

The 28 States System in South Sudan

Briefing Note by the Stimson Center | August 9, 2016

The recent violence in Juba between the forces of President Salva Kiir and former First Vice President Riek Machar demonstrated the fragility of South Sudan's peace and the critical role that the international community is playing in holding the country back from the brink of renewed civil war. But the simultaneous surge in violence in Wau highlighted the daunting fact that the national-level conflict is not the only challenge for the international community in South Sudan. The country is plagued by a diverse set of local-level conflicts that interact in different ways and to different extents with the national crisis.

Many of these local conflicts have been exacerbated by the Kiir faction's unilateral introduction of the 28 states system. In the context of heightened tribal tensions, shifting political loyalties, and increased competition over power and resources in a deteriorating economy, this system could cause significant conflict and instability.

As the Juba crisis unfolds and the 2015 peace agreement appears increasingly disregarded, national and international actors are considering a range of options for creating sustainable peace. This briefing note is intended to inform the debate over how to support stability in South Sudan by examining the 28 states system and its implications for security and governance.

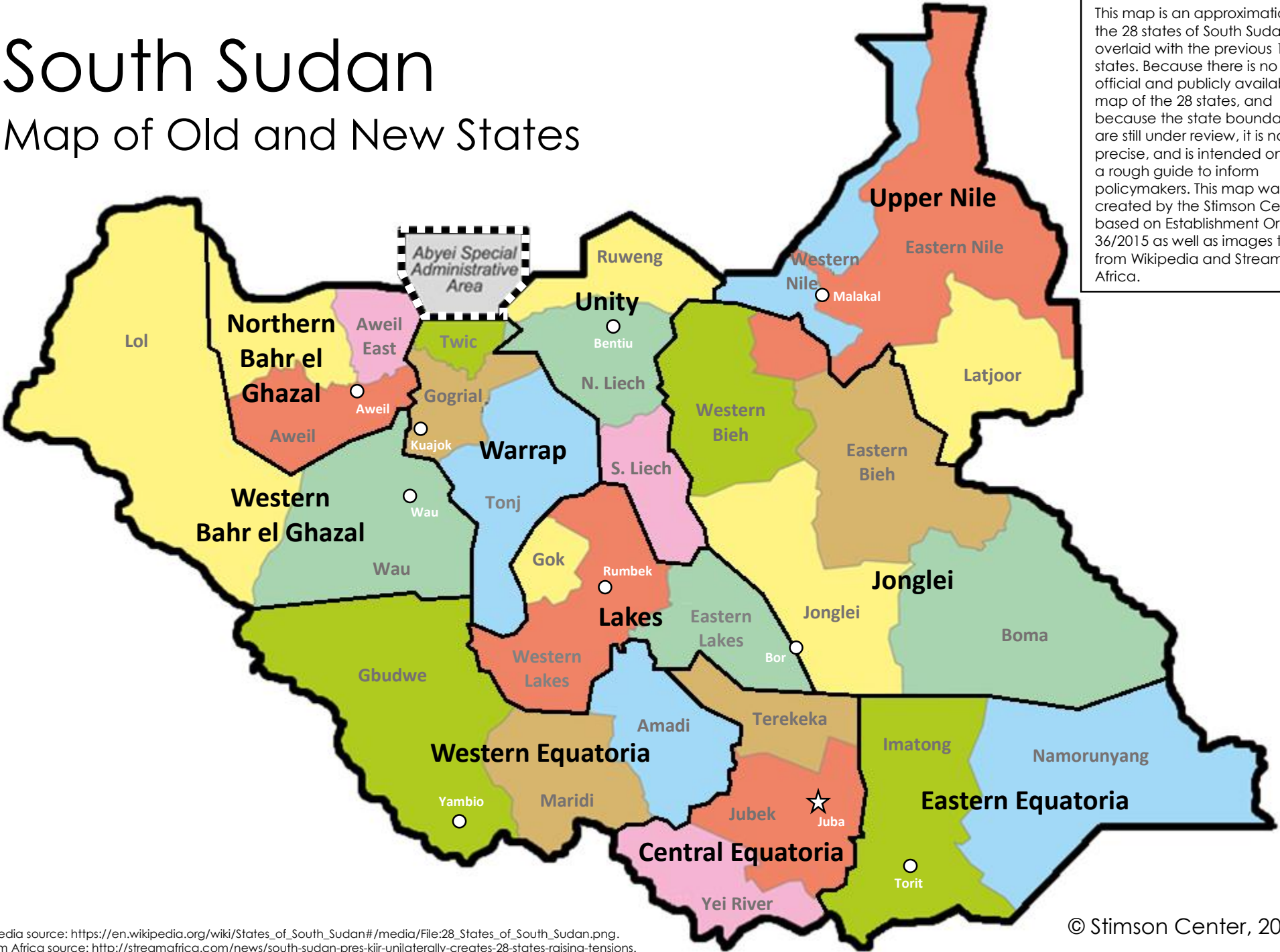
Key Points

- The 28 states system is causing considerable tension at the national level and is also affecting local conflict dynamics across the country. Former Upper Nile and Western Bahr el Ghazal States are two areas where the 28 states system has already caused significant violence. Conflict in Malakal in particular has significant potential to destabilize the country.
- However, it is impossible to generalize about the effects of the 28 states system. In former Lakes State, the system may have decreased intercommunal violence (at least in the short term) by improving local governance.
- There are many uncertainties about the 28 states system including: whether the number of states will remain at 28; what mandate the 15-member review commission will have; what authorities the state leaders will have; whether the new boundaries affect policies related to natural resources; and how the system will be financed.
- Per the Transitional Constitution, state governors are supposed to be elected; the president has the authority only to appoint 'care-taker' governors. So far, a lot of attention has been focused on whether the SPLM-IO will be given the opportunity to nominate governors for some of the new states, but elections should also be considered when security permits.
- Reversing the 28 states decision would be complex and could have negative consequences including popular protest by those who support decentralization and political opposition by leaders who were appointed under the new system.

South Sudan

Map of Old and New States

This map is an approximation of the 28 states of South Sudan overlaid with the previous 10 states. Because there is no official and publicly available map of the 28 states, and because the state boundaries are still under review, it is not precise, and is intended only as a rough guide to inform policymakers. This map was created by the Stimson Center based on Establishment Order 36/2015 as well as images taken from Wikipedia and Stream Africa.



Wikipedia source: https://en.wikipedia.org/wiki/States_of_South_Sudan#/media/File:28_States_of_South_Sudan.png.
 Stream Africa source: <http://streamafrica.com/news/south-sudan-pres-kiiir-unilaterally-creates-28-states-raising-tensions>.
 Establishment Order 36/2015: http://www.sudantribune.com/IMG/pdf/establishment_order_for_the_creation_of_28_states_in_south_sudan.pdf.

The Creation of 28 States

In October 2015, President Kiir announced his decision to dissolve the 10 existing states of South Sudan and create 28 states in their place.¹ It is widely believed that the 28 states plan was developed hastily and involved little or no consultation with either experts or local communities. The head of the Dinka Council of Elders said that it had proposed a 23 state plan, increased the number to 24 in response to feedback from the President's office, and only discovered that Kiir had changed the number to 28 when he announced the new system publicly.²

Although Kiir initially announced that the new system would be implemented by a presidential Establishment Order alone, he later submitted a proposal for parliamentary approval to amend the Transitional Constitution of South Sudan to create 28 states.³ Constitutional amendments require approval by two-thirds majorities in both houses of Parliament, and the bill failed to secure the required votes in the lower house.⁴ Nevertheless, Kiir's supporters combined the 189 lower house votes with 39 upper house votes and claimed that the bill had passed.⁵ The plan was implemented on December 24, 2015, with 28 governors appointed to the new states.⁶

Analysts with whom the research team spoke offered three main explanations for Kiir's creation of 28 states. First, he may have wanted to secure a balance of power that favored his supporters and/or members of the Dinka ethnic group. Second, he may have wanted to reinforce his patronage network by creating new positions of power that he could award to key figures in order to buy or maintain their loyalty. Third, he may have felt pressure to respond to long-standing demands for federalism and greater decentralization of power. The SPLM-IO's original proposal of 21 states⁷ may have increased the opposition's legitimacy among constituencies interested in federalism, and Kiir's counter-proposal of 28 states may have been intended to undermine that support.

Response to the 28 States

The opposition faction led by Machar objected to Kiir's decision to form 28 states, stating that it violated the peace agreement.⁸ On January 31, 2016, the Intergovernmental Authority on Development (IGAD) issued a communiqué calling on the parties to the peace

¹ Radio Tamazuj, "Kiir and Makuei Want 28 States in S. Sudan," October 2, 2015, <https://radiotamazuj.org/en/article/kiir-and-makuei-want-28-states-s-sudan>.

² Radio Tamazuj, "Dinka Council: Kiir Added Four States to Our Proposal," October 29, 2015, <https://radiotamazuj.org/en/article/dinka-council-kiir-added-4-states-our-proposal>.

³ Radio Tamazuj, "Kiir Pressured into Taking Decree to Parliament for Approval," October 14, 2015, <https://radiotamazuj.org/en/article/kiir-pressured-taking-decree-parliament-approval>.

⁴ Radio Tamazuj, "Less Than Two-Thirds of S. Sudan Parliament Members Vote to Approve 28 States Proposal," November 19, 2015, <https://radiotamazuj.org/en/article/less-23-s-sudan-parliament-members-vote-approve-28-states-proposal>.

⁵ Ibid.

⁶ Al Jazeera, "South Sudan President Creates 28 New States," December 25, 2015, <http://www.aljazeera.com/news/2015/12/south-sudan-president-creates-28-states-151225101750723.html>.

⁷ Radio Tamazuj, "SPLM-IO Proposes Breaking Apart Existing South Sudan States," July 17, 2014, <https://radiotamazuj.org/en/article/splm-io-proposes-breaking-apart-existing-south-sudan-states>.

⁸ James Butty, "South Sudan Rebels Condemn Creation of 28 New States," Voice of America News, October 5, 2015, <http://www.voanews.com/content/south-sudan-rebels-condemn-creation-of-28-new-states/2991681.html>.

agreement to suspend implementation of the 28 states system and form an inclusive commission to review it.⁹

South Sudanese civil society groups also raised objections in a joint letter, noting that the Transitional Constitution of South Sudan refers to 10 states and does not authorize the president to create new states or dissolve existing ones.¹⁰

The international community also criticized the 28 states decision, though the response was both mild and delayed. In January, the Troika (the US, the UK, and Norway) released a joint statement expressing concern about delays in forming the Transitional Government of National Unity and observing that the 28 states decision had “created an obstacle to consensus.”¹¹ In February, US Special Envoy to Sudan and South Sudan Donald Booth gave remarks in which he noted that the 28 states decision and the opposition’s response to it had “created a political crisis delaying the launch of the transition.”¹² In March, the UN Security Council released a Presidential Statement that, among other things, criticized the South Sudanese government for failing to take action in accordance with the IGAD communiqué on the 28 states.¹³

UNMISS, which already had an extremely difficult relationship with the South Sudanese government, responded to the 28 states announcement cautiously. In May, the head of UNMISS, Special Representative of the Secretary-General Ellen Løj, made a statement urging the transitional government to “address the issue of the 28 states” in accordance with the IGAD communiqué and noting that in the meantime, UNMISS was “not formally recognizing the 28 states, but we are of course dealing with the officials on the ground which we have to do on a daily basis.”¹⁴ Instead of referring to them as ‘state coordinators,’ the mission now refers to the ten civilian heads of the sub-national offices as ‘heads of field offices.’

⁹ Intergovernmental Authority on Development, *Communiqué of the 55th Extra-Ordinary Session of the IGAD Council of Ministers*, Addis Ababa, Ethiopia, January 30-31, 2016, http://igad.int/attachments/1275_55COM_Communique.pdf.

¹⁰ Sudan Tribune, “S. Sudan Civil Society Groups to the 28 States Issue to the Constitutional Body,” October 8, 2015, <http://reliefweb.int/report/south-sudan/s-sudan-civil-society-groups-28-states-issue-constitutional-body>.

¹¹ Media Note by the Governments of the United States of America, the United Kingdom, and Norway, “Joint Statement on South Sudan Peace Process,” U.S. Department of State, April 22, 2016, <http://www.state.gov/r/pa/prs/ps/2016/04/256503.htm>.

¹² Ambassador Donald Booth, “South Sudan, Africa, and the Challenge of Peacemaking,” Remarks at Chatham House, London, United Kingdom, February 9, 2016, <http://www.state.gov/p/af/rls/rm/2016/252466.htm>. Ambassador Booth also testified before the House Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in April expressing ongoing concern about the 28 state system which had “complicated implementation of the peace agreement, stoked grievances among some communities, and created new official structures that this government cannot afford” (Ambassador Donald Booth, “South Sudan’s Prospects for Peace and Security,” Testimony before the House Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, April 27, 2016, <http://www.state.gov/p/af/rls/rm/2016/256703.htm>).

¹³ United Nations Security Council Presidential Statement, March 17, 2016, S/PRST/2016/1, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2016/1.

¹⁴ Radio Tamazuj, “JMEC and UNMISS ‘Do Not Recognize 28 States,’” May 4, 2016, <https://radiotamazuj.org/en/article/jmec-and-unmiss-do-not-recognize-28-states>.

A representative of the Joint Monitoring and Evaluation Commission (JMEC) similarly stated in May that the JMEC would coordinate with any newly appointed governors, but would continue to recognize 10 states and did not “encourage any further implementation of the 28 states.”¹⁵

Although some in the international community refer to the 28 states ‘proposal’ or ‘plan,’ the system is treated as a reality on the ground. While its implementation has been flawed, the 28 states system purports to respond to a popular demand for greater decentralization and so has been received positively in some quarters. If the system were to be reversed or altered, it would require considerable care. As one civil society representative noted, any attempt to change the 28 states could cause challenges by politicians appointed under the new system and revolts by communities that favor decentralization, leading to an “even worse crisis.”

Unanswered Questions

There are many uncertainties about the 28 states system, including whether it will remain in its current form. During the research team’s visit in June, there were reports that the number of states could shrink (to a compromise between 28 and the 21 states proposed by the SPLM-IO in July 2014),¹⁶ or could grow to as many as 45. On June 1, 2016, leadership from the transitional government of national unity announced the creation of a new 15-member committee to review the 28 states decision.¹⁷ However, there has been disagreement about the scope and authority of this committee, including whether it can review both the number of states and their boundaries, and whether it has the power to make determinations or only recommendations.¹⁸

One critical area of uncertainty is how administrative powers will be apportioned between the 28 state governors, the national government leaders above them, and the county commissioners below them. For example, it is unclear what effect the new borders would have on land rights or access to dividends from oil or mineral deposits, and what powers the state administrations would exercise over issues such as trade, taxation, or law enforcement.

Another critical area of uncertainty relates to cost. Most analysts with whom the research team spoke expressed concern that the government would not be able to fund an expanded bureaucracy when it was already unable to support 10 state administrations. One analyst argued that, in the long run, the financial burden would not be significantly greater than before since most civil servants would be reallocated from existing positions; apart from the 28 governors themselves, there would not be a significant increase in the number of salaries that would need to be paid. However, even if there are no significant increases in personnel costs, the transition process itself (including funding the work of the review commission and empowering the new state governments to exercise their administrative powers) could be costlier than the government can afford.

¹⁵ Ibid.

¹⁶ Radio Tamazuj, “SPLM-IO Proposes Breaking Apart Existing South Sudan States,” July 17, 2014, <https://radiotamazuj.org/en/article/splm-io-proposes-breaking-apart-existing-south-sudan-states>.

¹⁷ Radio Tamazuj, “Kiir Agrees to Committee to Review 28 States; Critics Demand Return to 10,” June 2, 2016, <https://radiotamazuj.org/en/article/kiir-agrees-committee-review-28-states-critics-demand-return-10>.

¹⁸ Sudan Tribune, “South Sudanese Parties Differ over Purpose of States Committee,” June 3, 2016, <http://www.sudantribune.com/spip.php?article59165>.

Finally, it is yet to be seen how state governor positions will ultimately be decided. The Transitional Constitution of South Sudan authorizes the president to appoint care-taker governors only, with elections to be held within 60 days of an appointment.¹⁹ The August 2015 peace agreement provided that the governors of Upper Nile and Unity states would be nominated by the SPLM-IO.²⁰ The 28 governors appointed in December 2015 were not identified as care-taker governors, nor were any of them nominated by the SPLM-IO. Kiir indicated in December 2015 that he might reverse an unspecified number of appointments and allow the SPLM-IO to nominate replacement governors in former Upper Nile and Unity States.²¹

Effects on Local Conflict

SRSO Løj has noted that there were “challenges around the country in relation to how the borders have been drawn in the 28 states proposal, and that has led to ethnic tensions in many parts of the country.”²² This is undoubtedly true. There are abundant and diverse local conflicts across South Sudan that have been altered, and in many cases worsened, by the introduction of the 28 states system.

There are general concerns that the 28 states system may provoke disputes over political power or access to land or resources; that the system could reinforce tribal or clan identities and undermine national solidarity; and that if the state cannot afford the increased costs associated with the 28 states system, state administrators could extort the population to generate revenue. But the example of former Lakes state, where the 28 states system may have improved security, demonstrates that it is important not to overgeneralize about the impact of the system in different parts of the country.

The examples below demonstrate the different ways in which the 28 states system is affecting local conflict dynamics in three areas:

Former Western Bahr el Ghazal

Western Bahr el Ghazal has been relatively stable since the second Sudanese civil war, though intercommunal tensions have long existed between the Fertit and Dinka communities over political power, resources, and seasonal access to cattle grazing land. When the South Sudanese civil war broke out in December 2013, fighting did not spread immediately to Western Bahr el Ghazal. But a crisis emerged in April 2014 after President Kiir fired the SPLA chief of staff, James Hoth Mai, who is Nuer, and replaced him with Paul Malong, the former governor of Northern Bahr el Ghazal, who is Dinka. Nuer and Dinka SPLA

¹⁹ *Transitional Constitution of the Republic of South Sudan*, 2011, <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf>, para. 101 (s).

²⁰ Intergovernmental Authority on Development, *Agreement on the Resolution of the Conflict in the Republic of South Sudan*, Addis Ababa, Ethiopia, August 17, 2015, http://www.sudantribune.com/IMG/pdf/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf, para. 15.1.

²¹ Radio Tamazuj, “Kiir Hints at Reversing Some New Appointments, Says Willing to Appoint IO Governors,” December 29, 2015, <https://radiotamazuj.org/en/article/kiir-hints-reversing-some-new-appointments-says-willing-appoint-io-governors>.

²² Radio Tamazuj, “JMEC and UNMISS ‘Do Not Recognize 28 States,’” May 4, 2015, <https://radiotamazuj.org/en/article/jmec-and-unmiss-do-not-recognize-28-states>.

soldiers stationed at the base in Mapel clashed and many Nuer soldiers deserted and fled.²³ As word spread, Nuer soldiers also fled from Wau the following day.²⁴ Many of the deserting Nuer soldiers fled to Fertit areas, leading to a perception that Fertit communities supported the SPLA-IO and to violence and suspicion between SPLA and the Fertit.

With the implementation of the 28 states system, Western Bahr el Ghazal has been divided into two states: Wau and Lol. Several analysts with whom the research team met suggested that the 28 states divided Fertit communities in a way that left them politically weakened:

- Lol State includes all territory formerly belonging to Raja County, as well as Aweil North and Aweil West Counties that were previously part of former Northern Bahr el Ghazal, thus increasing Dinka numbers and political influence in the new state relative to the Fertit from Raja County.
- Western Bahr el Ghazal previously bordered both the Central African Republic and Sudan; as a result of the 28 states system, Wau State lost its borders with other countries.
- According to some analysts, the implementation of the 28 states system included political appointments of non-Fertit or non-local individuals to key positions – for example, the mayor of Wau town is Dinka and the Wau police commissioner is from Rumbek.
- Raja County is believed to contain valuable natural resources including uranium, gold and copper.²⁵ It is not yet known what administrative powers the new state governors will hold and how the division of Western Bahr el Ghazal and the loss of these natural resources will affect populations in Wau State economically and politically.

In June and July, fighting flared in both Lol and Wau States largely because of tensions related to the 28 states system. Fighting began in former Raja County on June 15 as armed Fertit attacked and briefly took control of Raja town. Analysts with whom the research team met at that time believed that the Fertit involved in the fighting wanted to protest the 28 states system. On June 24, fighting spread to Wau town as clashes broke out between SPLA soldiers and Fertit fighters, with at least 39 civilians and four soldiers killed.²⁶ After a short period of calm, violence broke out again in Wau on July 7.

The fighting also exposed political divisions between officials appointed under the 28 states system and the SPLA in Wau. On June 23, the SPLA declared a state of emergency in Wau

²³ Accounts of how and why these clashes occur differ. See Small Arms Survey, "The Conflict in Northern and Western Bahr el Ghazal States," October 10, 2014, <http://www.smallarmssurveysudan.org/facts-figures/south-sudan/conflict-of-2013-14/the-conflict-in-bahr-el-ghazal.html> for more detail.

²⁴ Ibid.

²⁵ United Nations Mission in Sudan, "Briefing Pack for Western Bahr el Ghazal State," June 2010, <http://unmis.unmissions.org/Portals/UNMIS/Referendum/Western%20Bahr%20el%20Ghazal.pdf>; Paul Ronan, "Report: LRA and Other Armed Groups Exacerbating Tensions along Darfur-S. Sudan Border," The Resolve, July 13, 2012, <http://www.theresolve.org/2012/07/report-lra-and-other-armed-groups-exacerbating-tensions-along-darfur-s-sudan-border/>.

²⁶ Denis Dumo, "Rebel, Army Clashes Kill 43 Near South Sudan's Wau: Government," Reuters Africa, June 28, 2016, <http://af.reuters.com/article/topNews/idAFKCN0ZE1HV>.

without informing the Wau State governor, Elias Waya.²⁷ On June 24, Kiir dismissed Waya and replaced him with Andrea Mayar Achok, prompting further fighting on July 10.²⁸

Former Lakes

Although communities in Lakes State have been largely uninvolved in the national crisis, they have continued to experience high levels of violence in the form of intercommunal conflicts between different Dinka clans. These intercommunal conflicts manifest primarily in cattle raids by *galweng* (youth who protect cattle) and subsequent revenge attacks or retaliatory cattle raids, as well as clashes over grazing land.

Under the 28 states system, Lakes State has been divided into three new states: Eastern Lakes, Western Lakes, and Gok. Among the people with whom the research team met in Rumbek, most agreed that the introduction of the 28 states system has *decreased*, not increased, intercommunal tensions.

Some analysts with whom the research team met suggested that the reduction in violence was because the system had brought administrative government closer to communities, thus improving law enforcement and other aspects of governance. For example, one civil society representative said that Gok State had previously been neglected by the Lakes government but that crime had reduced since the appointment of a Gok State governor. Several analysts suggested that the relatively peaceful implementation of the system is because the former Lakes State is a relatively homogenous Dinka area, and so there are not the same concerns surrounding Dinka consolidation of power as there are in other parts of the country.

However, one UNMISS representative raised a concern that even if the new state boundaries reduce tension in the short term, the clan-based boundary lines could ultimately reinforce clan identities, undermine traditional dispute resolution practices and mechanisms, and increase the risk of inter-clan violence in the long term.

Former Upper Nile

The conflict in Upper Nile was identified by many of the people with whom the research team met as the local conflict with the greatest potential to destabilize the country. The conflict has local dimensions related to historical intercommunal conflict between Dinka and Shilluk communities, particularly over land rights. The conflict also took on national dimensions as a result of the civil war. Influential Shilluk militia leader Johnson Olony, who had been integrated into the SPLA shortly before the civil war began, initially supported the government. He provided military support that was "vital to securing the SPLA position" in Upper Nile.²⁹ In May 2015, Olony shifted his allegiance to Machar and his forces, controlling Malakal on the IO's behalf.³⁰ One analyst with whom the research team met believes that

²⁷ Sudan Tribune, "President Kiir Fires Wau State Governor," June 25, 2016, <http://www.sudantribune.com/spip.php?article59397>.

²⁸ Ibid.

²⁹ "Situational Analysis: Malakal POC Site," South Sudan Humanitarian Project, February 2015, <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Malakal-Situation-Analysis-External-Version.pdf>.

³⁰ Radio Tamazuj, "S. Sudan Rebels: Johnson Olony Is on Our Side," May 17, 2015, <https://radiotamazuj.org/en/article/s-sudan-rebels-johnson-olony-our-side>.

the government's harsh treatment of the Shilluk under the 28 states system was prompted in part by this betrayal and the government's subsequent view that the Shilluk were anti-SPLA.

Since the creation of the 28 states, Upper Nile has been divided into three states: Eastern Nile, Western Nile, and Latjoor. The new boundaries favor Dinka communities and political power at the expense of the Shilluk. Most importantly, Malakal town, which has traditionally been seen as belonging to the Shilluk tribe, is now part of the Dinka-dominated Eastern Nile State. In addition, Western Nile State is divided into two areas separated by land belonging to Eastern Nile, allowing the Eastern Nile government to control movement within Western Nile State.

This division of Upper Nile has already had major political consequences, including the "unseating of Kwongo Dak Padiet, the Shilluk reth (king), who was perceived as being aligned with the Government."³¹ Overall, the 28 states plan has increased support for Olony among the Shilluk in Upper Nile.³² Some fighters, however, defected from Olony's militia and formed the Tiger Faction New Forces (TFNF), saying they would not be affiliated with parties to the peace agreement and would not abide by its stipulations until the 28 states plan was revoked.³³

Clashes between forces loyal to the government and armed Shilluk militia fighters have continued.³⁴ The attack by Dinka fighters and SPLA soldiers against Shilluk and Nuer communities taking shelter at the UNMISS protection of civilians site in Malakal in February "was part of an organized effort by authorities in Upper Nile state to push Shilluk people off the east bank of the White Nile river."³⁵ In the aftermath of the February attack, many Dinka civilians who had been living in the POC site moved to Malakal town. This has contributed to Shilluk concerns that the Dinka are taking control of Malakal, and many feel unsafe returning to the town.

Acknowledgements

This briefing note is based on field research conducted by the Stimson Center from June 10-20, 2016 in Juba, Rumbek, and Wau, South Sudan, as well as desk research. The members of the research team are grateful to the representatives from UNMISS, UN agencies, international non-governmental organizations, and local civil society organizations who took the time to speak with them, and to UNMISS for facilitating their travel within the country. For more information, please contact Aditi Gorur (agorur@stimson.org).

³¹ Small Arms Survey, "The Conflict in Upper Nile," March 8, 2016, <http://www.smallarmssurveysudan.org/facts-figures/south-sudan/conflict-of-2013-14/the-conflict-in-upper-nile.html>.

³² Ibid.

³³ Sudan Tribune, "Tiger Faction of Ethnic Shilluk Kingdom Dismisses Integration into SPLM-IO," March 11, 2016, <http://sudantribune.com/spip.php?article58273>.

³⁴ See Armed Conflict Location and Event Dataset, "Country Report: South Sudan Conflict Update," July 2016, http://www.acledata.com/wp-content/uploads/2016/07/ACLED_Africa_Country-Reports_South-Sudan_July-2016_pdf.pdf.

³⁵ Small Arms Survey, "The Conflict in Upper Nile," March 8, 2016, <http://www.smallarmssurveysudan.org/facts-figures/south-sudan/conflict-of-2013-14/the-conflict-in-upper-nile.html>.