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**An Agenda for Institutional Reforms in Sudan/South Sudan**

**By Berhanu Denu-G. , Addis Ababa University**

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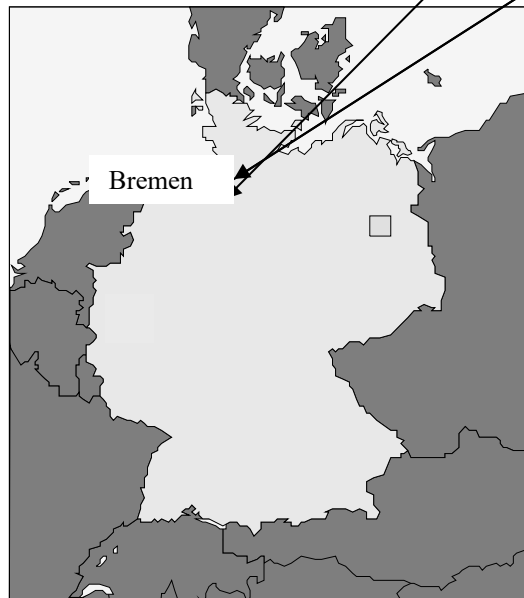
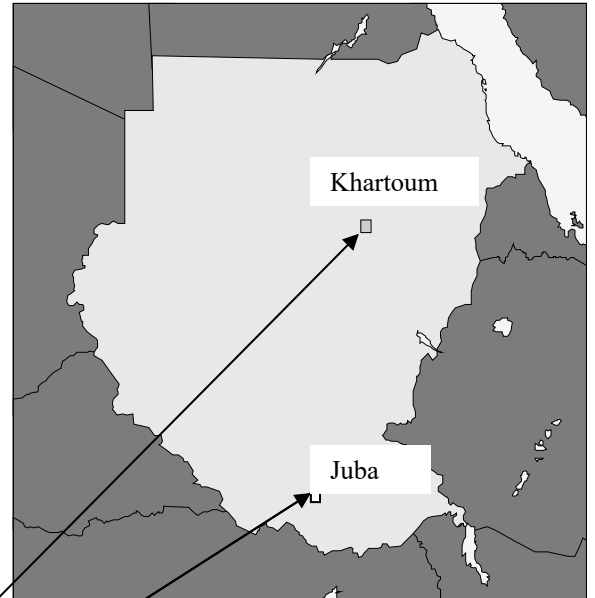
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**Bremen, April 2011**



# ***Sudan***



***Sudan Economy Research Group***

***University of Bremen***

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## List of Abbreviations

AEC	Assessment and Evaluation Commission
AERC	African Economic Research Consortium
AfDB	African Development Bank
AU	Africa Union
BE	Between Effects
BITs	Bilateral Investment Treaties
BoS	Bank of Sudan
BOSS	Bank of South Sudan
CIPE	Center for International Private Enterprise
CPA	Comprehensive Peace Agreement
CPR	Center for Policy Research
ECA	Economic Commission for Africa
EITI	Extractive Industries Transparency Initiative
FAO	Food and Agricultural Organization
FDI	Foreign Direct Investment
FE	Fixed Effects
FFAMC	Fiscal and Financial Allocation and Monitoring Commission
FIAS	Foreign Investment Advisory Service (World Bank/IMF)
GDP	Gross Domestic Product
GER	Gross Enrollment Rate
GNP	Gross National Product
GNU	Government of National Unity (Sudan)
GoS	Government of Sudan
GOSS	Government of South Sudan
IBRD	International Bank for Reconstruction and Development/ The World Bank
ICRC	International Committee of the Red Cross,
ICSS	Interim Constitution of South Sudan
IDPs	Internally Displaced Persons
IGAD	Inter Governmental Authority for Development
INC	Interim National Constitution (Sudan)
JAM	Joint Assessment Mission (Sudan)
LC	Land Commission
LDC	Least Developed Countries
LRA	Lord Resistance Army
MDTF	Multi-Donor Trust Funds
MENA	Middle East and North Africa
MLACD	Ministry of Legal Affairs and Constitutional Development (Soudan)
MFNE	Ministry of Finance and National Economy (Sudan)
NCP	National Congress Party (Sudan)
NCRC	National Constitutional Review Commission (Sudan)
NCSC	National Civil Service Council (Sudan)
NEPAD	New Partnership for Africa's Development
NGO	Non Governmental Organizations
NIE	New Institutional Economics
NPC	National Petroleum Commission (Sudan)
OIE	Original Institutional Economics
OLS	Ordinary Least Square
ORSA	Oil Revenue saving Account (Sudan)
OSSREA	Organization for Social Science Research in Eastern Africa
Polcon V	Measurement of Political constraint data base

PPP	Public Private Partnership
PPP	Purchasing Power Parity
PRS	Political Risk Services
PSP	Private Sector Participation
QEH	Queen Elizabeth House
REER	Real Effective Exchange Rate
RGDP	Real Gross Domestic Product
SERG	Sudan Economy Research Group (University of Bremen)
SLACD	Secretariat of Legal Affairs and Constitutional Development (Sudan)
SPC	Sudan Petroleum Corporation
SPLM/A	Sudan Peoples Liberation Movement/Army
SSAC	South Sudan Audit Chamber
SSCCSE	Southern Sudan Center for Census, Statistics and Evaluation
SSEC	Southern Sudan Electric Corporation
SSFFAC	South Sudan Fiscal and Financial Allocation Commission
SSLA	Southern Sudan Legislative Assembly
UN	United Nations
UNECA	United Nations Economic Commission for Africa
UNDP	United Nations Development Program
UNHCR	United Nations Higher Commission for Refugees
UNU/WIDER	United Nations University/World Institute for Development Research
USA-	United States of America
USAID	United States Agency for International Development
WDI	World Development Indicators
WFP	World Food Program
WHO	World Health Organization
WIDER	World Institute of Development Economic Research
WP/WPS	Working Paper/Working Paper Series
WSA	Wealth Sharing Agreement



## Abstract

Sudan has passed through two rounds of devastating civil war which greatly undermined the institutions of governance. However, since the 2005 CPA (Comprehensive Peace Agreement) between the Government of Sudan and the SPLM/A, Sudan and South Sudan have been engaged in the effort to reconstruct the economy and governance institutions. Several laws have been enacted and many of the previous laws have been revised to align them with the changed situation. New structures of governance have emerged and the referendum of January 2011 has resulted in the vote for independence of South Sudan. However, analysis of both secondary and primary survey data on Sudan shows that still there are institutional gaps and there is need for reforms. A cross-country regression analysis in which Sudan is included indicates a significant positive relationship between investment performance and institutional measures (Denu, 2011). The index of political constraint on executive power and the legal system as well as property rights in countries show statistically significant positive effect on investment flows. An analysis of survey data on business firms in South Sudan also shows that the decision to make further investment by business firms is determined by the level of transaction cost which is determined by the availability of a combination of institutional variables. The findings on the role of institutions and the views expressed in this paper give fresh support to the views that “institutions matter” and “institutions are susceptible to empirical analysis”. The paper shows that the “institutional environment (rules of the game)” and “institutions of governance (the play of the game)” (Williamson, 1998) require due consideration in the planning and implementation of post-conflict reconstruction programs.

Key words: Sudan/South Sudan development after the Referendum; Sudan/South Sudan economic policy; Sudan/South Sudan economic institutions; Institutions of governance in Sudan and South Sudan: institutional environment; economic and political constraints; transaction costs; property rights; legal systems.

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Berhanu Denu-G.

## **I. Introduction**

In 2005, Sudan brought to an end a long civil war through a negotiated peace. The peace agreement was signed between the Government of Sudan SPLM/A (Sudan's People Liberation Movement/Army). The CPA (Comprehensive Peace Agreement) contained among other things, agreement on the arrangement for an interim government for South Sudan for a period of six years and a referendum for South Sudanese people to decide on their fate. The CPA also contained an agreement on the equal sharing of the proceeds of oil wealth. Now, the interim period has come to an end and the people of South Sudan have held the promised referendum the result of which shows that the people voted in favor of independence for South Sudan. The changing situation in Sudan brings forth the need for new institutions to cope with the changes. This paper which is based on a doctoral research in Sudan/South Sudan presents an agenda for institutional reforms in Sudan/South Sudan. The views in the paper draw on a thorough analysis of past economic policies in Sudan and on an empirical analysis of survey data on South Sudan. An institutional analytical framework has been applied to see the impact of institutions on the performance of investment. The analysis of survey data on South Sudan was undertaken from a transaction cost economics point view. The analysis of data on Sudan shows that absence of appropriate and effective institutions of economic, political and corporate governance since independence has been an obstacle to peace, growth and prosperity of Sudan despite the country's abundant natural resources endowment. The analysis of survey data on South Sudan also shows that there is critical lack of infrastructure and other necessary factors that can result in accelerated progress in all spheres of life. Both in Sudan as a whole and in South Sudan the level of transaction cost has been found to be high and this is an obstacle to the productive performance of investment. On the other hand, the level of poverty is very high in both parts of Sudan and there is a high need of institutional reform to create a more conducive environment for economic progress in order to reduce poverty. A comparative analysis of panel data for many countries over a period of over 30 years shows that institutions of legal system and property rights as well as the level of political control over the power of the executive body have significant positive impact on the performance of investment and sustainable peace (Denu, 2011). This paper presents recommendations for institutional reform in Sudan/South Sudan to make sustainable

economic growth and lasting peace in the area. Section II of the paper presents a discussion on institutions and development in Sudan. Section III discusses institutional reform in Sudan/North Sudan. Section IV of the paper discusses the types of institutions for reform in South and section V presents an agenda for institutional reform in South Sudan. Part VI winds up the paper with a short conclusion.

## **II. Institutions and Development in Sudan<sup>1</sup>**

The framework for this research is the new institutional economics' approach to the study of economic development. Contrary to the OIE (Old Institutional Economics), which rejects the Classical Economic theory with all its assumptions, the NIE (New Institutional Economics) criticizes the Neoclassical Economics while at the same time it retains the theory with modifications that incorporate institutions into the models. Richter argues that the NIE focuses on issues like property rights, transaction costs, bounded rationality, opportunism, and industrial organization among others (Richter, 2005, pp. 2-3).

In this study, the performance of investment in Sudan is studied in relation to institutional factors. The neoclassical method cannot be the appropriate method for this study because it takes institutions as given. This study, on the other hand, is based on the assumption that institutions influence economic performance and that they need to be included as explanatory variables in the analysis of the performance of investment. Another reason for choosing NIE is that its assumption about positive transaction cost more realistically characterizes the situation in Sudan where there is asymmetry of information due to limited capacity to obtain "complete information". Destroyed infrastructure, bureaucratic inefficiency, obstacles in acquiring land, and conflict in different areas of Sudan indicate a high transaction cost in doing business (Denu, 2010). NIE provides a better approach to analyze transaction cost in South Sudan,. NIE also provides a better method to analyze the impact of past history of Sudan on its current problems. The war in Sudan has been caused by many factors. One among the causes for the war is economic marginalization which relates to property rights. NIE research has shown convincingly that institutions matter most for growth (Rodrik/Subramanian/Trebbi 2004).

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<sup>1</sup> This section of the paper heavily draws on chapters 5 – 7 of the PhD dissertation, submitted and defended at the University of Bremen by Denu-G. Berhanu, 2010, Bremen, Germany, and published as Denu-G. 2011.

NIE modifies the behavioral assumptions of Neoclassical Economics (North, 1990, pp. 17-26). For example, whereas Neoclassical Economics assumes rationality of the individual and utility maximizing economic agents with perfect information, NIE argues that economic agents make decisions with imperfect knowledge of the real world and the decisions do not necessarily aim at maximizing individual utility. Ideological doctrines and religious beliefs, which do not necessarily result in maximum individual utility, can, influence the decisions of individual agents. The NIE assumes that the rationality of the individual economic agents is limited due to the limited capacity of individuals to process and utilize all the available information (Williamson, 1973; North, 1990; Loasby, 1999; Klein, 1998, Williamson, 2000, 2007; Dequech, 2001). The cost of transaction indicates the need for alternative governance arrangement.

The general argument here is that the NIE provides a better framework of analysis of the process of reconstruction in post conflict Sudan/South Sudan. In this study, cross-country regression analysis is used to study the relationship between institutions and investment. The ratio of investment to real GDP is regressed on index of legal system and property right, index of political constraint on the executive body, real per-capita income, location of countries (latitude), and government consumption as percent of GDP, ethnic fractionalization, domestic credit, price of investment, lagged value of investment as well as dummy variables of civil war, landlocked-ness, and heavy dependence on primary products export. Fixed Effects (FE) model is used for estimation. A test known as Hausman test was conducted to compare Fixed Effects model with Random Effects model. The test gave results in favor of the Fixed Effects model. Further tests were carried out on the variables before the actual estimation was conducted. For example, a unit root test was conducted to see if the variables were stationary or not. Causality and multi-collinearity tests were also conducted. The test statistics showed that the variables are non stationary. It was also found that the causation (direction of flows) was from the respective variables to investment flows except in the case of real GDP which showed a feedback effect. The variables were found uncorrelated with one another.

The regression estimate with panel data including 110 countries over a period of 35 years gives significant positive coefficients for real per-capita GDP, legal system and property rights, and degree of constraint on the use of executive power, domestic credit and location of the country. On the other hand, the size of government consumption, ethnic fractionalization, price of investment, dummy variables for civil war, landlocked-ness, and heavy dependence on primary products export show negative effect on investment flows.

Lagged investment, population, secondary enrolment rate and the degree of openness were found insignificant and were excluded from the estimation.

The finding has important policy implications for Sudan and South Sudan. In order to improve the performance of investment, they should achieve growing real per-capita income, and need to improve their legal system and property rights as well as strengthening control over the use of executive power. In order to reduce the risk of civil war, the two countries need to reduce and eliminate inequality among their diverse clans and nationalities. There is also greater need to promote the establishment of all-inclusive democratic governance. The governments should also aim at reducing their consumption and too much involvement in economic activities. The countries also need to improve access to domestic credit. It is also implied that the countries need a health care policy that minimizes their location disadvantage of being near the equator. Sudan/South Sudan also needs to reduce heavy dependence on oil by undertaking effective diversification of the economy. South Sudan is landlocked and economic cooperation with its neighbors can reduce the challenge of the lack of direct access to sea.

The transaction economics analysis of the business environment in South Sudan shows high level of transaction cost in the country and that this negatively affects the decision of investors to make additional investment. Especially, foreign investors were found to be more sensitive to the lack of roads, power supply, water supply, difficulty in getting land, and bureaucratic inefficiency. The implication is that South Sudan should carry out effective institutional reform in order to stand as a nation.

### **III. Institutions for Reform in Sudan**

The policy implications of the empirical findings have been briefly presented in the preceding section. The implication is that Sudan/Southern Sudan need to undertake effective institutional reforms in order to achieve sustainable peace and economic growth through improved performance of investment.

In order to attract more capital, Sudan needs to improve its deteriorating investment climate. Various reports of the Doing Business by the World Bank show that with the exception of registration of property, Sudan is one of the least ranked countries with respect to ease of doing business. So, Sudan should undertake institutional reform. The following points might be taken as a general direction to be followed:

## **1) Legal Reform**

Legal reform has already started with the adoption of the Interim National Constitution (INC). However, this process should be farther deepened. Cognizant of the fact that the legal system of Sudan in the past had mainly been characterized by the imposition of laws made at the central level on society, and that it has been the extension of the legal system of the colonial period without much revision and adaptability to the changing situation in Sudan, it is necessary to implement a deeper reform of the legal system in the county. The review of the policies and the legal system shows that the legal system did not pay attention to the needs and aspirations of the people of Sudan. During the long years of civil war, the Government of Sudan repeatedly used emergency laws, after each coups and when the fighting was escalated to the highest degree. Under such conditions, human rights were highly disregarded, justice was difficult to obtain, and property rights could not be protected. Arbitrary arrests, disappearances of persons, torture, and loss of livelihood by people in the areas where the war was being waged show the failure of the legal system. This failure of the legal system resulted in generating more conflict and hatred among the warring groups and the people on both sides of the fighting. Despite the existence of the laws, the failure in implementation of the laws made the existence of the laws only to be on paper. It is with the understanding of the problems in the legal system that reform of the past legal system was included as one component of the CPA.

Since 2005, several measures have been taken in revising the legal system. New laws have been enacted and the laws already in use were revised and amended. A new institution, the National Constitutional Review Commission (NCRC) was entrusted with the drafting of new laws. However, still there are complexities in the legal system. The legal system is highly influenced by the numerous customary laws, the heritage of the colonial period, culture and religion. The dividing law between the formal and informal laws seems very narrow. Given the incompatibilities between some customary practices and the formal laws, there is still the need to identify the communalities between the formal and informal laws and to strengthen the complimentary nature of the two legal systems. This requires the codification of the customary laws and improving the uniformity of the various customary laws. It should be emphasized that despite some differences, the many customary laws in Sudan have many things in common. The establishment of a mechanism to create harmony among the customary laws and also the harmonization of the customary laws and the formal laws will create a suitable ground for the uniformity in the implementation of laws among the different communities. The tendency towards conflicts can also be reduced.

An important area that requires reform is the system of implementation of laws. There are laws that already exist on paper. The successful implementation of the laws adopted requires a strong political commitment and the establishment of an institutional arrangement that can pressurize the law enforcement sector to improve implementation of laws. This requires the existence of a strong and independent press and mass media, the existence of strong civic organizations and a mechanism for monitoring and evaluating the implantation of laws.

## **2) Judiciary Reform**

An independent judiciary is an important necessary condition for effective enforcement of law and as a constraint on abuse of public power. Independence of the judiciary has been eroded in the past and needs to be restored. Without an independent judiciary, Sudan cannot rebuild its good image with regard to respect for human rights and the provision of fair justice. The judiciary reform should aim beyond the enforcement of laws. It has to target accessibility to economic resources and create a system that promotes equal opportunity for access to resources. Economic opportunities should not be hijacked by the elites who are able to have better chances for information and for whom it is easier to establish political connections with the authorities. Capacity building of the judiciary should be one of the important measures in the judiciary reform. Lack of capacity is one of the factors inhibiting effective enforcement of laws. In this regard UNDP and the World Bank have been providing training and technical support for three years after the 2005 CPA. However, similar programs of support should be extended to the judiciary organs at all levels. The judiciary reform should also aim at correcting past grievances. It needs to be underlined that, the conflict in Sudan was caused by several factors that can be categorized as economic marginalization, religious discrimination, political exclusion, and ethnic suppression. The review of the causes of the conflict in Sudan in this study reveals that the need to obtain justice that could not be obtained through peaceful means has played the dominant role on the onset and prolongation of the conflict. The causes can boil down to grievances and economic marginalization. Thus, judiciary and justice reform in Sudan should aim at removing the past grievances and reestablish the social contract that has been broken by the conflict. Judiciary reform also involves the improvement in the remuneration of those employed in the sector. A low payment is a disincentive for highly qualified personnel and might also serve as a cause for corruption. Another point is that within the post-conflict environment in Sudan, justice reform should ensure the property rights of women legislatively and in practice. One of the problems in Sudan with regard to women's right is that the inequality might continue even after the introduction of legislative changes that uphold gender equality. The reconstruction of justice should include, in addition to



legislative reforms, measures like distributive justice, the ensuring of the rights of all citizens to participate in the formulation and implementation of laws. In Sudan, the transparency and impartial provision of justice system also requires awareness creation through legal literacy.

### **3) Administrative Reform**

The regression analysis shows that good institutions in the form of appropriate legal system and secure property rights as well as effective constraints on the power of the executive promote the performance of investment and economic development (Denu, 2011, 2010). The review of past economic performance of Sudan also shows the weaknesses in the formulation and implementation of policies. There is also a lack of reliable data on the different aspects of economic, social and political activities in Sudan. One of the factors that cause weaknesses in the economic and social policy management is the inappropriately designed and structured administrative system. Thus reforming the administrative system is necessary to improve the formulation, implementation and evaluation of policies. The first step in this regard is that Sudan rectifies past mistakes, by adopting new laws that can help as a legal framework to newly reorganize the administrative organs of the government. In the first place, appropriately designed buildings should be built for the different organs of the government. Related and complementary service provision activities should be placed within the same building, since this can improve efficiency and reduces transaction costs of economic agents. The offices should be equipped with necessary office equipment for efficient recoding, retrieving, and determination of data and information. Secondly, experienced and qualified persons should be assigned to lead the administrative activities of the offices. Recruitment policies which should be based on the due consideration of skill and competency should be used in the process of recruiting employees to the newly organized administrative structures. Improved system of remuneration should be established. Incentive in salaries and an impartial system of career development and promotion policy should be designed and implemented. Nepotism and favoritism in recruitment and promotion should be eliminated. To curb corruption in the provision of public services, a code of ethics should be formulated and should guide the actions and behaviors of officials and employees at public organizations. In general, administrative reform should aim at promoting result-oriented and customer centered public service provision.

Administrative reform in Sudan should involve the major actors in the chain of service provision. The authorities that exercise the state power and policy makers, citizens, service providing organizations (ministries, departments, divisions, etc.), and frontline providers

(doctors, teachers, judges, police, etc.) are the four main actors (see World Bank, 2005 for details). The four actors should be accountable for their actions at their respective levels. A system of reward for good practices and penalty for bad practices should be put in place. Independent media, advocacy groups and civil society organizations should serve as pressure groups to monitor and expose problems at each level. This has not been the case in most of the past history of Sudan. It is now time to change for the better and close the loopholes for further conflicts.

#### **4) Oil Revenue Management**

Sudan should also reform Oil Revenue Management to make it transparent to the people. At present little is known about the revenue from oil sale (box 1). The oil business is under the control of the Ministry of Energy and Mining and little is known outside that ministry. It should be taken into account that lack of transparency in the use of resources like oil is the cause for violent conflict in many resource rich developing countries, and Sudan cannot be an exception unless the appropriate institution is put in place for the purpose. It is encouraging that on the basis of the wealth sharing protocol, a formula for oil revenue sharing has been established. The transfer of 50% of the net oil revenue to South Sudan and transfer of 2% of the oil revenue to the oil producing states have been done continuously despite concerns about transparency on the part of South Sudan. An Oil Revenue Stabilizing Account (ORSA) has been established in which some proportion of the oil revenue is deposited. The NPC/The National Petroleum Commission is an institution that overlooks the management of the oil production. These measures indicate a good progress in the management of the oil sector. However, still there are gaps to be filled in the sector. First, there is still lack of transparency. The improvement of transparency requires periodical auditing of the oil sector and so far there is no record of this type of measure. NCP and SPLM have agreed to the idea of auditing the oil sector during the transition period. Secondly, the revenue from oil has not been used to increase pro-poor expenditure (Hansohm, 2009). Still the social services like education, health and social safety nets are at undeveloped stage and the huge revenue from oil has not yet resulted in substantial increase in the funds allocated to these sectors. So, there should be a mechanism that ensures an increase in pro-poor expenditure by earmarking some proportion of the oil revenue specifically for the purpose. In a country where poverty incidence exceeds 60%, a growing proportion of the oil revenue should be allocated to improve the education, health and employment condition of the poor. The oil revenue should also be used to improve the productivity of the small agricultural production in which the majority of the rural poor are

engaged. Third, due to the negative environmental impact of oil exploitation, the local people at the grass roots level should be allowed to participate in the assessment and management of the natural resources around the petroleum exploration areas. The people in the areas where oil is exploited suffer most as a result of displacement and loss of their livelihood. Moreover, punitive measures were used to drive out people from their areas of residence in the process of oil exploration and exploitation. Thousands of people were killed in the process. International oil companies are the most benefiting parties and the local people are not given their proper share from the oil riches. Such a situation can lead to violent conflict the outcome of which might damage the interests of all parties. To resolve the problem and to correct past mistakes, the local people should be consulted in the process of decisions on new oil contracts. A legislative framework should be put in place for the payment of a just compensation, and the arrangement of an alternative area of residence for those who are of necessity to be transferred from an area allocated for oil exploitation. The resident area should be equipped with better social services and infrastructural services. Fourth, there should be a mechanism that gives due consideration for the employment of the local people in the oil sector. Training of local people with the skill of working in the hydrocarbon industry should form a component of oil revenue and management reform. Sudan is not a member of the Extractive Industries Transparency Initiative (EITI). The GNU/Government of National Unity dominates all aspects oil sector management. The Ministry of Energy controls the production, processing and distribution of oil through the Sudan Petroleum Corporation (SPC). There is lack of transparency on all level of the oil production process (Hansohm, 2009). There is a great need for opening up the information on the oil sector in Sudan to clear doubts about the government's credibility in the oil management (see box 1).

**Box 3: Problems of Transparency in Sudanese Oil Management**

Transparency in the oil sector of Sudan is unusually weak, in comparison to many other oil-exporting developing countries. Specifically, as described below, the Ministry of Energy and Mining does not produce detailed statistics or reports about the sector or about project developments; the state oil company provides no public accounts; and there is very little information about business developments from the companies operating in Sudan. In most oil-exporting countries one or more of these sources of information provide a basis for assessing sector trends and policy. Moreover, it should be noted that nine oil-rich countries in sub-Saharan Africa have joined the Extractive Industries Transparency Initiative (EITI), an international process committed to improving revenue transparency and public accountability in oil, gas and mining. This lack of transparency appears to be contributing to Sudan's current fiscal problems and conflicts by making projections of oil production and revenues relatively inefficient.

Source World Bank, 2007a, Sudan Public Expenditure Review, Synthesis Report, p. 11

## **5) Federalism Reform**

A closely related matter with administrative reform is the reform in federalism. Sudan introduced a federal form of government in 1992. The country was then divided into 26 state governments (currently 25). Given Sudan's large size and scattered settlements of the population, a federal system is a better approach to improve service provision at the local level. However, the federalism approach did not solve problems faced by the local population as it had been intended. Lack of capacity at the local level, absence of fiscal decentralization, the shortage of funds at the local levels served as obstacles to the realization of the benefits of federalism. The gaps among states in terms of development are wide and the incidence of poverty greatly varies among states and regions. Block transfers of funds to the states have been the main source of finance at the local level. The decentralization of governance and federalism should be reformed in such a way as to strengthen local capacity through the allocation of sufficient number of qualified workers at the local and state levels. Fiscal decentralization, which has so far been characterized with block and specific purpose transfers, should be based on improved local revenue mobilization. In order to enhance the capacity for improved implementation of programs at local levels, the necessary human resource should be made available. The delineation of responsibilities among the federal, state and local government levels should be reinforced. So far, the federal level has been responsible for policy formulation, planning, coordination, monitoring and evaluation. The state level governments are responsible for planning and implementation of programs, while the local levels are mainly responsible for implementation of programs. This has now to be made more effective through improvements in capacity of implementation.

## **6) Social Sector Reform**

The social sector reform concerns mainly the improvement in the provision of social services and the implementation of poverty reduction and the removal of certain inappropriate practices that can lead to conflict. As regards poverty in Sudan, despite the lack of reliable data, poverty is very high and the trend has been an increasing one. This shows that the sharp increase in per capita income of Sudan as a result of revenue inflows from oil export does not necessarily imply an improvement in the income of the poor segment of the population. In order to achieve sustainable peace, there is a great need to reduce poverty. Sudan started to formulate a poverty reduction strategy in 1999. However, there has not been a rigorous activity in the fight against poverty. It is true that some

measures that aim at poverty reduction have been implemented. Such measures like the introduction of zakat (alms) tax, the introduction of social insurance system, and micro-financial facilities, etc., are some of the measures that can be mentioned. However, these services have so far benefited only a limited proportion of the population. There is still great need for more efforts in the direction of poverty reduction. This can best be achieved by raising the income of the population engaged in agriculture. Concurrent with the improvement in agricultural productivity, a planned expansion of urban employment is also another measure that can result in reduction of poverty. Poverty is not only lack of income, but also lack of education and health services. For example, the youth literacy rate of Sudan is about 72% for 2008, but it is expected to be 100% by 2015 (AfDB, 2009, p. 66). Access to primary health care is about 40% – 66% (WHO, 2007, p. 47). There should be reform in the health sector by focusing on preventive health services. The reform in health and education should aim at expanding the access to the services through expansion of the services and support for the poor to access the services. Government expenditure should reach the poor at the grass root. This can be done with the use of health extension services which can be delivered at household levels. Such services like vaccination, traditional birth attendance services and literacy programs can more and more reach the poor if appropriate arrangements are made. The capacity of the local level providers needs to be continuously improved and incentives should be provided to attract qualified personnel to local levels. Thus the social sector reform should aim at empowering the poor economically, through raising their earning capacity directly and indirectly. Provision of pro-poor health and education services enhance the capacity of the poor to earn better income. The government can also expand expenditures on direct employment of the poor. Such activities like public construction work support to small scale economic activities and direct cash transfers in certain spheres are direct income generating activities for the poor. The ultimate reduction of poverty depends on the growth of production and Sudan needs to make efforts to promote the productivity in the productive sectors. Again, institutional reforms should be at the heart of all reform measures. Land rights should be ensured for the rural population. Strong support must be provided to the individual small farmers. Impartial provision of credit and provision of modern agricultural input is required.

## **7) Improving Investment Conditions**

The analysis of investment climate in Sudan shows that Sudan is one of the countries ranked the least in terms of doing business. Reports on Doing Business in Sudan (World Bank, various issues) show that the situation deteriorates over time. Sudan is relatively well off only with regard to property registration. Thus, Sudan needs to improve its investment

climate. This can be done by implementing several complementary measures. First, Sudan should shorten the time required for obtaining a business license from the current 39 days to for example, 7-15 days or less. The question is if many other countries do it in few days, why can't Sudan do it in 15 days or less? Secondly, Sudan should improve its record with regard to closing a business. Sudan is the last ranked out of 183 countries. The court procedures required in closing a business firm should be shortened. It takes unlimited time (no practice of limited time), there is also no practice of deciding on the level of cost as percentage of the value of the estate, and the recovery rate (the recovery rate of cents on each dollar invested in the business) is 0 %, that means investors cannot recover any portion of their investment (World Bank, 2009a, p. 45). Third, Sudan should resolve the conflict in Darfur. The conflict put Sudan under international pressure. Conflict creates uncertainty and destroys infrastructure. Our review of the past civil wars in Sudan shows the destruction brought to the economy. Fourthly, Sudan has to strengthen its commitment to the CPA. It should peacefully resolve all remaining issues with SPLM/ South Sudan through peaceful negotiations. Sudan should reform its infrastructural services. Road transport, power and water supply systems should be reformed for better efficiency and coverage. Good infrastructural services are among the necessary conditions for a better performance of private investment.

## **8) Reforming Fiscal Institutions**

Sudan needs a far reaching reform to improve its fiscal institutions. The review of public expenditure in Sudan shows weaknesses in fiscal management (World Bank, 2007). Public budget management systems should be reformed in a way that enables it to control corruption and a fair regional allocation of resources. One of the causes of the wars in Sudan is unfair fiscal allocation because the opponents of the central government (SPLM & Darfur fighters) complain about the lack of development and of basic public services in their respective areas. Independent reports also show that there are wide regional differences in terms of development (Johnson, 2003; Yongo-Bure, 2007; Hansohm, 2009; JAM, 2005; World Bank; 2009b; UNDP, 2006). For example, a World Bank report notes the following unbalanced fiscal allocation in the 2006 of Sudan: “The largest five national projects (irrigation, transport, roads and bridges, energy, social development, agriculture) absorbed more than 60 percent of total GNU investments in 2006, causing weak financing performance in the remaining national portfolio (World Bank, 2007, p. 24). Thus, it is necessary to establish fiscal institutions at all levels of government which operate with an acceptable formula for fiscal allocation among the different states. Spending above budgeted allocations is common for the large projects (World Bank, 2007, Executive Summary). The

manner in which fiscal management is conducted should be transparent and convincing to the general public in order to avoid public discontent and revolt. There are several problems in public budget management in Sudan (box 2). The stated weaknesses make proper control and assessment difficult, and the system can open up public funds for corruption. The reform in public budget management requires the existence of an independent fiscal management system. The system that allows the large projects like the Merowe Dam to spend in excess of the allocated budget should undergo reform. Projects should stick align their expenditure to their budget and should have an easy and free hand to over step their budget.

The information in box 2 complements our analysis of the economic policies of Sudan from an institutional point of view. The inappropriate fiscal management is the result of the lack of appropriate institutional arrangement.

**Box 4: Weaknesses in Fiscal Management in Sudan**

- First, current GNU budget reporting does not provide a classification of expenditures according to their function and purpose, which is required to enable adequate analysis and evaluation of aggregate fiscal discipline, allocative efficiency and operational efficiency. Sudan traditionally reports budget data along economic lines, and the data are insufficiently disaggregated to monitor spending geographically, across time (during the budget cycle), or across sectors and programs.
- Second, the country lacks a consolidated budget covering all four levels of government, that is, GNU, GOSS, States, and localities. Budget data covered in this chapter is generally based on GNU reporting provided by MFNE that covers federal recurrent and capital spending and transfers to lower levels of government (GOSS and Northern states). It is difficult to clearly identify the amount of resources dedicated to specific purposes at the local, state, and federal levels. This poses management issues, particularly in the case of development spending, for example, in the health sector, investments in health infrastructure require a strong coordination between the federal and the state ministries of health. This coordination can be undermined if expenditure responsibilities are unclear, or the distribution of resources is inconsistent with expenditure responsibilities, and it weakens accountability of each entity for ultimate outcomes.
- Third, GNU expenditure data currently only captures MFNE releases (allocation) to spending units, rather than the actual use [of the budget] by spending units. This effectively precludes analysis of expenditure tracking and efficiency.

Source: World Bank, 2007a, Sudan: Public Expenditure Review, Synthesis Report, p. 19.

There should be a rule in places that should clearly define the fiscal responsibilities and accountability as well as the coordination among the different levels of fiscal activities. Areas of reform include budget allocation. A functional allocation system should be adopted, in which details of allocation for specific activities are clearly made. Further, periodic performance evaluation should be conducted to rectify problems in good time. There should also be a periodic reporting of expenditures and problems encountered in the process of execution of the budget by implementing levels.

## **9) External Debt Management**

Sudan is a highly indebted country with about US\$ 34 billion as of 2008 (IMF, 2009, p. 15). Because of the economic sanctions against it, Sudan cannot benefit from debt relief. Thus the best available option is to adopt a good system of debt management. One of the ways to manage debt is to be guided by the principle that what is borrowed has always to be repaid. This requires the establishment of a repayment fund which should continuously be built up and from which repayment can be made whenever a repayment is due. Another approach is to program repayment in accordance to the maturity of the debts. A timetable for repayment should be drawn up and funds should be put aside for repayment in good time. As much as possible, rescheduling of loans should be avoided. As much as possible, a massive unsustainable external borrowing should be avoided and a shift of policy to encourage foreign direct investment is more viable. Highly indebted countries are considered as risky by private investors and investment can be discouraged.

## **10) The Process of Policy Formulation**

Policy formulation in developing countries in general and in Sudan in particular, involves many actors. The political leaders, the bureaucracy, domestic private sector, civil societies, and donors participate and influence the choice as well as the implementation modalities of national policies. In Sudan, the disagreement between the government and external forces over the choice of policy was clearly observed during 1989 and 1997. The Government of Sudan decided to implement its own adjustment policy by rejecting the IMF adjustment policy. Also either the legislative or the executive can play the determining role in policy formulation. However, the more appropriate approach should be that the executive should initiate policy since it is the main implementer of the policy. Sudan needs to reform its policy formulation process in a way that makes the necessary balance between the



influences of the different actors. In this regard, while it is necessary to consult with donors and other countries of interest, it is also necessary to give more room for consultation with domestic interest groups and citizens in the process of policy formulation. Sufficient discussion should be conducted with the private sector, civil societies, and the citizens as a whole in order to establish the national ownership and strong domestic support for the policy. However, at the same time, it is also necessary to minimize the problem that might arise as a result of too many groups trying to influence the policy to reflect their specific interests. Another important reform area is the ensuring of policy coherence (UNECA, 2005). Coherence refers to the cooperation among the hierarchical levels of the government (vertical coherence), between different ministries, departments and offices, as well as coherence with regard to the different levels of governance (federal, States and local governments). There should be a mechanism that ensures the required coherence by sufficiently involving the different actors that are responsible for implementation during the process of formulation of the policy.

### **11) The Need for a strong Public Private Partnership (PPP)**

Sudan has a limited capacity in terms of capital, human resources, and undeveloped infrastructure that hamper efficient and effective provision of services and implementation of projects. Such a problem can be minimized by using a partnership between the government and the private sector organizations. Public private partnership (PPP) is an arrangement between a public institution and a private organization in which the private organization agrees to assume financial, technical and operation risk in the formulation, establishment, financing and implementation of a project for service delivery of some other productive activities (South Africa, 2004, p. 5). The private organization receives payment from the public institution of by collecting user fees or by the combination of receipts from the public institution and collection of user fees. The private organization can also use public assets for the provision of better quality services. Sudan can use the managerial skill and capital of the private organizations by promoting PPP in the sphere of public services like health services, utility services, and infrastructural rehabilitation. For this purpose, the government should draw up regulatory guidelines that facilitate the operationalization of the arrangement. It should be understood that both the government as well as the private sector cannot alone solve the socio-economic problems in the country.

## **12) The Need for Corporate Governance Reform**

This study has indicated the fact that the corporate governance in Sudan is poor. Thus there should be a reform corporate governance since the government has expressed its intention to be guided by market- driven economy. There should be a policy that supports the private sector in the country since this sector is not strong enough to play its proper role. Sudan also needs to revise its land ownership right, which has left most of the land under state ownership. Land ownership right should be legislatively ensured for the poor rural population. Access to credit, and protection of property rights should be improved. The government still has a dominating role in the economy and there should be a shift towards a policy of encouraging the development of the sector. It is true that this study has shown the existence of laws and rules relevant to corporate governance. However, the weaknesses in the implementation of the laws have made it difficult for a significant progress. The most important measure is to improve the capacities of the institutions responsible for implementing the appropriate laws and also the revision of old laws. There should also be a strong cooperation between the government, NGOs and the private sector. Participation of the private business enterprises in the formulation of laws and policies that affect them is an important component of good corporate governance.

Thus Sudan has a huge task in reforming its institutions. The empirical findings show the negative impact of civil war of dependence on primary product export and the positive impact of good institutions on investment flows, therefore Sudan should head for deep institutional reform. Strong and efficient institutions are a prerequisite for a better investment performance, for reconstruction and economic development, and for improving governance in Sudan.

## **IV. What Type of Institutions for Southern Sudan?**

As a post conflict country, Southern Sudan lacks all the necessary conditions for normal functioning of economic and governance activities. It lacks fiscal ability, implementation capacity, and an experienced administration. All of these things are necessary for the success of the process of reconstruction and the achievement of sustainable peace.

Weaknesses on the aftermath of the CPA undermine the strength of the GOSS, and the prospects of the peace agreement might be darker. The situation might even deteriorate and result in further instability and internal fighting within Southern Sudan. There have already been bitter inter-tribal clashes in several places. So there is a strong need for Southern Sudan

to take effective measures to create and strengthen the appropriate institutions, and to lead the transition period towards a successful path. Earlier, this study has identified the type of institutions that are necessary for reconstruction and in the following section an agenda for institutional reform is outlined. However, it should be underlined that the reform outline needs to be taken just as a specific suggestion which has to be further developed to be replicable.

The consideration of the process of institution building in Southern Sudan involves all the institutions in all the different classifications. That is to say, formal and informal institutions, the different levels of institutions, as well as the economic, political, and social institutions are all involved in the process of institutional reform. However, the classification of institutions on the basis of hierarchy will mainly be used as a framework of discussion about the type of institutions required for Southern Sudan. The hierarchical classification categorizes institutions into 4 levels. Level 1 institutions consist of social norms, customs, traditions, etc. Level 1 institutions have been functioning for many centuries; they are informal and are regarded as exogenous to the economic system (Jütting, 2003, p. 13). Level 2 institutions are those that relate to the “rules of the game”. These institutions define and enforce property rights. Level 2 institutions are mostly formal laws and conventions, but also include traditional rules that relate to the use of common natural resources (Jütting, 2003). Level 3 institutions are those that relate to the governance issue of the society. These institutions design the system of order and incentives, thereby structuring the governing system of the society. And: “Level 4 institutions define the extent to which adjustment occurs through prices or quantities, and determine the resource allocation mechanism” (Jütting 2003, p. 13).

The classification by hierarchy gives indications of the stage at which institutions can be identified and the length of the time required for a change to be effective. In the hierarchical classification, the time horizon for change is identified as 100 to 1000 years for level 1, 10 to 100 years for level 2, 1 to 10 years for level 3, and a short time period for level 4 (Jütting, 2003, p. 12).

However, this length of time span for change can be debatable since it can be different among different communities and even the different components of a level of institutions might need different time periods to change. For example, the components of traditions like marriage, funeral, and the relation between male and female, feeding and dietary practices can change over a shorter time span than the indicated 100 to 1000 years. With the exception of level 1 and partly level 2, institutions, which are designated as exogenous, the other two levels are considered as endogenous to the economic system. These institutions are formal

institutions that need to be designed by the government. Now, after deciding to use the hierarchical classification, the next question is about what types of institutions are to be suggested for Southern Sudan.

For this, the work of Rodrik (1999) can be of great help. Rodrik's argument shows that developing countries lack in five market supporting institutions and lists the five institutions as:

- ❖ Institutions of property rights;
- ❖ Regulatory institutions;
- ❖ Institutions for macroeconomic stabilization;
- ❖ Institutions of social insurance;
- ❖ Institutions of conflict management (Rodrik, 1999, pp. 5 - 13).

These institutions are formal institutions that need to be designed by the government.

Rodrik's argument helps if the aim of the reform is to promote a market economy. The market economy can function well if participants in the market are ensured control over their property. Then, property owners have the incentive to save, to accumulate and to increase the value of their property; they can exchange or pass it to another person in addition to using it for their own consumption. Further, a market economy can function better if instances of market failures are minimized through regulatory measures such as supervision of the quality of goods, control against fraudulent activities, and management of externalities. These regulatory measures protect people against unfair behavior of some elements of the market, like non-competitive or monopolistic tendency, adverse selection and moral hazard due to incomplete information. On the hand, such policy measures, like financial supervision, quality control offices, environmental management and pollution control are among the required regulatory institutions. The market economies also require institutions like independent central banking, fiscal institutions, and instruments to minimize periodic fluctuations between aggregate supply and demand. These institutions work to stabilize fluctuations in income, employment, production and consumption. The targets of control can be either inflation rates, monetary aggregates, or Government budgetary activities, surpluses/deficits. Institutions of social insurance and conflict management are also necessary to reduce instability, to promote harmonious and stable social interaction, and to provide for the smooth functioning of the market system. So, since the aim of the transition in Southern Sudan is to reconstruct the economy on a market basis, the market-supporting institutions are needed for Sudan. While this is the case, the question of how to establish market-supporting institutions in a post-conflict society is also to be answered.

Especially from where should Southern Sudan start? For this purpose, it is better to redefine the immediate objective of a post - conflict country. It can be reduced to two major components. These are the maintenance of peace and economic rehabilitation. Thus the institutions that are necessary for the achievement of the two objectives can be promoted. If we further narrow the initial purpose of the institutional reform, it should be the mobilization of domestic resources and reconstruction (Boyce, 2007) to strengthen peace in the short term and to lay the basis for long-term economic development. Given this objective, the sequence of institutional reform will be discussed in the following section V, based on the insights of this sub-section.

The hierarchical classification approach for institutions by Jütting and the approach of categorizing market supporting institutions by Rodrik have relevance for the institutional reconstruction process in South Sudan. South Sudan is becoming a newly independent country and lacks effective market supporting institutions. Also the consideration of the different hierarchies of institutions can provide a clue as to the types of institutional reform measures that should be given priority due to the different time frame of change for the different levels of institutions.

## **V. Institutional Reform Agenda for Southern Sudan**

As it has been stated in the preceding sections of the chapter, Southern Sudan needs to undertake massive institutional reform or construction in order to achieve sustainable peace and economic growth. Therefore, although there may not be a universally valid sequence of implementing institutional reforms, a possible path of institutional building in South Sudan is outlined below:

### **1) Building a Capable Administration**

The beginning step to strengthen peace and security is the building of the state capacity to administer effectively. This refers to the strengthening of the state power, and the expansion of the scope of state activities (CIPE, 2009). The strength of the state indicates the extent to which the government is capable of maintaining security and enforcing laws. The scope of the state shows the extent of responsiveness of the state to diverse requirements. If one considers Southern Sudan, GOSS is a newly established fragile semi-autonomous administration. Its strength has yet to be built because weaknesses are being observed in its capacity to ensure security. The effective scope of GOSS activities is also limited due to its limited strength and capacity. So, still six years after the signing of the CPA, efforts at

enhancing the strength of GOSS has to be given focus in order to enable it to ensure security and to create the environment for the reconstruction of economic, social and political institutions.

Since GOSS lacks the resources to enhance its own strength, a continuous and strong international support is crucial. It is true that the international donor community and countries in the region have been supporting GOSS since its establishment. However, there are still many difficult problems to be tackled. Violent clashes among different ethnic communities have been observed more frequently. Disarmament of illegal armed groups has still to be continued. De-mining activities have yet to clear large areas of farm, grazing and forest land from the mines of the war period. The economy has not shown a significant fast growth as it is usually the case with post-conflict societies. The uncertainty created by the insecure environment frustrates potential investors to undertake investment activities and prevents those already in investment not to make further investments.

The question about how to strengthen security in the context of Southern Sudan requires due consideration. This is a country with many ethnic communities living under a communal economic system and governed mainly by customary laws. So, one of the policies that should be pursued is the strengthening of peace through the promotion of participation of the different ethnic/community groups in the peace building process. This refers to conflict management institutions (see Rodrik, 1999) and to the level 3 or the governance level (see Jütting, 2003) of the classification by institutions. The numerous ethnic groups conflict over resource use. These ethnic groups keep themselves apart from one another and there is a limited economic and social interaction between them. Therefore, a mechanism should be created for the economic and social interaction of the different communities in a mutually beneficial way. One such mechanism is to form councils of neighboring communities with the participation of representatives or elders or spiritual leaders of the hostile tribes and communities. Such a council should be entrusted with the power and responsibility of coordinating activities in the different tribes/communities, and to follow up the developments in the communities, to work for the intervention in and resolution of conflicts. The council can also serve as a link between the government and the communities for consultation and dissemination of information among the communities.

Since the objective of the transition period is to create broad-based participatory governance, an effective legislation is required to ensure the right of representation of every community at all levels of administration and the right to administer itself locally in accordance with the constitution of the country and the customary laws of the community. However, whenever

conflict of laws arises, precedence should be given to the constitutional provision, and statute laws. In fact, the right to self-administer has been implemented formally after 2005. However, it is still weak due to weak capacity and it has to be strengthened in order to be able to establish an effective local administration. The representation of communities at all levels of government has been implemented in Ethiopia where the different ethnic groups elect and send their representatives into the House of Federation, which is the Upper House of parliament.

Another means of promoting peaceful interaction between the hostile communities is the establishment of economic and infrastructural structures that mutually benefit all the communities. For example, power plants, schools, dams for supply of water, and health facilities that can serve the population from the different communities should be established in selected strategic areas that can bring together neighboring communities. Although such projects might be new and might not have been tried elsewhere, they can be tested and put into effect in South Sudan. Initially it may result in some difficulties, but with strong external support from government offices, the condition, for a peaceful interaction on the joint use of resources developed by the more or less neutral government body can emerge. Concomitant with these measures, there should be a plan for a continuous awareness creation among the population at large. This relates to social institutions. On the other hand, cattle rustlers and those who participate in the abduction of children and women should be seriously punished as they are destabilizing criminals. Moreover, South Sudan should establish a security information network that facilitates timely preparedness and intervention to discourage and frustrate potential participants in violent conflicts. For this purpose, a Peace Task Force has to be established in each community, with a coordinating committee at the center. The main duty of the Task Force is to facilitate conditions for preventive measures. It should gather information on threats and make it available for quick response to the threats. Such measures are new but can be put to use in South Sudan with possible success.

Another component of activities in the promotion of security is the disarmament of illegally armed groups. This is necessary since the recent deadly clashes were also conducted with the force of arms. However, the measure should be implemented with precaution by first involving the local communities in a series of consultations. Each local community sees its armament as a means of self - defense against attacks from rival communities. GOSS has to convince the local population that it is capable of providing unbiased equal protection for all communities before it engages in at least reducing the amount of armament in private hands. One possible means of getting rid of unnecessary arms is to organize local community

police. This measure can lessen the fears of the local population about attacks from other groups and makes them to cooperate in the disarmament process.

With regard to those groups who participate in banditry with illegal arms, the communities and the governments at all levels should take serious measures to deter them and finally put an end to banditry. The government should positively respond and reintegrate those who voluntarily give up banditry and desire to live peacefully. Another measure that needs more attention is de-mining. The de-mining process is in progress. However, it has been slow and needs to increase in pace. Still large areas have not been reached. Large agricultural land, grazing land, and forests are dangerous and cannot be put to productive use until they are cleared of the mines.

The institutional reform that is suggested above in relation to the promotion of peace within the Southern Sudanese borders, through measures that promote the inter-tribal and inter-community relationships towards peaceful interaction, has taken consideration of the power structure between GOSS, the State Governments, and the communities. GOSS is the semi-sovereign body in Southern Sudan and it is in command of the society. State governments are autonomous regional administrations under the sovereign power of GOSS. The ethnic groups and communities are local levels of a decentralized government system. In comparison to local administration, the higher levels of government are better organized, better informed, and have more exposure to modern conflict management approaches, thereby being better positioned to initiate, to monitor, and to strengthen the institutions which aim at resolving contradictions among communities and tribal groups.

There is also a possible threat to peace in Southern Sudan from the periodic clashes between the NCP, which is the major partner to the GNU, and SPLM. The outstanding border issues and the future of the three areas (still including Abyei), are among the factors that may lead to clashes. Therefore, the international community and concerned regional bodies should keep vigilance on any development towards violent conflict and should swiftly intervene to avert the catastrophe from happening. A continuous dialogue between the parties should be conducted over and over again. One thing to be considered is that the purpose of another round of fighting has already been defeated. The war that could not be won in the past after being fought for about four decades cannot be won in the future. So, it is necessary and beneficial to understand this fact and refrain from a move that can aggravate the sufferings of both the South and North Sudanese civilians. In this regard, NCP should be abided by the CPA, by the INC, and the various international conventions and agreements it has signed as Government of Sudan. GOSS should also promote good governance, improve law and order



in the South, and conduct business in accordance with the provisions of the CPA, the INC, and the ICSS. The international community should continuously monitor the situation and consider its enforcement role with the use of its “Commitment Technology” to ensure the implementation of CPA. For example, such measures like economic sanctions, limitation on international movements of government authorities can be used to pressurize the parties to the peace agreement to respect the agreement. The CPA itself is an institution. Just like any other institution, the CPA can be viewed in terms of the power relationship between the NCP-led government of Sudan and the SPLM/A - led Government of South Sudan. Institutions reflect the norms and interests of the key groups that support them (Hyden, 2008). So, since the CPA came into existence within the context of domestic and international power structures, its successful implementation and transformation to other institutions like the general elections and the referendum, depend on the power structure of the key actors and groups in the political arena of Sudan, that is, the NCP and the SPLM, and the Sudanese People.

## **2) The Form of State for Southern Sudan**

Southern Sudan needs a democratic development governance system. The democratic development governance that needs to be created is to aim at the promotion of democratization of the society. Human rights must be respected. Constitutionalism should be strengthened and the rule of law needs to be deepened. The government should seek for legitimacy by holding periodic genuine and competitive elections. Since the current system is a presidential - parliamentary system, a pluralistic political system should be promoted in order to accommodate differing ideas and the culture of tolerance and unity of action within diversity of ideas. The democratic governance should strengthen accountability, transparency, predictability, and a participatory approach to policy formulation and implementation (Zaffarullah/Huque, 2006).

The people of Southern Sudan, and indeed all the people of Sudan, need democratic governance. The argument that western democracy does not suit African countries seems to be basically mistaken. Whenever we give different labels as “west” or “revolutionary”, “liberal” or “non-liberal” to democracy, the aim is to leave out some essential elements of a true democracy. True democracy is about human rights, equality and peaceful coexistence of different people, tolerance and mutual respect among different groups, respect for women’s right, protection of children’s rights, equality of opportunity for all members of the society, protection of individuals and groups of people, both from the state sector and from the private sector, and equitable distribution of income and other benefits. Aren’t these elements

of democracy suitable to African conditions? To be frank, more than anywhere else in the world, true democratic governance is needed most in Africa. Up to now, the problem in Africa in general and in Sudan in particular has been the lack of democracy and an overdose of undemocratic governance.

Southern Sudan needs to establish a democratic governance that uses a state system that is committed to the interests of the people, encourages the participation of citizens through different civil organizations, and promotes the development of the private sector with the objective of strengthening the market economy. A state that seeks to lead the country on the principle of consensus-building, and not by depending only on discretionally measures, needs to have an enlarged policy space which allows civil society organizations, NGOs, and professional as well as non-professional associations to work in close collaboration towards the promotion of a democratic culture. One of the measures to be implemented is the establishment of strong public-private cooperation through such means like, the active participation of the private sector in the formulation and implementation of laws, policies and rules. For this purpose, the people should be organized in civil organizations and associations. Through their organizations, the people should be given information about the direction of the changes taking place in their country and the possible benefits and costs and the duties of citizens in the process of reconstruction. Feedback from the private sector and the citizens at large should be used as an input for final policy formulation. Another, means of cooperation between the private sector and the government is the establishment of public-private partnership (PPP). The Government of South Sudan lacks the capacity to overcome all economic problems in the country alone. However, in partnership with the private businesses, GOSS can improve the provision of services and implementation of projects. The capital and the experience and skill of the private sector can be used through PPP. There needs to be a regulatory framework for the operation of the PPP.

Further, a close cooperation with NGOs is also important. NGOs have been undertaking important relief work under difficult conditions during the war and now they are shifting their focus more to development programs. About 78 international NGOs are operating in South Sudan undertaking 225 humanitarian and 183 development projects (Grawert, 2007, pp. 397 – 398).

It is important to pay due attention to the process of reconstruction of governance in Southern Sudan if the country is to proceed with the building of a genuine democracy. The fact that many of the previous rebel leaders have turned authoritarian after they came to power is a clear indication of the general tendency of rebel movements to turn themselves into dictatorships, and such tendencies should be curbed right from the outset. The pressure

by external and domestic civil organizations and by the international community can frustrate the aspiration of leaders to create such an authoritarian government. An important measure is to enact a law that limits the tenure of power by a leader to only two terms of 4 years or 5 years. The independence of the judiciary must also be ensured. A truly neutral Election Commission should be responsible for the implementation of the election law.

### **3) Judiciary and Law-Enforcing Institutional Reform**

Side by side with the building of the strength and the scope of the state, institutions of law-enforcement and those which protect the society against inappropriate use of state power should be put in place. Such institutions like independent judiciary, human rights commission, grievance commission, and a well-trained and professional police need to be established or strengthened. In the short run, local judiciary bodies can be organized from among the residents in a community. The customary courts may not continue in the old ways because of observed weaknesses like gender bias (Parmar, 2007). The local judiciary committees can be organized from local chiefs, religious leaders, teachers, representatives of women. At national level, there should be a policy to attract highly trained lawyers by initiating an attractive remuneration and thereby enhancing the capacity of the judiciary. The independence of the judiciary is of concern, since unless it is effectively ensured the future of the transition process will end up more likely in autocracy. At the same time, organizations that can constrain the power of GOSS and State Governments should be set up. Such commissions like the Human Rights Commission, the independent Audit Chamber, and the Grievance Commission, which are provided for in the interim Southern Sudan Constitution have been established but are very weak and are not working up to their expectations. Still there is a great need to strengthen them. These organizations can put control on the extent of use of state power. They receive grievances from citizens and try to resolve problems in cooperation with other concerned offices. Southern Sudan should make a break with the past history of autocracy in Sudan and aim at instituting truly democratic governance based on a market economy. Since these institutions are those of level 3 or governance institutions, they should be planned for 3 - 5 years for their successful establishment.

### **4) Reconstruction of Economic Institutions**

The short term focus on security activities is meant to create a peaceful environment for the establishment of the economic and social institutions necessary for the long term

development of the economy. In the short run, the most important measure is the provision of relief and rehabilitation support. The people who remained in the country have lost their livelihood and they need support for survival in the short term and to restart life on their own. The huge numbers of returnees, ex-refugees and of internally displaced persons (IDPs) have also to get support for rehabilitation. These tasks are among the first steps to be taken after the peace deal. These measures have been implemented with the support of the donors and international organizations like UNHCR/United Nations High Commissioner for Refugees and UNICEF/United Nations Children's Fund, USAID/United States Agency for International Development, UNDP/United Nations Development Program, WFP/ World Food Program, ICRC/ International Committee of the Red Cross, and other NGOs. However, this effort is to continue for sometime since more returnees will be expected when they are convinced about the sustainability of the peace. There is the need for the enhancement of the capacity of the institutions working in the relief and rehabilitation sector and related areas in South Sudan. The rehabilitation of the masses of returnees needs some more time. The building of basic social services in the areas of resettlement needs to be continued for some time. One important matter that requires legislation is about the place for resettlement of returnees. For instance, without undermining the restitution right conferred to previous owners of land by the new Land Act of 2009 (GOSS, 2009a), there should be a law that enables returnees to obtain the right to obtain land. The experience so far is that the previous land has been occupied by others in many places and there has been difficulty in resettling some of the returnees. There has also been observed some disagreement between returnees and those people who remained in the country during the war. The situation in South Sudan is somewhat different from the other neighboring countries to make experience sharing possible. For example, in Ethiopia all land is under the ownership of the state and the government can provide access to land for those who want land, either on a lease basis or free of payment, depending on the purpose for which the land is required.

Thus there is a need to develop an innovative domestic approach. After sufficient interaction and mutual understanding between the tribes and communities are achieved, GOSS and state Governments, with a strong participation of the local population, should introduce the appropriate national laws on the use of common properties like land, forest resources, water and mineral resources within the different communities. The objective of such a measure is to facilitate the formalization of property rights. Since customary laws are preponderant in relation to property rights in South Sudan, a gradual and participatory approach needs to be pursued by all levels of government in formalizing land holding rights and other property rights. This is the first market-supporting institution in Rodrik's framework (1999) and the level 2 in the classification of institutions by Jütting (2003) and Williamson (1975).

Establishing secure property rights is the first precondition for sustainable exchange transaction among economic agents. Adoption of formal rules that define property rights is a component of level 2 institutions which relate to the setting of the rule of the game. The issue of access to land is crucial for investment. Private businesses have complained about the difficulty and uncertainty of access to land for business purposes. The Land Act (GOSS, 2009a) is a step forward but it has not yet been operational. The Land Commission is just at a formative stage and given the size of Southern Sudan and the lack of communication infrastructure, the task ahead in relation to land mapping and cadastral as well as registration is too challenging and will require the concerted efforts of donors and all levels of administration. So far nothing significant has been done, not only because of lack of capacity, but because of fear that registration and measuring of land areas might provoke conflict between the government and the communities. The expected land bill should also consider and include means of making the land act more workable by taking the interests of all stakeholders into account. It is expected that the customary rules that guide access to land will take longer years to change, however, alternative approaches like such measures as to start with land which was not under direct control of local communities are necessary.

### **5) Reconstruction of Other Market-Supporting Economic Institutions**

As a post-conflict economy, Southern Sudan lacks in key economic institutions. Southern Sudan has not yet created an effective system of market-supporting institutions although it has established various elements of its government apparatus. For instance, GOSS and state level governments have been established. Ministries have been set up for all sectors of the economy and for public administration. Independent commissions have also been created to deal with specific areas which are of greatest priority and are considered to be important for peace building.

Despite the progress already made since the signing of the peace agreement, a lot remains to be done in terms of promotion of economic progress. For example, although the constitution clearly guarantees the right to private property, there are obstacles to the full realization of this right. Some of the factors are cultural. People prefer communal ownership and employment in public organizations and offices. For example, one can hardly find a Southern Sudanese girl or boy working in hotels, and guest houses, while one can see a large number of people seating in government offices. Such activities like taxi driving and small bus operations are undertaken predominantly by people from the neighboring countries. The lack of the necessary skill contributes to unwillingness to take up employment in areas where skills are needed.

The preference and heavy dependence on government or NGO employment and communal ownership of assets like land create a big obstacle to the development of a market-based economy and the growth of the private sector. The reason is that a market-based economy is an exchange economy with transactions among individual owners of property. Where the individual members do not have the right to own or control the land they use or the crops they grow and the animals they breed, a free market exchange cannot take place.

Clan loyalty and distrust towards other communities can hamper the development of market exchange since exchange presupposes transactions between mutually trustful parties. Clan bonds make ministers, officials as well as government employees to provide support for their community members. The support can take the form of financial handouts, sharing residence, food, other necessary materials, or the provision of public employment. Such commitments may be reduced with the tight control over budgetary expenditures and transparent and formal recruitment for jobs. This shows that informal institutions permeate and dominate the formal government bureaucracy.

Furthermore, the fact that land ownership belongs to the communities makes it difficult to obtain land for investment. Although it is possible to obtain land, it takes a long time and large amount of money to acquire a piece of land for any purpose. This is an obstacle to investment and growth. It also pins down the members of the community to the plots of land they live on without the incentive to look for better opportunities by moving to the urban areas or any other place. The outcome of such an institution of ownership will be reduced investment, lower growth and poverty.

Therefore, although the type of communal ownership and reciprocity might have been of help for the communities' survival in the past, such institutions are not able to promote economic progress within the context of globalization and the market-based economy. They need to be changed in a way that leads to economic growth and prosperity. This does not mean that pure market economy should be the immediate objective of Southern Sudan. However, Southern Sudan is now at a historical juncture to put its economy on the basis of an appropriate institutional growth trajectory. And the market-led economy has been a better path to prosperity and growth despite its periodic fluctuations. And to minimize the periodic fluctuation, the government has many important works to do. The important matter is to clearly define the role of the state and that of the private sector. The state has the sovereign power to make laws, and it should make laws that support economic growth. It has to create a level ground for fair play of the game. The state is the sovereign body to

define the structure of governance. It has to make laws and organizations that create incentives for the cooperation between the private sector, civil organizations and the state.

Another institution to be considered for reform is the regulatory institution. Regulatory activities range from institutions involved in the processing of entry of a business firm into the market as well as institutions for the conduct of macroeconomic policies to stabilize the economy. However, in the case of South Sudan, macroeconomic policies are pursued at national level (GNU level). The ease or difficulty with which the regulatory policy is enforced determines the level of transaction cost which is instrumental in the decision in making investment. The entry into businesses is determined by several factors. For example, some activities like utilities naturally incline towards monopoly. And entry is limited to a few large firms or the public sector only. Such activities like water supply, electric power generation, and telecommunications are characterized by large scale technology, which will be more efficient if undertaken by a few big firms. The existence of monopoly or oligopoly markets can also affect entry of new firms and these barriers are to be removed by pro-competition government policy. In the case of South Sudan, there is the possibility that some firms might lobby government policy makers and protect themselves against competition by closing the entry of new firms into the area of their investment. It is also possible that the government can sometimes limit entry into certain activities in order to protect national interest in the best possible way. So, the regulatory institutions have to have a clear and transparent legal framework for their decision. A good regulatory institutional arrangement is useful for the long term development of the country. It should regulate businesses with the ultimate objective of promoting national interest. Generally, South Sudan should adopt a policy that prohibits the tendency towards monopoly, and a policy that removes infrastructural bottlenecks should be strengthened. A planned long term investment in infrastructure should formulate. In the short term, rehabilitation of infrastructure like roads, water supply, power generation, primary health care services and schools is to be undertaken in cooperation with donors and NGOs.

With regard to macroeconomic policy institutions, it has to be viewed in relation to the specific context of Southern Sudan, which is not a fully sovereign state. Some of the key macro economic policy instruments are in the hands of the GNU. For example, monetary policy instruments like deciding the indicator rate of interest, exchange rate, printing and supply of currency, and management of the banking sector are under the auspices of the Government of National Unity/GNU. The issuing of entry visa, residence, and work and investment permits, for foreigners is also the competency of the GNU. Thus, Southern Sudan and GOSS cannot directly influence some of the national regulatory frameworks. However, there is a wider scope for GOSS to improve on regulations that may hinder

progress in Southern Sudan. GOSS leadership is a partner in the GNU and it can make suggestions for actions to be taken by the GNU. It should be noted that reform measures that will have positive effects on progress and growth will be beneficial to both Southern and Northern Sudan. Furthermore, South Sudan can put in place sound regulatory measures on such activities like the conduct of foreign exchange, the terms of credit in the South, the timing and amount of money to be paid for new business licenses, and the procedures and costs of property registration. The efficiency of government services can also be improved through training and enhancing technological capability. Government services are at a very low level. As it has been stated in the preceding sections, there is a dire shortage of public services. Thus plans and projects should be devised to construct infrastructure, rehabilitate agricultural production, and promote rural development.

In order to put the economy on the right path of sustainable development, as suggested above, democratic development governance should be established to lead the reconstruction process. Unlike the development administration of earlier times, which was mainly concerned with the planning exercise, democratic development governance is “about harmonizing and integrating economic growth, human advancement, and sustainable development” (Zafarullah/Huque, 2006, pp. 13 - 43).

## **6) Protection of the Environment and Reconstruction of Productive Sectors**

It has been observed that some elements took advantage of the weaknesses in the protection of the environment immediately after the CPA to cut down teak trees in mass and to export it for own benefit (interview with Director General of Forestry, 2008). Also periodic burning of bushes and grass coverage over large areas is a common phenomenon. However, appropriate economic growth refers to the quantitative increase in output as well as the improvement in the well-being of the population. The concern for improvement in the quality of life shows that growth should aim at the improvement in the environment, especially for the poor segments of the population. As it has already been stated, Southern Sudan suffers from a heavy burden of poverty of about 90% (GOSS, 2007a) and it is necessary to take measures to reduce poverty in South Sudan. Poverty can be reduced by increasing economic performance. Production in agriculture, industry and the service sector should grow, so as to improve the well being of the poor through employment and income generation. However, currently, only the service sector is more actively expanding in Southern Sudan. There is no industrial development although there were such attempts until 1983 (see Yongo-Bure, 2007). Agricultural production is dominated by subsistence production which is characterized by shifting cultivation and the burning down of the vegetation cover. Although this type of agriculture has been the main form of survival



strategy of the population for centuries, its negative impact on the environment as population grows is significant. South Sudan's agriculture should take a path that minimizes the negative impact on the environment.

One measure towards improving the management of the environment is to improve the capacities of government offices the activities of which are directly related to the environment and natural resources. Another measure is to use the mass media to create awareness about the problems facing the environment and clearly informing the population about any collective action required to improve the environment. Programs should be designed to reclaim wasted land and reforestation of areas that have lost their forest cover. Disposal of harmful industrial and chemical wastes must be done in a way that does not endanger the environment through open or underground pollution.

The government can play a significant role to improve the institutional capacity of those government and private sector organizations entrusted with the power and responsibility of dealing with agriculture and related activities. GOSS has already established various government ministries at central and state government levels to deal with agriculture and related areas of concern. The Ministry of Agriculture and Forestry, the Ministry of Environment, Wild Life and Tourism, the Ministry of Rural Development and Cooperatives, the Ministry of Water Resources and Irrigation, and the Ministry of Animal Resources and Fishery are the offices that are engaged in activities that directly bear upon agriculture, livestock, forestry and fishery. There are overlapping areas of responsibilities of the above ministries. A system of coordination of the activities of these ministries can result in improved effectiveness and efficiency in resource use and in implementation of development projects. South Sudan also needs to adopt a policy of rural development, which actively influences the transformation of the rural sector. As a demonstration, the establishment of some mechanized farms in joint ventures with private investors can be considered (see on prior attempt, Yongo-Bure, 2007). The use of modern agricultural technology, such as fertilizers and improved seeds should be promoted. However, the negative environmental impact of such input should also be taken into consideration. So far, five years after the CPA, nothing fundamental has been done, but agricultural development strategy that aims at achieving food self-sufficiency, among other things, has been formulated.

Diversification of the agricultural sector and commercialization of output can be promoted by focusing on the production of exportable, and on products that are of large and sustainable demand on domestic and external markets. For example, improvements in the

production of vegetables, fruits, poultry and fish in addition to sorghum and other cereals, can be used to generate cash for the farm households since such goods are produced mostly for sale and not for own consumption. The rural development program should be delivered as a package, consisting of education, health, water supply, sanitation, and cash income generation. Development agents, agricultural extension, and health extension workers should be trained and given the responsibility to execute programs. Here also, such programs are not in process. The gap is being filled mainly by the activities of the NGOs. In all the endeavors to reconstruct economic production and institutions, due consideration must be given to the protection and conservation of the environment. Development projects should be environmental-friendly. Investment proposals should be appraised in terms of their impact on the environment. To this effect, a law should be formulated that guides the assessment of investment activities in terms of the impact on the environment and natural resources.

Generally, poverty reduction requires a sustainable growth in the productive sectors which is environmental-friendly. Thus South Sudan needs a policy that focuses on the development of agriculture, rural small enterprises, and health and education services. A policy for an effective management of the aid inflows and the gain from the oil export needs that South Sudan should adopt a policy that promotes the capacity for productive absorption of the aid money and the maintenance of macroeconomic stability. A key element of the macroeconomic policy is the maintenance of the stability of the real effective exchange rate/REER (see Wohlmuth, 2011).

## **7) Fiscal and Financial Reconstruction**

Another institution that should be constructed is the fiscal and taxation administration. Fiscal breakdown and inequitable allocation of financial resources were among the factors that led to the civil war in Sudan. Lack of development assistance and the absence of government services are regarded by many Southern Sudanese as being the causes of the war. Now, during the period of relative peace, the past mistakes should be corrected in Sudan as a whole and within Southern Sudan in particular.

Conflicts in Africa can be viewed as being rooted in the break down of the social contract that governs the distribution of resources and institutions for resolving the conflict (Addison/Murshed, 2005, pp. 3 - 17). It is argued that it is the breakdown of arrangements for sharing resources is what causes conflicts in the developing countries. This has also been the case in Sudan.

The CPA contains provisions that aim at resolving the fiscal and resource sharing issues in the wealth-sharing agreement. The main resources for sharing are the revenues from oil sale. South Sudan and North Sudan share the revenues from oil in Southern Sudan equally. They also share the non-oil tax revenues equally. Within South Sudan, GOSS has adopted a block transfer system in which states are provided with financial resources to finance their expenditure. The South Sudan Fiscal and Financial Allocation and Monitoring Commission (SSFFAMC) has been established to supervise the distribution of the resources. Oil producing states are entitled to 2% of the net revenue from the oil produced in their respective areas. The transfer has continuously been made except for Abyei the borders of which have not been determined (see AEC, 2010).

The efforts are encouraging but still there should be a mechanism to control the use of the resources in order to ensure that the people at large ultimately get the benefit. If the utilization of the fiscal and financial resources obtained from GOSS are not systematically controlled, through such measures like periodic reporting and visits to the states, allocation on installment basis of the transfer, etc, individuals might benefit at the expense of the society.

In South Sudan, public finance management is very weak. An independent revenue authority does not exist at GOSS level. The Audit Chamber is not yet strong enough to conduct independent auditing of public fiscal activities. The tax administration is in a disorganized situation. There is no clear assignment of tax collection responsibilities to the different levels of government (Hansohm, 2009). The same tax can be collected repeatedly at State, at County and Payam levels. Therefore, the tax administration should be reorganized. An important measure is to establish an independent revenue authority. The necessary budget and skilled human resource should be allocated. The Audit Chamber should be given all support to make it operational. It is good that an independent auditor has been recruited with the help of the MDTF, but this is only a temporary measure. A strong and independent audit chamber is a necessary institution to be established without delay.

The tax administration is one crucial area that needs reconstruction. War has destroyed tax administration. The rates and the types of taxes should be carefully analyzed before introduction. Till the step by step introduction of direct taxes, indirect taxes with clearly determined rates should be put to use. The appropriate receipts should be prepared and collectors have to give receipts to payers. A time table needs to be drawn up for collecting the taxes. Payers should be informed about the timing of collection of the taxes. Post-conflict countries require a huge fund for reconstruction. The composition of the tax system

should be restructured to raise the required revenues. Different taxes should be introduced step by step. One of the most important measures to be implemented is to clearly sanction the persons and offices that are primarily responsible to collect taxes. No other body or persons than the designated ones should be allowed to collect tax. Another point is that the approach to taxation should be based on the principle of efficiency and effectiveness. Efficiency in taxation refers to the relation between the cost of collection and the amount of revenue collected. The tax system should be one that generates reasonably large revenue for each unit of cost of collection. Methods like educating tax payers, establishment of large taxation units, and the imposition of alternative tax systems for small tax payers, etc can improve efficiency (Tanzi /Pellechio, 1997, pp. 273 - 292). Effectiveness of taxation refers to the compliance of the tax payers. The degree of compliance can be improved by using several measures among which tax payer education and awareness creation are the most important measures.

South Sudan should pursue a fiscal policy that avoids ad hoc decisions, ensures transparency, enables minimum revenue mobilization, and expenditure policies should be of the type that aligns expenditure with the established priorities of expenditure (Gupta/Tareq/Clements/Segura-Ubierno/Bahtacharya, 2009, p. 175). The reconstruction steps should start with the enactment of the relevant law that governs fiscal activities. Then reconstruction and strengthening of the central revenue authority should come next.

After the administrative organs and structures are established, fiscal management and revenue mobilization measures have to be launched within the framework of the relevant laws.

Southern Sudan also needs to reconstruct its financial sector. Reconstruction has already started with a currency reform in which the previous national currency was replaced by another currency (Sudan pound/Guinea). The banking sector also needs to be reconstructed. The Bank of Southern Sudan (BOSS) has been established as a central Bank for South Sudan. However, BOSS has to adhere to the circulars and regulations of the Central Bank of Sudan and implements the Monetary Policy of the Central Bank of Sudan (see Bank of Sudan, 2008). The Banking system in South Sudan is in the process of a transition to conventional banking system from the previous Islamic banking system. The bank staff needs an in-depth training and retraining in conventional banking procedures. So, financial reconstruction is one of the agendas of the immediate post-conflict periods.

One other point that needs to be emphasized is the importance of reforms to attract foreign direct investment (FDI). Because of the weak domestic investment in relation to the urgent

needs of the country, foreign capital in the form of direct investment is required to achieve accelerated economic reconstruction.

South Sudan has two options to attract FDI. First, the domestic system of regulation on foreign investment should be improved. The security of foreign investors and their property should be enhanced. Theft and crime must be strongly dealt with. Any ownership restrictions on foreign investors need to be reconsidered in a mutually beneficial manner. Tax and fiscal encouragements should be provided in a way that ensures both the national interest and the interests of the investors. For example, wide range exemptions of investors from tax payment should be considered with care in relation to the need to raise the minimum required domestic revenue. These measures are unilateral regulatory measures which are meant to create a suitable domestic atmosphere for foreign investment. Second, the host country has to commit itself to internationally binding obligations by signing bilateral investment treaties (BITs). The BITs reduce uncertainty and can help host countries to boost their credibility and attract more FDI inflows. Southern Sudan is making efforts to liberalize the domestic investment environment but needs to work more vigorously to attract more FDI. One of the measures to do this is to improve the infrastructure and thereby reduce the transaction costs to be incurred by investors. It should be noted that direct foreign investment is superior to other forms of foreign capital such as capital flows through the provision of aid. FDI is a better channel for the transfer of technology.

The flows of FDI are affected by the combination of the specific factors of an economy. These include the size of the market, which is indicated by the level of income and also the size of the population, the availability of educated labor force, an investment-encouraging policy environment, resource endowment and macroeconomic stability. In fact the past flows of FDI in Africa have been due to natural resource endowment and policy reform (Morrisset, 2000, p. 3). Southern Sudan is rich with natural resources and has a growing population, but the market is limited.

## **8) Institutional Arrangement for the Upcoming Referendum of 2011**

The CPA calls for the implementation of a referendum for self-determination of Sudan. The outcome of the referendum will determine the independence of South Sudan or its unity with Sudan. This is an event for which the Southern Sudanese people have bitterly fought. The referendum is preceded by a general election which took place during April 11 – 15, 2010. Since the general election was the first of its kind, a lot of preparation was made. The result

of the election was that NCP and SPLM won in their respective areas. The election was criticized as not meeting international standards by EU and Carter Center observers.

The 2011 Referendum is going to be the beginning of a new chapter in the history of Sudan. It is going to be the second of its type after the one held for the endorsement of the presidential nomination during the time of the Nimeiri. If the outcome is going to be independence for Southern Sudan, it means the current state of Sudan will be dissolved giving birth to other independent state. If it ends up as an endorsement for unity, still there will be fundamental institutional reforms, but only one unified Sudan will be maintained.

It is up to the Southern Sudanese to decide on this matter. However, it is necessary to draw up laws and rules that clarify such issues like the eligibility of participants in the referendum, the independence and the responsibilities of the body to organize the referendum, and the percentage of the population required for the acceptance or rejection of the decision. The law should also clearly lay down the conditions for acceptance of the outcome, and the procedures for monitoring the process of the referendum. A referendum law was passed by the National Assembly of Sudan on December 29, 2009 after much controversy between NCP and SPLM. To organize the referendum an independent commission with membership from all the parties to the CPA should be established, including representatives of UN, IGAD, AU, EU, US, NGOs in Sudan, and professional associations. The international community has an extremely important role to play in the organization, funding and over-seeing the process of the referendum.

The referendum in South Sudan, unlike referendums in other areas of the world, is not going to be organized and conducted by a winner side in the previous conflict. The CPA was an outcome of more or less a stalemate condition in which both sides of the previous conflict have a strong say, albeit peacefully. Under such a condition an independent body is needed to follow up with developments of events and to intervene in the right time to put things on the right path when the process of transition seems to be off track. The necessary economic preparations have to be made now. Macroeconomic policy institutions have to be in place for South Sudan. The framework of economic cooperation between North and South Sudan should be drawn up through negotiations. A mechanism that enables a peaceful and safe implementation of the referendum result needs to be established.

### **9) An Institution for Sustainable Peace**

The South Sudanese people have suffered a great deal under the long civil war. In addition to the civilians confirmed to have been killed and displaced, many persons are reported to have disappeared without trace. The enmity and hatred that have grown between the

Northern and Southern Sudan people as a result of the atrocities during the war serve as an obstacle to the normalization of relations between the two people. This is an obstacle to future cooperation and peaceful coexistence among the two people. This requires the establishment of a mechanism to redress the problem and normalize relations even if Southern Sudan chooses independence in the upcoming referendum. One option of doing this is to institute a sort of a Truth Commission to document all war-related atrocities objectively and to use it as an evidence of the destruction and crime that is associated with civil war. The commission can be named as Justice and Friendship Committee to show that true friendship should be based on the basis of justice, equality and mutual respect for one another. Perpetrators (whether groups or individuals) should confess their deeds and ask for pardon. The documentation of all the atrocities should help to serve as a check against future violent conflict among the Sudanese people. The main objective of such a measure is not to stir up sentiments but rather to use it as a method to heal past wounds and hatred.

As it has been already stated, GOSS has established institutions to address governance issues. Such institutions include the South Sudan Anti-Corruption Commission (SSACC), the South Sudan Audit Chamber (SSAC), the South Sudan Fiscal and Financial Allocation and Monitoring Commission (SSFFAMC), South Sudan Employees Justice Chamber, the South Sudan Public Grievance Commission, the Human Rights Commission and the Peace Commission. These institutions are expected to address grievances and problems of bad governance from the past as well as preventing similar problems from happening in the future. This is encouraging although most of these institutions are at the formative stage, waiting for the approval of the law required for their establishment. At the moment there is no mechanism of co-coordinating the activities of these bodies and some of their duties and responsibilities can overlap. Since there can be great divergence between plans and implementation a strong monitoring and evaluation system is required to encourage the various offices to implement plans. One such method can be the adoption of an output-oriented expenditure system of the public budget. The focus should not be on whether something is done or not, but the tangible outcome of what has been done should be focused on. Plans that may be high sounding and designed only for external consumption will benefit no one.

## **10) Economic Cooperation Institutions to be created by the North and the South of Sudan after the Referendum**

Whatever the outcome of the referendum of the January 1, 2011, things are not going to be the same as in the past in Sudan. It is possible to expect unity of Sudan to be endorsed by the

referendum. However, since available information does not give a clear-cut indication on the direction the referendum takes, it is also possible to expect the independence of South Sudan. One thing is important for consideration whatever the outcome is going to be. The interdependence between North and South Sudan will continue. The two sides have many things in common. Common economic, social, cultural and even political interests will remain significant. So a safe landing for South Sudan and a broad cooperation between the two parts of Sudan calls for preparation and agreement on certain points. One major matter to be agreed on is the fate of the population across the borders. North and South Sudan should agree on the customary rights of the people living around the borders. The water, grazing and other livelihood activities of the border population should be ensured by both parties. The second arrangement regards the fate of North Sudanese who have lived in South Sudan and those South Sudanese who are living in North Sudan. Both North and South Sudan should base their policies on accepted international law and conventions and should accordingly agree to ensure and protect the well being and interests of such people. The third issue that requires agreement by both parties is the utilization of the oil wealth. South Sudan is landlocked and currently does not have its own refinery. Thus the ports of North Sudan can be the best option for South Sudan to export its oil and in this way both sides can benefit from cooperation. South Sudan can also use the refinery of North Sudan for service charges. Another further issue concerns the division of assets in the case of separation. The total public assets in Sudan as a whole in principle belong to the Sudanese people as a whole. There should be a mechanism to divide the assets if separation is going to be inevitable. Still another issue that requires agreement is the fate of citizens of both sides that have been serving in the other side. There are many persons working in the other side. The possible relocation and benefits like pension supports are to be arranged through negotiations. Another important issue is that both sides are beneficiaries of the Nile. They have to cooperate in a fair use of the resource between themselves and with other countries of the Nile Basin. The final issue of concern relates to cooperation on security issues. Both sides should refrain from political intervention in the affairs of the other and should cooperate to maintain security around their borders. Cultural interactions can be also arranged. The basis for all these is the peaceful implementation of the referendum and the acceptance of the outcome whatever it is going to be. The establishment of a joint committee is necessary to lay down the ground for cooperation. In addition to this, independent friendship-committees should be established both in South and North Sudan to promote and strengthen friendship between people in living both parts.

In the preceding sections the agenda for reform has been discussed on the basis of the findings from empirical investigation. One point that needs some discussion is the



prioritization or the sequencing of the measures for reconstruction. There are mainly two different views about sequencing. The old view approaches the sequence of measures as:

1. Relief and Humanitarian assistance;
2. Disarmament and reintegration;
3. Reconstruction of Physical Infrastructure; and
4. Reforming Economic Policy, Governance, and Institutions

(Haughton, 1998, Collier/Hoeffler, 2004, Collier, 2005)

The old approach gives first priority to relief (social policy) and pushes economic and governance policy reforms to a later stage of reconstruction. A different approach to prioritization is the one designed by AU/NEPAD (2005). According to this approach, the reconstruction phase is broken down into three phases as emergency, transition, and development phases. Each phase consists of five dimensions of policy interventions including security, political transition, socioeconomic development, human rights and justice, and resource mobilization, management and coordination. The agenda for action for South Sudan is given below (table 1).

The old approach to sequencing of phases of reconstruction is now no longer adhered to and a new approach is being pursued (see on this new approach also USAID, 2009): “A new approach is emerging which places less emphasis on a discrete, sequential approach and argues for all overlapping sequence of categories of assistance, more specifically for early interventions in policy reform, economic recovery and growth while securing and maintaining peace” (USAID, 2009, p. 7).

The information in the table 1 shows the measures that should be implemented during each phase of the reconstruction process. The reconstruction process begins with the emergency phase and ends with the development phase.

The emergency phase is the period immediately after the conflict and is expected to take up to one year. Security and stabilization activities are of higher priority and external forces play the most important roles. The transition phase is expected to take up to 3 years, while the development phase is expected to last for 4 -10 years. Activities that aim at developing domestic capacity and establishment of economic and legal institutions, political legitimization and governance reconstruction are to be implemented during the transition and development phases. South Sudan is now at the completion of the transition phase of 5 years (the 5 year transition period here was set taking into consideration the specific conditions in South Sudan). A general election has been conducted. However, important development measures still have to be undertaken in the development phase. Meanwhile,

also the Referendum of 2011 has taken place, and the South Sudan is heading for the Independence Declaration on July 9, 2011. The Plan of Action outlined in table 1 is still of relevance to South Sudan. The Juba Compact and other GOSS strategies are in conformity with this new approach.

Thus the old discrete phasing of the reconstruction process is being left out for a simultaneous and multi-dimensional intervention. This new approach is more realistic in that the measures for economic reconstruction are not postponed to near the end of the transition period. Discrete phasing might carry the danger of non-sustainability and dependency on external forces for a long time. In this regard the AU/African Union approach which is presented in table 1 seems to be more helpful to South Sudan. While there are three phases, each of them has five intervention dimensions. At all stages, there will be measures that deal with the issues of security, political, socioeconomic, human rights and justice, as well as resource mobilization.

With regard to the trend in investment in South Sudan after the CPA, casual observation shows that the first activities that started to operate were the mobile phone services. Currently there are four mobile service providers. Firms from Sudan, South Africa, Uganda, and Dubai are the main mobile service providers. The other fast growing areas of investment in which private firms are active are merchandizing activities for food items, clothing, footwear, beverages and vegetables. Another investment which attracted private firms is hotels and catering. But initially the hotels were not of a permanent structure; they were expensive but only tent hotels. The main actors were foreigners from the neighboring countries and from Europe. Another sector that attracted private investment was the construction sector. Construction activities concentrated on houses and some hotels at first. Later on, road building was also started on a limited scale. Main activists were from Uganda and Kenya. There was also some investment in air transport. Again the main actors are from Kenya. Investment in banking was also the area that attracted firms from neighboring countries like Kenya, Ethiopia and Egypt. Sectors like agriculture and industry, however, did not attract investors during the initial stage of the peace onset. Table 1 (see below) sets out how to change the priorities accordingly.

**Table 1: The Agenda for Reconstruction of South Sudan**

Phases Policy dimensions	Emergency Phase	Transition Phase	Development Phase
Security	Create safe environment	Establish legitimate and stable security institutions	Consolidate security capacity at all levels
Political and governance reform	laying the foundations for political participation and governance system	Laying the foundation for political legitimacy, conducting general elections	Consolidation of the legitimate government, institutions for political participation, governance strengthening, national consensus building
Socio-Economic development	humanitarian relief, resettlement of IDPs and returnees, rehabilitation of emergency transport, health services, laying the framework for economic actions	Rehabilitation of basic health, education, economic infrastructure	Boosting economic development, implementation of development projects, agriculture, trade and industry to be focused on
Human Rights and justice reform	Develop a framework to address past and emerging grievances	Reforming the legal human rights, reforming the judiciary, strengthening civil society	Establishment of stable legal system enriched by accepted international practices, ensuring the independence of the judiciary
Resource mobilization and management	Develop a mechanism to coordinate internal and external sources and actors	Develop domestic capacity to mobilize tax reforms, strong PFM/public financial management	Strengthen PFM, create technical capacity to formulate development projects, refine revenue laws and fiscal activities, debt management

Source: Adopted from AU/NEPAD, 2005, p. 8

## VI. Conclusions

This chapter has shown the great need and an agenda for institutional reform in Sudan/Southern Sudan. The questions about which institutions matter most have been answered by indicating the institutions which need to be constructed or reconstructed. Sudan is one of the lowest ranked countries in terms of governance, investment climate, protection of human rights and political stability. Evidence shows that Sudan needs to reform its fiscal and financial management system in order to create the condition, for the fair use of national resources as guaranteed by the Interim National Constitution. There is also great need for improvement in the investment climate and domestic capacity development and institutional reform to take advantage of the oil revenue and aid inflows. A policy that gives due consideration to the development of the productive sectors like agriculture, small industrial development, health, education and infrastructural development while maintaining macroeconomic stability should guide the economic activities of Sudan/South Sudan during the development phase of the reconstruction process.

At all levels governance reform and capacity development are necessary prerequisites for successful economic progress.

With regard to Southern Sudan, it has just emerged from decades of civil war that has virtually destroyed all peace time governance structures. The institutions that were in place during the fighting and just immediately after the CPA were meant to serve the purpose of a war time period and are not appropriate for peace time reconstruction. Since Southern Sudan is following a different system than Northern Sudan, it cannot borrow most of the institutions promoted for North Sudan. Therefore, Southern Sudan has to construct its institutions starting from scratch. Under such a situation, institutional construction in all spheres of governance - political governance, economic governance and corporate governance - needs to be sequenced. And the support of donors, UN agencies, NGOs, AU, and of neighboring countries is extremely important for the reconstruction process.

The most important first step is the implementation of measures that ensure law and order and that strengthen peace and security in the whole of Southern Sudan. This measure is an ongoing process since new conflicts have been emerging after the CPA. Concurrent with the process of peace building, the rehabilitation and opening up of roads and other infrastructural services as well as the introduction of economic reform policy should be given attention. For simplicity, it is necessary to break the reconstruction process into three interrelated stages. The first stage should focus on emergency measures in security, social services, economic rehabilitation, infrastructural rehabilitation, and institutional reforms.

Rehabilitation and resettlement of displaced mass of people, provision of basic necessities for the millions of people at risk should be focused on. In these efforts the biggest part of the burden falls on the international community. During the second phase (transition phase), which is expected to last for three years, the foundation for long term socio-economic and political development has to be created. Domestic capacity building, governance reform, legal and justice reconstruction, and infrastructural rehabilitation are undertaken during the second phase. During the third phase/development phase all the long term development foundations are to be put in place. The developments of the productive sectors like agriculture, small and medium industries, agro-industrial enterprises, and infrastructural base should be focused on. Human rights monitoring and legitimizing the political authority as well as the strengthening of the legal system are measures for the development phase. Development of the appropriate macroeconomic policy is also the agenda of the third phase. It is to be emphasized that economic, corporate and political governance should be given a focus during all the three stages. In any case the reconstruction of governance in the three spheres of politics, economics and corporate spheres are interdependent and one cannot focus only on one single sphere. The maintenance of the balance among the three forms governance is necessary for a successful reconstruction of governance.

The empirical part of this study has shown that the legal system and property right laws as well as checks and balances on the power of the executive authority have a significant positive effect on the economy. South Sudan is a post - conflict country that requires thorough institutional reconstruction. The main institutions and the sequence of reconstruction have been outlined. Since there are many different factors that caused the onset and prolongation of the fighting, the first reconstruction of governance should start from the formulation and implementation of measures that build peace but without postponing economic and institutional reforms.

Institutions affect the economy directly as well as indirectly. Institutions such as the culture of the society can affect the economy indirectly first by affecting other variables. Tribal allegiance, women's position, the view towards modern education, etc can also affect the economy indirectly. On the other hand, labor laws, liberalization of price control, etc. affect the economy directly. Furthermore, the chapter showed that the success in the transition period and beyond requires of South Sudan the establishment of democratic governance and the commitment of the international community to continuously support the process of transformation in the Sudan as a whole. Sufficient preparations have to be made for the upcoming referendum and a mechanism has to be designed to enforce commitment of the parties to accept the outcome of the referendum. Political commitment and strong external

support are required to make the peace in Southern Sudan sustainable. A framework for economic and cultural cooperation between North Sudan and South Sudan should be drawn up whatever the result of the referendum is going to be.

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