to the widely assimilated "aid dependency" discourse of international observers). Of course this was not the case for refugees in neighbouring countries.

Local societies were also to varying degrees marked by the following legacies: the state's monopoly of violence were outsourced to local armed groups with tenuous control from the government; high degree of military mobilization and small arms proliferation within communities affected by the war; low threshold for use of violence and to resort to organized rebellion among politicians and military leaders; vigilantism and lack of government protection within communities affected by the war; demobilised or deserted soldiers became a local security problem; permanent or temporarily changed settlement pattern; depopulation and returning IDPs; disrupted seasonal migration and war wounds created friction between communities. Therefore, it was to be anticipated that the legacies of the war violence and governance would spill over into

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[14] Douglas H. Johnson, *Root Causes*, (James Currey: Oxford, 2003). Cf. Mahmood Mamdani, *Citizen and subject*, (Princeton University Press: Princeton N.J., 1996).
[15] Øystein H. Rolandsen, 'Anya-Nya Insurgency', *J. of Eastern African Stud.*, 5 (2011), pp. 211-232.
[16] The regime of President Jafar Nimeri (1969-85) abolished the system of indirect rule and appropriated unregistered land.
[17] Øystein H. Rolandsen, *Guerrilla Government*, (Nordic Africa Institute: Uppsala, 2005).

the post-conflict environment and distorted or hinder any initiative that did not fully take this situation into consideration.

It is outside the scope of this article to present any exhaustive analysis of how oil impinges on politics and economy in South Sudan, but some vital aspects may be briefly discussed.[18] Sudan is not among the major oil producers of the world, but oil production and oil revenues is an important factors in Sudanese domestic politics. Historically, even the knowledge or anticipation of finding oil deposits has influences actors' strategies: e.g. President Jafar Nimeri's attempt in the 1970s to re-draw the boundary between North and South Sudan so that the most promising oil fields were added to the North. Oil issues was certainly a contributing factor in the political tensions building up before the start of the second civil war and it also affected the strategic priorities of the warring parties. Sharing of oil revenues was also a crucial element in the peace negotiations (but not the most difficult to compromise on).[19] Limited and constantly diminishing potential oil revenues provided the SPLM/A an incentive to reach a deal, while the NCP/GoS benefitted from a tardy negotiation process. An agreement was reached where the Government of Southern Sudan received 50% of the revenues incurring from oil production in the South and the oil producing states was to receive a 2% share. This has resulted in a completely unprecedented influx of money into the GoSS, and the South Sudan society as such, to the extent that more than 95% of the government budget is derived from the oil revenues.

Oil therefore has deeply affected both politics and economy in the CPA-period, where also the direct consequences of hosting oil companies and their production facilities plays a role, in particular at the local scene. A number of aspects of the oil issue may be identified. Firstly, as mentioned above oil is a source of government revenues which offer both unique opportunities for building a viable state, but also subject the South Sudan to the threat of the "oil curse". (**ref**) Secondly, the importance of oil revenues also put protection of the oil investment and securing oil infrastructure high on the government agenda and may spur other actors into destabilisation of the oil producing areas (as we have seen with Peter Gadet and Gatulak Gai's activities earlier this year). Thirdly, oil companies and their countries of origin become influential political players in

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[18] European Coalition on Oil in Sudan, *Sudan's Oil Industry: On The Eve of the Referendum*, (European Coalition on Oil in Sudan: Utrecht, NL., December 2010).
[19] Jostein Tellnes, 'Unexpected Deal', in Mark Simmons and Peter Dixon, eds., *ACCORD Peace by piece: addressing Sudan's conflicts* (Conciliation Resources: London, 2006) pp. 38-41.

South Sudan politics both at the national and local levels. This may be important in relation to the oil industry's need for various kinds of supporting infrastructure, land and attention from a weak and stretched government. These may then be given priority over the needs and concerns of the local population. On the more positive side, oil development may also, intentionally or not, develop infrastructure and provide service that (also) benefit the local population. Local employment opportunities are also view as a possible benefit. But for these benefits to materialise, a firm government involvement is often required. Fourthly, oil infrastructure or pollution may destroy large tracts of land, which is bound to create local grievances. Finally, compensation and wealth-sharing at the local level may also affect the local balance of power and the execution of governance. Oil issues are therefore highly significant, but its relative importance to other structural factors discussed here is still difficult to estimate.

Much emphasis has been put on the ethnic factor ("tribalism") when explaining political processes and violence in South Sudan.[20] There is however reasons to adopt a somewhat critical stance to attempts to present this as an overshadowing factor. Firstly, what may be called the 'ethnic landscape' in South Sudan is intricate and ethnic boundaries fluctuate. The size of ethnic groups differs considerably. The level of coherence and co-ordination among leaders hailing from the larger tribes[21] of Nuer, Dinka, Shilliuk, Bari and Zande is often low and political differences often trump any assumed notion of ethnic allegiance. Secondly, it is mostly the educated segment living in towns, in particular the politicians, who engage in identity politics. Politicians may also mobilise certain age groups and people with military training in both rural and urban areas, but in most cases local violence stem from various local disputes that can both be inter- and intra-tribal. Thirdly, town intellectuals and politicians are often key informants and conversation partners of the foreigners involved in aid, diplomacy and research in South Sudan. The former's opinions and agendas are therefore often regarded as a reflection of those of broader segment of the South Sudan population (Resulting in conclusion like: "The Equatorians feel suppressed by the Dinka" and "The Shilliuk look for aid from Khartoum"). It is as a social structure for political and military mobilisation that 'ethnicity' plays an important role, but such mobilisation does not

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[20] Leonardi, 'Paying Buckets'; de Waal, *What Kind of State?*; Katsuyoshi Fukui and John Markakis, *Ethnicity & Conflict*, (James Currey: Oxford, 1994); Eisei Kurimoto and Simon Simonse, *Conflict, Age & Power*, (James Currey: Oxford, 1998).
[21] In this context "tribe" is referring to the quasi-ethnic, hierarchical categorizations on which the so-called "indirect rule" was based. See also, Johnson, *Root*, p. xvii.

necessarily have to be directed against other ethnic groups – any significant external threat (e.g. the state, oil companies, LRA) may be sufficient. Yet, one of the legacies of the last civil war in South Sudan is a greater emphasis on ethnic belonging and mobilisation.

"Border proximity" does not normally feature as an explanatory factor in structural political analysis. However, there are arguably a number of reasons why living close to the North-South border and to the territory of North Sudan significantly impact livelihoods and local communities of Southerners in these areas. This border, although until now an internal and administrative border, has been important since the time of the Anglo-Egyptian Condominium. Moreover, it is to a considerable degree following climatic zones and geographical features (e.g. rivers).[22] It has to an increasingly larger degree become a cultural boundary. Since 2005 the border between North and South has also taken on increased political significance. During the CPA negotiations, it was established that 1 January 1956 border between the North and the South was to become the administrative border of GoSS and – in case of separation following the 2011 referendum – the international border between the two independent entities. After the signing of the CPA, with the exception of the Northern contingents to the Joint Integrated Units, the Sudan Armed Forces was to withdraw from the South and the GoSS and the SPLA were in reality in charge of the South Sudan's territory. Yet, the border areas and in particular Unity State was the last area from which Northern forces withdrew and the SPLA's control of peripheral areas has been tenuous at times. The various ways in which proximity to the North-South border affect local politics in Unity State will be further explored in the second part of the paper.

These structural factors constitute a grid that to large degree shape the processes and events of the CPA-period at both the national and local level. Legacies of governance and violence impact sate-society relations in terms of both practises and expectations. The radical reforms imbued in the peace agreement – and later developed in the Interim Constitution and other pieces of legislation (e.g. Land Act and Local Government Act) – in term of expansion of the local government structure and devolution of power may be regarded as an attempt at remedying some of the short-comings of the previous system and to mend the broken contract. For instance, John Garang's dictum of bringing the towns (and the government) to the people (in the countryside)

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[22] Douglas H. Johnson, *Boundaries Become Borders*, (Rift Valley Institute: London, 2010).

has often invoked as a justification for the on-going fragmentation of local government often referred to as "decentralisation".[23]

The impact of key CPA-processes and major events

The day-to-day politics of post-conflict CPA has been framed within the above-outlined structural limitations. Yet, there is no doubt that the implementation of the CPA and a number of events occurring in the period between 2005-11, some planned and anticipated, have also impacted the current situation and shaped the opportunities and constrains of communities and political actors at the local level. First and foremost it is the schedule established by the CPA that has set the political agenda. The fragility of the agreement combined with a nearly universal support for the 2011 referendum has provided political actors with the necessary incentive to restrict antagonising politics and to delay major battles until after the referendum and the anticipated separation. Another factor has been the weak government capacity which has made it necessary to focus on implementing the CPA and its corollary provisions and left limited room for addressing other issues.

The 2008 census, the 2010 elections, the January 2011 referendum have been separate events which have been individually motivated the CPA, but also seen as milestones and necessary exercises before the widely anticipated 9 July 2011 separation. Delays or cancelation of any of these processes would have been regarded as major violations of the CPA and set a negative precedence for the implementation of other key provisions. These processes were however ridden by political controversy and demanded considerable resources and external technical assistance to plan and implement. Consequently the attention and capacity of the South Sudan politicians and the "international community" was trained on this sequence of tasks while other issues were not addressed; such as insecurity, the infectivity of the long-term assistance to the South and preparations for the separation. Border demarcation between north and south was also widely believed to be a mandatory exercise in advance of South Sudan secession. Some progress was made to the extent that Sudanese leaders claimed that 80% of the border had been demarcated, but the contested areas remain. These large processes have been marked by incidents of violence

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[23] Mareike Schomerus and Tim Allen, *Southern Sudan at odds with itself: dynamics of conflict and predicaments of peace*, (London School of Economics and Political Science: London, 2010).

and general insecurity. Violence has either been directly related to these processes or they have been occurring because of the general environment of lawlessness and local conflict in the CPA-period.

Consequences for local governance and legitimacy

Then if we look strictly at the local level we are firstly faced with the question of what exactly is the local level. The division of South Sudan's three provinces into ten states means that several districts, the focal point of local politics, have now become states. Is this state level still a part of local politics, or does the introduction of three lower tires of government sufficiently distance the state level from local issues? Arguably, the state level may be defined as an in-between – meso – level that is both a part of local politics and national/South Sudan politics.

In terms of governance there is a problem with the introduction of modern politics at the local level, first and foremost at state level, but also to an increasing degree at the county level. There is no precedence for a culture of politics separate from that of state administration. The governor and the county commissioner have an ambiguous role as the undisputable head of the administration at each level and at the same time being supposedly elected politicians. Here the authoritarian culture of past governments takes precedence and leave very limited real power to the politicians in the state parliament and at the country level tasked with overseeing the local administration and the executive. A currently more important function of the state MP is that of an interlocutor between local communities and the state administration, like a modern reflection of the chief. Being MP at the GoSS or state level also give oppositional groups and individuals, "trouble makers", a stake in the system. The fact that the whole system is in flux and the future uncertain adds unpredictability and makes it difficult to craft long-term strategies. Positioning towards future restructuring and fragmentation hence becomes a part of the political struggle. Same is the process of demarcating administrative borders.

Not much has been done in terms of re-establishing the social contract and it is difficult for the local community to know who the contract partner is in an ever-changing system. Many people also perceive the post-war situation as less secure than the period of civil war. This is often

explained by the change from military to civilian policing.[24] The SPLA have been moved to the barracks and ordinary police is supposed to handle civilian cases. However the capacity of the police at the signing of the CPA was low indeed. During the first years little was accomplished in terms of remedying this situation. In later years policing capacity has improved somewhat, but the judicial system is still lagging behind and there are indications of misuse and parallel practises.[25] In terms of land and natural resource management, beyond individual arbitration by military commanders, the government had no capacity at all to handle such issues during the war and it has also only been slowly improved and suffers under the lack of a clear legal framework. In addition, land-grabbing is an increasing problem both in rural and urban areas. The main problem here is the increased pressure on land and natural resources cause by returnees and demands generated by the absence of war (e.g. expansion of urban centres and areas of commercial large scale farming). (**ref. NPA report, etc.**)

3. Unity State: Complicating factors

The idea that conflict is caused by lack of development/peace dividend does not hold for Unity State which scores close to the South Sudan average on social and economic indicators (**ref statistical yearbook 2010**). We will instead seek the explanation for lack of governance and high level of violence and insecurity in Unity State with reference to the problem of the broken state-society contracts. This problem is further intensified by the state's proximity to the north-south border and the extensive oil production in the area. These two factors have a mutually reinforcing effect on local politics in Unity State. Their impact is both indirect through aggravating the legacies of war and direct on political developments in the CPA-period. As a result, Unity state is particularly ungovernable and violent.

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[24] Alfred Lokuji, Abraham Sewonet Abatneh, and Kenyi Wani, *Police reform in southern Sudan: policy document*, (North-South Institute,: Ottawa, Ont., 2009).
[25] Cherry Leonardi, Leben Nelson Moro, Martina Santschi, and Deborah H. Isser, *Local Justice in Southern Sudan*, (United States Institute of Peace; Rift Valley Institute: Washington, DC, 2010).

Local governance in Unity state

The wedge shape area along the Western side of the *sudd* now called "Unit State" traces its existence as an administrative entity back to the status as a district during the Anglo-Egyptian Condominium. Until the signing of the CPA, this area was regarded to be a part of the Upper Nile region and referred to as "Western Upper Nile". The government in Khartoum had during the war divided Sudan's provinces into states, but for all practical purposes the Southern states did not come into being until after the signing of the CPA. Unity State covers **XXXX** sq. and has about 900 000 inhabitants. The majority of the population hail to the Nuer tribe while a minority in the northern part of the state belong to the Dinka. Under normal circumstances Ambororo and Misseriya cattle herders will migrate seasonally to the Northern part of the state in search of dry season pastures and trading opportunities. Unity State has a long north-south border with South-Kordofan. Unity State is also the foremost oil producing state in South Sudan followed (far behind) by Upper Nile. The oil activity is mostly taking place in the northern half of the state.

How shall we categorise Unity State along a centre-periphery grid? Of course, it is peripheral in many ways, but being on the border between north and south it also has a closer connection with the national capital than the areas further south. This situation has been gradually reversed as Juba has become more autonomous and the South Sudan political centre of gravity has moved away from Khartoum. This might therefore also lead to a situation of relative deprivation where leaders and ordinary people in Unity State continue to be drawn towards Khartoum where they actually have network and influence. This is yet another consequence of border proximity (see below).

The state capital of Bentiu is the centre of political activity in Unity State. The governor Taban Deng has the 2% oil revenue for Unity State at his personal discretion and he is not held publically accountable for the use of this money. It is not even official know how much it is and in Bentiu it is regarded as bad form to talk about this publically. But, it is assumed to be more than 10 million USD pr. annum. The counties of Unity State basically belong to two categories, those with a former district headquarter and those that were established on scratch after the CPA. The latter is in terms of governance in most cases in worse shape than the former.[26] The *payam* and *boma* government levels hardly exist outside the county centres and the rural areas continue

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[26] Interviews with Unity State officials, Bentiu, March 2011.

to be supervised by the chiefs and the occasional visiting government officer. Violence and insecurity is a major problem in the area where fighting and raiding occurs between communities within counties, between counties and further afield (other states South States, with government officials and enforcement personnel and with groups and people across the border to the North). The combination of extraordinary lack of local government services and the high level of violence can to a large degree be ascribed to the two factors of oil industry and local border proximity in combination with the legacies of war.

Impact of oil industry

While oil impact the South Sudan society in general more indirectly through the dependency and influx of oil money and its impact on political priorities, in Unity State the oil factor is very real and a ever-present issue. There is no doubt that the presence of oil deposits in Unity State made the war more intense in these areas. Not the least because the government in liaison with oil companies and local militias embarked on a policy of completely removing the local Nuer and Dinka population from the areas of oil production. Although clearly illegitimate and cruel, it was dictated by military logic which suggested that it would be impossible to avoid sabotage and infiltration in the areas if the "disloyal" civilian population was made stay. This is also an indication of the logic of the broken contract. The government in Khartoum did not even try to win the support of the local population instead of killing and displacing them. Although many have returned to these areas, they are paying dearly for the oil exploitation in terms of environmental destruction and they do not receive compensation nor any opportunities for wage labour within the industry.[27] With this legacy of oil-induced violence the current government in Khartoum cannot take the support of the local people for granted. Oil also fuels local politics and the 2% have proved to be a divisive factor and one that increase the authoritarian and neo-patrimonial/personal rule traits of the state administration.

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[27] Interviews with government officials, community representatives and others in Bentiu, Rub Kona and Ruweng Counties, March and April 2011.

Proximity to North-South Border

It is possible to argue that border proximity is a more fundamental factor explaining the problems in Unity state than the oil. For one, large parts of the South is regarded as potential oil fields and one reason why unity state was chosen as the place to start was its proximity to the north and possibility to protect it from attacks from the SPLM/A.

Political developments in border states and border communities are affected in a number of ways by the north-south border and the political processes related to changing the status of the border to an international border affect. Firstly, the issue of over the North-South border impact local societies in terms of *national security* and *territorial control*. African borders are typically porous and has a weak government presence since these states cannot afford or have limited incentives in asserting full control over border territories. In the North-South border case, the tension between the two governments demands a more forceful government presence and monitoring of people and movements in the area. Protection of rurally located infrastructure such as farming schemes and oil installations demands closer monitoring and more "boots on the ground" outside garrison towns. This might also result in a closer monitoring of the local population. The North-South border has since 2005 become a government security issue in Khartoum and Juba. During the civil war, Northern forces where concentrated in garrison towns and in strategic points. Now, SPLA and SAF are facing each other across North-South border. One consequence of this is an increased presence of soldiers and security forces in border areas in particular in Unity State where the oil fields are located, which is an economic burden to surrounding societies and lead to local tension. This also means that it is the border areas that are under immediate threat if tensions between the North and South should flare up to war. Moreover, the border areas are also the scene of skirmishes and other types of low intensity warfare. The need to protect people in border areas might also be used as a pretext by national government to interfere locally. The amount of attention and resources GoSS and the state administration devote to the protection of people in border areas varies considerably, and is governed by, among other factors, the influence of border communities in the political centres (e.g. Misseriya leader's influence in Khartoum) and the extent to which the protection of border people can be elevated to a national issue (cf. the Badme issue in the Eritrean-Ethiopian war, 1998-2000).

Secondly, *demarcation and territorial disputes* is another concern. The North-South border was supposed to be demarcated during the CPA-period. This is a formalisation and concretisation of a border which has been in flux and previously with no need for minute demarcation.[28] With the establishment of two separate states this issue becomes more acute (although there are still a number of disputed borders elsewhere in Africa). At least six areas along the North-South border have been identified as disputed and in need of clarification/mediation.[29] One of these issues is the border between South Kordofan and Unity State. One of the transitional areas, Abyei, is also heavily disputed with ramifications also for Unity State's borders. The parties stand far apart and need external mediation to find a solution to the border dispute. This lack of clarification creates apprehensiveness and tension at the local level and state level along the border. The demarcation and changing of status to an international border also have more subtle impact on cross border community interaction. Patterns of seasonal migration along the north-south border predate the establishment of any clearly defined administrative borders. A system of mutual utility made it possible to administer seasonal migration with a minimum of government involvement. These patterns were severely disrupted by the second civil war and the increased politisation of the north-south border has contributed further to complicate this migration.

Finally, *trade and movement of people* is a crucial factor for people living in border areas. The border communities and the border state economies are to a large degree dependent on a relatively open border policy in terms of movement of people and goods along roads. Controlling the flow of goods and people across borders is first and foremost a central government concern. There is both a security dimension and an economic/trade dimension, which are often inter-meshed in the political sphere (e.g. South Sudan might raise tariffs on goods from the North to lessen their economic, and hence strategic, dependence on the North and encourage imports from East Africa). The introduction of an international border is first and foremost an inconvenience and a complicating factor for the people living in these border areas and in terms of efficient local governance. There were however indications that both politicians and community leaders in Unity State saw the imposition of an international border as a strengthening their position in the negotiation over access to grazing land South of the border. Local traders and their customers in

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[28] Johnson, *Boundaries Become Borders*.
[29] *Ibid.*; Concordis International, *More Than A Line: Sudan's North - South Border*, (Concordis International: Cambridge UK, September 2010).

urban centres on the Southern side of the border are highly dependent on goods from the North, and Southerners do not want any restricts or tariffs on the products they sell to the north (livestock and other primary commodities). Moreover, many Southerners in the north-south border areas migrated to the North, especially Greater Khartoum, during the war. In many cases it is only some of the members of the family who has returned to the South while the rest remain. This creates a constant demand for people to move and communicate across the north-south border.

Therefore, in Unity State the problems between state and society are even deeper than elsewhere in the South and the local institution of the CPA post-conflict environment is even less equipped to deal with these problems. The structures are weak and personalised and militarised rule are even more encompassing than elsewhere. Concurrently, the central government in Juba also have strong incentives to interfere in local developments in Unity State because of its proximity to the border and the presence of strategic oil infrastructure. One the same note, Khartoum has a much larger interest in destabilising the area both through politics as we saw in the elections and by use of militia.

4. Conclusion: local legitimacy is the key to *de facto* sovereignty

The contract between the society and the state in South Sudan is severely broken by war and past negligence. The new Republic of South Sudan will continue to be ridden by local conflict and general lawlessness until it manages to reintroduce its core functions in the rural areas: keeping the peace and manage local land and resource disputes. It will not be able to brandish the overwhelming force that the Condominium government had, at least not in the foreseeable future. The legacies of war mean that the local society is able to resist government enforcement and, as a mentality of war continues to dominate, they have less invested in an unsatisfactory peace arrangement. The only viable approach to governance in today's South Sudan is by compliance and recognition of mutual interest between local communities and the state. This is made difficult by the mixing of identity politics and local government fragmentation, where counties, *payams* and *bomas* are demarcated according to ill-defined tribal and inter-tribal boundaries. The example of Unity State is instructive in the sense that the trends present elsewhere in the South is more

visible in this area because of the two exacerbating factors of oil and border proximity. Since Unity state is both the money maker of the South and a part of exposed belly to the North stability and support of the local communities in this area is particularly important and at the same time inherently difficult.

Although suggesting that more emphasis has to be given to the core functions of the state does not imply any preconceived and condescending notion of appropriate intervention or stages of development, and certainly not a culturalistic idea that people in South Sudan do not want democracy or social services. Indeed, a holistic approach is to be preferred where pursuing several important goals concurrently produce mutually reinforcing synergies. Rather, the somewhat simplistic point is that there will be no democracy or sustainable social and economic development without the state executing the core functions expected by the people. Part of the reason why this obvious fact has been ignored is, I argue, that the challenge this pose has not been sufficiently assessed nor understood.

A consequence of this analysis is that the local legitimacy of the state is essential for a *de facto* sovereign South Sudan. It will not be possible to control the borders or avoid foreign interference without the active compliance of the people in South Sudan's margins. Local violence and insecurity will continue and severely impede any attempt at initiating social and economic change. South Sudan will continue to be dependent on the oil revenues. The security sector will continue to swallow large parts of the national budget. Military rulers will continue to use security as an excuse to not open up for actual democratisation and pluralism. Put differently, it will become a thoroughly and permanently failed state.