

# U4 Expert Answer



## Overview of corruption and anti-corruption in South Sudan

### Query

*Please provide an overview of the nature of corruption in South Sudan. What legal and institutional framework is available to address corruption?*

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### Caveat

Since South Sudan has only gained independence in 2011, there is little data and research on governance and corruption. South Sudan is not included in most of corruption and governance indicators, yet.

### Summary

South Sudan became independent on 9 July 2011, emerging from decades of civil war. The country faces a myriad of governance and poverty challenges, as well as continued hostilities with Sudan. At the domestic level South Sudan is struggling with structural obstacles such as a lack of basic infrastructure, the weak development of markets and the lasting level of insecurity.

Corruption permeates all sectors of the economy and all levels of the state apparatus and manifests itself through various forms, including grand corruption and clientelistic networks along tribal lines.

Since independence, the country has taken steps to promote transparency and accountability to fight corruption, South Sudan's anti-corruption framework is still in its infancy. Where legal instruments exist, lack of capacity, resources and political will often hamper effective implementation.

## 1. Overview of corruption in South Sudan

### Background

The history of South Sudan is closely intertwined with the history of Sudan. Since Sudan's independence from the British in 1956, it faced long civil wars, involving ethnic, religious and economic conflicts between Northern and Southern Sudan. The conflict ended with the 2005 Comprehensive Peace Agreement (CPA), signed by the government of the Republic of the Sudan and the then southern-based rebel group, the Sudan People's Liberation Movement (SPLM). The CPA formalised a power-sharing system between the SPLM and the ruling political faction in Khartoum, the National Congress Party (NCP). Both parties held seats in a national unity government. The South, ruled by the SPLM-dominated government of South Sudan (GOSS)

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in Juba was granted a large degree of autonomy. The CPA further provided for self-determination for the people of Southern Sudan. The referendum was held in January 2011 when 98% of South Sudanese voted for independence. The Republic of South Sudan was established on July 9, 2011.

Since independence, tensions continue with the North, particularly in the contested region of Abyei, where a separate referendum was cancelled. Negotiations further stalled over issues including border demarcation and management of the oil sector.

When the mandate of the UN Mission in Sudan (UNMIS) expired with the independence of South Sudan, the Security Council unanimously approved a successor mission, the UN Mission in South Sudan (UNMISS), to include 7,000 military personnel. It has the mandate to “consolidate peace and security,” to help establish conditions for development, and to strengthen the capacity of South Sudan to govern effectively and democratically (HRW, 2012).

Insecurity within the South was a serious problem both before and after independence. The SPLA faced a series of armed rebellions where almost 2,400 people were killed in separate incidents during the first six months of 2011. Rebel leader George Athor was killed in December in an SPLA operation in the southwest of the country (Freedom House, 2012).

The country has been facing significant governance challenges including building core administrative structures and mechanisms. The new nation also struggles to contain internal violence, prevent abuse by its security forces and tackle corruption.

South Sudan, a country highly dependent on oil and foreign aid, is desperately poor and lacks accountable public institutions. A shutdown in oil production after continued dispute over oil with Sudan resulted in austerity measures, as South Sudan relies 98% on oil revenues.

## Extent of corruption

South Sudan is not yet included in most governance indicators and there is still very little quantitative data available on the extent of corruption in the country. The country performs extremely poorly in its first ranking on the 2011 World Bank's Worldwide Governance Indicators, scoring well below 20 (on a scale of 0 to 100) in all areas of governance assessed. The scores

on control of corruption and government effectiveness are particularly low, ranking 0.9 for both categories.

According to the 2011 Global Corruption Barometer, 67% of all citizens surveyed believe that corruption in the country has increased during the three years preceding the survey.

## Nature of corruption challenges

Corruption is present in all sectors of the economy and at all levels of the new state apparatus. Corruption is manifested in various forms, including financial and political corruption, patronage, pervasive tribalism and misuse of power. Both petty and grand forms of corruption are prevalent in South Sudan.

### *Bureaucratic corruption*

Citizens commonly face demands for bribes in their dealings with government institutions to access basic public services. The latest Transparency International Global Corruption Barometer found that those respondents who have had contact with nine public institutions (police, education, judiciary, medical services, land services, tax revenue, customs, registry/permit), 66% reported paying bribes in the past 12 months. The citizens' experience with corruption is significantly high in dealing with the police (where 47% of those in contact with the police reported paying bribes), registry/ permit services (46%), the judiciary (43%), and land services (41%). Coming to the reasons for paying bribes, the majority of Southern Sudanese have reported “to avoid a problem with the authorities” (40%) or “to speed things up” (33%) (Transparency International, 2011).

When it comes to doing business in the capital Juba, the large numbers of documents, payment and procedures required for business operations encourages public officials to solicit bribes and facilitation payments to bend the rules or speed up bureaucratic processes. South Sudan is not ranked yet by the *Ease of Doing Business Index*, however the subnational city profile of Juba gives a first indication about doing business in the country. An entrepreneur in Juba must take 11 procedures, 15 days and spend 250,2% of income per capita to open a business (World Bank/IFC, 2011). In a comparative perspective, the averages are low in terms of time (OECD average is 14 days), but high in terms of costs, as Juba is the second most expensive city to start up a business.

### *Patronage*

The new state is dominated by the military elite which is strongly fragmented and marked by competing clientelist networks along tribal and ethnic lines. The diverging interests are kept in balance around the President Salva Kiir which makes the regime susceptible to the demands of the many competing groups and thus open to corruption and clientelism (Lacher, 2012). Since the CPA in 2005, the GOSS has put efforts into integrating potential rebels and rewarding allies by appointing them to senior lucrative or symbolic posts. These appointments often consume large proportions of the state budget with ministries, agencies and commissions growing in number. National and State Parliaments serve above all as instruments of patronage (Lacher, 2012). Many complaints have been voiced about governors appointing members of their own clan without visible functions. According to the same author political accommodation, as a strategy for stability, is favouring the patronage system.

Another report finds that South Sudan's state has become the private property of its dominant political class, putting the business of governance and the wealth it generates well beyond citizens reach (Hemmer, 2012).

### *Political corruption*

South Sudan first national elections are due to be held in 2015. During the interim period, the country will be governed according to the results of the 2010 presidential and legislative elections, which were dominated by the SPLM party. The EU Election Observation Mission declared the elections which resulted in the election of President Salva Kiir Mayardit, as falling short of a number of international standards for genuine democratic elections (EOM Sudan, 2010).

In the months preceding the April 2010 elections, some persons suspected to be opposed to the SPLM have been harassed, arrested, and detained by the security forces, including journalists and opposition members (US Department of States, 2011).

The SPLM also imposed governors in some states. In the Unity State, for instance, the incumbent SPLM governor was declared the winner in spite of citizens voting overwhelmingly for the independent candidate (US Department of State, 2012). The imposition of SPLM governors triggered violence, resulting in deaths and injuries.

The implementation of the Southern Sudan Referendum in 2011 fulfilled a major requirement of the CPA of 2005 ending the second Sudanese civil war. Despite delay in passing the Southern Sudan Referendum Act and the establishment of the Southern Sudan Referendum Commission, the Referendum took place on time. According to international electoral observers, the referendum was held in a mostly peaceful environment and assessed it as credible and well organised.

Some observers, however, raised concerns of fraud and intimidation. The EU Mission particularly raised concerns about "the non-pluralistic political environment that resulted in the sometimes intimidation tactics used by the ruling SPLM in encouraging registered voters to cast their ballot" (EOM, 2011).

### *Embezzlement*

Grand corruption is a serious problem in South Sudan as officials take advantage of inadequate budget monitoring to divert public funds. The Head of the UN Mission to South Sudan called on the international community to help trace and repatriate funds that have been deposited abroad by GOSS officials (Freedom House, 2012).

President Salva Kiir has accused at least 75 current and ex-government officials of embezzling US\$4bn of public funds. In an extraordinary letter to the 75 senior staff, he demanded the funds to be returned anonymously to a bank account in Kenya. He also declares that "most of these funds have been taken out of the country and deposited in foreign accounts" (The Guardian, 2012). Some have purchased properties, often paid in cash. Since the letters were written, about US\$60m of the money that was used in various ministries has been recovered but the parliament suspended the suspected officials until they are convicted or acquitted (BBC News, 2012).

Another prominent scandal is the grain scandal. In 2008 the Ministry of Finance and Economic Planning initiated a huge project of purchasing and delivering grain throughout the country as well as building 132 emergency grain stores at a cost of US\$34m. According to the US State Department only 46 of the 132 stores were built and grains never reached their recipients and the rest of the money was either misappropriated or embezzled (US State Department, 2012.)

## Overview of sectors and institutions most affected by corruption in South Sudan

### *Extractive industries*

Despite South Sudan's independence from Sudan, both countries are still interdependent concerning the extraction of oil. The 2005 CPA was based on a deal to split oil revenues evenly, but contained no provisions for post-independence on an oil sharing mechanism or export transit fees.

Without an agreed basis for exporting South Sudan's crude oil via Sudan's pipelines and port, tensions have escalated dramatically. In January 2012, Sudan began confiscating South Sudanese oil in lieu of transit fees believed owed since independence. South Sudan responded by shutting down oil production. Though this prevented Sudan from accessing the oil, South Sudan was hit hard as it is the most dependent country in the world on oil, which makes 98% of its income (Global Witness, 2012).

In August 2012, an agreement between North and South Sudan was reached where South Sudan committed to pay fees of between US\$9.10 and US\$11 per barrel for use of Sudan's pipeline and export facilities. South Sudan has further agreed to provide a US\$3.028 billion grant over three and a half years to mitigate the drop in Sudan's income caused by the South's secession in 2011 (Global Witness, 2012).

South Sudan faces many of the corruption challenges resource-rich countries face. The lack of transparency in the oil sector as well as the lack of expertise in managing oil revenues is further increasing corruption opportunities. Since independence there have been several reports of new oil deals being negotiated and possibly awarded without open and competitive bidding processes. No contracts or production data have been made public and support for oversight institutions like the Audit Chamber and the National Legislative Assembly is lacking (Global Witness, 2012).

There are nevertheless foundations for sound oil management that set out a clear blueprint for how oil operations, contracts, and revenues should be managed (Global Witness, 2012).

The Petroleum Act includes many important requirements to prevent corruption and mismanagement. In addition to general commitments to

publish contracts and regular production and revenue data, the law requires that all oil contracts be awarded through a competitive, public process. This allocation process is complemented by compulsory publication of information on beneficial ownership of contractors (the individuals behind the companies).

The government has also drafted a Petroleum Revenue Management Bill<sup>1</sup> that includes important requirements for how revenues will be collected, managed, audited, and reported.

Though the government has sent many strong signals to its citizens and international partners that it intends to run a transparent and accountable oil sector, huge challenges remain in setting up the necessary administrative and reporting systems, and effective checks and balances (Global Witness, 2012).

### *Public financial management*

Until the decision of the GOSS to shut down oil production in January 2012, South Sudan's revenue was relying 98% on oil. Since then it has adopted austerity measures and aims to boost non-oil revenue for 2012-13 to 700 million pounds - 440 million from taxes and 260 million from fees, charges and other non-tax revenues (Reuters, 2012).

The 'austerity measures' involve cuts of around 30%, mainly to government consumption, transfers to the states, development budget and 50% cut to housing allowance but without touching public officials' wages and salaries.

These circumstances are further aggravated by the fact that the South Sudanese economy is only superficially integrated into markets and monetised exchange which makes it difficult for the state to raise taxes on markets and transactions (Lacher, 2012).

Currently, PEFA (Public Expenditure and Financial Accountability Program) is assessing South Sudan's public expenditure, procurement and financial accountability systems. So far, the assessment remains incomplete but the World Bank (2012) stated that South Sudan published only 50 % of its expenditures. The GOSS has also been reluctant to release information on oil revenues, supposedly because of security concerns.

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<sup>1</sup> This bill has not yet passed the parliament but is expected in the next few months.

The Sudan Public Expenditure Review 2007, which includes autonomous Southern Sudan, commented that some sources of government revenue appeared to be off-budget, including non-tax income for ministry services, police registration fees and travel taxes (Mbaku & Smith, 2012).

In addition to the failure to provide the public with adequate information on oil revenues, the GOSS has not been providing effective monitoring of the allocations to states (Mbaku & Smith, 2012).

### *Police and security forces*

According to the US Department of State 2012, corruption is affecting both Sudan and South Sudan when it comes to police and security forces (US Department of State, 2012). This is reflected in the 2011 Global Corruption Barometer, where South Sudanese have assessed the police as the most corrupt institution in the country (Transparency International, 2011).

The spectrum of transgression ranges from “everyday incidents such as illegal ‘taxation’ at checkpoints, assaults by drunken soldiers through to grave human rights violations” (Lacher, 2012).

Police corruption seems to be the most preoccupying in linkage with human rights abuses. The South Sudan Police Service (SSPS) is ill-equipped, unprofessional, and overwhelmed by the country’s security challenges. In February 2011, UN inspectors uncovered evidence of brutality and rape at the main police-training academy. At least two recruits died of their injuries. There were frequent reports during the year of arbitrary arrest, torture, and long periods of pre-trial detention in substandard facilities (Freedom House, 2012).

Human Rights Watch also documented unlawful killings, beatings and looting particularly while conducting forcible community disarmament operations as well as unlawful arrests and detentions. UN and humanitarian aid groups have further reported that police, soldiers and local authorities have harassed staff, hijacked vehicles and stolen aid supplies. The UN human rights chief of South Sudan was severely assaulted by police officers last August (HRW, 2012).

## 2. Governance structure and anti-corruption efforts in South Sudan

### Overview of anti-corruption reforms in South Sudan

Since the CPA in 2005, there have been efforts to step up the fight against corruption, but South Sudan’s anti-corruption framework is still embryonic. Where legal instruments exist, lack of capacity, resources and political will often hamper their implementation.

### Legal framework

#### *International legislation*

South Sudan has not yet signed nor ratified any international conventions against corruption.

#### *National legislation*

The South Sudan Penal Code Act 2008 provides criminal penalties for acts of corruption; however, the government did not effectively implement the law, and officials continue to engage in corrupt practices with impunity. According to the US State Department, despite President Kiir publicly criticising corruption, it was a problem in all branches of government and was compounded by poor record keeping, lax accounting procedures, and the pending status of corrective legislation within the country.

Government officials of director general rank and higher are required to submit financial declaration forms, although there is no penalty for failure to comply.

No law provides for public access to government information (US Department of State, 2012) and there is no legislation yet which provides for whistle-blower protection.

Despite the *Public Financial Management and Accountability Act 2011*, which provides for the establishment of procedures to control the management of public finances of the government, accountability in public financial management remains low.

The *Public Grievances Act of 2011*, provides for the redress of public grievances and remove patent injustices and present injuries suffered by citizens in relation to institutions of the government of South

Sudan, it also strives to impose the performance of the government institutions by ensuring their efficiency and propriety. The Act provided for the establishment of a Chamber of Grievances, which has already been affected by a crisis of alleged mismanagement of funds. Senior officials of the Chamber have accused their chairperson of corruption and asked the leadership to seriously look into the matter (Sudan Tribune, 2012a).

## Institutional framework

### *Judiciary*

The interim constitution provides for an independent judiciary headed by a Supreme Court. The President's Supreme Court appointments must be confirmed by a two-thirds majority in the National Legislative Assembly.

According to the US State Department, the courts were subject to pressure from the government and the SPLA on sensitive matters, such as the possible illegal sale of government land (US Department of State, 2012).

The court system in South Sudan is embryonic and faces major constraints. In September 2011, the chief justice said the courts had the capacity to handle 100,000 cases a year, but faced four times that number.

As a result, it does not function in many areas due to a lack of infrastructure, communications, and funding. In areas where courts exist, they are understaffed, and judges must handle many of the court's administrative tasks themselves. According to the UN human rights officer in Rumbek, some judges in formal courts reportedly continued to follow Sharia principles of tribal customary law in their rulings (US Department of State, 2012).

According to Human Rights Watch, South Sudan's plural legal system, in which formal courts co-exist with customary courts presided over by chiefs, presents concerns relating to the guarantee of due process rights. The HRW researchers met numerous people sent to prison by chiefs who had no formal legal training, for crimes that do not appear in South Sudan's criminal code. Though these courts are more accessible and efficient in some respects than the formal courts, the courts' criminal jurisdiction and sentencing powers are not sufficiently clear (HRW, 2012a).

### *Supreme Audit Institution*

South Sudan already has an institution in place with the legal mandate to independently monitor government processes and audit accounts. The Audit Chamber Act 2011 provided for the establishment of the National Audit Chamber which is tasked with supervising the financial performance of the whole government and reconciling government accounts with the annual budget. This involves the auditing of all revenue collection and spending, which is then reported on annually to the president and the National Legislative Assembly. It has so far published reports covering 2005/2006 and 2007/2008 which reported a number of findings on how the government's finances have been managed (Global Witness, 2012).

### *Anti-Corruption Commission*

In South Sudan, the institution with the constitutional mandate to investigate and prosecute corruption cases is the South Sudan Anti-Corruption Commission (SSACC). But the capacity of the SSACC is still very limited and it remains to be seen if it will actually be able to bring any major corruption cases to court (Global Witness, 2012).

The SSACC was created in 2009 under the authority of an amendment to the interim constitution of 2005. The transitional constitution expanded SSACC responsibilities to include prosecuting as well as investigating allegations of corruption. The 2009 Southern Sudan Anti-corruption Commission Act nevertheless provides that the SSACC refer investigations suggesting criminal activity to the Ministry of Justice for prosecution.

The National Legislative Assembly adopted the 2010 SSACC annual report and noted that the transitional constitution mandates that the commission prosecute corruption suspects. In practice the commission had no authority to prosecute because the constitution does not repeal or amend the 2009 act, previous laws, or procedures vesting prosecutorial powers in the Ministry of Justice (US Department of State, 2012)

Further, according to the U.S. government's 2011 Human Rights Report, since its establishment, the SSACC has submitted six cases of corruption for prosecution to the Ministry of Justice, none of which had been adjudicated by year's end. According to Global Witness, no government officials have yet been convicted of corruption, despite the fact that corruption is widely acknowledged to be endemic.

## Other actors

### Media

In May 2012, three bills were approved by the cabinet and were submitted to the National Legislative Assembly. The Right of Access to Information Bill, the Broadcasting Corporation Bill, which would separate state-owned SSTV from the government, and the Media Authority Bill, which would create a media regulatory body (Reporters without Borders, 2012).

There is still no clear legal framework and set of protections for journalists in South Sudan. Journalists have reportedly been subjected to regular harassment, restriction of movement and access, detention, and abuse, risks undermining all the best intentions behind South Sudan's transparency and accountability efforts (Global Witness, 2012).

Many officials, particularly from the SPLA, view journalists' activities with suspicion. According to the Union of Journalists of Southern Sudan, media workers face harassment, assault, and arrest in the course of their work, and avoid covering sensitive subjects such as human rights abuses and official corruption (Freedom House, 2012).

In February 2011 for example, security officials assaulted an employee of the *Citizen* newspaper and raided its offices following the publication of an article exposing police corruption. Copies of the *Juba Post* were seized in March after the paper carried an interview with the rebel leader George Athor. In November 2011, the editor and a journalist with *Destiny* newspaper were detained following the publication of an editorial that was critical of the president. Both were held without charge for two weeks before being released.

Persecution of journalists, particularly those covering the December 2012 violence in Wau, is on the rise as the government resorts to censorship in an attempt to prevent coverage of ethnic clashes occurring in the country (Freedom House, 2012).

However, in spite of these challenges, the country has entered the Reporter without Borders' Press Freedom Index 2011-2012 in a respectable position (111th) for what is a breakaway from one of the worst ranked countries, Sudan (170th).

### Civil society

Freedoms of association and assembly are enshrined in the interim charter, and the authorities typically uphold them in practice. South Sudan is highly dependent on the assistance of foreign nongovernmental organizations (NGOs), which operate freely in the country. Domestic civil society organizations, including unions, however remain at an early stage of development. A Workers' Trade Union Federation was formed in late 2010, and the GOSS pledged to support its work (Freedom House, 2012).

In spite of this trend, it remains difficult for civil society organisations to work on corruption and governance issues. For instance, in July 2012, the Chairperson of the South Sudan Civil Society Alliance was kidnapped in Juba. He was reportedly held and beaten for three days by unknown assailants and interrogated about his work on corruption issues in the country (Global Witness, 2012a).

At the moment, civil society in South Sudan is very weak and limited. According to experts consulted within the framework of the answer, civil society and international organisations have nevertheless played an important role in the fight against corruption.

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