

Four Dimensions of Sovereignty in the Making:

*The Government of Southern Sudan's Venture
Towards the Formation of a New State*

Linn Andrea Meinert Schønning



Masteroppgave i statsvitenskap, Institutt for statsvitenskap

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Linn Andrea Meinert Schøning

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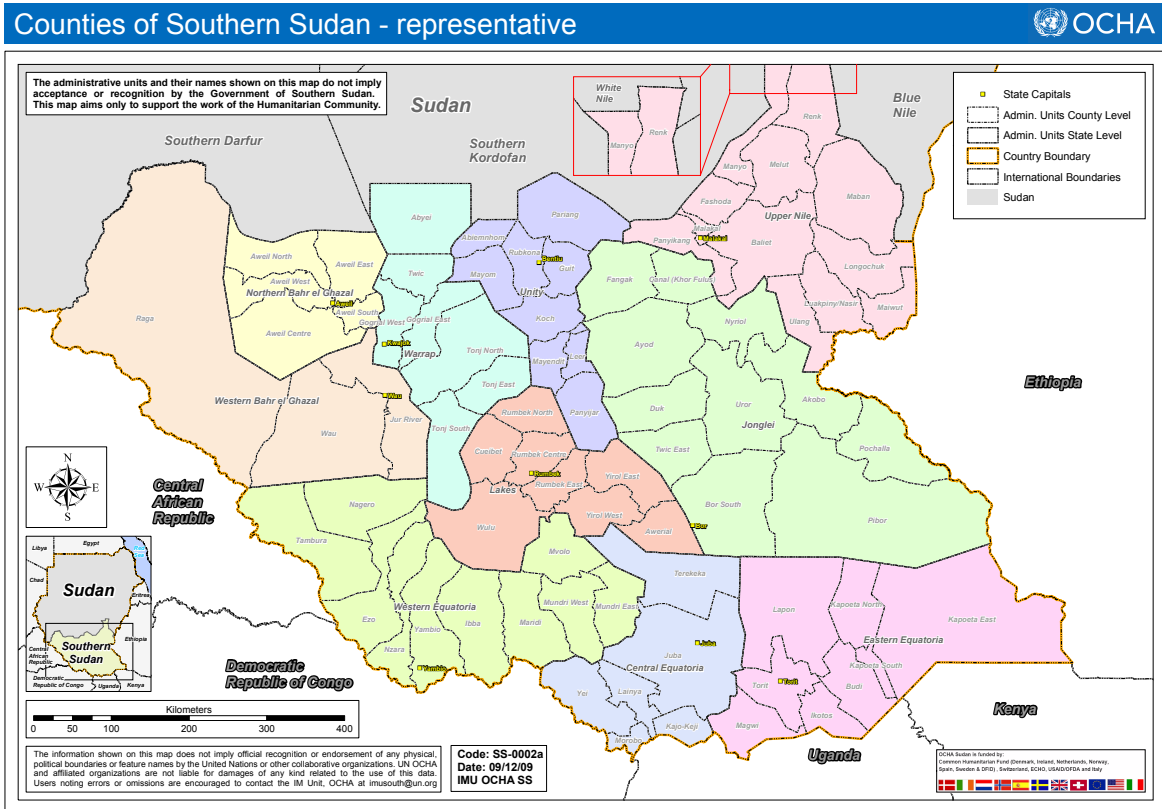
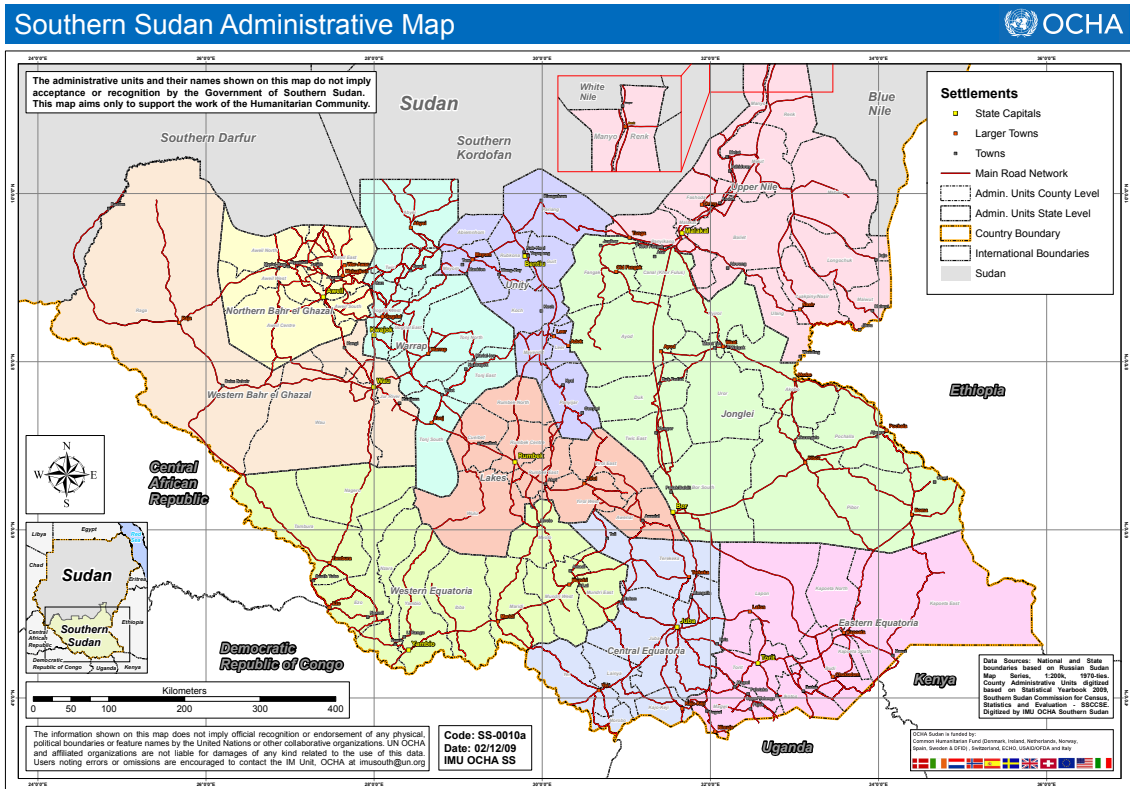
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Abbreviations and Acronyms

| | |
|---------|---|
| BOSS | Bank of Southern Sudan |
| CBS | Central Bank of Sudan |
| CPA | Comprehensive Peace Agreement |
| ICSS | Interim Constitution of Southern Sudan |
| IOM | International Organization for Migration |
| GoS | Government of Sudan |
| GoSS | Government of Southern/South Sudan |
| LRA | Lord's Resistance Army |
| NLA | National Legislative Assembly |
| OAU | Organization of African Unity |
| SAF | Sudan Armed Forces |
| SDG | Sudanese Pound |
| SLA | Sudan Legislative Assembly |
| SPLA | Sudan People's Liberation Army |
| SPLM | Sudan People's Liberation Movement |
| SPLM/A | Sudan People's Liberation Movement/Army |
| SPLM-DC | Sudan People's Liberation Movement for Democratic Change |
| SSDDRC | Southern Sudan Demobilization, Disarmament and Reintegration Commission |
| SSRB | Southern Sudan Referendum Bureau |
| SSRC | Southern Sudan Referendum Commission |
| UN | United Nations |
| UNICEF | United Nations Children's Fund |
| UNMIS | United Nation Mission in Sudan |

Maps of Southern Sudan



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Abstract

The comprehensive Peace Agreement between the government of the Republic of Sudan and Sudan People's Liberation Movement/Army, ended Africa's longest running civil war and enabled the semi-autonomous Government of Southern Sudan to initiate a process of state formation and political order in Southern Sudan.

This thesis aims to understand how sovereignty was crafted in Southern Sudan, by investigating the emergence of the Government of Southern Sudan. It is assumed that this development relies on some fundamental practices of statecraft, namely: the provision of security, administration of justice, revenue capture and political processes and institutions. These four dimensions are the basis of the analysis of how sovereignty is crafted in Southern Sudan.

It argues that some aspects of traditional theories on the state and sovereignty can be transferred to this context. However, these theories lack some aspects that makes implementation of practices of statecraft unfulfilled in South Sudan.

My findings shows that there has been progress in all the four dimensions, yet there is a gap between established institutions and implementation of policy. Nevertheless, the Republic of South Sudan was proclaimed 9 July 2011.

1. Introduction

Sovereignty is an embedded and fundamental principle in the western world. It is regarded as a defining principle of international relations, establishing the formal criteria for membership in the international system. It reflects the ultimate political authority, where the state is not subjected to a higher power as regards the making and enforcing of political decisions (Buzan 2003). In the context of international relations it indicates that states claim full self-government and mutual recognition between states of this claim of sovereignty. It is promulgated in international law through the UN charter.

However, this does not necessarily reflect sovereignty in the African context. The African state has been given many names. Scholars looking into the African state has used labels as: quasi-state, weak, failed, neo-patrimonial and more. This is because the African context has produced a state that varies from the definition of the state in the western context. In the same way, sovereignty is also argued to have a different status on the African continent. The heritage from the colonial area has given precedence of labeling African sovereignty as juridical sovereignty. Defined by its legality rather than effectiveness.

When the colonial powers left the African continent, they also left behind demarcations of borders that still today stand strong. Country names have changed as well as the powers in charge, but the borders are left pretty much unchanged. Nevertheless, there have been some instances where a demarcation has been challenged. “Throughout the African continent, there are several specific sites and processes of contested or attempted sovereignty – what we call ‘sovereignty in the making’”¹. One very interesting case of attempted sovereignty is the creation of an independent South Sudan.

1.1 Southern Sudan, secession and sovereignty - from Southern to South Sudan?

By the summer of 2011, Southern Sudan will become an independent state. This puts Southern Sudan in a remarkable situation in the African context. There are few examples of secessions or changes of the borders left by the colonialists. The outbreak of the first civil war between the northern and southern region of Sudan, came after the independence from Anglo-

¹ Sovereignty in the making project draft, Fafo AIS.

Egyptian rule in 1956 (Johnson 2003: 21). After a short cease of fire, after the signing of the Addis Ababa agreement in the 1970's, the conflict erupted yet again in the beginning of the 1980's (Johnson 2003: 39). The second civil war lasted until the signing of the Comprehensive Peace Agreement (CPA) in 2005. Far from being the only conflict in the region, it has been claimed that it was the longest running civil war on the African continent, which has been of great influence towards the claim of self-determination for the people in Southern Sudan.

The legitimacy of the Government of Southern Sudan (GoSS) rests on the agreements of the Comprehensive Peace Agreement of 2005, between the Government of the Republic of the Sudan (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A). The agreement lay out the guiding principles for a 6 yearlong interim period. It holds the right to self-determination for the people of South Sudan with the 2011 referendum for unity or secession². Even though unity was emphasized in the agreement, the referendum showed a 98 % claim for secession. As of July this year South Sudan can become a sovereign state.

1.2 Scope and research question

However, sovereignty as we know it holds certain implications. Are these present in this new state? To investigate that, I will ask the questions: what is being done in South Sudan to craft sovereignty? And what are the main challenges? This study will concentrate on four important dimensions in relation to sovereignty: security provision; administration of justice; revenue capture; and political processes and institution. These are chosen because they represent activities that are integral and constitutive of sovereignty³. Under these dimensions I will look into the most important observable processes in the case of building sovereignty in Southern Sudan. At the same time, it will be important to keep in mind that theories on sovereignty mainly derives from the Western European context. Not all theories developed in a European context are applicable when looking into Africa. In a following chapter, I will further explain what I have named the problem of transferability.

² The Comprehensive Peace Agreement Between The Government of The Republic of The Sudan and The Sudan People's Liberation Movement/Sudan People's Liberation Army, 09.01.2005, <http://unmis.unmissions.org/Default.aspx?tabid=515>.

³ Sovereignty in the making project draft, Fafo AIS.

1.2.1 Narrowing down the scope

Geographically, the paper will concentrate exclusively on the Southern part of Sudan, soon to be the Republic of South Sudan. This empirical delimitation in the paper is due to the scope and to be able to follow the problematic I set out to answer. A more detailed explanation will be presented in the methodology chapter. The names Southern Sudan and South Sudan will be used interchangeably. When I started researching the subject no one really knew if the Republic of South Sudan would become reality, yet by the summer of 2011 they declared their independence. As a consequence, Southern Sudan is used mainly to refer to the time period before 9th July 2011.

In the scope of time, the analysis is limited to concentrate on the period from the signing of the CPA in 2005 until the secession date of July 2011. This period has seen the change from civil war towards the development of a Southern Sudanese government. It is likely that most interesting aspects related to the developments in the four chosen variables are to be found in this period of time. A further explanation on the scope of time can be found in section 2.5 where I will further develop dimensions and indicators.

The theoretical scope of this paper is not yet given, and will be fully explored in the theoretical approach chapter. This paper is part of a larger project with the goal to further develop theories on sovereignty in the African context. It goes without saying that there is no fully developed theoretical framework present as of today. The theoretical part of this paper will present the most important theories related to the subject, but will not hold a comprehensive study of theories. Related to the chosen theoretical aspects I will develop a theoretical background for the analysis.

Sovereignty in the making is often seen in relation to “nation building”. This term is today often confused with “state building”. While the former can be identified as the formation of a national identity in a state, the latter is often used in relation to external deliberate efforts to install institutions. An important contribution to nation building theories were evolved by Stein Rokkan in the early 1970’s. His nation building theory handles the development of the Western European nation states. The European context is not directly transferable for the challenges of nation builders today. There are fundamental different conditions in a totally different world situation (Rokkan 1987: 379). Nevertheless, one of his goals was to develop an apparatus for comparing political structures for all levels of development, amid all

cultures. Nation building, state building and Rokkan will be further emphasized in the theoretical approach chapter.

Scholars looking into African politics often encounter upon the problem of transferability. One example being traditional international relations theory, where the state is seen as a system with hierarchically ordered units. However, the picture projected of the African continent is conflictual and disaster-prone. The relationship between African states is far more consensus oriented than traditional international relations theory predicts. As founded in the OAU-charter⁴, the principle of territorial integrity is usually highly regarded and respected in the African context. The relationship between African states is most often embossed with order and mutual respect. However, the African state is different from the western bureaucratic-rational one in many regards. The regimes might be strong, yet the state itself is weak. This implies that the order inside the state is not always as predicted by traditional international relations theorists. Following, the meaning of established concepts like sovereignty and the state might have a different content in the African context (Bøås and Dokken 2002: 162-165).

One of the heritages in Africa from colonialism was the relocation of European values. By the transfer of norms, ideas and concepts such as state sovereignty. By the division from colonial rule and thereby constructing modern states, the neo-Westphalian institution of state sovereignty was introduced and transferred to Africa. Not that there was no sense of sovereignty from before, but the institution of state sovereignty certainly influenced the transition from colonial rule to independent states. Even though this independence was vested on self-determination of the people, in many instances it became an imperative for African leaders to rule with exclusive and indivisible sovereignty, not with regards to citizenry (Makinda and Okumu 2008: 15-16).

Nonetheless, sovereignty is a concept with plural meanings. Put in different contexts, it implicates contesting views. Sovereignty is often presented as a dichotomy. For instance, international legal sovereignty can be defined as: “the international recognition of a state by its peers and its formal status in international law, with the attendant attributes of equality with other states, non-intervention, self-determination, and territorial integrity” (Englebert 2009:60). In the words of Jackson and Rosberg this is also termed juridical sovereignty as

⁴ See: Organization of African Unity (1963) The OAU Charter, Article II 1 c, and Article III 1-3.

opposed to empirical sovereignty, or negative versus positive sovereignty. The latter implies effective rule over their territories and population, or final authority over social, economic, and political matters. Negative sovereignty on the other hand, in the African context, is said to be resting on the UN General Assembly Resolution 1514 (XV) of 1960, which granted all former colonies of Africa sovereignty (Englebert 2009: 61).

Because African sovereignty is recognized as juridical sovereignty, it is often defined by its legality rather than its effectiveness (Englebert 2009: 62). Failures in legal command such as, the capacity to control, dominate, extract or dictate through law rests mainly on sovereign status. While, the state's capacity to provide security, order, and public services, or implement coherent policies and initiate social transformation, rests on domestic institutional effectiveness (Englebert 2009: 62).

1.2.2 Research question

The sovereignty in the making project refers to the sets of practices of statecraft that cumulatively comprise attempts to achieve juridical sovereignty. Sites of contested sovereignty falls into four basic categories: existing polities that are making new or pressing old territorial claims, but lack international recognition; old states that are in a state of prolonged collapse but still are considered sovereign entities; unitary states that are (re) configured into federal arrangements that 'split' sovereignty between two or more entities, often as a response to civil war or to civic claims for self-determination; and seemingly chronic civil war situations related, at least in part, to unrealized sovereignty claims⁵.

Given this division of categories, Southern Sudan falls into the third one, a split of sovereignty between two entities after a claim for self-determination as a response to prolonged civil war. In the case of Southern Sudan this claim has evolved into the forthcoming secession of July this year. However, as seen in the previous section on theoretical scope, the implications of sovereignty are contested. This soon-to-be independent state can be said to be in the middle of an immense state formation process⁶. International recognition, in terms of juridical sovereignty, might seem like an easy achievement from the outside. However, with the international society following the development under scrutiny,

5 Sovereignty in the making project draft, Fafo AIS.

6 A further distinction between the two concepts will be done in the theoretical approach chapter.

there might be a demand to create not only legality, but also domestic institutional effectiveness to gain recognized sovereignty. Therefore I will argue to not to view the case of Southern Sudan in light of “sets of practices of statecraft that cumulatively comprise attempts to achieve juridical sovereignty”. What is interesting in the case of Southern Sudan is the empirical aspect of sovereignty. What is the Government of Southern Sudan doing to improve the four chosen variables or dimensions? The answer to this is highly related to the process of creating sovereignty. My problem for discussion will be as following:

How is sovereignty crafted in Southern Sudan? And, what are the challenges in the four dimensions of sovereignty in the making?

To go from theories to practice in this paper, I need to operationalize the four critical dimensions of sovereignty have been chosen for further study. They will hopefully have the ability to illuminate how political actors attempt to create order and to what ends⁷. It can also be argued that these four dimensions are constitutive of our understanding of the concept of sovereignty. The development of indicators is described in section 2.5.

The methodological scope of this paper is to do a qualitative in-depth study of the four chosen variables related to sovereignty in the case of Southern Sudan. It can be classified as a within-case study (Gerring 2007: 217). However, this single case is part of a larger research project, which together holds the potential of doing a cross-case comparison. Data from the individual cases, can both be used for in-depth studies as well as for synthesizing analyses that examine overarching issues, problem, and themes, to produce generalizable knowledge of interest both for policymakers and researchers⁸. The chosen dimensions will be operationalized into observable phenomena and activities, where possible, in order to understand what is being done and how.

It is my assumption that very few of these dimension are in place at this time. The western European state developed over centuries and Southern Sudan has only had six years so far. However, there might be evidence of and work in progress around these dimensions. I will not focus on if they are present or not but rather on in what degree we can speak of sovereignty. In the case of Southern Sudan there might be evidence of ‘fussy’ classes, so the goal will be to classify as degrees of, not necessarily as evidence of pure forms. The four

⁷ Sovereignty in the making project draft, Fafo AIS.

⁸ Sovereignty in the making project draft, Fafo AIS.

dimensions will be presented shortly in the following section and further elaborated on in the theoretical approach and in the part of the analysis.

The first chosen dimension, or variable, is security provision defined by the “Sovereignty in the making project” as ‘*The assertion of territorial control and attempted monopoly of the use of violence*’⁹. The core meaning of sovereignty traditionally relates to supreme authority within a territory¹⁰. Chapter VI of the CPA is the foundation for the security arrangements for the interim period. Part ten of the Constitution lays out armed forces, law enforcement agencies and security provisions for Southern Sudan in accordance with the National Interim Constitution (CPA 2005: Chapter VI). However, this arrangement mainly addresses security problems related to hostilities between the regular forces SPLA and Sudan Armed Forces (SAF), and to a certain degree militia related to political parties (Rolandsen 2009: 6).

There are several challenges towards security provisions in the case of South Sudan. They mainly relates to a high level of violence and insecurity and a lack of protection of the people (Rolandsen 2009: 2). The first, and maybe most obvious, is the continuous fighting with dissent rebel forces in Jonglei, Unity and Upper Nile¹¹. There are also the occurrence of tribal and clan fighting often related to cattle rustling. In both cases, the consequence is often casualties among civilians and the need to flee the area. After 22 years of civil war, the flow of small arms in the communities is substantial. The flow of arms combined with the low threshold for using violence to solve conflicts is a lethal combination. As long as the government is not able to provide security for its citizens, this flow of arms will not voluntarily diminish. Related to the civil war, there is also a need to downsize, demobilize and professionalize the army. To enforce security there will be a need to establish police and military capacity that is able to deal with instances of local violence in peacetime and address the insecurity situation. It is possible that the main obstacle towards security provision in South Sudan is the lack of institutional capacity to provide security and prevent, contain and solve conflicts (Rolandsen 2010: 1).

Making the law is one of sovereignty’s attributes as a recognized a quality of statehood. “Making laws and being the law is a privilege of the prince” (Englebert 2009: 62). The

9 Sovereignty in the making project draft, Fafo AIS.

10 Stanford Encyclopedia of Philosophy, [<http://plato.stanford.edu/entries/sovereignty/>].

11 For reported violence see e.g.: IRIN <http://www.irinnews.org/report.aspx?ReportId=92233> and BBC South Sudan Clashes between army and militia kills 57. <http://www.bbc.co.uk/news/world-africa-13182109>

second dimension in this paper is administration of justice. In the words of Pierre Englebert, “Domestically, state sovereignty manifests itself through legal command, that is, the monopolistic capacity of the state to order people around through law” (Englebert 2009: 57). How is order and justice in South Sudan (however constituted) established or imposed and enforced? The Comprehensive Peace Agreement was incorporated into the Interim Constitution of Southern Sudan (ICSS). This Constitution is the supreme law of Southern Sudan as of 2005. There are also several amendments attached to the ICSS. The judiciary is structured into the Supreme Court of South Sudan, Courts of Appeal, High Court and County Courts. As an addition other courts and tribunals as deemed necessary can be established in accordance with the provision of the Constitution and the law (ICSS: 127 (a-d)).

The third dimension is revenue capture. It relates to how formal and informal governance in the territory is funded. The main question being how revenue is captured in South Sudan and by whom and what give authority to legislate? Existing framework derives from Chapter III of the Comprehensive Peace Agreement. It addresses wealth sharing between the two signatories of the protocol. There is also work in progress related to revenue capture in the new South Sudan Development Plan¹². Estimated Government of Southern Sudan revenue Sources for 2010 was based on 97.8 % oil revenues and only 1.2 % on personal income tax. Customs, VAT and other National Revenue was only 0.4 % and other Goss revenues 0.6 % (Statistical Yearbook 2010: 154).

The 2007 Personal Income Tax Act purpose is to provide rules and arrangements for the taxation of income of Southern Sudan taxpayers. It is founded upon the Interim Constitution of Southern Sudan of 2005. It grants the Government of Southern Sudan the authority to legislate for collecting the personal income tax of Southern Sudan (Personal Income Tax Act 2007 (2009): 4). The act further states that income up to 300 SDG per month is not object to taxation (0 % tax), while income over 300 SDG per month is taxed at 10 % on the excess over the 300 SDG per month (Personal Income Tax Act 2007: 9). According to the National Baseline Survey (2009) the average consumption per person per month in Southern Sudan was 100 SDG (Statistical Yearbook 2010: 122). This implicates that the existing taxation framework does not function as of today. The numbers presented in the previous section shows that there is no foundation for taxation when only limited parts of the population have

¹² Conversation with Torfinn Harding (5 March 2011), member of committee for drafting the South Sudan Development Plan.

taxable income. The main challenge for the government of South Sudan will be to provide a framework that enables revenue capture to decrease the dependence of oil revenues. Creating a legal framework that enables taxation of persons as well as businesses might do this. Such a framework will also hold a demand to provide public functions or social benefits for the population.

The fourth and last dimension is political institutions and processes. Portrayed as: *inclusive but not exclusive to elections- how is legitimacy generated or claimed*¹³. Not yet a formal independent country, I will have to base the assessment on the interim government and a processes in transition. This together with the election of 2009 and the referendum of this year. The two main question set out to answer will be; what are the political institutions of Southern Sudan? And, can elections (if present) be used to gather legitimacy for the government and sovereignty claim?

As a part of the CPA, the power sharing protocol of 2004 gave SPLM the right to form an autonomous government for Southern Sudan. It also included plans to hold general elections at all levels of government in 2009. Several political movements and armies were present in Southern Sudan prior to the signing of the CPA. GoSS representatives state that these are now transformed into political parties and have joined the SPLM in the new government (GOSS 2010a). According to the Interim Constitution of 2005, the “*sovereign authority in Southern Sudan is vested in the people and shall be exercised through their democratic and representative institutions established by this Constitution and elected by them in regular, free and fair elections*” (ICSS 2005: Chapter I, 2(1)). Upon independence the country will become a republic with a President as Head of Government and Commander-in-Chief of the army. The legislative power will be vested in the government and the unicameral South Sudan Legislative Assembly. The election of 2009 and the 2011 referendum can be important in relation to claiming legitimacy for the government as well as the sovereignty claim.

The main challenges ahead are multifaceted. There is a lack or absorbing of political opposition and a following need to open up the political space. There is a challenge in inclusion of civil society organizations, also operating outside the international non-governmental organization sector. There is a need for development of new policies and a challenge in the implementation of both old and new policies. It will also be of uppermost

13 Sovereignty in the making project draft, Fafo AIS

importance to create political trust in the population, and reduce corruption together with the importance of ethnic alliances in the building of the bureaucracy.

1.3 Structure of thesis

Chapter two will further introduce the theoretical approach taken in this paper. Chapter three will account for important empirical considerations as a background for the analysis. The methodological scope of the paper will be explained in chapter four. Chapter five will further elaborate on the four chosen variables to analyze the problematic of the paper. Chapter six will hold a conclusion and elaborate on some theoretical reflections.

2 Theoretical Approach

This chapter will present some important concepts and theoretical contributions related to the state and sovereignty. Through, raising awareness of what I have called the problem of transferability I emphasize that the traditional theories on state and sovereignty might prove inadequate in the African context. However, with an eclectic approach to existing theories I set out to form a theoretic framework for my thesis. The goal of this chapter is to develop dimensions and indicators to apply in my analysis of how sovereignty is crafted in Southern Sudan.

2.1 State sovereignty

The state is one out of many possible ways of political organizing. Throughout history we have seen several types of how political societies are organized. Nevertheless, in the world of today the essential foundation and most common form of political organizing is the state. In international relations, this is the way we distinguish actors from each other. In international relation theories, the state stands as the most common unit of analysis. This kind of organizing is identifiable by it being some kind of centralized control over a bounded territory. Inside these boundaries the political institutions have monopoly on the use of force, separated from other social institutions. The key to state power and consequently closely entangled to the state is the concept of sovereignty. Often portrayed as two sides of the same coin: external formal independence on the one side, and an internal lawmaking center with relations to various interest groups on the other side (Østerud 2007: 44).

2.1.1 The problem of transferability

It is today agreed upon that the African state differs from the western European in several aspects. The uniqueness of the African state has been expressed in terms of “la politique du ventre” (Bayart 1996), “degrees of statehood” (Clapham 1998), and “quasi-states” (Jackson 1990). This will be further emphasized upon when we later take a closer look into the African state. The African state has a different history of development than the Western European ones. In Europe, the states developed through a centuries long historical process, with few similarities to what has taken place on the African continent. Notwithstanding, there are evidence of pre-colonial African political units that where spatially constructed in several

different ways. Some were even organized in a hierarchical manner with a centralized power that would resemble requirements for sovereign states in the European fashion. However, very few pre-colonial African units had the same way of defining fixed and territorially bounded space as European ones. It is better understood as establishments residing on a core, where their power extended in fading circles (Clapham 2004: 1).

The African states of today, in territorial terms, were shaped by colonialism in the 18th and 19th century. When colonial powers departed around 1960, they left behind a new pattern of territorial boundaries and 'new states'. These borders did not necessarily follow social or ethnical lines, nor did it develop through a historical process, in the same way as we have seen in Europe. Different historical processes will in most cases lead to different outcomes. The contrast with the historical consolidation of western European states is striking (Englebert 2009: 2). It follows from this that established concepts like state and sovereignty might have a different content in the African context.

The argument to rise in this section is that a vast part of theoretical contribution to political science is written in a western European context. The African state is not the same as the bureaucratic-rational western state. The regimes might be strong but the state itself is often considered weak (Bøås and Dokken 2002: 162). Our analytical tools stems from theories based on the Western-European state. If the African state is so different, it is possible that the same theories prove to be inadequate. However, traditional theories based on the Western-European context might be useful as a starting point.

To explain sovereignty in the case of Southern Sudan, it might be useful to map out earlier works and theories related to the state and sovereignty. Traditional theories might come in handy to further develop theory that better fits the African context, and additionally, enrich general theory development. To put up a theoretical framework to analyze sovereignty in the case of Southern Sudan, I will have to build on existing theories and literature. I will do this by starting of with classical theories on the state and how the state develops, further duck-dive into the characteristics of the African state, before I go on to the equivocal concept of sovereignty. And last but not least, how these theories can be used to develop dimensions and indicators to analyze sovereignty in the making in Southern Sudan.

2.2 The modern state

The modern state arose as a part of an international system of states. The modern system of states originated in Western Europe. It is often related to the signing of the treaty of Westphalia in 1648, as an evocation of the idea of a system consisting of autonomous territorially bound, independent and formally equal states. This idea was further consolidated in international law theory of the 18th century, and an increasing number of agreements and treaties between states since. Around 1871, the system of states consisted of only fifteen units. After the Second World War, 51 states were signatories to the UN pact. In 2010 the UN listed 192 members¹⁴. This expanding process has led to the acknowledgement that the ‘principle of state’ has become a universal principle with formal sovereignty as the core value (Østerud 1987: 12).

Compared to the concept of government or regime, the state is a broader concept. This is because it holds the territory, laws, the bureaucratic and military apparatus, as well as some ideological justification of the state’s existence (Englebert 2002: 4). Statehood is the status of being a state. The foremost influential definition of the modern state is that of Max Weber. He emphasizes three aspects of the modern state: its territoriality; its monopoly of the means of physical violence; and its legitimacy (Burnham 2003: 513).

2.2.1 Weber’s bureaucratic-rational state

To study the phenomena of statehood it is not uncommon to apply Max Weber definition of political society. His description of the modern nation-state is when “existence and order is continuously safeguarded within a given territorial area by the threat and application of physical force on the part of the administrative staff” (Weber, cited by Giddens 1985, in Dokken 2008). This is not equal to the notion that force is the only requirement that makes a political organization a state, but that force can be taken as a last resort to make sure the survival of the state. In other words it is a state when it successfully is able to exercise legitimate monopoly over organized use of force within its boundaries. A state is defined by its rationalized central bureaucracy that enjoys a legitimate monopoly of organized violence over a given territory and population (Dokken 2008: 27-28).

¹⁴ UN members: <http://www.un.org/en/members/index.shtml>

2.2.2 State and nation

In Stein Rokkan's analysis of the structuring of mass-politics, or open political systems, he projects a theory of steps in the evolution of the different European political systems. The first step is the so-called "state formation" phase, recognized as consolidation of the political central power. With regards to Max Weber, it is common to claim that the power of the state separates from other institutions, in the way it tries to monopolize force inside its territorial boundaries. In other words, among the different forms of organizing society, only the state can proclaim legitimate use of force. The characteristics of the state-formation phase are: political coordination; increasing centralization; recognition of the state's sovereignty from other states; expansion of public authority throughout its territory with effective physical control; and taxation demands and lines for communication. In other words, state formation is the institutionalizing and tightening of political rule. This is by Rokkan seen so fundamental that, without this phase, it is impossible to talk about politics in the modern denotation of the word at all (Hagtvet in Rokkan 1987: 8). Given that this is supposedly the first phase of any new state, it might prove useful to apply this traditional theory on the situation in Southern Sudan.

Rokkan's second phase is what he calls the "nation building" process. In Rokkan's understanding this stage entails the national coordination of language and cultural standards, clarification of the state-power's confessional bindings and activation of the population through a gradual allotment of citizen rights into citizenship. Nation building is the foundation of the political orders legitimacy - people's credence in the ruling system right to rule (Hagtvet in Rokkan 1987: 8). Given the different circumstances from the historic process of African states, they cannot be viewed as nation-states. As a consequence, sovereignty in the making in Africa is not nation building. However, it might still be useful to apply this phase in terms of the political orders legitimacy. The concept of nation building will be further discussed in the following section.

2.2.3 The formation of new states

Rokkan acknowledged the contrast between the socio-economic conditions facing the state builders in Europe and the conditions prevailing in postcolonial states of the mid-twentieth century as "an accumulation of challenges in a very different world environment" (Goody 1973: 352). Rokkan finds it so contradictory that he asks the question both how these nations

were created but also how they sustain and continue to exist at all (Goody 1973: 352). To understand how sovereignty in the making proceeds today, there is a need to clarify some definitions.

I have already presented some of the concepts related to the formation of states. Because of its ambiguous use, throughout literature on the subject, there is definitely a need to clarify some of the concepts related to such, before we move on. Nevertheless, they all have in common the assumption that the state is the solution to the problem of political order. Charles Tilly's 'state making' is often seen in relation to war making¹⁵, which makes it not directly relevant for this case. However, state making seen alone, as state elites seeking to consolidate power and offer security in return for extraction of resources, might come in relevant. In the liberal political thought, state making is often seen as a social contracting between ruler and subjects, where subjects surrender absolute freedom in return for privileges like order and security. This is neither highly relevant, nor applicable as an analytic tool in this case (Dokken 2008: 28).

I choose to apply the definition of the following concepts in the following way. I understand nation building as the construction of national identity using the power of the state as a process of unification of its people. I do acknowledge that identities are important in a state, yet I find it secondary in this case. I will not touch upon the identity aspect in this paper, and therefore restrain from the concept of nation building. This will be further elaborated on after a short introduction to state building.

State building can be perceived as the external and deliberate efforts to install institutions in a newly independent or more often so called failed state. This is relevant to the extent of foreign actors role in the creation of an independent South Sudan. I acknowledge the importance of the international community in enabling sovereignty in Southern Sudan. Without international diplomacy, funding, capacity building and aid, Southern Sudan would not be in the position they are today. However, to explore sovereignty in the making we need to understand the internal efforts in Southern Sudan. Therefore I have chosen not to focus on the international community's role in this process.

15 Charles Tilly (1985) War Making and State Making as Organized Crime, in Bringing the State Back In, Evans Peter B., D. Rueschmeyer and T. Skocpol 1985 Cambridge University Press.)

In the introduction chapter I touched upon the relation between sovereignty in the making and nation building and already argued to restrain from this concept. In many aspects, what is going on in Southern Sudan today might better be viewed as state building. In the words of Alan Whites, state building is “the process through which states enhance their ability to function” (Whites 2008: 4). I chose to view state building on these terms, not in relation to external efforts. I find state building more relevant for the African context, given that nation building as a concept plays on assumptions taken from western states with a common culture, language or history as the driving force. African states are not nation states. For instance, in African countries territorial borders does not traditionally play the same role as we are used to in Western Europe. There might exist narratives of origin that does not correspond with the territorial borders the state is supposed to have territorial integrity over. Southern Sudan is not a unified people with common traditions and language. The demarcation of a border is not in respect to any natural aspects but solely the heritage from colonial rule.

Rokkan acknowledges that there is a problem with ‘new sovereignty’ and the short time it has available to build institution, because of enormous external and internal pressure. New states face established models for what is expected for the successful development of a state (Rokkan 1987: 357). This becomes quite evident in the case of Southern Sudan. If we go back and look at Rokkan's phases of development, Southern Sudan is a new state and does therefore belong in the first phase of state formation. However, it might look like it has entered into the second phase at the same time. Political legitimacy can be achieved through activation of the population in the election and the referendum. What European states was given centuries to develop, in a different historical context, Southern Sudan is supposed to have develop in a relatively short period of time.

2.3 The African state

As mentioned earlier, it is today widely accepted that the African state differs from the western state. African states did not emerge as a result of a long period of social, economic, political, scientific and religious development undergone by Africans. The basic conflict between nation and state is far from being resolved. In general they are centered on pluralistic nations not homogenous states. These types of political systems did not fit the Westphalian system and made their development in a post-colonial framework rather problematic (Malaquias 2001: 13-14). The nation-state has not been the basis for African governance

(Clapham 2007: 227). The African state has been described by several names, mostly in a pessimistic nature¹⁶. Yet, Africa is not without politics or political progress. Thus, when coerced into a strict western model it might appear that way. There are alternative models for socio-political organizations and there is a need to recognize the discursive way the Africans constructs the state (Dunn 2001: 62).

2.3.1 Rational-legal and patrimonial authority

The African state is often described as a type of state that functions in between a legal bureaucratic-rational and a personal relations framework. Weber differentiated what he called rational-legal from patrimonial authority. Rational-legal authority holds the public sphere strongly separated from the private sphere. Written laws and bureaucratic institutions guide the exercise of authority. Patrimonial authority on the other hand holds a notion that the public and private sphere is closely intertwined and was highly applicable to pre-colonial African societies (Dokken 2008: 35).

A clean-cut patrimonial model does not hold for how the African state function today. Yet, the separation between office and person and politics and economics may not always be in place. This is what is often referred to as tight patron-client relations. Political office is often also enabling personal economic gains, which is also dependent on political positions. However, there are both written law and bureaucratic institutions present. This does not however create chaos. It actually creates social order and organization, but from another logic than in the ideal model of the Westphalian national state (Bøås and Dokken 2002: 12-14).

Jean François Médard starts off with Weber's ideal type patrimonial¹⁷ and develops it into what he called the "neo-patrimonial" state. This is because he finds the African state to be a fusion between legal-bureaucratic and patrimonial norms (Médard 1991: 325). The prefix 'neo' stems from the thought that this is not an ideal type, but a hybrid form. Similar to the concept of neopatrimonialism is Jean- François Bayart's "politics of the belly". This concept also emphasizes the interconnectedness between the government and the private sector

16 Scholars on the subject has named African states as: 'failed' (Leys 1976), 'lame' (Sandbrooke 1985), 'fictive' (Callagy 1987), 'weak' (Rothchild 1987), 'collapsing' (Diamond 1987), 'quasi' (Migdal 1988), 'invented' and 'imposed' (Jackson 1990) 'shadow' (O'Brien 1991), 'overdeveloped' and 'centralized' (Davidson 1992), 'swollen' (Zartman 1995), 'soft' (Herbst 1996) 'extractive' and 'parasitic' (Clark 1998), 'premodern' (Busan 1998 and 'poststate' (Boone 1998), all of which focus on the dysfunctionality of the African states and underlines a rhetoric of state failure (Dunn 2001: 46).

17 Patrimonial is used by Weber to describe the principles of authority in the smallest and most traditional polities (Dokken 2008: 35).

(Bayart ([1989] 1996). The privatization of the public happens in a state where extraction and redistribution are caught in between government and private sector. Some main consequences are personalized power, politics that becomes business and mass-politics that are structured around vertical clientel relationships (Bøås and Dunn 2007: 22).

2.3.2 Guerrilla government and big men

The weak structures of African states and the low degree of accountability open up for political elites to prey on society. People with access to state authority, at all levels of the society, can extract resources if connected to a political patron (Englebert in Bøås and Dunn 2007: 59). This possibility of personal enrichment and extraction might be an incentive for rebel groups fighting for political power. When rebel groups win access to state structures, army commanders and warlords become the political elite.

This can also be seen in relation to so-called big men¹⁸ in Africa as described by Bayart. In the case of Southern Sudan, this might be relevant. Former army commanders are now members of government institutions. Jean-François Bayard called this “elite accommodation”. Reno calls it the shadow state. To create the outward appearance of sovereignty (exclusive control over people and territory) the elite makes informal deals with individuals (in this case other warlords and chiefs) who exercise power over groups or territories (Reno 1998: 2).

Positions of power enable resource extraversion. A job in the bureaucracy is not only salary but holds perks and benefits and the advantage of holding a public position like networks. Positions of power can use legitimate monopoly of violence to take hold of products, cash and labor. Political positions as well as civil servants access enrichment through bribes or corruption (Bayart 1996: 104-108). In Southern Sudan, the elite in the SPLM/A has gone from being army commanders into positions of government. This opens up the possibility of finding traces of neopatrimonialism in Southern Sudan. Especially related to elite accommodation and big men. To create the impression of exclusive control over people and territory, there might be evidences of including potential rivals and big men into power positions.

We have now been through several aspects of the state. What the state is in the traditional western aspects as well as some aspects related to the state in Africa. Given the special

¹⁸ Jean-François Bayart (1993) *The State in Africa*, chapter two, *The Unequal state: Little Men and Big men*.

circumstances of the African state it is likely that sovereignty also differs in the African context. The concept of state and sovereignty is also closely related in literature on the African context. Robert H. Jackson labeled the ex-colonial states of Africa as ‘quasi-states’. His argument is that African states are sovereign only in the legal aspect of the definition, because they often are deficient in many aspects we consider important for independent statehood in the western context (Jackson 1990: 21). Christopher Clapham (1998) builds upon Jackson’s definition and classifies the African state in terms of degrees of statehood. He says that statehood should be regarded as a relative concept (Clapham 1998: 143). To further understand these differences we have to move to the concept of sovereignty.

2.4 The concept of sovereignty

There can be said to be a conceptual confusion related to the concepts of state and sovereignty. Neither of the two is understood in exactly the same way within a particular academic discipline, let alone across various disciplines (Hashami 1997: 4). Before it is possible to say anything about what sovereignty might implicate for a new African state, there is a need to look into what has been said on the subject of sovereignty.

In a dictionary of politics ‘sovereignty’ is defined as “the claim to be the ultimate political authority, subject to no higher power as regards the making and enforcing of political decisions. In the international system, sovereignty is the claim by the state to full self-government, and the mutual recognition of claim to sovereignty is the basis of international society” (Buzan 2003: 502). Even though the definition of sovereignty is rather clear, there are several forms of sovereignty that need to be distinguished from each other in a proper way.

2.4.1 Forms of sovereignty

Krasner identifies four ways in which the term sovereignty is used. ‘Domestic sovereignty’ is the ability of the state in question to control its domestic affairs. Interdependence sovereignty refers to a state’s ability to control cross-border issues. International legal sovereignty concerns international recognition, both territorially and otherwise. And, Westphalian sovereignty, which refers to a state’s negative right to non-interference in domestic affairs

(Krasner 1999: 3-4). However, he does not consider the African state while investigating the concept of sovereignty.

Another important contributor on the subject is Robert H. Jackson and he takes the context of the post-colonial African state into consideration. His dichotomy of positive and negative sovereignty derives from the cognate ideas of negative and positive liberty made famous by Isaiah Berlin. Individuals possess liberty, while sovereignty is a possession of the state. Negative sovereignty can be defined as freedom from outside interference. As well as the legal foundation upon which a society of independent and formally equal states fundamentally rests (Jackson 1990: 26-27). The responsibility of the state (as opposed to the individual) is both external to other sovereigns and internal to citizens (Jackson 1990: 28).

Positive sovereignty is a substantive rather than a formal condition. It does not only enjoy rights of non-intervention and other international immunities but also possesses the wherewithal to provide political goods for its citizens. The state must be able to take advantage of its independence. It is relative and changing, because states are in constant change, unlike negative sovereignty, which is an absolute condition (Jackson 1990: 29). All recognized states enjoy negative sovereignty, however not all are able to take advantage of their independence (Jackson 1990: 30). The concept of positive and negative sovereignty is closely related to the failed states rhetoric and must be seen in the light of this debate.

Christopher Clapham (1998) also mention negative and positive sovereignty, but he further develops the concept into degrees of statehood. He moves away from the clean-cut dichotomy and explains sovereignty in the sub-Saharan context that entities meets criteria of sovereignty too lesser or greater extent (Clapham 1998: 143). He wishes to encompass the recognition that not all states are the same. In what he calls the decline of quasi-statehood, he argues that negative sovereignty is temporary and only a device for new states to become a part of the international order. At some point their inadequacies will be revealed and to proper claim sovereignty the new state will have to develop effective institutions (Clapham 1998: 146).

Negative and positive are words that implies certain meanings. I find it better to use juridical and empirical sovereignty in order to recognize the nature of sovereignty. These definitions were used by Robert Jackson and Carl Rosberg when it came to highlight the fact that African states often gain sovereignty from international recognition rather than from performances related to effective rule over territories and populations (Englebert 2009: 60). All states rely

on a combination of external recognition and domestic power, however the balance of the two might vary a great deal. Most states were at some point dependent on the role of the international system in their formation and creation of empirical sovereignty (Clapham 1998: 144).

Instead of labeling all sub-Saharan countries in the rhetoric of “failed” states, I find it more interesting to view them in the light of how they meet criteria of statehood to lesser or greater extent. These states might be hybrids, with some dysfunctional aspects but also parts that resemble institutional apparatus operating by Weberian norms (Englebert 2009: 8). The most fruitful approach for this paper will be to start of with juridical and empirical sovereignty, without looking at them as closed categories, but in relations to Clapham's concept. If South Sudan gains international recognition we can talk about juridical sovereignty. In the degree the new country enables security provision, administration of justice, revenue captures and political processes and institutions we can begin to identify outlines of empirical sovereignty.

2.5 Developing dimensions and indicators

In relation to Weber, the state as a territorially bound unit has been closely connected to the concept of sovereignty. The foundation of the structure is a geographically bound unit, ideally, with control of its borders. However, territory alone is not sufficient. Especially in the African context where borders have a different historical background. There are certain functions that a state has to successfully enable for its citizens to call itself a modern state. First and foremost, it has to be able to provide security to its citizens, ideally in terms of a monopoly on the use of armed force. Second, it has to administer general justice, provide a legal framework to protect citizen's rights. Third, it requires redistributive functions in terms of revenue capture, to provide social services for the population as well as to run state functions. Fourth, but not the least, it requires political processes and institutions to legitimize and provide representativeness of the rulers for the people (Dokken 2008: 28).

It is not unreasonable to say that these four functions have been absent in the case of Southern Sudan until recently. A long lasting process of marginalization and decades of war has led to a non-existent state. Developments in these four functions can be seen as increase in state capacity, which in the case of Southern Sudan can progress empirical sovereignty. To further

investigate progress in these four functions it is necessary to further develop these functions or dimensions and apply measurable indicators.

In a paper on state building by Alan Whaites (2008), he introduces political settlement, survival functions and expected functions as the three necessary areas in the process of state building. Political settlement consists of elite consolidation, the understanding and explicit articulation of a settlement, and actors that arise as aspiring government. In the case of Southern Sudan, the political settlement can be seen as the emergence of the SPLM/A as a political elite, together with explicit articulation through the signing of the CPA. This first necessary area of progress is seen as fulfilled in the case of Southern Sudan. The peace deal has made it possible for SPLM/A as the Government of Southern Sudan, to start a process of state formation by addressing needs in survival and expected functions. The period following the signing of the CPA makes the starting point for my thesis.

Survival functions are core functions that are essential for the survival and strengthening of the institutional framework of the state. Whaites advocate three survival functions:

- “Security – to be able to control, if not monopolise, the use of violence;
- Revenue – the ability to raise funds sustainably, particularly through taxation; and
- Law – the capability to rule through laws; and be seen to do this” (Whaites 2008: 8).

Security is often given prevalence in traditional theory, as seen in relation to Weber. However, there is a mutual reinforcing relationship between these three survival functions. Security is expensive and has to be paid for. Revenues raise income for a state, which can be used on providing security (or building institutions). However, domestic revenue capture through taxation is more likely to strengthen state structures and generate expectations of accountability. The issue of law has been under more debate, but is highly significant in relation to building trust towards the political settlement and in relation to delivery on public expectations. It is also complementary to security. Through laws, the state can make known under which conditions it is providing security and thereby engender predictability of state behavior. Laws are also important in the way they create standards and extend measures that can create wealth and develop tax collection (Whaites 2008: 8-9). As already mentioned, the three survival functions are reinforcing and overlapping. Developments in one can contribute to developments in another.

While survival functions are seen as important for maintaining a minimum level of control, expected functions are related to how the state should perform in relation to issues important to its citizens (Whaites 2008: 9). The relationship between the survival functions and political institutions can be seen as “areas that those dominant within the political settlement must attend to first, and most effectively, if they want the instruments of the state to be their vehicle for policy” (Whaites 2008: 10). This contributes to adding a fourth dimension in analyzing how sovereignty is crafted in Southern Sudan. The development of political process and institutions is highly related to the developments in the three other functions.

2.5.1 Security provision

To analyze progress in the four chosen functions it is necessary to operationalize each one of them into measurable indicators. I have chosen to measure security provision in terms of the governments ability to: 1) obtain territorial control and control on the use of violence; 2) their ability to enforce order; and 3) their efforts towards disarmament in the population. The first indicator is highly related to Weber and traditional theory, however sustain from using the term monopoly in accordance with Whaites definition better suited for the nascent state. It will be measured by the effectiveness of the military (SPLA), control of rebel movements and the LRA, and inter- and intra-communal fighting. The second indicator lays somewhere between the expansion of monopoly of violence and coercion, and empirical considerations in Southern Sudan. It will be measured by looking into the law enforcement capacity of the police, criminality and informal security provision. The third indicator is closely connected to empirical considerations in Southern Sudan. Decades of civil war have led to a highly militarized society where the immense flow of arms is a constant threat towards security. Disarmament is an important step towards providing security for the population as well as the expansion of control of violence. The last indicator will be measured by the efforts towards addressing the flow of small arms and the reintegration of soldiers.

2.5.2 Administration of justice

To measure the administration of justice in Southern Sudan, have chosen the following indicators: 1) developments in relation to the implementation of a legal system; 2) the capability to rule through law, and to the extent the government is seen to do this; and 3) implementations towards the protection of vulnerable groups. The first indicator will be able to

detect progress, if any, in efforts towards administration of justice through looking for a judiciary, a constitution and a framework of laws. The second indicator is connected to Whaites definition of rule of law. It will be measured by local perceptions of the justice system based on a case study by Leonardi et al. (2010). The third is an extension of the second, given that vulnerable groups are often the ones most sensible to the lack of a legal system. It will be measured by how the poor, women and children are treated in the justice sector. All three of the indicators can be seen in relation to Stein Rokkan's second phase of state formation, in relation to a state's confessional bindings and allotment of citizen's rights.

2.5.3 Revenue capture

The importance of domestic revenue capture through taxation has been emphasized, but will be further explored in the analysis by linking it to the resource curse debate. The assessment of revenue capture will be based on the governments ability to the 1) creation of an economic infrastructure; 2) policy and implementation of personal income tax; and 3) measures taken towards taxation of business and tariffs on trade. Even if less theoretically grounded, it is pending on the idea that the state is in need of economic infrastructure to raise domestic funds sustainably, that enables progress in the other dimensions. Sustainable internal revenues have the potential to create linkages between government and society and generate expectations of accountability (Whaites 2008: 8). The first indicator will be measured by looking for financial properties of a state, like a bank system and a ministry of finance. The second indicator will be measured by the presence and effectiveness of a personal income tax. The third indicator will be measured by the presence and effectiveness of taxation of business and tariffs on trade.

2.5.4 Political processes and institutions

The last dimension or function, political processes and institutions, can be viewed as the most important for this paper. Developments in this sector can be seen as a driving force for all the other dimensions as well as highly related to enabling sovereignty in the first place. This last function of this paper is highly related to the concept of empirical sovereignty and can be seen as an indicator on domestic institutional effectiveness. Political processes and institutions can be measured in several ways, given that this concept can include a variety of aspects. In the case of Southern Sudan I have chosen to measure it according to the following two indicators:

1) political institutions present in Southern Sudan; and 2) the legitimacy of the authorities through the election and referendum processes. The first aspect will handle the background for political institutions, and be measured according to the presence of a legislative and executive branch¹⁹, as well as the GoSS achievements in including or controlling complementary and contesting forms of authority. The second aspect will analyze the political processes related to election and referendum, on the assumption that these processes express the peoples trust in the ruling systems right to rule. This assessment will be done mainly on the foundation of international actors (European Union Election Observation Mission and the Carter Center) monitoring reports from the election and referendum. The theoretical background both indicators are Stein Rokkan's phases as introduced earlier in this chapter. His initial phase of institutionalizing and tightening of political rule is reflected in the first indicator. The second indicator reflects Rokkan's second phase. The assessment of process surrounding the 2010 general election and the 2011 Referendum is used as an indicator of people's credence in the ruling systems right to rule.

2.6 Sovereignty in the making

In this chapter I have gone through some of the most relevant theories and literature on aspects related to the state and sovereignty. The state is the most common way to organize political order and it is clearly entangled to the concept of sovereignty. Nevertheless, these are concepts developed in a Western context. Because of the different historical processes and the problem of transferability, state and sovereignty might not denote the same in the African context. However, theories and literature from a western perspective have proven useful in building an analytic framework for sovereignty in the making in Southern Sudan. From the various forms of sovereignty out there, it was possible to find concepts like juridical and empirical sovereignty that makes sense in the African context. Weber's monopoly on violence and Rokkan's phases of state-formation proved helpful in the process of developing dimensions and indicators for my analysis. Clapham's degrees of statehood might also be an interesting perspective when it comes to analyzing achievements in the four dimensions.

¹⁹ The judiciary could have been integrated into this section, but will be handled under the administration of justice.

3 Empirical considerations

In the theoretical approach it was emphasized that the concept of the state does not necessarily imply the same in a Southern Sudan context. This part will further elaborate on that by exploring what lies behind the formation of Southern Sudan. This is only supposed to be a short introduction and a preparation for the analysis, not a throughout description of historic events²⁰.

3.1 Traditional organizing

In pre-colonial Southern Sudan, political organization was formed as communal societies. Apart from some agriculturalists, most communities were semi-nomadic and dependent on cattle. Inter-ethnic conflict often related to the raiding of cattle and women. The cattle was very important because of its value as an economic asset and women for agricultural and household help (Breidlid 2010: 48).

Southern Sudan consists of three main ethnic groups. They can be broadly categorized into: Nilotic communities that reside mainly in the Upper Nile and the greater Bahr El Ghazal region, the Nilo-Hamitic communities that are to be found in Equatoria, and the South Western Sudanic groups in Equatoria and Western Bahr El Ghazal. However these three broad categories are further divided into a multitude of ethnic groups (GOSS 2010c):

- The Nilotic people consists of the Dinka, Nuer, Shilluk, Murle, Kachiopo, Jie, Anyuak, Acholi, Maban, Kuma, Luo (Jur), Bango, Bai, Ndogo, Gulu, Edri, Forgee, Chod (Jur), Khara, Ngorgule, Forugi, Siri, Zandi, Benga, Agar, Pakam, Gok, Ciec, Aliap, Hopi, Guere, Atuot, Apaak, Lango, Pari Otuho and Ajaa.
- The Nilo-Hamitic people consists of the Bari, Mundari, Kakwa, Pojulu, Nyangwara, Kuku, Latuko, Lokoya, Toposa, Buya, Lopit, Kakwa, Nyabgwara, Tennet, Lopit and Didinga.
- And, the South-Western Sudanic people include Kresh, Balanda, Banda, Ndogo, Azande, Madi, Olubo, Murus, Mundu, Baka, Avukaya and Makaraka.

²⁰ For a complete historical background see e.g. Johnson (2003), Breidlid (2010), Collins (2008) and Woodward (1990).

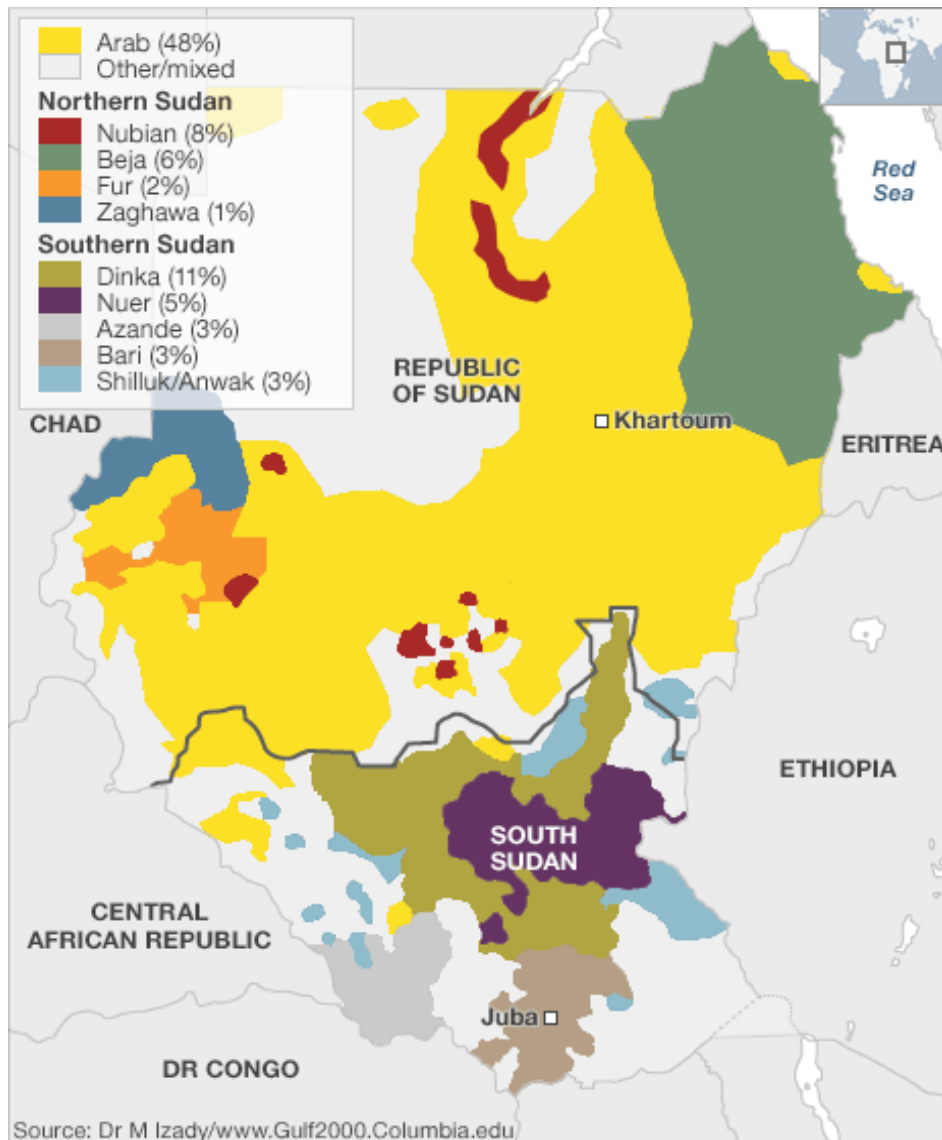
For the purpose of this paper, there will only be focus on a few of these groups, mainly the Dinka and the Nuer. The following section will explore forms of organizing in Southern Sudan, for this purpose I will mention Shilluk, Bari and Azande. These, together with Dinka and Nuer, are also the largest groups in Southern Sudan²¹.

In numbers, the Dinka is the largest ethnic group in Southern Sudan. They took residence in the Bahr-el-Ghazal region between 1650 and 1700. At the time they were technologically and economically superior and entered the region with better cattle and resistant sorghum. However, the Dinka had no tradition of centralized authority. They were clan based and their culture evolved around the cattle. It is said that a Dinka man is willing to risk his life for protecting or raiding new cattle (Breidlid 2010: 52). The Nuer is the second largest group in Southern Sudan. They were located in the Upper Nile Province and in the Bahr-el-Ghazal as well as in Western Ethiopia. Because of the threat of slave raiding, the Nuer migrated towards Dinka territory and the two cultures merged. However, because of the constant conflict over cattle, the divide into two different ethnic groups prevails. The Nuer society is kin-based and with no centralized political organization. Conflict is kept in check by varying alliances that shifts depending on the issue of the conflict (Breidlid 2010: 54-55). The Nuer and the Dinka are both Nilotic communities.

The Shilluk were unique among the Nilotic tribes because they were organized as a centralized nation. The Reth (divine king) were recognized by all the Shilluk settlements (Breidlid 2010: 56-58). The Bari is a Nilotic-Hamitic people that reside around the Juba region. They rely on subsistence mixed farming, while livestock is kept as a supplement to the diet and gifts when people marry (Breidlid 2010: 63-64). The Azande group is of the South-Western Sudanic groups and considered the third largest group in Southern Sudan. They differ from Nuer and Dinka mainly by way of subsistence. Traditionally they have been gatherers and agriculturalists focusing on subsistence cultivation. The group is culturally diverse but have been assimilated into a common system of cultural practice and customs, however with different military and political strategies. Their society was highly hierarchical with autonomous kingdoms (Breidlid 2010: 66-67). All the different tribes mentioned here are further divided into smaller tribes and belonging to the same main tribe does not necessarily mean homogenous identity.

21 See figure 1: Ethnic groups in Sudan.

Figure 1: Ethnic groups in Sudan.



(BBC 2011b)

3.2 Colonial rule

The whole of Sudan was under the rule of the Anglo-Egyptian Condominium from the 19th century and onwards. Under colonial rule administration of the north and the south were separated with the introduction of the Closed District Order (Bredlid 2010: 112). The 1930 declaration of a “Southern Policy” stated that the South was supposed to develop along “African” and not “Arab” lines. The objective was to administer Southern Sudan together with the other countries of British East Africa. The British policy of indirect rule came to be called “Native Administration” in Southern Sudan. The institutionalizing of Chief’s courts

was a fusion between indigenous customs and British innovation. However, the courts and administration of the more hierarchically organized communities developed on much more bureaucratic lines than pastoralist communities. Policy also opened up for Christian missions in the south, that were marginally tolerated to the extent they provided schools and education. The different systems of administration in the north and the south laid some of the foundation for divergence of practice and the future institutionalization of neglect and marginalization from the regime in Khartoum (Johnson 2003: 11-14).

3.3 The first civil war

The outbreak of the first civil war between the north and the south started with the Torit Mutiny a few months before independence in January 1956 (Johnson 2003: 21). The first civil war lasted until the negotiation of the Addis Ababa agreement in 1972. The failure to implement the agreement and the issues it failed to resolve led to the outbreak of a second civil war at the beginning of the 1980's (Johnson 2003: 39). By 1983, John Garang had become the leader of new organization that we today now as SPLM/A. The goal of this new organization was not announced as southern separation from the north, rather focused on the need to address specific grievances over failures in the Addis Ababa Agreement. The vision was a "New Sudan" with a restructuring of the central government and autonomous or federal governments for the various regions (Johnson 2003: 61-65).

3.4 SPLM/A administration

In the beginning the SPLM/A did not see itself as a possible provisional government for Southern Sudan, because its goal was to change the governmental structures of Sudan as a whole. In the areas they controlled they relied almost entirely on the old structures of the Native Administration. They recognized old chieftaincies and created some new ones. Chief courts continued to be the place for hearing cases under customary law. Chief court's also organized public projects like collecting taxes and building roads. Some inter-tribal courts were set up to solve inter-community issues. The only difference was that this was done under supervision of SPLA officers, the Civil/Military Administrators and Area or Zonal commanders. The local participation or representation in structures above the chief's court was close to nothing. However, civil administration in Southern Sudan has never been strong. Under Southern Regional government before the second civil war, the erosion of

infrastructure continued. So criticism towards the failure of providing services by the SPLA, has to be seen in this historical aspect (Johnson 2003: 105). The SPLA started a process of administrative restructuring in 1991, which culminated in the 1994 National Convention (Johnson 2003: 106). The National Convention will be further emphasized in my analysis.

An administrative consequence of the implementation of reforms was the establishment of a new system with bomas, payams and counties replacing the old system of three provinces divided into thirty districts. This was a result of SPLM/A policy towards winning confidence of local population through encouraging civil institutions at local level (Rolandsen 2005: 161). The division into states, counties, payams and bomas has been adopted into the GoSS administration. To explain how this division works: States are divided into a number of counties. The size and boundaries of counties still varies given that administrative changes are still taking place. Counties are further divided into payams, which usually consists of a small number of bomas or what are equivalent to villages.

3.5 From the second civil war to the Comprehensive Peace Agreement

Throughout the second civil war there were several splits and defections from SPLM/A, both in relation to ethnicity but more often in terms of ideology. The SPLA has often been portrayed as the Dinka army. The long history of inter- and intra-ethnic fighting between various communities in the south continued throughout the civil war (Johnson 2003: 65-69). Lessons from the first civil war led to a SPLA policy of preventing military factionalism. The political price for this was a focus on military means and coercion, rather than developments in the political wing of the organization. Changes in the political organization and alteration in policy were recognized first towards the end of the 1980s. Yet the issue of accountability and need for more democratic procedures was not raised until the early 1990s, by two senior commanders of Upper Nile: Riek Machar and Lam Akol. They also initiated the removal of John Garang from his position. This attempt of overthrow has been named the Nassir coup and led to a split in the SPLM/A and a decade of internal strife. It also brought forward the issue of self-determination and Southern independence.

Several attempts on separate deals and international involvement in negotiations was initiated during this time. The long delayed reconciliation of John Garang and Riek Machar did not

happen until 2002 (Johnson 2003: 93-126). International and regional efforts as well as changes in military balance and political organization in both the south and north, enabled the process that would finally lead to the signing of the Comprehensive Peace Agreement in 2005²².

²² See Johnson, Hilde F. (2011) *Waging Peace in Sudan: The inside Story of the Negotiations That Ended Africa's Longest Civil War*.

4 Methodological scope

This paper looks into sovereignty in the making, or the emergence of sovereign power in Southern Sudan. This is done through investigating empirical evidence for actual practices of statehood related to four chosen dimensions. My argument is that even though Southern Sudan is not yet a formally recognized state, it is in the process of crafting sovereignty.

Southern Sudan is in many ways a unique case, and one of very few examples of a breach of what Pierre Englebert calls the resilience of the African state (Englebert 2009: 1). Of the methodological challenges I faced during this research process, deciding on the best scientific approach was the first of many. There was no consistent theoretical framework ready to use, a limited literature on the subject and a rather abstract nature of the process in question (crafting of sovereignty), in a complex and constantly changing environment. I found great support in structuring my thesis from an earlier published master thesis on a related topic. Narve Nub Kveseth Rotwitt's thesis on Somalia and Islamic Courts Union²³, uses a similar approach and several of the same variables in investigating political control in a stateless society. This is in accordance with the scientific principle of building on existing research in a relatively unexplored field.

Common for all social research is the dialog between ideas and evidences. "Ideas help researchers make sense of evidence, and researchers use evidence to extend, revise, and test ideas" (Ragin 1994: 55). Ideas in this regard can be translated to theories, and evidence is viewed as data. This thesis is an attempt to embark on this dialogue. By interpreting the data collected, with regards to the research question I set out to answer, in the theoretical framework I presented in Chapter two. The end goal of the dialogue between ideas and evidence is to improve understanding of a social phenomenon. In this case what is being done in the process of building sovereignty in Southern Sudan. At the time of writing, there was no certainty that South Sudan would become an independent nation. The situation was changing on an everyday basis and the final outcome was unknown.

One common way to differentiate social research is between deduction and induction. This thesis however builds on the interplay between the two, or what is also known as retroduction.

23 Rotwitt, Narve Nub Kveseth (2010) *Somalia and Islamic Courts Union: New Dimensions of Political Control in a stateless society*, Masteroppgave i statsvitenskap, Institutt for statsvitenskap, Oslo: Universitetet i Oslo.

It is necessary to start out with some initial ideas and at the same time have the goal to advance theory (Ragin 1994: 47). This also reflects the interchange of ideas and evidence as mentioned earlier. Where ideas rest on the existing theoretical framework and evidence are collected data. The scientific approach taken in this thesis follows the same logic. It is non-positivist in nature by acknowledging that all science is somehow constructed. Mainly because of the complex nature of the process in question, some aspects will be left alone. Data is selected, not gathered and will not be able to cover every relevant aspect. However, I set out with the goal of covering the most important aspects on how sovereignty is created in Southern Sudan.

4.1 Research design

Qualitative research offers the possibility to refine and elaborate on images and concepts, and is especially appropriate for advancing theory (Ragin 1994: 83). When moving from an idea towards understanding social life, there is a need of a strategy, or design. A research design “is a plan for collecting and analyzing evidence that will make it possible for the investigator to answer whatever question he or she has posed” (Ragin 1994: 26). The preexisting theoretical framework is highly important in designing a case study. Guidance from preliminary theoretical concepts will increase the understanding of the topic, help define the unit of analysis, suggest relevant variables and guide the selection and collection of data (Yin 2003a: 3).

The goal of this thesis is to search for empirical evidence of acts of statesmanship in Southern Sudan after the instigation of the CPA in 2005. The research question is exploratory in nature and the theoretical framework lacks considerations for the African context. Both points towards that the application of a case study would be the most productive take in carrying out this research. When the phenomenon under study is not easily distinguishable from its context, the case study might come in handy (Yin 2003a: 4).

”A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Yin 2003b: 13). This is an easily defensible approach when looking into how sovereignty is crafted in Southern Sudan. It is a contemporary phenomenon that has to be seen in conjunction with its contextual conditions. The contextual condition in Southern

Sudan is far from the reality faced by western European countries. The phenomenon of sovereignty must be studied in the special Southern Sudan context to fully understand the event that is taking place and cannot be fully understood if separated from the real life context.

The most important challenge of the case study is how to generalize from the case study to theory. The case study opens up the possibility to enlighten a social phenomenon.

Nevertheless, I also sat out to improve or develop theory. This is challenging, but can be done by not stringent follow the urge to prove any hypothesis, and rather look for other alternative answers. Another challenge in a case study is judging the quality of the research design. To improve the quality of empirical social research it is common to apply certain logical test in terms of methodological criteria (Yin 2003b: 33-34).

4.2 Methodological criteria

To make sure that the research design represents a logical set of statements, it is common to apply certain methodological criteria. In social research these are validity and reliability. In general, validity refers to how the intended point or claim is actually supported. Reliability on the other hand, concerns how accurate the operationalized variables are measured. Both are methodological criteria that help us to avoid pitfalls in scientific research. Methodological criteria must be seen in relation to the specific research in question. Therefore I will focus on internal, external and construct validity, together with reliability, which are the most relevant in a case study.

4.2.1 Internal validity

Internal validity relates to the causal relationship between variables (Skog 1998: 107). The case study is often endorsed for its possibilities to reach internal validity. "[I]ts easier to establish the veracity of a causal relationship pertaining to a single case" (Gerring 2007: 43).

The casual premise here is more or less taken for granted. Sovereignty relies on the exertion of security provision, administration of justice, revenue capture and political processes and institutions. I do acknowledge that this might be a weakness of the thesis. This causal premise takes what the state is supposed to be for granted. Due to the fact that most assumptions about sovereignty are developed in a Western European context, it would be better to study actual

practices of statecraft in this case. The causal relationship should therefore be viewed as a reciprocal process. Sovereignty in the making is a process where increase in one variable, can support increase in another variable and eventually then move towards sovereignty. One way to improve validity in this context is to address contesting explanations (Yin 2003b: 36).

4.2.2 External validity

External validity relates to how generalizable the findings are beyond the chosen case (Skog 1998: 113). A single case is often criticized for its lack of external validity. Southern Sudan is in a very special situation; there is only one other example of secession in post-colonial Africa. At first glance there is a very limited transferability of the findings. The advantage here is that my case study is one of several related to a larger sovereignty in the making study. The same dimensions are being applied to other case studies from the region. This makes it a potential cross-case study when aggravated. Cross-case studies are said to be more representative of the population of interest than single case studies. However, if the universe is limited as in the case of successful secessionist aspirations, few or one case(s) cover big parts of the population (Gerring 2007: 43). There are several other less progressed secessionist movements in Africa. Findings from the more progressed situation in Southern Sudan can hold important learning for other cases. There are also several instances of separatist movements and cases of secession worldwide. The findings have the potential to contribute to a better understand the concept of sovereignty in the African context.

4.2.3 Construct validity

Construct validity concerns correct operational measures for the important concepts of the research in question. The central focus is to assess "whether a given indicator is empirically associated with other indicators in a way that confirms to theoretical expectations about their interrelationship" (Adcock and Collier 2001: 537). A problem occurs if the operationalization also covers non-pertinent aspects or unsystematic fallacy (Lund 2002: 120). It is avoided if the operational definition covers the relevant theoretical concept. Case studies are often criticized for its lack of construct validity because subjective judgment is often used in the data collection process and that the operational set of measures are often insufficient (Yin 2003b: 35). To operationalize sovereignty was a challenge, both because the concept is defined in multiple ways, and because the preliminary assumption of this thesis is that

sovereignty might hold other implications in the African context. However, the operationalization of the four independent variables are all deeply rooted in existing theory, which is important in improving construct validity.

4.2.4 Reliability

Validity is dependent on reliability, which concerns the accuracy of the data collection. The goal is to reduce errors and biases in the study. If done again, in the same procedure by another investigator, will we see the same result (Yin 2003b: 37)? The answer to this question in this case is probably not. South Sudan is in a process of constant change. Information is limited, can be politically colored, not existent or not always available. The region has been prone by civil war for decades that has reduced the possibility to collect and store data. In the transition to becoming an independent country, the political situation is tense. Information is power; there is not necessarily an incentive for sharing. It is also worth mentioning that there have been some evidences of oppression of the media, both from Khartoum and Juba.

One way to improve reliability in this case is by triangulation of data. I had to gather data from different sources. Sources from Sudanese sources, GoSS publications, and statistics had to be compared with international press, international organizations, and academic publications. The development of the Southern Sudan Centre for Census, Statistics and Evaluation has greatly improved the access to numeric indicators for Southern Sudan. Yet, the first census was highly contested because of the political implication the number of Southern Sudanese had in the establishment of the Government of National Unity. However, much work has been put in on developing reliable data and I found it to be a good supplement in evaluating my variables. In parts of my analysis I had to depend on limited sources. This counts especially for section 5.2.3 “The capability to rule through law” and in the assessment of the election and referendum. However, the available sources for these sections are internationally recognized and unbiased.

As mentioned earlier, the progress in Southern Sudan cannot be seen in separation from its real-life context. Fortunately, I was able to go to Southern Sudan to see for myself. Data collection started with a fieldtrip to Juba in March 2011. The trip was highly rewarding in contextual understanding and has improved my knowledge of the Southern Sudan. I believe that it has made me more able to see discrepancy and inconsistency in contesting sources. During my stay I was also able to talk with people that had lived through the conflict, and

worked with the development of political institutions. This gave me insight to the ongoing process in Southern Sudan. Some informal interviews and conversations were conducted, but mainly with non-Sudanese actors, namely NGOs, a representative of the Norwegian General Consulate and the UN. One of the most rewarding conversations was with the Coordinator for the Norwegian Police force, which gave me great insight to the development of security provision in Southern Sudan.

Getting in to Southern Sudan is a challenge in itself. I owe it to the Norwegian People's Aid, and their good relations with GoSS, that I was allowed to enter Juba in the first place. Accessing areas outside Juba are challenging and due to the fact that Juba is not representative of Southern Sudan in total, it can give a biased impression of the region. Nevertheless, most high-level governmental agencies are situated in Juba. I am certain that the visit to Juba has improved the reliability of my thesis. I got access to people and documents I would not have been able to without the visit. To further improve reliability it will be important to clearly state sources and making these people and documents available for other researchers on the subject.

5 Analysis

This chapter will build on the theories and empirical considerations presented in the previous chapters. The goal is to analyze how sovereignty is crafted in Southern Sudan by looking into security provision, administration of justice, revenue capture and political processes. These dimensions will be analyzed in the order of appearance above. The four dimensions are all somehow related to each other and will in one way or another be overlapping. Take for instance security and revenues. Security can be seen as an absolute minimum condition for all the other dimensions. However, security has to be financed somehow. There is also a close relationship between security and the justice sector, which will become apparent quite early in the analysis. Further, as stated by a Norwegian researcher on South Sudan “Maintenance of security is perhaps the most important requisite for creating an environment favorable for comprehensive governmental structures and social services” (Rolandsen 2005: 133).

5.1 Security provision

As mentioned in the part of the theoretical approach, the provision of security to its citizens is an all-important function of the state. Even though the civil war has ended, South Sudan is prevailed by insecurity issues and violence. Twenty years of war has led to a highly militarized society with little institutional capacity to provide security or tackle local conflicts. Nevertheless, some improvements have been made since the signing of the CPA. Yet, before we look into what have been done to implement a monopoly on coercion and violence, it is important to address the challenges towards security provision in the Southern Sudan context.

5.1.1 Insecurity and violence

The most obvious threat to security, especially related to sovereignty is the threat of war against the North. However, the threat is not the fear of outbreak of full-scale war, rather continued clashes between the northern army (or southern tribes or group with support from the north) and the SPLA. This has led to a massive build up of forces in the border areas from both sides. Consequently, this has increased the insecurity for the people living in the border region. It has been reported killings and pillaging which again has led to a flux of refugees to neighboring towns and areas. Yet more importantly, this insecurity situation has undermined efforts to address internal security threats, which will be the focus of this chapter.

There are mainly three factors that contribute to violent internal conflict in Southern Sudan. Ethnic divisions are tensions that have been present also during the civil war, as we saw in the empirical considerations chapter. Grievances from the war and continued raiding of cattle seem to still be fueling conflict. It possible to speculate that Dinka dominance in the political system can become a future source of grievance as well. Land and cattle disputes also go back in time but these are also exaggerated by returning refugees and lack of resources. The growing disaffected youth can be seen as an effect of the long lasting war. There is a large population of young men with experience limited to warfare. These circumstances contribute to a difficult environment to implement a monopoly on coercion.

The GoSS has gathered some legitimacy among the population to provision security, as proclaimed in the CPA. To analyze the measures taken by the government towards such provisions could include several aspects. However, I have chosen to focus on three important factors. The provision of security can be measured according to the Government's ability to: 1) obtain territorial control and control on the use of violence; 2) their ability to enforce order; and 3) their efforts towards disarmament in the population. The first factor is closely connected to traditional theories on sovereignty²⁴, yet adjusted to the situation of a nascent state. The development of police and justice systems, and disarmament among the population together with reintegration of demobilized soldiers were identified as key factors related to the development of justice and security institutions in a report on Southern Sudan (Bennett et al. 2010).

5.1.2 Territorial control and control on the use of violence

Southern Sudan contains a vast territory with limited infrastructure. Paved roads are limited to Juba town together with some in relation to the oilfields. During the rainy season many provincial areas are only reachable by foot or by helicopter. This makes de facto territorial control limited and easily exploited by rebel movements or the Lords Resistance Army.

The Sudan People's Liberation Army (SPLA)

After the CPA, SPLA became the only legitimate military force in Southern Sudan. The Juba declaration absorbed many former enemies into one army, but did not make it a unitary actor.

²⁴ Weber holds monopoly on violence as a precondition for an entity to be a state.

There has been made attempts towards modernizing and professionalize the army, yet is far from a completed process. Promotions and top positions have been handed out to control opposition or maintain loyalty, which has created a top-heavy overall organization of the army. There are huge communication problems and little control over different fractions. Local big men or former warlords often have control over local SPLA soldiers and use them for their own protection. SPLA leadership is said to de facto control as little as 30 percent of its soldiers. Given the capacity problems of the police force, the SPLA is the de facto provider of security in Southern Sudan. This might serve as a future problem if the military is to enforce law, which should belong to the civil sector/police. However, the SPLA also lacks mobility and logistical support. Most of its budget is spent on salaries, fuel and food (Mc Evoy and LeBrun 2010: 30-31). After the proclamation of the Republic of South Sudan on July 9 2011, the SPLA will become South Sudan National Army (GOSS 2011c). It is likely that we will see improvements towards a professionalizing of the new national army, but for the time being, the army is unable to provide sufficient territorial control and security.

Rebel movements

Central to building up a monopoly on coercion is the constant challenge of dissidents launching armed insurrections against the SPLM/A. Intra-Southern armed violence is not a new phenomenon, also during the civil war different southern fractions were fighting each other. The CPA outlawed all other armed forces than the SPLA to operate in Southern Sudan. Other armies had to join the SPLA or return to civilian life (Mc Evoy and LeBrun 2010: 15). The Juba declaration of January 2006, was supposed to address this issue and gather the different groups under the SPLA umbrella. Reportedly, close to 30 militias had joined the SPLA by 2009 (Mc Evoy and LeBrun 2010: 16). However, after the election in 2010 there was a new upsurge in dissident rebel insurgents after alleged fraud in the election²⁵.

One example could be the fraction led by George Athor. As quoted by BBC: “He took up arms last year, alleging fraud in state elections, but agreed to a ceasefire last month just before the historic referendum” (BBC 2011a). The BBC's reporter further states, “The fighting is another sign of the challenges the south faces in bringing its people together and improving security” (BBC 2011a). The GoSS are well aware of this problem and has taken measures to

²⁵ See IRIN for reported violence (<http://www.irinnews.org/report.aspx?ReportId=92233>)

include rebel leaders into the army and even government. However, this might continue to be a problem as long as there is mistrust towards the government and weapons available. There have also been some allegations that the North is providing these opposition movements with arms, to destabilize the South.

Another security threat in the region is the Ugandan Lord's Resistance Army (LRA). Even though they are a movement in opposition towards the Ugandan regime, they have been active in Southern Sudan territory since 1988 (Dunn 2007: 134). They attack and terrorize villages, they theft ammunition and food, and are also known for abducting children. Joint military campaigns between the Ugandan army and SPLA have managed to weaken LRA, but not their ability to survive and regroup. It continues to be a serious security threat both in Southern Sudan and regionally (Mc Envoy and LeBrun 2010: 27). As long as GoSS is unavailable of providing territorial control inside its borders, there is a possibility for the LRA to continue its movements in the new South Sudan.

When the army or police is unable to protect communities they have to rely on protecting themselves by arranging local home guards or militias. These home guards are also reportedly involved in local conflict with neighboring communities. Armed civilians also blur the distinction between civilians and army personnel in Southern Sudan in relation to local violence (Rolandsen 2010: 2). Due to the fragile political situation, several people in high-ranking political and military positions have chosen to keep their own private army, which further blur the civilian-military distinction.

Inter- and intra-communal fighting

The culturally and ethnically highly fragmented region has been the scene of inter- and intra-communal fighting for centuries. These conflicts are commonly attached to disagreements over land use or raiding of cattle. These conflicts are again aggravated by grievances from the civil war. Also military leaders, politicians and intellectuals alike have exploited war-related ethnic divisions. There have been little or no efforts towards reconciliation among different ethnic groups. The post-conflict political environment can be seen as a fragile balancing act between the substantial number of ethnic groups and powerbrokers. Many of the perpetrators of war-era violence are today in high-ranking power positions. Former perpetrators of war now in political positions have much to win on preserving status quo. They have no incentives towards starting a meaningful national reconciliation process when it might lead to the loss of

the power positions they have today (Mc Envoy and LeBrun 2010: 9). This can be seen in relation to Bayart's "politique du ventre" and elite accommodation.

Instances of local violence are both inter- and intra-tribal. For instances, the Murle have been clashing with the Lou Nuer, which have also clashed with the Jikany Nuer. Armed tribal groups are particularly active in Jonglei and Upper Nile states. The conflicts are often related to grievances from the war, but they are now being exacerbated by access to resources, and migration conflicts between pastoralists and agriculturalists. The victims are often children and women unable to protect themselves from the well-armed young men. An increased number of SPLA soldiers, police and local officials have also been reported killed in these attacks (Mc Envoy and LeBrun 2010: 22-23).

Actors in the international community were worried about how this unstable situation of tensions would affect the election of 2010 and the referendum of January 2011. Despite some instances of local eruption of violence, both the election and the referendum were completed in what observers called fair elections. Southern Sudan managed to perform a democratic process even before gaining the status of sovereignty.

5.1.3 Enforcement of order

To create law and order there is a need for a functional juridical system capable of apprehending and punish criminals. The administration of justice will be further elaborated on in part 5.2. This part will be used to address developments related to enforcement of order through looking at policing, criminality and informal security. Even though the Code of Criminal Procedure Act was announced in 2009²⁶, the police have no practical juridical function available to solve local conflicts and often have to rely on local traditions in solving such²⁷. The crime rate is reportedly increasing and informal actors play a role in enforcement of order.

26 Code of Criminal Procedure Act, 2008, (<http://www.goss.org/>).

27 Conversation with Strykar Gagnant (March 2011) Community Policing, Norwegian Contingent Commander, UNMIS HQ in South Juba.

Policing

Training of a police force has been a part of the CPA, implemented by the United Nation Mission In Sudan (UNMIS). According to the mandate “UNMIS Police shall significantly facilitate the transformation of Sudan Police into a professional, efficient, community oriented police service capable of ensuring safety and security of the common citizen of Sudan” (UNMIS Police factsheet 2010). A functioning South Sudan Police Service is very important for the security provision of the new country. Both in tackling increased criminality and handling local conflicts. Lack of infrastructure and training facilities and equipment are still challenges that have to be met (UNMIS Police factsheet 2010). Several reports from local papers tell about perpetrators being caught by civilian people, and physically punished before handed over to the police. This might be an example of the lack of police resources, but also an evidence of the traditional way of taking care of alleged perpetrators.

As a part of the training an important part is to increase the understanding of the role of the police and protection of vulnerable groups. A UNMIS police coordinator told me about how the human rights implementation is going²⁸. They were back at a local police station where they earlier had taught human rights, only to discover that they had a young boy locked behind bars. When asking questions why and underlining that children are not to be arrested, the local police explained. The reason they had put the young boy behind bars, was to protect the boy from retaliatory means from the father of his best friend that he had accidentally killed while playing with an old gun. Traditionally, a murder (accidental or not) has to be retaliated. This might stand as an evidence of improvements towards raising awareness of protection of vulnerable groups and human rights in the local police force. It does not have the potential to say anything on general terms, yet is an interesting observation.

Law enforcement is one of the top priority areas in the GoSS plan for rapid capacity development. A key deliverable is to train and deploy 12,000 police to the various states. This is seen as feasible by mid-2011 (GOSS 2010b). Training and deployment of more police in all regions of South Sudan has the potential to increase law enforcement.

28 Conversation with Strykar Gagnant (March 2011) Community Policing, Norwegian Contingent Commander, UNMIS HQ in South Juba.

Criminality

War has led to an erosion of traditional authority and practices of customary law that has rendered communities unable to control their heavily armed youths (Mc Envoy and LeBrun 2010: 20). In 2009, there were reports of increasing acts of crime in Southern Sudan. There are no complete data available due to lack of internal framework, yet some contributions towards collecting numbers are under progress²⁹.

One factor that has been said to increase criminality is the failing to pay soldiers. As a part of the Juba declaration was the promise of regular payment of those who integrated into the SPLA army. A large part of the national budget is reserved for the military.

Actually, a quarter of the budget goes to the SPLA and most of these are for salaries for soldiers (BBC 2011b). However, this might not be sufficient to cover all paychecks. Another aspect is in what degree these salaries actually end up in the hands of the soldiers. Proving for your self with gun in hand might become an option for these unpaid soldiers. A young population with a large group of young men with the only training being experience from warfare makes it hard to reintegrate ex-combatants into civil society.

Informal security

In relation to the increasing crime rate and because of the lack of sufficient police capacity, newly established businessmen in Juba town have to rely on private security companies or ex-soldiers. When walking through the town at night you see men sitting outside every shop with firearms. This, however, is an improvement from the period just after the signing of the CPA, when most businessmen themselves were carrying guns. Private or informal security provision is also substantial in rural areas. During the war the SPLA provided weapons for local communities to be able to protect themselves. For instance in the Lakes region “gelweng” or cattle guards were armed to protect cattle and communities (Rolandsen 2009: 8). Another examples can be SPLM home guards created during wartime and so called “arrow boys”. These are all consequences of the general lack of protection of local communities by the authorities. Given this deficiency in capacity, local authorities often turn a blind eye to or even encourage these informal protection forces (Rolandsen 2009: 13).

²⁹ Conversation with Strykar Gagnant (March 2011) Community Policing, Norwegian Contingent Commander, UNMIS HQ in South Juba.

5.1.4 Disarmament and re-integration of ex-soldiers

Control on violence is close to impossible without control of civilian access to and possession of weapons. It can be seen as a threat towards civilian security as well as a potential threat towards the government when communities, which do not support the SPLM, have access to arms (Rolandsen 2010: 4). There are no reliable figures on the number of arms that circulate among the population, however the number is expected to be very high (Rolandsen 2010: 4).

Flow of small arms

After decades of war, the Southern Sudanese society is highly militarized. It can be hard to differentiate between civilians and military personnel. The “Power of the gun” dynamics is still fueling conflict. There have been attempts at disarmament of the civilian population. However, this has so far been seen as a failure. Disarming certain group’s only make them vulnerable for cattle raids from neighboring communities. Given that the flow of arms is so significant, new weapons are regained and used for retaliatory attacks.

The first attempts towards disarmament, where selectively chosen and solely targeted communities that might have held grievances towards the SPLM/A. It was implemented without any form of compensation. After the disarmament these communities here left with inadequate protection from the police force or the SPLA (Rolandsen 2010: 4). A successful disarmament cannot be effective unless the government can provide security to its population. This holds both from intra- and inter-communal violence, rebels and the LRA. Little control of civilian access to weapons makes it close to impossible for the state to gain a monopoly of violence. On the other side, little or no monopoly on violence makes it difficult to disarm the population (Rolandsen 2010: 4).

Reintegration

The problems related to the large population of heavily armed youths have already been mentioned. Not all of these men can be integrated into the army. To control crime rates and violence, these men have to be absorbed into civil society. The GoSS have started programs for education and training. This makes it able to absorb ex-soldiers into governmental institutions, civil services, police, prison, and wildlife services. The Southern Sudan Demobilization, Disarmament and Reintegration Commission (SSDDRC) is the

implementing organ for these efforts and was an integral part of the CPA. They work through a community-based approach with partners like United Nation Mission In Sudan, International Organization for Migration and UNICEF for programs targeting children (Southern Sudan Demobilization, Disarmament and Reintegration Commission 2011).

By February 2011, over 8.000 former soldiers were registered into the program and approximately 4.700 had completed (Southern Sudan Demobilization, Disarmament and Reintegration Commission 2011). The expected number of ex-soldiers in need of reintegration greatly exceeds these numbers and indicates that there is much work left to do. However, it can serve as an acknowledgment of the challenge that ex-soldiers pose to civil society and a start for a program that could further develop.

5.1.5 Conclusion

The preoccupation with the border conflicts has led to a down prioritizing of internal insecurity problems. The GoSS and the SPLA might be the legitimate source for the provision of security, but they do not hold complete territorial control, neither a monopoly on violence. This is first and foremost challenged by rebel movements operating in areas outside control of the SPLA, but also by the LRA. Alongside ethnic tensions, this has and will continue to create insecurity in the society. Both the GoSS as well as the SPLA are ill equipped to meet the challenges of providing security to its people. However, predictions of a referendum destroyed by violence and destabilization did not become reality.

There has been progress in relation to the development of a police capacity. However, there are still challenges ahead. In relation to the juridical sector, there is still no throughout implementation of the legal framework the police needs to apprehending and punish criminals. The traditional way of handling perpetrators still stands strong in many communities. This has to be either integrated into the new systems of laws or the capacity of the police has to be expanded to be able to solve local conflicts. As a consequence of low police capacity (and security provision through the army), many communities organize informal security through home guards. When it comes to the immense flow of arms in the different communities, the only viable solution is to establish sufficient security provision by police and army, before any further disarmament of civilians. One way to reduce the number of guns in the hands of civilians is by re-integrating ex-soldiers not just into the army, but also into society. When young men become integrated into civil society and are able to provide a

livelihood, they become in a lesser degree dependant on the power of the gun. This however is not done overnight.

Security provision is supposedly a prerequisite for sovereignty. The Government of Southern Sudan does not have complete territorial control, nor are they able to provide security to all its citizens through an efficient police force or a functional juridical system. Nevertheless, there have been great improvements in the years following the signing of the CPA.

5.2 Administration of justice

As mentioned in relation to the functions that a state has to hold, administration of justice is the second function of state capacity. A state has to administer general justice and provide a legal framework to protect citizen's rights. The progress towards rule of law is significant for the development of state capacity. Rule of law will enhance predictability in an unstable environment and create legitimacy. Since the signing of the CPA, the GoSS has been able to develop a legal system that is codified and publicly known? To investigate the developments in administration of justice, I will use three indicators: 1) developments in relation to the implementation of a legal system; 2) the capability to rule through law, and to the extent the government is seen to do this; and 3) implementations towards the protection of vulnerable groups. In order to start investigating this I will briefly go through the legal situation in Southern Sudan before the signing of the CPA. The review of progress will mainly be based on the 2010 report by United States Institute of Peace called "Local Justice in Southern Sudan" (Leonardi et al. 2010).

5.2.1 The legal situation before 2005

Because of the lack of hierarchical structures in the south, the British organized the administration of the south much later than in the north. Only the Shilluk and the Azande had anything resembling the executive hierarchy that the British needed in their commitment to work through native structures. The Chief's courts system that developed in the late 1920s was a mixture between British innovation and indigenous customs. The courts set up were mobile, handled cattle disputes, and had the power to collect fines and taxes (Johnson 2003: 12). The 1931 Chief's Courts Ordinance established a simple hierarchy with: a) courts headed by a single chief, and b) courts that was headed by a president but consisted of a panel of chiefs (Leonardi et al. 2010: 19). The Sudan Criminal Code and the Sudan Penal Code were the main laws governing Sudan during this period. However, the practice was mainly limited to the administrative centers. Shari'a acted as a family law in the Muslim population. In the rural areas, most societies were following different forms of customary law (Johnson 2003: 13-14). After the independence, a policy of Islamization of Sudan grew in precedence. By the 1960s some of the major parties began advocating for an Islamic state. An Islamic state based on Shari'a that would deny legal and political rights to non-Muslims (Johnson 2003: 35). The

question of an Islamic state became one of the big issues that separated north and south in the following wars.

The areas under SPLM/A administration during the war saw an increasing number of chief courts and a new administrative structure. As early as the 1980s, the SPLM/A created its own judiciary, with mobile high and appeal courts. Yet, in most cases SPLM/A depended on local chief's courts. In accordance with the establishment of a civil administration on the local level, they adopted the new local government terminology of counties, payams and bomas. The old local chief courts (headed by one chief or a panel of chiefs) were restructured into boma courts and payam courts. The new division did not however follow old boundaries, and created some confusion and dispute. This period also experienced a growth in number of other courts set up by local authorities, military officers, police government officials and committees of traders, which further might have added to the confusion (Leonardi et al. 2010: 19).

5.2.2 Implementation of a legal system for Southern Sudan

Several leading southerners have stated that the SPLA struggle against the north has been a struggle to defend the customs, languages, communal properties, traditions and religions of the southerners. As southerners reassert an autonomous identity, the preservation of customary law, traditional authority and communal land rights is seen as a promising basis for a distinct Southern Sudan national identity (Leonardi et al. 2010: 11). The CPA of 2005 created a semiautonomous government of Southern Sudan. The six year long interim period has seen developments towards the creation of the administration of a justice sector.

The judiciary is structured into the Supreme Court of South Sudan, Courts of Appeal, High Court and County Courts. As an addition other courts and tribunals as deemed necessary can be established in accordance with the provision of the Constitution and the law (ICSS: 127 (a-d)). According to the CPA, The Supreme Court has criminal jurisdiction over the President and the Vice-President of the GoSS, and the speaker of Southern Sudan Legislature (CPA 2005: 35).

The CPA was incorporated into the Interim Constitution of Southern Sudan (ICSS). This Constitution is the supreme law of South Sudan as of 2005. There are also several amendments attached to the ICSS. The following amendments have been provisioned to the

ICSS: Interpretation of Laws and General provision Act, Code of Evidence Act, Investigation Committees Act, Public Premises Eviction Act, Personal Income Tax Act, South Sudan Research Council Act, Kush Institutional Act, Juridical Services Act, Judiciary Act, Code of Criminal Procedure Act, Partnership Act, Registration of Business Names Act, Ministry of Legal Affairs and Constitutional Development Organization Act, Penal Code Act, Child Act, Agency Act, Limited Partnership Act, Contract Act and Investment Promotion Act. The most important laws in relation to the implementation of a legal system is; the Judiciary Act (2008); the Local Government Act (2009); the Penal Code and Code of Criminal Procedure (2008); and the Codification of customary law (2008).

These acts reflect the fact that the Government of Southern Sudan has made attempts towards creating a justice system that reflects the values and requirements for justice among its citizens. Given both practical and political reasons, the chiefs' courts and customary law play a central role in this endeavor. However, there is still work left in how to define the relationship between chief's courts and the courts of Southern Sudan's judiciary. The different chief's courts embody ideas about law that does not necessarily reflect the governmental judiciary. Neither is the system of chief's courts always able to ensure equal access to justice and the protection of human rights. There are also contradictions and uncertainties regarding the jurisdiction and supervision of local courts (Leonardi et al. 2010: 3).

The process and culture of dispute resolution can be seen as a step-by-step hierarchy. Most disputes originate within close or extended family or communal relations. These conflicts should be resolved with assistance from people inside the community before the case is lifted to any courtroom. The next level is the boma chief court, which is most often lead by a chief or elder in the society. These are often held in open air (under a tree), which enables transparency. Most chief's courts do not follow any written laws or guides, which might compromise accountability. The next level is the payam court, which can be described as a chief's court, but closer attached to governmental institutions. The Government Courts are set up to handle criminal cases and differs from the other courts with its prominence of papers and a more exclusionary architecture. Because they are held inside in small offices, they do not have the capacity to include the whole community to watch the case. This might reduce accountability and receptivity of the court in the opinion of the audience. Still, many cases are handled according to customary law, even though there is a higher prevalence of references to

written law. Police play an important role in relation to governmental courts. However, in many instances they also cooperate with the chief's courts. The lack of police capacity, especially in rural areas is a problem in enforcing rule of law (Leonardi 2010: 29-37).

The different communities or ethnic groups practice different forms of customary law. In order to create a basis for direct application of a harmonized and modified customary law, the different forms needs to be identified and recorded in written form (Leonardi et al. 2010: 3). When oral customary law is codified and written down, there will be more certainty in the application of law. This kind of work was initiated as early as 1984, with the codification of Dinka customary law in the Bahr el Ghazal Province (Leonardi 2010: 27). The strategy for Southern Sudan is to develop a codified written customary law based on all ethnic groups, yet with community-based definitions and the potential for updating of laws in accordance with a changing society (Leonardi et al. 2010: 78).

5.2.3 The capability to rule through law

Local perception of the justice system has to be viewed in the light of the greatest obstacles to justice and personal security. These are mainly; “the extensive militarization of young men, police incompetence or abuses, the power and corruption of the government, and the perceived relative erosion of the power of the elders, chiefs, and even judges” (Leonardi et al. 2010: 39). This might be why people have frequently expressed that a negotiated and flexible settlement of the chief's court is preferable over more rigid application of written laws in the Government courts. The main complaint towards courts at all levels, but government courts in particular, is the existence of bribery that disadvantages the poor. Despite the perceived abuses in the system, there is a general belief that the courts and laws are fair and nondiscriminatory (Leonardi et al. 2010: 39).

Corruption and bribery will happen in all court levels and is exacerbated by the lack of payment of officials. However, in chief's court there is a built-in accountability system. If a chief is perceived to be corrupt or ill performing, due to the flexibility of the system a person can choose to take its case somewhere else. It is also said that the traditional courts are more flexible in negotiating personal relationships, which is useful in a rapidly changing society (Leonardi et al. 2010: 34).

One of the biggest challenges for the Government in implementing rule of law is the local tradition for revenge. “Teeth for tooth” is an inherited tradition in many communities, where escalation of violence and revenge killings is the answer if the conflict is not solved appropriately. The concept of *Dia* or blood money is important in this context. It is compensation in the case of the loss of life with huge socioeconomic importance for certain communities. As early as the 1990s, there were moves towards implementing compensation into Southern Sudanese criminal law. These efforts toward compensating the living instead of death penalty can be seen as an evidence of integrating customary law into statutory law. The increased practice of paying *Dia* might be seen as a successful example of how GoSS can integrate customary law into a written and more accountable system. However, it is worth mentioning that this would be less effective if taken out of its original cultural purpose of restoring lost reproductive resources (Leonardi et al. 2010: 63-64).

5.2.4 Protecting vulnerable groups

Imprisonment is often not enforced if the convict is able to pay compensation or fine. This means that prison sentence is most often given to poor people or those without family support to pay a fine. Prison is not liked in local culture, where compensation is preferred and prison exacerbates breach in social relations (Leonardi et al. 2010: 37-38). This might imply that the poor have less protection in this system.

Traditions frequently give men the upper hand in court cases: They have a potentially closer relationship with chiefs and judges. In the marriage system the men are vested rights over women. The inheritance system excludes women unless they are widows. Men also overwhelmingly dominate the court itself, with few women representatives. There have been reports of prison sentence for women seeking divorce, so they would reconsider their demand. Nevertheless, its reported that women feel confidence that their case will be handled fairly. Complaints are more often criticisms of personal favoritism than biased along gender lines. The powerful cultural imperative towards maintaining and restoring social relations often accommodate women to express grievances in both public and private arenas. As stated by a Parish priest in Wau: “Law is law, whether you are a man or woman” (Leonardi et al. 2010: 40-41).

Age might be more of a decisive factor, given the traditional authority of the elders. Young people have less of a voice in the courts. Although the Child Act of 2008 grants certain rights

for juveniles and children in conflict with the law, little has been done to preserve these rights and protections. “Children are often tried as adults and in most detention centers are detained together with adults, exposing these children to a heightened risk of sexual abuse” (Human Rights Watch 2011: 3). The efforts done by the government and international organizations to implement human rights have been met with discontent. It is often seen as a deeply foreign imposition, which removes the right for parents and elders to discipline the youth by corporal punishment. There are also examples of misinterpretations of human rights in chief’s courts. There seems to be a common believe that anyone under the age of eighteen cannot be sentenced to prison. This often contributes to courts deliberately records teenagers to be eighteen even if they are several years younger. Or, they end up with flogging as punishment instead of prison (Leonardi et al. 2010: 58-59). It might also be important to remember that age and counting of years does not have the same prevalence as in western societies. Not everyone knows their exact age and will not know if they are over or under the legal age of eighteen.

5.2.5 Conclusion

It seems like the lack of governmental institutions has opened up for a local justice systems capable of administrating justice on general basis. However, there are clear indications that the traditional system of customary law and the chief’s court is not always able to protect vulnerable groups. The implementation of human rights is publicly known yet not understood or respected. The same holds for the legal system in total. There is still some confusion about where to take your case. And Governmental courts are not always trusted to handle cases in the traditional way. However, improvements in codification of customary law, and modernization regulated by governmental courts, is likely to improve the administration of justice. To a certain degree, there is a clear and understandable legal system in Southern Sudan. Yet, it does not belong to the government. Improvements in codification and public awareness have the potential to improve the administration of justice and the legitimacy of GoSS.

5.3 The capture of revenues

Providing security and government does not come without a price. A common way to pay for such expenditures is through revenue capture. Revenue capture is thus a core indicator of state capacity. Revenue is defined as a state's annual income from which public expenses are met and capture how the revenues are taken possession of³⁰. Revenues can be collected in different ways, but here I will focus on the internal revenue generation. This because of internal revenue captures possible sustainability in raising funds. A state's ability to raise sustainable funds is dependent on its ability to implement taxation. Taxation may further create linkages between government and society and generate expectations of accountability (Whaites 2008: 8). Taxation without obvious benefits in terms of productive spending or policy that enables public goods for its citizens is likely to generate resentment.

Domestic revenue capture is highly important for a state in formation in especially two concerns. When the state has to work with raising resources, as opposed to rely on a potential rents bonanza of oil, the state is more likely to strengthen its structures. Domestic revenues also create confidence that the state has financial sustainability, as opposed to depending on unstable commodity prices and shifting flows of foreign aid (Whaites 2008: 8).

The economic paradox referred to as the resource curse, can illustrate the need to avoid oil revenue dependence. Several African countries have easily accessible and unexploited oil deposits. Nevertheless, countries that depend on such minimally processed natural resources tend to have a lower economic growth rate than those without. Oil export tends to inflate the value of a country's currency making other exports uncompetitive. Oil money also has a tendency to corrupt politicians. The money ends up in politician's pockets instead of being invested in a country's long-term prosperity. However, as Mehlum et al. (2002) points out: It is not the abundance of resources itself that creates this economical paradox, rather the presence of weak institutions unable to avoid rent seeking.³¹

South Sudan was without any formal state structures until the signing of the CPA. The limited services that were provided to its population were carried out by rebel organizations, the Church, or non-governmental organizations. Bringing in a formal state structure is, as I have

³⁰ New Oxford American Dictionary

³¹ For a more extensive debate on the resource curse, see Sachs and Warner (1997) and Mehlum et al. (2002) or Comparative Political Studies June 2011; 44 (6).

already argued, dependant on the establishment of a domestic income base. External support, through development aid and capacity building, is still necessary and will be so for a long time. But in the long run, the Government of South Sudan's state capacity will develop more sustainable if they can produce internal revenues.³² This section will look into what have been done in order to create a framework for such internal revenues. The assessment of revenue capture will be based on the governments' abilities on: 1) creation of an economic infrastructure; 2) policy and implementation of personal income tax; and 3) measures taken towards taxation of business and tariffs on trade. Before exploring this, there will be a short introduction to problems related to oil revenues and a background for taxation in Southern Sudan.

Dependency on oil revenues

In 2010, the estimated Government of Southern Sudan revenue sources was based on 97.8 % oil revenues and only 1.2 % on personal income tax. Other revenue sources like customs, VAT and other national revenue counted only 0.4 %, along with other GoSS revenues at a marginal 0.6 % (Statistical Yearbook 2010: 154). The peace deal from 2005 equally split the oil revenues between the two parties. Even if three-quarters of the daily production of about 500,000 barrels (which is for example approximately one-fifth of Norwegian production) originates from Southern territory, they are dependant on the pipeline and infrastructure situated on northern territories (BBC 2011c). The reserves of oil are calculated to be around 6.4 billion barrels, yet there might be more undiscovered sources and there might not. However, indications show that oil revenues are not sufficient to finance expenditures over a prolonged perspective. Even today, most of the oil revenues are only used to cover governmental and military salaries (Norsk Energi 2011). With relatively weak institutions, there is also the potential of developing the economical paradox of the resource curse through rent seeking.

Implementation of taxation

Taxation is not a new activity even in war-prone Southern Sudan. In times of British rule Chiefs courts were set up in Southern Sudan with the main tasks to deal with cattle disputes

³² Revenue collection is in the quantitative literature considered a core indicator of state capacity (thus endogeneity issues, and potentially mutually reinforcing effects); see e.g. Besley and Perssons works.

and collecting fines and taxes (Johnson 2003: 12). During the civil war, local chiefs were collecting taxes, often on behalf of SPLA or other movements (Rolandsen 2005: 32). These systems however, are not able to provide the government with revenues.

The administrative structure in Southern Sudan has become quite intricate after the signing of the CPA. The old system of three provinces and thirty districts has now been divided into a system including the levels of GoSS, state, county, payams and bomas. This extensive sub-division of administrative units creates a need for a complicated tax system to support the government presence and capacity at all levels. The period after the signing of the CPA have seen progress towards the creation of a tax system. This is a challenging task for a nascent state. Taxation is closely connected to the subject's recognition of the state's authority. However, coercion can also be taken use of in tax collection. Even if a subject does not recognize the legitimacy of the state, the state can coerce taxation, but it might prove to be less effective given that the subject might try to avoid the taxation. The current government is dominated by Dinka and in some degree the Nuer. The ethnical multitude throughout South Sudan might indicate that not all communities see their interests preserved by the government. The lack of infrastructure further challenges the possibility of collecting taxes. So does the fact that a vast majority of the population are pastoralist or subsistence farmers. As we discovered while looking in to security provision, the state also lacks capacity to use coercion in the taxation process.

A tax system is also dependent on a formal economy. Decades of war, and the absence of state structures, have fostered systems of trade and economic exchange outside state control or money based transactions. Income generated in the informal economy is usually not recorded for taxation. Because of low state capacity, many African countries have preferred tariffs to income taxes³³. Tariffs are easier to collect over taxes, but they do have their downsides, as we are about to discover when we look into taxation on business and tariffs. Prior to investigating the personal and business taxation process, we will look into what has been done in relation to the formal economic sector.

33 This has been the case in many African countries, with low state capacity. This is one reason why tariffs have been preferred to income taxes, as they are easier to collect.

5.3.1 The creation of a formal economic sector

During wartime formal economic activities were limited. Only a handful of banks operated in the south and they were all branches of banks based in Northern Sudan. In relation to the CPA, the Wealth Sharing Agreement was signed in January. It laid out the groundwork for the shape of the banking and currency institutions in post-war Sudan. For the interim period it was decided on a dual banking system under the Central Bank of Sudan (CBS). The dual system was to implement a single monetary policy, following Islamic standards in the north and a conventional system in the south. Under the CBS, the Bank of Southern Sudan (BOSS) was established to manage the Conventional banking system and to supervise financial institutions in Southern Sudan. On 16 July 2011, the newly established Central Bank of South Sudan introduced the new South Sudan currency (GOSS 2011a).

The Ministry of Finance and Economic planning is the implementing organ for the legislation and regulation in the economic sector. They are responsible for public financial management as well as tax and revenue collection (GOSS 2011b). With international assistance, they are currently working on a new financial development plan for the country.

5.3.2 Personal income tax

The creation of an independent state demands a formal system of taxation. The 2007 Personal Income Tax Act purpose is to provide rules and arrangements for the taxation of income of Southern Sudan taxpayers. It is founded upon the Interim Constitution of Southern Sudan of 2005. It grants the GoSS the authority to legislate for collecting the personal income tax in Southern Sudan (Personal Income Tax Act 2007 (2009): 4). The act further states that income up to 300 SDG³⁴ per month is not subject to taxation (0 percent tax), while income over 300 SDG per month is taxed at 10 percent on the excess over the 300 SDG per month (Personal Income Tax Act 2007 (2009): 9).

However, there are two main problems in relation to this act. First and foremost, there is no functioning implementing organ. Collection of taxes is sporadic at best, and non-existing at worst. The tax-administrating organ is weak in the sense that they lack trained manpower. The whole process is done manually. There is no filing system and tax dues are not formally

³⁴ 300 SDG equals 112 USD (4 August 2011).

notified to taxpayers, this to the simple fact that there is no designed and printed form for taxation (Non-oil revenue study 2009).

The second problem is easily understandable but hard to prove because the lack of economic indicators: There are still no income distribution indexes available for South Sudan. However, it is quite apparent that there are very few people in South Sudan with a monthly income of over 300 SDG. For instance, by looking at the consumption per person per month average (urban and rural), it is easily detectable that with an average consumption of 100 SDG the now withstanding tax system has a marginal purpose. According to the poverty estimates from 2009, 50.6 percent of the population fell below the poverty line. The poverty line was calculated to be 72.9 SDG³⁵ per person per month (Poverty in Southern Sudan 2010). However, the first pound of public spending on education, health care or infrastructure likely has a large positive effect.

5.3.3 Tax on business and tariffs on trade

The development of business is still in an early phase following the repercussions of long lasting and devastating war. After the signing of the CPA, there has been a rapid development of business. According to the Business Survey Listing of 2010, there has been rapid growth but mainly concentrated to Juba town (approximately one third of all registered businesses). However, 84 percent of registered businesses are in the service sector and big corporations are foreign owned (Sandvik 2011).

The creation of a formal tax system on business is dependent on the government's ability to implement a viable tax law. The existing Registration of business Names Act³⁶ is a step in the right direction and made it possible to implement a business survey. However, there is a need to further develop the existing business register and the business certification process. The 2010 business survey is an important step towards implementing such a system, but because of the regulations associated with gathering of statistics, the government will have to collect its own data for administrative purpose.

35 72.9 SDG equals 27.24 USD (4 August 2011).

36 The Registration of Business Names Act, 2008. Goss.org/Laws, Legislations and Policies

Tariffs

In the commodity sector, there is close to no production or refinement to talk of. Southern Sudan is a net importer of products. This can also be seen in relation to how oil-export tend to inflate a country's currency in the resource curse literature. Because Southern Sudan is so dependent on import of goods, too much taxation may have quite negative effects, as higher prices will reduce demand for import and thus reduce the incentive to transport goods into the region. Additionally to the customs in Juba, there are several checkpoints along the road from the Kenyan and Ugandan border run by local authorities, police and militias, which demands tax on transported goods. Multiple taxes are keeping costs of goods high and contribute to maintain Juba's reputation as Africa's most expensive capital. Custom tax in itself is relatively low (around 10 percent). However, the roadblocks and the unofficial agents raise the total tax as high as thirty to forty percent of value. There is also a problem related to infrastructure: A system of taxation is possible to implement on larger border crossings, Nile ports and airports, but harder at all the other crossings into South Sudan. Despite certain progress in registration there where no policy on business taxation present at the date of independence.

5.3.4 Conclusion

In the beginning of this section I presented several challenges for the GoSS in relation to revenue capture. Building government institutions, including taxation system, from the ground is not easy under the prevailing conditions in South Sudan. For the nascent state it is important to implement viable internal revenue capture apart from oil revenues to develop a sustainable state as well as build accountability to its citizens. The GoSS is the legitimate actor for revenue capture, yet they are in a very limited degree providing its citizens with public goods. It might only be a question of time before that authority will be questioned: The present system of tax collection does not function due to lack of implementation of the taxation act and insufficient personal income. Related to the business sector, there is still no tax policy present. Nevertheless, great progress has been made since the signing of the CPA. As early as 2005 Southern Sudan had the financial property of a state with regards to a branch of the central bank. However, they were restricted in terms of managing oil resources and revenues. The period leading up to independence have seen an improvement in policy and awareness of the institutions needed for sovereignty. The management of oil resources and

revenues is now in the hands of GoSS. However, the actual implementation of functioning systems is lagging behind.

5.4 Political processes and institutions

We have so far gone through three core functions of the state: security, law and revenue. These might be survival functions necessarily in a certain degree. The last function however, is not the less important. The performance in all the other functions highly relates to the existence of political processes and institutions. This last function of this paper is also highly related to the concept of empirical sovereignty and can be seen as an indicator on domestic institutional effectiveness. Some degree of action on public expectation is not optional if the government wants to uphold its authority (Whaites 2008: 9). In the case of Southern Sudan, the authority on providing these core functions is the Government of Southern Sudan.

As reviewed in the theoretical part, Stein Rokkan presented a framework for state formation phases. In very few words the first phase is the consolidation of the political central power or institutionalizing and tightening of political rule. His next phase is related to the political orders legitimacy, or the ruling systems right to rule. In regards to this I have chosen to analyze the fourth dimension in relation to Rokkan's two initial phases. This section will therefore use two indicators: 1) political institutions present in Southern Sudan; and 2) the legitimacy of the authorities through the election and referendum processes. The first part will handle the background for political institutions, the legislative and executive branch in post-CPA Southern Sudan³⁷, as well as contesting forms of authority. The second aspect will analyze the political processes related to election and referendum, on the assumption that these processes express the peoples trust in the ruling systems right to rule.

5.4.1 Institutionalizing and tightening of political rule

From the outside and with little knowledge of the new country it might be viewed as a black hole of anarchy. This is not the case. As mentioned in the empirical background part, very little was present in terms of governing at the time of the CPA signing. Southern Sudan has gone from having literary no institutions towards a creation of state structures that actually resembles a modern state. Before we move on to exploring the development of political institutions and processes, we will start off by a short introduction to progress during the second civil war.

³⁷ For the Judicial branch, see chapter 5.2

Early Political institutions and reforms

Under influence from Khartoum, institutional arrangements was specifically designed to enhance the ability of the north to dominate the south in all domains. The Church and NGOs were the only ones providing what could resemble state institutions providing public welfare. At the beginning of the second civil war, the SPLM/A was mostly concerned with armed resistance. The adaptation of liberation struggle idea led to the development of structures inside the movement, towards promotion of participatory democracy, values and ideas of tolerance, human rights, rule of law, accountability and transparency. This might have been rhetoric's to begin with, yet, developed into the formation of the National Convention in 1994 (Rolandsen 2005: 112).

From 1994 on, The SPLM/A created civil government structures through election of a national political body, separation of political and military structures, and a formal judicial system. The new political structure of the SPLM/A had the National Convention to meet every five years. The National Liberation Council in the function of a legislative and central political organ was to meet annually. The Chairman headed the National Executive Council, to execute policies and programs for the Movement, together with the responsibility for the administration of the "New Sudan". These institutions were to be replicated at the lower levels: region, county, payam and boma.

SPLM/A and Garang's reconciliation with Riek Machar in 2002 and Lam Akol in 2003 strengthened the movement militarily and politically. Ten years of internal civil war between the two largest ethnic groups, the Dinka and the Nuer, was ending (Collins 2008:262-263). Through regional consultation meetings in 2003, the SPLM/A gathered mandate from (some communities of) the people of Southern Sudan to finalize a peace accord with Khartoum (Rolandsen 2005: 175). This does not indicate that wartime Southern Sudan had a functioning government. Neither did it lead to an immediate change in power structures. Yet, it might have laid the groundwork for future developments and the formation of the Government of Southern Sudan in 2005 (Rolandsen 2005: 115-116)³⁸.

38 For an extensive insight on political development in Southern Sudan during the civil war, see Rolandsen (2005) *Guerrilla Government*.

Post-CPA developments

The CPA clearly provisioned the establishment of the Government of Southern Sudan (GoSS) within the borders of 1 January 1956. The GoSS was to consist of the Legislature of Southern Sudan, the Executive of Southern Sudan and the Judiciary of Southern Sudan in accordance with a Southern Sudan Constitution (Comprehensive Peace Agreement 2005: part III, 3). The GoSS gained the status of a semi-autonomous government with authority over the states of Southern Sudan.

The Legislature

The Southern Sudan Legislative Assembly came to existence under the Interim Constitution of the Southern Sudan of 2005 in accordance with the CPA. Originally it was composed of 70 percent SPLM members, 15 percent National Congress Party members and 15 percent other southern political entities. After the 2010 general election there were only representatives elected from constituencies in Southern Sudan left in the Assembly. Except from a few representatives of SPLM-DC³⁹ and even fewer Independents, the assembly consisted of SPLM party members. The National Assembly of the Republic of South Sudan was established through a Presidential Decree on 1 August 2011 (GOSS 2011d).

The SPLM is the dominant political force in South Sudan. It has transformed itself from a rebel movement into the most broadly recognized political entity throughout the south⁴⁰. Most other political parties emerged after the CPA and lack the resources and capacities to form any opposition or competition towards the SPLM. 90 percent of the seats in the national assembly are held by SPLM together with all cabinet positions – including the presidency (International Republican Institute 2011). This non-pluralistic political environment might lead to problems in the future. Especially if the SPLM is seen as unrepresentative for the ethnically diverse South Sudan population. Opening up political space and improving the capacity of contesting parties can solve this.

39 SPLM-Democratic Change, a political party headed by Lam Akol.

40 For more on democratic transition in Africa see e.g. Lise Rakner and related research projects at Christian Michelsen Institute.

The Executive

The CPA issued the establishment of an Executive Council of Ministers appointed by the President of the Government of Southern Sudan, in consultation with the Vice President and approved by the Legislative Assembly in accordance with the constitution. Before the election it had the same party allocation as the Legislative Assembly (Comprehensive Peace Agreement 2005: 33).

The leader of SPLM/A, John Garang, became the first President of GoSS and Vice-president of Sudan. He was killed in a helicopter crash only three weeks after the finalizing of the CPA. The Vice-President of GoSS (and former army chief of SPLA), Salva Kiir, acted as Garang's predecessor and was confirmed as President of GoSS in the April 2010 Presidential election. On 9 July 2011, Salva Kiir became the first President of the Republic of South Sudan. Both Garang and Salva Kiir are Dinka, but from different groups of the tribe. The Dinka is the biggest tribe in South Sudan, but allegations that this tribe overly represents the GoSS has lead to antagonism in the multi-ethnic southern population. As already mentioned in relation to the Legislative Assembly, SPLM domination might contribute to an unstable political environment, if representatives of other groups are not included in the political system. However, Salva Kiir's policies have been more targeted towards building consensus and including opposition than the late John Garang.

Table 1: Presidents of Southern Sudan/South Sudan.

| Presidency tenure | Incumbent |
|---|--|
| 9 th July 2005 to 30 th July 2005 | Dr John Garang de Mabior, President of GoSS |
| 30 th July to 11 th August 2005 | Salva Kiir Mayardit, acting President of GoSS |
| 11 th August 2005 to date | Salva Kiir Mayardit, President of GoSS (President of the Republic of South Sudan from 9 th July 2011) |

(GOSS 2009)

When Salva Kiir took over the Presidency, Riek Machar became the Vice-President of GoSS, despite his earlier defection from SPLM/A. This political move can be seen as coalition building between Dinka and Nuer. Yet also of the prevalence of big men being given important positions in the government. Riek Machar is definitely one of the big men from the wartime era. Riek Machar joined the SPLM/A in 1984, yet split from the movement in 1991 and formed the Nasir Faction with Lam Akol. The war between the two factions lead to huge

civilian losses and weakened military opposition against the north. The Nasir Faction signed a separate peace deal with Khartoum, received military assistance in fighting the SPLM/A. Salva Kiir was named President of the Southern Sudan Coordinating Council and assistant to the President of the Republic of Sudan. However, because of broken promises from the Khartoum government, he went back to the bush in January 2000. During this period Machar controlled a big part of the Nuer army, together with several regions and the flow of aid going in to these regions. He rejoined SPLM/A in 2002 yet did not get the position as vice-president until after the death of Garang in 2005 (Breidlid 2010: 288-296). Including Machar into the Government can be viewed as building consensus in the population with admitting opposition into power positions. However, it might also be viewed in terms of Reno's elite accommodation. Machar's access to a political position is an opportunity for him to enable personal gains for himself. It might also be seen as an advantage for GoSS, were including Machar increases outwards appearance of control over people and territory (Reno 1998: 2).

Table 2: Vice-Presidents of Southern Sudan/South Sudan.

| Vice-Presidency tenure | Incumbent |
|-----------------------------------|--|
| 9th July 2005 to 11th August 2005 | Salva Kiir Mayardit, Vice President of GoSS |
| 11th August 2005 to date | Dr Riek Machar Teny, Vice President of GoSS (Vice-President of the Republic of South Sudan from 9 th July 2011) |

(GOSS 2009)

Among several other duties and tasks, the President is responsible for the creation, reorganization and disbandment of ministries, commissions and other administrative units of the GoSS. He also appoints ministers, chairpersons of commissions and heads of other administrative units and their senior-most public servants. Several of the ministers are former army commanders of the SPLA. Most hold degrees from higher education achieved in Khartoum or abroad. By the time of the secession the GoSS consisted of the following thirty-one ministries:

Table 3: The Government of South Sudan Ministries.

| | |
|--------------------------|--------------------------------|
| Office of the President | Water Resources and Irrigation |
| Cabinet Affairs | Housing and Physical Planning |
| SPLA and Veteran Affairs | Education |

| | |
|--|--|
| Legal Affairs and Constitutional Development | Health |
| Regional Cooperation | Information |
| Internal Affairs | Communications and Postal Services |
| Labour and Public Service | Gender, Social Welfare and Religious Affairs |
| Parliamentary Affairs | Culture and Heritage |
| Finance and Economic Planning | Investment |
| Roads and Transport | Human Resource Development |
| Agriculture and Forestry | Environment |
| Animal Resource and Fisheries | Higher Education, Science and Technology |
| Cooperatives and Rural Development | Youth, Sports and Recreation |
| Energy and Mining | Humanitarian Affairs and Disaster Management |
| Commerce and Industry | Peace and CPA Implementation Affairs |
| Wildlife Conservation and Tourism | |

(GOSS 2011d)

From the CPA period, the GoSS now have a full complement of ministries and commissions to tackle the development challenges of South Sudan. However, legislative oversight of the institutions is still relatively weak. This is mainly a consequence of delays in passing legislation. In addition, there have been delays in strengthening parliament and other parts of the law-making system. Senior level staffing of institutions is still uncompleted. There is also a huge deficit in capacity both at government and state level, which replicates downwards at lower governing levels (GOSS 2008: 4).

State and local institutions

The CPA also provided Southern Sudan with a framework for institutions at the State level. The institutions on the state level are replications of the institutions on GoSS level; only the state executive is the office of the Governor (CPA 2005: 36). All ten states have their own legislative, executive and judiciary. As already mentioned there are some positions to be filled and capacity problems left unsolved. One of the priority areas for executive leadership is to ensure coordinated messaging within the GoSS and the state level (GOSS 2010b: 1).

Under the level of state, there is the further division into county, payam and boma. Given the size of Southern Sudan, limited infrastructure and limited broadcasting, traditional authority continues to play an important role in everyday life. The majority of the rural population is depending on the Chief for providing livelihood and wellbeing. There has been little improvement in Government provision of social services. Even if prioritized by the government, there is still a problem in filling vacancies to create capacity at boma, payam and county level. As mentioned in relation to the administration of justice, the lack of governmental institutions preserves traditional authority's role in the communities. This influences the Government's ability to build legitimacy. Yet, it might be improved both by providing services for communities, and by integrating traditional authorities into political structures, as done in the administration of justice sector.

Related to the problems of providing security, there are still areas and villages that are controlled by local militias or big men. It is hard to find written evidence of how big men or militias challenge the authority of the government. In Unity state, Peter Gadet from a Nuer tribe is leading a rebel group called South Sudan Liberation Army. In an interview he says they are: "fighting corruption, lack of development, and the domination of the Dinka ethnic group" (BBC 2011b). It might be a legitimate expression of the neglect of some communities by the GoSS, but just as well be related to the issue that some big men like Peter Gadet are being excluded from political power in the new government.

5.4.2 Legitimacy through election and Referendum?

Legitimacy can be viewed as the capacity of the political system to engender and maintain the belief that the existing political institutions are the most appropriate for the society⁴¹. The shortage in providing public goods to its citizens might become a challenge towards the Government of South Sudan's authority. However, it is important to remember that Southern Sudan was without any form of governmental institutions for decades and that it has only been six years since the signing of the CPA. Developments in election processes can also be used in analyzing the popular legitimacy of the authority GoSS.

41 From Seymore Martin Lipset's classical study *Political Man* (1960).

2010 Election

Due to delays in the implementation, the first multi-party election in Sudan in 24 years was delayed by a year. Originally it was supposed to be held in July 2009, but was moved to April 2010. The election was actually six elections held simultaneously, to fill the following offices: President of the Republic of Sudan, President of the Government of Southern Sudan, Governors for the twenty-five states, members of the National Legislative Assembly (NLA), members of the Southern Sudan Legislative Assembly (SSLA), and members of the State Legislative Assembly (SLA). However, Southern Sudanese had to fill twelve ballots in total. This is because of a rather complicated system where the presidential seats are elected through an absolute majority system. State governors and 60 percent of NLA, SLA and SSLA are elected through a simple majority system in single member constituencies. The remaining 40 percent of NLA, SLA and SSLA are elected in closed party lists (15 percent) and women's lists (25 percent) in a system of proportional representation with a 4 percent threshold (European Union Election Observation Mission 2010: 17-18).

The legal framework for the conduct of elections was in accordance with international standards, apart from the limitations posed by national criminal and national security laws. These laws reduced rights to express opinion and campaigning. In the south the election was conducted in an uncontrolled environment that led to confusion, clashes and intimidation. There were delays in publication of lists, ballots only written in Arabic, little available information, criticism towards voter registration, and refused voters. The election was followed with complaints of fraud and rigged election. There were also complaints of biased media coverage. The outcome of the election, however, was relatively clear. In the legislative assemblies, there was an overwhelming vote for the two governing parties, National Congress Party in the north and SPLM in the south. Omar Al-Bashir won 68.2 percent of the votes for President of the Republic of Sudan. Salva Kiir won the President of the GoSS office by 92.9 percent (European Union Election Observation Mission 2010: 6).

The Carter Center, the European Union and countries and bodies that sponsored the CPA, were all invited to take part in the process. Some provided training of staff and some were present as observers and implementers of the election (Barsaba 2010). In the Carter Center's final report on the election they had the following assessment of the election: circumscribed political rights and freedoms had placed limits on political parties and civil society which fostered distrust between ruling parties and opposition in both the northern and southern

region. This reportedly undermined the inclusiveness and credibility of the election (Carter Center 2010).

A report from the Southern Sudan High Election Committee complements the process, yet describes some difficulties related to the election: The LRA and tribal unrest in Jonglei, Upper Nile Unity and Warrap states, created insecurity in certain areas. The election was highly complicated with twelve different votes in the same election for first-time voters or voters that had not voted in twenty-four years. The high illiteracy rate, especially among rural women, posed a challenge especially given that ballots were only written in Arabic. There were also financial constraints and lack of basic infrastructure (Barsaba 2010).

Despite allegations of fraud and all the problems related to the elections, it was seen as a relative success in the southern population. The south now had a legitimately elected government and president. Even if the result was somehow contested it was seen as progress towards the 2011 Referendum that would decide the future of the southern population (European Union Election Observation Mission 2010: 4-6). It might be added that there is a possibility that most people of the south did not see the value of the actual election. Thus, the result might not be taken as legitimizing the GoSS in people's opinion. The function of the election might rather be viewed as a preparation for the Referendum.

2011 Referendum

The implementation of the Southern Sudan Referendum fulfilled a major requirement of the 2005 Comprehensive Peace Agreement. In the period after the signing of the CPA, no one was sure whether the Referendum would ever take place. Nevertheless, the Referendum took place on time and under a peaceful and orderly environment. In the aftermath it can definitely be viewed as a remarkable operational and political achievement. This despite some delays in passing the Southern Sudan Referendum Act, the Southern Sudan Referendum Commission (SSRC) and the establishment of the Juba based Southern Sudan Referendum Bureau (SSRB). Domestic as well as international observers reported a free fair and credible process, which reflected the desire of the Southern Sudanese voters for secession (European Union Election Observation Mission 2011: 5).

There are mainly four shortcomings that should be mentioned in relation to this process. The referendum took place in a non-pluralistic political environment⁴² with instances of intimidation tactics by the ruling SPLM. This consisted mostly of encouraging registered voters to cast their ballot. In ten percent of the Referendum Centers the turnout was in excess of 100 percent⁴³. This excess was not investigated by the SSRB before the results were published. In relation to the legal aspect, some elements of the Referendum's legal framework were bypassed to allow the Referendum to take place by the deadline. There were also a lack of appeal mechanisms to allow natural or legal persons to challenge elements of the Referendum administrating bodies in the preparation and execution of the Referendum (European Union Election Observation Mission 2011: 5-6).

The registration process was effective and according to procedures. The number of registered voters was 80 percent of the number that registered for the 2010 election. Close to 86 percent of the estimated number of eligible voters registered for Referendum. The voter turnout was extremely high. Estimates show that the total population of Southern Sudan was between 8 and 9 billions in 2010, with approximately 54 percent of the population being under the age of nineteen⁴⁴. The number of registrants was 3,947,676, out of where 3,851,994 voters cast their ballot⁴⁵ (European Union Election Observation Mission 2011: 8).

The referendum ballot was printed in both Arabic, English and accommodated illiterate voters. South Sudan has a high illiteracy rate, especially among women. To cast your vote, you only had to put your fingerprint on one of the two illustrated options. This was an improvement from the 2010 election, when ballots were only printed Arabic.

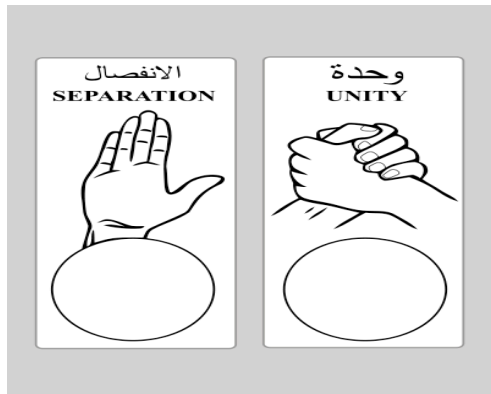
42 The participation of other parties was limited.

43 Turnout over 100 percent is probably the outcome of increased population and returning Southern Sudanese since the Population and Housing Census in 2008.

44 Statistical Yearbook for Southern Sudan 2010

45 Suffrage in Southern Sudan is eighteen years of age

Figure 2: Example of illustrations on ballot paper.



(Southern Sudan Referendum Commission 2011)

Very few women were working as staff at the Referendum Centers. This was partly due to the forty years of age limit imposed upon all Referendum Center staff members. The younger generation of women that had benefitted from the improved access to education was excluded on the basis of this age limit, together with adherence to local cultural and religious codes. However, approximately 52 percent of registered voters were women (European Union Election Observation Mission 2011: 36).

Southern Sudan civil society played an important role in the process. Civil society organizations were providing voter and civic education as well as domestic observers. Media outlets in Southern Sudan is limited in capacity and distribution, yet was not particularly affected by tight control by GoSS. Both state owned and private radio and TV media allocated far more airtime on advocating separation. The printed press however, was less biased and some even allocated marginally more space for unity advocacy (European Union Election Observation Mission 2011: 45-46).

The results from the referendum were overwhelmingly in favor of separation. Only 1.17 percent voted for unity, and 98.83 percent for secession (Southern Sudan Referendum Commission 2011). The Carter Center, an American organization with observers following the whole process, stated: “the referendum process to date is broadly consistent with international standards for democratic elections and represents the genuine expression of the will of the electorate” (The Carter Center 2011). The Referendum was a choice between continued unity and separation. The overwhelming vote for separation is first and foremost a token of the southern populations desire for separation. Thus, it can also be seen as the southern population acceptance of GoSS to conduct South Sudan.

5.4.3 Conclusion

In the six years since the signing of the CPA, the “Guerrilla government” of SPLM/A has evolved into what resembles a government with political institutions and processes. However, traditional authority still play’s an important role in the communities. Lack of security provision and public goods enables local militias to undermine the government’s authority. The existence of political institutions can also be said to mimic a western pattern. The political institutions are present, yet they does not manage to fully implement policy.

The Government of Southern Sudan (with a little help from its friends) managed to hold a general election, with an acceptable if not completely acknowledged outcome. This process prepared Southern Sudan to hold a free and fair Referendum with the result of becoming an independent state. The developments in the general election and the Referendum points towards that the GoSS is recognized as the most appropriate authority for the society. In relation to Rokkan’s phases, the GoSS has been able to initiate political coordination, increase centralization and expand public authority. Elections and Referendum has confirmed the ruling systems right to rule. After the referendum South Sudan has also received recognition of sovereignty from the United Nations and the African Union.

6 Conclusion

The developments in Southern Sudan since the signing of the Comprehensive Peace Agreement (CPA), has showed that it is possible to go from complete lack of state institutions to a sovereign government with structures resembling a modern state. South Sudan declared its independence 9 July 2011, which made it the most progressed current “sovereignty in the making” project in Africa.

After the signing of the CPA, the Government of Southern Sudan (GoSS), mainly consistent of members of the SPLM/A, became the legitimate semi-autonomous authority for Southern Sudan. Due to decades of war and mismanagement from the regime in Khartoum, GoSS had to build state structures from the ground. Even if they have been unable to establish complete territorial integrity and control of violence, they have been able to decrease insecurity through the formation of a professionalized army and police force. In the administration of justice, there is a relatively clear and understandable legal system present even if its legitimacy lays somewhere between governmental and traditional authority. The financial institutions needed for sovereignty is present in South Sudan. The same stands for a framework for sustainable revenue capture, even if implementation is less progressed. South Sudan has a president, vice-president and a legislative assembly elected by popular vote and a set of ministries. And, the people of Southern Sudan voted with overwhelming participation and vote for separation in the 2011 Referendum, which can be seen as the people’s acceptance of the GoSS as its legitimate authority.

Even if the GoSS has not fulfilled all functions of sovereignty, they have managed to achieve sovereignty in terms of recognition from external actors. In this view it is possible to state that the developments undertaken in the four dimensions as sufficient for gaining sovereignty. In light of the analysis presented in the previous chapters, its time to get back to the initial research question: *How is sovereignty crafted in Southern Sudan? And, what are the challenges in the four dimensions of sovereignty in the making?*

6.1 How is sovereignty crafted in Southern Sudan?

I set out to understand the core aspiration of this thesis – sovereignty in the making. My interest was triggered by the possibility that Southern Sudan could become the newest

addition to the states of the world, emerging from close to a total lack of state structures and decades of internal strife and civil war. To test how sovereignty is crafted in Southern Sudan I have carried out an explorative case study on the Government of Southern Sudan's achievements since the signing of the Comprehensive Peace Agreement in 2005.

Aware of the problem of transferability, I established certain aspects from existing theory that made a useful contribution to developing a set of dimension. Developments in the provision of security, administration of justice, revenue captures and political processes and institutions are seen as fundamental functions towards ensuring legitimacy and authority for a nascent state. To measure these dimensions they were further operationalized into underlying measurable indicators, adjusted to the political reality in Southern Sudan.

My assumption in the introduction chapter was that I would find very few indications of these dimensions being in place before independence. I predicted however, that I would find instances of work in progress. The dimensions chosen for this paper proved useful to cover the Government of Southern Sudan's achievements in crafting sovereignty, yet also to uncover challenges ahead. Given the flexible nature the analytic framework presented, it made it possible to view the progress in South Sudan as a real attempt on sovereignty in the making. It is also worth mentioning that the present institutions and laws, even if not completed, may serve as driving force and builders of accountability, which in the future enables more progress in the four functions.

The main findings in my analysis is the prevalence of measures taken in the four dimensions. Especially the many laws and political institutions present that resembles the ones you could find in a western country. State formation in Southern Sudan seems to be mimicking many aspects of the formation of western states. Institutions and processes are there, yet it seems less effective when it comes to implementation. This mimicking of western institutions might be a consequence of huge international investment in the process, were a centralized western model seems to be preferred by the international society. Yet, as we have seen South Sudan has elements that do not fit directly in to this model, especially in relation to traditional values and authorities.

I found that the Government of Southern Sudan has been relatively successful in most of the dimensions. Especially when you consider the short time since the peace agreement. However, I acknowledge that a great amount is lacking. This must, however, be seen in

relation to the amount of time given the government for developing the relevant institutions. Western European states had centuries to develop what the GoSS is expected to deliver in just six years. I will conclude this part with some general problems that can be connected to shortcomings in the theoretical and analytic framework that will be further explored in the next section.

Even if important institutions, laws and systems are in place, there is a huge gap between what is on paper and what is functioning effectively. A possible reason why it has been so hard to implement the framework of these new institutions might be because the new political system, processes and laws does not correspond with traditions and values within South Sudan's population. Most of the new developments are blueprints of the western state. They look good on paper, but are not necessarily transferable into the empirical reality in South Sudan. One example is the taxation process. There are laws and institutions present, but very limited collection of taxes implemented. Another is alternative form of security provision. This takes us back to the problem of transferability. Models and theories for the state are constructed in the western European context, and are not necessarily directly transferable to the African reality.

A centralized western model does not emphasize the importance of implementing existing traditional authorities into the formal state. This might lead to erosion instead of strengthening of traditional authorities. Implementing traditional values and authorities might have the potential to strengthen the legitimacy of the government's authority if modernized and adjusted into formal structures. As we saw in the case of the administration of justice, people's trust in government can be increased when traditional authorities and traditions are implemented into the formal system. This might serve as an example for improving developments in other functions as well.

Sovereignty in the making in South Sudan is not dependent on the completion of fulfilling demands in all the four dimensions presented. Authority and political power in South Sudan can to a certain degree be seen as extended in fading circles (Clapham 2004). The further away from the political center, Juba, the less control over the analyzed dimensions. Lower degree of security provision decrease governmental controlled justice, revenue capture and political institutions. This implicates the interconnectedness of the four functions in relation to emerging forms of state formation in Africa. Yet it is also underlining the reason why

alternative forms of providing security, justice, public services and authorities still play an important role in South Sudan communities.

One crucial but often overlooked component needed for nascent states is a national identity as a part of an overall strategy for development. This is very likely to be the case in South Sudan. The importance of a clearly and accurately defined national identity could strengthen the foundation of a nation that further would enable successful and lasting founding documents, social and political structures and societal cohesion (Townsend 2011). The lack of a South Sudanese national identity might become a challenge for the authorities in South Sudan. When the common threat from the north vanishes, the need for a defined national identity will appear. There have been some attempts towards creating a national identity as seen in the administration of justice sector. The codification of a unified customary law has the potential to strengthen a South Sudanese identity under a collective framework of laws. Another example is the process leading up to the new national anthem. A competition was launched for the people of South Sudan to compose the new anthem where everyone was invited to take part in the process. The national identity aspect however, takes us back to the nation building versus state building categorizing. For long term development there might be a need to open up for a concept more according to nation building in the international society's approach towards nascent states.

6.2 Theoretical reflections

Despite the problem of transferability, I was able to extract aspects of existing theory based on the western European state that proved to be applicable as analytic tools. Stein Rokkan's state formation phase proved to be a useful in relation to understanding how sovereignty is crafted in South Sudan. This, by viewing it as a phase or process were several characteristics together lead towards institutionalizing and tightening of political rule. Rokkan's second phase proved to some limited extent applicable in the case of South Sudan. Through the process of the election and referendum, the GoSS has been able to establish legitimacy. The foundation of the political orders legitimacy is an important component of Rokkan's second phase. However, Rokkan is not directly transferable, mainly because the context he portrays the state is very different from the reality in South Sudan.

Existing theories are useful but not sufficient to explain sovereignty in the making in Africa. The problem of transferability is highly relevant. The African state is not the same as the western European state. The definition of the modern state and sovereignty exclude certain important aspects in relation to the sovereignty in the making project. Even though western society assumes that replicating the western state is the best way to develop nascent states, there might be other forms of order and political structures more suitable for African states. As we discovered in the case of South Sudan there are informal structures that function adjacent to the formal institutions. The western model does not enable to capture traditional patterns of authority like chief's courts and other inherited values.

As we have discovered, South Sudan have structures that resembles the modern state. At the same time it is not functioning effectively according to western standards elevated in traditional theories on the state. African states are hybrids, with some dysfunctional aspects but also parts that resemble institutional apparatus operating by Weberian norms (Englebert 2009: 8). This is also the case for South Sudan. Consequently, I will argue that the theories need to be transformed to better suite the African context. The demands for effectiveness are too high and the models too rigid.

Clapham's approach to sovereignty in the sub-Saharan context deserves to be revisited. I find it useful to view crafting of sovereignty in South Sudan as a entity that meet criteria's of sovereignty to a lesser or greater extent. In the analysis of the dimensions or criteria's of statehood and sovereignty, the case study on South Sudan has showed exactly this. Criteria's are neither fulfilled nor absent even if the Republic of South Sudan is now a sovereign state.

In what Clapham calls the decline of quasi-statehood, he argues that juridical sovereignty is only a temporary device for new states. At some point their inadequacies will be revealed and to proper claim sovereignty the new state will have to develop effective institutions (Clapham 1998: 146). In South Sudan, the potential of becoming an internationally recognized state might have served as a driving force for developments in the four dimensions. At the same time, South Sudan made big improvements in the four dimensions even before international recognized sovereignty was proclaimed. This underlines that sovereignty is better viewed as a process rather than as eliminating categories of juridical and empirical sovereignty. In South Sudan the possibility to become a sovereign state might have served to improve domestic institutions. On the other side, the improvements in domestic institutions might have served as

a driving force for international recognition. Therefore, sovereignty in the making, in the case of South Sudan, is best categorized as a process not a particular condition.

6.3 Future research

This thesis focused exclusively on sovereignty in the making in South Sudan. However, because states and borders in Africa are remains of colonial rule, it is not unlikely that we will see more attempt on secessions and new sovereignty in the making projects. South Sudan and SPLM/A might also serve as an example for other movements seeking political control. To better understand the phenomenon of sovereignty in the making, similar studies could be applied to other cases.

This particular thesis was done in a macro perspective. Several aspects was touched upon without the possibility to be fully explored. Therefore, I see a need for a more focused study on each of the dimensions. I could also be interesting to apply Rokkan's phases on other similar cases to further test the relevance of Rokkan in state formation today. My thesis further located the need to investigate traditional authorities and values role in state formation in Africa.

Literature

Adcock, Robert and David Collier (2001) "Measurement validity: A Shared Standard for Qualitative and Quantitative Research", in *American Political Science Review* 95: 529-546.

Barsaba, Ms. Jersa Kide (2010) Final Report on the April 2010 Election in Southern Sudan, Southern Sudan High Election Committee, Juba.

Bayart, Jean-François ([1989] 1996) *L'État en Afrique*, Paris: Fayard.

BBC (2011a), 15 February 2011, "South Sudan Jonglei attack by Athor rebels 'killed 200'", <http://www.bbc.co.uk/news/world-africa-12465366> [accessed 17 June 2011].

BBC (2011b), 1 July 2011, "South Sudan's' enemy within", <http://www.bbc.co.uk/news/world-africa-13977178> [accessed 6 July 2011].

BBC (2011c), 4 July 2011, "Can Sudan's oil feed north and south?", <http://www.bbc.co.uk/news/world-africa-12128080> [accessed 3 August 2011].

Bennet, J., S. Pantuliano, W. Feron, A. Vaux, C. Barnett and E. Brusset (2010) A Multi-donor Evaluation of Support to Conflict Prevention and Peacebuilding Activities in Southern Sudan 2005-2010, ITAD Ltd., United Kingdom.

Breidlid, Anders (2010) (ed) A Concise History of South Sudan, First Edition, Kampala: Fountain Publishers.

Burnham, Peter (2003) "State", in McLean, Iain and Alistair McMillian (2003) *Oxford Concise Dictionary of Politics*.

Buzan, Barry (2003) "Sovereignty", in McLean, Iain and Alistair McMillian (2003) *Oxford Concise Dictionary of Politics*.

Bøås, Morten and Karin Dokken (2002) *Internasjonal Politikk og Sikkerhetspolitikk i Afrika sør for Sahara*, Oslo: Universitetsforlaget.

The Carter Center (2010) Final Report: Observing Sudan's 2010 National Elections, April 11-18, 2010, http://www.cartercenter.org/news/publications/election_reports.html#sudan [accessed 17 August 2011].

The Carter Center (2011) *Carter Center Preliminary Statement on the Southern Sudan Referendum*, 17 January 2011, <http://www.cartercenter.org/news/pr/sudan-011711.html> [accessed 17 August 2011].

Clapham, Christopher (1998) "Degrees of Statehood" in *Review of International Studies* (1998), 24 (2), pp. 143-157.

Clapham, Christopher (2004) *The Decay and Attempted Reconstruction of African Territorial Statehood*, University of Leipzig Papers on Africa, Politics and Economics, No. 69.

Clapham, Christopher (2007) “African Guerrillas Revisited” in Bøås, Morten and Kevin Dunn (eds) *African Guerrillas: Raging Against the Machine*. Boulder, CO: Lynne Rienner Publishers.

The Comprehensive Peace Agreement (2005) Between The Government of The Republic of The Sudan and The Sudan People’s Liberation Movement/Sudan People’s Liberation Army, 09.01.2005,

<http://unmis.unmissions.org/Default.aspx?tabid=515> [accessed 12 April 2011]

Collins, Robert O. (2008) *A History of Modern Sudan*, Cambridge University Press.

Dokken, Karin (2008) *African Security Politics Redefined*, New York: Palgrave Macmillan.

Dunn, Kevin C. (2001) “MadLib #32: The (Blank) African State: Rethinking the Sovereign State in International Relations Theory”, in Dunn, Kevin D. and Timothy M. Shaw (eds) *Africa’s Challenge to International Relations Theory*, Houndmills: Palgrave Publishers Ltd.

Dunn, Kevin C. (2007) “Uganda: The Lord’s Resistance Army” in Bøås M. and Kevin C. Dunn (eds) *African Guerrillas*, Boulder, CO: Lynne Rienner Publishers.

Englebort, Pierre (2002) *State Legitimacy and Development in Africa*, London: Lynne Rienner Publishers.

Englebort, Pierre (2007) “Whither the Separatist Motive?”, in Bøås M. and Kevin C. Dunn (eds) *African Guerrillas*, Boulder, CO: Lynne Rienner Publishers.

Englebort, Pierre (2009) *Africa: Unity, Sovereignty and Sorrow*, Boulder, CO: Lynne Rienner Publishers.

European Union Election Observation Mission (2010) Final Report, Executive and Legislative Elections 11-15 April 2010,

<http://www.eueom.eu/sudan2010/reports> [accessed 19 August 2011].

European Union Election Observation Mission (2011) Final Report, Southern Sudan Referendum 9-15 January 2011,

<http://www.eueom.eu/sudan2011/reports> [accessed 19 August 2011].

Gerring, John (2007) *Case Study Research: Principles and Practices*, Cambridge: Cambridge University Press.

Goody, Jack (1973) “Uniqueness in the cultural conditions for political development in Black Africa” in Eisenstadt, S. N. and Stein Rokkan (eds) *Building States and Nations*, Volume II, London: Sage Publications.

GOSS (2008) Progress in Southern Sudan 2005-2007, Prepared for the 2008 Sudan Consortium Ministry of Finance and Economic Planning, March 2008, [Http://www.goss-online.org](http://www.goss-online.org) [accessed 18 August 2011].

GOSS (2009), 20 October 2009, “Presidency”, <http://www.goss.org/> [accessed 17 August 2011].

GOSS (2010a), 29 January 2010, “Politics”, <http://www.goss.org/> [accessed 25 May 2011].

GOSS (2010b) GOSS Priority Core Government Functions Costed Action Plan for Rapid Capacity Development. (Received at Norwegian General Consulate, Juba, 8 March 2011).

GOSS (2010c), 1 June 2010, “Society”, <http://www.goss.org/> [accessed 6 July 2011].

GOSS (2011a), 12 July 2011, “Economy”, <http://www.goss.org/> [accessed 2 August 2011].

GOSS (2011b), 27 June 2011, “Finance”, <http://www.goss.org/> [accessed 4 August 2011].

GOSS (2011c), July 12 2011, “The military”, <http://www.goss.org/> [accessed 26 July 2011].

GOSS (2011d), 7 August 2011, “Legislative Assembly”, <http://www.goss.org/> [accessed 17 August 2011].

GOSS (2011e), 17 August 2011, “Ministries”, <http://www.goss.org/> [accessed 18 August 2011].

Hashami, Sohail H. (1997) “Introduction” in Hashami H. Sohail (ed) (1997). *State Sovereignty, Change and Persistence in International Relations*. Pennsylvania: The Pennsylvania State University Press.

Human Rights Watch (2011) South Sudan: A Human Rights Agenda June 30, 2011 <http://www.hrw.org/news/2011/06/30/south-sudan-human-rights-agenda> [accessed 11 August 2011].

ICSS (2005) The Interim Constitution of South Sudan.

International Republican Institute (IRI) July 12 2010, South Sudan: Africa’s newest nation <http://www.iri.org/news-events-press-center/news/south-sudan-africa%E2%80%99s-newest-nation> [accessed 16 August 2011].

Jackson, Robert H. (1990) *Quasi-states: Sovereignty, International Relations, and the Third World*. Cambridge: Cambridge University Press.

- Johnson, Douglas H. (2003) *The Root Causes of Sudan's Civil War*. Kampala: Fountain Publishers.
- Krasner, Stephen D. (1999). *Sovereignty: Organized Hypocrisy*.
- Leonardi, C., L. N. Moro, M. Santschi and D. H. Isser (2010) *Local Justice in Southern Sudan*. United States Institute of Peace.
- Lund, Torleif (2002) "Metodologiske prinsipper og referanserammer", in *Innføring i forskningsmetodologi*, Oslo: Unipub.
- Makinda, Samuel M. and F. Wafula Okumu (2008) *The African Union. Challenges of globalization, security and governance*, New York: Routledge Global Institutions.
- Malaquias, Assis (2001) "Reformulating International Relations Theory: African Insights and challenges" in Dunn, Kevin D. and Timothy M. Shaw (ed.) (2001) *Africa's Challenge to International Relations Theory*, Houndmills: Palgrave Publishers Ltd.
- Mc Evoy, Claire and Emile LeBrun (2010) *Uncertain Future: Armed Violence in Southern Sudan*. Small Arms Study, HSBA Working Paper 20.
- Médard, Jean François (1991) 'L'État néo-patrimonial en Afrique noire' in Médard, Jean-François (ed.) *États d'Afrique noire: Formations, mécanismes et crise*, Paris: Éditions KARTHALA.
- Mehlum, Halvor, K. Moene and R. Torvik (2002) *Institutions and the resource curse*, Memorandum No. 29/2002, University of Oslo: Department of Economics.
- Non-oil revenue study (2009) Volume I, summary final report by Zeru Gebre Selassie, March 2009,
<http://www.goss.org/finance> [accessed 4 August 2011].
- Norsk Energi (2001) *Viktig oppdrag for Norsk Energi i Sør-Sudan*.
<http://www.energi.no/interne-nyheter/viktig-oppdrag-for-norsk-energi-i-s-r-sudan.html>
 [accessed 3 August 2011].
- Personal Income Tax Act 2007 (2009) *Laws of Southern Sudan*, Ministry of Legal Affairs and Constitutional Development,
<http://www.goss.org/> [accessed 14 April 2011]
- Poverty in Southern Sudan (2010) *Estimates from NBHS 2009*. Southern Sudan Centre for Census, Statistics and Evaluation.
- Ragin, Charles C. (1994). *Constructing Social Research*. Thousand Oaks: Pine Forge Press.
- Reno, William (1998) *Warlord Politics and African States*. Boulder Col: Lynne Rienner Publishers.
- Rokkan, Stein (1987). *Stat, nasjon, klasse*. Oslo: Universitetsforlaget.

- Rolandsen, Øystein (2005). *Guerilla Government. Political Changes in the Southern Sudan during the 1990's*. Uppsala: Nordiska Afrikainstitutet.
- Rolandsen, Øystein H. (2009) “Land, Security and Peace Building in the Southern Sudan”, *Prio Paper*, December 2009, Oslo: International Peace Research Institute.
- Rolandsen, Øystein (2010) “Why is violence escalating in Southern Sudan?”, *Noref Policy Brief*, No. 2 February 2010.
- Sandvik, Ole (2011) “Økonomiske utfordringer i Sør-Sudan: Sør-Sudan – snart på egne bein” in *Samfunnsspeilet* nr 3 2011, Statistics of Norway.
- Skog, Ole-Jørgen (2009) *Å forklare sosiale fenomener*, Oslo: Gyldendal Akademisk.
- Southern Sudan Demobilization, Disarmament and Reintegration Commission (2011) Media Release, 25 March 2011, <http://goss-online.org> [accessed 24 August 2011].
- Southern Sudan Referendum Commission (2011) Southern Sudan Referendum Results. <http://ssrc.sd/SSRC2/> [accessed 15 August 2011].
- Statistical Yearbook for Southern Sudan 2010 (2011) Juba: Southern Sudan Centre for Census, Statistics and Evaluation.
- Townsend, Jake (2011) “Country: Know thyself”, in the Huffingtonpost.com, http://www.huffingtonpost.com/jake-townsend/country-know-thyself-why-_b_927390.html [accessed 22 August 2011].
- UNMIS Police Factsheet (2010) 11/04/2010, <http://unmis.unmissions.org/> [accessed]
- Whaites, Alan (2008) *States in Development: Understanding State-Building*, Department for International Development/A DFID working paper.
- Yin, Robert K. (2003a) *Applications of Case Study Research, Second Edition*. Thousand Oaks: Sage Publications.
- Yin, Robert K. (2003b) *Case Study Research. Design and Methods*, Thousand Oaks: Sage Publications.
- Østerud, Øyvind (1987) *Det moderne statssystem og andre politisk-historiske studier*, Oslo: Gyldendal Norsk Forlag.
- Østerud, Øyvind (2007) *Statsvitenskap: Innføring i politisk analyse*, Oslo: Universitetsforlaget.