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INTRODUCTION

It is a complex exercise to research corruption in an environment emerging from a period of disorder caused by prolonged civil war. Southern Sudan celebrated the Comprehensive Peace Agreement (CPA) with almost no structures or functional institutions in place to ensure the proper utilization of scarce resources in the post-conflict period. Beyond combating corruption, which has been made a priority, other urgent tasks facing Southern Sudan during this period of transition toward peace include the introduction of new laws, establishing public institutions, deploying human resources in management structures, and maintaining security and providing services.

Many of these tasks were undertaken simultaneously in an unprecedented, complex environment for governance. During the first two years of its existence, the work of establishing these structures consumed most of the Government of Southern Sudan's (GoSS) time. To examine corruption in this context and assess structures and mechanisms designed to curtail corruption, key guiding questions must be asked: How do people perceive corruption? What kinds of institutions exist to confront corruption? Where is corruption most rooted in society? What is the degree of tolerance to corruption in communities of Southern Sudan? What are considered corrupt practices by the people and how do these affect their lives?

Aware of the dangers of corruption, the GoSS created various oversight bodies at the early stages of its existence. In addition to establishing functional ministries, a

ABOUT THE SSR MONITOR

The *Security Sector Reform Monitor* is a quarterly publication that tracks developments and trends in the ongoing security sector reform (SSR) processes of five countries: Afghanistan, Burundi, Timor-Leste, Haiti and Southern Sudan. Every quarter, there will be separate editions for each case study country. Adopting a holistic definition of the security sector, the *SSR Monitor* will cover a wide range of actors, topics and themes, from reforms in the rule of law institutions and armed forces to demilitarization activities and the role of non-statutory security and justice actors.

Research for the *SSR Monitor* is field-based: a resident researcher in each case study country leads data collection and analysis, with support from desk-based analysts at The Centre for International Governance Innovation (CIGI). The same research guidelines are employed for each country. All editions of the *SSR Monitor* are subjected to an external peer review process in addition to our internal editorial review.

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parliamentary body — the Southern Sudan Legislative Assembly (SSLA) — and judicial institutions, the GoSS also created oversight bodies such as the Southern Sudan Anti-Corruption Commission (SSACC) and Southern Sudan Audit Chamber (SSAC). These institutions each have an area of responsibility and were established to prevent corruption from infecting the institutions and functioning of the GoSS, or from taking root in the public sphere or the business community. This edition of the *SSR Monitor: Southern Sudan* assesses their performance and offers suggestions for combating corruption.

CONCEPTS OF CORRUPTION AND ITS ENVIRONMENT

Corruption is a socioeconomic phenomenon that, in many cases, is defined in terms of legality. Empirical research into corrupt practices is important not only because corruption is a moral matter, but also because it has practical implications; it negatively affects public policy making, the performance of public institutions and corporate transactions. Several different definitions of corruption have been advanced in a variety of literature.¹

One form of corruption that is especially common in Southern Sudan is the phenomenon of “ghost employees,” where payrolls are full of people who are not actually employed. All forms of corruption can be defined as the intentional abuse of public power for private gain in an environment where established operational mechanisms and procedures do not exist or have been ignored.

¹ For example, Harrison and Huntington (2001) define corruption as efforts to secure wealth through illegal means — private gain at the expense of the public. A better definition of corruption is provided by Joseph Senturia quoted by Smelter (1971), which is “the misuse of public power for private profit” (Gratto, 2002: 5). Transparency International (TI) adopts this conventional definition, but differentiates between “according to rule” corruption and “against the rule” corruption. The former means the payment of a bribe to receive preferential treatment for something that the receiver is required to do by law. The latter is a bribe paid to obtain services the bribe receiver is prohibited from providing (TI, 2010).

There are multiple environmental factors that help explain the misconduct and mismanagement of privileged individuals with access to power and wealth. To begin with, institutions of power and wealth sharing were established by peer groups without wider participation of grassroots communities. These institutions were not accountable to the people because incumbents of public offices (executive and legislative) were selected by peer groups to ensure immediate implementation of the CPA. In other words, creating the bodies and structures of the post-conflict government was the priority of the signatories of the peace agreement and their regional and international partners. Once officials were appointed, the dependence of extended families and “children of the area”² on politicians and senior civil servants became cultural norms of the society. All of these factors often contributed to the misuse of public funds.

RELEVANT OVERSIGHT INSTITUTIONS AND THEIR PERFORMANCE

The Interim Constitution of Southern Sudan authorizes the president of the GoSS to establish institutions by decree. On June 26, 2006, the president created the SSACC, the SSAC and the Southern Sudan Civil Service Commission (SSCSC). In the absence of accompanying legislation, most of these commissions operated on an ad hoc basis. The purpose of these commissions was to combat and prevent corruption in public institutions throughout Southern Sudan; however, the fact that they had to be established in the first place, and that they were operating in a legal vacuum, presented obstacles that they were ill-equipped to confront.

² Not all dependents who crowd the homes of public office holders in Southern Sudan are relatives. Many of them only belong to the same villages or towns of origin of the bread winners.

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SOUTHERN SUDAN ANTI-CORRUPTION COMMISSION

The SSAC was established to protect public property, investigate cases of corruption and combat administrative

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malpractices. It is guided by the principles of upholding high standards of professional ethics, transparency and accountability, and fulfills the following functions:

1. Investigates corruption cases involving public and private property. The findings of its investigations are to be submitted to the Ministry of Legal Affairs and Constitutional Development for follow-up action.

2. Combats administrative malpractices in public institutions such as nepotism, favouritism, tribalism, gender discrimination, bribery, embezzlement and sexual harassment.
3. Requires all persons holding public offices to make a confidential formal declaration of their income, assets and liabilities.

The SSACC has more stable leadership than the SSAC, but its powers are limited in the area of prosecution of corrupt individuals or institutions. The prosecution of corruption cases is the prerogative of the Ministry of Legal Affairs and Constitutional Development; however, the commission can report and publicize incidents of corruption. This body has been active on the ground, sensitizing the general public about corruption. It commissioned a baseline survey between October and December 2007 to determine levels of corruption in Southern Sudan. The survey results provided useful information that contributed to the design of anti-corruption strategies. Specifically, the survey helped the government institutions and general public to understand the nature, form, extent and location of corruption in Southern Sudan. The SSACC defined corruption as “malpractices in public institutions such as nepotism, favouritism, tribalism, sectionalism, bribery, embezzlement and sexual harassment, among others.” The survey was conceived as one way of widening the views and perspectives available to policy makers and those taking part in the fight against corruption (SSACC, 2007: 8–15).

The report identified as problems poor management skills and a lack of operational procedures and guidelines for civil servants managing public resources and offices. Another difficulty is the lack of a legal framework to combat corruption. Corrupt practices are associated with people in positions of influence. Because of an absence of checks and balances throughout the government, accountability and transparency are almost nonexistent. The absence

of legislation to normalize the operations of established institutions contributes to institutional conflicts.

From its inception in 2006 until its authorizing act was passed in 2009, the commission took part — along with other institutions — in the investigation of cases concerning the mismanagement of contracts. This investigation eventually led to the dismissal of senior civil servants in the Ministry of Finance and Economic Planning and a review of all government contracts for the period 2005–2006 (Riak, 2007).

The commission also launched public awareness campaigns about the effects of corruption on society. For example, in December 2009, the SSACC launched a five-year anti-corruption strategy for the period 2010–2014 at Nyakuron Cultural Centre in Juba. Awut Deng, the representative of the president of Southern Sudan, praised the role of the commission and reiterated her commitment to stamping out corrupt practices in public service (United Nations Development Programme [UNDP], 2010: 3). Further, Deng Deng Hoc Yai, the SSACC executive director, declared in a workshop that approximately 124 million Sudanese pounds was recovered from corrupt individuals in the first half of 2010. He went on to disclose that of 92 cases of corruption registered with the commission in 2009, only 46 had been investigated (*Juba Post*, 2010: 11). Overall, the SSACC seems to be engaged more in public information campaigns than in investigating incidents of corruption. The institution has yet to make an impact on local-level structures, at the state and county levels, where it has only symbolic representation.

SOUTHERN SUDAN AUDIT CHAMBER

The SSAC, like other oversight institutions of the GoSS, was established on June 26, 2006, to serve as a financial watchdog overseeing public institutions in Southern Sudan. Its task was challenging because of the weakness

of governance mechanisms established under the CPA. The presidential decree creating the SSAC stipulates its functions as:

- To supervise the financial performance of all levels of the GoSS, including revenue collection and expenditures. This is in accordance with the budgets approved by their respective legislatures.
- To audit the accounts of the Southern Sudan Executive, the SSLA, the Judiciary of Southern Sudan and the accounts of states, local governments, independent commissions, public institutions and corporations and any other institutions in Southern Sudan as determined by law.

The SSAC probed government contracts in 2006, an exercise that resulted in the dismissal of undersecretaries from the GoSS Ministry of Finance and Economic Planning. The minister was also suspended over the undue inflation of the cost of vehicles. According to the auditor general, “the investigation revealed that few contractors known to senior government officials were awarded the bulk of government contracts without due regard to competitive bidding. The preferred mode of payment was cash, even for foreign vendors.” (Barnabas, 2007: 9).

The SSAC was itself beset by a host of problems that resulted in the dismissal of the auditor general on December 12, 2007, removed by the SSLA following a vote of no confidence. He was accused of undermining the power of the president of the GoSS by suspending presidential appointees without prior consultation of the president, illegally purchasing a property for the SSAC and signing cheques that were outside his powers as auditor general (*Sudan Tribune*, 2008). The episode left the SSAC without leadership for two years, until a replacement was finally installed in January 2010.

SOUTHERN SUDAN CIVIL SERVICE COMMISSION

In 2005, Southern Sudan emerged from a prolonged war that destroyed its civil service institutions. The new Southern Sudanese civil service was established with contested perceptions and philosophies of the wartime political regimes, the Sudan People's Liberation Army/Movement (SPLA/SPLM) and the GoSS that resulted from the CPA in 2005. It is in this confused context that the SSCSC was announced in 2006. The commission's mission is to advise the GoSS on the formulation and execution of policies related to public service, employment and employees. It has the following powers and functions:

1. To promote the basic values and principles set out for the civil service in the constitution;
2. To investigate, monitor and evaluate the organization, administration and personnel practices of the civil service;
3. To give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in the constitution; and
4. To advise all levels of government in Southern Sudan on personnel practices, recruitment, appointment, transfer, discharge and other aspects of the civil service.

Corruption in the civil service is apparent when examining the recruitment trends of civil servants. Although attempts have been made to develop merit-based employment regulations, tribalism continues to influence employment. According to findings from a study conducted in Juba (Cook, 2008: 69–71), most government institutions do not adhere

to merit-based public service regulations. For example, if a minister hails from a certain tribe, the undersecretary and director generals are likely to be of the same tribe. The top-down approach in staffing civil service institutions has contributed to the corrupt practices of tribalism and favouritism. What is more, distrust between the SPLM and civil servants in the administration of pre-CPA institutions, added another dimension of corruption to the civil service. Many qualified Southerners, who were not close to the SPLM leadership could not find positions corresponding to their skills. A scholar described the situation:

As with all governments that have weaker hold on power, the SPLM's leadership is concerned in the first instance with placing trustworthy people in positions of authority, second with rewarding its cadres and supporters and only third with the competence of the appointees. And overlaying this structure are tribally affiliated appointments which broadly follow the balance of power in the SPLM-dominated GoSS. And this in turn means a minister's closest colleagues will typically be from his or her ethnic community. (Young, 2008: 27)

The SSCS has made little noise about corruption in public offices since its inception. There have been issues for the commission to address, such as disparities in the salaries of civil service sectors;³ however, they left these issues to the Ministry of Public Service and Human Resources Development of the GoSS to address in the Council of Ministers and in the SSLA.

³ Members of the SSLA rewarded themselves with higher salaries. Likewise, the salaries in the Ministry of Legal Affairs and Constitutional Development were very high compared to other technical ministries.

INADEQUACY OF INSTITUTIONS AND DYSFUNCTIONAL MECHANISMS

Corruption is widely identified as a serious problem undermining the peace process in Southern Sudan. Because the majority of the population has scarcely felt any “peace dividend,” the perception of embezzlement and patronage is gradually eroding public confidence in the GOSS and its incipient institutions. The GoSS has publicly professed the political will to fight corruption in Southern Sudan, with President Salva Kiir announcing a “zero-tolerance” policy in 2006, but it took three years (March 2009) for an anti-corruption bill to be passed. The central problem in the fight against corruption is the shortage of laws passed in the SSLA (Young, 2008).

In order to address corruption, one must understand it within the political-legal context in Southern Sudan after the CPA. The phenomenon of corruption in Southern Sudan should be seen as falling into a number of categories. The first consists of practices of communal solidarity. Historically, due to poverty and war, social services in Southern Sudan have been either scarce or non-existent. Without a state structure to provide services, people have maintained traditional forms of looking after each other. In the absence of institutions, social security is provided by the family, clan and tribe; therefore, when individuals manage to rise above communal poverty they are seen to have a responsibility to assist larger social networks. Behaviour that would be criticized as nepotism in other parts of the world is seen as a virtue in Southern Sudanese traditional society. Until institutions are seen to be providing services, dependence on the family or tribe safety network will continue.

The creation of a culture of corruption is another challenge. The act of receiving or offering bribes and pilfering public

funds can become common practice when this pattern of behaviour is not socially stigmatized, but instead valued as clever. When an honest individual enters an environment where corruption is expected, he or she is often seen to be a “fool” if they do not participate in the system. The climate of corruption in Southern Sudan puts honest people under pressure to engage in corrupt behaviour. Another reason for corruption identified by Southerners is the postwar mentality, which is based on a concept of “just dues,” a feeling by former soldiers that they sacrificed their lives during the war and now deserve to gain from the peace (Shelley, 2009: 2, 5).

The administrative and political leaders in Southern Sudan who returned from exile brought with them regional and international connections. These external relationships facilitated a flow of funds into neighbouring countries and beyond. GoSS officials with external connections had an easier time removing appropriated funds from the country. A meeting between three director generals of the SSACC and the director of the School of Public Policy at George Mason University on August 19, 2009, summed up opinions of the Southern population about the misuse of money in the post-CPA period:

With the signing of the CPA, the leadership returned to assume positions within the GoSS. They did not return alone, however. These new government officials brought with them “regional connections,” i.e., friendships and relationships with their own objectives and agendas. As a result of these external influences [...] revenue has been pouring out of Sudan into neighbouring countries. (Shelley, 2009: 5)

Ultimately, the GoSS is a new and immature entity created as a result of the CPA and through political appointments at the end of a protracted war. Out of necessity, formal institutions were created and staffed before legal frameworks

were even developed. Appointments were made to meet political demands and to satisfy the ambitions of those who had fought a difficult war. Appointments were also strategic — designed to reduce competition between interest groups, balance ethnic quotas and repay wartime debts. Because legislation was slow to develop, there were simply no laws or procedures in place to deal with key governance issues and, therefore, no instruments to combat corruption.

ADDRESSING CORRUPTION

Addressing the issue of corruption first requires that adequate legislation be put in place. The period from 2005 to 2008 experienced markedly weak legal frameworks and inadequate regulations to combat corruption in financial disbursement, business transactions and the labour market (Wassara, 2009: 13). Tighter control mechanisms and increased capacity on the part of government officials are also needed to coordinate the monitoring and implementation of anti-corruption programs. Many cases of corruption are treated as rumours; for example, a high profile corruption incident involving the transfer of student bursaries in the Ministry of Education, Science and Technology (MoEST) became publicly known when Ugandan authorities discovered the fraud in July 2009 (*Sudan Vision Daily*, 2009; *Gurtong News*, 2010). An official outside the finance unit of the ministry was at the centre of the scandal. People were surprised how an information technology employee could undertake business transactions without the knowledge of the ministry's chief financial officer.

In addition to bolstering legal frameworks, it is necessary to begin prosecuting high profile cases to set an example that corrupt behaviour will not be tolerated. The few cases of corruption that have been exposed were dealt with politically. They involved the dismissal of senior civil servants and the minister of finance and economic

planning and the suspension of the undersecretary of higher education. The very fact that these cases were not transmitted to competent courts in Southern Sudan raised speculation about a cover up of corruption. Interviews conducted by the National Democratic Institute (NDI) in Juba recommended investigations into allegations of corruption and enforcement of penalties for individuals or groups found guilty of corruption (Cook, 2008: 75–78). To understand these conditions one must first understand the kind of society that is developing in Southern Sudan after the CPA. The society of Southern Sudan was dominated for decades by military regimes — the Sudan Armed Forces and the SPLA — which did little to engender civic values. This situation gave rise to a distribution of power and opportunities along ethnic and tribal lines. As a consequence, corruption has become a collective illicit enterprise that involves a conspiracy between colleagues, partners, assistants and superiors. Because this situation is developing collectively, it will also need to be tackled collectively through anti-corruption institutions and with the involvement of civil society and the general public.

Information transparency is another tool in the drive to stamp out corruption in Southern Sudan. Transparency enhances public involvement in the budgeting and procurement processes, and contributes to the reduction of corruption by helping to identify those engaging in corrupt practices through audit reports disseminated by the media (see Gatto, 2002). It also helps to foster an environment that is less appealing to those tempted by corruption. Development partners maintain, however, that there is an ongoing lack of transparency in payment prioritization, cash management and banking in Southern Sudan (see, for example, Kitabire, 2007).

THE IMPACT OF CORRUPTION ON SECURITY SECTOR

The socio-economic situation of Southern Sudan has recently changed from a war economy to an economy mainly subsidized by the transfer of oil revenue from the north to the south. Southern Sudan to date has no viable economy that could independently support the state and provide public services to southern communities; it is currently threatened by allegations of corruption and mismanagement of public goods and services. Currently, 98 percent of the GoSS budget is funded by transferred oil revenues. The absence of a payroll, and an untenable wage bill, weak procurement systems and a lack of internal control mechanisms illustrate the weakness of the public financial management system. With high salaries and 40 percent of the budget being allocated to military related expenditures, few resources remain for basic services and the security sector (UNDP, 2008).

The military displays many of the characteristics of its recent past, plus it faces the effects of an economic crisis that threatens to undermine military discipline and professionalism. Under the current GoSS budget, with a 40 percent allocation to security and defence expenditure, sufficient funding is not available to pay all the salaries of organized forces and war veterans. An increasing number of reports indicate that military personnel are reverting to extortion at road blocks, especially on trade routes connecting Southern Sudan to neighbouring countries. In some cases, units of the SPLA disobey orders with impunity. For this reason, the SPLA Command dismantled its unit at Wau Shilluk near Malakal in 2008, when soldiers revolted against underpayment of their salaries. In 2009, the war veterans caused chaos in Yei County because they were not paid their allowances on time.

The justice system suffers from similar problems, such as insufficient funds to establish the badly needed infrastructures in states and counties for justice administration. Many cases are delayed in courts due to insufficient resources for the investigation, prosecution and adjudication of cases. Ordinary people complain about the attitudes and behaviour of organized forces, which, in some cases, are incompatible with their duties of protecting civilians. Distrust increases between communities and the police, lawyers and judges who are seen not to be fulfilling their duties satisfactorily. The Southern Sudan Police Service is struggling to gain the necessary professionalism that would command the respect and trust of the population. The police force includes former SPLA combatants and former militia members. They maintain military attitudes and are often perceived to be abusive toward the population. The costs of professionalizing the security sector, according to the GoSS and state authorities, remain prohibitively high, thus attempts to redress the situation requires financial resources and good practices that would reduce administrative and financial malpractices.

CHALLENGES AND PROSPECTS

It is generally accepted that corruption is a moral concern and has a negative effect on government performance and societal welfare. Corruption is an obstacle to Southern Sudan's economic and social development. Although there has been little research commissioned in Southern Sudan to investigate the phenomenon of corruption, there are clear challenges to be surmounted by authorities at different levels of public management, including the GoSS, state governments and the counties.

One way of mitigating corruption in Southern Sudan is to promote accountability. Governments at the GoSS and state levels were less accountable to people during the period preceding the general elections in April 2010, and

this was when allegations of corruption were at their peak. Appointments to post-conflict institutions were made from the top down — ministers first, followed by undersecretaries and director generals, with other levels of the civil service last — in the absence of proper administrative systems. This situation weakened the development of operational mechanisms. In the field of financial management, reports indicated that many contracts were awarded outside of the budget, and that some government officials were involved in the provision of contractual services to the GoSS and state governments through regional business enterprises. It remains to be seen how the government's accountability systems will change after the general elections.

The centralization of public management has reinforced corruption in Southern Sudan. The post-CPA government structures were adapted to a federal system, and although the Interim Constitution of Southern Sudan has decentralization as a core value, the contrary has been the rule in practice. Technical ministries in states, counties, payams and bomas all depend on the GoSS for funds to pay their employees. The GoSS line ministries completely control the disbursement of funds in Southern Sudan, including funds budgeted for counterpart units in state governments. Spending approvals are still made at the political rather than the technical level (Kitabire, 2007). This means that political directives on spending remain an obstacle to mitigating corruption in Southern Sudan. The degree of centralization and concentration of financial power engenders tensions between state governments and the GoSS, and facilitates corruption.

Business has also been affected by weak institutionalization. Many enterprises such as commercial banks were established in the context of this legal vacuum in Southern Sudan. Established national banks had difficulty conducting business transactions. In the last quarter of 2008, and prior to the SSLA passing the Partnership Act, the Registration of Business Name Act, the Contract Act and the Agency

Act, among others, business transactions were being conducted on an ad hoc basis. With the exception of the Kenyan Commercial Bank, local commercial banks were operating at a loss, as small businesses owned by Southern Sudanese tended to operate on a cash basis. The circulation of money and transfers are still handled through hoarding and smuggling of hard currency out of Southern Sudan, as poorly applied regulations govern the flows of hard currency in and out of the region. All these realities contribute to creating a favourable environment for corruption.

There are many other challenges emanating from the widespread corruption facing communities in Southern Sudan. Rural communities' expectations of a peace dividend and socio-economic development are not being met. Southern Sudan has the lowest rate of adult literacy in the world, with women more affected than men; it has very poor physical infrastructure; and subsistence agriculture and animal husbandry have yet to be restored since the CPA was signed. This lack of progress is attributed as much to the void of institutional structures and mechanisms of governance left by the prolonged civil war, rather than the mismanagement of funds and the misallocation of human resources.

CONCLUSION

Many studies of corruption fail to differentiate between different kinds of corruption, conflating embezzlement, fraud, extortion and favouritism. The main point of this paper is to show that corruption is not embedded in the society of Southern Sudan as some researchers have claimed. Instead, the establishment of a government from scratch created a climate of corruption. The CPA's wealth-sharing provisions ensured the flow of oil money into government coffers in Southern Sudan without adequate mechanisms of economic governance and accountability.

Although Southern Sudanese politicians have expressed the political will to confront corruption, the SSACC and other oversight institutions could not prosecute institutions and people for corruption without the relevant codes of law. In the absence of legal provisions dealing with corruption, the GoSS dealt with cases of corruption according to political calculations and by decree. Corrupt individuals were dismissed or suspended by the president of Southern Sudan. Such individuals remain at large, but there is no evidence to indicate that they have re-engaged in public sector institutions. In short, the SSLA and anti-corruption institutions must continue to develop legal and bureaucratic frameworks to combat corruption, and the GoSS and state governments must redouble their efforts to set proper mechanisms of governance in place in order to minimize corruption in Southern Sudan.

Corruption adversely affects the security sector of Southern Sudanese society. Shortages of financial resources attributed to public mismanagement retard the implementation of reforms and the professionalization of security sector institutions. This situation encourages looting of resources in communities (such as cattle rustling) and extortion by organized forces to ensure their survival. To restore confidence between the rulers and the ruled, these challenges need to be addressed by making laws and developing a code of conduct for those holding public offices.

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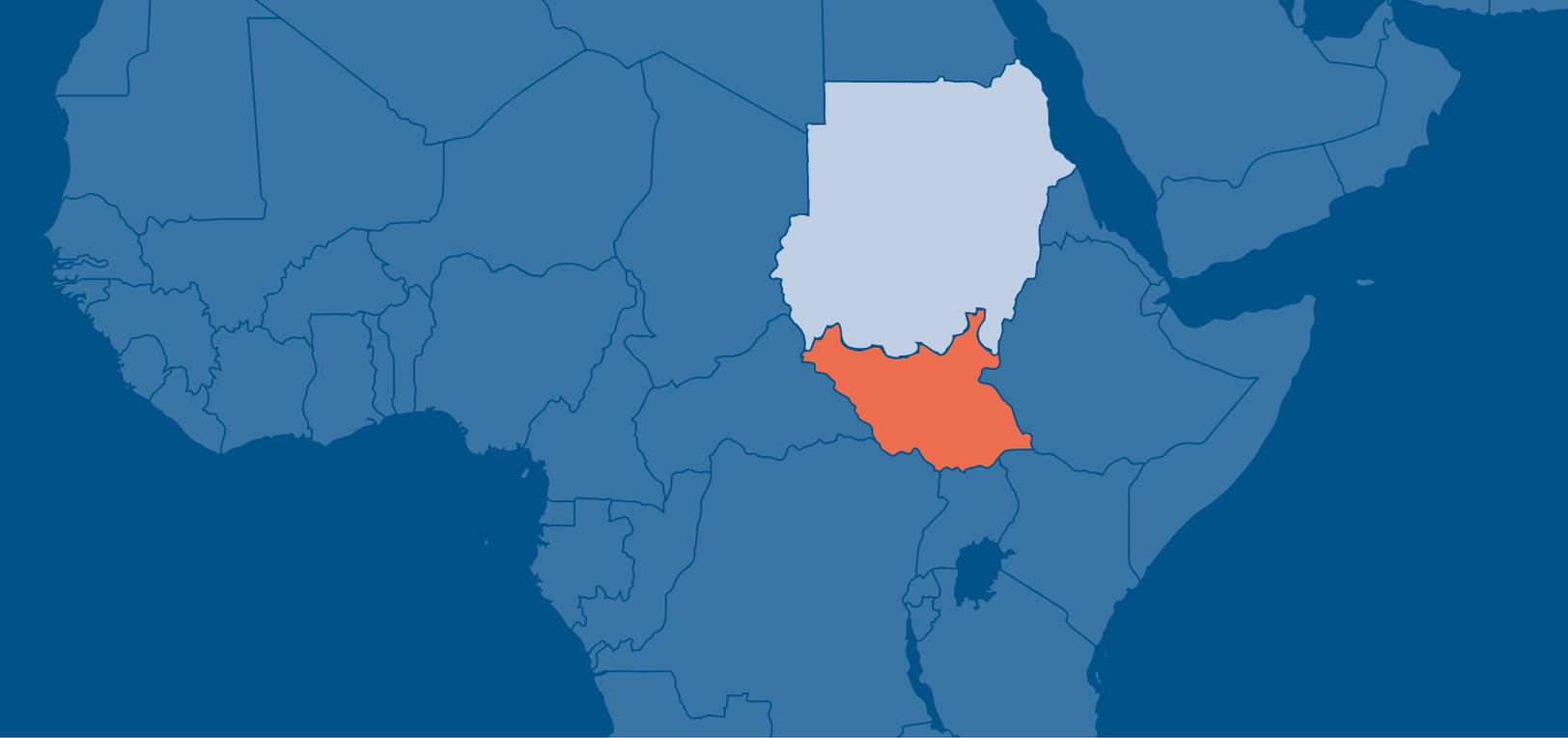
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