

Workshop on Transitional Government in South Sudan

The Challenges of Political Transition:
Lessons from CPA

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Introduction

- 1. Conflict Analysis Framework: Positioning Transition**
- 2. Political Transition: General Trends**
- 3. Managing Political Transition: The Case of Sudan Peace Agreement**
- 4. Why then Sudan faces again civil wars?**
- 5. Why South Sudan Slides to civil war?**
- 6. Political Transition: Implications to IGAD Negotiations on South Sudan**
- 7. Conclusion**

1. Conflict Analysis Framework: Positioning Transition

Level/ Phase	Pre-War Period (Production Factors)	During War Period (Reproduction Factors)	Post-War Period (Desired Outcomes)
Global and Regional (Macro)	<ul style="list-style-type: none">✓ Debt Burden✓ Colonial Legacy✓ Shared Resources✓ Bad Neighbours	<ul style="list-style-type: none">✓ MNCs and Natural Resources✓ Arms trade✓ Neighbouring countries✓ Humanitarian assistance	<ul style="list-style-type: none">✓ Post-conflict Dev. Assistance (JAM)✓ Monitoring Implementation of Peace Agreement✓ Post-conflict accountability
National (Meso)	<ul style="list-style-type: none">✓ Extractive Economic and Political institutions✓ Failure of state and elites	<ul style="list-style-type: none">✓ Counterinsurgency warfare✓ Ethnicity and Religious diversity for mobilization✓ Natural resources	<ul style="list-style-type: none">✓ Inclusive economic and political institutions✓ Federalism as system of governance for managing diversity.✓ State-building
Community (Micro)	<ul style="list-style-type: none">✓ Grievances✓ Inequality✓ Access to Basic services✓ Level of unemployment✓ One ethnic dominance	<ul style="list-style-type: none">✓ Youth prey to insurgency✓ Intra and inter community conflict✓ Decay of social capital✓ Trauma	<ul style="list-style-type: none">✓ Safety nets and social protection✓ Nation-building✓ Local justice and accountability✓ Local reconciliation✓ Counseling and healing

2. Political Transition:

Bridging War and Sustainable Peace (Hysom and Kane, 2013)

- Why countries slide to conflict? Management of Transition
- Transition as a bridge: Challenges and Opportunities
- The Pace of the Transition (Timing of elections)
- Sequence of the Transition (constitution, election and legitimacy)
- What should a transition agreement address?
 - ✓ A time-bound roadmap
 - ✓ Decision-making
 - ✓ Deadlock breaking
 - ✓ Pre-agreeing outcomes
 - ✓ Constitution-making: bodies and composition
 - ✓ Security arrangement and transitional justice
 - Who supervises the transition? (status quo, gov. of national unity, exclusion of warring parties)

3. Managing Transition:

Lessons from Sudan Comprehensive Peace Agreement (CPA)

- **Warring Parties: Incompatible Political Visions**
 - ✓ Many peace agreements between South and North dishonoured
 - ✓ Sudan People's Liberation Movement (Southern led-movement) vs. National Congress Party (Gov. led-political party) in 1989 through military coup
 - ✓ Islamic Sharia vs. Secularism
- **CPA: Transition Agreement and Building Bridge**
 - ✓ Mediated by the region (IGDA) that agreed with the warring parties on peace negotiations roadmap "Declaration of Principles".
 - ✓ Only the two warring parties were involved (Game Theory)
 - ✓ Reconciling two incompatible political visions by agreeing to work towards making unity attractive during the interim period of six years while giving the people of South Sudan the right of self-determination
 - ✓ Self-rule to the people of the South
 - ✓ Religious and ethnic Diversity recognized
 - ✓ Witnessed and signed by 14 regional/international organizations and countries

3. Managing Transition:

Lessons from Sudan Comprehensive Peace Agreement (CPA)

- **Who supervised transition?**

- ✓ Gov. of national unity with power-sharing agreement between the incumbent (NCP), the rebels (SPLM) and other parties.
- ✓ Joint National Transition Team (consisting of two warring parties) to oversee the transition
- ✓ International community (Assessment and Evaluation Commission)

- **The Pace of the Transition**

- ✓ Six-month of pre-interim period for security arrangements, resolving border issues, building trust and preparation for implementation of peace agreement.
- ✓ Interim period of 6 years as mid-way between 2 years (SPLM) to 10 years (GoS/NCP)
- ✓ Interim national parliament appointed on the basis of power-sharing agreement to pass the necessary legislations (election and referendum),
- ✓ Elections deferred to the third year but conducted in the fourth year of the interim period

- **Sequence of the Transition**

- ✓ A constitutional drafting committee agreed upon in the CPA and consisting mainly of the warring parties to draft interim constitution during the pre-interim period.
- ✓ Drafting committee was guided by CPA to be the basis for the interim constitution
- ✓ The draft interim constitution was then discussed and passed by the national constitutional review commission consisting of all stakeholders (warring parties, other political parties and civil society)
- ✓ CPA and the approved draft interim national constitution were then passed by both the incumbent national parliament and SPLM National Liberation Council (the legislative body of the rebels)

3. Managing Transition:

Lessons from Sudan Comprehensive Peace Agreement (CPA)

- What should a transition agreement address?

- ✓ **A time-bound roadmap**

- CPA provided a clear roadmap,
- Detailed implementation modalities with clear time-lines

- ✓ **Decision-making**

- Joint Presidency (NCP and SPLM) to take decision by consensus
- Decisions of Interim government and parliament through consensus
- Consensus led many times to gridlock and impasse such as Abyei

- ✓ **Deadlock breaking**

- CPA in-built Arbitration: Assessment and Evaluation Commission and Abyei Boundaries
- International binding and final arbitration: Abyei Border Arbitration
- Constitutional Court.

- ✓ **Pre-agreeing outcomes**

- Detailed pre-agreed political outcomes such as elections, referenda and popular consultation for the people of Nuba Mountains and Blue Nile

3. Managing Transition:

Lessons from Sudan Comprehensive Peace Agreement (CPA)

✓ **Constitution-making: bodies and composition**

- A small drafting committee agreed upon in CPA consisting only of the warring parties to translate CPA into Interim National Constitution
- National constitutional review commission consisting of all stakeholders (warring parties, other political parties, civil society and women) to discuss and approve the draft interim national constitution.
- The approved draft interim national constitution passed by the incumbent national parliament and SPLM Liberation Council (legislative body of the rebel)
- Presidency, government of national unity and interim parliaments established on the basis of the approved interim national constitution.

✓ **Security arrangement and transitional justice**

- Detailed security arrangements with three armies (national army (in the north), rebel army (SPLA in the South) and joint army consisting of national army and rebel army to be deployed the war affected areas (South, Abyei, Nuba Mountain and Blue Nile, capital)
- Difference over how to deal with the past (accountability and justice) and reconciliation.

✓ **Transition not to become permanent**

- General elections were held in 2010 as basis for transition to permanent structure
- By the end of interim a referendum for the South was conducted and that resulted in the South becoming independent in July 2011.

4. Why then Sudan faces again civil wars?

- CPA was not comprehensive (Darfur and Eastern Sudan).
- CPA Unfinished Business: The Popular Consultation for the people of Nuba Mountains and Blue Nile, Abyei Referendum, Border, Democratic transformation and recognition of diversity.
- Weak role of civil society.
- The Curse of Political Islam and Extractive Institutions.
- The Curse of Oil and Separation of the South
- Transitional Justice

Why South Sudan sliding to civil war?

The Challenges of Transitions

- **Transition from War to Peace and Independence**
- **Transition from Liberation to Government: The SPLM**
- **The Quality of Institutions and Policies**

Why South Sudan sliding to civil war?

Transition from war to Peace and then Independence

- **Transition as a bridge: Challenges and Opportunities**
 - ✓ CPA focused on the national transition
 - ✓ South Sudan and SPLM focused more on independence during the interim period
 - ✓ Less focus on nation-building and more on state building
 - ✓ Struggle for independence undermined the focus on institutions and accountability
 - ✓ Preparation for transition to independence did not involve adequately civil society
- **Who supervised transition?**
 - ✓ Unlike national government, the SPLM was the only political party in the South that exclusively supervised CPA on behalf of the people of the South
 - ✓ Presidency in the South was exclusively for SPLM with symbolic representation of other political parties with 30%.
- **The Pace of the Transition:**
 - ✓ Transition to independence was not handled properly despite formation of Taskforce
 - ✓ The Interim constitution of South Sudan that was very progressive was replaced by transitional constitution that took power from states and concentrated powers with the President.

Why South Sudan sliding to civil war?

Transition to Peace and then Independence

- **Sequence of the Transition:**
 - ✓ A constitutional drafting committee consisting mainly of SPLM and other stakeholders drafted interim constitution of South Sudan during the pre-interim period.
 - ✓ Drafting committee was guided by CPA to be the basis for the interim constitution
 - ✓ The draft interim constitution was then discussed and passed by the South Sudan parliament appointed on the basis of the power sharing agreed upon in the CPA and interim national constitution.
 - ✓ Transition to independence was badly managed with transitional constitution that distorted the progress made in the interim constitution.

Why South Sudan sliding to civil war?

Transition to Peace and then Independence

- **What should a transition agreement address?**
 - ✓ **Decision-making**
 - Presidency consisting only of the SPLM
 - Government consisting mainly of SPLM
 - Decisions were mainly taken without guidance from the SPLM
 - ✓ **Deadlock breaking:**
 - Consensus but always decided by the SPLM
 - The affairs of South Sudan were entirely entrusted to the SPLM
 - ✓ **Constitution-making: bodies and composition**
 - Drafting committee consisting of all stakeholders.
 - Draft constitution passed by the appointed parliament on the basis of CPA power-sharing
 - ✓ **Security arrangement and transitional justice**
 - Despite SPLM was pushing for transitional justice during CPA negotiations, it failed to address the issues of transitional justice during transition.
 - SPLM and its government failed to address the issues of reconciliation except Juba Declaration and the absorption of other armed groups

Why South Sudan sliding to civil war?

Transition from Liberation to Government

- ✓ **Sense of legitimacy**
- ✓ **Risked their lives during struggle**
- ✓ **Living memories of selfless sacrifices of their martyrs**
- ✓ **With such sacrifices and legitimacy they have the right to run the new government**
- ✓ **Values and ideals of liberation: common purpose, commitment and discipline**
- ✓ **People-centred and grassroots-based**

Why South Sudan sliding to civil war?

Transition from Liberation to Government

- ✓ Challenges of transition from liberation struggle to government
- ✓ Strong sense of exclusive entitlement to run new government with no one having equivalent right to rule
- ✓ Unlike waging liberation struggle with a single and simple goal of achieving victory that calls for unity, commitment, discipline and top-down structure of command and control, running a government is an exercise with multiple and competing goals that require consensus-building
- ✓ Flexibility vs. Rigidity
- ✓ Difference within the ranks: pragmatists, job seekers and ideologists and those “in” and those “out”
- ✓ Top leadership strengthened with new of individuals with no credentials in struggle but personally associated with the leader.
- ✓ Power struggle among comrades and possible split

Why South Sudan sliding to civil war?

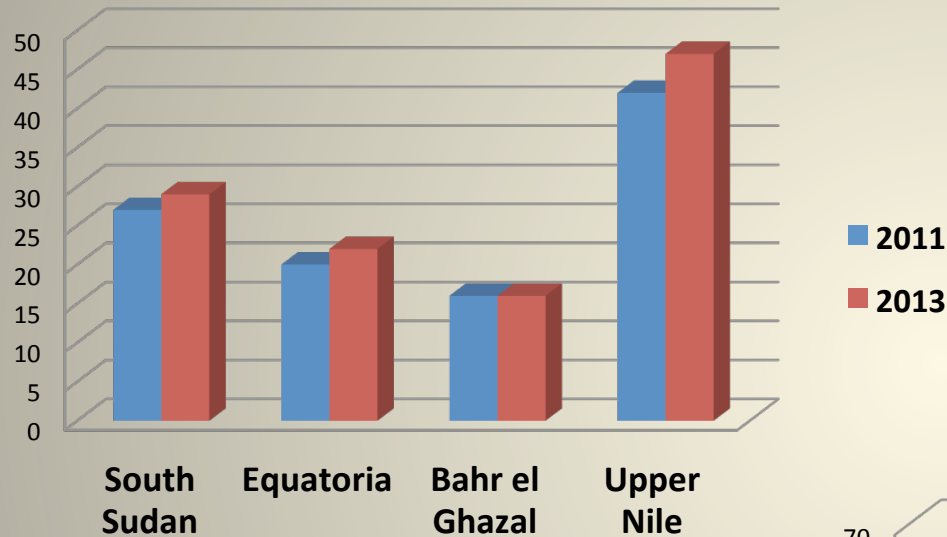
Transition from Liberation to Government: The SPLM

- ✓ SPLM Conventions (Pre-1994, 1994-2005, 2008, 2013!)
- ✓ Press Conference 6th December 2013
- ✓ National Liberation Council Meeting on 15th December 2014
- ✓ Political Bureau Meeting
- ✓ SPLM Institutional Reform agenda (transition from liberation movement to a political party and basic documents).

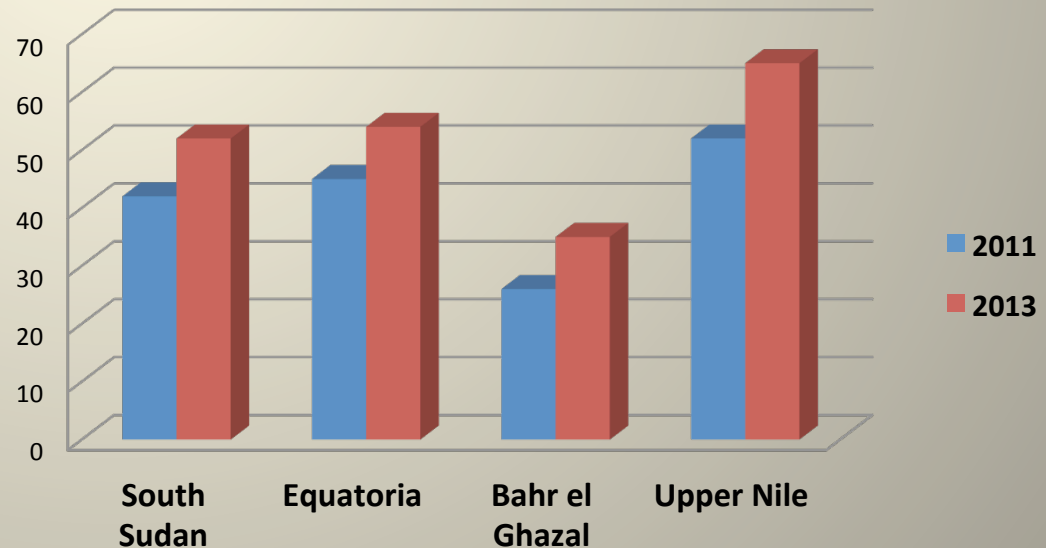
Why South Sudan sliding to civil war?

Transition from Liberation to Government: The SPLM

People Not Satisfied with SPLM

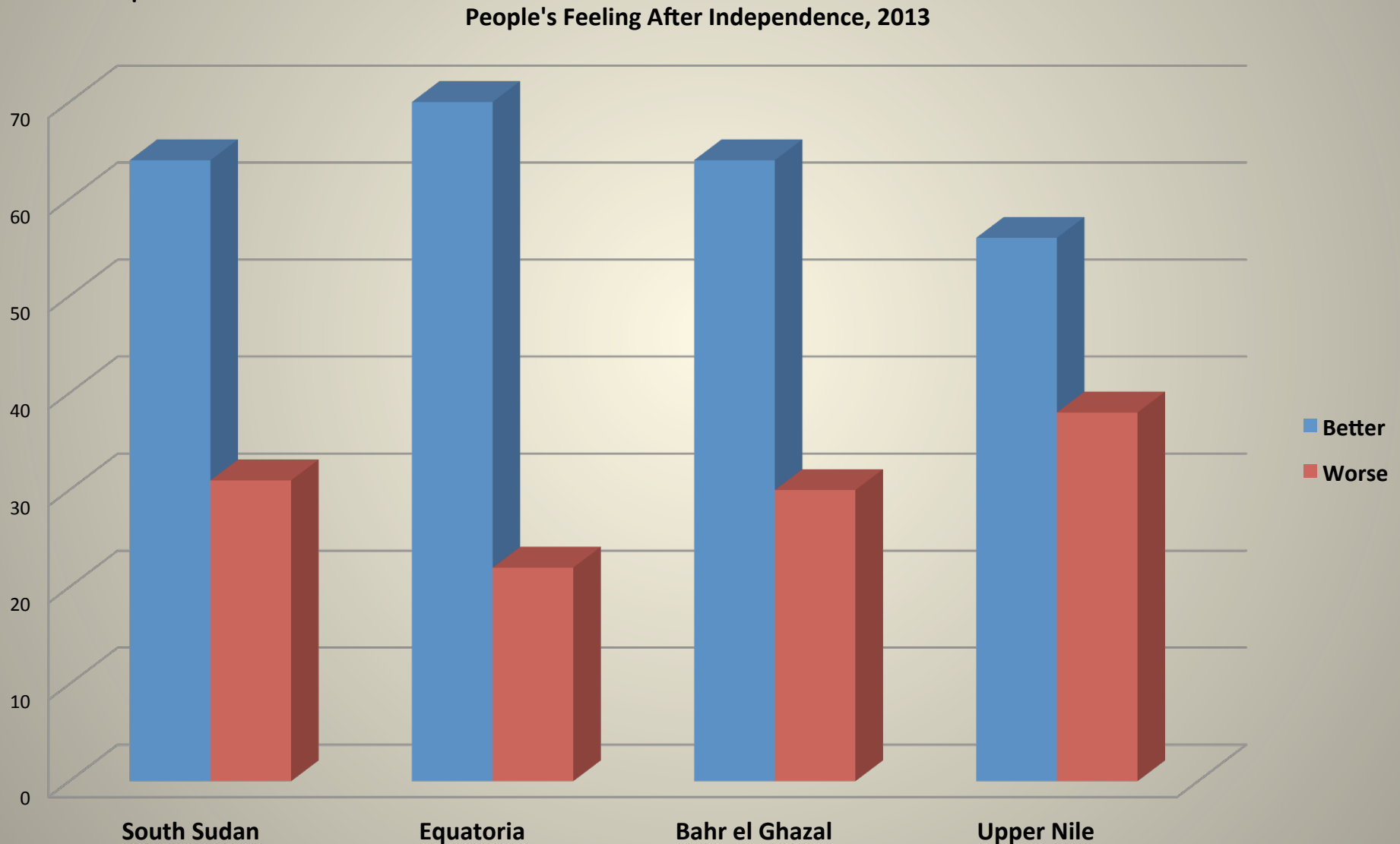


People's Perception: South Sudan on Wrong Direction



Why South Sudan sliding to civil war?

Transition from Liberation to Government: The SPLM



Why South Sudan sliding to civil war?

Institutions, Institutions, Institutions

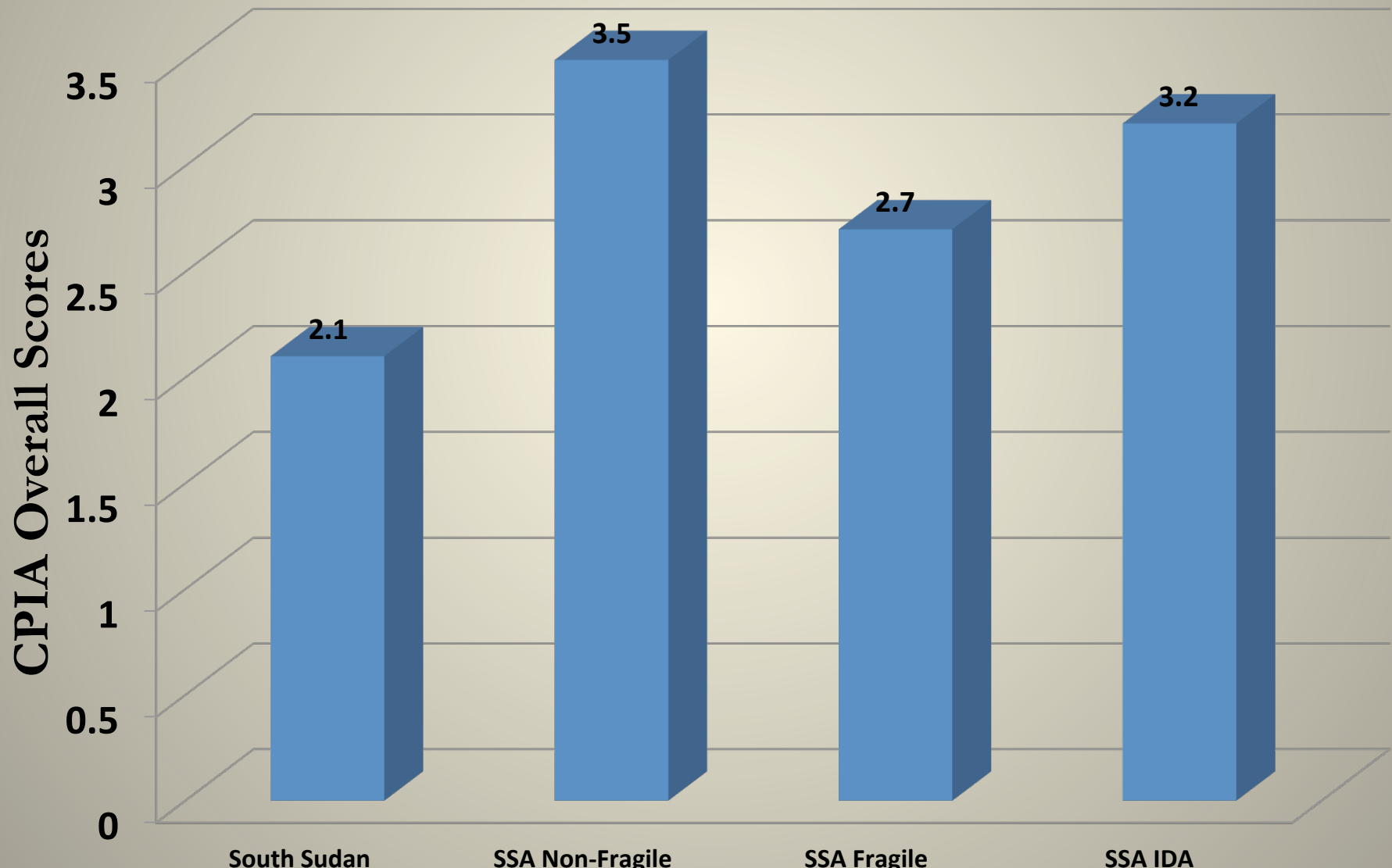
- **Why Nations Fail? Quality of Institutions**
 - ✓ **Weak institutions and extractive policies may explain better why countries slide to conflict and failed to deliver prosperity to its citizens**

Daron Acemoglu and James Robinson (eds), 2012

Why South Sudan sliding to civil war?

Quality of Institutions and Policies

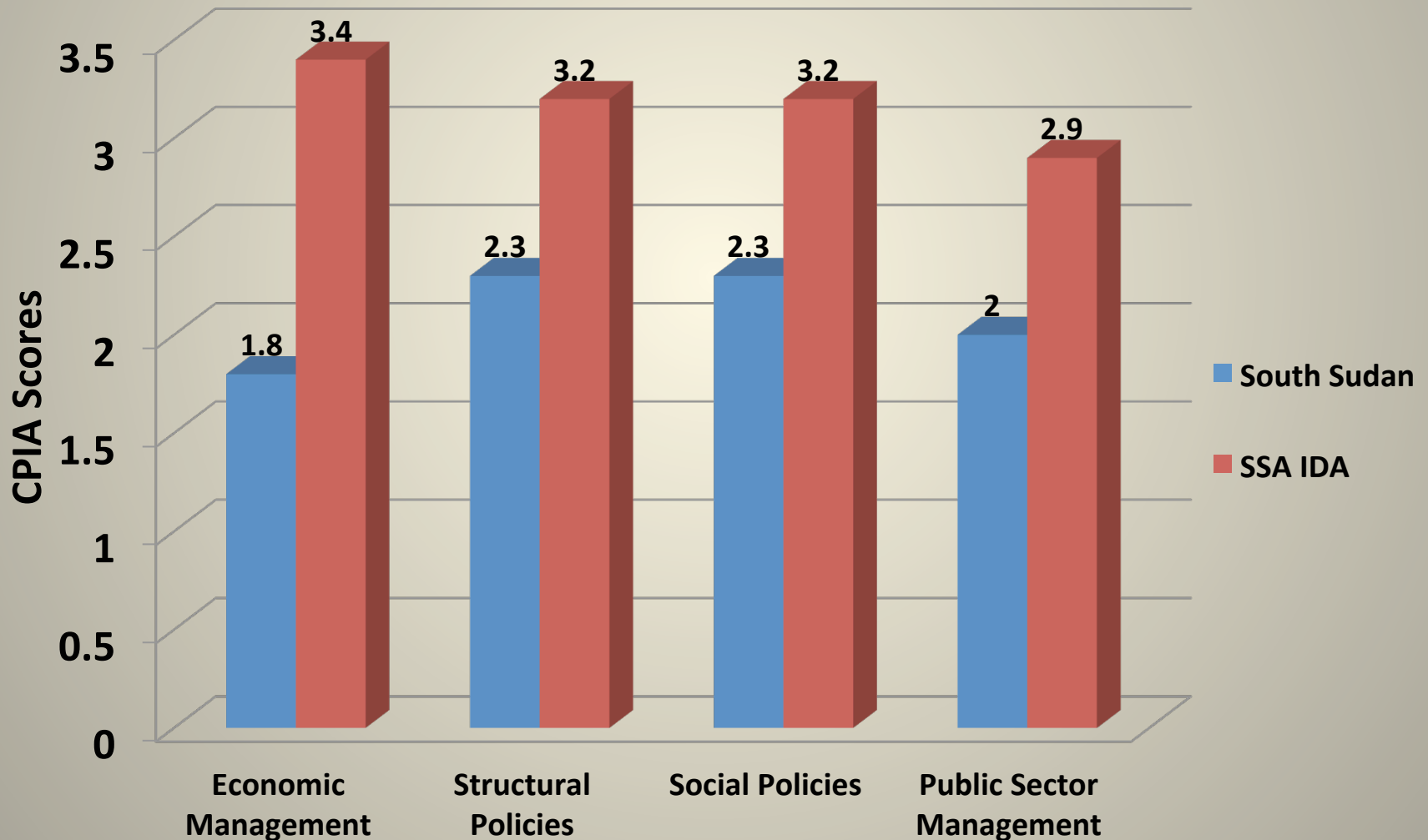
South Sudan and Sub-Saharan Africa CPIA Score for 2012



Why South Sudan sliding to civil war?

Quality of Institutions and Policies

South Sudan CPIA Cluster Scores for 2012



5. IGAD Peace Negotiations: Political Transition

- **Transition as a bridge: Challenges and Opportunities**
 - ✓ This crisis provides opportunities for serious reforms in South Sudan
 - ✓ The Two-track approach: All stakeholders and SPLM Intra-party dialogue
 - ✓ SPLM Intra-party dialogue to build consensus on political transition and reforms.
- **Who to supervise transition? Scenarios**
 - ✓ Government of National Unity based on the results of general elections of 2010, SPLM Election Manifesto, 2010 or CPA power-sharing formula
 - ✓ Dealing with incumbent government e.g. of Sudan and Kenya
 - ✓ Establishment of National Transition Oversight Council consisting of all stakeholders (political parties, civil society, religious leaders, elders)
 - ✓ Cabinet to be mainly technocrats with no involvement of previous ministers
 - ✓ Presidency (President, Vice President and Prime Minister) e.g. Kenya
 - ✓ Constituent Assembly to be appointed on the basis of 2010 General Elections or CPA's power-sharing formula or SPLM Election Manifesto, 2010
 - ✓ Interim Cabinet to be appointed on the basis of SPLM Election Manifesto, 2010 (70% SPLM, 30% other parties and women 30% of the cabinet)

4. IGAD Peace Negotiations: Political Transition

- **The Pace of the Transition**
 - ✓ Pre-interim period of six months
 - ✓ At least three years of interim period to build peace and confidence
 - ✓ General elections to be held towards the end of interim period
- **Sequence of the Transition**
 - ✓ A national constitutional amendments technical committee to be formed to suggest the necessary amendments to the current transitional constitution on the basis of the agreement and Interim Constitution of South Sudan, 2005
 - ✓ Establish Interim Constitution Review Committee (all stakeholders) to review the draft interim constitution, 2014.
 - ✓ The current parliament to endorse the agreement, pass these constitutional amendments to become the Interim Constitution of South Sudan and endorse the Interim President.
 - ✓ On the basis of the interim constitution, the interim president will dissolve the current parliament and other institutions
 - ✓ New institutions are to be established on the basis of the interim constitution and the agreement.
 - ✓ Elections and reforms agreed upon are to be supervised by the interim government.
 - ✓ Permanent constitution to be passed by an elected parliament

4. IGAD Peace Negotiations: Political Transition

- **What should a transition agreement address?**

- ✓ **A time-bound roadmap**

- A detailed implementation matrix of the agreement and provisions of the interim constitution.
- Formation of assessment and evaluation commission headed by IGAD and membership of IGAD Partners

- ✓ **Decision-making**

- Decisions by Interim Presidency (President, Vice and Prime Minister) by consensus
- Decisions of interim cabinet by consensus

- ✓ **Deadlock breaking**

- National Transition Oversight Council
- Third Party arbitration such as IGAD and Assessment and Evaluation Commission
- Supreme Court of South Sudan

- ✓ **Pre-agreeing outcomes**

- Implementation of peace agreement
- Implementation of reforms (security, economic sector, legal system, public service, public institutions, transitional constitution)
- Ensuring accountability, justice and reconciliation,
- Conduct of general elections

4. IGAD Peace Negotiations: Political Transition

- **What should a transition agreement address?**

- ✓ **Constitution-making: bodies and composition**

- Formation of national constitutional amendments technical committee to suggest amendments to the current transitional constitution on the basis of agreement and interim constitution 2005.
- Establish Interim Constitution Review Committee consisting of all stakeholders to review the draft Interim Constitution, 2014
- Current parliament to endorse the agreement and pass the interim constitution.
- Reconstitute new constitutional review commission for the permanent constitution

- ✓ **Security arrangement and transitional justice**

- Security sector reform and formation of national army that reflects the national diversity
- Setting up of hybrid tribunal for the trial of those committed atrocities and human rights abuses based on UN Human Rights Report and African Union Commission of Inquiry for South Sudan.
- Adoption and implementation of genuine national reconciliation process

7. Conclusion

Political Transition does matter in:

- ✓ **Providing solid basis for sustaining peace**
- ✓ **Building credible institutions and**
- ✓ **Initiating and implementing policy reforms agenda for stability.**