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**LONDON METROPOLITAN UNIVERSITY**  
Department of Law, Governance and International Relations

**The Sudanese Comprehensive Peace Agreement: How Could the Comprehensive Peace Agreement Become the Basis for Either Unity or Disintegration of the Sudan?**

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**A Dissertation Submitted to the London Metropolitan University  
in Partial Fulfillment of the Requirements for the Degree of  
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## List of Abbreviations

ABC	Abyei Boundaries Commission
AEC	Assessment and Evaluation Commission
AJMC	Area Joint Military Committee
ANC	African National Congress
AU	African Union
AWS	Agreement on Wealth Sharing
BOSS	Bank of Southern Sudan
CBOS	Central Bank of the Sudan
CDF	Civil Defence Forces
CDR	Coalition for the Defence of the Republic
CNDD-FDD	Council of National Defence for Democracy <b>Forces-Forces of Defence for Democracy</b>
CPA	Comprehensive Peace Agreement
DDR	Disarmament, Demobilisation and Reintegration
DOP	Declaration of Principles
DRC	Democratic Republic of Congo
DUP	Democratic Unionist Party
EPLF/TPLF	Eritrean People's Liberation Front/Tigray <b>People's</b> Liberation Front
EPRDF	Ethiopia People's Revolutionary Democratic <b>Front</b>
EU	European Union
FMLN	Farabundo Marti National Liberation Front
FRELIMO	Front Liberation of Mozambique
GNP	Greater Nile Pipeline
GNPOC	Greater Nile Petroleum Operation Company
GONU	Government of National Unity
GOS	Government of Sudan
GOSS	Government of South Sudan
ICCPR	International Covenant on Civil and Political <b>Rights</b>
ICG	International Crisis Group
IGAD	Intergovernmental Authority on Development
IGADD	Intergovernmental Authority on Drought and <b>Desertification</b>
IMF	International Monetary Fund



INC	Interim National Constitution
JDB	Joint Defence Board
MNDR	Movement Revolutionary National pour le Development
MP	Machakos Protocol
NCP	National Congress Party
NCRC	National Constitutional Review Commission
NDA	National Democratic Alliance
NGOs	Non-governmental organizations
NIF	National Islamic Front
NPC	National Petroleum Commission
OAG	Other Army Groups
OAU	Organisation of African Unity
PNCP	Popular National Congress Party
RENAMO	National Resistance of Mozambique
RUF	Revolutionary United Front
SANDF	South Africa National Defence Force
SANU	Southern Sudan African Union
SPLM/A	Sudan People's Liberation Movement/Army
SSDF	Southern Sudan Defence Forces
SSF	Southern Sudan Front
SSLF	Southern Sudan Liberation Front
SSLM	South Sudan Liberation Movement
SSLP	Southern Sudan Liberal Party
SSIM/A	Southern Sudan Independent Movement/Army
SOFA	Status of Forces Agreement
UNMIS	United Nations Monitoring Mission in Sudan
UNITA	National Union for the Total Independence of Angola
WB	World Bank

## **A chronology of key events in modern Sudanese history**

### **Modern Sudan**

- 1820: Sudan is conquered by Turko-Egyptian forces.
- 1881: Mohammed Ahmed Ibn Abdullah launches rebellion against Turkish-Egyptian administration.
- 1885: An Islamic state is founded in Sudan by Mohammed Ahmed Ibn Abdullah who declares himself Mahdi.
- 1898: British forces overthrow the Mahdist state.
- 1898: Sudan is governed under Anglo-Egyptian rule.
- 1920's: Britain introduces "closed door" ordinances, effectively separating Southern Sudan from the North
- 1946: The British colonial authority reverses its policy and decides to integrate the North and South Sudan
- 1947: The Juba Conference is held to discuss ways of uniting the North and South
- 1953: Anglo-Egyptian agreement granting self-governance to the Sudan
- 1954: First Sudanese elections are won by the National Unionist Party
- 1955: Revolt in Southern Sudan town of Torit and start of the civil war.
- 1956: The Sudan gains independence.
- 1958: A military coup led by Chief of Staff Lt. Gen. Ibrahim Abboud overthrows civilian government
- 1962: Civil war breaks out in southern parts of the Sudan.
- 1964: Military rule led by Lt. Gen Ibrahim Abboud is overthrown and a provisional government established.
- 1965: Parliamentary elections held in April 1965 lead to a coalition government of the Umma and National Unionist Parties under Prime Minister Muhammad Ahmad Mahjou and a national government is established
- 1965: The Round Table Conference held to try and resolve North/South conflict.
- 1969: Col Jaafar Numeiri leads the "May Revolution" military coup
- 1972: Addis Ababa peace agreement signed, declaring the Southern Sudan to be semi-autonomous
- 1978: Large findings of oil discovered in Bentiu, Southern Sudan.

- 1983: Civil war breaks out again in the Southern Sudan town of Bor.
- 1983: President Numeiri declares the introduction of Shari'a law
- 1985: President Numeiri is removed from power in a military coup.
- 1985: The SPLM/A calls for National Constitutional Conference.
- 1986: Coalition government formed after general elections, with Sadiq al-Mahdi as Prime Minister.
- 1986: Koka Dam all party national constitutional conference held
- 1988: Coalition partner the Democratic Unionist Party drafts cease-fire agreement with the SPLM amending Koka Dam declaration, but it is voted down and not implemented.
- 1989: Col Omar Hassan Ahmad al-Bashir Al-Bashir and his Islamic Front (NIC) seize power in a military coup.
- 1991: Splits develop within the SPLM/A
- 1992: Abuja I Negotiations under the mediation of the Nigerian President Ibrahim Babangida
- 1993: Abuja II Negotiations again under Nigerian mediators.
- 1993: The Washington Declaration by the SPLM/A and SPLM/A-United, signed in Washington DC in October
- 1994: The Declaration of Principles (IGADD) signed by the Government of the Sudan in Nairobi on 20 July
- 1994: Memorandum of Understanding between the SPLM/A and Umma Party affirm self-determination for the Southern Sudan signed in Chukudum, Southern Sudan in December.
- 1995: The Asmara Declaration signed by the NDA, SPLMA in June
- 1995: The Sudanese government is accused of being behind assassination attempt on Egyptian President Husseni Mubarak. UN imposes sanctions against the Sudan.
- 1997: Khartoum Peace Agreement signed
- 1998: USA launches a missile attack on a chemical plant in Khartoum which USA claims is an Al Qaeda weapons plant.
- 1998: A new constitution in Sudan.
- 1999: The president dissolves the National Assembly and declares state of emergency.

- 1999: Sudan starts to export of oil with international assistance
- 2001: The UN lifts sanctions against the Sudan to support ongoing peace negotiations.
- 2001: Following the 11 September 2001 attacks, USA imposes new sanctions on the Sudan, accusing the Sudan of supporting international terrorism.
- 2002: Machakos peace Protocol signed on July 20 to end the civil war.
- 2002: President Bashir meets for the first time with SPLM/A leader Dr. John Garang on July 27
- 2002: Fighting breaks out again on July 31 between Government and SPLA
- 2002: Ceasefire is reconfirmed in October
- 2003: Rebellion breaks out in Darfur
- 2003: Agreement on Security Arrangements signed in Naivasha, Kenya on 25 September
- 2004: Agreement on Wealth Sharing signed in Naivasha, Kenya on 7 January
- 2004: Protocols signed Naivasha Kenya in May on the Resolution of the Conflict in Abyei and on the Resolution of Conflict in Southern Kordofan/Nuba Mountains and Blue Nile States
- 2004: Protocol on Power sharing signed in Naivasha, Kenya in May
- 2005: Comprehensive Peace Agreement signed on 9 January, but agreement does not cover Darfur
- 2005: UN Security Council agrees to send 10,000 peace keeping soldiers to the Southern Sudan, but this does not include the Darfur region.

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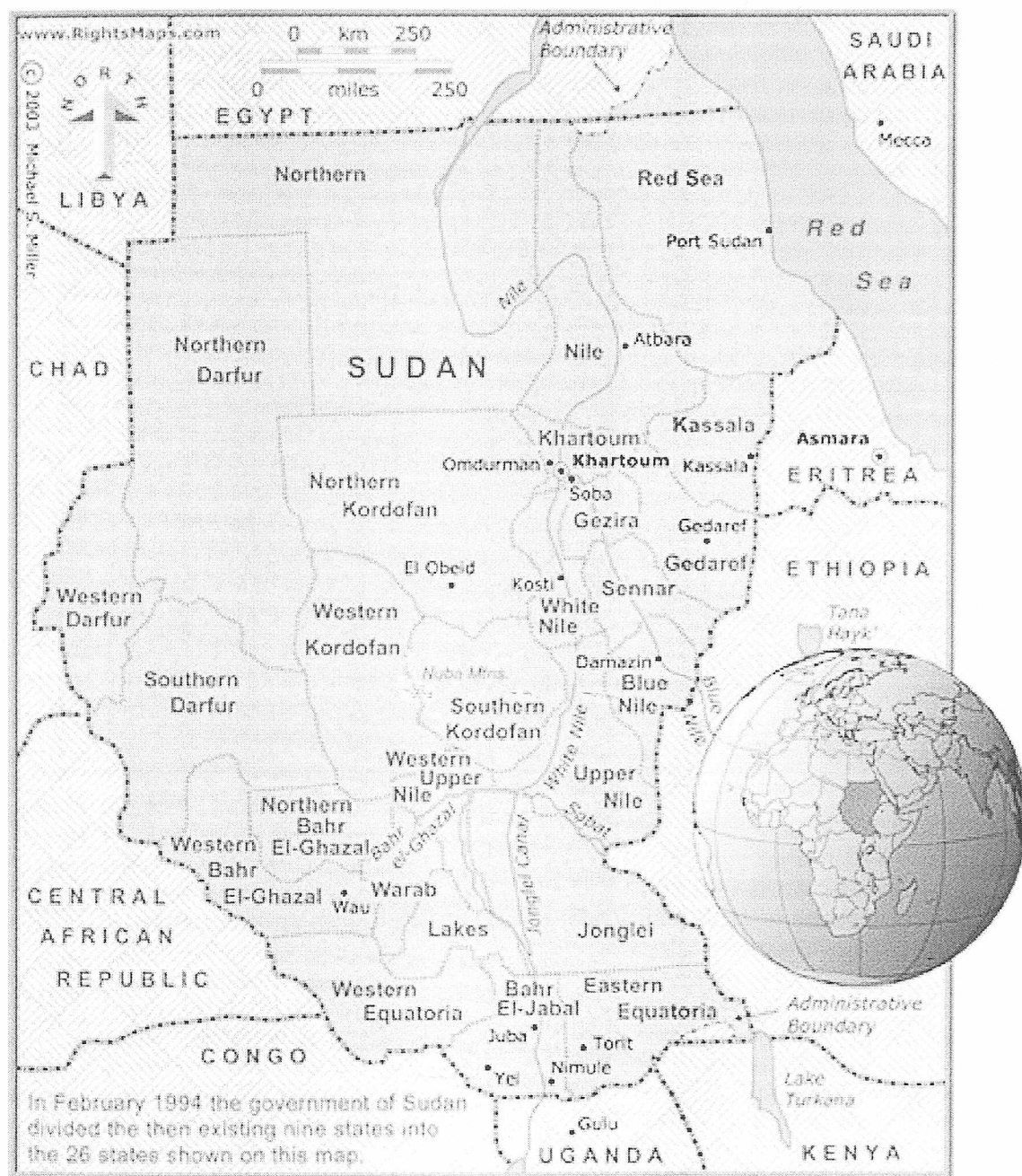
During my study, I have received generous financial help and moral encouragement. My deep appreciation goes to the John Slater Fund Scholarship Committee and the Diocese of London for their support. I would have not been able to carry out my research in the Sudan without their help. Many individuals read the draft of this study at different stages of its development and offered valuable advice. I am grateful to Dr. Mark Powel the Vicar at St. Peter's Parish Church and Mrs. Val Stephens for their interest and help.

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### *Abstract*

*This study argues that the Sudanese Comprehensive Peace Agreement (CPA) could result in the disintegration of Sudan. There are four main factors which increase the likelihood of such an outcome. Firstly, the hatred and distrust between the North and South of Sudan have deepened because successive Northern Sudanese regimes have not honoured previous agreements. Among the Southern Sudanese, in particular, there is increased support for secession. Secondly, the agreement is not being implemented fully, in both spirit and letter, and it could therefore collapse. Thirdly, the evident lack of good will on the part of the old regime (the National Congress Party) and its desire to establish an Islamic state with Shari'ah law in Northern Sudan are incompatible with national unity. Fourthly, the peace agreement is undermined by the controversial provision that at the end of the six-year transitional period, the South will vote in a referendum on whether it wishes to secede or to be part of a united Sudan. This principle of self-determination for the South, for which the South has fought for decades, makes the peace agreement's acclaimed aim of national unity an illusory goal. Nonetheless, the unity of the Sudan must not be ruled out entirely. It could be achieved if unity was made suitably 'attractive' to both parties and the separation of state from religion succeeded. To achieve national unity, this study proposes a consociational, power-sharing democracy consisting of a grand coalition, a mutual veto, proportional representation and regional autonomy. It is argued that this model of government is particularly suited to address the challenges of post-conflict Sudan. Decentralising decision-making through regional autonomy could be a particularly useful way of building peace in post-conflict Sudan if it remains a united country.*

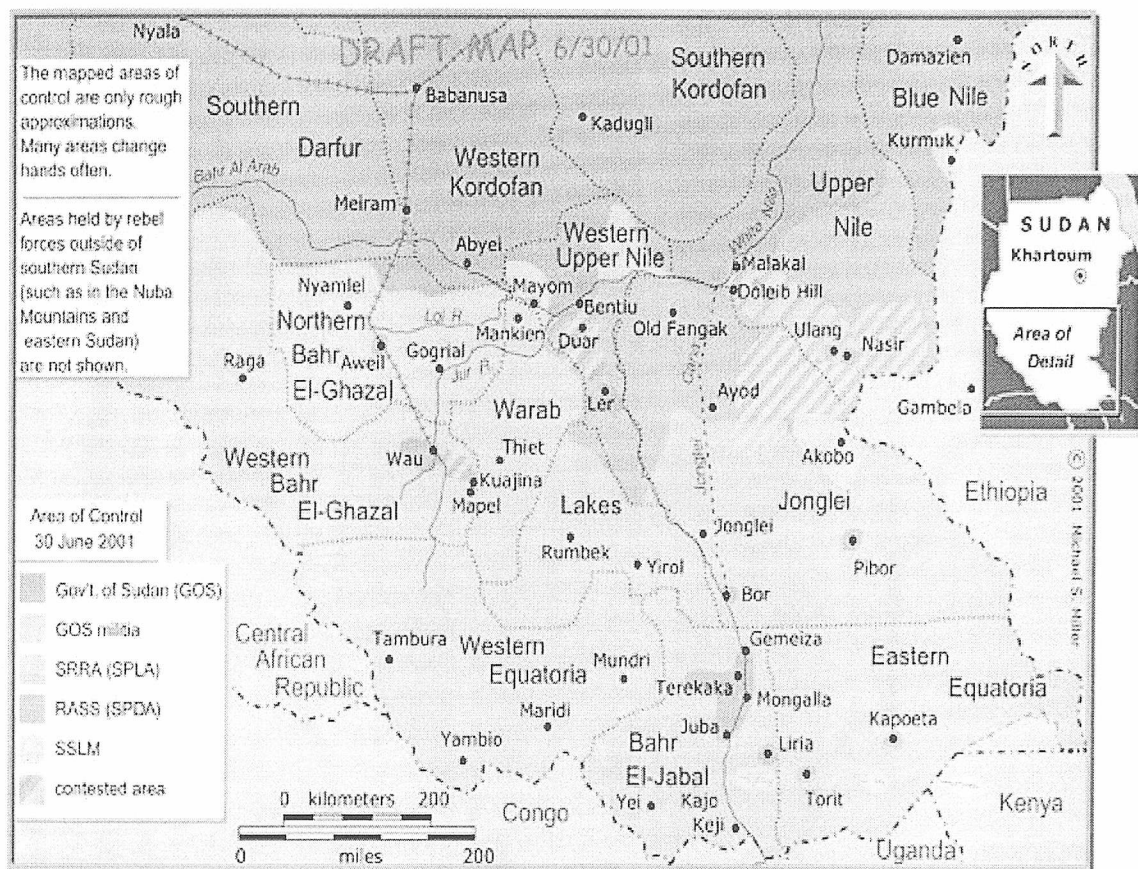
### Map 1: Democratic Republic of the Sudan in 1994



Source: [www.rightmaps.com](http://www.rightmaps.com)



**Map 2: of Southern Sudan and the Contested Regions in 2002**



Sources: [www.rightmaps.com](http://www.rightmaps.com), Johnson (2003), The Root Causes of Sudan's Civil Wars

Map 3: The Western Region of Darfur



Sources: [www.rightmaps.com](http://www.rightmaps.com)

## **Chapter I: Introduction**

This study examines how the Sudan's Comprehensive Peace Agreement (CPA) could lead to either the unity or disintegration of the Sudan. After three years of intense negotiations, the agreement was signed on 9 January 2005 in the Kenyan capital, Nairobi. The signatories, the Sudan People's Liberation Movement (SPLM) and the ruling Islamist National Congress Party (NCP) agreed to end a bloody 22-year conflict (1983-2005). The Sudan People's Liberation Movement/Army (SPLM/A) is an amalgamation of many parties and peasants from South Sudan incorporating the areas of the Nuba Mountains and the Southern Blue Nile. The parties came together because they had been marginalised by the ruling elites of the North. The National Congress Party (NCP) brings together several Northern political parties and Islamist hardliners who want to homogenise and unite all the Sudanese people under Islamic ideology.

This chapter outlines the aims of this study and provides a brief background on the Sudan in general, which is crucial for understanding Sudanese politics today. There are three parts. The first gives the geographic, historical and demographic context of the Sudan. The second outlines the root causes of the Sudanese conflict. The third introduces the Comprehensive Peace Agreement (CPA) and sets out the aim of this study, its rationale, methodology and organisation.

### **1.1 Geographic, historical and demographic context**

Sudan is in northeastern Africa. It borders nine countries and is across the Red Sea from Saudi Arabia. Two of its neighbours are Arab: Libya and Egypt. The other seven are African: Eritrea, Ethiopia, Kenya, Uganda, Democratic Republic of Congo (DRC), Central Africa Republic, and Chad. The Sudan is the largest country in Africa, and it may geographically be divided into four parts: the Sudan plain, the northwestern hills, the central Sudan hills and the South (Wai 1981). The Sudan is divided into an Arab North and African South (Jendia 2002). The Blue and White Nile Rivers converge in the capital, Khartoum, and the Nile continues north into Egypt. The Sudan has great diversity of climate, soil, vegetation and resources, including oil, and thus, great potential for agriculture and energy production. However, the Sudan is economically underdeveloped and poor, and has low status within the Arab world, largely because of the civil war that has shattered the country since independence from Britain in 1956.

The history of the Sudan is the history of division following the introduction of Islam in the 15th century which gradually split the country into Arab North and African South. Over the last 100 years there were three important periods that were political turning points: Turko-Egyptian rule beginning in 1820/21, Anglo-Egyptian rule 1898-1956 and independence from 1956. The first period started when the Ottoman Sultan's viceroy in Egypt, Muhammad Ali, entered the Sudan in the early 1820s and brought Northern Sudan under his rule (Alier 1990). Turko-Egyptian rule lasted for four decades, during which period there were annual raids into Southern Sudan. These resulted in the capture and enslavement of thousands of black Sudanese, the destruction of the region's stability and economy and the development of a deep hatred of Arabs by the Southern Sudanese. In 1885 a local Islamist, Mohammed Ahmed Ibn Abdullah, managed to drive the Turko-Egyptians out of the Sudan. Mohamed Ahmend Ibn Abdullah led an Islamic movement, claimed to be a divine and chosen leader, and proclaimed himself the Mahdi ("guided one") (Johnson 2003). However, the new Islamist ruler was soon beaten and expelled by British forces, and in 1899 Anglo-Egyptian joint rule was proclaimed over the whole of the Sudan (Warburg 2003). The British allowed the region of Darfur a measure of autonomy until formal annexation in 1916. From 1924 until independence in 1956, the British ran the Sudan as two separate colonies, the North and the South, the separation emphasising the divisions between them.

The ethnic and cultural demography of the Sudan is complex, but generally categorised as African or Arab. In a population of about 30 million, there are 616 ethnic groups and 115 languages (Brown 1997: 5). In the 1955-1956 Census, 56% of the population was of African stock and 40% Arab (Africa Watch 1990). Religions are generally described as Christian, Islam and African traditional. In contemporary literature on the history of the Sudan, it has been estimated that followers of Islam are 75.0% ,Christians between 10 and 20% and the followers of other religions 13.8% of the overall population. These figures are based on Wheeler (1997) and other statistical surveys.

## **1.2 The Sudan's Comprehensive Peace Agreement**

The Comprehensive Peace Agreement (CPA) sets up a power sharing arrangement between the signatories, SPLM/A and NCP for a six-year interim period (2005-2011). It includes provisions on state and religion, self-determination, political power sharing, wealth sharing, security arrangements, a cease-fire, and the status of the border areas of Abyei, Nuba Mountains and Blue Nile. There are separate provisions for implementation and these

alone run to more than one hundred pages. However, many Sudanese are asking: Can the Sudanese state in its present form represent all the various groupings and regional shades of opinion and interests? This is the fundamental question.

Most Northern Sudanese would answer yes. They feel they have enjoyed the right to self-determination since independence in 1956. Southern Sudanese, however, would argue they have never before been part of any agreement on the present Sudanese state. Furthermore Southern Sudanese have great distrust of the North following two civil wars (1955-1972 and 1983-2005). Most South Sudanese favour self-determination and secession. The separation of religion and state is a major sticking point. The South is multi-faith, with no predominant religion or sect. South Sudanese would prefer a secular state. In the North, Islamic Shari'a law defines both public and private life; there is no distinction between religion and state. Many Northerners consider the peace agreement a sell-out to the South. Turabi (2005), the leader of the Popular National Congress (PNCP), has argued that the CPA guarantees the separation of the South from the rest of the Sudan and would lead to the disintegration and fragmentation of the whole country.

The present Sudanese State was originally created as a result of colonial geographical convenience. Its initial objective was to serve colonial interests. It was not based on any social contract or agreement by the Sudanese people. John Garang, former first Vice President of Sudan and former leader of the SPLM/A, said in his speech (15 March 2005) that the elite of Khartoum and nearby central Sudan took over the colonial state and looked at it as if it were a magical tree that perpetually bears fruits of all kinds. They based the Sudanese State on the dysfunctional colonial State and the two exclusionist ideologies of Arabism and Islamism. This limited vision of Sudan's successive regimes has been behind most of the problems that have bedeviled the country since independence and resulted in many wars. The CPA is a fundamental shift away from this colonially inherited State, that was based on the hegemony of a few and marginalisation of the majority, to a new power sharing arrangement during the interim period.

### **1.2.1 The Aim of the Study**

The aim of this study is to assess and consider whether the CPA may lead to the unity or disintegration of the Sudan. The study will focus on four areas: (1) the origins of the Sudanese conflict; (2) whether the CPA has addressed the causes of the Sudanese conflict;

(3) what guarantees are needed to ensure the CPA's implementation and whether they are being achieved; (4) the likely outcome: unity or disintegration.

### **1.2.2 Rationale for the study**

Since 1983, media coverage of the conflict in the Sudan has been intensive but often incoherent. It has not brought understanding of the wars and the issues leading to them. The civil wars in the Sudan have sometimes been represented as a conflict between Christians and Muslims, and at others times as between Arabs and Africans. Like Rwanda, Burundi and the former Yugoslavia, the Sudan in the 1990s illustrated the crises of nationalism and of defining the nation-state. Hence, this study attempts to provide information to specifically inform western scholars as a guide to academic research as well as to inform policy makers.

The perpetual conflict, which has raged in Sudan since 1955, is a product of interlocking internal centrifugal and centripetal forces. Sharkey (2003) said that the civil war in the Sudan had been a fight to define the nation-state, its official legal, linguistic and religious codes and its division of powers. The divergence of views over national identity underlines the complexity of the questions. How mono-cultural must a national identity be? Can a theory of national oneness accommodate social diversity? Most nation-states struggle to answer these same questions. Some, like the Sudan, succumb to war. Conflicts have raged between Sudanese regimes and liberation movements, each side advocating incompatible and uncompromising stances on what should constitute an acceptable and workable resolution to the civil war. The Sudan Muslim ruling elite sought a centralisation of Islamisation and Arabisation policies which was unacceptable to the Southern Sudanese. The Sudan's racial and cultural heterogeneity, exacerbated by geo-political realities and colonial legacies, has led to a huge problem of national integration.

The study is also important because of the Sudan's strategic position in the Horn of Africa and its influence on other regions such as East Africa and the Great Lakes, or countries like Nigeria with similar ethnic and religious composition and associated conflicts. In a book published by the Sudan Ministry of Foreign Affairs (1973) it is argued that the problem of Southern Sudan is one that concerns not only the Sudan and her neighbours, but many other countries which have similar if not identical problems. Indeed, support by neighbouring countries for each other's armed dissidents is a critical element in regional relations. The SPLA received support from the Ethiopian military junta, headed by Mengistu Haile

Mariam, from 1974 to 1987, to counterbalance Sudanese government support for Eritrean and Ethiopian revolutionaries. In fact Sudanese support for Eritrean and Ethiopian revolutionaries resulted in the overthrow of the Mengistu military regime in Addis Ababa, and the establishment of the independent state in Eritrea (Johnson 2003). A similar pattern is seen in Uganda-Sudanese relations; Kampala's support for the SPLA counterbalanced Khartoum's support for the Lord's Resistance Army (LAR) (Young 1997). Thus, the implementation of the CPA may serve to encourage or undermine the resolution of other regional conflicts, depending on whether it leads to the unity or disintegration of the Sudan.

Scholars of the modern Sudan differ on whether the Sudan will remain united or will disintegrate. Others tend to adopt a middle ground. Alier (1990) says that a violent and reactionary revolution in Northern Sudan, bringing in a theocratic system of government and all-out Arab nationalism and making no provision for African nationality, could well spell the end of a Sudanese nation-state. Writing in 1999, Abel Alier noted that Southern Sudan could break away if Khartoum continued the Islamist policies. In his words, "mixing religion with politics is not conducive to the unity of Sudan" (Alier 1999). El-Affendi (1990) says what we are witnessing is the clash of two antagonistic cultural outlooks, both of which are experiencing a revival. Turabi, former leader of the National Islamic Front and the Sudanese Muslim Brotherhood played a leading role in moving the Sudan towards the adoption of Shari'a law, which resulted in civil war. Turabi rejects the secular Western state model inherent in the thinking of Sadiq al-Mahdi, head of the National Umma Party. It is, in his view, a product of Western colonialism. Turabi favours an Islamic constitution and Islamic State (El-Affendi 1991). For many reasons (including the imposition of Islamic system by successive regimes in Khartoum) Sudan is unlikely again to become a single united country (Abulemoi, 2002)

Warburg (2003) says that the Sudan emerged as a centre of Sunni-Islam militancy after 1989 when a group of radical Islamic officers assumed power under the guidance of Hassan Turabi and the National Islamic Front (NIF). Mahmoud (2003) notes that Sadiq al-Mahdi, the leader of the Umma party, insists there should be no denial of political, economic or social rights that would create citizens of a lower grade. For al-Mahdi, enforcing Shari'a State Law in the Sudan is inappropriate. Al-Mahdi believes that the issue of Shari'a law should be put before the nation in a referendum. Northern Sudanese who strongly identify with their Arab heritage will not be attracted by the ideology of Africanism. While Islamic



ideology is by definition unacceptable to non-Muslims and non-Arabs in the Sudan. Also the association of Islamic ideology with Arab Northern self-assertion makes it unpalatable to Southerners. Johnson (2003) says the process of self-determination must accommodate demands for a greater self-government for Sudan's regions, as well as the choice between unity and independence for the South.

The SPLA commitment to the unity of the country is not shared by many of its cadres and the rank and file. Deng (1999) argues that the SPLM/SPLA leadership sees fighting for justice as more likely to win sympathy and support than calling for secession. In its calculation, even the separatists stand a better chance of achieving their objectives within the framework of equitable unity, co-operating with those wanting a new democratic, secular and pluralistic Sudan. Deng (1999) asserts that Egypt, operating individually and through the Arab League, has campaigned vigorously against self-determination in the South, fearing that it would lead to the secession and the creation of a non-Arab state in the upper Nile region where Egypt has a strategic water interest. The SPLM/SPLA calls for a secular system while the old regime (NCP) remains true to its Islamic agenda (Deng, 1999).

It is difficult to satisfy the conflicting demands of the two major camps within one state. A multi-state solution may be the only way to preserve what is left of that once much loved oasis (the Sudan), and could be the only substitute to an illusory united country (El-Affendi, 1990). The integral Islamic state desired by some in the North can never be imposed on the South, either by military force or the now-shattered state apparatus--the alternative to splitting the Sudanese state is a political settlement acceptable to the South (Young, 1991). Danforth (2002) argues that decentralisation of power in this way can move in opposite directions, not toward greater centralisation but unravelling into separation and secession.

This study attempts to provide a comprehensive analysis and understanding of the Sudan's Comprehensive Peace Agreement (CPA). It can also serve as a benchmark for comparing the CPA with previously signed agreements, for example, the Addis Ababa peace accord (1972) and the Khartoum Agreement (1997); each of which failed to deliver.

### **1.2.3 The Methodology used in this Study**

The geopolitical context of the Sudan has been chosen for this study in an effort to provide an in-depth investigation into the CPA signed between the Government of Sudan (GoS) and the SPLM/A on 9 January 2005. The thesis is based on qualitative research.



The effectiveness of power sharing will be considered, as it has been by Lijphart 1977; Crocker and Hampson 1996; Hartzell 1999; Rothchild 1997; and Kumar and Ottaway 1998, to look at power sharing in post-conflict situations and divided societies. Advocates of power sharing say it promotes moderate and co-operative behaviour and helps to mitigate enduring conflict by fostering a positive view of political life. Critics of power sharing say that such institutional arrangements are inflexible and create divisions based on group identities and are thus unlikely to promote long-term stability. Other scholars say that such decentralisation of power can lead not to greater centralisation but to separation and secession. It is hoped that consideration of the theory of power sharing in post-conflict and divided societies like the Sudan will help explain how and why the Sudan's CPA could lead either to unity or disintegration. Although it has obvious merits, including recognising the claims of minorities, translating power-sharing into practice has failed in much of Africa.

Sources useful for this study include the CPA Documents themselves: the Machakos Protocol 20 July 2002, Protocol on Power Sharing 26 May 2004, Protocol on Wealth Sharing, 7 January 2004, as well as the Resolution of the Abyei Conflict, 26 May 2004, the Resolution of the Conflict in Southern Kordofan and Blue Nile States 26 May 2004. The study also uses books, Sudanese and Egyptian newspapers, journals and the Internet.

Examination of the CPA documents looks first at understanding how the differences between the parties were resolved and why the parties signed the Machakos Protocol which paved the way for the final peace agreement in 2005. Second, the study investigates the extent to which the CPA has addressed the root causes of the Sudanese conflict. Third, the study provides a basis for monitoring whether the parties will put the agreement into practice both in spirit and letter. Since there are no published books on the CPA, secondary sources such as newspapers, journals, and the Internet are used to update information on the peace process and implementation of the CPA.

In pursuit of the aim and objectives of this study, primary sources include questionnaires and interviews with a wide section of Sudanese society including key politicians and negotiators of the current and previous peace agreements. Explorative interviews provide perspective. The objectives of the interviews are to elicit reactions regarding the following issues: (1) key factors that have contributed to the success of the CPA; (2) the extent to which the CPA has addressed the root causes of the Sudanese conflict; (3) the political

commitment both in the North and South Sudan to change fundamentally the political, social and economic institutions; (4) the readiness of Sudanese civil society to participate in change and their expectation of such change; (5) people's expectations regarding the government's role in delivering change; (6) whether the provision for a self-determination referendum will lead to an independent Southern Sudan; (7) Whether tribalism and regionalism are potential threat to the unity of the post 2011 Southern Sudan. Interviews were conducted in Khartoum, the Nuba Mountains, the Southern Blue Nile, Abyei, Southern Sudan and with Sudanese in the diaspora.

Historical and sociological sources will be used to give the context and background, but they are not major factors in the study. This study gives special consideration to the previous peace agreement, the root causes of the Sudanese conflict and their effect on the unity of the Sudan as a country. It also outlines the formation of the SPLM/A, their objectives for the "New Sudan" and whether these objectives have been achieved through the CPA and how their impact is being felt in the Sudan. Logical reasoning will be applied to the research so that precision, objectivity and rigour replace hunches, experience and intuition.

#### **1.2.4 Organisation of the study**

This study is in nine chapters. Chapter I is this introduction. Chapter II reviews how scholars have perceived power-sharing since the 1960s. It provides a general understanding of contemporary power-sharing arrangements taking place across the world, which is fundamental in understanding the Sudan's Comprehensive Peace Agreement. Chapter III presents a chronology of historical and political events applicable to this study, and the roots of delicate and disharmonious North-South relations. Chapter IV looks at how tensions and contradictions within and between the parties and NCP were settled or led to compromise on key issues such as the right of self-determination for the people of Southern Sudan, the relationship between religion and the state, and cultural diversity.

Chapter V examines the Protocol of Power Sharing signed between the GoS and the SPLM on 26 May 2004. It looks at how far the Protocol of Power Sharing addresses the Sudan's conflicts of governance and the grievances of Southern Sudan. Chapter VI examines the agreement on wealth sharing of 7 January 2004 signed between the SPLM and the government of the Sudan. Chapter VII investigates resolutions of conflict in Abyei,

Southern Kordufan and Blue Nile, and how far parties to the CPA tackle the grievances there. Chapter VIII examines what assurances exist for the implementation of the Comprehensive Peace Agreement. Finally, chapter IX summarises this study and offers conclusions and recommendations.

## **Chapter II: Theoretical Review**

The Sudanese Comprehensive Peace Agreement (CPA) concluded between the Sudan government and the SPLM/A on 9 January 2005 is based on power sharing for a six year interim period. Will power sharing increase the probability of lasting peace in post-conflict Sudan? This chapter will review the theory of power sharing to help clarify the basis of the CPA and the situation post conflict in the Sudan. The theory of consociational democracy suggests that power sharing nearly always requires some accommodation and co-operation among leaders, support for democracy and good governance in ethnically divided societies (Lijphart 1977). The theory of consociationalism has been at the forefront of scholarly discussion, in particular about what promotes peacemaking and democratic change in deeply divided societies such as the Sudan. Supporters of the consociational system of government like Lijphart, (1999) have argued that settlement can most easily be achieved in multi-ethnic states when different communal interests can be accommodated in a power-sharing arrangement.

### **2.1 Power Sharing**

Scholars, diplomats and mediators favour using power sharing in countries divided by separatist movements or ethnic rivalries. It is an alternative to separation or secession. Some scholars believe that power sharing encourages group co-operation and avoids ethnic rebellion in societies divided into distinct linguistic, religious, nationalistic and cultural communities. This view is based on the theory of consociationalism which was initially developed in the late 1960s and early 1970s. The theory was used to explain the stability in a few divided European democracies, such as Austria, Belgium and the Netherlands (Lijphart 1969). Consociational democracy has also been applied extensively to a number of transitional and consolidating democracies, as in the Lebanon, South Africa and Malaysia. The concept was developed by several writers, including Gerhard Lehmbruch (1967), Jog Steiner (1974), and Hans Daalder (1974). Arend Lijphart has been the most closely connected with developing and advocating consociational democracy.

For Lijphart, consociationalism is intended to establish a stable political system through co-operation despite social division. In his early work, Lijphart identifies four characteristics of consociational constitutions: executive power sharing in a coalition of political leaders drawn from all areas of society; a vote for the minority, proportional representation, and a

high degree of cultural autonomy for each group (Lijphart 1968, 1977). Writing in 1999, Lijphart argued that this type of power sharing had considerable advantages over majority rule, generating “kinder, gentler” governance with more inclusive processes of decision making, more egalitarian policy and better economic performance (Lijphart 1999).

Other scholars agree with Lijphart’s theory of consociationalism. Hartzell, Hodie and Rothchild (2001:199) have argued that negotiated settlements, involving power sharing, make it difficult for any one group to use state resources to increase its power over others. This reduces the likelihood of a return to war. Marely (1997) and Clark (1996) note how power sharing was used in the creation of a new defence force in the 1992 Mozambican Peace Accords. They provided for a new army made fifty percent from members of the Liberation Front of Mozambique (FRELIMO) forces and fifty percent from the Mozambican National Resistance (RENAMO). The integration of the two sides prevented either from seizing state security agencies and using them against the other. Geof (2004) notes that the Colombian National Front’s (1958-1974) rotating presidency and equal division of all political offices between the Conservative and Liberal parties is an example of how dividing political power between groups can promote agreement enforcement.

One of the best known examples of power sharing is South Africa’s transition from apartheid rule to a relatively stable, multi-ethnic democracy. It is a powerful illustration of the value of power sharing when conflict is likely. Rothchild (1997: 54) argues that in accepting proportional representation in South Africa, the leaders of the African National Congress (ANC) acknowledged the white minority’s individual and collective insecurities. This speeded recognition of the political and legal changes that would lead to ANC majority rule. Power sharing also helps after civil war before there are any “rules to change the rules”. Malaysia’s power-sharing accord between the Malay and Chinese communities is a case in point. Snyder (2000: 283-285) says that when the accord began to break down because of increased numbers of Chinese voters and Malay feelings of economic grievance, the power-sharing government took steps to create new rules. They re-structured political and economic distribution and revoked the citizenship or legal right of residency of several non-Malays.

Critics of power sharing say that such arrangements are inflexible, promote ethnic division and are unlikely to promote stability in the long run (Barry 1975, and Horowitz 1985).

Others like Snyder, are concerned about exacerbating ethnic identities and prefer an "authoritarian regime" to a democratic, power-sharing one. Snyder (2000) says that "power sharing and ethno-federalism, by locking in ethnic identities, are in that sense steps in the wrong direction". However, power sharing can be designed to integrate groups and help produce a new, common identity over time. South Africa's peace agreement, for example, called for the integration of former state security forces and the ANC's military wing into the newly constructed South Africa National Defence Force (SANDF). The Strategy Survey (1994-1995) says that although the SANDF experienced some troop unrest, South African generals were happy with the appointment of Joe Modise, former head of the ANC's military wing as new Minister of Defence, particularly once he became a key defender of South Africa's war machine and its budget.

Weiner (1995) and Sowell (1990) say power sharing can sometimes fail to manage the post-civil war environment and can in itself pose a problem for conflict management. Encouraging weaker parties with expectations of future involvement in government can be a problem; short-term motives for adopting power-sharing arrangements may be at variance with long-term incentives to strengthen political power (Roeder and Rothchild, 2005). The problems of implementating a peace agreement are often underestimated, as in the case of many African post-conflict societies such as Angola.

## **2.2 The importance of Power Sharing**

Power sharing can be as attractive to those whose power is on the way out as to those whose power is on the increase. Hoddie and Hartzell (2001) list four aspects of power sharing: the allocation of political power, regional de-centralisation, military limitations on the warring parties, economic distribution of state resources. They say former combatants are likely to be more reassured by a resolution that calls for power sharing in each of these areas, than by one that calls for power sharing in only one. For Arend Lijphart (1999) the term power sharing means jointly exercising governmental authority, in particular executive power sharing. This may take various forms. The most straightforward form is a grand coalition in a parliamentary system. Another form is partial self-rule, in addition to joint rule. In this form, factions make joint decisions on all issues of common concern, but make independent decisions on matters of regional concern.

Diplomats and scholars favour power sharing after civil wars. It gives support to weaker

parties and encourages them to commit to a peace agreement. Reilly and Reynolds (1999: 16) say “weaker parties typically have a greater need for inclusiveness and a lower threshold for the robust rhetoric of adversarial politics than their established counterpart”. Some scholars say that power sharing is the only way to promote stability in deeply divided societies. Lijphart believed his “consociational democracy” to be an institutionalised form of democratic conflict management for divided societies. He is critical of majoritarian electoral systems based on “winner take all”. Unlike proportional representation, majoritarian regimes often fail to incorporate minorities into government. As a result excluded communities resort to other ways to express their demands, ranging from peaceful protest to outright rebellion. Byman (2002) says examples can be seen in the sectarian violence through lack of sustained progress towards democracy in Kenya, Nigeria and Zimbabwe. Pippa Norris (2005) likewise says that “in Iraq, for example, if elections were to be held under majoritarian rules, since the minority Sunni community feels threatened by the hegemonic Shi’a Muslim population, government decision-making concentrated in the hands of the winning majority would be vulnerable to collapse under pressures from inter-ethnic rivalries and insecurities”.

Contemporary African experiments with power-sharing institutions have had mixed results. UN Special Envoy to Burundi Ahmedou Ould-Abdallah writes in the mid-1990s that “the presence of a community’s representatives within a government acts as some reassurance to that community that its vital interests will not be ignored”. Jarstad (2006) asserts that “in divided societies, the political parties diverge to a great extent”. In her opinion “where people vote along ethnic lines, political parties representing ethnic minorities have no chance of ever forming a majority, and shifting majorities in parliament are therefore unlikely”. Lijphart believes that under such circumstances rule by majority is not only unfair, but also unsafe and risks resulting in civil strife (Lijphart 1999: 31-33). Regarding Lebanon in 1985, Lijphart writes that “the choice is not between consociational and majoritarian democracy, but between consociational democracy and no democracy at all” (Lijphart 1985: 13).

There are other political measures that can help to encourage co-operation and moderation in ethnically divided societies. Horowitz (1985), Reilly (2001), Reynolds (2002), Sisk (1996) and others scholars (cited in Jarstad 2006), have recognised that self-governing through integration can hold together ethnic groups as a basis of democracy. Horowitz

(1985) notes that such a system creates incentives for moderation and collaboration across ethnic divides. Ian S. Spears (2000: 105-108) writes that power sharing “can be compatible with democracy”; however, power sharing is sometimes used as an “alternative” to elections.

Walter (2002) describes problems with power sharing when there is a lot of distrust and vulnerability. She says concessions in a peace deal increase the parties’ vulnerability and limit their ability to enforce a treaty. Once parties have laid down their arms and surrendered territory, they can be vulnerable to surprise attacks. Also parties do not trust each other to implement the agreement. Walter (1999) suggests that each side demand some form of power sharing as the “price for peace”. She claims warring parties are 38% more likely to sign an agreement if it includes guaranteed positions in a future government.

### **2.3 The aims of power sharing**

The aim of power sharing is to end conflict by reassuring warring parties with a guaranteed position in future government. Power sharing involves a wide range of arrangements normally embodied in constitutional terms. The most important elements of society are guaranteed a place and influence in governance. So an assured place in a grand coalition is an incentive for weaker groups to sign a peace agreement. For Arend Lijphart (1999: 31-32) consociational democracy is more democratic than majoritarian types. He says rule by all major parties is more legitimate than government by majority.

The theory of consociationalism emphasises the importance of incentives in two phases. First, power-sharing arrangements, as described by Lijphart, mitigate conflict between leaders. Consociational democracy is designed to turn a fragmented political base into a stable democracy (Lijphart 1969). Norris (2005) says consociationalism should maximise the number of “stakeholders” with an interest in playing by the rules. He says this is exemplified by proportional electoral systems with a low vote threshold, which normally results in a legislature with many small parties, each representing a different community. Morrow (1994) says collaboration in a grand coalition promotes mutual understanding so that policies do not discriminate against any group. The rationale of consociationalism is that recognising ethnic demands increases security, and that in turn promotes mutual trust and reduces grievances. In the long run, consociationalism is expected to depoliticise ethnicity and allow the development of a common national identity (Jarstad 2001: 46-48).



Jarstad (2006) notes the importance of Hoddie and Hartzell's (2001) study in understanding the content of peace agreements. Hoddie and Hartzell (2001) say that using four types of power sharing leads to political stability. They divide power sharing into the following areas: political, military, economic and regional autonomy. Jarstad says broad power sharing may increase the costs of a return to war and thus serve as an internal guarantee in the absence of a neutral third party.

Scholars differ in their definitions of consociationalism. Jarstad (2001) says that Lijphart has altered the scope of the consociational category over the years: a stricter definition of consociationalism is applied in some writings; and political circumstances have changed. Reilly and Benjamin (2001) say that Hoddie and Hartzell (2001)'s list of instances of "power-sharing and power-dividing institutions specified in agreements to end civil wars" includes various types of power sharing. In addition to democratic power sharing, regional autonomy or federalism are included, as for example in Papua New Guinea. According to Reilly and Benjamin (2001) Australia and Estonia, which are on Lijphart's list, are not divided societies, but have used regional autonomy or federal forms of institutional design. Below is the list of cases based on power sharing as classified and defined by Hoddie and Hartzell 2001.

### 2.3.1 Examples of Power Sharing Institutions in Civil Wars Settlements

	Central Power-sharing Institutions	Territorial Power-sharing	Military power-sharing policies	Economic power-sharing policies
Angola 1975-89	0	0	0	0
Angola 1989-91	1	1	1	0
Angola 1989-94	1	1	1	0
Azerbaijan 1989-94	0	1	1	0
Bosnia 1992-95	1	1	1	0
Cambodia 1970-91	1	0	1	0
Chad 1979-79	1	0	0	0
Chad 1979-96	1	0	1	0
Chechnya 1994-96	1	1	1	1
Colombia 1948-57	1	0	0	1
Croatia 1995-95	1	0	0	0
Dominican Republic 1965-65	0	0	1	0
El Salvador 1979-92	1	0	1	1
Georgia [Osetia] 1989-92	0	1	1	0
Georgia [Abkhazia] 1992-94	1	1	0	0

Guatemala 1963-96	0	1	0	1
Guinea Bissau 1998-98	1	0	1	0
Papua New Guinea 1989-98	0	1	0	0
India 1946-49	1	1	0	0
Laos 1959-73	1	0	0	0
Iraq 1961-70	1	1	0	1
Lebanon 1958-75	1	0	0	1
Lebanon 1975-89	1	0	0	1
Liberia 1989-93	1	0	0	0
Liberia 1994-96	1	0	0	0
Malaysia 1948-56	1	0	0	1
Moldavia 1992-92	1	1	0	1
Mozambique 1982-92	1	1	1	0
Nicaragua 1981-89	1	1	1	1
Philippines 1972-96	1	1	1	1
Rwanda 1990-93	1	0	1	1
Sierra Leone 1992-96	1	0	1	1
South Africa 1983-91	1	1	1	1
Sudan 1963-72	0	1	1	1
Tajikistan 1992-97	1	0	1	0
Yemen 1962-70				
Zimbabwe 1972-79	1	0	1	1

Hoddie and Hartzell 2001

### 2.3.2 Examples of consociational democracies according to Lijphart

Below is a list of consociational democracies as defined and classified by Lijphart.

Austria 1945-1966	Belgium since 1970
The Netherlands 1917-1967	South Africa interim constitution of 1994
Colombia 1958-74	Surinam
Cyprus 1960-63	Switzerland since 1943
Czechoslovakia 1989-93	Lebanon 1943-1975, since 1989
Israel	Malaysia 1955 breakdown in 1969-71)
India	Lebanon 1943-1975, since 1989

Sources: (Lijphart, 1977; 1985: 89-90; 1996: 259; 1998: 101-2).

As shown in the tables above, there are a few cases in Hoddie and Hartzell's list which correspond with Lijphart's. Both lists include the peace accords after the civil wars in Colombia 1948-57, Lebanon 1958-75 and 1975-89, Malaysia 1948-56 and South Africa 1983-94. The rest of Hoddie and Hartzell's cases have not been recognised by Lijphart as

consociational solutions. Jarstad (2001) notes that Hoddie and Hartzell include only wars ended by negotiated settlement or truce. They do not agree with Lijphart's inclusion of the peace accords after the Cyprus conflicts 1963-64 and in 1974 as the peace terms were imposed rather than agreed.

On the other hand Hoddie and Hartzell's (2001) list includes cases that involve just one or two aspects of the four power-sharing features: regional autonomy or federalism, military and economic policies. For example, the peace deal at the end of the 1989-92 war between Georgia and South Ossetia is included because of the provisions for military and territorial power-sharing. The peace deal after the Congo/Zaire 1998-99 war is also used as an example of military power sharing. The agreement after the war in Mozambique 1982-92 contains, according to Hoddie and Hartzell, provisions for political, military and territorial power sharing.

#### **2.4 Power sharing and conflict management**

Scholars have different views on the effectiveness of power sharing. Some say that power sharing can promote stability in ethnically divided societies through proportional representation and many emphasise the importance of inclusive governance in multi-ethnic societies. Hoddie and Hartzell's research indicates that of 38 civil wars ended by negotiated settlement between 1945 and 1998, only one did not provide for power sharing. They conclude that the more power sharing there is, the greater the likelihood that peace will last (Hartzell and Hoddie 2003: 319).

Jarstad (2006) notes that "in the conflict management discourse, power sharing is seen as a mechanism to manage the uncertainty involved in a peace process if need be, as a substitute for elections, while research based on democratic theory treats power sharing as a mechanism to foster moderation and to improve the quality of democracy". Scholars such as Lewis provide justification for the need to share power in ethnically pluralistic societies. He writes "everyone affected by a decision should have the opportunity to participate in making that decision, either directly or through representatives and the preferences of the majority should prevail" (Lewis 1965). Lijphart (1969) notes that European countries resorted to coalition cabinets during World War II because solidarity in defeating the enemy was more important than partisan differences.

Some scholars believe that power sharing can only limit conflict for a short period and can

destabilise in the long run. An examination of power sharing in Africa seems to confirm this view. Ian S. Spears (2002: 123-136) has argued that power-sharing agreements are impracticable. He says "in the aftermath of civil war, power-sharing agreements are difficult to arrive at, difficult to put in practice, and when implemented rarely stand the test of time". Timothy Sisk (1999: 9) warns that "power-sharing practices are likely to have conflict-mitigating effects, only if the disputants arrive at them through a process of negotiation and reciprocity that all significant parties perceive as fair and just, given their own changing interests and needs". In the findings of Spears (2000: 106), a power-sharing pact is an unstable foundation on which to build peace, and requires the commitment of the international community.

Other scholars believe that an integrated political forum and economy helps prevent conflict in divided societies. Richard Sandbrook (2000: 61) writes that "democracy can manage ethnic divisions, but only if its institutions foster compromise, inclusion and cooperation across cleavages". Elster (1999: 1) maintains power sharing has three functions: inclusion, leveling of power relations and guidelines on the most important disagreements among the elite. These functions should uphold peace and a democratic system. In other words, exclusion of opposition groups can prompt them to take up arms and thus threaten peace. Darby and Ginty (2003) point out that power-sharing arrangements which provide positions in government for only some of the warring groups, can provoke excluded groups to resort to violence. In the case of the Sudanese power-sharing agreement, interviews with different groups indicate that while the agreement was intended to be inclusive, it has, in practice, led to the exclusion of certain groups and individuals.

Power sharing is a very complex system of government. Jarstad (2006) says that it can be understood in terms of a basic two-player game. She says that if the elite fails to get everybody on board, extremist splinter factions (as in the case of the Sudan) or fundamental popular movements may disrupt the move towards democracy and peace. The conflict can be regulated or obscured by allocating a certain number of government positions to each faction. This may provide room for moderate factions supporting peace and democracy. Lijphart's (1999) says that the provisions of consociationalism change the value of co-operation for the parties involved. Lijphart (1968) says that in pluralistic societies the concepts closely related to consociationalism are consensus democracies, power sharing, accommodation and corporatism which contrast with the competing model of democracy

based on pluralism.

2.4.1 Examples of Power-Sharing Accords

Angola The Lusaka Protocol 1994	Burundi The Arusha Accord 2000
Bosnia, Herzegovina Dayton Accords 1995	Cambodia The Paris Agreement 1991
Cyprus The London Accords 1959	Coted'Ivoire The Linas-Marcoussis Agreement 2003
Democratic Republic of Congo The Pretoria Agreement 2002	Lebanon The Ta'if Agreement 1989
Liberia The Accra Comprehensive Peace Agreement 2003	South Africa The Interim Constitution Agreement 1993
Rwanda The Arusha Accords 1993	Sudan The Naivasha Comprehensive Peace Agreement 2005
Sierra Leone The Lomé Accord 1999	Tajikistan The Moscow Declaration 1997
Uganda The Yumbe Agreement 2002	Zimbabwe The Lancaster House Settlement 1979

Source: Jarstad 2006

Contemporary African experiments with power sharing have had mixed results. The table above lists a range of peace agreements of different types, many of which have experienced difficulties, particularly in Africa. Following the signing of peace accords in Burundi, DR Congo, Liberia, Rwanda and the Sudan, a number of patterns were seen. Co-existence was unstable in Burundi, the Democratic Republic of Congo (DRC) and Liberia, where intense mediation efforts by external parties led to power-sharing agreements in principle, but implementation proved difficult and incomplete (ICG 2002, African Bulletin 2004). The Burundi agreement provided for two forms of ethnic power sharing. Ethnic political parties shared power for a transitional period, while the constitution determined the percentage of Hutu and Tutsi representatives.

In Liberia serious divisions surfaced in 2004, not only among the factions making up the cabinet but within the main rebel group, Liberians United for Reconciliation and Democracy (LURD) (Africa Research Bulletin 2004). The Ivory Coast peace agreement, negotiated by the government of Laurent Gbagbo and Northern rebel groups in Marcoussis, France, was an unstable political and military deal from its outset. Power was divided between Gbagbo, who stayed on as president, and Seydou Dirra, a Northern Muslim who became prime minister charged with heading the government of national reconciliation (African Research Bulletin 2004).

Some peace accords do not make any reference to ethnic groups, for example the peace

accords in Angola, Cambodia, Ivory Coast, and Sierra Leone (ICG 2003), but these too have met with difficulty. In Sierra Leone in 1999, violence caused the power sharing to break down. Jarstad (2006) concluded that power-sharing can affect inter-group relations in war-torn societies. The power-sharing provisions of the 1994 Lusaka Protocol to bring peace to Angola were not fully implemented until after the death in 2002 of Jonas Savimbi, the leader of the National Union for the Total Independence of Angola (UNITA) rebel movement. Hodges (2001: 58) notes that implementation of the power-sharing provisions began only with the formation of the Government of Unity and National Reconciliation in April 1997, when some UNITA deputies took up their seats in parliament. However Savimbi declined the vice-presidency that was offered to him and renewed fighting in 1998.

The North-South Sudan agreement is another example. The Nairobi Declaration on the Final Phase of Peace in the Sudan was signed on June 5, 2004. It reaffirmed the Protocol between the Government of the Sudan (GoS) and the Sudan People's Liberation Movement (SPLM) on power sharing. These arrangements were incorporated in the January 2005 peace agreement, but still have not been applied throughout the country.

Other scholars note that societies in civil war are affected by multiple conflicts. Atlas and Licklider (1999) point out that once the major conflict has been resolved, other conflicts may come to the fore. Jones (2002) says that intra-group rivalry in ethnically divided societies can result in the formation of radical splinter groups. Khadiagala (2002) notes that sometimes aggression continues, as was the case in Rwanda 1993, where the Arusha Peace Agreement could not avert genocide. Jones (1999) and Rothchild (2005) write that a radical splinter group of the Hutu government, the National Revolutionary Movement for Development (MNDR) "feared exclusion from power sharing" and formed a faction called Coalition for the Defence of the Republic (CDR) which intended to do away "with all Hutu moderates and Tutsi". A long military campaign by the rebel movement, the Council of National Defence for Democracy Forces-Forces of Defence for Democracy (CNDD-FDD), ended when the Pretoria Protocol of 8 October 2003 allotted them four seats in the transitional cabinet and fifteen seats in the National Assembly. Bentley and Southall (2005) note that the Global Peace Accords of 16 November 2003 stipulated that CNDD-FDD should get three ministry positions and the post of Minister of State.

## 2.5 Power Sharing and Democratisation

Can power sharing encourage a democratic system? Hoddie and Hartzell (2003) conclude that “the main function of power sharing is to end violence, not build democracy”. Walter (1999) suggests that as contending parties each fear that the other side will not uphold an agreement on democratic governance after a “winner-takes-all election”, they prefer some form of power sharing. However, Lijphart has a different view on the relationship between power sharing and democracy. Lijphart (1999) says “the majority is dependent on the minority’s allegiance to the regime”. He argues (1965) that consensus democracies have advantages and that a broad participation of groups, bargaining and compromise are essential for legitimate decision-making. Lijphart says that a divided society will co-exist more peacefully when parties and politicians representing diverse ethnic communities are included in the governing process.

The creation of a grand coalition can limit violence in divided societies, as was the case in Kenya. A coalition was established after post-election riots in January 2008. Lijphart (1999: 32-33) believes that a government including the greatest possible number of factions is more democratic than popular rule. Lijphart (1994:12) has to a great extent developed the view that consociationalism can promote a way of finding the middle ground and understanding among different groups. Lijphart (1999) reports that there were considerably fewer violent riots and political deaths in consensus democracies than majoritarian ones. He claims that consensus democracies can have a better quality of democracy and generate greater satisfaction. For example they may improve representation of women. He says they also promote more successful macro-economic management as regards inflation, unemployment and economic inequality .

Consociationalism takes into account ethnic demands and thus promotes security and mutual trust and reduces grievances. Morrow (1994: 264) says that co-operation in a grand coalition government can promote mutual understanding . Jarstad (2001: 46-48) echoes Morrow when she writes that “in the long run, the policies of the parties are expected to conform, to avoid exclusion or discrimination of the other group”. Smith (2000) says people are reassured by democratic institutions that have regular elections, shared political power, government transparency and accountability, and recognition of the rights of the individual. Bakan (1995) argues that fair elections are essential for the transition from civil war to peace. Electoral systems hold out the prospect of legitimate governance over time. Jarstad



(2006) says that “elections can make a difference in a power-sharing system, by allowing voters to choose between different candidates”. Power sharing may therefore help bring about peace and democracy post-conflict in the Sudan provided the CPA is implemented in full.

Many scholars agree that democracy is essential in post-conflict societies. Reynolds and Sisk (1998:17) observe that post-conflict elections are critical turning points in the transition from armed conflict to stable governance and conflict management. Krishna Kumar (1998: 7) says “elections contribute to the institutionalisation of a conflict resolution mechanism in the body politic” . Lopez-Pinter (1997) argues that post-conflict elections are more likely to become “reconciliation elections” if the agreement calls for the construction of power-sharing institutions designed to address the security concerns of former opponents . South Africa, which held its first post-conflict elections more than two years after the signing of a negotiated agreement, is a case in point. Reynolds (1998) notes Lopez-Pinter wrote “the architects of that country’s settlement created institutions for sharing military, political and economic power to reassure minority groups about the manner in which power would be exercised and the uses to which power would be put, thus lessening parties’ fears of electoral outcomes. Kumar and Ottaway (1998: 236) note that “not only were elections held...but by the time the elections were held, widespread consensus had been achieved on the rules of the political game”. It would therefore seem fair to conclude that power sharing is essential for stabilisation after conflict and for a transition to democracy and that democratic government helps to resolve conflict.

## **2.6 Confidence building in post-conflict relations**

Civil wars leave countries in a nervous and dangerous state. There is a high degree of suspicion and resentment. Rothchild (1997: 140) has written at length about how leaders of different groups are unsure about the transition to peace, fearing that they will either be removed or murdered. He quotes Angola's former UNITA leader Jonas Savimbi speaking in 1996: “No leader in history that I have known disarmed and stayed in power”. Rothchild’s analysis prompted Jarstad (2006) to conclude that Savimbi's fears contributed to his return to civil war.

What can be done to guarantee security in the post-civil war period? Research done by Hoddie, Hartzell, and Rothchild (2001: 199) indicates that the presence of a third-party to



enforce peace is important in preventing its collapse during the first five years. Stedman and Rothchild (1996: 18) say that during the transitional period the third party must reassure the negotiating parties by playing an active role in implementing the security measures agreed at the bargaining table. They say these measures should include ceasefire monitoring, verifying troop movements, setting realistic goals for disarmament and demobilisation, overseeing the integration of the new army, and reforming the police.

The implementation of post-conflict power-sharing arrangements in Africa has often been unsatisfactory. Rothchild (1997: 134) says the United Nations and its members have not always been willing or able to make a sustained commitment. The 1991 Angola settlement is an example. The \$132 million allocated for the UN observer team funded only 480 monitors, an inadequate number to monitor the demobilisation of troops and the reintegration of Angola's armies.

Similar situations faced the Sudan after the 2005 agreement and the Democratic Republic of Congo (DRC) following the 1999 Lusaka agreement. The Africa Research Bulletin (2004) notes that the UN force sent to the DRC had only 5,537 military observers and support troops, far too few to monitor the ceasefire in a vast poorly-integrated country. Huntington (1968: 24) says stable government cannot be established unless the abnormality of civil war is replaced by normal social communications in daily life.

Research on post-conflict power sharing underlines that a fundamental requisite for lasting peace is that a third party takes charge of the reconciliation process. Rothchild (2005) says that mediators and peace-keepers provide reassurance during the transition by separating opposing forces and restricting them to specified assembly points. Jeong (2005) says this is a most perilous phase of the process because the opposing forces are afraid of being vulnerable to attack. Ginifer (1996: 29-34) says that after the negotiations on Zimbabwe's independence, Patriotic Front leaders worried about possible collusion between the Rhodesian Security Forces and the Commonwealth peace-keepers. It is crucial that the third party builds confidence by assuring both sides that it will protect the agreement and prevent a surprise attack. In the end, however, the parties themselves must cooperate with the mediator. Hare (1998: 97) says that in Angola, when one side failed to send its best troops and equipment to the assembly points, there was little a third party could do to stabilise the agreement.

Rothchild (2005) says that when the quartering of troops is underway, a third party can build confidence by overseeing disarmament and demobilisation. Walter (2002) notes the importance of the third party's role in reassuring insurgents who fear the consequences of reduced military capacity during the transition period. Jeong (1999) says the third-party's role is crucial in observing, verifying and supervising disarmament and demobilisation, and assisting ex-combatants to reintegrate into society.

A peace agreement is more likely to be acceptable if it is precise about the role of the intermediary in enforcing the agreement and clear about the guidelines for disarmament, demobilisation and dispatch of illegal weapons. Marely (1997-98: 142) and Clark (1996: 27) note that external support for demobilisation in Liberia (1995) and in Mozambique was inadequate, both in its planning and funding the return of soldiers to civilian life. There was also inadequate supervision of the disarmament process, resulting in many ex-combatants, criminal elements or militia bands remaining armed and disrupting security..

In the Sudan, there was in 2008 still considerable mistrust between the signatories to the CPA. They might well try to protect themselves by hiding weapons and resisting demobilisation. Jeong (1999) says a third-party can play an essential role in overcoming such mutual distrust by monitoring the implementation of the agreement and by helping the parties to engage in what they see as a potentially hazardous political relationship with their former enemy . So to end civil war negotiation alone is not sufficient. It needs external guarantees. The combatants are more likely to sign and implement an agreement if a third party is ready to implement and verify demobilisation.

## **2.7 Federalism and political decentralisation**

Federalism and decentralisation are key factors in resolving some civil wars. Federalism is when sovereignty is constitutionally divided between a central governing authority and constituent political units, such as states or provinces. Power can be shared between national and state governments, creating what is often called a federation. Decentralisation is when decision-making governance is closer to the people, for example when regions take charge of decisions on issues such as their local housing or transport.

Riker (1994), Elazar (1998), Rector (2003), and Lake (2003) note that federalism and decentralisation are frequently used to bring peace to war-torn societies around the world. In

Bosnia, the Dayton Agreement relied on a new federal structure to build the peace. Cohen (1995) says that in Kosovo, the Western powers used force against Serbia ostensibly to restore regional autonomy for the ethnic Albanians. David A. Lake (2003) says that territorial autonomy was used in the Philippines to resolve the conflict in Mindanao. Woodward (2003) writes that in Ethiopia, the People's Revolutionary Democratic Front (PRDF), established an ethnically based federal structure after taking over power from Mengistu Haile Mariam when he fled the country in 1991.

Consociationalism emphasises the importance of federalism, the territorial sharing of power, for group autonomy in ethnically divided societies (Deng and Morrison (2001: 2) . Consociational theory also promotes democratic stability in culturally divided political systems, as for example between religious groups (Steiner (2002). Anton Pelinka (2002) says Austria is an interesting example of where consociationalism has always been intertwined with corporatist structures.

Advocates of federalism note how it can promote stability and harmony. Bermeo(2002) says that armed rebellions are three times more common among groups living in unitary states rather than in federations. He also notes that federal states experience lower levels of discrimination and grievances. Alf Stephan (1999) suggests that plural societies such as the Russian Federation, Indonesia, and Burma/Myanmar will not be stable consolidated democracies without practical federal systems . Tedd Gurr (1993) also advocates power sharing and group self-government as a solution to ethnic conflict and civil wars.

Advocates of decentralisation of political power say it can be a solution to civil wars in ethnically divided societies. Rothchild and Hartzell (1999: 259) assert that as ethnic leaders attain some degree of autonomy on issues such as language, education, social welfare, cultural and social matters, they become more confident about their security in a post conflict environment. Rothchild and Hartzell (1999: 260)'s analysis shows that the granting of regional autonomy had a positive and significant effect in 26 negotiated settlements between 1945 and 1999. Varennes argues, in Darby and Ginty (ed. 2003), that successful peace accords are almost always those that involve devolution of political power and changes to the structure of the state through a form of autonomy.

Lake and Rothchild (1999) have recognised that regional and ethnic leaders view territorial

autonomy as a means of group protection and empowerment. Lijphart (1977: 31) also states that given the mutual lack of trust after civil wars, it is better to be in government together with your counterpart, than to trust him to govern your interests while you are in opposition. Wantchekon and Simon (1998) state that there are three important factors in territorial decentralisation: the relative means of the regions or groups, the costs of continued or renewed fighting, and future expectations. They add that democracy may well reinforce the credibility of decentralisation.

McGarry (2001) notes how consociational solutions were used to resolve the complex Northern Ireland conflict which had profound historical roots and was not based simply on religious differences between Catholics and Protestants. In his opinion, the key of the conflict was its ethnic nature with the Catholics being of Irish descent and the Protestants of British descent and both groups claiming Northern Ireland as their homeland. As a result, the "Good Friday" Accord of 1998 promised a consociational solution to the conflict even though the implementation of the accord is not easy.

Federalism can be a crucial means for political integration of pluralistic societies and can act as a counterbalance to tyranny. It can foster democracy and enable the participation of all factions in the government of the country. It can also shield minority ethnic groups from the influence and domination of major groups. As a minority spokesman explained before the Wilink Minorities Commission in Nigeria in 1958, "there is no better solution to the fear of the lamb that finds itself in a zoo with a lion than the iron cage" (Akinyele 2000). However, de-centralisation is not always embraced with open arms. Bose (2002) points out that where a number of powerful regions exist, each with some realistic chance of victory and future dominance, parties are wary of decentralisation, as was the case with the peace agreement in Sri Lanka. The creation of a federal system in Nigeria has failed to resolve the minorities question for a number of reasons. The relocation of the administrative boundary merely redistributed the majority/minority category with its associated fears and grievances. Federalism has not ended the fear of northern domination or the habit of treating Nigeria as the sum total of its three major groups. Doyin Okupe (1988: 36) noted that what Nigeria needs is not only federation, but also equality of opportunities.

Federalism can also be the antithesis of political integration and result in secession. Simeon and Conway note examples of this can be found in Chechnya, Spain's Basque region,

Kashmir, Nigeria and the Sudan. The success or failure of federalism in addressing the challenges of multiculturalism is dependent on the nature of the society where it is employed. Sometime it is quickly abandoned by dominant political groups and regions in favour of centralisation and by weaker political groups or regions in favour of full political autonomy or secession.

## **2.8 Power Sharing: the Sudanese perspective**

So far this study has presented varying views and analysis of the theory of power sharing. The Comprehensive Peace Agreement (CPA) can be examined in the light of these theories. Nothing has so far been written about power-sharing and the CPA. Abel Alier, M.W.Daly, P.M Holt, Muhammed Omer Basher, Sikainga, Dunstan Wai, and Peter Woodward have all written about the Sudan and provided useful background material on the Sudan, but they have not yet addressed the CPA.

The Sudanese Comprehensive Peace Agreement (CPA) is a sequence of agreements growing from negotiations which began in the late 1980s. These were followed by the First Machakos Protocol, signed in July 2002, which set out the principles for further negotiations. These included the premise that the unity of the Sudanese State would be retained initially, but that the people of Southern Sudan would have a right to vote on “self-determination” in a referendum at the end of a six-year Interim Period (Article 1.2). The principle of the separation of religion and state was agreed, as were the basic terms for the formation of government. (Article 6.3).

The Protocol on power sharing was signed in Kenya in May 2004. It set out how governmental power was to be divided between the Government of National Unity (GONU) and the Government of South Sudan (GOSS). It also set out how power was to be divided between the GOSS and the ten constituent states of South Sudan. This Protocol on power sharing carefully balances power in the national cabinet between various Northern and Southern interests. It distributes cabinet seats as follows: the National Congress Party 52%, the Sudan People’s Liberation Movement 28%, other Northern political forces 14% and other Southern political forces, 6% .

Other Protocols were also signed in 2004. The Wealth Sharing Protocol outlined how wealth, commerce and financial affairs would be handled. The Resolution of the Abyei

Conflict in May 2004 settled whether the Dinka Ngok people should be considered as Northern or Southern Sudanese. Also in May 2004 was a protocol settling the same issue for the people of Southern Kordufan and Blue Nile States, who had joined the SPLM in great numbers even though they were not traditionally considered to be from South Sudan. The last protocol, on Security Arrangements, signed in Kenya in September 2005, set out how a permanent ceasefire, peace and security should be maintained. The CPA with crucial annexes on how to implement the protocols, marked the end of a bloody civil war between South and North Sudan, which had gone on almost continuously for half a century since the country gained independence. It was Africa's longest civil war. Since 1983, conflict and famine in the Sudan, one of the most impoverished nations on earth, had killed an estimated 1.5 million people and created more than 4 million refugees.

Peace does not yet reign in the whole of the Sudan. In 2008 intense fighting was still taking place in the Western region of Darfur. Jan Pronk (BBC News, February 8, 2005) said, "Without a solution in Darfur, the North-South CPA will not remain a sustainable peace agreement". Given the history of Sudan, the key question is whether the power sharing arrangements will be sufficient to limit further bloodshed. Clearly there is an ethnic aspect to the conflict in the Sudan. Ali Mazuri (1980: 96) noted the civil war was, essentially a war between the Arabs and Arabised Northern Sudanese and the non-Arabised African Sudanese to the South. Arnold Toynbee (cited in Dunstan M. Wai 1980:168) supported the ethnic argument, saying that the problem of the Sudan is the problem of two Africas and the continuation of the conflict would heighten tension between Arabs and Africans everywhere. Sooner or later, Southern Sudan would become the focus of Africa's bitterness against Northern Africa. Resolution of the Sudanese conflict poses the classic problem of how to create effective constitutional measures that will contain community tensions, manage democratic transitions, and achieve economic development in ethnically or religiously divided states.

### **Chapter III: The North/South Sudan Conflict: Historical Dimensions**

The unity of the Sudan has been under strain since its inception. Factors that led to the North/South conflict built up over the years. In 1955, divergent political ambitions were the main cause of conflict. Since 1983, national identity and religious hegemony have been important factors. Control of natural resources, in particular the oil reserves in the South, then became a source of contention. This chapter gives some historical background to the conflict and to early attempts to resolve it and shows how fragile the unity of the Sudan remains.

#### **3.1 Turko-Egyptian rule/the Mahdist State (1820/21-1898)**

The invasion of Northern Sudan by Muhammad Ali in 1820/21 marked the first of a series of wars of conquest and the beginning of a period of slavery and plunder of valuable resources in the South Sudan. Muhammad Ali, an Albanian, was commander of the Ottoman army that was sent to drive Napoleon's forces out of Egypt. After the French withdrawal, he seized power himself and in 1805 forced the Ottoman Sultan Mahmud II to recognize him as Governor of Egypt. He conquered Sudan in the first half of his reign and consolidated Turko-Egyptian rule of the area.

Turko-Egyptian rule lasted for four decades, during which there were annual raids into Southern Sudan. Because Muslims were forbidden to enslave Muslims, raids for slaves were carried out in the "non Muslims hinterlands of the White Nile and Nuba Mountains" (Abd Al-Rahim 1969: 14). Since that time Arab Northerners have regarded Southerners as inferiors, and Southern Sudanese have developed an enduring hatred and distrust of Northerners. In 1885 a Sudanese religious leader, Mohammed Ahmed Ibn Abdullah, led a nationalist revolt and drove the Turko-Egyptians out of the Sudan. He tried to unify the tribes in western and central Sudan, but he did not succeed in bringing the South under his rule. Abdullah proclaimed himself to be The Mahdi, the prophesied redeemer of Islam. He declared the war against Egyptian authority in the Sudan to be a jihad or holy war to set up a Mahdist state.

In the 1950's similar calls for Islamisation echoed Mahdist times. Islamisation and Arabisation were presented by Northern sectarian parties as policies necessary to create national unity (Johnson 2003: 35). As Holt and Daly (2000) point out "Northern



nationalists like Azhari and Abd al-Rahman and others were also quick to call for an Islamic constitution in 1955”.

### **3.2 The Anglo-Egyptian Period (1898-1956)**

In 1898 British forces expelled Abdullah's successor, Khalifa Abdullah, and the following year Anglo-Egyptian joint rule was proclaimed over the whole of the Sudan. The overthrow of the Mahdist State resurrected questions about the administration of the Sudan. The Southern part of the country had historically been separate from the North. Attempts to pacify the South and set up an overall administration met with little success during the later part of the Turko-Egyptian period (1821-1885) and the early part of the Mahdiya (1885-1898). A Southern administration was established during the Anglo-Egyptian period (1898-1955), but this was still separate from the government in the North.

During Anglo-Egyptian rule tensions increased between the North and South over resources, ethnic, religious and cultural differences. As a result the British authorities treated the three Southern provinces as a separate region. "Closed door" ordinances barred Northern Sudanese from entering or working in the South and this reinforced the separate development policy (Peter Woodward 1979). Gradually the British replaced Arab administrators and expelled Arab merchants and this further severed the South's economic contacts with the North. The colonial administration also discouraged the spread of Islam and tried to revitalise the African customs and tribal life that the slave trade had disrupted (Johnson 2003). Finally, in 1930 a directive stated that blacks in the Southern provinces were to be considered a people distinct from Northern Muslims and that the region should be prepared for eventual integration with British East Africa.

Alier (1990) says the Closed Door Ordinances aimed to: (1) reduce the wanton exploitation of resources in the South, (2) abolish the slave trade, (3) preserve cultural diversity of the Southerners, (4) check the spread of Islam in the South and into central Africa, and (5) initiate the separation of African Sudan from Arab Sudan. Johnson (2003) says the stark racial and cultural divisions between the North and South impelled the imposition of the "Closed Door" policy of the 1920s. It was intended to protect Southern people from cultural and economic exploitation by the North. Alier (1990) adds the administration of the South as a separate entity aimed to be more along "African, than "Arab" lines, as it was thought its future might ultimately lie with the countries of East Africa. Johnson (2003)



says the North was administered along Middle Eastern lines, referring to Islamic education and Shari'a law (at least in family matters) which did not apply in the South. The movement and activities of the Northerners in the South were restricted by law (Rolandsen 2005). The British thus divided the Sudan, allowing the North and South to develop in different directions.

Then, in 1946, the British colonial authority reversed its policy and decided to integrate North and South Sudan under one government. Egypt and the Northern Sudanese had been resisting Britain's Southern Policy. Furthermore the move by East African countries towards independence could not include Southern Sudan, which was too under-developed and fractured by intertribal differences to stand alone. Many Southern Sudanese considered this attempt to unify North and South would undermine the stability of the country (Beshir 1968). Alier (1990) says that the British recognised the need to assure Southerners of their rights to manage their own affairs. So the Juba conference was convened in 1947 to organise ways to combine the North and the South in one entity. The conference agreed that the North and the South should constitute one state and that a Legislative Assembly should represent the entire colony.

Economically, the South could not stand on its own, but it did not want to be subject to the North. A Constitutional Commission was established in 1951 to propose safeguards for the South. However, as Holt and Daly (2000) note, the commission had only nominal Southern participation. It proposed some measures that favoured the South, but rejected the call for a federal system of governance. Similarly, the Anglo-Egyptian Agreement in 1953 granting self-governance to Sudan did not include participation by the South either (Johnson, Douglas H, 2003).

The Sudanese Provisional Parliament attempted to resolve North/South tensions in 1955 by passing a resolution declaring the North and the South to be one united sovereign state. However, it soon became clear that provisions granting the South political powers and maintaining its cultural identity were not being honoured by Northern politicians. Instead the political agenda was set by Northern traditional parties to expand the role of Islam in government (Voll 1991). Johnson (2003) says the Southern Sudanese were disappointed as Northerners were appointed to all the senior positions in the South. The marginalisation of the South in the independence process continued, leading to armed uprising in the Southern

province of Equatoria in 1955 . This turned into a 17-year war (1955 to 1972) between the Northern part of Sudan and a South demanding more regional autonomy. It also led to the emergence in 1983 of the Sudan People's Liberation Movement/Army (SPLM/A) and even more instability in the Sudan.

### **3.3 The First North-South Civil War (1955-1972)**

The first civil war broke out in 1955 just before independence was declared in 1956. The road to independence was rocky. Alier (1990) says the lack of commitment by the colonial authorities and the indifference of Northern politicians to Southern demands triggered the mutiny of Southern troops in the Torit garrison of Equatoria province in 1955. Holt and Daly (2000) say that the differences between North and the South even before independence were such that only the greatest political sensitivity and caution could have prevented a split between the two disparate parts of the new state. Khartoum rarely showed such sensitivity and from 1956 onwards resentment against the North steadily built up in the South .

When independence was granted colonial systems were transferred from Britain to the Northern Sudanese nationalists (Johnson 2003) . The fundamental question of whether the South belonged in the Sudanese state was not addressed. Therefore, the Sudan's independence did not lead to much rejoicing in the South. Rolandsen (2005 ) says Southern leaders have since argued that decolonisation was flawed as they had no influence on the process in general. After independence, Northern nationalism spread. The new men in power, whether elected in parliament or there by virtue of military coup, set about implementing policies that reflected their national ideals ( Lesch 1998) . Sharkey (2003) says that while the British had recognised diversity, the Northerners sought national monoculture. They saw diversity as a problem that would complicate the task of a central government and undermine their desire to build an Islamic Arab State.

In 1958 General Ibrahim Abboud seized power and began a campaign to suppress opposition and accelerate the Islamisation of the South . He believed national unity could be achieved through enforced Arabisation ( Alier 1990) . Arnold (1991: 397-99) says civil and police posts in the South were given to Northerners in a classical form of "colonial" exploitation. Education which had been taught in English by Christian Missionaries was now to be Islamic and in Arabic. The traditional Sunday day of rest that had existed in

British colonial days since 1918 was changed to Friday, the traditional Muslim day of rest (Barsella and Guixot 1998: 28-30). General Abboud's enforced Arabisation ended any talk about federation. Johnson (2003) says Southerners began to join forces with the remains of the 1955 mutineers and formed a political front called the Sudan African Nationalist Union (SANU), also known as the Anyanya. Full civil war broke out. After the Abboud regime was forced to relinquish power in 1964 and a civilian government established, the Round Table Conference of 1965 was convened to try to resolve the North/South Sudan conflict. However the situation got more complicated.

### **3.3.1 The Round Table Conference 1965**

Southern representatives at the Round Table conference were divided as to whether the South should remain a single political unit and whether independence was viable. The Southern representatives fell into three groups: two different SANU factions and a group called the Southern Front (SF). One SANU faction, led by William Deng, wanted to stay within a federation; the other SANU faction, led by Aggrey Jaden, wanted full independence; and the Southern Front (SF) wanted a referendum on the area's future (Malwal 1981).

The Northern parties consisted of the Umma Party, the National Union Party (NUP), the People's Democratic Party (ODP), the Islamic Charter Front (ICF) and the Communist Party (Johnson 2003). Northern politicians were prepared to concede only limited regional autonomy to the South in areas such as primary education, health and roads. Central government would still control economic planning, financial policy, state security, armed forces, foreign affairs and other areas of national policy (Alier 1990). The conference ended in deadlock. A committee tasked with drawing up a working paper finally agreed that the South should be separate from the North, but it was unable to agree on key issues such as whether the South should be one region, as most Northerners wanted, or three regions, as advocated by the Southerners (Alier 1990). There were also fundamental differences on the relationship between Southern and Northern troops and on fiscal issues.

Though the discussion did not reach a solution, it did expose the problems and differences between North and South (Arnold 1991: 399). Abdalla (2001) says the 1965 Round Table Conference could have formed the basis for a peaceful and democratic relationship between the two sides, had it not been for lack of mutual confidence and a failure to negotiate in

good faith . Such was the lack of security in the South in 1965 that elections were held only in the North ( Johnson 2003) . So, the Southern parties were not only ignored at the conference, but were effectively denied a voice in parliament . Southern distrust of the North increased. From 1965 to 1969 the war in the South was fought with increasing ferocity and no longer for a federal system or self-determination but for independence of the Southern Sudan. In Khartoum coalition governments rose and fell with growing rapidity.

On 23 May 1969 all the Northern Sudan political parties in the Constituent Assembly accepted the principle that Sudan should have an Islamic presidential constitution, and general elections were scheduled for January 1970. Less than forty-eight hours later, several young officers, calling themselves the Free Officers Movement, led by Colonel Jaafar Numeiri seized power in Sudan, thus bringing about the Numeiri era ( Alier 1990) . In July 1971 Numeiri appointed Abel Alier to replace Joseph Garang, as minister for Southern affairs. Secret meetings with Southern leaders in exile led to a conference in Addis Ababa in February 1972. On the 27<sup>th</sup> February 1972, a peace agreement between Southern Sudan Liberation Movement (SSLM) and the Government of the Sudan (GoS) was signed, known as the Addis Ababa Agreement.

### **3.3.2 The Addis Ababa Agreement (1972-1983)**

The Addis Ababa Agreement was one of the significant developments in the relationship between the North and South . It was the most important, if not the only achievement, of the Numeiri regime (Voll 1991). North Sudan began to moderate its pro-Arabic and Islamic leanings and the Sudan improved its standing among African nations. The Agreement declared Southern Sudan a semi-autonomous region, with its own parliament and High Executive Council (HEC). A Regional Assembly was empowered to elect and remove the president of the HEC, subject to the confirmation of the President of the Republic (Article 13.I. and Article 19). The agreement granted the Southern Regional government powers to raise revenue from local taxation (including corporation taxes, business profits tax and royalties), and promised additional revenue from the central government ( Johnson (2003: 40). Despite this, the agreement still denied the South the right to legislate or exercise power over economic planning and social development (Article 7.VIII).

The interim provisions for security were set out in a separate protocol (Protocol on interim Arrangements, Chapter II). One important provision was that the People's Armed Forces in

the South would “consist of a national force called the Southern Command composed of 12,000 officers and men of whom 6,000 shall be citizens of the Region and the other 6,000 from outside the Region” ( Alier 1992). This created complexity. The establishment of a ceasefire and the gradual absorption of the Anyanya guerrillas into the security forces were very delicate tasks (Johnson 2003). First, many guerrillas in the bush were unwilling to comply with the security provisions in the agreement. Second, some who complied with it were still suspicious of the army and wished to remain in their own units.

Many Southern Sudanese in exile were unhappy about abandoning the goal of independence, and there was a clear difference of understanding between the government and delegations of the South Sudan Liberation Movement ( SSLM) about the proposed “regional autonomy”. Johnson (2003: 41) said that an attempt to reduce the number of former Anyanya fighters in the newly integrated army was another source of dissatisfaction among Southern Sudanese. In the early years of the civil war the Anyanya was a loose organisation (or many competing organisations). It was never centralised like the Sudan People's Liberation Movement/Army (SPLM/A) Alier (1990) says that John Garang, a junior officer, wrote to the SSLM leadership saying the Anyanya needed more training and proposing three armies for the Sudan. One in the South to be recruited from citizens of Southern Sudan; a second in the North recruited from the citizens of Northern Sudan; and a third to be recruited in equal numbers from North and South. His proposal was not taken up.

Critics of the Addis Ababa Agreement point to shortcomings such as the lack of military arrangements and the form of representation in regional and central government. Kok (1996:204) says Southern Sudan did not have enough autonomy to protect itself from Northern hegemony. Many vague clauses of the Addis Ababa Agreement relied on the establishment of mutual trust over time. Several annexes of the agreement dealt with a future constitution, revenue, repatriation and resettlement of refugees and arrangements for a cease-fire. Among problems, Rolandsen (2005: 25) says there was considerable dissatisfaction with the failure of the central government to fulfill its financial obligations to the South. He claimed that only a fraction of the special development budgets for the region was paid out. The new Southern regional government was crippled by ethnic and personal rivalries. The Addis Ababa Agreement gave Numeiri an opportunity to divide and rule. Johnson (2003) says many Southerners thought that the constitutional warranties for Southern autonomy were too weak.

So the optimism engendered by the Addis Ababa agreement was almost immediately crushed by broken promises and agreements. Political development was not harmonious either. Elections in 1978 led to Alier's resignation as president of the High Executive Council. Holt and Daly (2000) say Alier's government lost public support as the social and economic benefits expected from the peace agreement were slow to materialise. Alier was replaced by Joseph Lagu, a leader of the Anyanya military wing. This set the stage for a power struggle in which Lagu was forced to make significant concessions to Alier's supporters. Malwal (1985) says corruption scandals further weakened the regime of Lagu, and in February 1980 President Numeiri dissolved the Regional Assembly and dismissed Lagu.

To preserve his regime Numeiri adopted a more dictatorial style of leadership. He ordered the State Security Organisation to imprison without trial thousands of opponents and dissidents. In September 1982 he decreed Shari'a law to be the basis of the Sudanese legal system. His decrees, which became known as "the September laws", were bitterly resented by the predominantly non-Muslim South where the security situation had so deteriorated that by the end of 1983 it amounted to a resumption of the civil war. In early 1985, anti-government discontent resulted in a general strike in Khartoum with protests against rising costs of food, gasoline, and transport. The strike paralysed the country. Numeiri, aware that he had become politically isolated, went to the United States, ostensibly for a medical check-up, and did not return. As Johnson (2003) says, Numeiri came to power in 1969 saying that the war in the South could not be solved through military means. From 1972-1985 uneasy peace reigned in the Sudan. However, within a decade Numeiri had reneged on most of his promises and ushered the Sudanese people into a renewed era of political anarchy, destruction and instability. This ended his regime in 1985 and brought in international interference.

### **3.4 The Second Civil War (1983-2005)**

The second civil war, like the first, began with a mutiny. In May 1983 an order to transfer some Southern battalions to the North provoked a revolt by the 105<sup>th</sup> battalion in Bor. Battalions in Pibor and Pochalla joined in, along with many Southerners who had joined the rebel groups operating from Ethiopia. Beneath the conflict were several root causes: the discovery of oil in the South; an attempt to redraw boundaries so that rich resources would

come under Northern control; unequal development; religious and ethnic differences; and general dissatisfaction with the Addis Ababa agreement.

#### **3.4.1 Dissatisfaction with the Addis Ababa Agreement**

Although the 1983 mutiny is said to mark the start of the second civil war, some argue that the first war had never ended. Some Anyanya fighters refused to accept the Addis Ababa Agreement as it did not give them full independence. They continued their fight from areas along Ethiopia's border. Johnson (2003) says Ethiopian regimes started to support these groups as early as 1976 in retaliation for Khartoum's support for Eritrean separatists. Ethiopia became the Sudanese insurgents' main supporter for 15 years. Rolandsen (2005) says from 1980-83 the rebel groups which were now generally referred to as Anyanya 2, became increasingly assertive as the institutions established by the Addis Ababa Agreement started to fall apart. Although Moghamed Al-Min Khalifa had boasted in 1991 "we have through federation created equal distribution of power and wealth" (Guardian, 18th August 1991: A3) in Sudan, the federal arrangement adopted in Addis Abba in 1972 was never satisfactorily implemented. Adamolekun (1991: 174-175) said the 10 years of Southern Sudan semi-autonomy had not been a happy period. The central government had never handed out money to which the South felt entitled and the countryside remained pitifully underdeveloped..

#### **3.4.2 Imposition of Islamic Shari'a Law**

Numeiri's provocative introduction of Shari'a law was strongly resented by Southerners. Lesch (1998: 86-87) says that for the Sudanese leaders, ethnicity and religion were the main criteria for control of government institutions and economic, political, social and cultural ways of life. Adar (2000b: 49-50) adds the non-Muslims perceived the state as an apparatus used by the Northern Islamist governments to oppress and suppress them. The ruling Sudanese elite used Islam to gain power over the affairs of the state and to mobilise Muslims against the South Sudanese.

Advocates of Islamisation in the Sudan believed that religion and Islam were entwined with Arabic culture and language (Adar 2000a). Shari'a law was legal under the 1998 Constitution. Article 65 of the Constitution stipulated that Shari'a h law and national elections, together with the Constitution and custom were the bases of law and that no law was to be enacted contrary to them. The state and Shari'ah were thus inseparable.



### **3.4.3 The issue of National Identity**

National identity was also an issue of contention. Malwal (2000b: 49-50) says “the Sudanese situation is characterised by racism and cultural and religious bigotry” The Northern Sudanese elite projected an image of the Sudan as an Arab country. Alier (1990) notes this image was enhanced by selective recruitment of Arabs to work in the Foreign Ministry and missions abroad. The Khartoum Governments also became a member of the Arab League and fostered closer ties with the Arab World than with African countries. Domestically, the Northern elite introduced Arabic as the compulsory language of instruction at all levels of education. The mass media is also only in Arabic; no indigenous languages are allowed. De Chand (1998) says the continuous attempts to assimilate non-Arab people to what he described as the “mystical” mainstream of Arab culture has led to alienation and civil conflict.

### **3.4.4 Natural Resources**

The question of who would benefit from the Sudan's natural resources also rankled. The SPLM/A Manifesto 1983 said the conflict over natural resources was not about whether the South's resources are sold on the market, acquired through coercion, or should remain in the ground: it is about ensuring that natural wealth promotes the welfare and progress of all Sudanese. The exploitation of natural resources in the South has always benefited a national development policy drawn up and dictated by the North.

Another issue was water. A struggle broke out over the stalled Jonglei Canal Project in the Upper Nile which would have benefited the North and Egypt. It was initiated without sufficient local consultation. As a result, the project became part of the increasing social, economic and political tensions that led to the second North/South conflict. Woodward (2003) says 1980's plans allowing some of the waters of the White Nile to be used by Egypt damaged the economic well-being of Southern Sudanese. Sharkey (2003) says the project was seen as a continuation of the exploitation of the South's resources without benefit to the people there.

The discovery of the oil in the South in 1978 had already rekindled the suspicion which marked relations between the two parts of the country (Alier 1990). Peter N. Kok (1995) said “the conflict itself is historical, a conflict over the control, access to and the use of state power in the Sudan. But since oil, like all other strategic resources, is a source of power, it



logically becomes an important element in the conflict” During all this the government was convinced that regional autonomy was likely to fuel separatist tendencies in the South. Rolandsen (2005) notes that by 1980 the government had not only ignored the call for some areas to be annexed to the South, as stated in the 1972 Addis Ababa Agreement, but it also redrew the map of the Southern provinces arbitrarily, incorporating oil areas into the bordering Northern provinces. This resulted in the unconstitutional abrogation of the 1972 agreement.

Although oil had been discovered in the Sudan, the government lacked the technical and financial means to develop the resource. Initially there was some foreign investment (Chevron had drilled several successful wells in the Abyei area in 1981), but they pulled out in 1984 after an SPLA attack. Serious investment in the oil began only in the mid-1990s when an increasing number of companies began funding, building and maintaining pipelines. They included: Denim Pipeline Construction (Canada), Mannesmann (Germany), the Euro-Pipe Consortium, Weir Pumps and Altem Power Engineering (United Kingdom), Techint (Argentina) and the Chinese Government (Adar 2000b). In 1996, the Canadian independent, Arakis Energy, began development of oilfields, including Heglig and Unity (Blocks 1 and 2), then estimated to contain reserves of between 600 million and 1.2 billion barrels.

These oil companies have directly and indirectly influenced the behaviour of the National Congress in the civil wars. The government dramatically increased military arms purchases by the GoS after oil exports began in the 1990s. These more than tripled from US\$204 million in 1990 to more than US\$766 million in 1992 (Adar 2000b). Western and Asian support for the Sudan's oil industry also had considerable impact on the nation's diplomacy. Chinese strategic interest in the Sudan was based on its immediate and long-term needs for oil. Field (2000) notes that China gave constant support to the NCP government in Khartoum in the United Nations Security Council. Malaysia was another important trading partner. When the International Monetary Fund (IMF) threatened to eject the Sudan because of unpaid debts, it was Malaysia, which paid US\$500 million to cover them.

#### **3.4.5 Unequal Development between the North and the South Sudan**

A major source of conflict in the Sudan has been the historical concentration of wealth and power in the North at the expense of the marginalised majority in the South. It was this

marginalisation, coupled with racial and religious discrimination, which resulted in the brutal civil conflict which has ravaged the country for all but 11 of the last 50 years (Barnett and Abdelkarim 1988) . Development projects were mostly concentrated in the central part of the Sudan particularly in Khartoum, Gezira and Gedaref. In the South, hardly any development projects were carried out apart from the Agro-Industrial Complex at Nzara and the Wau Fruit Canning Factory. Alier (1990) says that even these projects were not sustainable because of deliberate obstruction by successive governments in Khartoum. The North's refusal to allow Southern regions to license border trade also adversely affected the South's economy. It deprived the region of the revenue from taxes on imports and exports and prevented it from organising trade according to its own priorities. It also made the Southern regions more dependent on the North for essential commodities.

Another issue was centralised planning. Jendia (2002) says the ruling elite used centralised planning to line their own pockets and consolidate their political control. It also resulted in the inequitable distribution of development resources. The government kept to themselves all the lucrative sources of revenue such as import, export, customs duties and excise. Instead of devising an equitable formula for sharing revenue, the government resorted to arbitrary grants-in-aid to the regions ( Alier 1990) .

In the North economic development programmes were fully funded even if they were not productive. Jendia (2002) says the central government supported only those projects in the South that benefited the North. The Jonglei Canal and Bentiu oil projects were cases in point. This inequality of funding resulted in unequal distribution of transport, lack of mobility of labour and under-funding of social services, schools and hospitals in the South. The lack of financial institutions in the South made the regional government and its assembly less effective and perpetuated dependence on the central government ( Abdalla 2001) . The economic policies of the Sudan government were intended to perpetuate the dependency of the peripheral regions on the centre, creating a master-servant relationship which has contributed greatly to the instability in the country.

#### **3.4.6 Why the Nuba Mountains and Blue Nile joined the war in 1980s**

The conflict in the Nuba Mountains cannot be separated from the long-standing conflict in the Sudan as a whole. The Nuba, like other marginalised people, have suffered from suppression, discrimination and exploitation from all the governments that have ruled the

Sudan since independence in 1956. The land struggle also sharpened the disputes in the Nuba Mountains. The term “Nuba” has two very different connotations. To the Nuba themselves, it means the culture and traditions of more than fifty different tribal groups in their Mountains. But to the ruling elite of Khartoum, in particular the old NCP regime, “Nuba” means second class citizens, primitive black people, servants and labourers (Abdal Salam and de Waal 2001). The Nuba, like the Southerners are victims of a racism that pervades Northern Sudan. Their war was a struggle to define their own identity.

Northern discrimination against the Nuba included land seizures in the 1970s and 80's. Foreign investors began setting up agricultural schemes in the lowland areas of the Blue Nile region without consulting local people. The Ingessana hills were also opened up to timber and mineral extraction by foreigners. The Addis Ababa Agreement decreed that the people should be entitled to vote in a referendum on whether to join the Southern Sudan; but as Johnson (2003) says, no referendum took place. The Nuba had little say in their fate. Religion was also an issue. The Nuba people were of mixed religion, following Islam, Christianity and traditional beliefs. Harassment, especially of church leaders of the Koman-speaking Uduk people, increased after the outbreak of the war in 1983. The 1985 famine saw further religious confrontation. One of the SPLM officials from Southern Blue Nile says that Dawa al-Islamiya established projects in the area, but declared that relief was available only to practising Muslims (Interview 1 April 2007). Johnson (2003) says during the same period Church non-governmental organisations (NGOs) such as World Vision began to distribute famine relief to various local communities via the Uduk church leaders.

The 1986 election campaign saw a growth in the Muslim Brothers movement in Kurumuk, who elected a NIF (now National Popular Party) representative. This new representative took control of aid distribution in the region to ensure further propagation of the Islamic faith (Interview 1 April 2007). All of this resulted in bitterness and frustration among the people of the Nuba Mountains and Blue Nile, leading them to join the civil war against the central government. This anger and unhappiness has to a great extent contributed to the present crisis affecting the country.

### **3.4.7 Darfur Civil Conflict**

The war in the Darfur region of Western Sudan broke out in February 2003. This came after the 2002 signing of the first Machakos Protocol, which was the prelude to the CPA,

and as a result, it was not easy to include Darfur in the CPA negotiations. Those opposing the inclusion of Darfur argued that the CPA was dealing with the conflict between the North and South and that the issues in Darfur were very different. The rebellion in Darfur started with two local groups--the Justice and Equality Movement (JEM) and the SPLM/A--accusing Khartoum of oppressing non-Arabs. Khartoum deployed the Janjaweed militia, recruited from the Arab nomad tribes of the northern Rizeigat region, to suppress the rebellion. They faced rebel forces recruited primarily from the non-Arab Fur, Zaghawa and Masalit tribes (see William G. O'Neill 2005). Khartoum publicly denied it supported the Janjaweed, but provided money and assistance to it and participated in joint attacks. Thousands of people have been killed and millions displaced.

Darfur, which means the land of Fur, was an independent Muslim sultanate until 1916 when the British expelled the Sultan and incorporated the Sultanate into the Sudan (A.B. Theobald 1965). The ethnically diverse people of Darfur were predominantly Muslim, but more than 40 percent were not Arabs and felt more affinity with related groups in neighboring Chad. Disputes were common as far back as 1939 and they generally involved access to natural resources like grazing and water, closure of herd routes and cattle raiding. Mary E. King and Mohamed Awad Osman (2004) confirm also that environmental degradation is one of the roots causes of Conflict in the western region of Darfur. Nevertheless, Khartoum failed to cope with the social and economic consequences of the environmental disaster, a situation that increased alienation from the central government. By the early 1990s, much of Darfur was in a state of anarchy. A famine in the mid-1980s disrupted many social structures and led to the first significant fighting amongst Darfuris (see F.N Ibrahim 1984).

The war in Darfur which began in 2003 differed from previous conflicts in the region. First, the liberation movements JEM and SPLM/A said they were taking action against Khartoum because of Darfur's marginalisation and underdevelopment. Secondly, the conflict in Darfur was more intense. Khartoum launched a campaign of aerial bombardment to support ground attacks by the Janjaweed militia. T. Hoile [2005] said the Khartoum government used its army and air force in its response to the rebellion. It also drew on local "popular defence forces" made up of national and local volunteers. The Janjaweed were accused of major human rights violations, including mass killing, looting, and systematic

rape of the non-Arab population, frequently burning down whole villages. By the summer of 2004, 50,000 to 80,000 people had been killed and at least a million driven from their homes... a major humanitarian crisis (see Hoile 2005).

Khartoum maintained that the conflict was primarily a localised tribal issue, but leaders of the Fur tribe said the depopulation of villages and changes in land ownership were part of a government strategy to change the whole demography of Darfur. The non-Arab tribes forced from their villages fled to refugee camps in Darfur and Chad. Mohamed Suleiman [2005] note that attacking the cultural values of a particular ethnic group is usually followed by physical attack of the members of that group. This is one obvious reason behind the ethnic discrimination of Southern Sudanese, Nuba, Fij and the Fur people in the western region of Darfur. Unfortunately, the Comprehensive Peace Agreement does not cover the area of Darfur. However the scale of the conflict in the area undermines the security of the Sudan as a whole and affects the international perception of the integrity of the Sudanese government.

### **3.5 The SPLM/SPLA strategy from 1983-1991**

Following the disintegration of the Addis Ababa Agreement and President Numeiri reneging on most of his promises, the SPLM/A leadership issued a manifesto outlining their policy for the new Sudan. The 1983 manifesto stated that their goal was to establish a new Sudan in which human rights were respected and power was not monopolised by a privileged few (Khalid 1987). The Manifesto said uneven development was the root of the country's crisis. It proposed restructuring government power more equally through consensus of political groups and oversight by a people's government within a united, secular, and democratic Sudan. From 1983 to 1991, the SPLM/A took a firm stand in favour of a united democratic secular Sudan despite strong separatist sentiments among the SPLM/A foot soldiers and the people of the Southern Sudan.

The SPLM/A may have felt it necessary to come out in favour of unity to placate the former Ethiopian regime and other foreign governments. Prunier (1986: 6) says that in the 1980s Ethiopia was fighting separatism in Eritrea and may not have wanted to support SPLM/A separatism in the Sudan. Johnson (1998: 56-57) says the separatist policies of guerrilla groups in the first civil war were the main reason for lack of international support. The fear of international isolation was probably well founded. While it was possible to win

international support for the fight against oppression by successive Khartoum governments, a struggle for a breakaway independent Southern Sudan had less international appeal. Another factor was that during the 1980s, the SPLM/A had spread its influence into the Nuba Mountains (African Rights 1995: 60-103). If the Movement started to fight for an independent Southern Sudan that did not include this area, then the SPLM/A would quickly lose support.

Other analysts considered it unfeasible for the SPLM/A to push for a united Sudan as the opposing forces were too far apart. Alier (1990: 271) asked "what if the sectarian forces and Islamic fundamentalists are not prepared to compromise?" He argued the Islamic fundamentalists and the SPLM/A were pulling in diametrically opposite directions. He said the bill put before the Constituent Assembly by the National Islamic Front, DUP and the Umma leadership in September 1988, was a "criminal bill based on the Shari'a law" which was even harsher than the September 1983 laws it wanted to replace. He said that although the SPLM/A leadership came out in favour of unity, the SPLM/A rank and file actually supported separatist aims--one had only to listen to the SPLM/A songs which he said revealed the groups' aims much more simply, boldly and frankly than any official speeches (Alier 1990:172). Prunier (1994) said that even though the SPLM/A leadership called for one new Sudan, the rank and file of the SPLA had wholly different goals.

Both these analysts feared there would be a brutal struggle between the Northern Islamists and the Southerners who had totally opposite aims, one wanting a united state under Sharia' law and the other a secular independent Southern Sudan.

### **3.6 Peace Negotiations (1985-1989)**

The process of finding a comprehensive and peaceful solution to the Sudanese conflict began two years after the 1983 formation of the SPLM/A with the all-party national constitutional conference on March 22 1985, followed by the Koka Dam Conference in March 1986. The delegations at the Koka Dam conference agreed that the Sudan should be a secular and democratic state (Koka Dam Document 1986). However, Prime Minister Sadiq Al-Mahdi declined to implement the agreement. He said "non-Muslims can ask us to protect their rights and we will do that, but that's all they can ask. We wish to establish Islam as the source of law in the Sudan because the Sudan has a Muslim majority " (Newsweek May 19, 1986). Warburg (2003) says that Al-Mahdi claimed that the people

who signed the agreement on behalf of his party were not authorised to do so and that the Democratic Unionist Party (DUP), a junior partner in his government, was not a signatory to the agreement . It became obvious that like other Islamist leaders before him, Al-Mahdi would not support a secular political system in the Sudan.

In 1988 the SPLM/A and the DUP signed a "Sudan peace agreement" which essentially modified the Koka Dam Declaration on the "September laws" on Sharia' law by agreeing to freeze them rather than abrogate them (SPLM/A, Peace and Development, 2000: 3-4). However once again Sadiq Al-Mahdi's Umma party in the coalition government opposed the agreement and actually voted it down on December 12 1988 in favour of Mahdiya Islamic ideology (Khalid 1990). This was embarrassing for the DUP and they resigned from the coalition government. A new coalition was formed by the Umma Party with the National Islamic Front led by Hasan Turabi, leaving the DUP and other South Sudanese parties in opposition (Warburg 2003) .

The military situation in the South then deteriorated. The SPLA went on a major offensive capturing several towns and putting public pressure on the Sadiq Al-Mahdi government. So Al-Mahdi was forced to accept the SPLM/DUP peace agreement in May 1989, agreeing to endorse it on 30 June 1989, and to hold a national constitutional conference on 18 September. On 30 June, the day the agreement was scheduled to be endorsed, Colonel Omar Hassan Ahmad al-Bashir, allied with Hasan Turabi's National Islamic Front, led a group of army officers in a coup, ousting the coalition government of Prime Minister Sadiq al-Mahdi. Al-Bashir said the coup was intended to "save the country from being taken over by the infidels and preserve the Islamic Arab identity of the Sudan" (Sudan Now July 1990). This is why the National Islamic Front, (now known as the National Congress Party) called this their National Salvation Revolution.

### **3.7 The 1991 Split and the Movement's Goal**

In 1991 SPLM/A unity collapsed and John Garang was dismissed as leader of the movement. The initiative for removing Garang came from Lam Akol, a senior SPLA commander, who brought in another commander, Riek Machar, who was based in Nasir which had easy access to the Ethiopian border and the SPLA rear bases. Johnson (1994: 63) says that on 28 August 1991, Lam Akol, Riek Machar and Gordon Kong declared John Garang was no longer Chairman of the Movement. Prunier (1994: 2-3) said the coup



makers, known as the Nasir faction, issued a declaration protesting against John Garang's "dictatorial leadership" and demanding independence for the Southern Sudan. This repudiated SPLM/A policy which favoured the unity of the Sudan. Johnson (2003) says they also called for greater democracy in the SPLM/A command structure and greater respect for human rights, in particular the release of political prisoners and a halt to child soldier recruitment. The coup leaders were also unhappy about the dominance of the Dinka tribe within the SPLM/A. The Dinka from the Upper Nile region, especially around the town of Bor, were believed to have too many leading positions.

The SPLM/A became split. Akol, Machar and Kong failed to rally sufficient support. The three had hoped that dissatisfaction with Garang would be widespread in Equatoria, where both separatist and anti-Dinka feeling was strong and in Baher el-Ghazal, which felt neglected. But there had been no domestic preparation for the coup; the commanders had concentrated on securing external support. Johnson (2003) says the only areas to rally to the coup faction were the Nuer districts already under the Upper Nile Command. Kong and Machar came from the second largest ethnic group in the Southern Sudan, the Nuer. Lam was a Shulluk, who live mainly in northern parts of the Upper Nile region. Since the Nuer and Shulluk were both in the minority in the SPLM/A, neither Machar nor Akol could expect to take over leadership of the whole movement (Rolandsen 2005: 36).

These attempts to seize leadership of the SPLM/A changed the civil war in the Sudan for the next decade. In autumn 1991 open hostilities broke out between the SPLM/A and the Nasir faction. The fighting lasted several years and was at times more violent than the war with the government army (Prunier 1994: 12). The reaction of the SPLA, other Southerners and even the international community was not what the Nasir faction anticipated. The main casualties were civilians and this raised serious doubts about the Nasir faction's commitment to human rights. It also became clear that the Nasir faction had a tactical alliance with Khartoum (Johnson 1998: 66-67). This raised doubts about the faction's commitment to an independent Southern Sudan. Johnson (2003: 98) also says the rest of the SPLA did not rally behind the faction, Southern exile opinion was seriously divided and the international community distanced itself. The division in the SPLM/A, and the material support that Khartoum offered the Nasir splinter group, enabled the government to regain the military initiative in many parts of the South.



Eventually in October 1993 Machar and Garang signed a declaration in Washington, saying that they would stop fighting each other and start discussing independence for the people of Southern Sudan (Prunier 1994, pp. 28-29). The Nasir group had already started to fall apart. Machar wanted to end the co-operation with Khartoum, while the other faction leaders disagreed (Hutchinson 1996: 320). In February 1994, Machar dismissed Akol and in September 1994 he formed his own South Sudan Independence Movement (SSIM/A). Lam Akol moved to Tonga in the Shulluk homeland where he began calling local armed groups loyal to him SPLA-United (Hutchinson 1996: 126). A series of military setbacks made the SPLM/A leadership realise that there was little hope of a quick assumption of power and they needed a new strategy. Prunier (1994) said the movement had entered into a phase of protracted warfare with no solution in sight, and a new strategy had to be developed. Rolandsen (2005: 38) said it had become exceedingly difficult to dismiss demands for political and organisational reform by saying "democracy had to wait until victory was achieved" .

### **3.7.1 The Abuja I and II negotiations (1992-1993)**

In 1992 Nigerian President Ibrahim Babagida chaired peace talks between the Sudan Government and the SPLM/A which became known as the Abuja I and II negotiations (1992-1993). However, differences over religion and state prevented any agreement. The Sudan government delegates insisted that the country had to be an Islamic Arab State, since Islam was the majority religion (70 percent) and Arabic the most widespread language (40 percent) (Wondu and Lesch 2000). The government delegates claimed moreover that residents in the South were exempt from Islamic punishments and that their proposals recognised the country's religious diversity and provided a solution based on justice and equality among all citizens. Wondu and Lesch (2000: 40) say the government delegation maintained that the problems in the Sudan had nothing to do with religion, as North-South tensions had arisen in 1955 long before Shari'a had become the legal code.

The SPLM/A delegates insisted that the Sudan had to be a secular and multicultural state if it were to stay united. They said that the Sudan suffered from religious apartheid. They would not accept an Islamic state with some areas exempt from certain Islamic laws. If fundamentalists in Khartoum insisted that they have a natural right to a religious-based state, then non-Muslims and non-fundamentalist Muslims of the Sudan should also have the same natural right to their own secular state (Wondu and Lesch 2000) . Nhial Deng stated

that “Religious apartheid in Sudan would lead to full and total divorce” of the South from the North (Wondu and Lesch 2000: 43).

In previous peace negotiations the Khartoum regimes and the SPLM/A had negotiated on equal terms. Now the National Islamic Front (NIF) leaders sought to capitalise on SPLM/A divisions and make separate agreements with the different groups. Johnson (2003: 101) said the government was keen to bind the Nasir faction to a separate agreement which would protect the central role of the Islamist state and dilute any conditions for the Southern exercise of self-determination. The NIF leaders also regarded the Abuja talks as an opportunity for the SPLM/A to concede defeat honourably, instead of a humiliation in the field (Prunier 1994: 2). The SPLM/A, however, was not ready to discuss surrender, and nothing new emerged from the negotiations other than a common declaration on self-determination from the two Southern factions. The Khartoum Government had underestimated both the SPLM/A's strength and its leadership's commitment to freedom and democracy and social and economic development. The SPLM/A Manifesto of July 1983 says that the crucial problem of Sudan is not self-determination but social and economic development. The SPLM/A believed that independence for the South would not be enough to bring an end to civil war, as grievances caused by socio-economic differences would still be too great, as can be seen in the Western region of Darfur and Eastern Sudan.

The conference's Nigerian hosts thought that their country had lessons to offer. Like the Sudan, Nigeria had struggled after independence to overcome North-South, Muslim-Christian divisions, and had fought a civil war in Biafra (1967-70). Akinyele (2000) said that after the war, Nigerian leaders had sought to reunite the country by redrawing internal boundaries, devolving greater authority to smaller regional states, and devising power-sharing mechanisms within the army and central government. Wondu and Lesch (2000) said that at Abuja, the SPLM/A delegates welcomed ideas for modelling a post-war Sudan on Nigeria, but Sudan government delegates rejected it outright. So the Abuja talks made few gains on the key issues.

### **3.7.2 Regional Dimension: The IGAD Peace Process**

The Intergovernmental Authority on Development (IGAD) has played a prominent part in the Sudanese peace process. The organisation was created in 1986 as the Intergovernmental Authority for Drought and Development (IGADD) and later renamed IGAD.

In 1993 its members included: Djibouti, Ethiopia, Eritrea, Kenya, Somalia, Sudan and Uganda. IGADD's initial objectives were to deal with endemic ecological and humanitarian problems in the region. Following the failed Nigerian peace initiatives and given the destabilising impact of the Sudan civil war on neighbouring countries, IGAD established a Standing Committee on peace in the Sudan early in 1993 (Deng 1995). IGAD negotiated a comprehensive peace proposal in 1994 and adopted a Declaration of Principles (DOP) at a meeting in Nairobi attended by representatives from the GoS, the SPLM/A and SPLM/A-United. Adar (2000:23) says the declaration endorsed the separation of religion and state and the right to self-determination by all Southern Sudanese.

However despite the declaration, the parties were far from agreement. Lesch (1998: 187) says the initiative was launched at a time when Khartoum thought that the SPLM/A had become irrelevant because of its military setbacks. Deng (1999:1-12) says that even though the Khartoum government signed the declaration in 1997, the National Islamic Front leaders still insisted that the document was not legally binding on the government. The incorporation of Shari'ah law in the Sudanese constitution the following year was another setback for the IGAD peace process. The Sudan Government was still convinced that its forces could win on the battlefield. Johnson (2003) says the government thought it could rely on the support of both the Eritrean and Ethiopian governments, whom the Sudan had supported in their war against the Mengistu regime. Meanwhile the SPLM/A built up relations with National Democratic Alliance (NDA) and launched the 1995-1996 military offensive. By March 1996 the SPLM/A had pushed back government forces in Eastern Equatoria (Johnson 2003).

Although the Nairobi declaration was not implemented, it can be seen as a triumph for the Southern liberation movements given its endorsement of the separation of religion and state. Furthermore the IGAD initiative gained international support, so that for the first time there was international consensus on the principle of self-determination for the Southern Sudan.

### 3.7.3 Khartoum Peace Agreement 1997

The Khartoum Peace Agreement was signed in Khartoum on April 21 1997 by the Government of the Sudan (GoS), the SPLM/A and several splinter groups. They included: the South Sudan Independence Movement (SSIM); the Union of Sudan African Parties

(U.S.A.P.); the Equatoria Defense Force (EDF); and the South Sudan Independents Group (SSIG). The agreement reaffirmed the unity of the Sudan, a federal system, and Sharia law. It provided for some regional autonomy: "the states may enact legislation complementary to the federal law in matters peculiar to those states" (Article 2 and 6). The same terminology was used in the Permanent Constitution of 1973, but the Khartoum Peace Agreement contained some additional clauses. First the Agreement provided for a referendum for Southerners to determine their political aspirations at the end of an unspecified period (Article 3). It also specified security arrangements to be observed by the GoS and Southern splinter groups (Article 12). The Agreement made provision for cultural diversity: Article 7 says the Sudanese people are encouraged to freely express their values. Article 14 states that "the Sudan government and Southern national forces shall pursue peaceful dialogue as well as mobilise the masses to rally behind and support the peace agreement that will result from dialogue".

After the signing of the Agreement Charter, disputes developed between the various Southern organisations over the distribution of offices. Johnson (2003) said General Matip, who was theoretically part of the Southern Sudan Independent Army (SSIA), was unhappy about the elevation of Machar. Nor could Machar count on the support of all of the South Sudan Independent Movement (SSIM) or the Nuer people. Matip and Machar backed rival candidates for governor. While attempts were being made to implement the 1997 Khartoum Peace Agreement, the key proponents of the agreement, including Riek Machar, defected from the government, arguing that the Khartoum government had no intention of upholding its end of the agreement. By the end of 1996/January 1997 the SPLA was on the offensive in the Nuba Mountains and the NDA and the SPLA were active in Eastern Sudan. They recaptured the Ethiopia border towns of Kurmuk and Qaissan. Rolandsen (2005) says in March and April 1997 the (SPLA) had made substantial gains in its advance on Juba, and repelled government columns in Equatoria, the Nuba Mountains and Blue Nile.

The peace charter not only failed to bring peace but it also failed to halt the SPLM/A's political and military resurgence. Neither Machar nor the government had much to show for their collaboration. The wording of the 1997 agreement shared the same weaknesses as the Addis Ababa Agreement, it was open to too many interpretations. Also the powers devolved to the Southern states were qualified by Federal control. For example, economic planning in the South had to tie in with Federal planning (Article 4). While the Southern states had

powers over their own security and public order, the Federal government exercised power over the armed forces, defence affairs and national security (Articles 2, and 19). Adar (2000) says the Khartoum Peace Agreement supported the government's Islamisation policy and extended the marginalisation of Southern Sudanese. He said the expansion of the Nuer civil war demonstrated how false was the premise of "peace from within".

In this chapter, a number of issues have been articulated. The Sudan's history is a history of failed peace agreements. Most problems stem from when colonial Britain merged the separate Sudanese states into a single country without reference to people, culture or religion. Second, the greatest barriers to unity have been the unwillingness of the North to accept a pluralistic society and its politicisation of Islamic ideology. Past peace efforts have failed to resolve conflicts of religion, ethnicity and resources. The 1965 Round Table Conference failed because Northern sectarian parties rejected the federalism demanded by Southern Sudan. The 1972 Addis Ababa Agreement established the principle of regional self-government in Southern Sudan, then collapsed in 1983 because of Khartoum's failure to implement it. The constitutional conference called for the Koka Dam declaration of March 1986 was never held, because Sadiq Al-Mahdi rejected it, refusing to repeal Shari'ah law. Attempts to implement the 1997 Khartoum Peace Agreement failed because the key proponents of the agreement defected amid disagreement over government intentions. Early African-led mediation also failed. This study finds that the inability of track one peace initiatives directly to challenge the parties to the conflict on contentious issues such as state and religion, the right of self-determination for the Southern Sudan and the more recent issue of oil, has greatly limited any movement in negotiations.

None of these peace attempts have healed the divisions within the country. They have mostly aggravated them. It remains highly questionable whether the Southern Sudanese will choose unity if the referendum provided for by the Comprehensive Peace Agreement (CPA) is held in 2011.

#### **Chapter IV: The Machakos Agreement: A Prelude to the CPA**

The Machakos Protocol signed on 20 July 2002 by the GoS and the SPLM/A was a prelude to the Comprehensive Peace Agreement (CPA) three years later. The main questions about it are: how far did the peace negotiations address the causes of the conflict; and what were the motivations behind the signing. Several scholars have argued that failure to resolve the

root causes of a war creates new dynamics in the continuing search for peace in a divided society. It can be argued that the Machakos agreement was just such a dynamic. It spurred on and paved the way for the conclusion of the Sudan CPA, with its recognition of the Southern Sudan's right to self-determination. This particular provision provided a qualitative departure from failed negotiations such as those of Abuja in 1992 and 1993 respectively.

Regional and international parties contributed to the success of the Machakos agreement. U.S. involvement raised the level of negotiations, as did the participation of Ethiopian and Eritrean leaders who had lived in the Sudan and were well informed about it. They played a part in pushing for self-determination in the South. However the provision for a referendum on self-determination in the Southern Sudan does put the unity of the Sudan into question.

#### **4.1 The peace process**

By the end of the 1990s the Sudanese conflict still showed no signs of ending. Although the SPLM/A and the Sudan government realised that neither could win militarily, they seemed incapable of finding a peaceful solution. The IGAD peace initiative in 1997 stalled largely because of a lack of political will in Khartoum and also because of the lack of international pressure for a genuine peace process. That pressure emerged in 2001 with the United States becoming involved in negotiations that brought in Great Britain, Norway and later Italy, the "troika" (Special Report [www.usip.org](http://www.usip.org), 2007). Kenya's President Daniel Arap-Moi also decided to strengthen the IGAD process to end the civil war. The involvement of all these countries, together with the African Union (AU) and the United Nations, finally led the SPLM/A and the GoS to sign the Machakos Protocol. This Protocol established the framework for future talks and met the crucial Southern demand for a referendum on unity or secession. It also limited Islamic law to the North. The Machakos Protocol was the first of six protocols and five implementation modalities which later led to the CPA.

#### **4.2 The Machakos Protocol: Road to Comprehensive Peace Agreement**

The lengthy negotiations leading to the Machakos agreement frequently ground to a halt. The SPLM/A formally insisted on unity in a "New Sudan", but many Southerners wanted independence. This made it difficult to find a workable solution (Young 2002). The Machakos agreement was the result of many compromises. For example, the GoS

compromised by accepting a self-determination referendum for the South, while the SPLM/A compromised by dropping its insistence on the secularisation of the whole country. For the first time in 19 years there was a real prospect of peace. The signing of the Machakos Protocol changed the political dynamic both inside and outside Sudan (Young 2002). Before this the GoS, the SPLM and the Northern opposition had used peace negotiations to undermine each other. The GoS compromise on self-determination for the South, which for a decade it had said was non-negotiable, gave rise to mounting dissent within its core (ICG Report 2002). But the GoS compromise on self-determination was balanced by SPLM/A acceptance of Shari'a law in the North, and a long interim period before any referendum.

#### **4.2.1 Self-determination for the people of the Southern Sudan**

Self-determination by nations and people is a principle enshrined in the United Nations' charter and resolutions. The concept has, however, changed over the last two centuries and its application has been neither universal nor consistent. Since 1960 the UN has equated self-determination with anti-colonial liberation, but it has condemned secession. The attitude of the Organisation of African Unity (OAU) has followed that of the UN (Shaw 2003). When IGAD became involved in peace negotiations in 1993, it saw self-determination through a referendum as the basis for negotiations between the GoS and the SPLM/A. In early 2002 the official SPLM/A aim was the replacement of Islamist rule with a "New Sudan", a secular state run by the SPLM and the Northern opposition (Johnson 2003). If that proved impossible, the SPLM/A's next best solution was a "constitutional separation" between North and South, a loose confederation replacing the old unitary Sudan. Self-determination leading to the total independence of the South was only the third and final option, if the other two could not be achieved.

Article 1.3 of the Machakos Protocol says that "the people of the South Sudan have the right to self-determination, *inter alia* through a referendum to determine their status." Why self-determination for Southern Sudan? There are several reasons. First, as discussed in Chapter III, the idea had precedence. The prospect of self-determination was formally raised by the Southern Sudanese as early as 1947. Adar (2000a) says there is general agreement that the civil war was caused both by the colonial policy which divided the Sudan between 1899 and 1945, and by the indifference of successive governments after independence. The pan-ethnic groups of the South Sudan did not feel they belonged to the new nation-state. The



Muslim ruling elite had pressed for a society based on Islamic Shari'a law, but the Southern Sudanese sought a system of national consensus that separated religion and state. The conflict in desires undermined national unity. Second, mistrust on both sides argued against continued unity. Alier (1990) says since the North had not honoured any previous peace agreements, Southerners were asking why should they seek a settlement within a united Sudan? By 2005 the civil war had claimed more than 2 million lives and created 4 million refugees, a sacrifice that many Southern Sudanese felt should lead to self-determination, not the compromise of a united country.

The idea of self-determination had widespread support in the South and, to some extent, even in the North. This was reflected in the 1993 declaration signed between the leaders of SPLM and South Sudan Independent Movement (SSIM) in Washington and the IGADD Declaration of Principles signed in May 1994. Alier (1990) says self-determination also received bold support from important Northern Sudanese political groups. For instance, the Umma Party leaders recognised the Southern Sudanese right to self-determination in a December 1994 declaration signed with the SPLM in Chukudum, Sudan, and the National Democratic Alliance (NDA) gave support to self-determination in the June 1995 declaration signed in Asmara.

Third, the South Sudanese had not had equal opportunities within the unified state. Abdalla (2001) says Islamic rule failed to provide a fair distribution of wealth, power or governance, resolution of conflict or human rights. The South Sudanese had only limited participation in the social, economic and political activities of the state because of poor education and the adoption of Arabic as the official language of the state and instruction (Johnson 2003). The Machakos Protocol was an important step towards affording the Southerners the opportunity to determine their constitutional, political, economic and social future. Kulusika (2004) says although the agreement is a political document, the principle of self-determination is remarkable as it accepts that the people of the Southern Sudan are a people within the definition of international law.

In the Protocol, self-determination is not defined, but it appears to refer to 'internal' and 'external' self-determination. Shaw (2003) says 'external' self-determination encompasses a broader concept of self-determination, which includes the right of secession. The Protocol allows for 'internal' self-determination by granting some autonomy within a unified state



and 'external' self-determination through a referendum on the issue of secession. However, the people of the South Sudan are allowed a referendum on self-determination only after an interim period and after the evaluation of arrangements for unity.

#### 4.2.1.1 Summary on agreement for Self-determination Referendum

Provisions	Timing	Executing Body	Composition	Location	Procedure, Process and Criteria
1. Self-determination Referendum for the people of Southern Sudan Art. 2.5, 2.10.5	After 6 years of the Interim Period (2011).	GOS, SPLM and An Ad-hoc International Monitors	N/A	To be determined by Referendum Commission	Machakos Protocol Article 2.5, 2.10.5
(a) Enactment of Referendum Act	Beginning of 3 <sup>rd</sup> year of the Interim Period	National Legislature	N/A	Seat of National Legislature	Routine Legislature procedure
(b) Establishment of Referendum Commission	After enactment of the Referendum Act	Presidency	GNU and GOSS	Khartoum	To be established by the Presidency in accordance with CPA and Referendum Act
© Registration of Voters	Start at the beginning of the 6 <sup>th</sup> year of the interim period for 3 months before voting	Referendum Commission	N/A	Southern Sudan, other locations determined by Referendum Commission	Presentation of proof of eligibility upon registration in accordance with Referendum Act
(d) Enlightenment campaign on the Referendum	After establishment of the Referendum Commission	Referendum Commission	N/A	Southern Sudan and other relevant locations	Media, meetings, public rallies, conferences, seminars, workshops etc
(e) Voting	6 months before the end of the interim period	Referendum Commission	N/A	Southern Sudan and other relevant locations determined by RC	One-person one vote.

Source: Machakos Protocol, 20 July 2002

#### **4.2.1.2 Option for Independent Southern Sudan**

The summary above shows the process which would precede a referendum: “to either confirm the unity of the Sudan by voting to adopt the system of government established under the peace agreement, or to vote for secession” (Article 2.5). But would a sovereign Southern Sudan be viable? A number of political, legal and economic issues must be considered. First, security, peace and stability in the Horn of Africa are important requirements of these regional powers; preconditions for development, trade, etc. The legal questions may be resolved by the provision of answers regarding whether Southern Sudan is considered to have satisfied a definition of a state under international law. There are the criteria necessary to be recognised as a sovereign state under international law and be eligible for admission to the United Nations. Would the South Sudan meet these criteria?

The Montevideo Convention on the Rights and Duties of States, signed in Uruguay on December 26, 1933, sets out the definition, rights and duties of statehood. Article one of the Convention, later accepted as international law, sets out four criteria for statehood: a permanent population, a defined territory, government, and the capacity to enter into relations with other states. The UN Charter lists functions and international obligations required of a member state. Kulusika (2004) says a state must be able to fulfil its international responsibilities and obligations, as for example in the realm of human rights. Article 4 of the UN Charter says that membership is open to all peace-loving states which accept and carry out the obligations contained in the Charter. Admission to the UN is decided by the General Assembly upon the recommendation of the Security Council.

Most importantly, the creation of a new state must not be considered illegal. Kulusika (2004) says for example that the creation of the Bantustans (Transkei, Venda, and Bophuthatswana) by South Africa in the 1980s was condemned and rejected by the OAU and UN as illegal and invalid. The Bantustans were originally set up by South Africa as black African homelands as part of the policy of apartheid. When South Africa declared them independent in the 1980s they were viewed by the international community as little more than puppet states. James Crawford in Dixon (2003: 134-135) sets out other possible conditions for a state such as a permanence, willingness and ability to observe international law, a degree of civility and recognition of legal order within the state and legality.

If the South Sudan were to vote for independence, it could meet all the above conditions for statehood, satisfy the criteria of the Montevideo Convention and meet the requirements of Article 4 of the UN Charter. The fact that the parties to the Machakos Agreement agreed that the people of the Southern Sudan could exercise the right of self-determination through a referendum means a crucial criterion for statehood and international recognition has already been set down. Kulusika (2004: 179) argues further that the principle of self-determination should be viewed as transferring back to the South Sudanese the sovereignty they had lost following alien intrusion. Such a transfer of sovereignty should legitimise the recognition of the new entity in the South Sudan by other states. The proposed referendum therefore is an important measure which could legitimise the creation of an independent state.

#### 4.2.1.3 Territory

Territory is an important requirement for the determination of statehood. Robert McCorquodale (2000: 52-103) says that traditionally a would-be state must demonstrate, first, that it has sovereign title over a territory and, second, that the territory is defined satisfactorily. States establish title to territory according to rules of international law. Castellino (2000: 75-107) says the lack of legitimate title has in the past been the basis for withholding recognition, as for example from Manchukuo under the Japanese and the Turkish Republic of Northern Cyprus. Japan invaded the Chinese province of Manchuria in 1931 and attempted to set up the state of Manchukuo, while Turkey invaded Cyprus in 1974 and attempted to set up a Turkish Republic. Most countries in the world refused to recognise the legitimacy of either of these states and instead supported Chinese and Cypriot claims to the territory.

The size of the territory does not play a crucial role in definition of the territory. Charlesworth and Chinkin (2000: 124-134) have argued the size of a state does not matter. The important factor is that there must be a certain coherent territory that can be effectively governed. The Southern Sudan already has a defined territory based on the 1956 North/South border and again defined in the Machakos Protocol and the Comprehensive Peace Agreement (CPA). Although the definition of this territory would be altered if the people of Abyei vote in a separate referendum to be part of the Southern Sudan. The Protocol on Abyei dated 26 May 2004 provides that the residents of Abyei should cast a separate ballot simultaneously with the referendum for the Southern Sudan. The residents of

Abyei will have two choices: (1) that Abyei retain its special administrative status in the North and (2) that Abyei be part of Bahr el Ghazal in the Southern Sudan (Article 1.3).

#### **4.2.1.4 A Permanent Population**

In general an entity cannot claim to be a state unless it has a permanent population, whatever its size. Evans (2003) says this criterion of statehood requires that a state be able to exercise governmental control over a permanent population resident in its territory. It is imperative, as without an organised community, it is difficult to establish the existence of a state. Schwarzenbeger and Brown (1976: 43) list three conditions for an entity to be described as a state: it must possess a stable government which does not recognise any outside superior authority; the government must rule supreme within a territory which has more or less settled frontiers; and the government must exercise control over a certain number of people. There are no limits as to the size of population or territory. Hillier, (1999: 76-77) gives the example of the South Pacific Island of Nauru which became independent in 1968. It had less than 10,000 inhabitants and a territory of less than 10 square miles. So, the people of Southern Sudan satisfy the criterion of population for an independent statehood.

#### **4.2.1.5 Effective Government**

Effective governmental authority is a crucial element of statehood and is closely related to independence and sovereignty. Government is the legitimate authority within the state that needs to be recognised by other states under international law. Hence, a government is an essential criterion for the definition of statehood. A number of scholars have asserted that for a government to be recognised, it must show the international community that it is in effective control of the territory and capable of exercising its authority freely over the territory. Richard Gardiner (2003: 180-182) argues that the government, in exercising its power, must be capable of acting independently of foreign government. In other words, even nominal subordination to an outside government authority must be absent for an entity to claim to be a state.

In the language of the Permanent Court of International Justice in the Austro-German Customs Union Case, a separate state has to possess "the sole right of decision in all matters economic, political, financial or other" (Hudson 1934-43: 713). The lack of effective and independent governmental control has served as a basis for the non-recognition of an entity as a sovereign state in a significant number of cases. For instance, Akiko (2000: 6-12) says

recognition was withheld from Manchukuo, Katanga and Biafra, in part due to a lack of effective and independent governmental authority. Taiwan is another case in point. Cassese (2001: 51) says that China's claim that Taiwan is a part of China's territory and subject to its sovereignty prevents Taiwan from establishing diplomatic relations with many states in the world, although it does have relations with some.

There are, however, cases where the criterion of effective government has been ignored in the past. A state has become a member of an international or regional Organisation, even when it lacked an effective government, as for example the Republic of the Congo. In July 1960, the Republic of the Congo was granted independence by the former colonial power, Belgium, and admitted to the United Nations (Evans 2003: 223). This was despite the fact that there was a complete breakdown of law and order in the Congo and the government controlled very little of its territory. Most of the country was controlled by the Katanga people (Hillier 1999: 78). Kulusika (2004) gives the example of the Western Sahara which was admitted to the OAU (now African Union), even though it has never had a permanent government.

So the criterion of effective government could present a theoretical problem for the Southern Sudan if applied in a narrow sense. However in practice statehood has been recognised internationally even when there is a lack of effective government or the rendering of a government ineffective by reason of political instability or the failure of socio-economic institutions.

#### **4.2.1.6 A capacity to enter into relations with other states**

A sovereign state must be able to establish relations with other states; otherwise it is not a state. Gardiner (2003:10-11) says the capacity to enter into foreign relations is an essential prerequisite of independence according to international law; otherwise it is not an independent state but an autonomous non-sovereign body.

The government of Southern Sudan (GOSS) established after the signing of the CPA has no power to conduct foreign relations. As will be explained in Chapter V, only the Government of National Unity (GNU) has this power. The Protocol of Power Sharing does allow the GOSS to negotiate and sign external cultural and economic agreements for the reconstruction of the South. Some in the SPLM/A seem to view these as foreign relations.

In this study's view, dealings between the GoSS and representatives of foreign states and international organisations during the interim period cannot be considered as foreign relations. But the case would be made once the South Sudan achieved independence.

If the Southern Sudan achieves statehood by a referendum in 2011, it will be the continuation of a process regarded as both democratic and necessary for self-determination (Cassese 1995: 74). There are numerous examples of the expression of the free will of people by means of plebiscites and referenda. Kulusika (2004) points to the referenda leading to the independence of East Timor in 2001 and Eritrea in 1993. Other examples include: the 1956 referendum and elections held in British Togo Land and the 1974 referendum in Ellis Island as to whether it should remain part of the Gilbert Islands. The Ellis Island referendum supervised by the UN mission, resulted in a majority in favour of separation and the renaming of the island as Tuvalu (UN Year Book 1968). The UN favours referenda on self-determination, as they reflect the free will of the people. Kulusika (2004) points to former Soviet republics which held referenda to justify their independence following the break-up of the Soviet Union. Referenda took place in Lithuania in February 1991, in Estonia and Latvia the following month, and brought a resounding yes vote for independence.

Referenda held under the aegis of the international community can give people the chance of a free and fair expression of their wishes and political aspirations. So in a complicated situation, such as in the South Sudan, a referendum is the most secure method of affording people a free and genuine choice.

#### **4.3 Relation between Religion and State**

The most divisive issue in the Sudan is the relationship of religion and state. This was recognised by U.S special envoy Senator John Danforth, who was charged by President Bush in 2002 to write a report on the Outlook for peace in the Sudan. Though Danforth opposed independence for the Southern Sudan, he recognised that the relationship between religion and the state would continue to be a sticking point between Muslims and Christians. He said that the sharp division left no communication or understanding between the faiths. Young (2003) says that, for the Sudanese, religion is a sensitive matter of belief and identity. Shari'a law remained in place during the transitional government which replaced Numeiri in 1985, the elected government of Sadiq Al-Mahdi between 1986 and 1989, and

also during the NIF government that came to power in 1989. For the Northern Sudanese it was an essential part of life. Yet, for the SPLM/A, as explained in chapter III, the separation of religion and state was of paramount importance.

Until the Machakos Protocol, the most workable compromise was to avoid the issue: the SPLM/A would drop demands for secularism and separation of religion and state, and the Sudan government would agree to a constitution that was silent on religion, ending its insistence on Shari'a law and custom (ICG Report 2002). The Machakos agreement, however, envisaged a different approach within a federal framework: Shari'a law and the "consensus of the people" would form the basis of legislation in the North, while regional consensus and values would form the basis of legislation in the South (Article 3.1.5 and 3.2.4). Article 6.3 of the Protocol states clearly that "eligibility for public office, including the presidency, public services and the enjoyment of all rights and duties, should be based on citizenship and not on any religion, beliefs or customs". The Machakos Protocol thus redefines the nature of the Sudanese State. It moves away from the Arab Islamic form and recognises religious pluralism as a virtue and foundation for national cohesion in a new post-conflict Sudan.

The Machakos Protocol acknowledges the role of religion, customs, and beliefs as a source of moral strength and inspiration for the Sudanese people. Thus it takes different approaches in the North and South. The Protocol's Interim Constitution of Southern Sudan was based on the South's customs and beliefs and guaranteed equality for all religions with no religion to be declared the official religion. In the North, however, Islamic-Shari'a and the consensus of the people were recognised as the basis of the legislation. Young (2002) say that many Sudanese people, whether from the North or the South, are typically conservative and religious and would not feel comfortable in the secular states of the West. Moreover, the Islamic major parties in the North would find it hard to accept a secular constitution, out of sensitivity to their supporters.

During the negotiations of the Machakos Protocol, hard-line religious scholars and army officers were the main opponents. Religious hard-liners in Khartoum accused the NCP of pursuing peace at the cost of Shari'a law. The NCP itself had expressed public reservations about negotiations with the SPLM in general and with the terms of the Machakos Protocol (AFP 22 July 2002). NIF leader Turabi strongly objected to any constitution other than the



1998 NIF constitution (Abulemoi 2002). Progress towards the Machakos Protocol demanded compromises by the SPLM and NCP. Young (2002) says that many observers felt the real breakthroughs came with the GoS's commitment to a referendum on self-determination for the South Sudan and with the SPLM's acceptance of a religion-based administration in the North, reversing its long held demand for secularism.

The Machakos Protocol still left unanswered questions about national unity. How far could religious pluralism, separation of religion from the state apparatus be accepted? Was reconciliation between North and South viable? What were the legal and institutional mechanisms for religious tolerance and pluralism, either in a unified state or two separate states?

Although the parties appeared to agree that Shari'a should provide the basis of legislation in all areas of the North, there was no specific agreement on whether the capital, Khartoum, should remain under Shari'a law or even whether it should remain the centre of government. The ICG Report (2002) says the GoS claimed the Protocol's provisions on Shari'a did include Khartoum because it is clearly in the North. Abdellahi an-Naim (2000) said a state founded on Islamic law is incompatible with freedom of religion and other freedoms such as expression and association. Abdel Salam (2001) said that applying Shari'a in a country like the Sudan was extremely complex and controversial for the unity of the country. Religion remained a divisive issue rather than a unifying one.

#### **4.4 Cultural and Religious Diversity**

Cultural, ethnic and religious diversity are fundamental causes of violent conflict in the Sudan. The Northern elite saw such diversity as a curse and a threat to unity and then strove to eliminate it by promoting an Arab-Islamic state as a framework for national unity. But instead of unifying the Sudan, they created a deep sense of marginalisation of the South which led to civil war. The SPLM/A Manifesto (1983) said it was fighting for a new multi-cultural, multi-lingual, multi-racial, multi-ethnic and multi-religious Sudan where diversities co-exist and are sources of strength, harmony and inspiration.

In the Machakos Protocol, the parties agreed to "establish a democratic system of governance taking into account cultural, ethnic, racial religious and linguistic diversity and gender equality of the people of the Sudan" (Article 1.5.1). Meanwhile, Article 3.2.1 (b)



states clearly that during the interim period, "the National Government in all its laws shall take into account the religious and cultural diversity of the Sudanese people". The Machakos Protocol provided a golden opportunity for defining national identity and recognising cultural and religious diversity as a basis for peace, citizenship and legal pluralism. For the first time, the Sudan's constitution recognised cultural diversity.

Why was the issue of cultural diversity central in the Machakos negotiations between the GoS and the SPLM/A? As shown in Chapter III, the issue of national identity is one of the root causes of the Sudanese conflict. Sudan is composed of multiple ethnic groups with diverse cultural backgrounds, which are divided into two major groups (African and Arab). In the past Sudanese leaders have made a clear linkage and correlation between Islamic law and Arabic culture and language. Adar (2000a) says Shari'a law was the nerve centre that controlled and regulated the socio-economic and political policies of the Muslim ruling elite. It became imperative, in their view, for non-Muslims to be assimilated into Arab culture.

Since independence, the Sudan has had a system of government incompatible with the diversity of its people and cultures. Sharkey (2003) said Arabisation-that is, the policy of assimilation and integration of non-Muslims and non-Arabs into Arab culture-had become a sine qua non condition of the leadership in the Sudan. Article 3 of the Constitution provides that "Arabic is the official language in the Republic of the Sudan. The State permits the development of other international and local languages."(1998:Article 3). In other words, other languages were subordinate to Arabic. The imposition of Arab culture and language on non-Arabs met with persistent resistance.

Arabisation and Islamisation doctrines were viewed by non-Muslim and non-Arabic speaking Sudanese as discriminatory and exclusive. It was, therefore, not surprising that national identity was the first item on the agenda in the Machakos negotiations. The two parties sought to define Sudanese national identity and reach agreement on a national unity that recognised the ethnic, cultural and religious diversities. They also sought to reach agreement on the equality of Sudanese based on their common citizenship and to spell out the fundamental human rights, liberties and religious freedoms which would be essential for achieving equality and common identity. But to what extent is cultural diversity accepted in the Sudan? In practice the issue of cultural identity may yet bring about the break up of the

Sudan.

#### 4.5 Regional Reactions to the Machakos agreement

The Machakos agreement did not receive universal support. Some neighbouring countries rejected self-determination for the South. Egypt campaigned vigorously against self-determination. It feared the secession of the South and the creation of a non-Arab state in the upper Nile region threatening its strategic water interests (Abulemoi 2002). Egypt also wanted to curtail Islamic fundamentalism and preferred a united Sudan with a less fundamentalist government than the NIF, rather than the NIF in power and a secessionist South (ICG Report 2002). In 2002, Egypt's National Security Advisor Osama al-Baz called the self-determination referendum specified in the Machakos Protocol "a contagious phenomenon that would spread to surrounding countries" (AFP 31 July 2002). Egypt's President Hosni Mubarak showed his opposition to any self-determination soon afterwards, saying that Egypt would only "support any outcome that does not lead to the splintering or breakup of Sudan" (AFP August 2002).

Other IGAD members were also concerned that self-determination could lead to an independent Southern Sudan without regime change in the North. The ICG Report (2002) said the United States and the West shared this concern because the GoS had been accused of involvement in international terrorism. At the same time these countries did not wish to be seen as anti-Islamic or anti-Arab, for fear of alienating some of their closest Arab Islamic allies, especially Egypt and Saudi Arabia. Deng (1999) said international interest in the South was therefore marginal and largely humanitarian. The international position towards the GoS government and the cause of peace often appeared ambiguous and ineffective.

Despite this, peace in the Sudan required international support for self-determination for the South (Deng 1995). After signing the Machakos Protocol, Sudanese President Al-Bashir immediately called the powerful leaders of Egypt and Libya, as he was worried about their reactions. Egypt maintained its position that it would not accept a deal that might result in self-determination for the South, but the Libyan leader, Muammar al-Gaddafi, messaged the Sudanese President supporting the protocol. On the question of Nile water, al-Gaddafi said, "the Nile does not belong to the Sudan or Egypt, it belongs jointly to nine riverine countries, none of which should individually conduct activities affecting the Nile waters

without the consent of the others” (Al-Bayan 2002). So on both self-determination and water, Egypt lost its most reliable ally in opposing the deal.

The Libyan government also showed its interest in the peace talks when it sent a high level delegation to attend the NDA discussions of the Protocol in Asmara(al-Bayan Newspaper, 31 July 2002). The Sudan government received further support from Africa Union Secretary General Amara Essy who issued a positive statement in favour of the Machakos Protocol while on a visit to Khartoum. He said “the AU hailed the Machakos agreement as a breakthrough, and it hoped the parties would push ahead to a comprehensive settlement” ([www.splmtoday.com](http://www.splmtoday.com), 2002). The Egyptians soon realised that they were alone in their opposition to the Machakos Protocol and had no African allies. President Mubarak's refusal to receive Sudanese Vice President Taha later that month showed clear Egyptian frustration (IRIN, August 20, 2002) .

#### **4.6 What prompted the parties to Sign the Protocol**

Many factors, both inside and outside of the Sudan, led the SPLM and the GoS to sign the Machakos Protocol. The Machakos agreement of 20 July 2002 contains provisional agreements on several vital issues such as self-determination, religion and state and the structure of the national government. There was significant compromise on the issue of religion and state. For the first time ever, the government put the unity of the country ahead of its other concerns and allowed the “consensus of the people” to be the source of legislation for the national authority (Article 3.2.2). Africa Confidential (2002) said the government thought that by exempting non-Muslims in northern states from the application of Shari’a, it would boost a unity vote in any referendum on Southern Sudan. The Upper House, which would consist of equal representation from the North and South, would protect regions from national legislation of a religious nature through a veto.

While promoting unity, the Machakos Protocol leaves independence for the South as a possible eventual outcome. The parties agreed to implement the peace agreement so as to make the unity of the Sudan an “attractive option”, especially for the people of Southern Sudan, who they hoped would then vote for unity in the 2011 referendum(CPA Chapter I). The parties hoped that by making the unity option more attractive, they might persuade the non-Arab North, such as people in the Nuba Mountains and Southern Blue Nile, to choose to remain within a united Sudan, even if the South were to opt for secession.

How unity is to be made attractive is interpreted differently by the North and the South. The CPA creates "one country-two systems" before the referendum. The challenge is to transform that model into "one country-one system", which would be essential to maintaining the Sudan's unity. To the negotiators, attractive unity meant finding something new to replace the failed attempt to get Islamists to separate religion and state (ICG Africa Report 11 December 2003). Really attractive unity must transcend the six-year interim period. Before the Comprehensive Peace Agreement of 2005, existing socio-economic and political systems were unattractive to those who had been marginalised and those who rejected the Islamic-Arabic system. Brutal attempts at unity had resulted in nearly fifty years of civil war. Socio-economic and political underdevelopment and exclusion had led to dissatisfaction among the people of Southern Sudan and among the Nuba, Beja, Ingessena Darfurians and other groups (Johnson 2003). For Southern Sudanese, attractive unity could mean a short 'wait and see' until July 2011 when they could vote on whether to remain part of the confederation or become independent. The ruling government during the interim period would need to provide incentives and dividends to make unity attractive.

Attractive unity is the desire of all Sudanese who want gradual sustainable change. The CPA has made it the watchword for genuine long-term progressive change and transformation. Former SPLM/A leader John Garang said in 2005 that making unity attractive was a long-term aim intended to create a "New Sudan" on a new basis and to go beyond the structure and timeframe of the CPA to attract all those who had previously rebelled. So the CPA urges Sudanese to adopt a new mindset to transform the country into a new and attractive nation for all those who have despised the old ways. Failure to make unity attractive to all people may lead to the fragmentation of the Sudan. If the South secedes following the 2011 referendum, will the people of the Nuba Mountains, Southern Blue Nile, Eastern Sudan and Darfur still find unity attractive? Making unity attractive means opening up a political space which engages all Sudanese.

#### **4.6.1 The Sudan People's Liberation Movement**

The SPLM/A had more than one reason for signing the Machakos Protocol (Khamier 2006). Foremost was the clear commitment to a referendum on self-determination which could lead to independence. This met the primary objective of many SPLM/A supporters. If you ask Southern Sudanese what the CPA means to them, they say self-determination. Many on

both sides think the Southern Sudan will end up independent no matter what anyone does to make unity attractive.

The principle of self-determination was key, because it enshrined the idea that the Southern Sudanese had the right to govern themselves, and recognised that not all regions of the Sudan share the same traditions or priorities (Akot 2006). The Protocol resolved a dilemma for the SPLM. For tactical reasons it had expressed commitment to unity even though most of its supporters favoured secession. Now the Protocol offered a choice between unity and secession. The Protocol also eased the concerns of the North. The Khartoum government had taken for granted the Sudan's identity and integrity (Ofuho 2006) and the Protocol was not seen as synonymous with secession. Unity was still a possibility. Secession was an option which the South could adopt if unity was not made sufficiently attractive.

The principle of self-determination received wide political support in the South and some support in the North. As noted in chapter III, this was demonstrated by SSIM and SPLM support of the IGAD DOP in May 1994, the Washington declaration between the leaders of SPLM and SSIM in October 1993 and the support given by the Southern Sudanese concerned at the Asmara meetings in 1995. Self-determination also received support from important Northern Sudanese political groups. The Umma leaders recognised the Southern Sudanese right to self-determination in a declaration signed with the SPLM/A in Chukudum in December 1994, and the National Democratic Alliance (NDA) voiced support for self-determination at the Asmara meetings in June 1995 and January 1996. Chand (1998) says most Southern Sudanese believe self-determination means complete partition between the North and South and the establishment of a sovereign nation state. Chand says the Egyptian Peace Initiative failed because it wanted to preserve the unity of Sudan at the expense of the South and denied the right of self-determination to the people of the South.

The SPLM/A may have also seen advantage in a deal with the ruling party which enabled both sides to share control during the interim period while providing the basis for a referendum. Because of the SPLM compromise on separation of religion and state, the Protocol implicitly endorses the premise that Shari'a in the North is the will of the majority there (Article 3.1.1). But the SPLM did not lose anything tangible in compromising on its principles. A secular Sudan would not have been possible without the downfall of the

Northern regime and would not have been acceptable to many Northerners..

#### **4.6.1.1 Machakos Protocol and the Goal for a New Sudan**

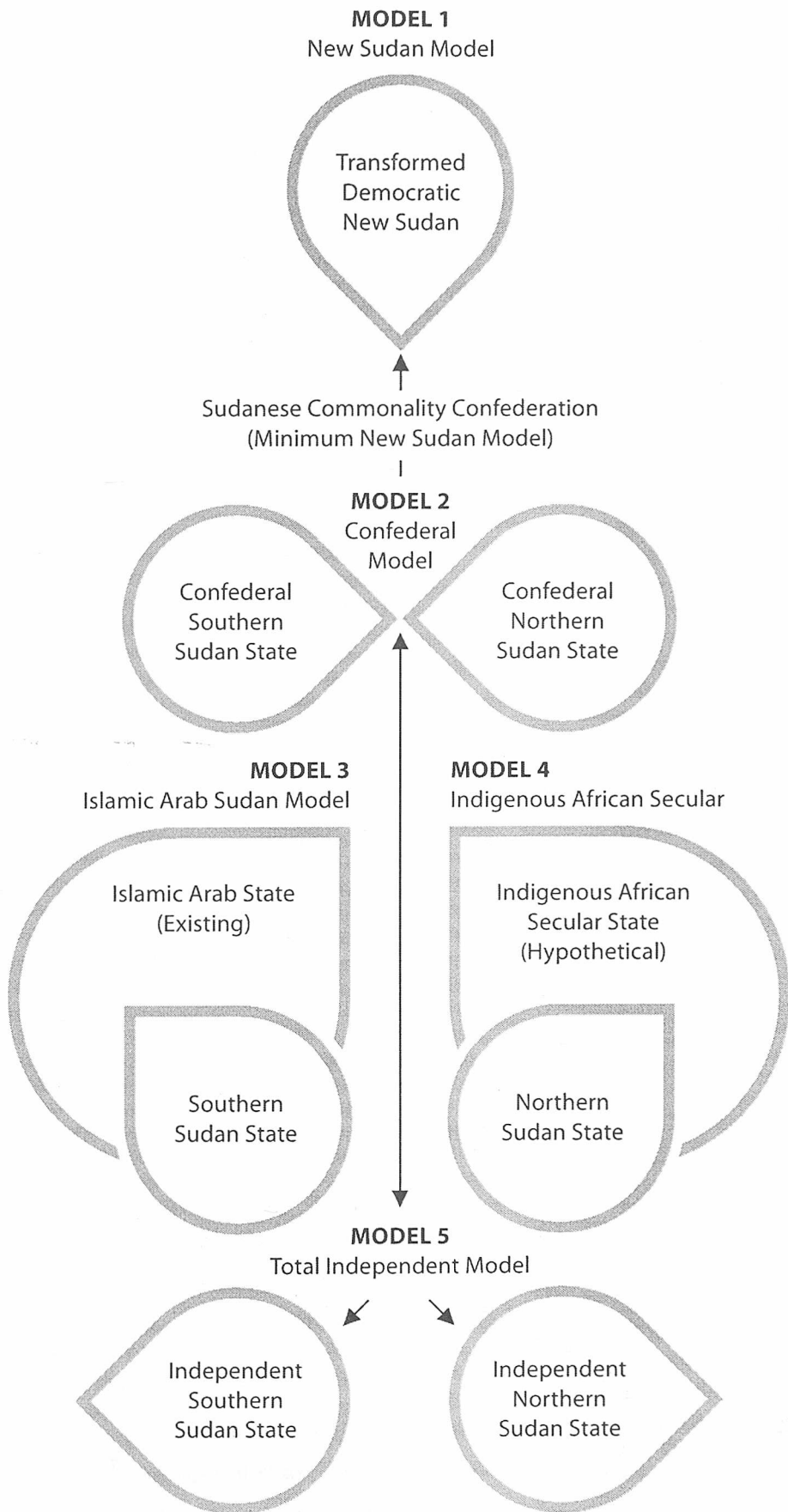
Some critics view the SPLM/A agreement to the Machakos Protocol as shifting from its original vision of a "New Sudan" to a position of separatism. Others say the terms of Machakos Protocol were imposed on the SPLM/A by the Americans. Examination of the SPLM/A manifesto shows that unity was an integral part of the movement's "New Sudan vision". However some Northerners found it difficult to believe in the SPLM/A's commitment to unity. Khamier (2006) says the call for unity was not taken seriously by the Northern Sudanese ruling elite and was disdainfully ridiculed. SPLM/A leader John Garang once warned the Sudanese people that "separatism this time will not come from the South as it used to be the case, but ironically will come from the North" (Khalid 1992:231-68). This analysis was made as a result of the government's rejection of a secular democratic Sudan and its insistence on a theocratic Arab Islamic state based on Shari'a law .

The SPLM/A demand for self-determination was in response to political conditions both in the South Sudan and in Khartoum. The Machakos agreement says self-determination is a tool or a mechanism for achieving "voluntary unity" in an adverse environment. Separation of religion from the state is essential for the building of a nation-state and, thus, is part and parcel of the SPLM/A objective (SPLM/A Manifesto 1983). This should not be confused with the SPLM/A political strategies. Critics felt that the SPLM/A had reneged on its position on the separation of the state and religion by agreeing to the continuation of Shari'a in the North (Khamier 2006). The SPLM/A had two choices: It could insist on separation of religion and state all over the Sudan, which would have led to the breakdown in talks. This would not have looked good either for the SPLM/A or for the mediators. Worse it could have taken the country back to civil war . Or it could seek workable solutions that would end the war, without compromising the rights of non-Muslims not only in the South, but also in the whole country.

Critics of the SPLM/A vision also saw the adoption of a "one country-two systems" model as a recipe for separation. Arguably, "voluntary unity" as included in the Machakos Protocol of 20 July 2002, is based on creating a political and socio-economic commonality that brings all the Sudanese together as equal citizens in rights and obligations (Khalid 1983). In other words, this would not be possible if religion or any particular constituent of

this commonality and not the constitution were to become the source of legislation. Hence, the “one country-two systems model” advocated by the Machakos agreement was a direct response to the government’s intransigent position on the relation of religion and state. The system was, therefore, intended to ensure unity without relegating non-Muslim Sudanese to second-class citizenship in their own country. What had been achieved through negotiation was only one step in the long political process of building the New Sudan. This argument can be justified by analysing the various SPLM/A plans for ending the Sudan conflict.

**4.6.1.2 SPLM Solution Modalities for the Sudan Conflict**



Sources: Garang, Mobior (1993) SPLM Modalities for the Sudan Conflict



This table shows the formula for peace was not dictated by one single factor or by foreign powers as maintained by some critics. It was based on confederal arrangements outlined in the SPLM/A "Solution Modalities for the Sudan Conflict" presented early in 1993 during the Abuja talks. The SPLM/A was aware that Model 2, i.e. "one country-two systems", brought about by the Machakos Protocol, fell short of the New Sudan envisaged by the Movement (Khalid 1987). So the SPLM/A calls it "Minimum New Sudan". It is based on the assumption that confederal arrangements provide space for promoting and fostering Sudanese commonality during an interim period that would eventually lead either to "A Transformed Democratic Sudan" (Model 1) or split the country into two independent states (Model 5). Model 3 assumes an Islamic-Arab Sudan dominating the South (which was the pre-CPA situation, which would have led to the separation of the South). Model 4 is purely theoretical where an indigenous African secular state dominates and would lead to the formation of an independent state in the North.

The SPLM/A thought the best way to maintain unity would be to move directly from Model 3 (Old Sudan) to Model 1 (A Transformed Democratic Sudan). This would have been a decisive defeat for the incumbent regime of the Old Sudan. However, military defeat was not possible and a negotiated process was required, so the second best option was considered to be Model 2 (Confederal Minimum New Sudan or a "One Country-two system" Model). This option runs the risk of becoming Model 5 (Separation) which would be a failure for the forces that want a secular-democratic New Sudan. The establishment of a New Sudan was the joint responsibility of the SPLM/A and the National Congress Party (NCP), as well as other political forces of change. They all had a role to play to ensure a move from the situation in Model 2 to Model 1, rather than ending up as in Model 5.

#### **4.6.2 The Government of the Sudan**

The government's motives for signing the peace deal were complex and key officials seemed to have different agendas. Both moderate and hard-line elements wanted to retain power and manage future change, but they had different reasons for proceeding with the peace agreement. First, as examined previously in Chapter III, the introduction of Sharia' law and the ensuing civil war had divided the country. The SPLM had called for a "New Sudan" based on equality and justice rather than secession and was winning support at home and abroad. The idea also appealed to non-Muslims in the North and had divided the region. The old regime knew that opposing self-determination in the South would fragment the

whole country.

Second, both Muslims and non-Muslims were dissatisfied with a government which did not hear their grievances. Various groups alienated by the “Arab” centre had grown sympathetic to the SPLM/A, and in some cases fought alongside them (ICG Report 2002a). The outbreak of civil war in Eastern and Western Sudan increased pressure on Khartoum. So the Khartoum leadership realised that peace talks might enable its political survival. By signing the Machakos Protocol, the NCP would be seen as a party of peace and could broaden its power base at the expense of the larger Umma Party and Democratic Unionist Party (DUP). The agreement between the NCP and splinter Umma Party factions helped that strategy (ICG Report 2002b)

Third, oil revenue would not increase until drilling could begin in the war zone. The government needed a ceasefire. The ICG Briefing (August 2002) said that to secure a ceasefire the government was prepared to make significant compromises that did not threaten its hold on power. The regime may have hoped that oil revenue could help integrate the economies of the North and South during the interim period, creating a new dynamic for unity. Key members of the NCP believed that the Sudan, once free of the civil war, could become a major power in Africa and a bridge to the Middle East (ICG 2002b).

Fourth, signing the Machakos Protocol would show the government to be flexible. The government thought that the SPLM would box itself into a corner by putting forward what mediators might consider to be extreme positions (ICG Report 2002a). Khartoum would then be able to say that it had already made the fundamental compromise on self-determination and it was not responsible for the talks collapsing. This did happen to a degree when the SPLM/A hardened its position on the issue of the adjacent “Three Areas” (the Southern Blue Nile, Nuba mountains and Abyei) . The government, however, lost potential international sympathy by walking away from the talks rather than maintaining the high ground and pushing for a ceasefire (ICG Briefing Report 2002).

Fifth, the Machakos agreement to grant the South a referendum did not automatically mean the South would secede. Complex negotiations would still be required between the SPLM and Khartoum in the event of a vote for secession. Therefore, the old regime might hope that it would be able to undermine independence in the negotiations. As will be seen in

Chapter VII , there are signs that the NCP sought to undermine the implementation of the CPA through its use of militias (SSDF), bribery and tactics of divide and rule. It was actively encouraging hostility between Southern groups in the hope that intra-South fighting would result in the postponement of a referendum indefinitely. These tactics might intensify if international pressure over the conflict in Darfur diminishes.

Sixth, the SPLM/A made a number of important concessions. It gave up its demand for a secular system and accepted a relatively lengthy interim period before a referendum for the people of Southern Sudan, even though this risked the referendum being prevented by changing circumstances. With six years to wait the old regime might hope that the Evaluation Committee set up by the Protocol would be able to certify that Khartoum had implemented its end of the bargain and question the staging of a referendum over the South Sudan (Al Sharq-al Awsat, 1 August 2002).

Seventh, some Northern leaders felt the Machakos Protocol and the entire peace process provided an opportunity to divide and rule. They wanted to break the alliance between the South and the disputed adjacent "Three Areas," as well as between the SPLM/A and the Northern political parties in the NDA, who felt excluded by the IGAD and somewhat marginalised by the SPLM/A leadership (ICG Report 2002b). Without altering fundamental power relationships, the NCP leaders would have six years to entice the SPLM/A through generous entitlements, including positions of influence and control of economic resources. The ICG Report (2007) says that in the run up to the 2009 elections, the regime was working even harder to split the SPLM, not only from other Northern opposition parties, but also within the Northern branch of the SPLM and to attract those who split away from the NCP.

#### **4.6.3 The Approach and Strategies of the Mediators**

The mediators contributed greatly to the success of the Machakos agreement and the entire peace process. The involvement of the IGAD, the USA, Italy, the United Kingdom and Norway, the UN, and the AU gave international recognition to the SPLM/A 's cause. Moreover, the mediators' ability to maintain their special relationship with both parties without compromising their own independence was a great asset (ICG 2002a). Another factor facilitating the success of the mediation effort was the seminars organised by the mediators. As already explained in Chapter III, the Sudanese conflict is complex with many features and many confusing labels. For some, it is a war over colonialism; for others, a race

and cultural war and genocide, yet for others, a religious war. Thus, the seminars organised by the mediators and documents produced by the International Crisis Group (ICG) put all these aspects into perspective, and dealt with the underlying economic, political, cultural and religious dimensions of the often-stated superficial labels (ICG Report 2002b). Both parties appreciated that whatever misinterpretations the intermediaries might have had about the conflict were corrected with the help of the concerned groups.

The intermediaries' seminars had a positive psychological effect on each of the parties, making them feel their issues were understood. The seminars may also have improved each side's understanding of the other's position. One of the mediators said "a party is less likely to distort statements made by neutral third parties than if the adversary made the same statements" (Interview 20 May 2007). A SPLM senior negotiator said "the seminars gave each party the opportunity to understand the limited nature of its adversary's motives, concerns and preferences" (Interview 10 April 2007).

The broad international composition of the mediating team also contributed to the success of the talks. A mediating team has a greater advantage over a single individual mediator. Tasks can be divided between team members who can concentrate on areas of their particular skill. One mediator said "the fact that the mediation was led by the neighbouring countries and Africans contributed to their success in their roles" (Interview 20 May 2007). The skills and procedures the mediators used also helped bring about a successful conclusion. One strong incentive was the promise of aid if the parties stopped fighting and negotiated peace. Confidence in the peace process was also increased by the mediators' desire to build on national consensus and the recognition of a need for a referendum on self-determination in Southern Sudan.

#### **4.6.4 International Factors**

There were various international and regional influences on the peace talks, but American interest in the area was a major force. U.S involvement in the peace process changed the course of the negotiations, increasing their profile. Sudanese Vice President Ali Osman Taha acknowledged the U.S role when speaking to Egyptian media in 2002. He said there were three main reasons persuading the Government of the Sudan to sign the Machakos Protocol: the discovery of oil and the emergence of important American interests in this field; the agreement that Southerners should have the right of self-determination; and

intervention by foreign powers, in particular the USA (ICG Report 2002b).

So what brought about American involvement in the peace talks? America was concerned about the Sudan's support for radical Islamic groups. America was on high alert against international terrorism following the attacks on the USA on 11 September 2001. The Sudan was on America's list of countries supporting terrorism. The Khartoum government had supported radical Islamist groups in Algeria and Iraq's invasion of Kuwait. The Sudan was being used as a base for militant Islamist groups. Radical movements such as Osama Bin Laden's al Qaeda were given safe haven and logistical aid in return for financial support (Abulemoi 2002: 218-220). America's previous Clinton administration had included the Sudan on its list of states supporting terrorism and imposed sanctions against it in 1996. In 1998 the USA even launched a missile attack on a chemical plant in Khartoum, claiming it was an Al-Qaeda weapons plant. The USA banned multilateral funding to Sudan. Any development aid from the World Bank and the International Monetary Fund (IMF) was blocked.

However, the international climate changed after the September 11 attacks and there was greater international involvement in attempts to bring about peace and security. The Taliban had been overthrown in Afghanistan and the USA had invaded Iraq. There was broad American support for peace and stability in the Sudan plus a concern to secure oil supplies. US bodies wanting to see peace in the Sudan included the Congressional Black Caucus, the Christian right, liberals, human rights activists and American humanitarian agencies.

Why was the Khartoum government prepared to allow broader international involvement? The government was feeling the pinch from the imposition of sanctions. The NCP government may have hoped that a peace agreement would lead to normalisation of relations and an end to US sanctions. (Washington Post, 3 September 2002). The Sudan regime was heavily in debt (Adar 2000b). The Sudan government was prepared to make significant compromises in order to get sanctions lifted and aid restored. The Sudan was reducing its ties with former allies in the Middle East in its attempts to improve relations with the USA and the international community at large. So the international presence at the talks exerted considerable influence on the Sudanese government which led to the signing of the Machakos Protocol.

#### 4.6.5 Regional Factors

Regional powerplay had been an important factor in the civil wars in Sudan, Eritrea and Uganda. Neighbouring countries regularly supported one another's armed dissidents (Young 1997). Khartoum's support for Tigrayan and Eritrean revolutionaries had contributed to the overthrow of Ethiopian leader Haile Mariam Mengistu in Addis Ababa, the coming to power of the Ethiopian People's Revolutionary Democratic Front (EPRDF), and an independent state in Eritrea under the Eritrean People's Liberation Front (EPLF) (Johnson 2003). The SPLA had received support from Ethiopia to counterbalance Sudanese government support for Ethiopian dissidents. The new Ethiopian and Eritrean governments later also supported the SPLA and the National Democratic Alliance (NDA) to counter the Sudanese National Islamic Front (NIF)'s support for Islamist groups attempting to overthrow the EPRDF and EPLF. A similar pattern was at work in Ugandan-Sudanese relations where Kampala's support for the SPLA led to, or was due to, Khartoum's support for the Ugandan rebel group, the Lord's Resistance Army (LRA) (Young 1997).

In 1993 IGAD intervened to help mediate peace in the Sudan after the collapse of Nigeria's peace initiatives at Abuja I and II (Abdelwahab El-Affendi, 2001). The Khartoum government expected to get a sympathetic hearing from IGAD's other members: Djibouti, Eritrea, Ethiopia, Kenya, Somalia and Uganda. Two member governments, Eritrea and Ethiopia, had received support from the Sudan government in their struggle against the former Ethiopian leader Mengistu Haile Mariam. The new leaders in Ethiopia and Eritrea had lived in Sudan and were well informed on the sources of conflict. They realised that the problems of the region were interconnected and that peace, security and stability in the neighbouring countries were indivisible and should be approached regionally (Deng 2001)

However, the Khartoum government had misread the regional dynamics. The government of Eritrea and Ethiopia were not at all well disposed to them. Khartoum had been pursuing an aggressive Islamist-based foreign policy which had alienated its neighbours. The incursion by Islamic guerrillas based in the Sudan into the Sahel region of Eritrea in December 1994 was a pivotal moment in the decline of relations between the two countries (Cliffe, 1999). Ethiopia and Egypt also blamed the Sudan for the attempted assassination of Egyptian President Hosni Mubarak in Addis Ababa in June 1995 (Middle East Times, 10-09-1995). Kenyan logistical support for SPLA political and humanitarian operations put a



considerable strain on Kenyan -Sudanese relations. In 1992 and 1994 the Sudan even resorted to the aerial bombing of Northern Kenya. Tension along the Sudanese-Ugandan border had also led to tit for tat support for one another's dissidents.

So contrary to the Khartoum government's expectations, IGAD gave strong support to the SPLM/A's demands for secularism and self-determination. Under the influence of Ethiopian Prime Minister Meles Zenawi and to some extent Eritrean President Issias Afwerki , and with the support of the governments of Kenya, Uganda and Djibouti, an IGAD Peace Initiative was formulated that gave high value to secularism and self-determination in its DOP (Johnson 2003). The GoS's forceful rejection of these proposals in 1994 wrecked relations with its neighbours. The NIF's aggressive attempt to export political Islam in the region, the resistance of the region, and the stymied peace process, together galvanised the countries of the Horn of the Africa, and in particular Eritrea, Ethiopia and Uganda, to launch a military campaign against Khartoum (Young 1997).

Early 1997 saw a high degree of unity and commitment by IGAD members, and even Egypt, to seriously confront the NIF regime. Indeed, Egypt had joined Ethiopia to co-sponsor a Security Council resolution with strong U.S support for sanctions against the Sudan. Egypt had thus moved from initially urging the international community to accept the NIF to making clear at the highest levels its revulsion of the regime (Swain 1997). Cairo was aggrieved at the confiscation of state properties in Khartoum. Cairo was also alarmed at NIF leader Turabi's assumption of a leading role in the internationalist Islamist movement and Sudan's growing relations with Iran, which Cairo saw as its major challenger for dominance in the Middle East. With all of these grievances in mind Egypt deliberately intensified the conflict over the long contentious Halib area along Sudan and Egypt's joint border near the Red Sea and endeavoured to isolate the NIF in both the Arab world and international forums (Young 1999). Although Cairo could not follow IGAD in accepting self-determination for Southern Sudan, its distrust of the Khartoum regime and desire to see it replaced was not very different from that of the IGAD countries.

By late 1997 Khartoum had become aware of the impact of this regional effort to isolate or, worse still, overthrow the NIF. The Islamist threat to the region was weakening, the aggressive stance of Khartoum was being recognised by its leadership as a failure (Young 1999). The NIF had rejected IGAD's peace efforts in the strongest language in 1994, but by

1997 it had bowed to regional pressure and accepted IGAD's DOP as the basis for negotiations.

#### **4.7 The weaknesses of the IGAD mediation**

War has raged in the Sudan for most of its existence since independence. Many Sudanese hoped the Comprehensive Peace Agreement (CPA) of 9 January 2005 would not only bring an end to war, but also provide the momentum to resolve other conflicts in the country. In 2008 it was still uncertain whether the CPA would survive until the 2011 referendum on Southern self-determination. The CPA had not yet served as the stimulus to end the war and the humanitarian crisis in Darfur. Furthermore the CPA had not yet brought about any reconciliation between the people of North and South Sudan, nor provided any hope that the commitment to 'make unity attractive' could be fulfilled. Nor was it ushering in a democratic transformation of the country (ICG Briefing Report 2008). There was widespread acceptance that the CPA and the broader peace process it fostered was at best stalling, or at worst collapsing. On 13 April 2007 a Nairobi meeting of the IGAD Council of Ministers concluded the implementation of the CPA was 'lagging behind schedule' and urged an extraordinary meeting of the IGAD Heads of State to consider the problem (IGAD, 13 April 2007).

One of the major weaknesses of the IGAD mediation was the failure to include all the warring parties in the peace process and power sharing. The exclusion of Northern opposition groups and interested parties in the Southern Sudan, such as civilians, certain political parties, and splinter factions had made it difficult to implement the agreed protocols, including the Machakos Protocol. John Young (1997), says that the mediation focused on ending the violence (many respondents referred to it as an extended cease-fire) instead of laying the basis for a sustainable and comprehensive peace in the South and the country at large.

In Chapter II, a review of power sharing showed that agreements which excluded certain warring groups could end in violence as the excluded group rebelled. The 2000 Burundi power-sharing agreement is a case in point. For several years the Burundi rebel group, Council of National Defence for Democracy Forces-Forces of Defence (CNDD-FDD), had refused to participate in the peace talks. The CNDD-FDD eventually laid down their arms in 2003 when The Pretoria Protocol on Political, Defence and Security Power Sharing in



Burundi allotted them, among other things, 4 seats in the transitional cabinet and 15 seats in the National Assembly (Bentley and Southall 2005). Thus, when a peace agreement involves power-sharing, it is necessary to include all the warring factions to ensure peace.

In the case of Sudan, the IGAD process was moribund for a long time. The DOP was adopted in 1994 but no meetings were held until 1997. The meetings were delayed by two years of debate among the IGAD member states and their international partners, mainly the USA, UK and Norway, as to the formula for the representation of the various Sudanese groups in the IGAD peace process. A minority pressed for full representation including the NDA and non-SPLM/A Southern factions (de Waal 2007). This did not happen. One reason was that the mediators thought it was simply too complicated to bring in all parties. The argument was that the principal problem lay between the GoS and the SPLM/A, that the other parties did not have significant military forces, and that once the GoS-SPLM/A problem was solved, the other questions of democratisation and participation could be addressed in a way that would satisfy the other parties (de Waal 2007). The peace process never developed trust and understanding between all the parties concerned, and in its absence and the failure to commit to wide-ranging reconciliation, the mediation followed Western practice and emphasised legal requirements and time-tables (Young 2008).

The IGAD mediation also lacked the means to resolve any conflict that might emerge during the implementation process. In 2008 the great number of bodies and commissions formed to regulate, monitor, and adjudicate disputes had not managed to overcome the lack of trust between the SPLM/A and the GoS, and as a result the implementation of the agreement was far behind schedule (Young 2008). As outlined in Chapter VIII, the agreement to dissolve other militias threatened to unleash a war between the SPLA and the South Sudan Defence Force, while the power-sharing arrangement which gave the SPLM and the NCP the lion's share of state power undermined efforts to reach a settlement in Darfur and encouraged secessionist sentiments. The review on the theory of power-sharing in Chapter II explains the need for mechanisms to resolve differences during the implementation of peace agreements like the CPA. Differences arising from ambiguities in interpreting the peace agreement have to be resolved by mediation, arbitration or bilateral negotiation. In other words, a concrete package of mutual commitments and undertakings is needed to build confidence in peacemaking.

So three major factors played a part in making the Machakos agreement the basis of the Sudan's Comprehensive Peace Agreement. First, international pressure and incentives: international mediation efforts and promises of economic assistance helped the parties to negotiate the peace agreement to bring an end to civil war. Second, regional pressure: military and political pressure applied by the region, and the SPLM/A forced the GoS back to the negotiation table. The study finds that the military and political pressure applied by the region, together with that of the SPLM/A was such as to put the very existence of the GoS into question. Internal factors might have also contributed to the achievement of the Machakos agreement. The emergence of civil wars in the Eastern Sudan and the Western regions of Darfur played a part. The NCP regime had to choose between the continuation of war on several fronts which it could not win or a peace agreement with the SPLM/A.

Finally, the Machakos Protocol would have not come about without the compromises made by the SPLM/A and the GoS. The SPLM/A's acceptance of Shari'a law in the Northern Sudan and Khartoum's agreement to a referendum on self-determination for the people of Southern Sudan in 2011 enabled agreement to be reached. The Machakos agreement provided the general framework for a political settlement of the Sudanese conflict, although the question of whether the Sudan would remain united or split into two separate states remained open until 2011. For the time being, the GoS secured the prevalence of Islam at least in Northern Sudan, while the SPLM/A gained a secular administration and a referendum of self-determination for Southern Sudan.

## Chapter V: Power-sharing in Post-Conflict Sudan

This chapter examines the CPA's Protocol of Power Sharing and asks how well its provisions address the Sudan's conflicts of governance and grievances. Power sharing arrangements usually try to balance power among the main adversaries. The Protocol of Power Sharing, which was signed by the GoS and the SPLM/A on 26 May 2004, provided a formula for dividing political power equitably between them. However the Protocol does not include all parties. Some Northern opposition groups and some Southern splinter groups were left out, creating frustration which could lead to violence. The Protocol provides for the establishment of an autonomous Southern Sudan government and for fixed representation of the GoS and the SPLM in national government institutions such as the Presidency, legislature and civil service. The Protocol also provides for elections at all levels by the end of the third year of the interim period, as well as a new interim national constitution and for a number of human rights to be protected under Sudanese law.

The new governmental structure set up by the CPA could provide power sharing not only between North and South Sudan, but throughout the country. But in 2008 it remained unclear whether the new Government of National Unity, together with reforms and decentralisation would address local conflicts and grievances.

### 5.1 Administration of the Sudan during the Interim Period

Since independence the Sudan has had a one-sided government which created resentment and discontent among the people of the South, Eastern and Western Sudan (Hoebink 1999). Consociational theory suggests that power-sharing can facilitate accommodation and co-operation among leadership elites, promoting democracy and good governance in divided societies (Norris 2005). The Machakos Protocol says "the Sudan is to be governed through a decentralised system that includes the Government of National Unity, the Government of the Southern Sudan and state level governments" (Article 1.5). A broad based government has a better chance of implementing the CPA successfully. This can be achieved by widening opportunities at the centre and in the Southern government, as well as by devolving functions and responsibilities to state and local levels after the holding of local elections.

Political decentralisation seeks to protect weaker parties by partitioning state power between

the centre and the regions. De-centralising measures such as regional autonomy and federalism are included in peace agreements to reassure and protect ethnic and regional minorities (Deng and Morrison 2001:2). Regional and ethnic leaders view territorial autonomy as a means of group protection and empowerment (Rothchild and Hartzell (1999: 259). So what impact are the new power-sharing systems and decentralisation having on the Sudan?

### 5.1.1 The Government of National Unity

The CPA signed between the GoS and the SPLM/A in 2005 provides for the formation of a Government of National Unity (GNU). Power is to be shared at the centre during the interim period and is to be used to transform Sudanese political, social and economic life. Three years after the swearing in of the Government of National Unity on 22 September 2005, little seemed to have changed. The transformation that was supposed to take place at national level through power sharing and reform of legislation has yet to occur. The GNU was intended to end the monopoly of power by an elite in Khartoum. Interviews with Sudanese in Juba and Khartoum showed that they considered the new government still to be run by a single authoritarian Islamist party, the NCP, and not by a new hybrid government. Why was this? There were several problems. First, although the parties agreed in principle that “during the interim period, there shall be a Government of National Unity reflecting the need for inclusiveness, the promotion of national unity, and the defence of national sovereignty, and the respect and implementation of the Peace Agreement” (Article 2.5.1) in practice the CPA was less than comprehensive and did not reflect inclusiveness.

Many critics of the CPA said that the failure to include all interested parties and armed groups in the GNU has led to marginalised people taking up arms to protect their interests. The introduction of proportional representation could help resolve these issues. Several scholars argue that proportional representation of diverse ethnic and political groups at various levels of government can bridge differences and improve co-operation. Specific ratios between ethnic groups for jobs in the public service, the legislature and the courts could be set up to reduce inter-group tensions. Abbink (1997) says regional and political parties can be involved in the new government through power-sharing schemes such as a guaranteed distribution of administrative positions.

Second, another problem is educating the public in the meaning of the CPA and how it can

bring about change. In principle, the parties agreed in Article 2.5.9 that the “the Government of National Unity shall implement an information campaign throughout Sudan in all national languages in Sudan to popularise the Peace Agreement and to foster national unity, reconciliation and mutual understanding”. In practice the NCP and SPLM did not do this. It seemed that the NCP and SPLM were unwilling to initiate the process of reconciliation and the CPA had not been effectively communicated to the public. The experience of countries like South Africa has shown that reconciliation contributes to a return to normality by focussing on both psychological and social needs. Compassion, the acceptance of an apology, and forgiveness constitute important dimensions of reconciliation. In the Sudan, psychological rehabilitation is necessary to integrate victims of war. Social reconstruction, rehabilitation and reconciliation are essential elements that make a peace process durable and sustainable (Galtung 1998). Reconciliation may start with healing psychological trauma caused by indiscriminate killing and torture and other types of abuses. Both Montville (1993) and Rothstein (1999) say trauma from abuse and violence includes mental deprivation and a loss of meaning and control of one’s own life. Helping victims overcome trauma is an important step towards regaining their individual self-esteem. Community programs are needed to help women who were sexually assaulted as well as others who were exposed to physical brutality and have subsequently been experiencing psychological wounds.

Third, foreign policy is also a problem. In accordance with Article 2.9.1, Sudan’s new foreign policy is to promote peace, regional and international co-operation and good neighbourliness among the Sudan’s neighbours, as well as not interfering in the affairs of other states and combating all forms of terrorism. However, Sudan’s foreign policy since the signing of the CPA has not lived up to these principles and values. In practice this has not been the case with tensions with some of the Sudan’s neighbours, for example Chad, and confrontation with the international community, particularly with regard to the conflict in Darfur. This aggression has contributed to internal and regional instability and tension and slowed the implementation of the CPA.

### **5.1.2 The National Executive**

A look at the structure of the interim government helps identify some of the problems in implementing the CPA. One important element of the CPA plan for power sharing was to be the establishment of a National Executive, consisting of a Council of Ministers and a

Presidency made up of the President and two Vice Presidents (Article 2.3.1). In Article 2.3.4, the parties agreed that “until elections are held (three years after the signing of the Protocol), the incumbent President Al-Bashir would remain in office and SPLM/A Chairman John Garang would act as the First Vice President as well as President of the Government of the South Sudan. The post of Second Vice President would be allocated to Osman Taha, who was the previous Vice President. As agreed, the three-member Presidency was inaugurated on 9 July 2005. Al-Bashir was sworn in as President, Garang as First Vice President and Taha as Second Vice President. Later in July, following the death of John Garang in a helicopter crash, Salva Kiir was sworn in to take his place as First Vice President.

The CPA provisions on executive power sharing during the interim period are confidence building. Ould-Abdallah (2000: 73-80) says that in deeply-divided Burundi in 1994, leaders in both major communities considered executive power sharing to be critical for stable political relations. Jarstad (2006) says that power sharing can change the dynamic of political contestation. And by fixing the ratio of government positions for each contending group, the primary conflict is regulated or at least concealed. She says that when the focus moves away from the main inequalities, it is possible to concentrate on other tangible political issues that cut across former lines of conflict. This provides space for moderate factions in support of peace and democracy.

After considerable delays in allocating ministerial portfolios, notably Energy and Mining, President Al-Bashir issued four decrees on 20 September 2005 establishing the Government of National Unity. As per the CPA agreement, there were 12 Presidential advisors, 28 ministers and 33 state ministers. The NCP had five major ministries including those of Energy and Mining and of Defence, six economic departments, and four service ministries. The SPLM took charge of the Council of Ministers and of Foreign Affairs, three economic departments and three service ministries, including Higher Education. Other Southern political groups took two ministries. The participation of marginalised people in the national cabinet is a significant achievement of the CPA. Rothchild (1997:13-15) says executive power sharing represents an important incentive to minority groups to sign peace accords and is helpful in reducing the threat of possible future victimisation.

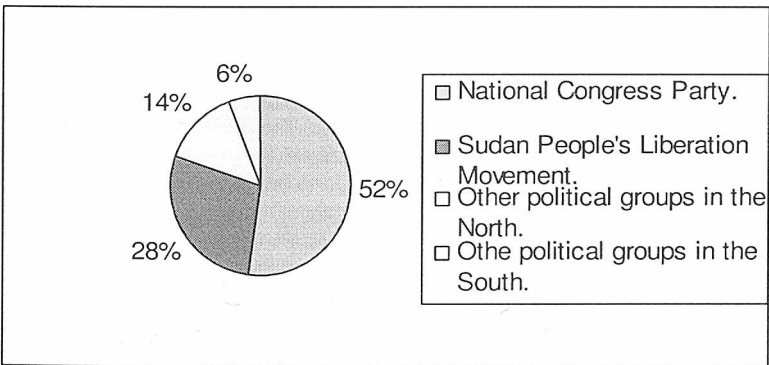
However, power sharing can also destabilise by unsettling those whose powers are reduced

and who don't like compromise. Suhrke and Jones (2000: 244) say that after the Arusha agreement of 1994, Rwanda's hard-line Hutu leadership saw the power-sharing arrangement as shifting the balance of group power during the transition and became increasingly determined "to derail it by means of a coup and mass murder". In this case, the agreement was destabilising and failed to survive the implementation. Rothchild (1997) says the instability of executive power sharing is sometimes also evident after elections when political leaders face challenges in governing. In his opinion, not only can power-sharing institutions give rise to political bargaining, but also communal members in exile may make radical demands on group representatives in the ruling coalition. There is a danger that the dominant majority may come to regard the formal provisions on executive power balance as less urgent and open to change.

5.1.3 The National Legislature

After the signing of the peace agreement, the warring parties need to form political parties and organise their supporters peacefully. The supporters need a legislative voice to influence government policies. Article 2.5.5 of the Protocol on Power sharing allocates seats in the Sudanese National Legislature. It's more sophisticated than the "one country-two systems" formula and a compromise that may prove more consistent with the ultimate goal of a united Sudan.

5.1.3.1 Allocation of Seats in the National Assembly



Source: The Protocol on Power Sharing, signed in Naivasha, Kenya, 26<sup>th</sup> May 2004

The table above shows the allocation of seats in the National Assembly under power-sharing. The National Congress Party (NCP) with 52% and the SPLM with its 28% dominate the Assembly. Other Northern political groups have 14% and other Southern political groups 6%. It's similar to Guatemala which Rachel McCleary (1999: 159) says



was a process dominated by the two most powerful groups, not a bottom-up violent revolution. Similarly the military commanders and politicians of the NCP or SPLM/A dominate the assemblies and all levels of government. The army benefited in several ways. First, the military negotiated an amnesty for human rights violations it committed during the civil war. Second, the army retained its domination of Sudanese society in both the North and the South. The legislative provisions have been less well received in the North than the South because of objections to NCP domination. While several small Northern parties joined the Government of National Unity, Sadiq Al Mahdi's Umma party and Hassan Al-Turabi's Popular National Congress Party (PNCP) objected to the percentage allocated in the agreement and refused to join either the National Constitutional Review Commission (NCRC) or the coalition government.

The power-sharing system may need to be reviewed if peace agreements are signed to end the conflicts in Darfur and the East Sudan and an adequate redistribution of seats cannot be achieved under the current system. The Government of National Unity may need to consider increasing the overall number of seats. According to Jarstad (2006), three conditions of power sharing determine the prospects for peace: inclusion of warring parties, the levelling of power relations and intra-group competition. So power sharing in the Sudan could have a negative effect on democratisation: by the exclusion of moderate Muslims, by the domination of the elite and by the lack of Sudanese civil control of the political process. Successful coalition governments rule by consensus without any one party imposing its policies.

However in the Sudan two parties, the NCP and the SPLM, have between them 80% of the assembly seats-far outweighing the smaller groupings. The Council of Ministers decides government policies. Article 72 of the Interim National Constitution (INC), itself derived from the CPA, defines the functions of the council of ministers. One function, (72(b)), is the "implementation of the CPA". The Council of Ministers is appointed 'through consultations within the Presidency'. Appendix B2 of Annexe II of the Implementation Modalities and Global Implementation Matrix and appendixes of the CPA says: "The following appointments shall be made through consultations within the Presidency: (1) the Governor of the States of Southern Kordufan and Blue Nile and (2) Constitutional Post holders in the Government of National Unity Ministers and State Ministers".

The President of the Republic can therefore veto the appointment of ministers and state ministers presented to him by each party in the Government of National Unity. A party cannot automatically appoint their choice of minister to a post without consulting the President. Article 58(1) of the Interim National Constitution says “the President of the Republic is the Head of the State and Government and represents the will of the people and the authority of the State. He/she shall exercise the powers vested in him/her by the Constitution and the Comprehensive Peace Agreement”. Therefore, it is a fundamental responsibility of the President to ensure that the State, including the National Council of Ministers, functions well.

## **5.2 The Rationale for Democracy in Post-Conflict Sudan**

A transition to democracy is necessary to eliminate conflict, but it is a very sensitive and complex task, conditioned by several factors. Elections cannot always be immediate. In Rwanda, for example, the international community felt free and fair elections could not immediately follow the genocide; voters might bring back in the political elite responsible for the bloodbath. Instead the international community first demanded of the Rwanda government long-term guarantees of democracy, a promotion of civil society and independent media, and human rights (Roland Paris 2004). Uganda was different. The international community pressed for elections in 1993 even though they were not multi-party. Considerations of political stability and economic development were weighed up by the international community in both cases (De Zeeuw and Kumar 2006: 4-5).

It is argued that the promotion of democracy in war-torn societies helps combat international terrorism which breeds in autocratic regimes that prohibit political participation and freedom of speech (De Zeeuw and Kumar 2006). Democracy is founded on individual rights and the rule of law and provides opportunities for groups to freely articulate their interests and mobilise public support (Przeworski 1991). In the Sudan, the CPA introduces major political and socio-economic change and guarantees freedom for political diversity. It provides for elections in 2009, a year later than set out in the Protocol on Power Sharing, signed by the NCP and SPLM in May 2004--the date was altered in the CPA's implementation modalities. Under the agreement of power sharing, Article 2.3.7, the president-elect will appoint two vice presidents, one from the South and the other from the North. If the president elect is from the South, the first vice president should be from the North and vice versa.

These provisions for democracy in the CPA are intended to help the Southern Sudan develop “at least partially democratic regional and other political parties” during the interim period (Human Rights Watch Report, October 2005). As shown in Chapter III, democracy is important for several reasons, including reducing the risk of a renewal of conflict and enabling representation for minorities. Khameir (2006) says “in the past, civil rights were subject to the authoritarian regimes” and most Sudanese regions remained peripheral to the central power and were treated as an expendable appendage that could be manipulated through political trickery. Interviews show that Sudanese intellectuals, educators and social and religious leaders want democracy and political participation.

A major question is whether authoritarian regimes like those in North and South Sudan can develop democratic and transparent political and economic institutions. Research on power sharing shows that agreements implemented by people with previous experience in democracy are likely to be more stable and long-lasting than those implemented by people who had been authoritarian. Hartzell (1999) says “regimes, familiar with democratic process, are more likely than those from authoritarian societies to trust that the institutions they have helped to create as part of a settlement can be counted on to manage conflict”. Kumar (1998) says adversaries’ previous experiences with a political regime may influence their willingness to commit to a stable peace and to hold post-conflict elections. The NCP and the SPLM have no experience of democracy. They lack experience in the accommodation of opponent’s interests and public views, which could contribute to long term stability.

The CPA provides for fundamental freedoms and respect of human rights from National to State levels of government. However interviews with Sudanese in the North and South Sudan show that basic human rights are being ignored and the regime’s security organs are spying on the public, instead of protecting them (Interviews 19-20 March 2007). One of the NCP and SPLM/A’s problems is that they came to power through conflict and are still led as they were during the time of armed conflict. History shows that authoritarian regimes and institutions that came to power through conflict rarely adapt to a democratic system. For example, once the Eritrean People’s Liberation Front (EPLF) had secured power in Asmara, it organised itself as a one party state (Pool 2001). To achieve lasting peace, former warring parties must agree to establish power-sharing institutions that address the problems raised by civil war and provide peaceful solutions. The new institutions must

either be self-enforcing or the international community must be willing to legitimise and enforce them. Post Apartheid South Africa is an example of the successful introduction of power-sharing agreements that fostered stability and democracy.

Overall, democratisation should cater for the interests of all communities with decentralisation of state power enabling broad regional representation. Equally importantly, it should involve the emergence of horizontal relations at a local level so that a few elites and dominant groups do not monopolise power and resources (Soerensen 1998: 17). This does not seem to be the case in the Sudan. NCP domination of the government allows it to control the financial resources and state machinery necessary to manipulate electoral outcomes. The regime's constant back-tracking and foot-dragging on a resolution to the Darfur conflict seem designed to perpetuate the region's instability and so preclude its genuine participation in the 2009 election (ICG Briefing Report No. 47, 2007). The SPLM is in control of resources in the South Sudan but, as a party, is disorganised. The SPLM leadership have so far failed to make the transformation from guerrillas to statesmen.

Post-conflict elections are a critical turning point in the transition from armed conflict to stable governance and systems of conflict management. Lopez-Pinter(1997) says that post-conflict elections are more likely to become "reconciliation elections" if the agreement calls for the construction of power-sharing institutions designed to address the security concerns of former opponents. Smith (2000) says that democratic institutions that provide for regular elections, shared political power, government transparency and accountability, and individual rights are likely to have a reassuring effect. Bakan (1995) says that elections are crucial for the transition from civil war to peaceful interactions. Provided that the competing parties act with moderation, electoral systems hold out the prospect of legitimate governance over time. However the timing of an election is a delicate issue. In Namibia and El Salvador, free elections were held after the complete demobilisation of forces. The Namibian election took place after the UN Transition Assistance Group had supervised the withdrawal of South African forces and disbandment of civilian armed groups (Anstee 1996). In El Salvador elections followed the demobilisation of the Farabundo Marti National Liberation Front (FMLN) and the reconstruction of the armed forces (Boyce and Pastor 1997).

In post-war Sudan, the demobilisation of militia is also necessary to bring about a secure

climate for elections. The CPA provides the opportunity for democracy through “free and fair elections”. However, the implementation of the CPA requires constant monitoring by the regional and international community. The international community has proven itself to be more willing since 1990 to sponsor, organise and monitor international elections at the end of civil wars than it had been before (Lopez-Pintor 1997). An international presence would make it harder for the NCP and the SPLM/A to balk at the idea of holding elections.

### **5.3 The Interim National Constitution of the Sudan**

As shown in Chapter III, the civil and military administrations in the Sudan have consistently pursued policies that embrace Islamic Shari’a law. Sudan has had several constitutions but in practice, none of them has guaranteed the basic fundamental and inalienable rights, equitable distribution of power, equal development and the inclusion of all citizens in the body politic. A new constitution acceptable to all Sudanese is crucial for peace. Consequently, the Protocol on Power Sharing provides for the formation of a National Constitutional Review Commission (NCRC) comprised of the NCP, the SPLM and representatives of other political forces and civil society to address the lack of consensus on a workable national constitution for the Sudan.

According to the Protocol on Power Sharing, the first task of the Commission was the preparation of a legal constitutional framework based on the CPA, the 1998 Sudan Constitution and other relevant documents presented by the parties (Article 2.12.5). As agreed in the Protocol of Power Sharing, the National Assembly and the SPLM National Liberation Council adopted the Interim National Constitution (INC) on 6 July 2005. The NCRC is responsible for organising a constitutional review process during the interim period. On 7 January 2006, the President of the Republic in consultation with the Presidency issued a decree to re-establish the NCRC for this purpose (The CPA Monitor January 2006).

#### **5.3.1 Foundations and Sources of Legislation**

The Interim National Constitution (INC) of the Sudan is based on the 2005 CPA, the 1998 Sudan Constitution, and agreements between the GoS and the SPLM/A. According to Article 225(1), the CPA is “deemed to have been duly incorporated in its entirety in this Constitution” and “the provisions of the CPA which are not expressly incorporated herein shall be considered as part of this Constitution.” In particular, the Power-Sharing Protocol,

agreed in May 2004 and signed on 5 June , forms the basis of the relationship between government institutions, and contains the Bill of Rights, which is included in the Constitution. However, the INC is insufficient to prevent human rights violations. Strong constitutional guarantees for human rights are needed to prevent further abuses in the Sudan.

The fact that the INC makes human rights a foundation of the state is to be welcomed. Article 1 says that "the Republic of the Sudan is a sovereign, democratic, decentralised, multi-cultural, multi-racial, multi-ethnic, multi-religious, and multi-lingual State; committed to the respect and promotion of human dignity and founded on justice, equality and the advancement of human rights and freedoms. It is an all embracing homeland wherein races and cultures coalesce and religions co-exist in harmony". However, this commitment is not always reflected in legislation. Article 5 of the INC says nationally enacted legislation "shall have as its sources Shari'a and the consensus of the people" outside the Southern Sudan . Article 5 (2) says Southern Sudan "shall have as its sources of legislation popular consensus, the values and customs, and traditions and beliefs of the people of the Sudan".

However, this article fails to mention international human rights law among the sources of national legislation and this omission may cause difficulties in interpretation and implementation when legislation based on religion or custom conflicts with human rights rules and standards. According to Article 27 of the Vienna Convention on the Law of Treaties, a state may not invoke the provisions of its internal law as justification for its failure to observe its international obligation (Dixon & McCorquodale 2003). The issue of international human rights needs to be included in the national constitutional review.

### **5.3.2 Human Rights and Fundamental Freedoms**

The CPA provides a Bill of Rights, which has been incorporated into the Interim National Constitution (INC) as Articles 27 to 48, but there are several flaws: Article 27 says "The Bill of Rights is a covenant between the Sudanese people and between them and their governments at every level and also a commitment to respect and promote the human rights and fundamental freedoms enshrined in the Constitution. It is the cornerstone of social justice, equality and democracy in the Sudan; the State shall guarantee, protect, and fulfil this Bill; all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of Sudan shall be an integral part of this Bill".



However, Article 27 does not say that the international human rights instruments ratified by the Sudan are directly enforceable in a Sudanese court.

The Bill of Rights includes some explicit guarantees: the right to life; the right to liberty and security of person; the right not to be held in slavery or servitude; the right to equality before the law; the right not to be subjected to torture or ill-treatment; the right to a fair trial. It also includes equal rights for men and women; the right to education; the right to privacy; the right to property; the right to freedom of conscience and religion; the right to freedom of assembly and association. However if there is no provision to enforce international human rights provisions, its effect will be limited.

### **5.3.3 The right not to be tortured and fair trial**

The INC's Article 33 says: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment". However, detainees continue to be routinely tortured and ill-treated in the Sudan by members of the police or the National Security forces of the old Northern regime (Human Rights Watch 2006). The INC prohibits the use of torture and other forms of ill-treatment, but it does not incorporate safeguards to prevent torture and other forms of ill-treatment as is the international norm. For example it does not specify that: any complaint of torture or ill treatment should be promptly and impartially examined by independent civilian judicial authorities. The INC should also specify that perpetrators of torture will be brought to justice.

The INC's Article 34 sets out some guarantees for fair trial including the right to be promptly informed of the reasons of arrest and any charges. The Article also includes: the right to a public trial by a competent, independent and impartial court of law; the presumption of innocence; the prohibition of prosecution for offences which were not crimes when committed; and the right to defend oneself in person or through counsel. However, the INC omits many important safeguards explicitly mentioned in Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). In particular, the INC's Article 34 does not include: the right to be brought promptly before a judge; the right to be tried in reasonable time or to be released from detention pending trial (ICCPR, Article 9(3)); the right to challenge the lawfulness of the detention before a court (ICCPR, Article 9(4)); the right to reparation for unlawful arrest or detention (ICCPR, article 9(5)); and the right to appeal against conviction to a higher tribunal (ICCPR, article 14(5)) (Rehman



2003). Moreover, the INC'S Article (14 (5)) guarantees the right to legal assistance only during the trial, while the right to the assistance of a lawyer is established under international law at all stages of criminal proceedings, including interrogation. Clearly the NCRC review needs to strengthen the INC's Article 34 to include all the fair trial safeguards established under international human rights law.

#### **5.3.4 The Death Penalty**

The death penalty continues to exist in the Sudan. Like the 1998 Constitution, the INC's Article 36 states that: "No death penalty shall be inflicted save as retribution or punishment for extremely serious offences in accordance with the law". Many people believe that the death penalty violates the right to life and should be abolished in the Interim National and Interim Southern Sudan Constitutions. It is argued that the death penalty is irrevocable and can be inflicted on the innocent; moreover, it has never been shown to deter crime more effectively than other punishments. The international community favours the abolition of the death penalty. Twelve African countries have already abolished the death penalty.

However, if the INC retains Article 36, pending the revision of the 1991 Penal Code, it is important that judicial safeguards should be written into the Constitution. In the past most Sudanese death penalty cases that have come to the attention of Amnesty International have been the result of unfair trials, often without the benefit of a lawyer (African Watch 1997). The sentences have often been upheld by local courts of appeal but overturned by the Supreme Court of Appeal in Khartoum. It is, therefore, important that Article 36 should include the safeguard that exists in Article 6 of the ICCPR: "This penalty can only be carried out pursuant to a final judgement rendered by a competent court."

The 1991 Sudanese Penal Code allows the death penalty for a variety of offences, including crimes against the state, such as undermining the constitutional system, waging war against the state or espionage, as well as for religious offences and adultery. The 1991 Sudanese Penal Code also allows the death penalty for those who have violated Islamic law even if they are minors or elderly, under 18 or over 70. However, the Human Rights Committee, in its General Comment 6, states that "the death penalty should be a quite exceptional measure". And paragraph 1 of the UN Safeguards guaranteeing protection of the rights of those facing the Death Penalty, endorsed by the UN General Assembly in 1984, states that crimes punishable by death "should not go beyond intentional crimes, with lethal or other

extremely grave consequences" (Steiner and Alston 2000).

For the Sudanese Penal Code to come in line with international standards and with recommendations of the Human Rights Committee, judicial safeguards would have to be added to limit the penalty to crimes with lethal or other extremely grave consequences; to impose the strict requirement of fair trial according to international standards, including the right to appeal to a court of higher jurisdiction; and to prohibit the death penalty being imposed on people under the age of 18 at the time of the offence, on those over 70, on the mentally disabled, pregnant women and new or recent mothers.

### **5.3.5 Freedom of expression, association and assembly**

As explained in Chapter III, the freedoms of expression, association and assembly were denied to the Sudanese people under old Islamic regimes. Musa Harund one of the SPLM officials from Nuba Mountains says "the Islamic government has emphasised that the media must reflect Islamic values and protect the Sudan from Western media invasion" (Interview 2006). The INC's Article 39 guarantees the right to freedom of expression and information, as well as the freedom of the press and other media. The right to freedom of expression is not only a right in itself, but it is also a tool for the defence of other human rights. It encompasses freedom of speech, the right to receive, impart and seek information and freedom of the press and other media. Many people in the Sudan have been detained arbitrarily for expressing their beliefs.

The INC's Article 40 guarantees the right to freedom of association and assembly. It also regulates the formation of political parties; Article 40 (3) (b) in particular states that: "No association shall function as a political party at national level unless it has a programme that upholds the Comprehensive Peace Agreement, and conforms to this Constitution". There is concern that Article 40 (b) may be interpreted as excluding from registration and political life those groups who debate or criticise provisions of the CPA. Article 40(b) should be revised to ensure that discussions on the CPA are allowed in Sudanese political life.

Articles 39 and 40, and many other articles in the INC, stipulate that restrictions to the enjoyment of the right to freedom of expression and information and to the right of association and assembly will be "determined by law" or "regulated by law in a democratic society". The human rights guarantees in the 1998 Constitution of Sudan were consistently

diminished by the restrictions in the 1991 Penal Code, which was not updated in accordance with the constitutional guarantees, nor has it been updated to take into account laws passed subsequent to the 1998 Constitution, often consisting of presidential decrees. For instance, the right to freedom of expression has been consistently curtailed under legislation on "crimes against the state" or the Press laws. The current INC restrictions to the right to freedom of expression and information and to the right of association and assembly do not guarantee that human rights will be respected and promoted in present or future Sudanese legislation.

### **5.3.6 The Rights of Women and Children**

The INC's Bill of Rights includes provisions for women and children, but they are not enforceable. The INC's Article 22 specifically states: "Unless this Constitution otherwise provides, or a duly enacted law guarantees the rights and liberties described in this Chapter, the provisions contained in this Chapter are not by themselves enforceable in a court of law. However, the principles expressed herein are basic to governance and the State is duty-bound to be guided by them, especially in making laws". This raises serious concern about possible disregard for women and children's right in the new Interim National Constitution.

Regarding women, the INC's Article 15 on "Family, Women and Marriage" prohibits forced marriage and provides that the State shall "emancipate women from injustice, promote gender equality and encourage the role of women in family and public life". However, once again, as stated in Article 22, this provision is not enforceable in a court of law and only expresses a basic principle to governance. The INC's Article 32 (10) recognises the principle of non-discrimination between men and women, but the INC fails to guarantee the respect, protection and promotion of the rights of women. The INC should require the State to take positive measures in all fields to ensure the full development and advancement of women, including measures to ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights. The right to equality between women and men, and the recognition of the right to equal pay for equal work should be understood in the light of international standards as the right to equal pay for work of equal value.

Regarding children, the INC's Article 14, titled "Children, Youth and Sports", states that: "The State shall direct policies and provide facilities for youth welfare and ensure that they develop morally and physically; the State shall also protect children from moral and

physical abuse and abandonment.” It adds the state should promote sports for youth “to develop their potential and enjoy their leisure”. The very narrow formulation of this article falls short of implementing the provisions of the International Convention on the Rights of the Child, of which Sudan is a party. Articles 13 (Education, Science, Art, Culture and Cultural Heritage), 14 (Children, Youth and Sports), 15 (Family, Women and Marriage) and 19 (Public Health) of the National constitution should all be enforceable in a Sudanese court of law. Furthermore the INC should be amended to reflect Sudan’s obligations under the International Convention of the Rights of Child.

The Sudan is a signatory to various conventions of the International Labour Organisation (ILO) and to the International Covenant on Economic, Social and Cultural Rights (ICESCR). However The INC’S Bill of Rights fails to adequately guarantee some labour rights or a decent standard of living as stipulated by these conventions. The INC does not guarantee the right to adequate food, housing, water and other elements for decent standard of living. Article 11 (1) of the ICESCR recognises the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of the living conditions” (Steiner and Alston 2000). Rehman (2003), says the ICESCR Article points to the importance of adequate housing as a fundamental human right and treats forced eviction, such as occurred in Darfur in 2006, as violation of the Article.

The National Constitutional Review Commission needs to ensure that the new Constitution protects the human rights of everyone in the Sudan. The Constitution should cover all the Sudan's obligations under various international Conventions such as those signed by the Sudan with the ICCPR, the ILO, and ICESCR. The Commission should also take advice from organisations such as Human Rights Watch and Amnesty International among others, and strengthen safeguards and guarantees for the respect, protection and promotion of the human rights of all people in the Sudan. The next challenge for the Sudanese will be to undertake a comprehensive review of existing national laws and practice to ensure that they do not conflict with the human rights safeguards in the new Constitution. Only then will the Sudanese feel confident that peace guarantees human rights.

### **5.3.7 The National Judiciary**

The Sudan had a largely independent judiciary from the time of independence in 1956 until

Omar Al-Bashir's coup in 1989, despite occasional interference by military regimes. Sharanjeet Parmar (2007) says arbiters of disputes and administrators of formal and informal laws come in various forms throughout the Sudan, depending on ethnic, religious and political factors. Judicial courts are provided for under both statute and customary law while informal community practices also rely upon local chiefs, known as Sultans, to resolve disputes between community members. John Makec (1988) says that the judiciary of Sudan relies greatly on popular justice for solving disputes through methods of conciliation and the application of tradition. Customary laws generally consist of non-state dispute resolution systems that are usually based upon local customary, traditional or tribal systems of justice. Given Sudan's ethnic and religious plurality, customary laws and practice are diverse, differing from tribe-to-tribe and community to community.

However, after the 1989 coup, the military regime assumed wide-ranging powers over the appointment of judges, including the Chief Justice and members of the higher Judicial Council, the previously independent body of judges responsible for the regulation of the judiciary. Sharanjeet Parmar (2007) says military courts were set up in July 1989 to try civilians. Presided over by the army officers they did not allow defence representation. Interviews with a number of former judiciary members in Khartoum show that lawyers were the first to be detained after the coup. Some were detained to intimidate them and discourage them from taking part in political trials (Interviews 28-29 March 2007).

Many Northern Sudanese fled the country following the coup and some joined the SPLM/A. Horowitz (1985) says deficiencies in the judicial/legal system can exacerbate inequitable political or economic situations. Disparate treatment by authorities can undermine confidence that the system will redress the grievances of non-dominant groups, leaving them no alternative but violence. Poorly based judicial/legal systems contribute to conflict when they support the arbitrary use of political and economic power and maintain the status quo by denying citizens legal recourse against the state for wrongs against individuals or groups, including, torture, expulsion, persecution, or other political violence.

The CPA includes provisions for the reform of Sudan's judiciary/legal system. The structure of the National Judiciary includes the Supreme Court, Court of Appeal, Constitutional Court and other national courts or tribunals as deemed necessary to be established by law. Under the Protocol on Power Sharing, "the national judicial competence in the Republic of the

Sudan would be vested in an independent authority to be known as the National Judiciary” (Article 2.11.1). As agreed in the text of the Protocol of Power Sharing, the National Judiciary is functioning. The President of the Republic of the Sudan, in consultation with the Presidency, issued a decree on 28 November 2005, appointing Chief Justice and Deputy Chief Justices who would serve during the interim period. The National Legislature approved the Constitutional Court Act on 1st October 2005 and the President of the Republic of the Sudan signed the Act in November 2005. On 24 December 2005, another decree was issued, appointing the President and members of the Constitutional Court who were sworn in on 31 December 2005 (The CPA Monitor December 2005).

However, since the establishment of the National Judiciary, the hoped for reform and rule of law have not yet occurred. The challenge is how to strengthen the weakened judiciary system and provide a fair legal reform to which all have access and in which all have confidence, regardless of their status, ethnicity and religion.

The NCP and SPLM failed to agree on a development agenda consistent with basic human rights and distinct independence for law enforcing institutions from political interference. The CPA's "one country-two systems" sources of legislation complicates the judicial/legal reform in the Sudan. The Machakos Protocol says the sources of legislation for states outside of the Southern Sudan are “Shari’a and the consensus of the people”, while the sources of legislation for states in the Southern Sudan are “popular consensus, values and customs, traditions and religious beliefs”. Although the CPA exempts Khartoum, as a national capital, from the application of any religious laws, the NCP has argued ever since the CPA signing that Khartoum is part of Northern Sudan and should therefore be governed by Islamic Shari’a law. An independent judiciary and successful judicial/legal reform would be a major step towards preventing conflict in the Sudan.

The CPA provides for a National Constitutional Court which is representative and independent from the Judiciary and any other courts in the country. The CPA says the Constitutional Court, headed by a President appointed by the President of the Republic of the Sudan with the consent of the First Vice President, is answerable to the Presidency (Article 2.11.3.1). The Court has several functions. First, the role of the Constitutional Court during the interim period is to uphold the Interim National Constitution (INC), the Interim Constitution of the Government of Southern Sudan, and state constitutions. Second, it has



jurisdiction to decide disputes that may arise under the INC and other state constitutions between individuals, juridical entities or government. Third, the constitutional court can deal with appeals against the decisions of the Southern Sudan Supreme Court on the Constitution of Southern Sudan and the constitutions of the Southern Sudan States (Article 2.11.3.1-V-VIII).

As agreed in the CPA, the National Constitutional Court has been trying to uphold the INC and the Constitution of the Government of Southern Sudan and other states constitutions from the North and South Sudan. In 2006, the Southern Sudan Supreme Court, without recommendation from the National Constitutional Court, upheld some of the Southern Sudan state constitutions. The NCP considered that to be a violation of the CPA by the government of Southern Sudan. Though the constitutional court is facing difficulties in upholding the states' constitutions, it is still functioning and trying its best to see that states' constitutions all over the Sudan conform with the INC or Constitution of the Government of Southern Sudan in the case of states in Southern Sudan.

Fourth, the new Constitutional Court is obliged to protect human rights and fundamental freedoms. Article 2.11.3.2 (vii) states that "the Constitutional Court shall protect human rights and fundamental freedoms". This is one of the positive steps of the Sudanese peace agreement. The protection of human rights has to be one of the primary goals for the reform of public institutions in the Sudan. The protection of human rights is not separate from peace and is crucial in social reconstruction. Given that war torn countries like the Sudan do not have adequate legal and administrative mechanisms, human rights cannot be protected without the reform of the judiciary system and infrastructure. Human rights have to confront social injustice and political oppression often associated with authoritarian religious, political or military doctrines. However, one of the weaknesses of the CPA is that the agreement fails to provide a mechanism to investigate past atrocities or human rights violations by the Sudan armed forces, the SPLM/A, militias and the police. There is no system, such as a truth commission, prosecution, or inquiry that can bring the perpetrators of war crimes to justice for the numerous abuses committed during the civil war. The perpetrators of these crimes go unpunished. Furthermore, there is continuing violation of human rights and fundamental freedoms by the regime's military security forces and police.

Human rights abuses in post-conflict countries like Cambodia, El Salvador, Guatemala,



Haiti, Rwanda and Uganda have been observed and documented by UN and NGO monitoring mission (Anstee 1996; Chan and Vanancio 1998, Parris 1997). The Uganda Commission of Inquiry in Human Rights Abuse, established in 1986 disappointed many human rights activists since most people incriminated by testimony to the Commission were not prosecuted. Nevertheless, the Commission boosted popular confidence in Yoweri Museveni's government's commitment to human rights. In the case of El Salvador, international monitoring teams maintained contact with both government agencies and guerrilla forces in order to investigate human rights violations and help to design new programmes for the armed forces. The investigation of past human rights violations increases popular confidence in government commitment to human rights and justice.

Fifth, the Constitutional Court has criminal jurisdiction over the President of the Republic, the two Vice Presidents, the two Speakers of the National Legislature and the Justices of the National and Southern Sudan Supreme Courts (Articles 2.11.3.2 and 2.11.3.3). However, like the old 1998 constitution, the INC's Articles 60 and 92 guarantee immunity from prosecution to the President of the Republic and Members of Parliament. There is widespread concern about this immunity from prosecution. International critics say that whatever immunity the Head of State or members of Parliament may have under national law for ordinary crimes, such immunity should not apply to crimes under international law such as war crimes, crimes against humanity and genocide, such as the genocide committed by the Sudanese regime in the western region of Darfur.

Those who have been involved in human rights abuses during the North/South conflict have escaped justice. Unless the international community intervenes, those responsible for human rights abuses in the Western region of Darfur will also escape justice. Lasting peace is unlikely to be achieved and the future abuse of human rights avoided unless a Truth Commission, or some similar mechanism, is set up by the UN to bring those Sudanese officials involved in genocide in Darfur to justice. Evidence from other countries like Sierra Leone, Rwanda and South Africa shows that the Truth Commission offers lessons to be learned and increases public confidence in government commitment to human rights.

#### **5.3.8 National Independent Commissions**

The Protocol on Power Sharing provides for the formation of independent Commissions with equal representation from the North and South to supervise implementation of the

CPA during the interim period. The Commissions include a National Judiciary Service Commission, Human Rights Commission, Civil Service Commission, Electoral Commission, and an ad-hoc commission to monitor and ensure accuracy, legitimacy and transparency of the referendum on self-determination for the people of South Sudan. The CPA specifies that the referendum commission should include national, regional and international experts. However, three years after the signing of the CPA, some key commissions have still not been established. They include: the National Human Rights Commission, the Civil Service Commission and the National Electoral Commission. Others like the Commission for the Rights of non-Muslims in the National Capital have been announced in 2006 but not set up. Some other commissions that have been set up are flawed.

The National Judicial Service Commission is to oversee management of the National Judiciary. It is to regulate National, Southern Sudan and states judiciaries during the interim period. In the case of the Southern Sudan, it is to consult with the President of the Supreme Court of the Southern Sudan. The National Judicial Service Commission is chaired by the Chief Justice and all judges are appointed by the Presidency on the recommendation of the National Judicial Service Commission (CPA Chapter II). Members of the National Judiciary Service Commission include: representatives of academia, judges, members of the legal profession, members of the National Legislature and the Minister of Justice. The INC's Article 2.11.4.5 states that "the National Service Commission shall be determined in the INC referred to in paragraph 2.12 herein and shall reflect the need for appropriate representation, inclusiveness and diversity". In practice, the parties have not lived up to this principle. The inclusiveness is in reality the NCP and the SPLM and does not include all Sudanese regardless of their political parties, gender, race, religion and culture.

The Human Rights Commission, when eventually established, is to supervise the implementation of human rights and fundamental freedoms provided for in the CPA (Chapter II). It is to set up new structures that can ensure individual and group security and freedom. However, the fact that the commission's members are to be appointed by the Presidency raises concerns as to its independence. Local police and military forces have not yet been reformed and are therefore not trusted to protect marginalised social groups. Improvement in human rights in any post-conflict country like the Sudan is a major factor in the development of civil society. Jeong (2005) says that public confidence will not be

gained without a guarantee of political, economic, social and cultural rights.

The CPA provides for a National Civil Service Commission to ensure that the recruitment of qualified south Sudanese into the national civil service is in accordance with the provisions of the peace agreement. In the past recruitment for any government job was on a religious basis. Recognising that “imbalances and disadvantages must be redressed” the Protocol of power sharing provides for allocation of between 20% and 30% of civil positions to Southerners incrementally over the interim period: 20% within the first three years, 25% within five years and 30% within six years (Article 2.10.1.4). But three years after the CPA signing the National Civil Service Commission has not been established and the recruitment allocations have not been reached. Instead of filling 20% of middle and senior civil service positions with qualified South Sudanese, less than 5% have been recruited as civil servants in the Government of National Unity.

A power-sharing agreement needs mechanisms to ensure the implementation of agreements. For example, in El Salvador, a supervisory body known as the National Commission for the Consolidation of Peace (COPAZ) was given responsibility for overseeing the implementation of all the political agreements reached by the parties. It consisted of two members each from FMLN and the government and one representative from each political party or coalition in the legislative Assembly (Arnson 1999). The Guatemalan peace agreement was helped by the establishment of 15 multi-sectoral commissions charged with making recommendations in several key areas. In their opinion, these commissions provided for unprecedented debate over key social and political issues (Darby and Ginty 2003). Three years after the signing of the CPA the Sudan still lacks such supervisory bodies and the implementation of the CPA is suffering as a consequence.

#### **5.4 The Autonomous Government of Southern Sudan**

The CPA ( Part II) provides for the establishment of the autonomous government of Southern Sudan during the Interim Period until the Southern Sudanese decide through referendum whether to maintain the current system or opt for an independent Southern Sudan. However the exact borders and population of the South Sudan are still under discussion. Geographically, the Southern Sudan territory is based on the 1956 North/South border agreement and consists of the three original provinces of Bahr el Ghazal, Equatoria, and Upper Nile. A border commission is still looking into the precise definition of these

borders.

A 2001 report put the population of the Southern Sudan at 5.1 million out of a total Sudanese population of 31.9 million (World Bank II 2003:1). The Sudanese census of 1983 recorded the population of Southern Sudan at 5.3 million. With under-coverage of 5 percent, the 1983 figure was raised to about 5.5 million (Yongo-Bure 1989: 1-2). However if allowance were made for the emigration of South Sudanese refugees to Northern Sudan and abroad during the war, the 2001 population figure for Southern Sudanese could be about 10 million. In 1995, UNICEF estimated Southern Sudanese migrants to Northern Sudan during the war at about 4.5 million, and it estimated refugees in neighbouring countries at over 0.5 million. Substantial numbers of Southern Sudanese have also taken refugee further afield.

Since the Sudan's independence in 1956, attempts to give some regional control to the Southern Sudan have all been limited. The Southern regional autonomy that lasted for a decade after the 1972 Addis Ababa Accord operated under a centralised political system rather than enjoying greater regional autonomy. Alier (1992) says the accommodation was based on constitutionally guaranteed power-sharing arrangements that were basic in nature if not in name. Kulusika (1998: 67) said the North brokered a loosely defined peace agreement in 1972 by promising regional autonomy for the Southern Sudan, but this was just a measure to stall the fighting, as the political parties in the North had no desire to recognise the Southern right to self-rule. So to what extent do CPA provisions for the establishment of the autonomous government of Southern Sudan work in practice?

#### **5.4.1 Powers for the Government of the South Sudan (GOSS)**

Under the Addis Ababa Agreement, the Southern regional government did not control socio-economic development. Central government policy had to be followed in carrying out matters relating to regions, including town and village planning, land use, police, prisons administration, and development of forestry and pastures (Johnson 2003). The Southern Sudan regional government operated under a centralised political system rather than one of greater regional autonomy (Wakoson in Daly and Sikainga 1993). Under the national policy of political decentralisation in the early 1980s, regional governments did not win greater autonomy from the centre because regional governors were appointed directly by the President of the republic who was based in the North. So regional governments could not control the destiny of the people they purportedly ruled.

Unlike the Addis Ababa Agreement, the Protocol on Power Sharing provides for the transfer of significant powers to the Government of the South Sudan. The CPA (Chapter II) signed by the SPLM/A and GoS, gives the Government of the South Sudan (GOSS) control in political, social and economic areas. In setting out the powers of the GOSS, the CPA says "the powers of the GOSS emanate from the will of the people of the Southern Sudan, the CPA and the Interim National Constitution and the Interim Constitution of the South Sudan" (Article 3.3). Under the Protocol of Power Sharing, the GOSS's primary responsibility is to be the authority in the South Sudan. The GOSS is also the only link between the Government of National Unity and states in the Southern Sudan during the interim period (Article 3.4). As agreed in the protocol of power sharing, the GOSS has responsibility in a wide variety of governmental spheres. For example, the GOSS exercises full authority over the police, prison and wildlife services, the Judiciary, and socio-economic planning and development in the South Sudan. It has a separate army during the interim period subject to the agreement on security arrangements. The Protocol on Power Sharing provides for the GOSS to be responsible for the legislation relating to the GOSS structures and for the delivery of services at all levels of government of the South Sudan.

However the GOSS does not have control over the area's foreign relations. Article 2.9 of the power-sharing agreement shows that the GOSS does not have powers in the sphere of foreign relations and is not permitted to establish embassies, consulates or any type of foreign missions. Under Article 2.9, the Government of National Unity is responsible for the Sudan foreign policy including issuing of passports. The GOSS may conduct negotiations and sign agreements with states or international organisations (Article 1.14) in areas such as the economy or reconstruction. However, dealings between the GOSS and representatives of foreign states and international organisations cannot be considered as foreign relations.

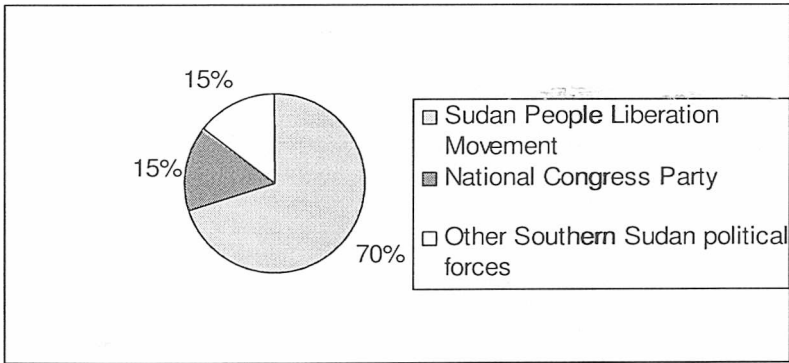
#### **5.4.2 The Legislature of the South Sudan**

Under the CPA, the GOSS's legislative and executive powers are vested in the President and the National Assembly of the South Sudan which was an improvement on the provisions of the 1972 Addis Ababa Agreement. Previously under the 1972 Agreement, the South Sudan had its own parliament and High Executive Council (HEC). A Regional Assembly was empowered to elect and remove the President of the HEC, subject to the confirmation of the President of the Republic (Article 13.I. and Article 19). Relations between the Higher Executive Council (HEC) and central government ministers were left

to the President of the Republic to regulate. So the President of the HEC and his cabinet were both collectively and individually responsible to the President of the Republic based in the North and the People’s Regional Assembly in the South Sudan (Wakoson in Daly and Sikainga 1993). In practice, this resulted in serious interference by the central authorities in the efficient functioning of the regional government.

The Protocol of Power Sharing (Part II) lays down rules for the composition of the National Assembly of the South Sudan. The Assembly's allocation of seats is outlined in Table II below. As agreed in the CPA, the SPLM holds 70% of seats in the Assembly of South Sudan, the NCP 15% and other South Sudan political forces 15%. For the first time the South Sudan has its own President who is not answerable to Khartoum, heading a Council of Ministers that is only answerable to him and to the South Sudan Legislature Assembly in Juba.

**5.4.2.1 Allocation of seats in the South Sudan Assembly**



Source: CPA Protocol on Power Sharing, 26th May 2004

However, three years after the CPA was signed, the South Sudan government exists in name only. Though ministers have been appointed, many lack offices or even desks and basic supplies. Sullivan (2006) describes most Southern ministries as being in the “teething stage” and points to a lack of qualified civil servants and finance. During the war the South’s most educated people were targeted and forced to flee the country. Thus attracting qualified Southerners back to help out with setting up a new government remains a major challenge (Interviews 15-17 April 2007).

The Southern Sudan Legislative Assembly (SSLA), which in addition to its legislative functions should be a government watchdog, has fallen short of meeting the expectations of



the people. The President of the GOSS's addresses to the opening sessions of the SSLA have so far been like statements delivered in political rallies rather than policy documents outlining GOSS policies, ministry by ministry or sector by sector, for the session(s) concerned as is the parliamentary practice ([www.Gurtong.com](http://www.Gurtong.com), 2007). The SSLA has even introduced the practice of discussing and taking resolutions on issues raised by a political party but not tabled before the Assembly by any Minister (Interviews 25 March 2007).

#### **5.4.3 The Judiciary of the Southern Sudan**

As examined in Chapter III, the 1972 Addis Ababa Agreement denied regional government control of the Judiciary in the South Sudan. However under the CPA, the GOSS is in full control of the Judiciary system. Article 3.7.2, states clearly that “the Constitution of the South Sudan will establish the Supreme Court for the South Sudan to which appeals should be directed on matters relating to national and state laws as determined by the Interim Constitution of the South Sudan”. In principle, the independent Judiciary of the South Sudan has been established and the SPLM has nominated a Chief Justice as the President of the Supreme Court of South Sudan. The Southern Legislature Assembly has approved the Code of Evidence Act and the Interpretation of Laws and General Provisions Act signed by the GOSS President in October 2006 (UNMIS report 2006). The judges of the High Court and of the Court of Appeal of the South Sudan were sworn in on 24 June 2006.

In practice, the GOSS is far from having an effectively functioning administration of justice because of lack of qualified personnel. Interviews with UN and GOSS officials have shown that the judiciary/legal system in the South Sudan is incapable of administering justice effectively. The police are poorly trained and lack modern administrative procedures and technical skills. New systems of court administration need to be introduced such as improved record-keeping, budgeting, personnel management and the acquisition of modern technology to improve communications. Evaluations carried out by the U.S. Agency for International Development (USAID) in the Greater Horn of Africa (27 April 1994) show the benefits of improving legal technical knowledge and training in judicial ethics, professional standards and principles of ethnic impartiality. Training and reform of the police and judicial system in the South Sudan are essential to improve the rule of law.

#### **5.5 The GOSS and peace dividends in the Southern Sudan**

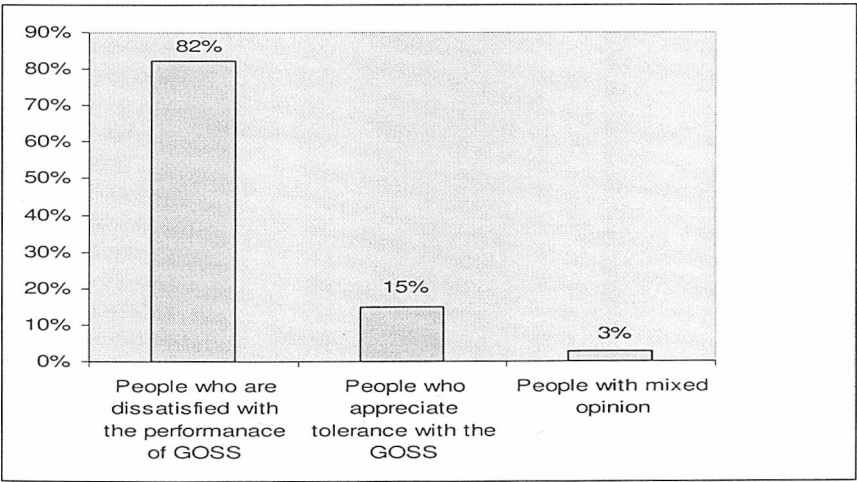
Managing people's expectations is the hardest task in any post conflict situation.



Peacekeeping has to proceed from cease-fire and refugee resettlement to economic reconstruction and the advancement of human rights (Bearg 1998: 26-29). Social reconstruction, rehabilitation and reconciliation are essential elements, which make a peace process durable and sustainable (Galtung 1998). In the case of the South Sudan, the Government of Southern Sudan (GOSS) has been accused of failing to implement the CPA in full and of failing to improve the infrastructure. Three years after the CPA was signed, people are still waiting for long promised health facilities, schools and roads.

A survey carried out by the Sudanese magazine Referendum Bell in September/October 2007 indicated that 82% of Southern Sudanese were dissatisfied with the services and performance of the GOSS, 15% were prepared to show tolerance and give the government more time, 3% held mixed opinions. The GOSS President acknowledged “we are still far from delivering the services to match the expectations of our people” (Juba-Post 26 March 2007). These failures have occurred despite considerable funding. The GOSS received 2.95 billion US dollars in oil revenue from 2005 to August 2007, as well as contributions from the Multi-Donor Trust Fund (MDTF), soft loans guaranteed by the Central Bank and aid grants from the National Government (ICG Report 2007).

5.5.1 Southern Sudan Public opinion



Source: The Referendum Bell September /October 2007

The SPLM manifesto declared it wanted to establish a “New Sudan,” where Sudanese can enjoy equal distribution of resources and equal access to power. The CPA and the Interim National Constitution have, for the first time in the Sudan’s history, provided the framework for this. Millions of Sudanese who supported the SPLM/A policies and slogans

during the twenty-two-year struggle were convinced that the movement, given its commitment to “justice, equality and freedom,” would provide them with clean water, quality roads, health care and education (Khalid 1987). One of the main reasons why members of the poor rural population were receptive to the message of the SPLM/A was the hope of improving their standard of living.

In a post-conflict situation, economic programmes have to be designed to bring about stability and equity (Boyce 1997). The GOSS needs a centralised budget and development plan. State governors cannot embark on projects without knowing their budget. Three years after the signing of the CPA, governors of Southern States have not started reconstructing schools, health and other facilities, because they have no budget or guidance from the GOSS.(Interview 2 April 2007). Three years after the signing of the CPA, the people of the South Sudan still do not feel they are reaping the full dividends of peace.

#### **5.5.2 Corruption, Ethnicity, and Security in the Southern Sudan**

Corruption is another problem affecting the South Sudan. It is widespread among GOSS officials, the army and security forces. A senior UN official stated that corruption is usually the result of weak structures, poor systems and the lack of institutions to curb it (Interview 18 March 2007). The agreement on power sharing provided for the creation of an anti-corruption commission, but like other independent Commissions in the South Sudan, the anti-corruption commission is lacking effective supervision and financial support. Corruption is essentially termed as an “impairment of integrity, virtue or moral principle; depravity, decay or inducement to wrong by improper or unlawful means” (Okulu 1974). Political corruption is the abuse of power by political leaders for private gain, with the objective of increasing power or wealth (Heidenheimer, 1970). Political corruption is an obstacle to transparency in public life. Interviews with Southern Sudanese have shown that corruption in the GOSS includes: bribery, extortion, cronyism, patronage and embezzlement (Interviews 14-15 March 2007).

Corruption impeded the Government of the South Sudan's efforts to restructure and rebuild the country. In 2006 the GOSS Minister of International Co-operation and Development Nhial Deng Nhial resigned in protest against corruption in the Southern government. A corruption scandal in the South's finance ministry led to the suspension of the Minister of Finance Arthur Akuein Chol in March 2007 (ICG 2007a). The Legislative Council of

Upper Nile State sacked the minister of Finance in Upper Nile State Luk Bedong Mak because of corruption (Gata 2007). Several senior members of the SPLM also resigned or protested against corruption. Senior SPLM official John Okot said "corruption will not help develop the culture of good governance which the Southern Sudan had hoped to establish". (Interview, 15 March 2007). An article in the Sudan Mirror by Noel Okoth (2007) said that corruption and patriotism do not go together--there is no way one can claim to love one's country if one is stealing its wealth. He went on to say that the corrupt are simply selfish and unpatriotic. They may claim they fought for their country, but it can only mean they fought for personal gain. Corruption leads to state failure. William Reno (2002) noted corruption had been rife in several African countries, as for example Nigeria which had a legacy of political corruption,

Corruption poses a serious development challenge. Heidenheimer, Johnston and LeVine (1989) say it undermines the legitimacy of government and such democratic values as trust and tolerance. Corruption in the judiciary compromises the rule of law and corruption in public administration results in the unfair provision of services. Lambsdorff, Johann Graf (2007) said corruption also undermines economic development by generating considerable distortions and inefficiency. In the private sector, corruption increases the cost of business through the price of illicit payments, the management cost of negotiating with officials, and the risk of breached agreements or detection. Corruption can facilitate environmental destruction. Even if GOSS has formal legislation to protect the environment, it cannot be enforced if the officials can be easily bribed. Corruption can also undermine national stability. Okulu (1974) said corruption has been a major factor in the downfall of many governments which have collapsed or been ousted by coup in Africa. For example, corruption was at the root of troubles in Nigeria, Ghana and Uganda, to mention only a few. Therefore, corruption blinds the officials and subverts the cause of those who are in the right.

A top SPLM official in the GOSS blamed corruption problems on tribalism (Interview 14 March 2007). Tribal or ethnic origin continues to be a major issue in the Sudan. But the most dangerous of all is tribalism in politics, government and generally in leadership where the unqualified and even the criminal take centre position in the affairs of state for no reason other than belonging to the tribe in power. Tribalism is a wasteful practice when the employment of all human resources for development is considered. Henry Okulu (1974)

said if a country exists in which all the leading posts in politics, the civil service, teaching, commerce, business, police and army are taken by members of the same tribe one would be justifiably suspicious that jobs have not been distributed on merit. The GOSS led by the SPLM has been widely criticised for engaging in ethnic discrimination. On October 26, 2005 Nuer members of the Southern Sudan assembly sent a petition to the GOSS President complaining that the Nuer were under-represented. Several Equatorian groups have also complained about their lack of participation. One Equatorian writer castigates another Equatorian group, the Bari of Juba, for holding a disproportionate number of jobs in the new administration in the name of Bari speaking people (Interviews 1 April 2007). Interviews with SPLA officials have shown that senior officers who were in command during the liberation struggle have become disheartened and demoralised by the ethnic rivalry and corruption within the SPLA establishment.

The GOSS failure to implement provisions for national reconciliation has not helped appease the situation. Former UN Secretary General Boutros Boutros-Ghali (1995: 32) said that to prevent the recurrence of violence, the root causes have to be tackled by structural transformation, by addressing the principal political, economic, social and ethnic imbalance that led to conflict in the first place. Three years after the CPA signing, this has not been done. Many government jobs are allocated to people belonging to the dominant tribe. The Sudanese hoped the signing of the CPA would bring peace and stability. However, since the establishment of the GOSS in October 2005, there have been pockets of insecurity all over the South, including intra-tribal conflicts, fights with militias and cattle rustling. In 2007 there were frequent inter-tribal clashes in the Yambio and Bentiu areas involving the SPLA and the police which caused heavy casualties (Interview 15 October 2007). SPLA checkpoints were still common in many parts of the South at that time. Some SPLA militias were unwilling to surrender their arms to the police. (Interviews 29 March 2007).

Tribalism or ethnicity has led to civil wars in many African countries as for example, the recent conflicts in Chad, Ivory Coast, Democratic Republic of Congo, Kenya, Liberia, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan and Zimbabwe. In Rwanda in 1994, the enmity between the Hutus and Tutsis resulted in the killing of hundreds of thousands of Tutsis by Hutu militia. Similar conflicts in Kenya between the Luos and Kikuyus in 2008, in Liberia between the Americo-Liberians and the native Africans, in Nigeria between Northern Hausa/Fulani and the Southern Ibos and Yorubas have also led to tragic violence.

Robert Rotberg [2003] said that civil wars usually stem from ethnic, religious, linguistic, or other inter-communal enmity. The fear of the other ethnic group leads to conflict and subordination of the weaker groups.

Security in the Southern Sudan has also been destabilised by the northern Ugandan rebel group, the Lord's Resistance Army (LRA). The LRA was formed in 1987 and is engaged in armed rebellion against the Ugandan government. It is led by Joseph Kony, who proclaims to be the "spokesperson" of God and wants to establish a theocratic state based on the Ten Commandments and tradition of the Acholi people. The LRA had been supported by the Khartoum government in the past and was allowed to establish bases in the Sudan. It joined the Sudanese army and government Southern militias in attacks on the SPLA in regions to the South and East of Juba (Human Rights Watch Report July 2003). The Government of Southern Sudan needs to take firm action to restore peace and security before the referendum in 2011.

## **5.6 The Federal Level of Government**

The Protocol of Power Sharing Part III provides for a federal system of government. It allows for significant powers to be devolved from the national and Southern governments to individual states. As already discussed in Chapter III, the previous system of federalism had failed to correct chronic socio-economic imbalances between the dominant centre and marginalised South. On the contrary it had aggravated the imbalances and ensured that only the North benefited from the new oil wealth. The previous system of federalism was too centrally controlled. The central government appointed the state ministers and the federal government retained control of many aspects of social structure, such as the police, schools and prisons, rather than devolving power to the states. Political devolution without the power to make economic decisions and planning at regional level was inadequate

### **5.6.1 The composition of the state legislature**

The CPA attempts to address these problems by stipulating the composition of the state legislature. Under the Protocol of Power Sharing, the National Congress Party (NCP) is accorded 70% of seats in the Northern States Legislature and the SPLM 70% seats in the Southern Sudan States (Article 4.5.1.1). The remaining 30% in the Northern and Southern States are allocated as follows: 10% in the Southern Sudan to the National Congress Party and 10% in the Northern States to the SPLM. The remaining 20% in the Northern and

Southern States are allocated to representatives of other Northern and Southern Sudan political forces respectively (Article 4.5.1.2).

Federalism and devolution of power are important for the resolution of conflict in the Sudan. Policy-makers and scholars have turned their attention to federalism or decentralised governance as a means for managing struggles between governments and subnational groups. Kristin Bakke (2004) says that political decentralisation along territorial lines is favoured by the international community in resolving conflict in deeply divided societies like the Sudan. David Lake (2003) argues that decentralisation helps preserve a nation's unity while allowing for social diversity. It can contribute to internal stability. As argued in Chapter II decentralisation of political power can be a solution to civil wars in ethnically divided societies and a counterbalance to tyranny. However it can also be the antithesis of political integration and result in secession.

### **5.7 Language policy and education in the Sudan**

The GoS and the SPLM/A have committed themselves to transform the Sudan into a multi-lingual, multi-cultural, multi-regional and multi-ethnic country. However the measures needed to achieve this have not all been resolved. Debate continues over the language policy to be adopted. In particular as to whether the CPA signatories will make “all languages” in the Sudan “national languages” and languages for instruction in the schools. In many multi-ethnic countries, choosing any one or more languages as the medium of instruction gives groups speaking those languages an obvious advantage. As a result, other linguistic groups may consider themselves disadvantaged. This may lead to political instability. So, there must be an appropriate language policy, especially in a country like the Sudan where ethnic issues are so divisive.

Various countries have adopted different policies. For example, in the former Soviet Union, Article 34 of the constitution stated that citizens were equal before the law, without distinction of language. One of the major guarantees of this equality as stipulated in Article 36 was “the possibility to use their native language and language of other peoples of the USSR” (The Soviet Constitution 1986: 154-155). This meant that, officially, the Soviet Union's educational policy was multi-ethnic and that all citizens had the right to education in their mother tongue. In reality, however, not all the languages were used as a medium of instruction at every level. Some languages were used as media of instruction unlimitedly



while others were used only up to certain levels (Williams 1971: 186-187). This problem created friction between the central government and many minority linguistic groups.

In 1961, the French Cameroons and Southern (British) Cameroons merged to form the Federal Republic of Cameroon, which in 1972 became the United Republic of Cameroon. As a result, Cameroon is a country where both English and French are widely used. Its first constitution stipulated that "the official languages of the Federation shall be English and French" (Tadadjeu 1975: 56). Initially the medium of instruction was often one, not both, of the official languages: English in the schools of West Cameroon and French in the schools of East Cameroon (Chumbow 1980: 290). Later on, schools were encouraged to offer both languages as a subject in the curriculum so that students could reach a respectable degree of proficiency by graduation (Chumbow 1980: 290). This was a policy dictated by pragmatism and by considerations of national unity.

The language policy of Apartheid South Africa was also multi-lingual, but divisive. The Apartheid government in the Republic of South Africa consistently demoted English. This was not only to promote Afrikaans, the language of the ruling minority, but also to encourage the use of so-called tribal languages such as Setswana, Sesotho, Khosa and Zulu in pursuit of "divide and rule" policy (Bloor and Tamrat 1996: 53). This shows that the introduction of the mother tongue in education is not always intended to develop local cultures and to respect the rights of the communities to use their languages. It can also be used to divide the society into smaller units.

In the Sudan, the language policy has been one of the root causes of conflict. During the colonial period, the language of instruction was Arabic in the North and English in the South. After the declaration of independence, Arabic was pronounced to be the national and official language. Voll (1991) says the deep-seated Southern fear of Islamisation and Arabisation was exacerbated under Gen Abboud's rule (1958-1964), when government policy was national integration through the enforced spread of Islamic education and promotion of Arabic as the national language.

The Addis Ababa Agreement of 1972 stipulated that Arabic should be the official language for the North Sudan and English for the South (Article 6). This was to be without prejudice to the use of any other language (s), which may serve a practical necessity for the efficient and expeditious discharge of executive and administrative functions of the region.



Unfortunately, Article 6 was not implemented because article (7) of the same agreement deprived the Southern Regional Government of any right to plan education. Article (7), stated clearly that “neither the People’s Regional Assembly nor the High Executive Council shall legislate or exercise any powers on matters of national nature” which included, but was not limited, to educational planning.

The SPLM/A consistently proposed recognition of indigenous languages and both English and Arabic as official languages in the Sudan. The Machakos Protocol signed on 20th July 2002 called for establishment of a democratic system of governance taking into account the cultural, ethnic, racial, religious and linguistic diversity and gender equality of the people of the Sudan (Article 1.6). The protocol favoured bilingual planning. The Naivasha protocol on power sharing signed later on 24th May 2004 confirmed this new language policy .

The CPA signed in Nairobi on 9 January 2005 has established two kinds of language policy. One system for the North and one for the South. It is the first agreement in the Sudan to recognise all Sudanese national languages. The Interim National Constitution says “all indigenous languages should be recognised as national, respected and are to be promoted in all levels of government”. Arabic and English are to be the official working languages of the national government business and languages of instruction for higher education (Article 2.8.3). Furthermore, the legislature of any “sub-national level of government may adopt any other national language (s) as official working language (s) at its level” (Article 2.8.4). This agreement resolves the language policy in principle. However in practice, the policy has not been implemented fully and some community languages are not yet used. Furthermore there are not enough teachers or translators of some community languages to enable them to be taught in schools or used in government.

Once a language policy has been adopted it needs careful implementation. Tanzania has been highly praised for having solved the national language problem with the Swahilisation policy of 1967. However even Tanzania had problems implementing its policy. This government adopted Swahili as the country’s national and official language. Yet English has continued to be the language of education. In August 1980 the Presidential Commission on Education recommended the change from English to Kiswahili and even set the date: January 1985 for secondary schools and 1991 for the universities. However, this recommendation was deleted from the official publication of the report of the commission

in 1994 (Rubanza 1979: 92). The 1995 Education and Training Policy stated that “the medium of instruction for pre-primary and primary education shall be Kiswahili and that English shall be a compulsory subject”. The medium of instruction for secondary education “shall continue to be English, and Kiswahili shall be compulsory subject” (Brock-Utne 2002: 28). Therefore, two problems are still unsolved in Tanzania. The policy of replacing English with Swahili as a medium of instruction as it was intended has not materialised, and there is lack of clear policy on the introduction of ethnic community languages as media of instruction.

The transitional government of Ethiopia, which came to power in 1991, redrew the country’s internal boundaries on the basis of linguistic identity and ethnic settlement. Every ethnic state, according to the federal constitution and the new educational policy, was encouraged to choose not only its medium of instruction but also the type of alphabet to be used (Negash 1996: 82). There was no meaningful attempt to study which languages were ready to be used as a medium of instruction and what kind of programme would be suitable to help the development of the other languages. In the Report of the Support Group to the Ethiopian Human Rights Council, it seems that the choice of languages was made for purely political reasons (2000: 18).

So in conclusion, three years after the signing of the CPA, implementation of its provisions for power-sharing institutions has not progressed as effectively as the signatories hoped. The basic constitutional framework has been established and some of the political institutions are functioning. However many commissions have not yet been set up and critical aspects of the peace agreement related to political reform, improvement of human rights and demarcation of the North/South border remain well behind schedule.

The principles of the Agreement related to political inclusion and “making unity attractive” to the Southern Sudanese have yet to be fully upheld and much remains to be done if the parties are to achieve their ambitious goals. For the CPA to be a truly “comprehensive” peace agreement, it must overcome the perception that it is a two-party deal, which gives the NCP control of the North and the SPLM control of the South. Many South Sudanese are not happy with the performance of the new SPLM-led Government of South Sudan (GOSS). The situation in the South is increasingly troubling, with the challenges facing the GOSS compounded by a growing financial crisis, lack of skilled personnel, corruption and good

governance. Increased insecurity in the South, in particular since 2006, is another danger. Tribal conflicts have been destabilising the situation further.

In principle considerable steps have been made to promote federalism. Following the signing of the CPA, the Sudan has witnessed a constitutional transformation with all states having their own constitutions, functioning legislative assemblies, governments and judiciary. However, lack of finance, organisation and interference by the NCP and GOSS in state affairs has been causing concern. State levels of governments should be responsible for their own affairs in accordance with the CPA. Local communities have not been able to enjoy the considerable freedom to manage their own affairs that was intended under the CPA. Nor have they been able to enjoy all the hoped for benefits of unity. This increases the likelihood of the Southern Sudanese voting to secede if the promised referendum takes place in 2011.

## Chapter VI: Wealth Sharing during the Interim Period

The unequal distribution of wealth between the North and South was the source of much dissatisfaction among the Southern Sudanese. So how far has the CPA's Agreement on Wealth Sharing addressed the problem? As shown in Chapter III, the question of who would benefit from the Sudan's natural resources was one of the roots of the Sudanese conflict. The discovery of a natural resource such as oil can be a curse rather than a blessing. Several studies indicate that heavy dependence on oil income makes a state less democratic, less able to create economic growth and more corrupt. It also has led to violent conflict (Ross 2004b).

Fair distribution of revenue from resources is important for lasting peace. Few postwar peace agreements have addressed the distribution of such revenue. The 1994 Lusaka protocols on Angola and the 1999 Lomé accord on Sierra Leone specified that the governments of national unity should take charge of the nation's natural resources (Ross 2004a: 54). In 2003, the Indonesian government decentralised revenues from resources to promote a renewed peace process. A new law stipulated that 70 percent of the energy and mining revenues from Papua and Aceh should go to these provinces (Le Billion 2003: 61).

In the Sudan oil has been seen both as a cause of civil war and a major reason for its continuation. The economic policies of previous Sudanese governments made the South more dependent on Khartoum. But in January 2004 the combatants, the GoS and the SPLM/A, met in Naivasha, Kenya, and resolved their differences over resources with an Agreement on Wealth Sharing during the interim period. The talks covered ownership of land and of mineral rights, the sharing of oil and other resource revenues, the status of existing oil contracts and the management of the sector. The question of the ownership of mineral resources was left unresolved.

Although the GoS and the SPLM/A could not agree on a formula on ownership of natural resources, they put that aside and reached an understanding on previously divisive issues such as sharing revenue and managing the oil sector. The most important questions in this chapter are why the terms of the Agreement on Wealth Sharing became acceptable; and whether it will help achieve the Sudan's unity. This Chapter also examines mediation strategies. The success of the Intergovernmental Authority on Development (IGAD)

negotiations on wealth stem from a decision to leave unresolved the ownership of subterranean natural resources.

### **6.1 Proceedings of the IGAD talks on Wealth Sharing**

The Machakos Protocol of 20 July 2002 addressed core issues of self-determination and the role of the state and religion. Talks in October and November that year focussed on substantive differences regarding land ownership and revenue. Some SPLM/A members argued that the Machakos protocol had created a confederate political structure with greater autonomy for the Southern Sudan and that wealth should be divided in a similar way. GoS representatives argued that the Machakos Protocol created a federal structure within a national framework (ICG Report 2003a). They wanted central control of wealth. The gap narrowed a little during talks in Kenya in January and February of 2003, at which representatives from the World Bank and the International Monetary Fund (IMF) added their technical expertise and pragmatism in resolving disputes (ICG Report 2003b: 14).

However by May 2003, there was still no agreement on wealth sharing and power sharing nor on the disputed three adjacent areas of Abyei, Nuba Mountains and Blue Nile. As a result, the IGAD mediators switched from specific issues to a “holistic” approach taking all the outstanding issues together. The intention was to put forward trade-offs between the outstanding issues that would allow the parties to reach a final agreement (ICG Report 2003c: 3). In early July 2003, the mediators presented the Nakuru Protocol, a draft framework for resolving outstanding issues arising out of the elaborations of the Machakos Protocol. The mediators proposed “fair compromises” on outstanding issues, including the ownership of subterranean natural resources and currency (Nakuru document 2003).

The SPLM/A delegation was ready to negotiate on the proposals, but the GoS delegation rejected them outright. Sudanese President Al-Bashir said “IGAD could go to hell” (ICG 2003). Justice Africa (2003: 1) said the GoS mainly disagreed over issues concerning the national capital, power sharing and security with only minor comments on wealth sharing, but the peace process appeared near to collapse.

#### **6.1.1 The Near Collapse of Nakuru**

International mediators worked hard to get the parties back to the negotiating table after the breakdown. A meeting was held the following month in Nanyuki in Kenya, but little was

achieved. Then, the mediators changed procedure and put the parties face to face under the chairmanship of Kenyan General Sumbeiywo (ICG 2003c: 4). The first face to face meeting was held in September 2003 in Naivasha, Kenya between the SPLM/A leader John Garang and Sudanese Vice President Ali Osman Taha. It opened a new dynamic; the parties themselves now leading the process, set the agenda, and found middle ground (ICG 2003c: 1). Considerable progress was made on the difficult issue of security and on 25 September a draft agreement on internal security was drawn up which provided for separate armies in the North and South Sudan.

Another round of discussions was held in Naivasha the following month. This time the SPLM/A proposed plans for sharing wealth similar to those on security; separate central banks and separate currencies, but with a joint monetary authority (PWS January 2004). These proposals “upset both the GoS and the World Bank and IMF experts involved in the discussions” (ICG Report 2003:7). During December 2003 Garang and Taha re-examined the issues of sharing wealth and came to an initial agreement on monetary policy, a central bank, currency and land rights, and “grey zones” such as representation in different commissions (Keane 2004). On 7th January 2004, the parties signed the Agreement on Wealth Sharing. The complicated issue of oil revenues was resolved and there appeared to be a renewed get-up-and-go to the peace process (ICG Report 2004). Skeptics commented that “the devil is hiding in the details” of the agreement. They claimed that, although the agreement covered many issues in detail, several paragraphs were unclear and the implementation of the deal would face numerous challenges (Keane 2004; Lokuji 2004; Reeves 2004). Nonetheless, the Agreement on Wealth Sharing marked major progress towards a final comprehensive agreement.

## **6.2 The New National Currency and Banking system**

The lack of commercial activity in the Southern Sudan after the 1972 Addis Ababa Accord deprived the area of funds. The North had controlled all commercial agreements. Banks were established in the South in the late 1970s, but they functioned poorly because of limited funds (Jendia 2002). In the Machakos Protocol of 20 July 2002, the parties agreed to a dual banking system during the interim period. The Agreement on Wealth Sharing confirmed this dual system. It provided for an “Islamic banking system” in the North under the Central Bank of Sudan (CBOS) (MP Article 14.1) and a “conventional banking system” in the South under the Bank of Southern Sudan (BOSS) (MP Article 14.2). The Bank of

Southern Sudan was to be considered as a branch of the Central Bank.

Under the Agreement, the parties agreed to restructure CBOS to reflect the duality of the banking system. CBOS was to develop two sets of banking instruments, one Islamic and the other Conventional, and regulate and supervise the implementation of a single monetary policy. Above all CBOS was to ensure price stability, maintain a stable exchange rate, a sound banking system and the issuing of a new currency. The design of the new currency was to reflect the cultural diversity of the Sudan. The circulating currencies in the South were to be recognised until agreement was reached on a new one. The new currency was to be introduced gradually, circulating in parallel with existing ones for a fixed period, after which only the new currency would be accepted. The single currency would help unite the country and offer greater security. Various currency reforms have been introduced in post-conflict countries. Hanson (2000) says currency is as much a symbol of statehood as a national flag; a factor that motivated Somaliland to introduce a new currency when it broke away from Somalia. Kayizzi-Mugerwa (2000: 9) says the rapid introduction of new notes renders looted cash worthless, offsets the deflationary impact of the stolen monetary base, and increases the political credibility of the new government.

The Agreement on Wealth Sharing provides for a Central Bank “fully independent in its pursuit of monetary policy” (AWS Article 14.6). However, it is uncertain if this will happen in practice. Reno (1995) argued that political interference in banking is especially acute in post-conflict countries with weaker democratic institutions, such as the Sudan. Such banking systems are often insolvent, having been pillaged by politically-connected insiders. In Congo-Brazzaville two of the largest banks collapsed in the 1990s because of fraud and insider lending, leaving the banking system to be recapitalised at a cost of CFA 50 billion (Africa Research Bulletin 2000).

In the Sudan, corruption, together with a lack of accountability and political interference in commercial arrangements had been rife. Most of the country's revenue had come from its natural resources rather than taxation which is more easily accountable. Research shows that countries are more likely to be corrupt when they gain much of their revenue from natural resources such as oil, minerals and timber. In Angola almost \$1 billion disappeared in 2001 as a result of corruption (IMF 2002). Fiscal discrepancies over the previous years represented between 2 and 23% of the country's gross national product. The Khartoum



government had relied heavily on its oil revenue to fund its arm purchases during the civil war and appease groups through bribes and economic stimulants. So it was questionable whether it could suddenly change its ways.

The Agreement on Wealth Sharing states that “the Central Bank of Sudan shall carry out monetary policy relying primarily on market forces instead of administrative allocation of credit” (Article 14.5). However, the central bank of a developing country like the Sudan, with an underdeveloped financial system, will find it difficult to operate according to market forces without government intervention. The Sudan has never had a stable economic system based on market forces.

### **6.3 Ownership of land and subterranean natural resources**

The Sudan has many natural resources, including oil, minerals, agriculture and forests. Consequently the question of land ownership and management, especially the management of the petroleum sector, were key issues in discussions on wealth sharing. The GoS argued that surface land and subterranean resources were two different categories of “land” (GoS delegation 2003). Regarding surface land, the GoS accepted in principle the SPLM/A’s demand for community-based rights, but the GoS insisted on national ownership for subterranean resources (GoS delegation 2003).

First the GoS argued that it was best placed to decide what to do with subterranean natural resources and their revenue. The GoS said it should both own and manage them and was better placed to decide how to use them to stimulate long-term economic growth (GOS delegation 2003b). The GoS proposed that a percentage of revenue from these resources should be distributed to the regional Government of the South. The SPLM/A took the opposite view. It did not want to differentiate between surface and subterranean land and said both kinds of land in the South should be owned by the local communities (SPLM/A 2003a/b). The SPLM/A also said that customary land rights were not sufficiently protected by existing laws and wanted new laws based on legal traditions (SPLM/A 2003a).

The two positions seemed irreconcilable so the mediators proposed that the ownership of subterranean natural resources should be put aside and resolved later. Meanwhile the revenues could be shared and management of the oil sector could be discussed separately (Mediators 2003). The parties agreed to this major compromise and the questions of

ownership of subterranean natural resources were left undecided during the interim period.

### **6.3.1 The Land Commissions**

The Sudan's most important resource is land. Whether exploited for agriculture, cattle-herding or subterranean resources such as oil or water, land ownership is key to wealth and power. Historically, the politicisation of land ownership dates back to the Sudan's recognition of tribal homelands by colonial administrators (Jendia 2003). Conflicts over land were further politicised by the 1970 Unrestricted Lands Act. This legislation proved more repressive than colonial laws. It entitled the government to use force to safeguard "its" land and enabled the accumulation of land by a few rich investors, both local and foreign (Abulemoi 2002). The legislation alienated local farmers. It denied any legal status to traditional property rights and effectively cancelled farmers' rights to water, land and grazing (Jendia 2003).

The 1970 Act did, however, enable the government to mechanise agriculture. By 2005 the total area under mechanised farming had increased fifteen-fold. The 1990 Investment Act also resulted in vast tracts of land being allotted to private capital investments, substantially cutting rural communities' rights to land and displacing people from their homeland (Ayoub 2006). This displacement became a major source of grievance and conflict, reinforcing feelings of neglect, marginalisation and repression. Changes in land use also closed off nomadic routes, water points and pastures, creating large landless groups who were forced to migrate to urban centres.

The GoS and SPLM/A agreed that surface land claims should be settled through a National Land Commission and a Southern Sudan Land Commission. The Australian lawyer, Patricia Lane, helped draw up the terms for the commissions. In her paper, "Land law and communal title in Australia" (2003), she showed how communal land ownership could be based on common law and how land disputes can be settled through commissions. The GoS and SPLM/A agreed to develop and amend laws to incorporate customary laws and practices, local heritage and international trends. This was to be done through both commissions which gave recommendations on land reform, recognition of customary land rights and appropriate compensation and also arbitrated on claims (AWS 2004: paragraph 2).

The GoS was ready to accept an independent Southern Sudan Land Commission as it had

not sold licenses for use of surface land in the South and did not have commercial obligations there. It still remains to be seen whether the Southern Sudan Land Commission will be left free to settle land claims in the South. If the Southern Sudan Land Commission and the National Land Commission fail to reconcile any conflict between them, the case will be decided by the Constitutional Court (Agreement on wealth sharing 2004: paragraph 2.9). So the Southern Sudan Land Commission's independence may be limited by the court's decisions.

#### **6.3.1.1 Existing legal framework for land ownership**

Resolving land disputes, especially when refugees return, has been an essential part of rebuilding countries after conflict. Various solutions have been adopted. In Burundi, it was decided to increase the capacity of institutions handling refugee repatriation and integration, strengthen dispute resolution mechanisms and educate and advise people on land tenure (Oketch and Huggins 2005). In Rwanda, the government policy was to share land resources or to establish protected public land for resettlement. Rwanda introduced a controversial 'villagisation' policy, under which every Rwandan was to move to a village to ensure proper land use and the provision of basic services. There were many reports of 'coerced' relocations and it was very much a top-down approach with a lack of local participation in the decisions.

The international community provided uncritical support for this policy, highlighting the need to improve protection for resettling displaced persons (Huggins 2004). In Niger, democratisation reduced the number of conflicts being registered because the traditional chiefs had regained their influence and their right to settle conflicts. But far from being neutral judges, these chiefs were the ones primarily involved in land distribution and they contributed greatly to land use conflicts themselves (Neef 2001). In Mozambique, evidence based on custom was incorporated into the formal land tenure system (land law) and this was a fundamental step in making such evidence legitimate within the formal system and making the formal system legitimate to small-holders. To make dispute resolution institutions operate effectively between 'custom' and formal tenure systems, it is easier to take customary norms and rules regarding land tenure into the law than it is to cut them out (Unruh 2001).

This is not to suggest that all aspects of custom should be incorporated into law; rather the

law should recognise the themes and tenets that embody these, such as community membership, testimony, local leadership, history of occupation, present use, and existing institutions for resolving disputes. In Ghana informal arbitration, using family elders, respected community leaders and/or mediators, was popular and frequently used to resolve disputes involving individuals or families. It was praised because it helped preserve social harmony and also helped reduce the bitterness and conflict aroused by resorting to the courts. In this sense it is seen as the most 'appropriate' or socially acceptable method and is better than court proceedings which prolong conflict (Ejisu 2002).

In the Sudan, the legal framework for arbitration, conciliation and mediation stems from the Agreement on Wealth Sharing during the Interim Period, GoS and GOSS laws and customary laws. Although these provide a base for arbitration and conciliation, there remains a lack of consensus over applicable laws and jurisdiction. The Wealth Sharing Agreement is a legal innovation and needs clarifying. Areas of confusion include the hierarchy, urban vs. rural areas of jurisdiction, as well as the laws available to the adjudicating bodies. The tools of arbitration, mediation and conciliation provided under the different bodies require consolidation and consensus over areas of jurisdiction and legal value. Articles 2.0 to 2.9 in the Agreement on Wealth Sharing are unclear on a number of essential issues. Article 2.1 states that "Without prejudice to the position of the parties with respect to ownership of land and subterranean natural resources, including in the South Sudan, this Agreement is not intended to address the ownership of those resources. The parties agree to establish a process to resolve this issue". This provision refers the final determination on resource ownership to a legal process.

Article 2.3 says "the regulation of land tenure, usage and exercise of rights in land is to be a concurrent competency exercised at the appropriate levels of government". The insertion of the term "concurrent" means a simultaneous and parallel, but not necessarily synchronised, regulatory function regarding land rights and use. Questions that can arise are: What is the legal hierarchy of the bodies in "concurrent competency"? If a matter is referred to the Constitutional court, which legislation will be used to resolve the issue? Will it be legislation based on long-standing, yet disputed laws, or based on unrecognised yet fragmented and unconsolidated customs or based on generally accepted principles of law and justice?

The Agreement on Wealth Sharing says that "Rights to **land** owned by the GoS shall be exercised through the appropriate or designated levels of **Government**" (Article 2.4). It also says that a "process be instituted to progressively develop **and** amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices" (Article 2.5). What legal value will the customary norms and practices and international trends and practices hold in the interim period with regard to the resolution of land disputes related to returning refugees? If many land-related disputes, especially in the South, necessitate legal recognition of different customary norms for equitable consideration and adjudication, what will be their relevant **value** in the interim period?

Article 2.6 of the Agreement states that "without prejudice to the jurisdiction of courts, there shall be established a National Land Commission that shall have the function" of "arbitration between the willing contending Parties on **claims** over **land**, and sort out such claims" (2.6.1). However the Land Commissions do not **hold** exclusive jurisdiction over land matters. So can they be overruled by the regular courts? What is the appeals procedure? Upon which laws will they be decided and by which **authority**? What degree of law can the Land Commissions ensure?

Article 2.6.2 provides that "the party or group making **claims** in respect of land may make a claim against the relevant government and/or other parties **interested** in the land." What is the value of this provision with regard to the 1990 Amendment of the Civil Transactions Act, Article 2.A, which says: "no court or any other **authority** shall be competent to consider any application, suit or procedure in respect of any subject **having** to do with proprietorship of any land owned by the state"? What value does the provision in Article 2.6.2 hold if it is argued that government property was acquired under the Unregistered Land Act of 1970 which states that: "all types of lands not registered before the date of this Act shall be deemed as if they are registered in the name of the State"? What value does the provision in Article 2.6.2 hold if reference is made to the Civil Transactions Act 1984, Art 555 (1), which states that "Whosoever possesses an unclaimed and **ownerless** property with intent to own it, acquires the ownership thereof"? What value does the provision in Article 2.6.2 hold with regard to the SPLM/A tenet that "all land is **communally** owned", therefore there is no such thing as unclaimed and ownerless property?

There are many areas of confusion that need clarifying. The Sudan Joint Assessment

Mission Conflict Analysis Guidelines (Report 2004) recognise land as a critical factor underlying conflict in the Sudan, and in particular that “specific redress by individuals or local communities for improper management of land has hardly been available”. The newly created land commissions need to settle land use policies, arbitrate in controversial cases and provide compensation. But this will be a very lengthy process unless legal clarifications are introduced. Measures adopted by the Agreement on Wealth Sharing during the interim period provide a base for development; however, they leave many questions unanswered and insufficiently address the immediacy of land disputes, particularly those related to returning refugees. The backlog in dealing with the claims of returning refugees, among others, heightens uncertainty and discontent.

The Journal of Humanitarian Assistance reported (2001) that no agency held clear responsibility for organising the return of persons displaced within East Timor. Inevitably population displacement and property destruction led to widespread ad hoc occupation of vacant houses and conflict over property. The more this occurs in the Sudan the harder it will be to resolve competing claims for land. The greater the extent of temporary occupation, the more likely dealings will be based on opportunistic possession rather than legal ownership. The Agreement on Wealth Sharing focuses extensively on the division of oil revenues, which was the priority of all the parties at the negotiating table because of the potential hard currency involved. However the issues of water and land rights are of more immediate concern to the vast rural population of the Sudan and these have to be resolved through lengthy and unclear processes. Frustrations over delays in resolving these issues could result in renewed conflict.

Three years after the signing of the Agreement on Wealth Sharing there were already signs of tribal conflict in the South. The Government of the Southern Sudan was meeting resistance from the tribes. For example, there was a dispute as to whether the town of Juba should come under the jurisdiction of the Government of the South Sudan or the Bari tribe which also claimed jurisdiction. Similar problems are likely in other tribal areas. Article 2.6.5 of the Agreement states that “the National Land Commission shall apply the law applicable in the locality where the land is situated or such other laws as the Parties to the arbitration agree, including principles of equity.” Does this provision tacitly recognise the value of customary law? In the case of disagreement on the law applicable, do principles of equity automatically prevail? What if the concurrent Land Commissions, National and



Southern decide to apply different laws, for example, Statutory and principles of equity? What in the case of appeal? For instance, could one party render an opposite judgment on a law, which is an integral part of the claim? The situation is far from clear and the possibility of conflict high. Legal clarifications are required and a system to help returning refugees should be introduced.

#### **6.3.1.2 Relevant Land Related Legislation**

The 1925 Land Resettlement and Registration Act states that ‘all waste, forest and unoccupied land’ shall be deemed to be property of the government until the contrary is proven. Proof of ownership relies heavily on ‘occupation’, i.e. highly visible land use. The unregistered Land Act, 1970 states clearly that “All land that is not registered before the enactment of this law becomes the property of the government by default. This cuts across rural communities’ land rights, challenges communal and tribal ownership and provides the government with the means to acquire large tracts of land for agricultural schemes at the expense of rural residents. The Act allows the transfer of all unregistered land to the government with the power of transfer of land to a public or national enterprise as well as leases to farmers. The Act also deprives prior users of the land of any right to be compensated for its loss (De Wit 2004). The 1984 Civil Transaction Act and its 1990 amendment repeal the 1970 Unregistered Land Act, stating that “registered usufruct rights are equal to registered ownership” (De Wit 2001). In other words the rights of someone who uses or profits from a property belonging to someone else are equal to the rights of the registered owner.

All these statutes conflict with the customary laws which presume the undisputed communal ownership of land from time immemorial. For example, the 1970 Unregistered Land Act and the 1984 Civil Transaction Act provided the GoS with a legal mechanism to interfere at will in customary land management. The State can undermine long standing rural agreements. Thousands of people in the South, Southern Blue Nile and Nuba Mountains had their land expropriated without reasonable compensation and lost direct access to land. Some tribes lost their homes because of the extension of agricultural activities (Aredo 2004) and these groups are now permanently on the move, causing tension wherever they go. A 2002 Christian Aid Report said the demarcation of large tracts of land for oil exploitation had resulted in conflict. Disputes over the use of land will continue until there is agreement on which law is applicable. Broadly accepted principles and tools of international law could



be introduced. A broadly recognised system of equity, restitution and compensation needs to be established.

#### **6.3.1.3 Customary legal framework**

The customary systems of tenure need to be harmonised with the statutory laws. A wide variety of customary legislation exists in the Southern Sudan, reflecting the differences in ethnicity, tradition, geography and livelihoods (Deng 1995). These laws have shown flexibility and innovation for centuries. The systems all come from oral traditions (Mijak 2004) and this has often disadvantaged them, allowing easy overruling by centralised decision-making. Nevertheless, customary law, while in dire need of consolidation and official recognition, remains valid and on demand by local communities through persistent use in the face of decades of war and uncertainty.

The legal framework could be improved through: (1) aligning it with widely proven international procedures of arbitration, mediation and conciliation, as laid down in the Wealth Sharing Agreement. (2) Providing mechanisms for resolving conflict between customary and statutory laws (CPA Chapter III). (3) Consolidating existing customary norms on arbitration, mediation and conciliation. Regarding existing statutory law, comparison with international law should be considered before enacting any changes. Quick importation of external laws is not the answer. A review needs to be carried out involving all stakeholders aimed at revising and retaining usable systems pertinent to the Sudan.

### **6.4 Management of the Oil Sector**

Oil production in the Sudan has had a major impact both on domestic policy and on foreign relations. Oil has funded Khartoum's war against the SPLM/A and resulted in the forcible eviction of civilians from oil-prospecting areas, displacing and killing thousands of people in the process (World Bank 2000: 176). The Sudan's oil consumption increased from about 12,000 barrels a day in 1999 to 200,000 barrels a day in early 2000 (Horn of Africa Bulletin 1999). But because of the civil war oil prospecting had yet to be carried out in large areas of the Southern Sudan. Oil-prospecting concessions were issued in blocks (map Appendix IV), but individual licenses had to be negotiated to exploit the oil (Fawzi 2001: 249). Given the economic and political power of oil, both the GoS and the SPLM/A had high interest in how leases and licenses were to be granted in the interim period.

The GoS wanted to retain central control of the petroleum sector during the interim period. It proposed a “National” commission which would control oil resources in the South (GoS 2003b). The rationale for this position paralleled that of federal ownership of natural resources that a national body could best ensure that benefits were distributed equally throughout the country. The GoS argued that if individual states controlled oil revenues, they would develop differently, creating imbalances and instability. With central control the government could maintain macroeconomic stability (GoS, 2003b)

The SPLM/A wanted the Government of the South Sudan (GOSS) to have a greater say in regulating the oil sector in its area during the interim period. At talks in Kenya in 2003, the SPLM/A first called for three petroleum commissions to be set up: one “joint” or “national” commission, one Northern and one Southern. Later the SPLM/A changed its position to two commissions: a Southern Commission for the South and a national commission for the rest of the country (ICG 2004a). The Southern commission would give the government there autonomy in dealing with new oil contracts. The national commission would have equal representation from the national government, the GOSS and representatives of other oil producing states/regions (SPLM/A 2003d).

#### **6.4.1 National Petroleum Commission**

A compromise was eventually negotiated. A single petroleum commission, known as the National Petroleum Commission (NPC) was set up. In accord with the Agreement on Wealth Sharing, the NPC was to consist of four permanent members of the GoS, four permanent members of the GOSS, and up to three non-permanent members from oil-producing states/regions (Article 3.3). The NPC had a mandate to formulate “public policies and guidelines in relation to the development and management of the petroleum sector; and to negotiate and approve all oil contracts for the exploration and development of oil and ensure they are consistent with the NPC’s principles, policies and guidelines (Article 3.4.1). One SPLM official said the arrangement was acceptable to them because the GOSS had a *de facto* veto in the NPC (Interview 2006).

The SPLM/A was concerned about oil revenue because it was central to the previous unequal development between the North and South. Following the 1972 Addis Ababa Agreement, the South had received little of the foreign aid available over the next eleven years. Foreign currency had been centrally controlled and projects often diverted to the

North (Alier 1990). The Southern government had rarely taken part in the negotiating contracts for foreign assisted projects in the South (Jendia 2003). Central government had controlled trade and commerce, the issuing of import and export licenses and the establishment of financial institutions and private companies (Alier 1990). The South had been deprived of revenue from import and export taxes and prevented from directing border trade. So the South had been dependent on the North for essential commodities.

Under the NPC compromise Khartoum kept a say in oil management in the South under the single National Commission, but it had to yield some control to the SPLM/A. A GoS spokesman (interview 12 June 2006) said “there was a trade-off between this issue (a national commission) and the issue of oil revenues”. The SPLM/A gave up its demand for a separate Southern commission, but was to receive half of the revenue from oil extracted in the South and participation in the NPC decision-making. So why did Khartoum accept the establishment of a NPC commission where the South would have a *de facto* veto? The South might block new leases in the region until after a 2011 referendum in order to get all the revenues after a possible secession. The GoS may have thought the GOSS would need the revenue from new concessions during the interim period or that most important contracts had already been signed. In practice, the work of the NPC was being impeded in 2008 by disagreement over whether it was an advisory body or a decision-making body. Also smaller regional groups are not represented on the NPC which could lead to conflict. An international presence on the NPC, even as observers, could help prevent any such conflict.

#### **6.4.2 The Status of Existing Oil Contracts**

The Sudan has signed petroleum contracts with a number of oil companies since exploration started in 1974 (Appendix IV). These contracts have been negotiated by the GoS and the details kept confidential. During its talks with the SPLM/A, the GoS stressed that trying to change existing contracts might damage the climate for foreign investments which both sides had an interest in protecting (ICG 2003).

In September 2003 the SPLM/A had wanted to renegotiate contracts if they were “deemed to have fundamental social and environmental problems which cannot be rectified by remedial measures” (SPLM/A 2003a). The SPLM/A said the oil contracts had been negotiated without Southern consultation and were illegal because the land was owned by

the local communities. However the SPLM/A later changed its position and agreed that existing contracts should not be subject to re-negotiation. The SPLM/A may have agreed to this out of concern for revenue, but there is also an option to implement necessary remedial measures if contracts are found to have fundamental social and environmental problems (PWS 2004: Article 4.3).

#### **6.4.3. Sharing of revenues during the Interim Period**

Petroleum contributed about \$1 billion or 35 percent of the federal revenue in 2002. One forecast then said a durable peace might see this increase to \$2 billion a year for at least a decade (CSIS 2002: 1). The importance of oil revenue assured negotiations on it remained intense. Taxes on income, domestic goods and services and on international trade provided only 11.3% of the GDP in 2001 (WB 2003: 49-50). But peace would help increase non-oil revenues as well, especially through international trade, investments and donations.

When oil was discovered in the South the central government at first denied it, attempted to annex the regions where oil was found and finally tried to create a new province around the oilfields called "Unity Province" (Johnson 2003). When all these manoeuvres failed, the government ordered the oil to be piped to either Kosti or Port Sudan in the North for refining. Alier says the central government was trying to deprive the South Sudan of the economic and social benefits of the oil (Alier 1990). During the 2003 talks in Kenya, the GoS said it wanted to collect oil revenue as a national resource so it could distribute the benefits equally around the country. The government argued that it had already invested in the development of the oilfields and attracted international partners and that this should be taken into account when revenues were shared (ICG 2003: 14).

The SPLM/A said that because most of the oil was in the South (as of the borders of 1<sup>st</sup> January 1956) and because it had been exploited at the cost of many Southern lives, the South deserved the lion's share of the revenue. Initially the SPLM/A demanded 90% of the oil revenue in the South (ICG 2003: 14). However in October 2003, the SPLM/A revised its demands and proposed that 5% of the revenue be allocated to the oil-producing state/region, 60% to the Southern government and the remainder to the National Government. Regarding other federal revenue, the SPLM/A proposed 10% of nationally collected revenue be allocated annually to the South and its states/regions. This was to be for "general budgetary expenditure and the establishment of institutions of governance". The SPLM/A said 33.3%

of other revenue should be allocated annually to the GOSS for costs of “repatriation, resettlement, rehabilitation, reintegration, reconstruction and development” (SPLM/A 2003).

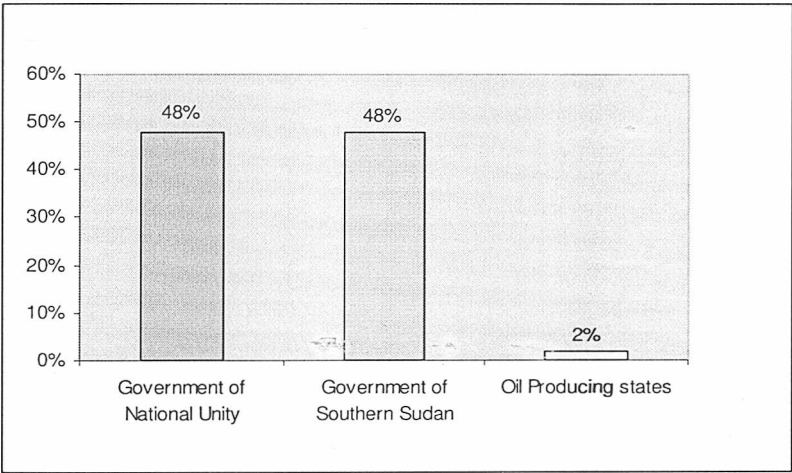
The central government was deeply in debt (World Bank 2003). During most of the 1980s and 1990s Sudan ranked third after Nigeria and the Ivory Coast as the most heavily indebted country in Sub-Sahara Africa, excluding South Africa. In 1997 Sudan’s external debt exceeded US\$ 16 billion, second only to Nigeria’s US\$ 28 billion (World, Africa Development Indicators 2000: 176). The steady increase in the Sudan's debt prompted the International Monetary Fund to threaten to expel Sudan in 1997 (Field 2000: 4). Sudan’s indebtedness was compounded by its high inflation, which averaged 83% between 1985 and 1996 and 133% during 1996, and by its monthly difficulties with payments on loans, estimated at US\$ 4.5 million in 1997 (Allan 2000: 1051). The financial difficulties were made worse by the civil war, which cost the government more than US\$ 1 million per day (AP 3 February 1999). The Sudan's deficit continued to grow, rising from US\$ 500 million in 1995 to US\$ 827 million, US\$ 828 million and US\$ 957 million in 1996, 1997 and 1998 respectively (Allan 2000: 1054).

As a result the GoS had limited ability to share revenue during the first years of the interim period and it proposed wealth sharing based on its ability to share after meeting debt obligations rather than on the enormous needs for reconstruction and development in the South. According to ICG Report (11 December 2003), Khartoum proposed wealth sharing based on gradually increasing revenue from increased taxes, decreased military expenses and donations from abroad and oil investments.

The July 2003 draft agreement, known as the Nakuru document, proposed four sources of revenue to the South. The first was to be transfers from a “National Revenue Fund” collected nationally by the central government (IGAD secretariat 2003a: chapter 18). These would include revenues from existing oil contracts and from sources such as national taxes and duties. The percentage of GDP transferred was to rise with the GDP. The second source of revenue was to be donations from abroad handled through a “Southern Sudan Reconstruction Fund” proposed in the Nakuru document (IGAD secretariat 2003: chapter 27). Third, the GOSS itself was to be entitled to raise and collect taxes such as state, income and agricultural tax (IGAD secretariat 2003: chapter 17).

Finally, the GOSS was to receive oil revenues from “new” contracts signed after the start of the interim period and treated differently from existing ones. It was suggested that the GOSS have 48 percent of revenues from “new” contracts (IGAD secretariat 2003: chapter 16). While the federal government collected revenues from “old” contracts and transferred to the GOSS a part of them linked to a certain share of GDP. In the end the GoS and the SPLM/A chose not to differentiate between “new” and “old” contracts. Instead, they agreed to share revenues from oil produced in the Southern Sudan with 2% going to the oil producing states/regions and the rest shared equally (48% each).

**6.4.3.1            Sharing of Oil Revenues**



Source: Agreement on Wealth Sharing 7 January 2004

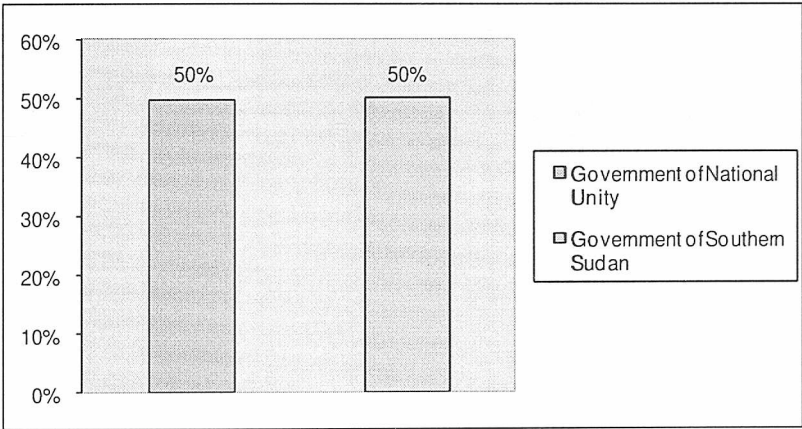
The shared revenue agreement was acceptable to the SPLM/A because it thought it more important to ensure a big part of the revenue than to depend on federal government transfers. International observers confirmed that this was of paramount importance to the SPLM/A during the negotiations (ICG Report 2004). The SPLM/A may not have had much faith that the GoS would implement the promised transfers given the history of failed agreements. For the South Sudan to get half of the oil revenue, plus aid promised by IGAD partners was a saleable proposition to SPLM/A constituencies, even though many Southerners saw oil as a wholly Southern asset. The economic terms meet core SPLM/A goals so long as the agreement is implemented and the oil revenues and international donations are enough to build a new government in the South. This is better for the SPLM/A than going back to war.

Why was the GoS prepared to accept the 50-50 split of oil revenues, given that it was



heavily in debt and waging a costly war in Darfur? International pressure played a huge part in this, as did the incentives of international donations if there was peace in the Sudan (ICG Report 2003). But Khartoum only finally agreed to the formula when it was based on the division of oil revenue from the Southern Sudan alone and not the oil revenue of the whole of Sudan. This meant that Northern resources would not be transferred to the South and the South's revenue would come primarily from its own oil.

**6.4.3.2                      Sharing of Non Oil Revenue**



Source: CPA: Agreement on Wealth Sharing, 7 January 2004.

In the interim period, however, a low level of transfers of other revenues from the federal government to the GOSS would likely lead to less integration and could lead Southerners to claim the GoS was unwilling to share revenues with the South. For its part, though, the GoS considered the oil in the South to be a national resource and would argue that a significant part of the national revenue had thus been shared with the South. For the GoS, safeguarding its revenues was more important than the political costs.

However, by 2007, GOSS had not passed any new tax laws and collected little revenue. Kizito Oketa Modest wrote in the Juba Post (2007) that the GOSS had collected 74 million Sudanese pounds (\$369,000) in border taxes. The revenue collected was deposited in the Bank of Southern Sudan in the non-oil revenue account. The GOSS Director General of Taxation Ayom Mach Jok confirmed that the taxes were being collected only in the “Greater Equatoria” region and none were collected in the Baher-el Ghazal or Upper Nile regions. The collection of business and value added tax had not started at all (Report 2007).



## 6.5 Summary of the Issues of Petroleum in the IGAD talks

Issues	GoS Position	SPLM/A Position	Terms of Agreement on Wealth Sharing
	Differ between surface and subsurface land		Subterranean natural resource: The ownership is not addressed (AW Art.2.1)
Ownership of Land and natural resource	<p>Use rights of surface land can be held by communities;</p> <p>Surface natural resources belong to the national government;</p> <p>South Sudan land commission, chairman appointed by the Presidency of the GNU.</p>	<p>Land is communally owned;</p> <p>Subterranean natural resources are owned by land owners and regulated by governments at their respective level;</p> <p>Fully autonomous Southern Sudan land commission.</p>	<p><b>Surface land:</b></p> <p>A national Land Commission and Southern Land Commission are established with the following:</p> <p>(1) Arbitrate communal land claims;</p> <p>(2) Recommend to appropriate levels of government land reform policies and recognition of customary land rights and/or law;</p> <p>(3) Assess appropriate land compensation;</p> <p>(4) Study and record land use practices in areas where natural resources exploitation occurs.</p> <p>In the case of conflict between the findings and recommendation of the NLC and SLC, the two commissions reconcile their positions or eventually refer the matter to the Constitutional Court (AW 3:9).</p>
Management of the oil sector during interim period	<p>One oil commission in Sudan:</p> <p>A national Petroleum commission</p> <p>Decision by majority in the national oil commission</p> <p>Limited GOSS representation in the national oil commission</p>	<p>Two oil commission in Sudan:</p> <p>An independent Southern Sudan oil commission and a national oil commission</p> <p>In the national oil commission decisions by consensus and half of the representatives from the GOSS.</p>	<p>The NPC is established with the following powers (AW 3:4): (1) Formulate public policies and guidelines in relation to the development and management of the petroleum sector; (2) Monitor and assess the implementation of those policies to ensure that they work in the best interests of the people of Sudan; (3) Negotiate and approve all oil contracts for the exploration and development of oil in the Sudan, and ensure they are consistent with the NPC's principles, policies and guidelines.</p> <p>The decisions of the NPC are by consensus (AW 3.2).</p>

			<p>The members of the NPC are the presidents of the GoS and the GOSS, four permanent members representing the National Government, four representing the GOSS, and not more than three representatives of an oil producing states/region in which petroleum development is being considered (AW 3.3).</p>
Existing Oil Contracts	<p>No changes</p> <p>Every contract before the CPA is valid</p>	<p>Re-negotiate if deemed to have social and environmental problems which cannot be rectified by remedial measures.</p> <p>Contracts signed after the agreement on wealth sharing invalid.</p>	<p>Contracts are not subject to re-negotiation (AW 4.1). If contracts are deemed to have fundamental social and environmental problem the GoS implements necessary remedial measures (AW 4.2). People whose rights have been violated by oil contracts entitled to compensation. Parties to the oil contracts are held liable to compensate the affected people (AW 5.5).</p>
Revenue Sharing in the interim period	<p>Oil revenue collected as a national resource.</p> <p>Limited transfers to the GOSS and state/regions.</p>		<p><b>Oil Revenues:</b> At least 2 % of oil revenue is allocated to the oil producing states/regions in proportion to output in such state/regions (AW 5.6). After the payment to the Oil Revenue Stabilisation Account and to the oil producing states/regions, 50% of net oil revenue derived from oil producing from wells in Southern Sudan shall be allocated to the GOSS (AW 4.6).</p> <p><b>Non-Oil Revenues:</b> 50% of the non-oil revenue collected in Southern Sudan by the National Government is allocated to the GOSS. At the mid-term of the interim period the parties have reviewed this arrangement with the view of allocating additional resources to the GOSS (AW 7.3).</p>

Source: Protocol of Wealth Sharing 2004

First this chapter identified several explanations for why the settlement of petroleum issues became acceptable to the GoS and the SPLM/A in the IGAD talks. The mediation strategies included resolving fundamental issues of self-determination and state and religion before addressing other issues, introducing international expertise of the issues, proposing a “holistic” framework agreement and suggesting a new procedure of top level consultation when the talks seemed to be breaking down.

The second part of chapter focused on how the specific issues were addressed as explanations for why the terms of agreement became acceptable for the parties. The establishment of a National Petroleum Commission became acceptable to the GoS as a national body to control the oil sector, while it was acceptable to the SPLM/A as a guarantee of power sharing. Both parties have equal representation on the Commission and decisions are by consensus. In summary, on wealth sharing, the SPLM/A wanted a 50% share of the oil revenue rather than establish a complex system of federal transfers but the same thought and attention was not given to issues of surface land and water where the risk of conflict is high. Four years after the CPA the legal framework for settling land disputes quickly was still inadequate with insufficient guarantees of equity and justice, particularly for returning refugees. The implementation of the Agreement on Wealth Sharing was unlikely to achieve the stated desire for the unity of the Sudan.

## **Chapter VII: Resolutions of Conflict in Abyei, Southern Kordufan and Blue Nile**

The CPA deals separately with the three adjacent areas of Abyei, Southern Kordufan and the Blue Nile, which lie between North and South Sudan. Two Protocols on these areas were signed in Naivasha Kenya in May 2004: the Protocol on the Resolution of the Abyei conflict and the Protocol on the Resolution of Conflict in Southern Kordufan/Nuba Mountains and the Blue Nile States. How far do these Protocols address the causes of conflict and will they achieve the unity of the Sudan?

The Abyei Protocol gives the area “special administrative status” under the Presidency. Residents would be represented in the legislatures of both Southern Kordufan to the North and Bahr el Ghazal to the South during the interim period. In 2011, at the end of the interim period, residents would have a separate referendum at the same time as the South to decide whether to maintain their special status in the North or to become part of the Southern Sudan Bahr el Ghazal region.

The Protocol on Southern Kordufan/Nuba Mountains and the Blue Nile States proposes that Southern Kordufan would merge with Western Kordufan State to reconstitute the former Southern Kordufan province. But would the Nuba people feel they had adequate representation under this arrangement or would it dilute their influence? Also how far does the Protocol address other issues of conflict in the area? Would it contribute to peace?

### **7.1 The Three Regions: Background to the Conflict**

Abyei, located between Bahr el-Ghazal and Southern Kordufan, is geographically, ethnically and politically caught between the North and South of Sudan. It is home to the Ngok Dinka tribe, cousins of the South’s populous Dinka tribe and bordered to the North and North East by the Messeriya Arab cattle herders, who pass through each year to graze their animals (see Appendix VI). The Abyei region had provided grazing for the Messeriya Arabs and Ngok Dinka chiefdoms since the 18<sup>th</sup> century (Deng 1995). Relations between them were amicable in the 19<sup>th</sup> century. They lived within separate colonial administrations until 1905, when the British transferred the nine chiefdoms of the Ngok Dinka from Bahr el-Ghazal to the Southern Kordufan province which is in Northern Sudan.

The Ngok Dinka and Messeriya Arabs began to take separate paths with the onset of the

first civil war (1956-1972). The Abyei became a major point of tension, particularly after the 1965 massacre of 72 Ngok Dinka by Messeriya in the town of Babanusa. The Ngok Dinka were drawn to the Southern Anya-Nya militia, while the Messiriya became firmly associated with the North. Tension in the area increased further after oil was discovered in 1979. The inclusion of Abyei in the CPA shows its political and economic value both to the North and to the South.

The 1972 Addis Ababa Agreement, which ended the first civil war, included provision for a referendum to allow "any areas that were culturally and geographically a part of the Southern Complex", including Abyei, to choose between remaining in the North or joining the new autonomous Southern region (Article 3). The referendum was never held, and attacks against the Dinka continued throughout the 1970s, leading to the formation of a Ngok Dinka unit of the Anya-Nya II militia in the small Southern rebellion that began in Upper Nile in 1975 (Johnson 2003). When the second civil war broke out in June 1983 many Ngok Dinka joined the SPLM/A. The Anya-Nya II unit from Abyei played a leading role in the foundation of the SPLM/A (Johnson 2003). Displacement of the Ngok Dinka, which had begun during the first civil war and continued throughout the 1970s, escalated during the second war.

Many people from Abyei held senior military and political positions in the SPLM/A and had close links to its then chairman, John Garang. As the war dragged on, the call for independence grew stronger among Southerners, including the Ngok Dinka (ICG Report 2007). The discovery of oil in 1979 complicated matters because President Numeiri tried to alter state boundaries to move oil-rich areas from the South to the North (see Chapter III). The Messeriya joined the war on the government side in the mid-1980s and provided frontline forces against the Dinka and took part in raids on Southern villages.

The Southern Kordufan/Nuba Mountains region is the geographical centre of the Sudan, occupying approximately 30,000 square miles. During British rule of the Sudan (1896-1956) the region was under "Closed Door" administration in the South of the country with its capital in Talodi. In 1929 the British amalgamated the area with Kordufan to form a Greater Kordufan Province (Alier 1992). In 1974, however, during the time of President Numeiri, Greater Kordufan was divided into North and South Kordufan, the latter being the Nuba Mountains area. The Nuba Mountains are inhabited by approximately 2 million

people. The indigenous Nuba are the majority and the rest are Baggara Arabs (cattle herders) and a small minority from West Africa (de Waal 1995). The region is fertile and became a main target for Khartoum's enforced introduction of mechanised farming in the 1970s.

The British had contemplated drawing a "racial" border and locating all African people in the Upper Nile Province of the Southern Sudan. In the end the British transferred only the areas of Chali and Yabus from the Southern Blue Nile to the Upper Nile Province in the Southern Sudan. These two areas were later returned back to the Southern Blue Nile in the North Sudan just before independence in 1956. The 1972 Addis Ababa Agreement provided for a referendum on the status of Chali, whether it should rejoin the South, but the referendum never took place (Johnson 2003).

Conflict in the Abyei, Southern Kordufan and the Blue Nile States cannot be separated from the long-standing conflict in the Sudan as a whole. The Nuba, like other marginalised people in the Sudan, have suffered from suppression, discrimination and exploitation by all Sudanese governments since independence in 1956. As in the South Sudan, factors contributing to the conflict include political and economic marginalisation, ethnic and religious and cultural discrimination, dispossession of lands and traditions, poor educational, political and economic opportunities and the discovery of oil. The Machakos Protocol of July 2002, which provided the framework for the CPA, defined the Southern Sudan according to the borders that existed at independence on 1 January 1956. These borders exclude Abyei, Southern Kordufan and Blue Nile. So under the terms of the Machakos Protocol they would not be able to take part in a 2011 referendum.

### 7.1.1 The Negotiations of the Three Areas

The three areas of Abyei, Southern Kordufan, and the Blue Nile were one of the most difficult issues in the CPA negotiations. Initially the government had initially argued that IGAD's mandate was limited to the problem of the Southern Sudan (ICG Report 2002). There was also a dispute over who represented the Abyei at the talks. The NCP had included a representative of the Messiriya Arabs in their delegation, but the SPLM/A would not accept him as he was not from Abyei (ICG Briefing 2003). If the Ngok Dinka and the SPLM/A had accepted the Messiriya representative, it would have indicated that the Messiriya were inhabitants of Abyei and entitled to vote in any referendum on self-

determination. This would have had considerable impact on the result as the Messiriya supported Khartoum's opposition to self-determination for the region.

The main disagreement was over whether Abyei should be granted the right to a referendum on whether it should join the Southern Sudan. Such a referendum might result in it joining an independent South after 2011. The SPLM/A insisted that the Abyei should be allowed a referendum and the group's leadership included several Abyei people, so SPLM/A leader John Garang had little flexibility (ICG Report 2002a). The GoS refused to consider a referendum for Abyei, arguing that the Machakos Protocol had already closed that door, and Abyei must remain in the North (ICG Report 2002b). The GoS rejection was driven primarily by its fear of losing control over Abyei's oil resources in the area, which make up the bulk of the North Sudan's reserves. The stalemate was eventually broken by U.S. intervention. In March 2004 U.S. Special Envoy to the Sudan, former Senator John Danforth, presented a draft proposal on Abyei to the negotiators in Naivasha, Kenya. The GoS initially rejected this proposal as it included a referendum for the Abyei area, but the GoS eventually yielded to U.S. pressure (ICG Report 2003).

Under the 1956 borders, the Southern Kordufan/Nuba Mountains and Southern Blue Nile were located in the North Sudan. However, a quarter of the SPLA's 60,000 strong army came from Nuba, many had joined because Khartoum had discriminated against them and seized vast quantities of their land. Therefore since 1985, the SPLM/A had called for the Southern Kordufan/Nuba Mountains and Southern Blue Nile to constitute part of the Southern Sudan (De Waal 1999: 1). The Khartoum government refused to discuss such changes because it feared further fragmentation of the country and argued that mediation must be limited to the South, as defined at independence in 1956. The GoS totally opposed a referendum for areas outside of the Southern Sudan or an increase in autonomy.

On the other hand, the SPLM/A insisted on resolving the status of the Southern Kordufan/Nuba Mountains and Blue Nile at the IGAD talks. The SPLM official position was that five regions should be under the Southern Sudan government during the interim period: Bahr al-Ghazal, Upper Nile, Equatoria, Nuba Mountains, Abyei and Southern Blue Nile. The SPLM/A wanted the Nuba Mountains/Southern Kordufan, Blue Nile and Abyei to vote on whether they would join the South before the South's referendum (ICG Report 2002). The presence of SPLM/A leaders from the Nuba and Southern Blue Nile on its



negotiating team in Machakos strengthened the SPLM/A position (ICG Report 2002). A regional SPLM/A congress held in the Nuba Mountains in August 2002, endorsed the position that the Nuba Mountains should remain with the South during the interim period and have a self-determination referendum (ICG Report 2002).

Early in 2000 IGAD mediators had proposed that the Nuba Mountains and Southern Blue Nile should vote to determine their administrative and political status within a united Sudan (IGAD Advisory Non-Paper 1, October 2000). The SPLM/A and the GoS allowed the IGAD mediators to undertake a fact-finding mission in the Nuba Mountains and Southern Blue Nile in 2002. IGAD then drew up a draft agreement based on their findings which the GoS and the SPLM/A signed on 26 May 2004.

## **7.2 The Protocols on Abyei, Southern Kordufan and Blue Nile**

Negotiations on the Three Areas led to separate agreements being signed on 26 May 2004: one on Abyei and the other on Southern Kordufan and the Blue Nile. The Protocol on Abyei granted it special administrative status under the Presidency and a 2011 referendum to decide whether to join what might then be an independent Southern Sudan or to maintain its special status under the Northern Government. The Protocol on the Resolution of the Conflict in Southern Kordufan and Blue Nile of 26 May 2004 provides for equality, fairness, economic development, social welfare and stability as the goals for the Sudanese people, in general, and the people of the conflict areas of Southern Kordufan and Blue Nile in particular. The Protocol provides the basis for a political, administrative, economic and social solution to the conflict in these two states. It reaffirms citizenship as the basis for equal rights and duties for all Sudanese citizens, regardless of their ethnicity or religion and the recognition of cultural and social diversity. The Protocol also provides some degree of power sharing, security and wealth sharing.

### **7.2.1 The Protocol on Abyei**

The Protocol on Abyei granted the disputed territory special administrative status under the Presidency, in other words under the GoS. It was to consist of the nine Ngok Dinka chiefdoms that were transferred to Kordufan in 1905. A special Abyei Boundaries Commission (ABC) was to define this area, and a local executive council was to be appointed by the Presidency before the 2009 local elections (Articles 2.4 and 5.1).

However, by 2008 there had been no progress on the issue of representation in the temporary administration because boundaries had not been defined and so it was not established who lived there. According to the Abyei Protocol, representatives of the temporary administration were to be members of the Ngok Dinka community and other Sudanese residing in the region. The Northern government considered the Messiriya people to be resident in the area, but the SPLM/A disagreed. Agreement on the boundaries had to precede agreement on who were the residents. The Abyei Boundaries Commission (ABC) consisted of five representatives from the NCP and SPLM/A and five international experts (Article 1.3). If the parties were unable to agree on boundaries, as was the case, the experts were to decide after reviewing evidence collected by the Abyei Boundaries Commission (Article 5.3). In 2008 the boundary issue was still unresolved.

The Protocol on Abyei is very strong in its protection of the rights of the Abyei people and in its provision of financial support for rehabilitation. It also provides for a referendum, to be held simultaneously with that of the South Sudan in 2011, on whether the area should retain its special administrative status in the North or be part of Bahr el Ghazal region in the South (Article 1.3). If the South votes for independence in 2011 and Abyei votes to join the region of Bahr el-Ghazal, then it will be part of the autonomous Southern government. It also guarantees rights of access and grazing of any group with traditional access to the area, in particular the Messiriya Arabs (Article 1.13). This means that the Messiriya are entitled to usufruct rights; that is to benefit from a property that belongs to another person, regardless of the decision of the boundary commission or any referendum.

#### **7.2.1.1 The Abyei Boundaries Commission**

Many analysts have described the heated discussions over the Abyei region as the most volatile aspect of the Sudan's 2005 CPA. At first sight the Protocol on Abyei appears to be relatively straightforward. The order of implementation was clear and it was to begin with the demarcation of borders (Article 5). This turned out to be the biggest challenge in the implementation of the Sudan's Comprehensive Peace Agreement. Both the GoS and the Messiriya Arabs claimed that the Ngok chiefdoms of 1905 were South of the Bahr El-Arab River and that the Messiriya had settled permanently in Abyei long before the Ngok arrived. The Ngok and the SPLM disagreed, saying that the Ngok chiefdoms were both North and South of the river. The ABC independent experts found much of the local testimony so similar either to the GoS or SPLM position that they thought locals were rehearsed

(Johnson 2006; U.S Peace Institute Report 2005) The experts looked for historical records, but found no maps or written descriptions of the Ngok Dinka chiefdoms' territory around 1905 (ICG Report 2005).

The ABC independent experts concluded, however, that there was no clearly demarcated boundary of the nine Ngok Dinka chiefdoms transferred from Bahr el-Ghazal to Kordufan in 1905. They also concluded that the GoS belief that the chiefdoms were entirely south of the Bahr El-Arab River was mistaken, and it was based largely on a report by a British official who thought incorrectly that he had reached the Bahr El-Arab when in fact he had only come to the Ragaba ez-Zarga/Ngok. The ABC experts also concluded that historical record and environmental factors refuted the Messiriya contention that their territory extended well to the South of the Bahr el-Arab. Although they had clear "secondary" (seasonal) grazing rights to specific locations North and South of Abyei Town, their allegation that they had "dominant" (permanent) rights to these places was not supported by documentary or material evidence.

When the Protocol on the Resolution of Abyei conflict was signed in 2004, both parties said they would accept the report of the ABC commission. But when the ABC presented its report in July 2005, it was immediately rejected by the Messiriya and by Sudanese President al-Bashir. Both claimed the ABC had exceeded its mandate and that the report should be considered as a recommendation and not final and binding (UNMIS Report 2006). The negotiations between the GoS and the SPLM/A stalled, and both sides started building up their military forces around the Abyei region. The GoS was anxious that the pro-Northern Messiriyans should have a say in the administration of Abyei so it could continue to have some control of the area. The oil in the area was especially important to the GoS.

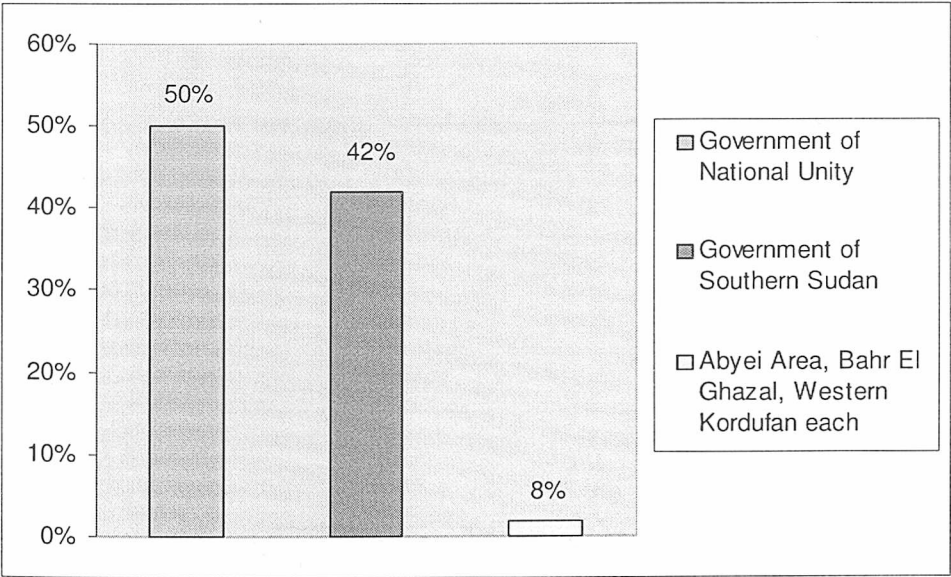
One of the biggest faults with the ABC committee was that it allowed representatives of the NCP and SPLM/A to represent the communities in Messiriya and Ngok Dinka area. The positions of the Ngok Dinka and the SPLM had been consistently in line, but the NCP had repeatedly exploited the Messiriya in ways that show its interests are tied to the oilfields (ICG Report 2007). Three years after the signing of the CPA, the Executive Council for Abyei, which was provided for in the Protocol on the Resolution of Abyei conflict, had still not been established. The lack of civil administration in Abyei hampered the progress of the CPA and left gaps in education, sanitation and health services and undermined security and

stability in the area.

**7.2.1.2 Financial Resources**

The Protocol on the Resolution of Abyei conflict provided for national, regional and international financial resources to help develop the area. It said Abyei would be entitled to a share of the national revenue in accordance with the Agreement on Wealth Sharing, as well as local revenue from income tax and other taxes and a share of the Abyei oil revenue. The Protocol also said Abyei was entitled to a share of the National Reconstruction Development funds (NRDF), an equitable share of the Southern Sudan Development and Reconstruction Fund (SSDRF) and foreign donations and grants (Article 3.2.3 and 3.2.4). The money was to be used to boost the economy and development in the region. In practice, however, four years after the signing of the Protocol, the financial provisions were still not being implemented, partly because of the lack of agreement on the border demarcation and partly because they ran contrary to the economic interests of the Governments of Sudan and South Sudan.

**7.2.1.3 Allocation of the Oil revenue in Abyei Area**



Sources: Protocol of the Resolution on Abyei Conflict

The table above shows that the Protocol on the Resolution of Abyei conflict made special provisions for the allocation of the Abyei oil revenue during the interim period (Article 3.1). The Ngok Dinka and Messiriya people were each to receive 2% of the oil revenue as were the state of Western Kordufan and the region of Bahr el Ghazal. The remaining oil revenue

was to be shared between the national governments: 50% to the Government of National Unity and 42% to the Government of the Southern Sudan (Article 1.2.3).

In practice three years after the signing of the Protocol these allocations were not being made in full. The management of the oil sector was still controlled by the National Congress Party (NCP) and corruption was widespread, though the layers of NCP-affiliated companies and security agencies, which thrived on state resources, make it appear relatively subtle (ICG October 2007). As explained in Chapter VI, the National Petroleum Commission (NPC) was created under the terms of the CPA to supervise the management of the oil sector and the distribution of wealth. The NPC, jointly run by the NCP-SPLM, finally got off the ground in 2006 after more than a year of procedural roadblocks. However in 2008 it was still not in control of the oil sector or ensuring the implementation of the agreed revenue allocations.

### 7.3 Production history, forecasts of the Abyei oilfields

Year	Bamboo Complex	Heglig	Diffra	Toma South at 10%	Total BPD
1999	0	38200	0	3250	43449
2000	0	36200	0	4450	42650
2001	13000	58200	0	4700	77901
2002	19700	54400	0	4650	80752
2003	18300	44200	0	4800	69303
2004	16300	35200	25100	4270	82874
2005	14600	23200	30000	3250	73055
2006	12800	24500	25000	1990	66296
2007	11300	19900	13800	1480	48487
2008	10100	17200	7100	1180	37588
2009	9200	15100	4000	970	31279

Source: ICG Brief Report No. 47, at [www.crisisgroup.org](http://www.crisisgroup.org), 12 October 2007

The above table indicates that from 1999 through to 2006 Abyei was believed to have produced 196 million barrels. The sum of reserves of all the known Abyei fields prior to production was about 395 million barrels (Crisis Group interview, November 2006). Heglig, the largest field in Abyei, had about 200 million barrels of recoverable reserves before

production began. Toma South had approximately 165 million barrels. The Sudan's oil production took off in 1999. By 2000 it was producing about 181,000 barrels a day. By 2003, national production was about 262,000 barrels a day, of which 69,000 barrels a day, more than a quarter came from Abyei (ICG 2005). After 2004 production at the Abyei fields began to decline and new fields opened up elsewhere in the country. The 12 October 2007 ICG report said that by the last quarter of 2006, oil production from the fields in the Melut Basin, as well as Blocks 5A and 6 (see Appendix IV), represented about half the country's production.

### 7.3.1 Estimates of Abyei revenues from 2005 to 2009

Year	Price per barrel (\$)	Production	Net revenues (\$ million)
2005	38.96	28.66	599
2006	52.03	24.20	670.85
2007	52.03	17.70	529.39
2008	55.71	13.76	440.6
2009	59.24	11.42	388.87

Source: ICG Brief Report No. 47 at, [www.crisisgroup.org](http://www.crisisgroup.org) 12October 2007

The above tables show the oil production history of the Abyei area and its revenue forecasts. The tables show the decline in Abyei oil production, with estimates dropping sharply after 2006. From over a quarter of the nation's oil production in 2003, it was forecast to produce less than 8 per cent in 2007. It would seem that more than half the recoverable reserves have been extracted. The relative importance of Abyei to Sudan's oil production is therefore on the decline. Taken with other technical indications Abyei had probably about 200 million barrels of recoverable reserves left in 2007 (ICG Report 2007).

### 7.3.2 The effect of Abyei oil on the implementation of the Abyei Protocol

By 2011 Abyei's remaining oil reserves are likely to be very small compared to other Sudanese reserves and this may make it less of a bone of contention between Khartoum and the Government of the South Sudan. Abyei will, however, remain important for the transfer of oil around the country as major pipelines pass through the area. Oil transit fees could become a greater source of Abyei revenue than its own oil production. However, Abyei can only collect transit fees if it remains linked to the North Sudan as the oil is in transit from the South. This might be an incentive for the Abyei people to vote in 2011 to stay with the North (ICG Report 2007). However, there is no guarantee that the GoS would allow Abyei to keep the transit fees for themselves. The Protocol on Abyei does not define what



continuing “special administrative status” as part of the North means after the interim period. Therefore, important negotiations need to be held before 2011 that could affect the outcome of a referendum.

Even though Abyei's oil production is on the decline, it can be seen from the above tables that its oil has produced a significant amount of revenue. This may be one of the reasons why the GoS rejected the Abyei Boundaries Commission (ABC) report. The report put several important oilfields in the Abyei area which would have meant that the GoS would have had to share half the revenue instead of keeping it entirely in the national budget. One UN official said he thought the only way to resolve the Abyei boundaries deadlock would be “for the SPLM to show some flexibility in order to lessen the financial blow to Khartoum” (Interview 17 December 2007). However, as the value of Abyei's oil production declines, there is greater hope that the boundary issue may be resolved.

#### **7.4 The Resolution of Conflict in Southern Kordufan/Nuba Mts Blue Nile**

Unlike the people of Southern Sudan and Abyei, the people of Southern Kordufan/Nuba Mountains and Blue Nile were not fighting for an independent state. They wanted to be part of a new Sudan based on equality, democracy, respect of human rights and fundamental freedoms. Consequently the Protocol on the Resolution of Conflict in Southern Kordufan/Nuba Mountains and Blue Nile States does not include a referendum. Instead the Protocol guarantees autonomy in a number of areas under the administration of the GoS. The Protocol provides the basis for a political, administrative, economic and social solution of the conflict in these two states. It includes provisions on human rights and fundamental freedoms, guarantees for the protection of cultural heritage and local languages and the development of human resources and infrastructure (Articles 1.1, 1.2 and 1.3). The Protocol provides some degree of power sharing, wealth sharing and reform of security. However, the implementation of the Protocol's provisions has been slow and political integration weak.

##### **7.4.1 The Structure of the Government during the Interim Period**

The Protocol on Southern Kordufan/Nuba Mountains and Blue Nile reaffirmed citizenship as the basis for equal rights and duties for all Sudanese citizens, regardless of their ethnicity or religion, and the recognition of cultural and social diversity. The Protocol also said the structure of the government in Southern Kordufan and Blue Nile should consist of “a state



Executive including a Governor, a State Council of Ministers and local government” (Article 4.1). The Governorship was to be "rotational" and "no one party was to hold the office of governor in both states at the same time” (Article 11.1.2).

The Protocol said there should be proportional representation of the people of Southern Kordufan/Nuba Mountains and Blue Nile in national institutions (Article 11.2). However, the Protocol also said that “pending general elections, the two areas/states should remain firmly under the control of Khartoum’s jurisdiction and be dominated by the National Congress Party”, the proportion of seats in local government was to be 55% to the NCP and 45% to SPLM (Article 11.1.1). Knife and Tekle-Mikael (1997) said that a system which allows the winner to take all does not ensure the rights of the minorities. In winner-takes-all elections, the losers have incentives to take up arms and return to violence in order to pursue their political objectives. In the case of the Southern Kordufan/Nuba Mountains and Blue Nile, NCP domination may not ensure the rights of the minorities and may lead to further discontent.

#### **7.4.2 Allocation of positions in the Executive and Legislature**

The Protocol on the Southern Kordufan/Nuba Mountains and Blue Nile specifies the allocation of seats in the state legislatures until elections can be held in 2009: 55% to the NCP and 45% to the SPLM in the executive and legislatures of Southern Kordufan and Blue Nile states respectively (Article 11.1.1). The Protocol does not allocate seats to any other political groups during the interim period or beyond it. The lack of broad representation could well lead to future conflict. As shown in Chapter II de-centralisation and public involvement in decision making can reduce grievances. In Eritrea there was a public debate on the new Constitution. Religious, ethnic and regional constituencies were invited for public consultation to avoid a top-down approach (Abbink 1997). In South Africa national conferences were held to discuss the transition to multiparty democracy. Griffith (1998) maintains that democratic development has to be based on social consensus regarding the system of rules that govern the expression of political differences and competition.

In principle, the CPA and the Interim National Constitution have helped to address regional inequalities in Sudan by devolving power and bringing decision-making closer to the people. In practice although the Protocol on the Southern Kordufan/Nuba Mountains and Blue Nile recognises the autonomy of the area, many grievances have to be dealt with by national laws, bodies and institutions rather than at a regional level. For example some

matters concerning land reform, legal and educational reform are all dealt with at a national level (CPA Chapter V). The autonomy accorded to the area by the Protocol is therefore rather limited.

The Protocol on Southern Kordufan/Nuba Mountains and Blue Nile is not final until endorsed by the two state legislatures of South Kordufan and Blue Nile States after what's termed "popular consultation". The state assemblies need to ratify the Protocol by 2011 if they want to maintain the current autonomous system established by the CPA. The popular consultation is to be indirect through the elected representatives to the state assembly. If the state assembly endorses the Protocol, it becomes the final settlement. If the state assemblies choose to amend the provisions, they have to negotiate with the Government of National Unity.

The Nuba mountains people were not happy about their area coming under the administration of the North Sudan and their representatives might choose not to endorse the Protocol. Four years after the signing of the Protocol, the status of the people of the Southern Kordufan/Nuba Mountains and Blue Nile therefore remains uncertain. Until the Protocol is ratified they will not know whether their future is to be as Northerners under Khartoum or as Southerners looking to Juba. There has been great competition between the NCP and SPLM to gain the political support of the Nuba Mountains people. However, neither party has put much effort into addressing the issues affecting them or initiated any sustainable development in the area. This has created frustration and resentment among the whole community.

#### **7.4.3 The State share in the national wealth**

The transition from war to peace is as challenging as the transition from colony to a nation. It is essential to address the factors which led to the onset of the conflict, as well as to organise demobilisation, the reconstruction of infrastructure, security and economic growth. Cuny and Victor (1995) say economic policies can generate growth and development and thereby prevent or mitigate conflict by reducing political instability caused by economic deterioration. There are many economic and political causes of conflict such as low incomes, high unemployment, competition for resources, and human rights abuses (Pastor and Boyce 2000). Before appropriate reconstruction policies can be designed, it is essential to understand the roots of the conflict.

As pointed out in Chapter III, the ethnic, religious and economic diversity of the Sudan makes political and economic integration difficult. Two causes of conflict in the Sudan were the struggle for natural resources and land and the unbalanced distribution of wealth. The fertile Southern Kordufan/Nuba Mountains was one of the first to have mechanised farming imposed on it. The 1970 Unrestricted Lands Act enabled the government to allot lands to private investors and to mechanise the agricultural sector (Johnson 2003: 131). The displacement this caused together with the lack of economic opportunities at home forced many Nuba men and women to become migrant labourers in Khartoum, where they were frequently exploited and discriminated against. The Nuba people were also not awarded their fair share of jobs in local government (Africa Rights 1995). As outlined in Chapter VI, previous Sudanese governments had designed their economic policy to make peripheral regions dependent on the centre. This created a master-servant relationship which reinforced feelings of neglect, marginalisation and social repression

As examined in Chapter VI, a Draft Framework for the resolution of outstanding issues arising out of the elaborations of the Machakos Protocol was presented in July 2003 to the negotiating parties in Nakuru, Kenya. Part Two of the document was devoted to wealth sharing. It laid down guiding principles for the fair distribution of wealth as follows: "(1).the wealth of the Sudan must be shared equitably so as to permit each level of government to discharge its legal and constitutional responsibilities and duties. (2). the sharing and allocation of wealth emanating from the resources of the Sudan should ensure the quality of life, dignity and living conditions of all citizens without discrimination of gender, race, religion, politics, ethnicity or region. (3). the Southern Sudan and those areas in need of construction/reconstruction should be brought up to the same standard of social/economic and public services as the Northern states" (Article 1-5).

However these principles are vague about what indicators to use to ensure the equitable sharing of income and wealth between the various regions of the Sudan. Principle (1) emphasises the importance of enabling the various levels of government to discharge their legal and constitutional responsibilities. Such requirements are usually reflected in government budgets. Principle (2) emphasises the importance of promoting non-discriminatory development as regards quality of life and living conditions, but neither quality of life nor living conditions is defined. Principle (3) is to minimise the gap in socio-economic standards between North and South, but again socio-economic standard is not

defined.

This study suggests that the ultimate application of the wealth allocation formula would require a high quality survey of household budgets. This is vital in view of principles (2) and (3) which refer to the equitable sharing of wealth and the comparison of living standards between the North and the South. The relevant information on living standards did not exist when the Nakuru document was signed in 2003 and still did not exist five years later. Standards for high quality data for use in income, and expenditure, distribution and poverty studies have been explored by, among others, Dininger and Squire (1996: 567-571). The requirements are (i) that the data be based on actual observation of individual units drawn from household surveys; (ii) that the data even if drawn from household surveys, be based on a representative sample covering all of the population; and (iii) that income data should be based on a comprehensive coverage of different income sources as well as of population groups. Given the diverse ethnic, cultural and political nature of the Sudan, it would not be easy to assemble such data.

Both the NCP and the SPLM acknowledged economic inequities existed by signing the 2003 Draft Framework for the resolution of outstanding issues and the 2004 Agreement on Wealth Sharing. As noted in Chapter III, the CPA established two reconstruction and development funds: the South Sudan Reconstruction and Development Fund (SSRDF) and the National Reconstruction and Development Fund (NRDF), as well as two Multi-Donor Trust Funds (MDTFs). Article 15 of the Agreement on Wealth Sharing specified that the national funds would be principally financed by the respective governments, while the MDTFs would come from foreign aid. The World Bank was to administer the MDTFs to ensure the money was used by UN agencies and not transferred to national funds. The MDTFs were given a three-tier structure: (a) a governing board to decide on the allocation of funds would comprise of representatives of the World Bank, the UN, donor countries and representatives of the national and Southern governments; (b) a technical secretariat directed by the World Bank and located in Khartoum and Rumbek would receive and review proposals and make recommendations to the governing board on allocation of resources; and (c) a donor committee would review the performance of the MDTFs and provide guidance to the governing board (CPA Chapter III).

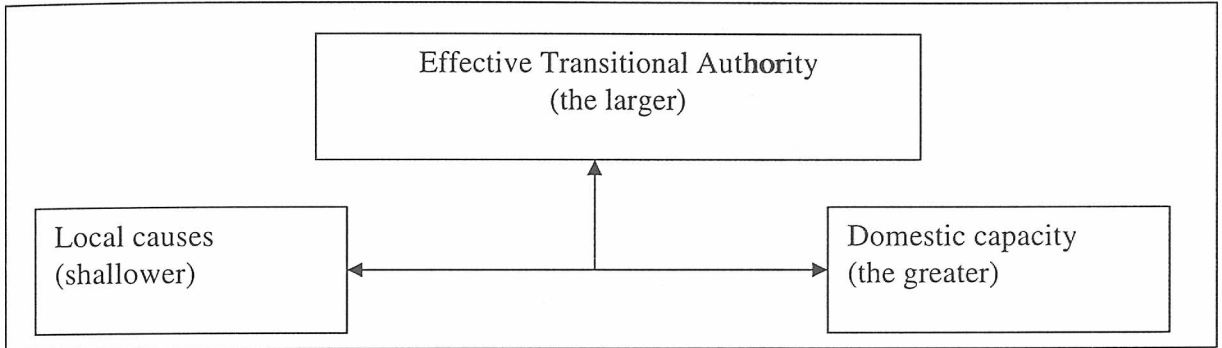
The disadvantage of two national trust funds is that money cannot be balanced between the

two. On the other hand, a separate MDTF for South Sudan allows the GOSS to raise funds directly from international donors without relying on Khartoum's goodwill. This could help the South to improve its level of development during the interim period.

The National Reconstruction and Development fund (NRDF) was originally set up for use in the "Three Areas" (Abyei, Southern Kordufan and Blue Nile states), but in practice it is gradually being expanded to include all Northern Sudan regions. On Khartoum's insistence, the NRDF and the National MDTF are dedicated not only to "war affected areas" such as the Nuba Mountains and Southern Blue Nile, but also to "the least developed areas" outside the South Sudan (Article 15.4). The Khartoum government is trying to move away from focusing the fund on a limited area towards creating the perception that the North as a whole needs a fund. This perception was reinforced after the outbreak of the Darfur conflict in 2003 which highlighted the region's marginalisation and future reconstruction needs. While Darfur is likely to be eligible for NRDF support because it is a war-affected area, the amount of support remains to be decided (ICG Report 2005). The Agreement on Wealth Sharing allocated 75% of the NRDF national fund to war-affected areas, in particular the Southern Kordufan and Blue Nile states and the remaining 25% to least-developed areas (Article 8.6). The Agreement made no provision for the Darfur region as the conflict in the area broke out after the Machakos Protocol was signed in 2002 and Darfur was never included in the CPA negotiations.

The Agreement on Wealth Sharing is the national basis for the distribution of wealth within the Sudan. Foreign donor plans were based on the outcome of a Joint Assessment Mission set up by the IGAD Partners Forum in December 2003 to establish the Sudan's recovery and development needs for the six-year interim period. The mission's report was presented at a donors' pledging conference in Oslo, Norway, on 11-12 April 2005, and formed the basis of the donors' development plans (ICG Report 2006). However, despite all these plans for reconstruction and foreign aid, the local authorities in Southern Kordufan and Blue Nile have seen little sign of it. They lack funds and need considerable transfers of resources from the national government and foreign donations, given their very narrow tax bases, especially in the early years of peace. Interviews with officials in these states show that their capacity to generate their own revenues will grow as rural development gains momentum. Matus (2006) said both states have limited finance for government development projects or reconstruction and there was little transparency of revenue, especially oil revenue.

#### 7.4.4 Peace Building Triangle



Source: Doyle and Sambanis 2000

The table above shows three foundations for peace: dealing with local root causes, creating local capacity for change and building effective transitional authority. Doyle says in Stedman, Rothchild and Cousens (2002) that just as civil war is about failure of state authority, peace is about its successful reconstruction. The findings of this study show that the transitional governments in Southern Kordufan/Nuba Mountains and Blue Nile were not functioning and were ineffective in dealing with the local root causes of conflict. Rahhal (2007) said that the implementation of the Protocol on the resolution of conflict in Southern Kordufan/Nuba Mountains and Blue Nile was encountering serious problems. By 2008 the Protocol had failed to address the grievances, aspirations and demands of the people of these two areas. Auvinen and Nafziger (1999) say econometric analysis of the causes of war invariably finds that the most consistent predictor of conflict in any country is having a previous conflict. If the causes of conflict are not addressed, further violence is likely. This is certainly true in the Sudan.

#### 7.4.5 Land Commissions for Southern Kordufan and Blue Nile

As investigated in Chapters III and VI, questions over the control and distribution of resources in the Sudan have caused conflict. The politicisation of land ownership dates back to the Sudan's division by colonial administrators in 1923 into tribal homelands (Ayoub 2006). The 1970 Unregistered Lands Act and enforced mechanisation led to the displacement of the local population, the loss of traditional property rights and the loss of access to water and grazing. De Waal (1995) said the issue of land ownership was one of



the most explosive questions in the Nuba Mountains, as merchant farmers expropriated smallholders' land under the aegis of the government's Mechanised Farming Corporation. De Waal said that for many farmers, the fight for land turned into a guerrilla war against the government.

The Protocol on the Southern Kordufan and Blue Nile specified the establishment of Land Commissions made up of people from each state. The two states' land commissions would have all the powers of the National Land Commission but at state level (Article 9.3). The state Land Commission would review existing land leases and contracts, examine the criteria for current land allocations and make recommendations to the state authority on the restitution of land rights or compensation and liaise with the National Land Commission in cases of land conflict which could not be resolved by agreement (Article 9.6, 9.7 and 9.8). The Nuba Mountains General Union, established in 1965, argued for the "implementation of a land reform policy for the benefit of the indigenous farmers of the Nuba Mountains and the eradication of the feudalistic land policies" (Ayoub 2006). As noted in Chapter III, the annexation of Nuba lands by the government and outside investors was one of the main reasons that led the Nuba people joined the Sudan People's Liberation Movement/Army. Therefore, a comprehensive and far-reaching settlement of the land issue remains essential for lasting peace.

As Chapter VI showed, the Agreement on Wealth Sharing addressed the question of land ownership only superficially. By 2008 the matter was becoming increasingly critical as hundreds of thousands of refugees and internally displaced persons returned to their homes in the aftermath of the peace agreement. The Agreement on Wealth Sharing established a National Land Commission which was to be "representative and independent" and empowered to arbitrate between conflicting land claims. The Commission was also to provide advice on land reform policies and the incorporation of customary law and practice into land legislation (Article 2.6.10). Given the politicisation of these issues, however, it remained to be seen which principles the commission would apply in its rulings, how it would arbitrate between the modern and traditional farming sectors, and whether it would resist political pressure.



### **7.5 The Protocols on the Three Areas and national relevance**

This study finds the future of the Southern Kordufan/Nuba Mountains and Blue Nile is linked to the question of the identity and destiny of the Sudanese nation. The debate in the South increasingly concerns whether it should be part of a united Sudan or separate. The debate in Southern Kordufan and Blue Nile concerns whether the two states should have been aligned with the North. As outlined in Chapter IV, the CPA refers to "one country with two systems." In reality the Sudan is more like one country with seven systems. There are different arrangements for the Southern States, Abyei, the states of Southern Kordufan and Blue Nile, Khartoum, the remaining Northern States and most recently for the Eastern Sudan.

In principle, the Southern Kordufan/Nuba Mountains and Blue Nile could be models for solving Sudan's problems because the grievances that the Protocol attempts to resolve are shared by marginalised groups throughout the Sudan. In practice, how the Protocol deals with the root causes of conflict in these areas, and more importantly how the parties implement it, is crucial to determining whether it will be a successful model for the rest of the Sudan.

The key elements for achieving national peace are decentralisation and devolution of authority, democratisation, land reform, freedom of religion and culture, equitable distribution of national wealth, financial reform, security reform and development. In Ghai (2000) it was argued that autonomy can increase the possibilities of national unity because it neutralise state power and enables central authorities to balance regional and national interests. In the case of Southern Kordufan/Nuba Mountains and Blue Nile, the arrangements for autonomy share power and may balance regional interests. Ghai (1997) said that the guarantees for autonomy and means of their enforcement emphasise the rule of law and the role of independent institutions. The operation of the arrangements, particularly those parts governing the relationship between the centre and the regions, is dependent on discussions, mutual respect and compromise, which frequently serve to strengthen these qualities.

Abyei's relevance to the Sudan's future is slightly different. It could be a bridge between the North and South, linking the people of the Sudan and testing the willingness of the NCP and

SPLM/A to implement the CPA, specifically to hold free and fair referenda. Every one of the three areas is of national economic importance. Straddling the border, they are a North-South trade link. They have important natural resources, including oil, significant agricultural land, water including a significant dam on the Blue Nile, gold, gum arabic and other wood products, as well as pasture allowing for the migration of nomads southward (Matus 2006). The nationalisation of these resources, specifically the removal of traditional owners and commercial development by a minority of wealthy investors who are mostly from outside the three areas, is considered a root cause of the war and remains the most likely trigger for renewed conflict. The Southern Kordufan/Nuba Mountains and Blue Nile are also important for national stability and security. The CPA's security provisions provide for joint integrated units of GoS and SPLA forces in the areas. The local communities are very militarised, with many militias and armed groups moving through them. Inter-tribal clashes could escalate and draw in the two armies.

As shown in Chapter III, in the past the Northern Sudanese government had imposed an Islamic system on the country and opposed regional autonomy. However, regional autonomy can increase the political integration of ethnic groups with the rest of the country by accentuating intra-group differences and leading to the fragmentation of the monolithic ethnic system. Local problems which might otherwise have created a national crisis are dealt with by the locality itself (Ghai 1997). On the other hand, some states have fragmented due to failure to handle autonomy effectively (Pakistan with the loss of Bangladesh and Indonesia with the loss of East Timor). The future of some states like Russia and India depends on how disputes about autonomy are resolved (Ghai 1997).

The "Three Areas" Protocols and their implementation are key tests of the willingness of the NCP and SPLM to address the causes of conflict and could be models for solving problems across the Sudan. With implementation so far behind schedule, however by 2008 there was a risk that the protocols would in the long run prove unsustainable and undermine national peace. The SPLM supporters in the Southern Kordufan and Blue Nile are divided with some wanting autonomy within the Northern administration and others wanting to be part of an independent South Sudan (Church Review 2007). If the Protocol on the Southern Kordufan/Nuba Mountains and Blue Nile is not ratified, the status of the area will be uncertain. It would no longer be part of the Northern administration and some members might want to join the South. If the people of the South then chose to vote for secession in

the 2011 referendum, then the area could be torn apart.

Abyei, with its natural resources and its central control on the oil pipeline infrastructure, has a vital role to play in the Sudan's economy. What happens in Abyei is likely to determine whether the Sudan consolidates peace or returns to war. Progress in the Abyei area could unlock a broader set of problems challenging CPA implementation. The absence of local administration and any implementation of the Protocol is leading to mounting tension. To protect the Sudan's fragile peace, this study recommends that the international community should urgently re-engage on the implementation of the Abyei Protocol, as part of a broader re-engagement on CPA issues. As the NCP's position is based on its interest in Abyei's oil, a breakthrough is unlikely until that question is dealt with in a transparent way (ICG Report 2007). The NCP is unlikely to accept the Abyei Boundaries Commission report as "final and binding" unless international pressure is brought to bear on it and a way is found to help the GoS cope with the revenue-sharing payments due to Abyei from its oil. The way in which the Abyei issue is handled in the run up to the 2011 Abyei referendum will effect whether Abyei votes to remain in the North or become part of an autonomous Southern Sudan.

Unlike Abyei, the Protocol on Southern Kordofan/Nuba Mountains and Blue Nile does not provide for a referendum on the area's future, but only the right to a "popular consultation". Implementation of the Protocol's provisions is moving very slowly in both states, and frustration is growing. The study argues that the international community must focus greater attention on the implementation of the agreements in these areas. This study has found that there is a fear that if the South separates, the Nuba Mountains and Blue Nile regions may undergo serious problems, as there are some SPLM/A in these areas who would like to go with the South. A democratic secular united Sudan will only be achieved if the nation embraces all its citizens without discrimination and marginalisation. This study suggests that adoption of a consociational democracy is the best option to avoid any further conflict in the North that may lead to the fragmentation of the Sudan.

### **Chapter VIII: What are the Guarantees for the Implementation of the CPA?**

The CPA is a complex agreement and difficult to implement. The ethnic, religious and geographic diversity of the Sudan complicates the situation. Post-conflict countries face immense challenges of reconciliation, reconstruction and security. Problems of security can arise when each party increases his own security and strives to reduce the security of the other. The mistrust and animosity that surrounded military encounters can continue into post-conflict relations (Snyder 1999:15). Implementation of the CPA's security provisions for the interim period are fairly complex. Each region has its own dynamic. However if the CPA could be implemented successfully and peace were to continue in the North and South, this could provide a framework for resolving the conflict that broke out in Darfur in 2003 and prevent conflict in other parts of the country. As pointed out in Chapter III, there has been no shortage of peace agreements in the Sudan in the past, but previous ones have lacked security guarantees and the will of the parties to sustain the peace effort.

An Agreement on Security Arrangements in the interim period was signed by the Sudan government (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A) on 25 September 2003 in Naivasha, Kenya. The questions asked in this chapter are: how far has the Agreement adequately addressed the security problem? Will it work? Will regional and international observers guarantee the implementation of the CPA? Does the UN Monitoring Mission in the Sudan (UNMIS) have any power to enforce the Agreement's implementation and how is it performing its role?

Unlike previous agreements, the Agreement on Security Arrangements provided two important guarantors for the implementation of the CPA. First, there is the provision for two separate Sudanese armies during the interim period, one in the North and one in the South. Second, there is provision for regional and international peacekeeping forces. The CPA's security and military provisions have been relatively well implemented, but like so many other parts of the CPA they have been implemented late. The regional and international peacekeeping forces lack power to enforce the implementation of the CPA.

### **8.1 Internal Guarantees for the implementation of the CPA**

As shown in Chapter II, the question of internal security has dominated most peace talks and is often difficult to resolve. A balance of power produces peace because then no one side can gain superiority over the other. The decision to go to war or remain at peace is strongly affected by the relative balance of power between adversaries (Steiner 2002). In El Salvador, the difficult issues of human rights and electoral and judicial reform were resolved by April 1991, but negotiations over security dragged on for a further eight months. During that time, the Farabundo Marti National Liberation Front (FMLN) refused to agree to a ceasefire without a “prior final agreement on military reform or sufficient guarantees for its safety” (Walter 2002).

In Angola, the supposedly make-or-break issue of multi-party rule was settled in the first two months of negotiations. The government and rebels spent eleven months working out the details: a ceasefire, the integration of both armies, and internal security during the transition. Hoddie and Hartzell (2003) examined sixteen peace agreements between 1989 and 1996 that have included provisions for the sharing of military power among former combatants. They found the complete implementation of this aspect of settlements significantly improved the prospects for lasting peace.

Generations of Northern Sudan military domination and aggression have had devastating psychological and physical consequences. Critics of the 1972 Addis Ababa Agreement have argued that lack of security arrangements was one of the causes of its collapse. The unilateral troop rotation and undermining of the 1972 Addis Ababa Agreement by the Numeiri government provided the spark for the 1983 civil war (Johnson 2003). To reverse this situation, produce stability, and increase Southern self-confidence, any peace deal must allow the SPLA to maintain operational control of the South, although encampment and demobilisation would have to be major components of the deal. It was not surprising that the SPLM/A and Southern people considered the most important issue after self-determination to be the internal security. The question was what to do about the two armies: the Sudan’s Armed Forces (SAF) and the Sudan People’s Liberation Army (SPLA).

The Agreement on Security Arrangements addressed the lack of security arrangements in previous peace agreements. It provides for the two armed forces (SAF and SPLA) to remain

separate during the interim period. Article (1B) of the Agreement on Security Arrangements says “both forces should be considered and treated equally as the Sudan’s national forces”. The Agreement on Security Arrangements provided for the redeployment of both armies (the SAF and SPLA). The GoS armed forces would leave the South within two and a half years and the SPLA would be withdraw its forces from the North within a year (Article 3).

The Agreement on Security Arrangements provided for the formation of Joint Integrated Units (JIUs) consisting of equal numbers from the Sudan Army Forces (SAF) and the Sudan People’s Liberation Army (SPLA) during the interim period under co-chiefs of staff (Article 4). The Joint Integrated Units would form the nucleus of the post-referendum army of the Sudan if the referendum on the self-determination in the South confirmed the unity of the country (Article 20.1). If the referendum found for secession, then the JIUs would be dissolved and the component parts re-integrated into their respective forces pending separate armed forces for the emerging states (Article 20.2). Prior to the 2011 referendum the integrated units were intended to be a symbol of the national unity and sovereignty of the Sudan.

#### **8.1.1 Redeployment of troops and Joint Integrated Units**

The line dividing the redeployed SAF and SPLA troops is the North/South Border of 1/1/1956 as stated in Article 3 (b) in the Agreement on Security Arrangements. By 2008 the SAF had on the whole kept to the Agreement but the SPLA was not respecting it in full. In 2006 UN observers estimated 13,343 SAF troops stationed in the South had been moved to the North prior to the signing of the CPA, so nearly a third of SAF troops withdrew the first year of the interim period (UNMIS Report 30 January 2006). Redeployment continued over the next 18 months and the only SAF troops remaining were those in the Joint Integrated Units (JIUs).

As for the SPLA, the UN estimated that only 1,500 (17%) of 8,736 SPLA troops were removed from the Eastern Sudan during the first year. A senior SPLA commander interviewed on 26 March 2006 said that other SPLA troops in Southern Blue Nile and Southern Kordufan would not be re-deployed until July 2006 after the establishment of the JIUs. But the SPLA was slow to join the integrated units. By January 2006, the SAF had nominated some 18,975 troops for the JIUs, (97%) of the total stipulated under the Agreement, while the SPLA had nominated only 8,695 (46%) of the stipulated total



(UNMIS Report 2006). The size and deployment of the JIUs throughout the interim period was laid down in the Agreement on Security Arrangements as follows: Southern Sudan 24,000; Nuba Mountains 6,000; Blue Nile 6,000 and in Khartoum 3000 integrated military units (Article 4.1).

In practice, however, the formation of JIUs has been significantly behind schedule. By 2006 one JIU had actually been set up in Khartoum made up of 1,500 SAF and 1,500 SPLA forces. In 2006, UNMIS reported that 77% of the stipulated number of troops had been assembled for inclusion in JIU, but the SAF and SPLA JIU forces were functioning separately and under different chains of command. This study found that the delays in troop redeployment and setting up of JIUs came less from lack of commitment on the side of the SPLA than from failures of logistics and organisation on both sides. The UNMIS Report of January 2006 blames significant delays in the formation of a Joint Defence Board (JDB) which was not established until a presidential decree of 29 December 2005. The UNMIS report did note delays in moving the 7,236 SPLA troops from Eastern Sudan in 2006 during a time when national and international attention had been focussed on the conflict in Darfur.

UN Secretary General Ban Ki-moon said on 20 August 2007 that the Joint Defence Board (JDB) and JIU High Command had made some progress in agreeing priorities for integration and development following a meeting of SAF and SPLA JIU Commanders in Juba from 21 to 23 May 2007. But he said the Joint Defence Board had yet to agree on a request for international assistance to support this process. In July 2007, the SPLA began to withdraw its forces from the Southern Kordofan and Blue Nile States, under verification by joint monitoring teams. A senior SPLA officer said that "some forces and heavy equipment could not be moved immediately owing to poor road and weather conditions" (Interview 12 September 2007). However, verification of the early stages of redeployment was hindered in some areas by non-cooperation of commanders of both parties (UNMIS Report 2006). The delay in SPLA redeployment and the joint operation of JIUs reflects continuing mutual distrust on the part of the SAF and SPLA which could be alleviated by a greater international presence.

## **8.2 Demobilisation, Disarmament and Re-Integration**

In principle, the GoS and the SPLM/A have recognised that the disarmament, demobilisation and re-integration (DDR) of ex-combatants are crucial for a secure and



peaceful Sudan and have committed themselves to this process (CPA Chapter VI).

Demobilisation involves either the disbanding of an armed unit or the reduction in the number of combatants in a unit or an interim stage before the assembly of a united armed force (Sisk 1996). Technical objectives of demobilisation and disarmament activities generally include improving the quality and efficiency of armed forces (Spears 2002). Chris (1996) says that demobilisation helps to reduce the costs of standing armed forces; fewer personnel need to be paid, and funds can be spent more efficiently on equipment and salaries. This encourages the modernisation of military forces. Disarmament forms an integral part of demobilisation when the aim is to reduce the number of combatants or to disband an armed unit. The redundant weapons must be handed over to the authorities, which are responsible for their safe storage, redistribution or destruction (Berdal 1996).

Under the Agreement on Security Arrangements re-integration is defined as the process by which ex-combatants acquire civilian status and gain access to civilian work and income. It is essentially a social and economic process with an open time frame, primarily taking place in local communities. Re-integration is part of the general development of a country and a national responsibility, often needing external assistance (Cilliers 1995). Different circumstances produce different motives and options for demobilisation. In Africa and in Central America, demobilisation took place at the end of civil wars (Berdal 1996). As outlined in Chapter II, sustainable peace was only possible in countries such as Cambodia, El Salvador, Nicaragua, Angola, Mozambique and South Africa, when groups that were formerly enemies agreed to share power. People from opposing sides had to be integrated into a common political system and the various military forces assigned new tasks. Consequently, demobilisation was a political imperative.

The Agreement on Security Arrangements provides for the creation of a "National DDR Co-ordination Council (NDDRCC) to be appointed by the Presidency and responsible for the guidance and evaluation of the two separate DDR committees" (Article 25.1.1). In Article 25.1.2, "the Northern Sudan DDR Commission and Southern DDR Commission" are charged with "designing and implementing programmes at the Northern and Southern sub-national levels". Even though the disarmament, demobilisation and re-integration of former combatants is seen as crucial to a secure and peaceful Sudan, the means of conducting DDR are not elaborated. DDR in the Sudan is unusually challenging for several

reasons. The geography and climate pose many problems of transport, logistics and communications. Also, the re-integration of thousands of combatants was scheduled to coincide with the return of hundreds of thousands of refugees and internally displaced persons. This caused enormous strains on communities, made even heavier in the South by limited prospects of re-integration.

Article 11.12 of the Agreement on Security Arrangements says “the Southern Sudan DDR Commission will continue the re-integration process of the demobilised and disarmed members of other armed groups (OAG) into the civil service and social institutions in the Southern Sudan with follow up by the OAG Collaborative Committee”. In practice, however, the Agreement on Security Arrangements did not allow for the problems of re-integration. Research on power sharing shows re-integration has considerable economic and social effects. Spenser (1997) said a major problem is the ex-combatant’s lack of information about the real economic situation he will face in civilian life. Pearce and Turner (1990) said “an information, counselling and referral service” needs to be established to assist ex-combatants to re-integrate. The 2001 World Bank study said local communities need to be consulted on re-integration and need to work with those being re-integrated if resettlement is to succeed. Ginifer (2004) said the challenges of gaining acceptance, finding employment and accepting that the war has come to an end are often overwhelming for many soldiers who grew up knowing nothing other than war. In such cases, offering vocational training that provides ex-combatants with marketable skills serves as part of the solution to DDR problems.

The Agreement on Security Arrangements provides for both the NCP and SPLA to downsize by re-integrating some troops into civilian life through DDR (Article 19), but this was delayed. By 2007 the parties had still not started downsizing and had agreed, instead, to start negotiating the proportional downsizing only after the completion of SAF redeployment to the North (ICG Report 2007). In the meantime, DDR focussed on the lesser forces, including child soldiers, the elderly and disabled who were to be demobilised within six months, and on the “Other Armed Groups”, which were to “disband within a year”. (Article 7). Nevertheless, a badly-handled disarmament and demobilisation in the South Sudan has caused discontent that could lead to unrest. Because of the lack of effective demobilisation rogue militia commanders supported by the NCP have disrupted the implementation of the CPA. The civilian population in the Southern Sudan also

remained heavily armed. Spear (1996) said the provision of “security to fighters and civilians alike during the process of disarmament and demobilisation” was absolutely crucial. In other words, without a sense of security, fighters and non-combatants would not want to part with their weapons. Disarmament and demobilisation can be achieved only when security has been achieved. Outside monitoring is crucial to prevent a backslide into violence.

Security in the Sudan is crucial for peace. The Sudan needs large-scale demobilisation on each side in order to allay the other side's fears and minimise the chances of renewed fighting. Walter (1999) said after the civil war in Mozambique demobilised ex-combatants were transported with their families to the home areas of their choice. They were also provided with two sets of civilian clothes, seed and agricultural tools. Despite this most were unable to find work and drifted to the main population centres. There was little employment for unskilled ex-soldiers there either and many eventually resorted to armed robbery (Marely 1997-98: 142, Clark 1996: 27). Darby and Ginty (2003) said lack of effective and timely disarmament has been responsible for continued violent conflict in many post-conflict countries. Demobilisation goes together with the re-integration of former combatants into civilian society, but the release of combatants without appropriate training for community life can add to social instability (Jeong 1999).

By 2008 the NCP and SPLM/A had made some progress in implementing security arrangements, though much remained to be done to ensure lasting peace. A 2006 UNMIS Report said the military confrontation between SAF and the SPLA in Malakal, Upper Nile State, was a reminder that the “hard-won Agreement” was not yet stable or self-sustaining and needed constant encouragement. Mistrust between the NCP and SPLM/A remained a serious obstacle. Potential troublemakers still exist on both sides (NCP and SPLM/A) and the war in Darfur has diverted international attention and support from implementation of the Comprehensive Peace Agreement. Jeong (1999) said that a lack of genuine commitment can make the transition to peaceful relations very difficult. In the Sudan, lack of trust may encourage the South to opt for independence in July 2011.

### **8.2.1 The Southern Sudan Defence Forces (SSDF)**

The Southern Sudan Defence Forces (SSDF), which was a militia allied to the Khartoum government during the civil war, became a great threat to the peace accords. The Agreement

on Security Arrangements laid out a clear timetable for the demobilisation of all forces within the Sudan and not just the SAF and SPLM/A. Article 11.7 of the Agreement stated that after the signing of the CPA Other Armed Groups (OAG) should be incorporated either into the armed forces of the SAF or SPLA, or into the civil service. As an ally of Khartoum, the SSDF had expected many of its forces to be included in the SAF part of the JIUs in the South. This did not happen to the extent the SSDF expected, causing considerable disappointment and anger (Interview 10 April 2007). This was largely due to a restriction on numbers in the JIUs, but also because of arguments over rank and money. Under the CPA, Khartoum's entire armed presence in the South was restricted to 12,000 troops in the JIUs. If Khartoum chose not to use SSDF personnel in the JIUs, then it should move them North. The April 2005 ICG report noted that because SSDF members originally came from the South, they would not want to go North and so might rebel, desert and go home, or defect to the SPLA.

In principle, the signatories to the Agreement on Security Arrangements agreed that the re-integration programme in the South should be worked out by the South Sudan's DDR Commission with technical assistance from international experts (Article 7b). The "collaborative approach" reflected concerns that some SSDF members might be unwilling to abide by the provisions of an Agreement on which they had scarcely been consulted and which made a radical change to their status. An earlier ICG report in 2004 was concerned that SSDF units were likely to be used as spoiling force by Khartoum, especially if the SPLM/A blocked reconciliation efforts. The SSDF, therefore, posed one great threat to peace. A UN peacekeeping officer said "The fighting in late 2003 and early 2004 indicated that certain military commanders (of the SSDF) were not keen to join either of the two official armies" (Interview 2 April 2007). The SSDF commanders were mostly Nuer people, who made up the majority of the oil-rich Unity state. The commanders were reluctant to give up control of their territory and risk losing their source of income. Some SSDF members were also unhappy with the provisions of the Agreement on Wealth Sharing which allocated only 2% of oil revenues to oil-producing states.

The SSDF was also a rather fragmented force. One SPLM official said "the SSDF is not one united force but composed of separate organisations and military forces directed individually by the Sudanese Government's Military Intelligence" (Interview 3 April 2007). So, in the absence of any central command, the disarming and disbandment of each SSDF

unit had to be done on a case-by-case basis. For example, in January 2006, General Paulino Matip Nhial, SSDF Chief of Staff, accepted a position as second in command of the SPLA after a meeting in Juba between his faction and the SPLA. The group led by Major General Gabriel Tangyangi, however, chose to join the SAF. It was not clear what numbers the various groups represented. An UNMIS Report of December 2005 said it was generally accepted that General Paulino Matip's contingent was the largest in the SSDF. One UN observer said, in reference to the appointment of General Paulino Matip as second in command of the SPLA: "This move makes the redeployment of troops easier and solidifies the SPLA strength in the South" (Interview 15 March 2007). However, an UNMIS report of August 2006 said that developments in Western and Central Upper Nile indicated that the GoS was using its influence over those SSDF forces still allied to it to undermine, rather than foster, the peace process .

Article 7 (a) of the Agreement on Security Arrangements said "the parties agree to expedite the process of incorporation and re-integration of armed groups allied to either party, into their armed forces, other organised forces, the civil service and civil social institutions." This study finds that the SSDF units which have not been included in the South Sudan's political and military administration remain potential spoilers of the peace process both independently and on behalf of other groups. As of 2008 the incorporation of several SSDF groups into the SPLA might be a valid option, given the lack of opportunity for civilian re-integration in the South Sudan, but this would increase the size of the SPLA and its costs. Integration of the SSDF into the SAF poses several problems. If the South votes for independence in 2011 SAF JIU units would be redeployed to the North, leaving SSDF members, who were not from the North originally, stranded there with the SAF.

Article 11.12 of the Agreement on Security Arrangements allowed for the peaceful and voluntary integration of SSDF members into the SPLA or voluntary demobilisation. Forcible disarmament of any group that refuses to abide by the provisions of security arrangements implemented by the SAF, SPLA or even the UN mission, should be kept as an absolute last option. The Agreement on Security Arrangements stipulates there should be two armed forces, the SAF and SPLA. The SAF and SPLA therefore need to resolve issues with the SSDF and either integrate SSDF forces into their respective armies or demobilise them. The violence in Malakal in 2006 showed that armed groups needed to be integrated as a matter of priority and that Joint Integrated Units did not yet form the foundation of a

possible future national army or as guarantors of security and stability.

### 8.3 Conflict duration, intensity and other factors

What factors could prevent the outbreak of another civil war in the Sudan, seen by many analysts as highly likely? There have been several changes in the Sudan in the three years since the signing of the CPA in 2005. The Government of the South Sudan (GOSS) has been formed and is trying to deal with the legacy of many years of conflict. The SPLM/A has lost its former visionary leader, John Garang, who died in a plane crash on 30 July 2005. The North's National Congress Party faces new problems with conflicts in Darfur and the Eastern Sudan.

As stated in Chapter III, since 1955 more than two million people have died and more than four million been displaced by civil wars in the Sudan. The Southern Sudanese in particular suffered tremendous hardships. Khartoum's military campaigns targeted specific ethnic groups. The Northern forces bombed civilians and carried out arbitrary killings and arrests, torture, rape, and the abduction of women and children. The Khartoum government also sought to pit rival Southern groups against one another. The long war and the many deaths were significant factors in the combatants' decision to start negotiations. As shown in Chapter II, several scholars have argued that long and intense wars can increase the likelihood that the warring parties will commit to a lasting peace. Werner (1999) said that as civil wars become longer and opponents only reach a brutal stalemate, each side is increasingly likely to come to believe that they cannot win.

A high death toll can provoke warring parties to seek a negotiated settlement. Hartzell, Caroline, and Hoddie (2001) said that as death tolls rise negotiation becomes more likely. This does not mean, however, that elections or stability will follow in the short term. The reason is that there is a difference between costs measured in time and costs measured in human lives. Jeong (1999) said that long wars should increase the likelihood of a durable settlement. Walter (2002) said combatants were 39% more likely to seek negotiated settlements if wars were very deadly, and 70% more likely if wars were very long, as in the Sudan.

The length of the Sudanese civil wars and their cost in life and resources reduces the benefit of a return to war and makes the NCP and the SPLM/A reluctant to reignite conflict.



The Sudan had been at war for 39 of the 49 years since independence. If the 11 years of the Anya-nya-2 war are included, then the Sudan has been at war ever since independence--50 years. The Comprehensive Peace Agreement (CPA) halted this longest war in Africa and neither the North nor the South want a return to conflict. One SPLM official in the Government of the South Sudan said "it would be difficult for us to go back to war after we have lost over two million people" (Interview 2 November 2006). Former SPLM/A leader John Garang was a unifying figure in the South and since his death in a plane crash in 2005 there has been less unity and more hostility between Southern tribes. This undermines peacebuilding and the SPLM/A desire, expressed in its manifesto, for a United Southern Entity.

A survey by the Sudanese magazine Referendum Bell showed that three years after the CPA many in the South were dissatisfied with the services and performance of the Government of Southern Sudan. Research carried out by this study in the Southern Capital, Juba, also revealed the division among Southern Sudanese (Interviews 15 March 2007). In October 2007 the SPLM/A withdrew from the Government of National Unity for two months in protest at what it claimed was Khartoum's failure to implement its part of the peace deal. Some Southern Sudanese and political leaders called the move "panic at its failure to deliver basic services in the Southern Sudan and an attempt to regain the support of Southern Sudanese" (Interviews 30 October 2007). Others viewed the withdrawal as an American idea to put pressure on the NCP, to remedy the SPLM/A's previous failure to challenge the NCP over many provisions of the CPA. (Interviews 29 October 2007).

The SPLA faced several problems at the end of 2007. Firstly, interviews with SPLA officials revealed that many senior SPLA officers in command during the liberation struggle had either left the army or become disheartened by tribal rivalries and corruption within the SPLM/A. Secondly SPLA veterans who had lost limbs during the civil war were not being well cared for. Thirdly, following the death of John Garang, SPLM/A leaders abandoned his vision of a united new Sudan and distanced themselves from their SPLM/A supporters in the North by concentrating on self-determination for the Southern Sudan at the expense of the national agenda. This left some SPLM/A supporters in the Nuba Mountains and the Southern Blue Nile confused and disillusioned about what the future would hold if the Southern Sudan were to become independent. Furthermore the structure and concepts of the CPA had not been communicated effectively to the people, especially in the South



Sudan, Blue Nile and Southern Kordufan. As a result there is considerable confusion as to what the CPA means and whether it will automatically lead to an independent South Sudan after the interim period.

In Northern Sudan, by the end of 2007, the NCP was weakened by internal divisions, particularly over the conflicts in Darfur and Eastern Sudan. Some major Northern parties remained outside of the coalition Government of National Unity after protesting at being excluded from the CPA negotiations. There was also widespread concern that if war broke out again, the Southern Sudan might make a unilateral declaration of independence. The CPA has been incorporated into the new Sudan Interim National Constitution. So if the NCP were to break the provisions of the Constitution, then the SPLM could either seek regional or international mediation or secede from the rest of the Sudan.

However, in the event of war breaking out again, the NCP would be in a good position to re-mobilise its forces quickly and under the banner of the Islamic faith. Some Northern Sudanese traditional parties considered the CPA “as giving too much to the Southern Sudanese” and were opposed to an independent Southern Sudan. Southern militias still loyal to NCP would give their support to the NCP in order to derail or even delay the South's referendum on self-determination. The NCP also had more resources and better military equipment than the SPLA. Interviews conducted by this study indicated that the NCP planned to derail the CPA at any cost, even if meant making use of Southern Sudan militia groups allied to the NCP or bribing Southern Sudanese political leaders (Interviews 3-4 April 2007). The National Congress Party was therefore more prepared than the SPLM/A for another civil war.

#### **8.4 International Guarantees for the implementation of the CPA**

The CPA attracted widespread international attention because of the prolonged human suffering during fifty years of war in the Sudan. As stated in Chapter IV, several international countries became involved in the mediation process and were monitoring its implementation. The USA, IGAD, African Union, European Union, the League of Arab States and the United Nations were all involved in the drawing up of the CPA. They were also the CPA's custodians in the form of UN peacekeepers, international donors and guarantors in the Assessment and Evaluation Commission. International monitoring mechanisms and economic assistance were established to assist the implementation of the

CPA and to bring stability and security to the Sudan. Strong international commitment could help make peace a reality in the Sudan.

#### **8.4.1 The Assessment and Evaluation Committee (AEC)**

The Assessment and Evaluation Commission (AEC) was set up to oversee and monitor the implementation of the CPA (CPA Chapter I). It is made up of representatives of the NCP, SPLM and international members. Its main function is to monitor the implementation of the CPA and conduct a mid-term evaluation. However, in the years since the signing of the CPA the AEC was impotent in the face of the NCP/SPLM intransigence and unable to penalise those responsible for obstacles. The Commission has been established, but has not resolved outstanding issues in the implementation of the CPA, particularly because of lack of representation of minority groups and because it lacks teeth. Its mandate is limited to monitoring and evaluation. AEC Chairman Tom Vraalsen stepped down in December 2007, frustrated by the lack of engagement by the parties. A former UK ambassador, Sir Derek Plumbly, was appointed his successor on 12 February 2008 (ICG Briefing 2007).

The Assessment and Evaluation Commission could play a more important role if it was revitalised with an effective verification mechanism and regular meetings at envoy level. The AEC should ideally serve as an information clearinghouse on CPA implementation, with the Chairman coordinating international involvement to help resolve obstacles (ICG Briefing 2008).

#### **8.4.2 United Nations Peace Support Mission**

The United Nations Mission in the Sudan (UNMIS) was established under UN Security Council Resolution 1950 on March 24, in 2005, two months after the signing of the CPA. UNMIS was set up to support the implementation of the CPA, to provide humanitarian assistance, and to protect and promote human rights. Settlements with third party enforcement are more likely to succeed (UNMIS Report, 2006).

Third-party security guarantees generally play an important part in ensuring that power-sharing results in peace and stability. Research on conflicts in Colombia, Guatemala, Bosnia, Rwanda and Angola show the importance of third-party security guarantees and the effectiveness of power sharing pacts in preventing a return to war (Walter 2001). Global organisations, regional forces or individual states have increasingly been called upon to

play prominent roles in post-conflict war situations. Roles include peace monitoring, resettling refugees and economic reconstruction. Settlements with third-party enforcement are more likely to lead to timely post-conflict elections (Touyal 1982). The presence of a third party reassures former combatants even if they do not like the election outcome (Walter 1997). The third party can play an active role in security by monitoring ceasefires, verifying troop deployment, setting realistic goals on disarmament and demobilisation, overseeing the integration of the new army, and emphasising police reform (Stedman and Rothchild 1996).

The permanent ceasefire agreement signed on December 2004 provided for the establishment of a UN Peace Support Mission to monitor, verify and support the implementation of the peace agreement (Article 15.1). Joint Military Teams (JMTs) were to be established, consisting of equal numbers of SAF/SPLA officers and UN monitors, to patrol and report on ceasefire violations to one of the eight Area Joint Military Committees (AJMC) (Article 14.7.1). The Area Joint Military Committee would then report back to the central Joint Military Committee based in Juba, Southern Sudan. The Central Joint Military Committee was to be chaired by a UN force Commander or his deputy and was to include security officers from the SAF and SPLA (Article 14.6.1). The Central Joint Military Committee would in turn report back to the Ceasefire Political Commission, the political decision-making body composed of senior political, military and legal party representatives, the Deputy Special Representative of the UN Secretary General and observers from IGAD and their Partners Forum (IPF) (Article 14.2). Article 14.5.11 stated that the Ceasefire Political Commission was ultimately answerable to the Presidency and all decisions were to be made by consensus.

The Agreement did not provide for any independent role of the UN in cases of ceasefire violations or any UN response other than individual “disciplinary measures” as might be proposed by the Ceasefire Joint Military Committee (Article 10.2.4). The ceasefire agreement stated that “any deadlock arising out of the implementation of the ceasefire should be referred, as of last resort, to the Presidency” (Article. 10.5). The ceasefire monitoring structure built on a mixed monitoring concept of including both national and international representatives, which has been ineffective elsewhere. International representatives enjoy no pre-eminence or decision-making authority at any level. In the

case of either non-compliance or simple disagreement among the parties, there is no real enforcement mechanism or authority.

Joint monitoring activities provide reassurance and build confidence in the peacekeeping system. This type of arrangement can also compensate for limited human resources. However, security issues in the post conflict Sudan cannot be solved simply through consent-based mechanisms as stated under Article 14.3. The Joint Military teams were unable to prevent numerous ceasefire violations or renewed fighting in the South Sudan between militias and the SPLA. Strong enforcement mechanisms by the UNMIS are crucial for the effective implementation of the peace agreement.

Can a political formula achieve lasting agreement based on trust between formerly-belligerent parties? As shown in Chapter II, research on power-sharing pacts reveals that the pacts are not, in themselves, usually sufficient to convince the combatants to implement a peace settlement. The Uganda government and the National Resistance Movement carefully distributed the seats in a new government and agreed to integrate their armies, but could find no third party willing to establish a peacekeeping force. The terms of the peace agreement were never implemented (Ball 1997). Similarly, the Nigerian government promised the Ibo a general amnesty, offered them a fair share of employment in federal public services, and promised that police units in the Ibo area would consist mostly of persons of Ibo origin, but this did little to reduce Ibo fears of post-war persecution. Without an external guarantor, this offer had little impact on negotiations and it eventually failed to produce a settlement (Walter 2002).

This study finds that the lack of power of regional and UN monitors to enforce CPA provisions means there is no real enforcement mechanism or authority. The former warring parties act as their own judges and this can make it difficult to resolve differences. Ending the civil war in the Sudan was just the start of a six-year experiment before a 2011 referendum on the status of the Southern Sudan. The interim period is a tense time when there are many temptations for parties to renege on their commitments. In addition, conflicts elsewhere in the Sudan, in particular the conflict in Darfur, could bring down the entire peace effort.

Chapter II noted that the examples of Angola, Sierra Leone and Congo demonstrated how

relying on the goodwill of former warring parties will not ensure the long-term success of a peace agreement. Despite its weaknesses, the UN Mission in Sudan (UNMIS) could yet make a difference to security in the region. It could increase monitoring of flashpoint areas in Abyei and along the North-South border and negotiate with the SAF/SPLA to create demilitarised zones into which UNMIS forces could deploy and monitor troop movements to help prevent local flare-ups from escalating. UNMIS should send the UN Secretary General monthly reports on the implementation of key CPA agreements, reporting on the situation in Abyei, the redeployment of armed forces, election preparations, fiscal management and transparency of oil revenues.

#### **8.4.3 Economic Assistance**

As stated in Chapter IV, the promise of international economic assistance for the reconstruction of the post-conflict Sudan was a strong incentive to the NCP and the SPLM/A to sign the peace agreement. Peace building requires financial resources. The provision of basic services such as education, healthcare, electricity, clean water are not only basic to health but also the best way to build confidence in government (Harris 1999). There are also the costs of resettlement programmes and restoring broken infrastructure.

The CPA signatories jointly appealed to the regional and international community to support the implementation of the CPA and provide the resources for reconstruction (CPA Chapter I). Although the “quick start” programmes planned by the international community are important, donations will be required for many years to address the Sudan's reconstruction needs. World Bank research found that post-conflict countries like the Sudan need ten-year investment plans before rapid growth can be sustained without outside assistance (Collier et al 2003: 167). Development programmes need to address the social and economic ills that are the root causes of violence. Political stability can be undermined by both perceived and real balances in income and wealth (Jeong 2005). To reduce social disparities, an economic system has to be reformed to strengthen the development potential of different ethnic groups and ultimately to benefit all.

The repatriation of refugees and relocation of displaced persons is a major challenge to post-conflict governments. The UN High Commission for Refugees (UNHCR) tries to protect refugees and assist in their resettlement all over the world. For example between March 30, 1992 and April 30, 1993 the UNHCR assisted the return home of more than 365,000

Cambodian refugees. By providing post-return assistance in emergencies, the UNHCR programmes have improved the economic status of the returnees and their communities (Jeong 2005).

UN specialised agencies have long been engaged in the Sudan. A consortium of UN agencies, in particular the UN Children's Fund UNICEF and the World Food Programme, played a leading role in relief efforts in the late-1980s with Operation Lifeline Sudan. Operation Lifeline was set up in response to a devastating famine and the effects of the long civil war. The UNHCR also provided assistance to Eritrean and Ethiopian refugees sheltering in the Sudan in the late 1990s and Sudanese refugees sheltering in Kenya during the civil war. The UNHCR accepted responsibility for the return of internally displaced Sudanese, most of whom lived in the Khartoum area (UNHCR Report 2005). However this study found that the relocation of displaced persons was proceeding slowly with the UNHCR struggling with the size of the problem. The UNHCR was also slowed by the fact that it had first to set up its own infrastructure in the South because of the poor facilities there.

Before the CPA, the Sudanese and their donor partners held several conferences to coordinate reconstruction plans. An innovative GoS-SPLM/A Joint Planning Mechanism was established to help the two parties assess needs, identify reconstruction priorities and draw up action plans for the pre-interim period. The UN and international donors did substantial research in a wide range of areas. The World Bank began to re-engage in the area, and the two largest donors, the United States and the European Union (EU) approved reconstruction strategies (Eposito and Crocker 2004). A World Bank–UNDP Joint Assessment Mission began in mid-2004. IGAD, the UN, international financial institutions, interested partners, and the Sudanese all recognised the need to work out development priorities. Norway chaired the Joint Assessment Mission coordinating group meeting in March 2005 (ICG Report 2005).

The Joint Assessment Mission set up Multi-Donor Trust Funds but these have encountered some problems. At a major donor conference in April 2005 the United States pledged \$1.7 billion of the \$7.9 billion needed, but continuing sanctions prevented U.S. funds from going to the North except under waiver (ICG Report 2006). Monies go through separate trust funds to the North and the South Sudan. Although banks are opening in the South, the



region lacks proper banking and accounting structures.

For the CPA to succeed it is not enough for the opposing sides to resolve the underlying issues behind the civil war. The analysis presented in this chapter confirms that military power-sharing and third-party security guarantees can significantly improve the chances of a successful peace settlement. Security in the Sudan would be greater if a third party were to enforce or verify disarmament and demobilisation. The CPA provides specific political, military and territorial guarantees during the interim period before a 2011 referendum in the South and Abyei. Strong third party monitoring of the implementation of the guarantees would increase confidence in peacebuilding. The cost of nearly fifty years of civil war with nearly two million dead and four million people displaced, the war-weariness, poverty and military stalemate also enhances the chances of peace succeeding as a return to war provides no immediate benefit to either side.

However, confidence is not helped by the slow implementation of the CPA, the slow rate of reconstruction and rehabilitation, the provision for separate armies in the North and South and the delay in setting up the Joint Integrated Units, as well as the lack of effective third party security enforcement. By 2008 many people, particularly in the South, had seen few benefits of the new united Sudan. If this were to continue, the South might well vote for independence in 2011. The international and regional observers and peacekeepers lack power to enforce the peaceful implementation of the CPA. This study argues that the engagement of the international community must be renewed and broadened if the CPA is to hold until the year 2011. The AEC does not have a mandate to sanction parties, but it could make specific recommendations on security, power sharing, and wealth sharing. To guarantee Sudan's ambitious and complex peace agreement effectively, the international community and the Sudanese North and South Governments must work together to build peace and overcome obstacles to the peace agreement.



## **Chapter IX: Summary, Conclusion and Recommendations**

The fundamental aim of this study was to examine whether the Sudan's CPA could lead to a new united Sudan or its disintegration. The signing of the CPA in 2005 heralded the beginning of a new era in Sudanese history. The CPA provided a basis for power sharing between the NCP and the SPLM/A for an interim six year period. On 9 January 2005, SPLM/A former leader John Garang said: "For the first time the Sudan will be a country voluntarily united in justice, honour and dignity for all its citizens regardless of their race, regardless of their religion, regardless of their gender." Or else if the country fails to rise to this challenge of moving away from the old Sudan to the new Sudan of free and equal citizens, then "the union shall be dissolved amicably and peacefully through the right of self determination at the end the six years of the interim period" through a referendum in 2011.

This Chapter will look at the effects of the CPA, presenting a summary, conclusion and recommendations separately. As set out in Chapter I, the objectives of this study have been to: (1) explain the historical origins of the Sudanese conflict; (2) gain insight into the extent to which the CPA has addressed the root causes of the Sudanese conflict; (3) identify what guarantees are needed to ensure the CPA's implementation and how these guarantees are being achieved in practice; (4) anticipate the outcome of the CPA: whether it will result in the unity or disintegration of the Sudan. Chapter II of this study outlined the theory of power sharing arrangements. It showed that power-sharing helps to resolve differences, prevent conflict and lead to democratisation. The effects of power sharing on both short and long term democratisation and peacebuilding were illustrated by experiences from recent accords. In the case of Sudan, three years after the signing of the CPA, power sharing had so far contributed little to conflict management and democratisation.

Chapter III explained the historical origins of the Sudanese conflict. Root causes include the facts that: First, the Sudan has never been one entity. The 'closed door' policies of Anglo-Egyptian rule which kept the North and South apart laid the basis for economic disparities and uneven development. Second, the civilian and military administrations in post-independence Sudan consistently pursued policies of Islamisation and Arabisation. The South Sudanese and non-Muslims rejected these policies, which were discriminatory and exclusive. The SPLM/A advocated the establishment of two separate independent states or a secular united Sudan. In the past several attempts had been made to resolve

conflict but all had ended in failure. Nearly fifty years of civil war and the failure of all previous peace settlements had built up distrust on both sides which was hard to overcome.

Chapters IV-VII looked at the degree to which the CPA has dealt with the root causes of the Sudanese conflict. The GoS and the SPLM/A were finally forced to face up to the fact that they could not win a military victory and had to find a peaceful solution to the conflict. Chapter IV showed how the mediators, regional and international bodies all contributed to the success of the Machakos Protocol signed between the GoS and SPLM/A on 20 July 2002. The breakthrough at Machakos centred on two things: Shari'a law would be the basis of national legislation outside of the South Sudan, but the South would be secular; and an internationally-monitored referendum would be held in Southern Sudan at the end of a six-year interim period to decide if the Sudan would remain united or whether the South would secede. In principle, the Machakos Protocol also committed the NCP and SPLM/A to working together during the interim period to "make unity attractive" to the people of Southern Sudan so that they might vote for the unity of the Sudan in 2011.

In practice, the NCP and SPLM/A partnership can only succeed if there is a firm understanding on the CPA's implementation. The fragile partnership between the NCP and the SPLM may last until the Southern referendum in 2011 even if the national reform agenda is not completed in full. The partnership is, however, under strain in particular by the NCP's unwillingness to resolve the Abyei border demarcation, to implement security protocols in full or to make the oil sector transparent. On the other hand, the SPLM has had trouble maintaining focus on both National and Southern issues. The SPLM/A has long been divided over the "New Sudan" ideology of its former leader John Garang and on tribal and regional lines. "Since the death of John Garang, the SPLM vision has become blurred" is the view of one UN official (Interview 10 March 2007). The SPLM has focused on issues in the South at the expense of the national agenda, a retreat that has given the NCP space to take charge of the country as a whole. This study recommends that the SPLM gives more attention to national as well as Southern issues in order to ensure the smooth running of the elections and of the self-determination referendum for Southern Sudan.

Chapter III established that one of the fundamental causes of the North-South conflict was a lack of power sharing. The CPA tries to address this by providing a coalition Government of National Unity and a separate Government of South Sudan, based on the 1956 border

between North and South Sudan. The Protocol on Power Sharing provided for a decentralised system of government in the Sudan, granting more power to individual states and setting out a bill of fundamental freedoms. The Protocol stipulated that the National and Southern Sudan constitutions must comply with the Interim National Constitution. The Protocol also called for elections to be held by the end of the fourth year of the interim period. A number of institutions, commissions and committees were also created, including a new Upper House in Khartoum with representatives from each of the 25 states. The Protocol set up a framework of political power based on a "one country-two systems" model.

This study, however, found that by 2008 the Protocol of Power Sharing had not been put into practice effectively either at national level or in the South. At national level one of the most important provisions involved civil service reform, including the incorporation of 20-30% qualified and trained Southern Sudanese, to "fairly represent all the people of the Sudan and utilise affirmative action and job training to achieve equitable targets for representation within an agreed time frame" (Article 2.6.1.5). By 2008 little had been done beyond the appointment of a handful of SPLM and National Democratic Alliance officials to national and state ministerial positions. Many planned legal reforms, such as the political parties' law and the overhaul of security agencies, had also not taken place. Human rights monitors and political opponents were still not able to operate freely, and security agencies continued heavy-handedly to impede free speech, free assembly and free association both in the North and the South.

Chapter V established that the SPLM is facing enormous challenges, which are severely undermining its ability to function as an effective partner in the Government of National Unity. The SPLM is weak and disorganised and has failed to fulfil its promises in the South. The SPLM as a political party is lacking an institutionally based leadership. The leadership has been based on individuals who have little or no experience of democracy. Wracked by internal divisions and contradictions since the death of John Garang, and with no well-organised party structures, the SPLM has been unable successfully to confront the NCP on many issues relating to the implementation of the Comprehensive Peace Agreement.

One of the most important CPA provisions on power sharing was the establishment of a separate autonomous Government of the South Sudan (GOSS). In practice, however, the

SPLM-dominated GOSS has been failing to transform itself into democratic government, failing to cope with the challenges of reconstruction, legal reform and economic growth and failing to cope with the growing financial crisis. The SPLM has not lived up to its promises. The GOSS lacks accountability and has not set up efficient mechanisms to ensure that people's voices are heard and their rights upheld, either in parliament, the media or the justice system. The appointment of ministers and the employment of civil servants has been based on tribal lines and loyalty, rather than on merit as stipulated in the CPA protocol of power sharing. The trustworthiness of the GOSS is being damaged by delays in providing services and the passing of a number of bills relating to the Civil Service and the Anti-Corruption Commissions. The Southern legislature adopted only four laws in 2006 and one in 2007; nine draft bills are waiting to be examined.

In principle, the Protocol of Power Sharing provides for the devolution of powers to state levels of government. In practice, devolution of power to Southern states as per the CPA is questionable, because the President of the GOSS, has adopted an increasingly common practice of reshuffling state governments, a disturbing trend that warrants further attention. This study has found that in 2008 both the NCP and the SPLM were still autocratic entities with no democratic tradition. Security forces operated with impunity both in the North and the South. Serious violations of human rights were well documented in both regions. Freedom of assembly, freedom of speech and the formation of political parties were stifled in both regions. The authority of traditional leaders had been trampled on and civil groups muted.

Women in the Sudan still did not have full equal rights. Even though many constitutional and legislative provisions bar discrimination, there is a legacy of customary law in many parts of the Southern Sudan that denies women the right to choose their marriage partner and control property. A culture has been built over the centuries that assumes the imbalanced treatment of women. In Rumbek, Southern Sudan, police were found to be harassing women who were cycling on the ground that "women are not supposed to use the bicycle" (Interview 2 April 2007). In Juba local officials issued an order banning women from wearing trousers and short skirts. In 2008, women who wore trousers were picked up from bus stops and roads by police and taken to the police station. Some of them were beaten up and fined \$283. Earlier in 2008, women in the Southern Sudan town of Yei were forced to strip in public by police officers and pay an unofficial fine for wearing tight trousers (BBC

News 8 October 2008). This was not the behaviour that local women expected of liberation forces who claimed to fight for equality.

Chapter VI dealt with the Agreement on Wealth Sharing during the interim period. The Agreement established commissions to look into land ownership issues and established a system for the distribution of revenues, though it set aside the question of ownership of mineral resources as the NCP and SPLM failed to agree on a formula. Both the Khartoum Government and the SPLM had a long history of using local revenue and humanitarian assistance for their own gain. Neither group had any experience or training in transparent accounting of public resources. The ability of the GoS and GOSS to allocate donor resources responsibly or to distribute oil revenue fairly is questionable. This study found that in 2008 there was still a lack of transparency in the oil sector. The NCP was still in control of oil revenues, and the Petroleum Commission, which was meant to oversee distribution of oil revenue was ineffective. There was also some debate about the GOSS' ability to manage revenue and donations competently.

Chapter VII dealt with the Protocols on the conflict in Abyei, Southern Kordufan and Blue Nile regions, signed by the NCP and SPLM/A on 23 September 2003 and 24 May 2004 respectively. The study showed that in 2008 the Abyei Protocol had still not been implemented, stalled over the question of Abyei's Boundaries. The Abyei's Boundaries Commission (ABC) recommendations were rejected by the Presidency and NCP who feared loss of control of important oil revenues. State funds for the reconstruction of Abyei and the establishment of local government did not seem to be forthcoming. Both the NCP and SPLM/A retained military and police forces in the area, but they were not integrated as planned.

In the Southern Kordufan and Blue Nile states, the NCP remained largely in control in 2008 through its command of central government. Finances were limited, particularly for government development projects, and there was little transparency of revenue, especially oil revenue. The study also found that in both the Southern Kordufan and Blue Nile states, implementation of the Protocol was far behind schedule. Refugees and nomads were starting to return to areas previously blocked during the war and investors were coming back. But security was still fragile, land disputes unresolved and integration minimal.

Chapter VIII looked into the Agreement on internal security arrangements and ways to ensure its successful implementation in the interim period. The Agreement provided for Joint Integrated Units of 24,000 soldiers to be formed with equal numbers from the SAF and the SPLA during the six-year interim period. The SAF and the SPLA would also continue to operate as separate armies with both armies considered part of SAF. The SPLA has struggled with the reorganisation process. It has been slow to complete head counts and demobilisation. The SPLA agreed to incorporate 31,000 fighters from the former Khartoum aligned SSDF into the SPLA which posed challenges in cost and command structure. In principle the Agreement on Security Arrangements provided a timetable for the redeployment of the SAF and SPLA. In practice both sides failed to keep to the schedule.

Clashes between the SAF and the SPLA in Malakal in late November 2006 emphasised the fragility of the situation. Mistrust, financial constraints and a lack of an adequate UN-led disarmament, demobilisation and re-integration programme have hampered military reorganisation. Inter-tribal rivalry and conflict has increased tension. For example the April 2007 arrest of Deputy Chief of Staff Isaac Obutu Mamur increased anti-Dinka rhetoric by Equatorians in and around Juba. The killing of Equatorian police officers in Yambio in 2007 also reflected the fragile security situation in the South.

## CONCLUSION

In principle, the CPA has dealt with the fundamental causes of the North/South Sudan conflict, but it is unlikely that the Sudan will remain united at the end of the interim period. The long civil war in the Sudan and the previous dishonoured agreements by successive Northern Sudanese regimes have deepened hatred and mistrust between the North and South. The Sudan's war started as a clash between two different religions embedded in different cultures. The struggle for political authority and economic resources has been closely tied to communal tensions between the North and South Sudan. Religion has been significant in defining communal identity and been seen by scholars as inseparable from issues such as racial discrimination and the disparity in wealth and power between North and South. Southern opposition groups have consistently opposed the North's efforts to force unity, and have argued for either complete separation from the North or a secular political structure. With the NCP insisting on Shari'a law in the North, it is hard to imagine a united Sudan in the long term.



This study concludes that it is highly likely that the CPA and its provision for a referendum will lead to the break-up of the Sudan. There are increasing signs that the implementation of the CPA is deteriorating because of lack of political will in the NCP. This study has established that there are serious aspects of the CPA that have not been implemented and could result in the entire CPA collapsing and the resumption of war or the declaration of an independent South Sudan: for example, the non-implementation of the Abyei Protocol and the rejection of the Abyei Boundaries Commission report. Another problem is the demarcation of the North-South border. Some experts believe that the North-South border demarcation will be more of a merely administrative and technical exercise than the Abyei border demarcation. However, the location of oilfields and agriculture schemes straddling the border may widen the gap between the NCP and SPLM.

This study argues that by accepting self-determination for the Southern Sudan, the parties to the CPA have made the unity of Sudan an illusory goal. "It will take an act of God to vote for unity in 2011; neither side is making unity attractive. They just want to sit out the interim period" was the view of one UNMIS official (Interview 27 March 2007). As examined in Chapter IV, the Machakos Protocol tends to enshrine and reinforce ethnic, religious and cultural differences in the Sudan. As a result, the Protocol may bring separation closer rather than unity. Uncertainty remains as to whether the ruling party will continue to share power and whether a Government of National Unity dominated by the NCP can, in point of fact, function. The SPLM's temporary pull-out from the Government of National Unity in October 2007 was caused by the NCP's lack of political will to fully implement the CPA.

The Sudanese civil war was complex with many foreign powers getting involved. Super powers like China and the United States of America had an interest in the area's oil and security. Oil placed the Sudan on the world map. The CPA would never have been drafted or signed if there had not been international pressure on the former combatants. The CPA's provision for a 2011 referendum on self-determination in the South may signal the break-up of the Sudan. On the other hand, the promised referendum still seems a long way off to many Sudanese. Even holding a census to get an electoral roll has been complicated. Demarcations of the boundaries of the North-South border and the state of Abyei are not yet agreed, let alone those of constituencies. Refugees and displaced persons are still returning. International oil investors like China and other Western and Asian investors who signed oil



contracts with the old Khartoum government may well favour a united Sudan for fear that an independent Southern Sudan may invalidate their contracts.

If the Sudan were to remain united, what would be the appropriate form of government? This study argued that consociational power-sharing could be suitable for a divided society like the Sudan. It provides a viable platform for building peace in the post-conflict Sudan. Proportional representation can ensure representation of minority groups in the decision-making process. Decentralisation of power through regional autonomy, as stipulated in the CPA, can, if implemented properly reduce tension and contribute to lasting peace. Previous research has shown that coalition governments involving all major parties search for compromise and consensus. As shown in Chapter II, the beauty of a grand coalition is that policy choices have majority support. If a post-conflict country like the Sudan had an inclusive grand coalition government during the interim period, the probability of renewed conflict would be less than if the post-conflict Sudan did not have a coalition. Previous research has also shown that regional autonomy for countries of diverse ethnic origin is a viable solution for avoiding conflict. A large, multi-ethnic country like the Sudan should benefit from the three features of a consociational power-sharing democracy: a grand coalition, proportional representation and territorial autonomy.

Consociational democracy is intended to establish a stable political system through co-operation despite existing societal divisions, with executive power shared by a coalition of political leaders drawn from all groups in society, protection of the minority, proportional representation, and a high degree of cultural autonomy for each participating group. As can be seen in this study, this system would be ideally suited to Sudan with its broad ethnic, cultural, religious and economic divisions. Lijphart argued that this type of power sharing has considerable advantages over majority rule, generating “kinder, gentler” governance with more inclusive processes of decision making, more egalitarian policy and better economic performance. However, while the Sudan has a grand coalition government based in Khartoum, only two groups have dominated the decision-making, the GoS and the SPLM/A, resulting in a limited minority vote. The Sudan has had little success in establishing a multi-national democracy and many regions have been excluded from the political process and from economic and social planning and development. The CPA has nonetheless addressed some of the significant structural problems. Even though the CPA is

not based on the consociational model, it contains a grand coalition government based in Khartoum, a limited minority vote, proportionality in the cabinet, extensive autonomy for the Southern Sudan and a federal system. The CPA was designed to establish peace between the GoS and the SPLM/A and to draw up a structure which would enable the two groups to co-exist. In this respect the CPA has had some considerable success, but the limited power given to some ethnic and cultural groups and the exclusion of other armed and political groups is producing tensions. Furthermore, the civil war in Darfur has slow down the implementation of the CPA. The CPA is in danger of collapse, mainly as a result of lack of political will and international neglect, the latter a cruel irony given international concern to conclude the CPA negotiations led to initial reluctance to address the developing Darfur crisis in 2003-2004.

In a diverse country like the Sudan, it is important that all groups and parties are represented in decision making and not just the NCP and the SPLM/A. Representatives from all groups also need to be involved in the administration, the judiciary, the armed forces and all aspects the country. This will reduce fear of being marginalised and disputes can be resolved through non-violent means. As the analysis showed in Chapter II, consociational democracy is based on a proportional distribution of influence and seats in the legislature. It is also a means to allocate civil service posts and judicial appointments, financial resources and assure an adequate representation within the army and state-owned companies. What is important, regardless of the outcome of the Southern Sudan self-determination referendum, is stability, prosperity, self-determination, democracy and respect of human rights.

### **Recommendations:**

The analysis in this study suggests that lasting and comprehensive peace in the Sudan requires a fundamental shift in the way the country is being governed. The dominating approach of the ruling NCP has triggered new wars in Darfur and Eastern Sudan, with fresh conflicts brewing in Kordufan and the far North. The common theme is disenfranchised peripheral communities taking arms against a central government that is perceived as unfairly controlling the state's power and wealth.

### **To the Government of the Sudan:**

- For the CPA to live up to its billing as a truly “comprehensive” peace agreement, it must overcome the perception that it is a two-party deal, which gives the NCP control of the North and the SPLM control of the South;
- To settle the many grievances against the government and bring sustainable peace, the national reforms and democratisation process leading up to elections, must be implemented in good faith;
- Reform of fiscal transparency and accountability for transfers from the central government to the states;
- Allow freedom of speech. Cease harassment of journalists. Remove restrictions on local media. Respect political freedoms. Release political prisoners. Reform the National Security Act and other laws that contradict the CPA and Constitution. Implement in a full and timely manner the commitments undertaken in the CPA.
- The SPLM must play its part in the Government of National Unity and not just focus on governance issues in the South. The SPLM must pay particular attention to CPA provisions for national reforms and democratisation leading to free and fair elections in 2009;
- The NCP should cease all inflammatory rhetoric designed to mobilise the Messeriya Arabs against the Ngok Dinka, resolve its differences with the Abyei Boundary Commission, and stop administering Abyei unconstitutionally from Southern Kordufan;

- The Presidency should immediately appoint a Local Executive Council for Abyei, in consultation with the 1<sup>st</sup> Vice-President and Vice-President in accordance with the CPA.
- If the stalemate on Abyei continues and the formation of an administration is not forthcoming, UNMIS should seek to set up a temporary administration in Abyei, while facilitating discussions between the NCP and SPLM, and between the Messeriya Arabs and Ngok Dinka.
- The NCP and SPLM should encourage national and communal dialogue on the roots of the civil war and its legacies and on strategies to foster socio-economic development.

#### **To the Government of Southern Sudan:**

- To reform government institutions in order to sustain the peace agreement and make the government an effective instrument for development by focussing on the management of public finance, public administration, and justice and law enforcement;
- To work and resolve internal divisions and contradictions within the SPLM and immediately move to begin rebuilding party structures, working towards an SPLM national convention, in order to be a more effective partner in the implementation process and a driving force in the government's reform;
- To draw up comprehensive capacity-building strategies. Skilled professionals are key to improving the administration and technical knowledge, which the Government of Southern Sudan is so gravely lacking;
- Commit to genuine federal system of government for various states in the Southern Sudan as per the CPA without interference by the President of the Government of Southern Sudan in the affairs of the states;
- Commit to the establishment of a democratic, transparent and accountable government in which equality, freedom, economic and social justice and respect for human rights are not mere slogans but concrete realities the GOSS should promote, cherish and protect;
- To promote gender equality and empower women to participate fully in the political,

economic and social decision making of the Government of the Southern Sudan;

- To reduce unemployment, particularly among the youth. It can fuel violent rebellion against the order of the day or increase criminal activity;
- To promote development partnerships with donors for long-term sustainable economic growth and poverty reduction. Government readiness for regular and frank dialogue with donors, commitment to poverty reduction, transparency and accountability in the use of resources are important factors for sustaining donor partnerships;
- The SPLM, as a leading party, must demonstrate renewed political will to fight against corruption at all levels in the economy and society. Fighting corruption should involve tackling those who offer bribes as well as those who take them by bringing them to justice.

#### **Reform of the security services:**

- Security is a high priority for the citizens of a post-war country like the Sudan, thus the reform of security services (police, army, customs and immigration, presidential guards, intelligence and illicit drug control agencies etc) to protect the citizens should be a priority.
- Reform of the security in accordance with the new Constitution is essential to maintaining peace and sustaining good governance in the post-war Sudan.
- The SPLA must take immediate steps to develop a common internal approach on reorganisation. It must prioritise the reorganisation of the army, together with a transparent and accountable salary structure, in order to help improve security in the South.

#### **Tribalism:**

- To be dedicated to the eradication of tribalism, sectionalism and provincialism, which have been encouraged by self-seeking politicians. The following are some of the ways for dealing with tribalism in Southern Sudan:
- (a) Education is one of the most important ways of combating tribalism. Teachers have the

best opportunity to warn the young against the dangers of tribalism;

Tribalism should be introduced in the curriculum as one of the subjects taught in the schools. There are already books available on tribalism in Africa.

- (b) Laws to curb tribal excesses in both public and private institutions should be enacted to bring to justice those people known to practice tribalism in public and private institutions.
- (c) Encourage equal opportunities for employment in both private and government organisations.

#### **Basic Services:**

- The Government of the Southern Sudan and the Donors must meet their commitments to achieve education for all, ensuring that every child in the Southern Sudan goes to school.
- The Government of the Southern Sudan must undertake to do away with school fees for basic education, and donors should fund this until the Government of the Southern Sudan can afford this cost itself.
- To ensure that high-quality education is delivered the Government of Southern Sudan must invest in teacher training, retention of staff and professional development;
- To develop appropriate curricula at all levels of education in order to provide relevant skills for the contemporary world as for example the educational system adopted in Uganda.
- To allocate more funds to healthcare and put in place strategies for the effective delivery of a public health service.

#### **To the International Community:**

- Devote increased attention to the implementation of the CPA and demand that the following benchmarks be met within the CPA's timescale so as to prepare for free and fair national elections in 2009 and reform central government operations:
- (a) The ad hoc North-South Boundary Commission complete its work, and the SAF be

immediately and fully redeployed out of the Southern Sudan;

(b) The National Civil Service Commission be operational; and

(c) The Fiscal and Financial Allocation and Monitoring Commission (FFAMC) begin to operate freely, according to its CPA mandate and with support and guidance from the World Bank and the finance ministry respect its directive.

- Develop a comprehensive road map for peace in the Sudan that includes:
  - (a) Agreement on supporting implementation of the above CPA benchmarks;
  - (b) The existing AU/UN road map for reviving the political process on Darfur;
  - (c) Consensus on the diplomatic and economic rewards and punitive measures to be taken with respect to the road map.
- International assistance for the Nuba Mountains and Blue Nile people who are becoming increasingly dissatisfied with the implementation of the CPA
- The IGAD and its partners should work to improve international co-ordination and strategy for the CPA implementation with a Technical Secretariat attached to the Assessment and Evaluation Commission, to track and report on implementation
- Provide the SPLA with technical and financial support to help it reorganise its forces, integrate the SSDF troops who have joined the SPLA, and develop a professional standing army, capable of combating security threats in the South Sudan.



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This bibliography is divided into six sections: Publications, Academic and Working Papers, Documents, Newspapers and Bulletins, Journals, Interviews.

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## **F. Interviews**

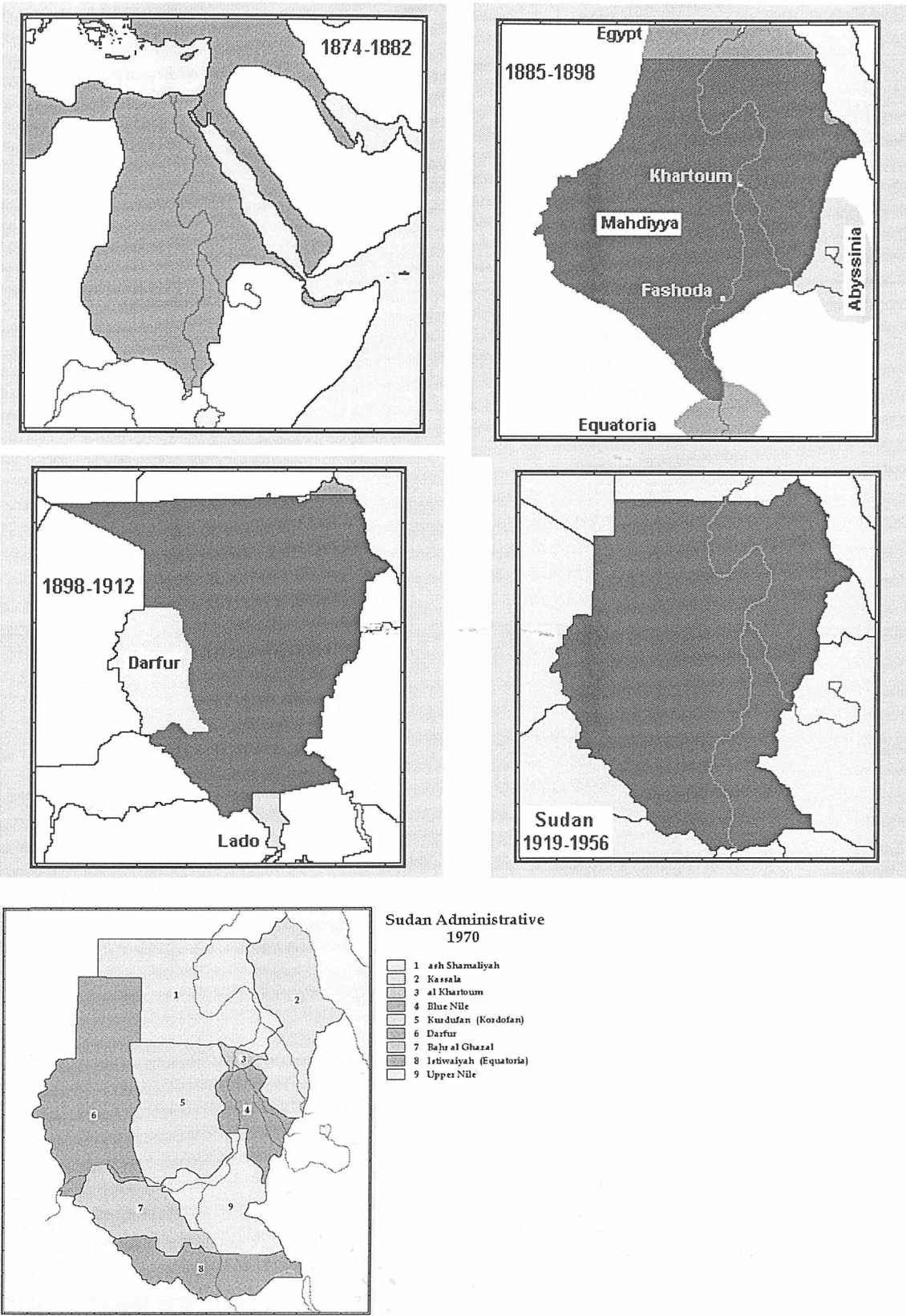
- 1.1 Interview with SPLM Official, Juba, Southern Sudan 10 April 2007
- 1.2. Interview with one of the SPLM, Juba, Southern Sudan, 10 May 2007
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- 1.5 Interview with one of the SPLM officials, Juba Southern Sudan, 15 August 2007
- 1.6 Interview with SPLM/A officials, conducted by the researcher in Juba, Southern Sudan August 2007
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2. Interview with one of the SPLM officials from Nuba Mountains Musa Harund, London, UK, 27 October 2006
3. Interview with S. Rahhal, London, UK, 15 May 2007
- 4.1 Interview with one of the NCP Officials, Khartoum, Sudan, 25 October 2006
- 4.2 Interview with one of the Government of Sudan officials, Khartoum, Sudan, 25 October 2006
- 4.3 Interview with Tele-Sir Mahgoub, Government of Sudan officials, Khartoum, Sudan, 26 January 2006
- 4.4 Interviews with former judiciary members, Khartoum, Sudan 28-29 March 2007
- 5.1. Interviews conducted by the researcher, Juba, Southern Sudan, 10 April 2007
- 5.2. Interviews with conducted by the researcher in Rumbek, Southern Sudan, 2 April

2007

- 5.3 Interviews conducted by ICG, Juba Southern Sudan 29 June 2006
- 5.4 Interviews conducted by the researcher in Juba, Southern Sudan, 28 July 2007
- 5.5 Interviews conducted by researcher in Juba, Southern Sudan, 14-15 March 2007
- 6.1 Interviews with some of mediators, London, UK, 20 May 2007
- 6.2 Interviews conducted by researcher with southern Sudanese and Ugandans who involved in the negotiations in Kampala, Uganda, 23 April 2007
- 7.1 Interview with one of the UN officials, Juba, Southern Sudan, 28 July 2006
- 7.2. Interview with one of the UN officials, Juba, Southern Sudan, 15 February 2006
- 7.3 Interview with one of the UN officials, Khartoum, Sudan, 30 January 2006
- 7.4 Interview with one of the UN officials, Khartoum, Sudan, 26 March 2006
- 7.5 Interview with one of the UN officials, Juba, Southern Sudan, 10 March 2007
- 7.6 Interview with one of the UN officials, Juba Southern Sudan, 25 March 2007
- 7.7 Interview with one of the UN officials, Juba Southern Sudan, 27 March 2007
- 7.8 Interview with one of the UN officials, Juba Southern Sudan, 18 March 2007
- 7.9 Interview with one of the UN officials, Juba, Southern Sudan, 15<sup>th</sup> March 2007
- 7.10 Interview with one of the UN officials, Rumbek, Southern Sudan, 2 April 2007
- 7.11 Interview with one of the UN officials, Juba, Southern Sudan, 3 April 2007



Appendix I: Maps 3-5: The Sudan from 1874-1970





## Appendix II: Territorial Decentralisation and Civil War Outcomes

**Appendix A: Table 4.1. Territorial Decentralisation and Civil War Outcomes**

Centralised States		Semi-	Decentralise States	Decentralised States
Greece (1944-49)	Dominican Republic (1965)		Argentina (1955)	None
China (1947)	Uganda (1966)		Sudan (1963-72)	
Paraguay (1947)	Guatemala		Nigeria (1967-70)	
Yemen (1948)	China (1967-68)		Cambodia (1979-91)	
Costa Rica (1948)	Burma (1968-80)		Mozambique (1979-91)	
Clumbia (1948-62)	Cambodia (1970-75)		India (1985-93)	
Burma (1948-51)	Jordan (1970)		Sir Lanka (1978-89)	
Indonesia (1950)	Pakistan (1971)		Burundi (1988)	
Philiphines (1950-52)	Sir Lanka (1971)		Tajikistan (1992-94)	
Bolivia (1952)	Burundi (1972)			
Indonesia (1953)	Zimbabwe (1972-79)			
Guatmala (1954)	Pakistan (1973-77)			
Indonesia (1956-60)	Lebenon (1975-90)			
Lebenon (1958)	Iran (1978-79)			
Cuba (1958-59)	Nicaragua (1978-79)			
Iraq (1959)	El Salvador (1979-92)			
Vietnam (1960-65)	Chad (1980-88)			
Congo (1960-65)	Uganda (1980-88)			
Laos (1960-73)	Iran (1981-82)			
Algeria (1962-63)	Nicaragua (1982-90)			
Yemen (1962-69)	South Yemen (1986)			
Rwanda (1963-64)	Rwanda (1990-94)			
Romania (1989)	Croatia (1991-92)			
Bosina (1992-95)				

**Appendix B: Table 4.2. States "Born" Decentralised**

Decentralised (Stable)	Semi-Decentralised
Australia (1901-)	Azerbaijan (1991-)
Belgium (1831-)	Botswana (1966-)
Canada (1867-)	Georgia (1991-)
Czechoslovakia (1948-1991)	Lesotho (1966-)
Germany (1871-1945)	
Germany Federal Rep. (1949-)	
India (1950-)	

Papua New Guinea (1976-)  
 Switzerland (1948-)  
 United Arab Emirates (1971-)  
 United States (1815-  
 )

<u>Unstable</u>	<u>Direction of Change</u>
Afghanistan (1920-1924)	Decentralised to Centralised
Argentina (1825-1829)	Decentralised to centralised
Cameroon (1961-1971)	Decentralised to Semi-Decentralised (1962) Semi-Decentralised to Centralised
Cyprus (1960-1973)	Semi-Decentralised to centralised
Libya (1952-1963)	Decentralised to Centralised
Malaysia (1957-1963)	Decentralised to Centralised
Mexico (1822-1833, 1919-)	Semi-Decentralised to centralised Centralised to Decentralised
Mongolia (1924-1928)	Semi-Decentralised to centralised
Nigeria (1960-1993)	Decentralised to Semi-Decentralised Semi-Decentralised to Centralised (1979) Decentralised to Semi-Decentralised (1984) Semi-Decentralised to Centralised
Pakistan (1947-1970)	Semi-Decentralised to Centralised
Sierra Leone (1961-)	Decentralised to Semi-Decentralised (1970)
Somalia (1960-)	Decentralised to Semi-Decentralised
Thailand (1815-1867)	Semi-Decentralised to Centralised
Turkey (1815-1919)	Decentralised to Centralised
Uganda (1962-1965)	Decentralised to Centralised
Venezuela (1830-1869, 1961-)	Decentralised to Semi-Decentralised (1858) Semi-Decentralised to Centralised Centralised to Decentralised

**Appendix C: Table 3: Decentralisation and Secessionism**

<b>Decentralised State with</b>	<b>New State that Emerged</b>	<b>New State Regime: or Centralised</b>	<b>Decentralise</b>
<b>Strong Secessionism</b>	<b>(Year of Independence)</b>		
Czechoslovakia	Czech Republic (1992)	Centralised	
Czechoslovakia	Slovakia (1992)	Centralised	
Ethiopia	Eritrea (1993)	Centralised	
Indonesia	East Timor (1999)	Centralised	
Malaysia	Singapore (1965)	Centralised	
Pakistan	Bangladesh (1971)	Centralised	
Yugoslavia	Bosnia and Herzegovina (1991)	Decentralised	
	Croatia (1991)	Centralised	
	Macedonia (1991)	Centralised	
	Slovenia (1991)	Centralised	
	Serbia and Montenegro (1991)	Centralised	
USSR/Soviet Union	Armenia (1991)	Centralised	
	Azerbaijan (1991)	Centralised	
	Belarus (1991)	Centralised	
	Estonia (1991)	Centralised	
	Georgia (1991)	Semi-Centralised	
	Kazakhstan (1991)	Centralised	
	Kyrgyzstan (1991)	Centralised	
	Latvia (1991)	Centralised	
	Lithuania (1991)	Centralised	
	Moldova (1991)	Centralised	
	Russian Federation (1991)	Decentralised	
	Tajikistan (1991)	Centralised	
	Turkmenistan (1991)	Centralised	
	Ukraine (1991)	Centralised	
	Uzbekistan (1991)	Centralised	

Sources: Walter 2002, Gurr 1989 and Jagers and Gurr 1996

### **Appendix III: Addis Ababa Agreement of the 1972**

#### **The Addis Ababa Agreement on the Problems of the South Sudan**

Draft organic law to organise regional self-government in the Southern Provinces of the Democratic Republic of the Sudan

In accordance with the provisions of the constitution of the Democratic Republic of the Sudan and in realization of the Memorable May Revolution Declaration of June 9, 1969, granting the Southern Provinces of the Sudan regional self-government within a United Socialist Sudan, and in accordance with the principle of the May Revolution that the Sudanese people participated actively in and supervised the decentralised system of the government of their country, it is hereunder enacted:

Article 1: This law shall be called the Law for Regional Self-Government in the Southern Provinces. It shall come into force on a date within a period not exceeding thirty days from the date of the Addis Ababa agreement.

Article 2. This law shall be issued as an organic law, which cannot be amended, except by a three-quarter's majority of the Peoples National Assembly and confirmed by a two-thirds majority in a referendum held in the three Southern Provinces of the Sudan.

#### **Chapter II: Definitions**

Article 3. (i) " Constitution" refers to the Republican order No: 5 or any other basic law replacing or amending it. (ii) " President" means the president of the Democratic Republic of the Sudan. (iii) "Southern Provinces of the Sudan" means the provinces of Bahr el Ghazal, Equatoria and Upper Nile in accordance with their boundaries as they stood on January 1, 1956 and any other areas that were culturally and geographically a part of the southern complex as may be decided by a referendum. (iv) "Peoples Regional Assembly" refers to the legislative body for the Southern Regions of the Sudan. (v) "High Executive Council" refers to the Executive Council appointed by the President on the recommendation of the President of the High Executive Council and such body shall supervise the administration and direct public affairs in the Southern Regions of the Sudan. (vi) "President of the High Executive Council" refers to the person appointed by the president on the recommendation of the people's Regional Assembly to lead and supervise the executive organs responsible for the administration of the Southern Provinces. (vii) "Peoples National Assembly" refers to the National Legislative Assembly representing the people of the Sudan in accordance with the constitution. (viii) "Sudanese" refers to any Sudanese citizen as defined by the Sudanese nationality act 1957 and any amendments thereof.

#### **Chapter III: The Southern Region**

Article 4: The provinces of Bahr Al Ghazal, Equatoria and Upper Nile as defined in Article 3 (iii) shall constitute a self - governing region within the Democratic Republic of the Sudan and shall be known as the southern region.

Article 5. The Southern Regions shall have legislative and executive organs; the functions and powers of which are defined by this law. Article 6. Arabic shall be the official language for the Sudan and English the principal language for the Southern Regions without prejudice to the use of any other language or languages, which may serve a practical necessity for the efficient and expeditious discharge of executive and administrative functions of the region.

## Chapter IV: State Powers and Responsibilities

Article 7. Neither the people's Regional Assembly nor the High Executive Council shall legislate or exercise any powers on matters of National nature, which are: (i) National Defense. (ii) External Affairs. (iii) Currency and Coinage (iv) Air and Inter-Regional River transports. (v) Communications and Telecommunications. (vi) Customs and Foreign Trade except for border trade and certain commodities, which the Regional Government may specify with the approval of the Central Government (vii) Nationality and Immigration (emigration). (viii) Planning for economic and social development. (ix) Educational planning. (x) Public audit.

## Chapter V: Legislature

Article 8. Regional legislation in the Southern Regions is exercised by a People's Regional Assembly elected by Sudanese citizens resident in the southern region. The constitution and conditions of membership of the Assembly shall be determined by law. Article 9. Members of the people's Regional Assembly shall be elected by direct, secret ballot.

Article 10. (i) For the first Assembly the President may appoint additional members to the people's Regional Assembly where conditions for elections are not conducive to such elections as stipulated in article 9, provided that such appointed members shall not exceed one quarter of the Assembly. (ii) The people's Regional Assembly shall regulate the conduct of its business in accordance with rules of procedures to be laid down by the said Assembly during its first sitting. (iii) The people's Regional Assembly shall elect one of its members as speaker, provided that the first sitting shall be presided over by the interim president of the High Executive Council.

Article 11. The people's Regional Assembly shall legislate for the preservation of public order, internal security, efficient administration and the development of the Southern Regions in cultural, economic and social fields and in particular in the following: -

- (i) Promotion and utilisation of regional financial resources for the development and administration of the Southern Region
- (ii) Organisation of the machinery for regional and local administration.
- (iii) Legislation on traditional law and custom within the framework of national law.
- (iv) Establishment, maintenance and administration of prisons and reformatory institutions.
- (v) Establishment, maintenance and administration of public schools at all levels in accordance with national plans for education and economic and social development.
- (vi) Promotion of local languages and cultures.
- (vii) Town and village planning and the construction of roads in accordance with national plans and programs.
- (viii) Promotion of trade, establishment of local industries and markets, issue of traders licenses and formation of co-operative societies.
- (ix) Establishment, maintenance and administration of public hospitals.
- (x) Administration of environmental health services; maternity care; child welfare; supervision of markets; combat of epidemic diseases; training of medical assistants and rural midwives; establishment of health centres, dispensaries and dressing stations.
- (xi) Promotion of animal health; control of epidemics and improvement of animal production and trade.
- (xii) Promotion of tourism.
- (xiii) Establishment of zoological gardens, museums, organisations of trade and cultural exhibitions.
- (xiv) Mining and quarrying without prejudice to the right of the central government in the event of the discovery of natural gas and minerals

- (xv) Recruitment for, organisation and administration of police and prison services in accordance with the national policy and standards.
- (xvi) Land use in accordance with national laws and plans.
- (xvii) Control and prevention of pests and plant diseases.
- (xviii) Development, utilisation, and protection of forests crops and pastures in accordance with national laws.
- (xix) Promotion and encouragement of self- help programs.
- (xx) All other matters delegated by the president or the People's National Assembly for Legislation.

Article 12. The People's National Assembly may call for facts and information concerning the conduct of administration in the southern region.

Article 13. (i) The people's Regional Assembly may, by a three - quarter's majority and for specified reasons relating to public interest, request the president to relieve the president or any member of High Executive Council from office. The president shall accede to such request. (ii) In case of vacancy, relief or resignation of the president of the High Executive Council, the entire body shall be considered as having automatically resigned.

Article 14. The people's Regional Assembly may, by a two - thirds majority, request the president to postpone the coming into force of any law which, in the view of the members, adversely affects the welfare and interests of the citizens of the southern region. The president may, if he thinks fit, accede to such request.

Article 15. (I) The people's Regional Assembly may, by a majority of its members, request the president to withdraw any bill presented to the People's National Assembly which in their view affects adversely the welfare rights or interests of the citizens in the southern region, pending communication of the views of the people's Regional Assembly. (ii) If the president accedes to such request, the peoples Regional Assembly shall present its views within 15 days from the date of accession to the request. The president shall communicate any such views to the People's National Assembly together with his own observations if he deems necessary.

Article 16. The People's National Assembly shall communicate all bills and acts to the people's Regional Assembly for their information. The people's Regional Assembly shall act similarly.

## **Chapter VI: The Executive**

ARTICLE: 17 The regional executive authority is vested in a High Executive Council, which acts on behalf of the president.

Article 18 The High Executive Council shall specify the duties of the various departments in the Southern Region provided that on matters relating to central government agencies it shall act with the approval of the president. Article 19. The president of the High Executive Council shall be appointed and relieved of office by the president on the recommendation of the People's Regional Assembly.

Article 20 The High Executive Council shall be composed of members appointed and relieved of office by president on the recommendation of the president of the High Executive Council.

Article 21 The president of the High Executive Council and its members are responsible to the president and to the people's Regional Assembly for efficient administration in the southern region. They shall take an oath of office before the president.

Article 22 The president and members of the High Executive Council may attend meetings of the people's Regional Assembly and participate in its deliberations without the right to vote, unless they are also members of the people's Regional Assembly.

## **Chapter VII: Relations between Central Government and the High Executive Council**

Article 23. The president shall from time to time regulate the relationship between the High Executive Council and the central ministries.

Article 24. The High Executive Council may initiate laws for the creation of a regional public service. These laws shall specify the terms and conditions of service for the regional public service.

## **Chapter VIII: Finance**

Article 25 The people's Regional Assembly may levy regional duties and taxes in addition to national and local duties and taxes. It may issue legislation and orders to guarantee the collection of all public monies at different levels. (a) The source of revenue of the Southern Regions shall consist of the following; - (i) Direct and indirect regional taxes. (ii) Contributions from people's local government councils. (iii) Revenue from commercial, industrial and agricultural projects in the region in accordance with the national plan. (iv) Funds from the National treasury for established services. (v) Funds voted by the People's National Assembly in accordance with the requirements of the region. (vi) The special development budget for the south as presented by the people's Regional Assembly for the acceleration of economic and social advancement of the Southern Regions as envisaged in the declaration of June 9-1968. (vii) See appendix b. (viii) Any other sources. (b) The Regional Executive Council shall prepare a budget to meet the expenditure of regional services, security, administration, and development in accordance with national plans and programs and shall submit it to the people's Regional Assembly for approval.

## **Chapter IX: Other Provisions**

Article 27 (i) Citizens of the Southern Regions shall constitute a sizeable proportion of the people's armed forces in such reasonable numbers as will correspond to the population of the region. (ii) The use of the people's armed forces within the region and outside the framework of national defense shall be controlled by the president on the advice of the president of High Executive Council. (iii) Temporary arrangements for the composition of units of the people's armed forces in the Southern Regions are provided for in the protocol on interim arrangements.

Article 28 The president may veto any bill, which he deems contrary to the provisions of the national constitution provided that the people's Regional Assembly after receiving the president's views, may reintroduce the bill.

Article 29. The president and members of the High Executive Council may initiate laws in the people's Regional Assembly.

Article 30. Any member of the people's Regional Assembly may initiate any law provided that financial bills shall not be presented without sufficient notice to the president of the High Executive Council.



Article 31. The people's Regional Assembly shall strive to consolidate the unity of the Sudan and respect the spirit of the national constitution.

Article 32 All citizens are guaranteed freedom of movement in and out of the southern region, provided restriction or prohibition of movement may be imposed on a named citizen or citizens solely on grounds of public health and order.

Article 33 (i) All citizens resident in the Southern Regions are guaranteed equal opportunity of education, employment, commerce and the practice of any profession. (ii) No law may adversely affect the rights of citizens enumerated in the previous item on the basis of race, tribal origin, religion, place of birth, or sex.

Article 34. Juba shall be the capital of the Southern Regions and the seat of the regional executive and legislature.

### **Appendix A: A fundamental Rights Freedoms**

The following should be guaranteed by the constitution of the Democratic Republic of the Sudan.

1. A citizen should not be deprived of his citizenship.
2. Equality of citizens. (i) All citizens, without distinction based on race, national origin, birth, language, sex, economic or social status, should have equal rights and duties before the law. (ii) All persons should be equal before the courts of law and should have the right to institute legal proceedings in order to remove any injustice or declare any right in an open court without delay prejudicing their interests.
3. Personal liberty. (i) Penal liability should be personal. Any kind of collective punishment should be prohibited. (ii) The accused should be presumed innocent until proved guilty. (iii) Retrospective penal legislation and punishment should be prohibited. (iv) The right of the accused to defend himself personally or through an agent should be guaranteed. (v) No person should be arrested, detained or imprisoned except in accordance with the due process of law, and no person should remain in custody or detention for more than twenty-four hours without judicial order. (vi) No accused person should be subjected to inducement, intimidation or torture in order to extract evidence from him whether in his favour or against him or against any other person, and no humiliating punishment should be inflicted on any convicted person.
4. Freedom of religion and conscience. (i) Every person should enjoy freedom of religious opinion and of conscience and the right to profess them publicly and privately and to establish religious institutions subject to reasonable limitations in favor of morality, health or public order as prescribed by law. (ii) Parents and guardians should be guaranteed the right to educate their children and those under their care in accordance with the religion of their choice.
5. Protection of labour. (i) Forced and compulsory labour of any kind should be prohibited except when ordered for military or civil necessity or pursuant to penal punishment prescribed by law. (iii) The right to equal pay for equal work should be guaranteed.
6. Freedom of minority to use their languages and develop their culture should be guaranteed.

### **Appendix IX B: Draft Ordinance on items of revenue and grants in aid for the southern region**

1. Profits accruing to the central government as a result of exporting products of the southern region.
2. Business profit tax of the Southern Regions that are at present in the central list of ministry of treasury.
3. Excise duties on alcoholic beverages and spirits consumed in the southern region.
4. Profits on sugar consumed in the southern region.
5. Royalties on forest products of the southern region.

6. Royalties on leaf tobacco and cigarettes
7. Taxation on property other than that provided in the rates ordinance.
8. Taxes and rates on central and local government projects, (5% of net profits of factories, co-operative societies, agricultural enterprises and cinemas)
9. Revenue accruing from central and government activities in the Southern Regions provided the region shall bear maintenance expenses, e.g. post office revenue, land sales, sale of forms and documents, stamp duties, and any other item to be specified from time to time.
10. Licenses other than those provided for in the peoples local government act, 1971.
11. Special development tax to be paid by residents in the southern region, the rate of which should be decided by the people's Regional Assembly.
12. Income tax collect from officials and employees serving in the Southern Regions both in the national and civil services as well as in the army, police, judiciary and political establishment.
13. Corporation tax on any factory and / or agricultural project established in the region but not run by regional government, (5% of the initial cost).
14. Contributions from the central government for the encouragement of construction and development; for every agricultural project, industrial project and trading enterprise, (25% of the initial cost as assessed by the central government).
15. New social service projects to be established by the region or any of its local government units, and for which funds are allocated, shall receive grants from the national treasury in the following manner: Educational institutions: 20% of expenses. Channels, roads and bridges: 25% expenses. Relief and social amenities: 15% expenses. Tourist attraction projects: 25% expenses. Security: 15% expenses. Grants for post secondary and university education within the Sudan: 20% of grants, and outside the Sudan: 30% of the grants. Contribution for research, scientific advancement, and cultural activities: 25% of expenses.

## **Appendix IV: The Sudan's Khartoum Peace Agreement 12/1997**

### **PREAMBLE**

We the parties to the conflict in the Sudan;

Deeply committed to an immediate end to the current armed conflict through peaceful and political means;

Aware that the attainment of a just and lasting peace requires courage, statesmanship, political daring and challenging vision from the parties;

Aware that only a sustainable peace based on justice, equality, democracy, and freedom can lead to a meaningful development and progress, which would assist in the solution of the fundamental problems of the people of the Sudan;

Fully cognizant of the fact that the unity of the Sudan cannot be based on force or coercion, but on the free will of the people;

Hereby agree to make and abide by this agreement.

### **CHAPTER ONE DEFINITIONS**

In this agreement unless the context otherwise requires the following words shall have the same meanings assigned to it.

"Southern States" means the ten Southern States arising from the former provinces of Bahr el Gazal, Equatoria and Upper Nile with their boundaries as stood on 1<sup>st</sup> January 1956

"Interim Period" means the transitional period having the defined functions to this agreement, the end of which shall be the announcement of the referendum results.

"Constitution" means the constitution of the Sudan including such parts or articles of the agreement as shall be designated to be part thereof.

"Agreement" is this peace agreement signed on April 21<sup>st</sup>, 1997 between the Sudan Government on the one hand and the UDSF, SPLM, SSIG, and EDF on the other.

"President of the Coordinating Council" refers to the person appointed by the President of the Republic of the Sudan to preside over the Coordinating Council.

"Custom" in the States of South Sudan means the African Custom.

### **GENERAL PRINCIPLES**

The general principles contained in the political charter signed in Khartoum on 10<sup>th</sup> April 1996 shall be part of this agreement and shall guide and explain its provisions.

During a four-year interim period South Sudan shall enjoy a special status as defined in this peace agreement.

The interim arrangements shall be preceded by a declaration of permanent cease-fire and general amnesty proclamation.

The people of South Sudan shall exercise the right of self-determination through a referendum.

The problem of Abyei has been discussed and a final solution is referred to a conference on Abyei that will be convened in the area within the interim period

## **CHAPER TWO AGREEMENT**

### **1. Parties to the Agreement**

### **2. The Government of Sudan;**

The South Sudan United Democratic Salvation Front (UDSF)

Comprising of: -

The South Sudan Independence Movement (SSIM)

The Union of Sudan African Parties (U.S.A.P.); and

The Sudan People's Liberation Movement (SPLM);

The Equatoria Defense Force (EDF); and

The South Sudan Independents Group (SSIG).

All represented by the signatories hereunder.

Commencement of agreement

This agreement shall come into force as from the date of signature by the President of the Republic.

This Agreement shall be endorsed by the National Assembly and considered as an organic law, which has the effect of a constitutional decree.

## **CHAPTER THREE POLITICAL ISSUES**

Constitutional and Legal Matters

Religion and the State

Sudan is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. Islam is the religion of the majority of the population and Christianity and the African creeds are followed by a considerable number of citizens. Nevertheless the basis of rights and duties in the Sudan shall be citizenship, and all Sudanese shall equally share in all aspects of life and political responsibilities on the basis of citizenship.

Freedom of religion, belief and worship shall be guaranteed.

A suitable atmosphere shall be maintained for practicing, worship, dawa, proselytization and preaching.

No citizen shall be coerced to embrace any faith or religion.

There shall be no legislation, which would adversely affect the religious rights of any citizen.

A.) Sharia and Custom shall be the sources of legislation.

B) On the issue of Sharia, the parties agreed on a formula under which Laws of a general nature that are based on general principles common to the States shall apply at the National level, provided that the States shall have the right to enact any complementary legislation to Federal legislation on matters that are peculiar to them. This power shall be exercised in addition to the powers the States exercise on matters designated as falling within their jurisdiction, including the development of customary law.

### **1. Constitutional Guarantees**

The Supreme Court is the custodian of the constitution and is thus entrusted with the protection and interpretation of the Constitution.

The Constitution shall enshrine the following principles:-

There shall be no punishment except as provided for by the law.

Every person is presumed innocent until the contrary is proved.

Litigation before courts is a right guaranteed for every person.

The Constitution shall guarantee the equality of all citizens before law without any discrimination; no immunity shall be without law.

The Constitution shall guarantee the application of the Rule of Law.

The bill of rights and freedoms shall be enshrined in the Constitution.

Any law or decision that contravenes the Constitution may be challenged in court by any aggrieved person.

All personal matters such as marriage, divorce, parentage and inheritance shall be governed by the religion and custom of those involved.

**Fundamental Rights and Freedoms**

Under the concept of the rule of law the following basic human rights and fundamental freedoms shall be guaranteed:

The right to life and inviolability of the human person.

The right to equal treatment irrespective of gender, race, colour, religion or origin.

The right to family life and privacy.

The right to freedom of thought and conscience.

The right to property.

Freedom of expression.

Freedom of movement.

Freedom of the press.

Freedom of association and assembly as shall be regulated by the law.

Immunity from arbitrary arrest, detention and torture.

Freedom of religious worship, preaching, dawa, proselytization and religious propagation.

Freedom of expression and development of cultures and languages.

All other basic rights and freedoms that are recognised by and guaranteed under the International Conventions and Protocols ratified by the Government of the Sudan.

## **The Judiciary**

The judiciary in the Sudan shall be independent and decentralised.

Every State shall have judicial organ, which is composed of a Court of Appeal, Province Courts, District Courts and Local Courts.

Appeals from the Court of Appeal shall be submitted to the Supreme Court.

Administration of justice in the State shall be vested in the State Judicial Organ.

Judges at all levels shall be appointed by the President of the Republic on the recommendation of the High Judicial Council.

Matters related to qualification, emoluments, privileges, promotions, training, retirements, etc. shall be regulated by law.

**Democracy**

Participatory democracy shall be realised through congresses and national convention or conference.

In promotion of participatory democracy the congresses and national convention shall be organised: -

To accommodate forums for all citizens.

To discourage all forms of intolerance and totalitarianism.

The parties to this Agreement shall be guaranteed full participation in the political and constitutional processes in Sudan.

## **POWER SHARING**

### **THE FEDERAL POWERS**

The following powers shall be exercised by the Federal institutions:-

Foreign Affairs.  
 Armed Forces and Defense Affairs.  
 Maritime Shipping and Navigation.  
 Currency, Coinage and Bills of Exchange.  
 Federal Budget and Federal Planning.  
 External Communications, External and Inter-State Postal and Telecommunication services,  
 Civil Aviation and the operation and maintenance of International Airports.  
 Judiciary  
 Federal Rail Ways and Inter-State Highways.  
 Weights, measures and determination of time.  
 National Census.  
 Fishing and Fisheries in and beyond territorial waters.  
 Mining.  
 Inter-State Waterways.  
 Federal Election Commission.  
 Customs.  
 External Trade.  
 International Boundarand Inter-State Boundary Disputes.  
 Meteorological Services.  
 National Security.  
 Federal Legislation:  
 On matters within Federal Powers.  
 On matters common to the States.  
 Audit General.  
 Education Planning.  
 Attorney General and Advocacy.  
 National Electricity Network.  
 Federal Taxation.  
 Passports, Immigration, Nationality and Aliens Affairs.  
 Epidemic Control.  
 Emergency Jurisdiction.

## **1. STATE POWERS**

State Security, Public order and good governance.  
 Wildlife, tourism, Hotels, Inn, ...etc.  
 Land use and conservation without prejudice to the Federal Policies.  
 Local Government.  
 State Taxes.  
 Agriculture, forestry and Fisheries including the establishment of Training Institutions in these fields.  
 Promotion of Languages, Cultures, Folklore, Arts, etc.  
 State Radio, TV, Newspapers and Printing Press.  
 Quarrying  
 Roads, Water Supply, Hydro-Electric Power.  
 Irrigation and embankment, pastures and their development.  
 Animal Health, Animal Husbandry and Animal Wealth.  
 Libraries and Museums.  
 Industrial and commercial development.  
 Missionaries activities, Charities and Endowments.

Specialised Hospitals and Clinics.  
 Establishment of Banks in accordance with Central Bank Policies.  
 State Public Audit.  
 State Electricity Network.  
 State Attorney General.  
 State Legislation.  
 In matters within State Powers.  
 Complementary to Federal laws in matters peculiar to the State.  
 Customary laws.  
 State economic development and Planning in accordance with Federal Planning.  
 Recruitment of Specialised technical expertise in various fields of development.  
 Health care and establishment of all types of medical institutions for treatment and training of qualified medical personnel.  
 Registration of Birth and Death, and Marriages.  
 Statistics.  
 Scientific Research and Development.  
 Administration of Meteorological Services.  
 Education Management, Planning and Training up to the University level within the framework of the National planning.

### **c. RESIDUAL POWERS**

The State shall exercise the residual powers without prejudice to the powers allocated to the Federal authorities.

The Federal authorities shall exercise the residual powers without infringing on powers allocated to the States.

In case of dispute over the residual powers between the State and Federal authority, the dispute shall be referred to the Federal (Supreme) Court.

### **1. WEALTH SHARING**

The Federal Government shall lay down a comprehensive economic and social plan to develop the country in general and to bridge the gap between the various States in particular, so that within a definite period, a parity in provision of basic needs such as security, employment, water, food, education, health and housing could be reached.

In order to consolidate the economic policies:-

The economy in the Sudan shall be based on free market forces.

The Federal Bank of the Sudan shall be responsible for regulating internal and external value of the Sudanese currency.

There shall be an independent Stock exchange Bureau for selling and floating shares, bonds and premiums of companies and currency regulation to enhance free market economy.

There shall be established development projects to promote and maintain peace and stability among the people of the Sudan.

Major Federal development projects and big mining and oil projects shall be considered as national wealth and be managed on national basis provided that:-

The Federal Government shall observe to allocate an equitable percentage of the Returns to be fixed by the Revenue Allocation Commission to the State where the project is located (see annex 3).

Ensure participation of the States in the management of such projects.

Ensure recruitment and training of citizens of the State in order to participate in such projects.



Any other fringe benefits.

Revenue Allocation Commission shall be established to recommend revenue sharing formula for the whole country. The Coordinating Council shall be represented.

The Federal Government shall observe the following for the purpose of distribution of national revenue among the States and for site selection of major development projects: -

Giving priority to the less developed States according to their state of underdevelopment. Economic feasibility of projects and their efficient functioning.

Effect of the project in the realisation of self-sufficiency in the basic needs of the country.

A balance relationship between development and density of population and environment.

Establishment of special fund to take care of crash development programmes and maintenance of peace.

In the field of rehabilitation of the war affected areas, the following shall be observed: -

The Federal Government and the Coordinating Council shall work to attract loans and aid from the sisterly and friendly countries and international benevolent organisations to rehabilitate the economic projects which ceased to function or were damaged because of the war affected areas and resettlement of returnees and displaced persons.

The Federal Government and the Coordinating Council shall launch a plan and joint international appeal for the reconstruction, rehabilitation, repatriation and development of the Southern States and other war affected areas.

The Coordinating Council shall also establish a relief, resettlement, rehabilitation and reconstruction commission to manage and administer the resources acquired for the above purposes.

The sources of revenue of the Southern States shall consist of the following:-

State taxes and generated revenue.

Fees, excise duties and licenses.

Revenue from commercial, industrial and agricultural projects based in Southern States.

Funds from the Federal treasury for established services in the States until such a time when they become self-reliant.

Any development assistance and donations from foreign sources.

Revenue allocation from the Federal Government for socio-economic development.

State share of Federal taxes levied on Federal projects and services functioning within the Southern States.

Business profit taxes.

Corporate taxes on factories and agricultural enterprises in the State, other than Federal ones, established in Southern States.

Property taxes.

The share of fees on licenses for mineral oil explorations (see annex 3).

Profits accruing from the Customs, Airports Services, Roads, Postal and

Telecommunication Services and River Transport in Southern States shall be allocated to the Rehabilitation, Reconstruction, Repatriation Commission.

The State Government shall prepare a budget to meet the expenditure on services , administration and development of the State to be submitted to the State Legislative Organ for approval.

No project adversely affecting the people, ecology and natural environment of State may be implemented without consulting the State Concerned.

The Federal Government and the Coordinating Council shall encourage and promote foreign investment and procurement of development assistance for the Southern States and shall encourage establishment of branches of public sector institutions, development corporations and specialised banks.

The Coordinating Council shall prepare a development budget for Southern States and to submit the same to the President.

## **PARTICIPATION OF THE SOUTHERN CITIZENS IN THE FEDERAL INSTITUTIONS**

Mindful of the present participation of the Southerners in the Federal Institutions, this Agreement is putting forward further balanced representation in the Federal institutions.

The participation shall be based on values of efficiency, qualification, honesty, justice, responsibility and equality between all the citizens without discrimination.

The Southern citizens shall participate in all Federal, political and constitutional institutions in numbers commensurate to the demands of the interim period taking into consideration population size and provided that the criteria for eligibility are met.

The Southern citizens shall have the right to participate in the Federal Institutions as follows: -

The Presidency.

The Federal Council of Ministers.

The National Legislative Assembly.

The Federal Defense and Security Council.

The Supreme Court.

The Federal Planning Institutions.

The National ECommission.

Foreign Affairs.

The Federal Career Selection Commission.

Federal Universities and Research Institutions.

The Armed Forces

Any other Federal Institutions.

The Federal Career Selection Commission (FCSC) shall have an office at the seat of the Coordinating Council.

## **CHAPTER FOUR THE INTERIM PERIOD**

The length of the interim period shall be four years. However, it may be shortened or extended if need arises by recommendation from the Coordinating Council to the President of the Republic.

The interim period shall commence as from the date of the formation of the Coordinating Council and shall end as soon as the referendum is accomplished and the results are declared.

The Coordinating council shall carry out the following activities during the interim period:

To assist repatriate, resettle and rehabilitate the displaced and the returnees.

To reconstruct the war devastated areas.

To remove effects of war by clearing mine fields, opening up roads and water ways.

To promote reconciliation, peace and confidence building amongst the Sudanese citizens.

To draw development plans for the Southern States and solicit funds from national, regional and international bodies and institutions for implementation of the peace agreement.

To draw a political mobilisation plan to strengthen peace and unity in different parts of the country.

To strengthen the Federal rule in the Southern States.

To reassemble and train manpower in order to re-establish the public service in the Southern States.

To strengthen the capacity building of the people in the Southern States to become self-reliant. In this regard plans shall be drawn to receive support for educational, health, food security and social services institutions.

To educate and mobilise the people of Southern States on the process of referendum.

To provide adequate security in the Southern States in order to create conducive atmosphere for the referendum.

To participate in conducting census in the Southern States.

To assist register voters for the referendum.

## **CHAPTER FIVE**

### **THE COORDINATING COUNCIL OF THE SOUTHERN STATES**

#### **DEFINITION**

In accordance with this Peace Agreement, there shall be established a Coordinating Council in Southern States during the interim period. The Coordinating council shall be responsible for coordination, supervision, socio-economic planning, confidence building, peace nurturing, policy-making as well as political mobilisation.

The President of the coordinating council shall be accountable to the President of the Republic.

The President of the Republic in consultation with parties signatory to this Agreement shall appoint the President of the Coordinating Council.

The President of the Coordinating Council in consultation with Southern political forces shall recommend his cabinet including the Governors (Walis) to the President of the Republic for appointment.

The Ministers in the Coordinating council shall enjoy status of Federal Ministers.

The Governors of the Southern States in consultation with the political forces on their respective States shall recommend appointment of members of their governments including commissioners to the President of the Coordinating Council who shall pass the same to the President of the Republic.

Until the atmosphere is conducive for elections of State Assemblies to take place, the President of Coordinating Council in consultation with the political forces shall recommend to the President of the Republic new members of legislative assemblies in the Southern States for appointment.

The Coordinating Council shall act as a link between the Federal Government and the Southern States.

The Coordinating council has the right to choose its seat.

## **2. FUNCTIONS OF THE COORDINATING COUNCIL**

The Coordinating Council shall have the following functions: -

General Supervision of the implementation of this peace agreement as well as all peace matters.

Voluntary repatriation of the returnees, and the displaced, rehabilitation and reconstruction of war affected areas in Southern States.

Ensuring confidence building measures among the Sudanese citizens.

To embark on mobilisation of the people therein for the referendum.

Legislative Functions:-

The Coordinating Council shall establish Advisory Council for the perfection of the legislative process.

The Coordinating Council shall coordinate legislation with the Southern States Legislative Assemblies in matters common to these States.

The Coordinating Council may request adjournment of any legislation tabled in the National Assembly if deemed to adversely affect the interests of the Southern States until such a time the coordinating Council presents its opinion.

Encourage establishment and supervision of foreign consulates, UN agencies and NGOs in South Sudan in coordination with the Federal Government in coordination with the Federal organs concerned.

### **3. POWERS OF THE COORDINATING COUNCIL**

The Coordinating Council shall exercise the following powers:

#### **DEVOLVED POWERS**

Education Planning up to University in accordance with National policies.

Planning and supervision of Southern States security, public order and good governance.

Economic development and planning in accordance with National policies.

Planning and programming for electricity network and other public utilities in the Southern States.

Organisation of scientific research, technological, industrial and commercial development.

To conduct International agreements on culture, trade, including border trade, and technical co-operation, the procurement of foreign capital investment and development assistance from governmental and non-governmental organisations (NGOs) in coordination with the Federal organs concerned.

#### **4. CONCURRENT POWERS**

The Coordinating Council shall exercise the following powers concurrent with the Federal organs:

Planning for survey and land disposition.

Planning and supervision of the Public Service in the Southern States.

Organisation of States Elections and Census.

Drawing of environmental conservation policies.

Cultural planning and regulation, supervision of Radio, TV, newspapers and printing press.

Supervision of trade union disputes.

Audit within the Audit General

Establishment of Banks.

Air, Land and River Transport, Postal Services and Telecommunication.

Copy Rights, Patents and Publishers Rights.

In addition to the above devolved and concurrent powers, the President of the Republic and any Federal Ministry or Federal Organ may delegate powers to the Coordinating Council for policy planning and general supervision in Southern States.

The Coordinating Council shall receive regular reports from the Governments and other institutions of the Southern States and shall report the same to the President of the Republic. The Coordinating Council shall take over the responsibilities and functions of the Supreme Council for Peace and its organs.

## **COMPOSITION OF THE COORDINATING COUNCIL**

The Coordinating Council membership shall be as follows: -

The President of the Coordinating council.

The Vice President of the Coordinating Council and Minister of Local Government Affairs and Public Security.

Minister for Cabinet Affairs.

Minister for Economic Planning and Financial Affairs.

Minister for Education and Instruction Affairs.

Minister for Legal Affairs.

Minister for Public Service and Labour.

Minister for Information, Culture and Social Affairs.

Minister for Agriculture and Natural Resources.

Minister for Health Affairs.

Minister for Peace and Political Mobilisation.

Minister for wildlife Conservation, Tourism and Environmental Control.

Minister for Engineering Affairs and Public Utilities.

Minister for Humanitarian Affairs and Rehabilitation.

Minister for commerce, Supplies and Industry.

Besides the members mentioned above the Governors (Walis) of the Southern States shall be members in the coordinating council by virtue of the their post.

There shall be established in Southern States of Relief, Rehabilitation, Resettlement, Repatriation Commission (SSRRRC) which shall be supervised by the Minister for Humanitarian Affairs.

The Coordinating Council shall prepare its annual budget to be submitted to the President of the Republic.

The Coordinating Council shall issue regulations to direct its activities and specify the functions, duties and roles of its various departments.

The President of the coordinating Council shall recommend to the President of the Republic relief from office, acceptance or rejection of resignation of any member of the coordinating Council including the Governors.

The State governors shall recommend to the President of the Coordinating Council relief from office, acceptance or rejection of resignation of any member of the State governments including commissioners. The President of the Coordinating Council shall pass the same to the President of the Republic for approval.

## **CHAPTER SIX**

### **8. SECURITY ARRANGEMENTS DURING THE INTERIM PERIOD**

The South Sudan Defense Force (SSDF) shall remain separate from the National Army and be stationed in their locations under their command.

Police, Prisons, Wildlife, Civil Defense, Fire Brigade and Public Security in the Southern States shall be drawn from the people of Southern Sudan.

The size of the Sudanese Armed Forces in South Sudan shall be reduced to peace time level once peace is established.

A joint Technical Military Committee of equal numbers shall be constituted from the Sudanese Armed Forces on one hand and the SSDF on the other for the purpose of supervision and implementation of the security arrangements in this agreement (see annex 1).

The Joint Technical Military Committee shall oversee and supervise the activities of the cease-fire Commission and the peace-keeping observers.

The joint Technical Military Committee shall coordinate with the Army General HQs provision of supplies, training, armament, emoluments and other facilities for the SSDF.

A Joint Military Cease-fire Commission shall be established to monitor cease-fire violations and the disengagement of troops in Southern States (annex 1).

The Movement of the armed parties shall be coordinated and controlled by the Joint Technical Military Committee, and its subcommittees (annex 1).

In accordance with this agreement the President of the Republic of the Sudan shall declare general amnesty to members of SSDF from any criminal or civil culpability relating to acts committed during the period of the war with effect from the date of signing this Peace Agreement (see Annex 2).

There shall be established a Joint Amnesty commission to follow up the implementation of the general Amnesty Proclamation ( see annex 2).

There shall be established a Joint Amnesty Tribunal to receive, examine and determine cases which are covered by this Amnesty Proclamation (see Annex 2).

War wounded, widows, orphans and other war victims shall be rehabilitated with assistance from the national, regional and international humanitarian agencies.

The annexes are considered as guidelines with a degree of flexibility to the said committees/commissions.

## **CHAPTER SEVEN**

### **10. REFERENDUM**

By this Agreement the right of the people of Southern Sudan to determine their political aspirations and to pursue their economic, social and cultural development is hereby affirmed.

The people of Southern Sudan shall exercise this right in a referendum before the end of the interim period.

Options in the referendum shall be: -

Unity.

Succession

Referendum shall be free, fair and be conducted by a Special decree in consultation with the coordinating Council.

Eligible voters for the referendum shall be Southern Sudanese people who attained the age of eighteen years and above residing inside and outside of South Sudan.

The vote shall be by secret ballot.

To ensure free and fair conduct of the referendum, the SRC shall invite observers as follows:-

OAU, Arab League, UN, Religious bodies, IGAD, National and Foreign NGOs and any other countries.



National and international media and journalist.

The parties agree to respect, abide by and implement in good faith the result of the referendum.

## **CHAPTER EIGHT**

### **12.FINAL PROVISIONS**

#### **LANGUAGE**

Arabic is the official language of the Sudan, English is the second language in the Sudan.

The government shall endeavour to develop other languages.

Amendment of Agreement.

No amendment bill on this Agreement shall be presented to the National Assembly without consulting the Coordinating Council.

For amendment on this Agreement the Coordinating Council may present its petition to the President of the Republic provided that such a bill is passed in the Coordinating Council by two-thirds majority.

#### **Signed by:**

For the Government of Sudan:

LT General El Zuber Mohammed Saleh, Vice President

For the United Democratic Salvation Front (UDSF)

and South Sudan Independence Movement/Army (SSIM/A):

Cdr. Dr. Riek Machar Teny D., Chairman & C-in-C (SSIM/A)

For the Sudan People's Liberation Movement (SPLM/A)

Cdr. Karubino Kawanyn Bol

Chairman C-in-C (SPLM/A)

For South Sudan Independents Group (SSIG)

Cdr. Kawac Makwei

Chairman C-in-C (SSIG)

For Equatoria Defense Force (DF)

Dr. Thiopholus Ochang Loti

Chairman C-in-C (EDF)

For Union of Sudanese African Parties (U.S.A.P)

Mr. Samuel Aru Bol

Chairman (U.S.A.P)

For Bor Group

Arok Thon Arok

Chairman

Source: <http://www.somourgd.com/THE%20SUDAN.htm>



## **APPENDIX V: SUMMARY OF THE COMPREHENSIVE PEACE AGREEMENT:**

The official signing of the Comprehensive Peace Agreement (CPA) on 9th January 2005 between the Government of the Republic of the Sudan (GoS) and the Sudan Peoples' Liberation Movement/Army (SPLM/A) marked a historical watershed for Sudan. It brought to an end 22 years of protracted and costly civil war that had caused tremendous loss of life, devastated the country's infrastructure (especially in the South) and destroyed livelihoods, trust and hope.

The terms agreed to and the renewed hope engendered by the CPA needs to be channeled to the rebuilding of this war torn country. The CPA sets out the framework for a just and lasting peace in the Sudan, and along with the subsequent Interim National Constitution (INC) and the Interim Constitution of the Southern Sudan (ICSS), establishes a new political, military and economic system based on the values of justice, democracy, and human rights that gives a voice and role to all the peoples of the Sudan and paves the way for restored dignity and well being, security and equality for all.

## **APPENDIX A: THE MACHAKOS PROTOCOL**

The Machakos Protocol was the result of a breakthrough round of negotiations in 2002. It is the foundation of the final CPA. It lays down the principles and procedures to guide political development until a referendum in the south in 2011, identifies the levels and roles of government, and sets out the basic agreements reached on State and Religion. A brief summary of the Protocol is given here; more detail can be found in the section on the Power Sharing Arrangements on p.10.

### **Part A – Agreed Principles**

- The unity of the Sudan, based on the free will of its people and good democratic governance, is and shall always be the priority of the parties;
- The People of Southern Sudan shall control and govern the affairs of the South as well as participate equitably in the National Government;
- The people of Southern Sudan shall have the right to self-determination through a referendum.
- The people of the Sudan agree to work together to, among other things:
  - Establish a democratic system of governance;
  - Find a comprehensive solution to the economic and social deterioration of the Sudan;
  - Find a solution that replaces war with peace, but also with social and economic justice, and human rights;
  - Formulate a reconstruction and development plan for areas affected by war;
  - Make the unity of Sudan an attractive option especially to the people of Southern Sudan;

### **Part B – The Transition Process**

The implementation of the comprehensive peace agreement will cover two phases:

- A Pre-Interim Period of 6 months (9 January 2005 – 8 July 2005); and,
- An Interim Period of 6 years (9 July 2005 – 8 July 2011).

During the Pre-Interim period and continuing through the Interim Period the institutions and bodies of a transitional government will be established in the context of a comprehensive, internationally-monitored ceasefire. These institutions, bodies and mechanisms are treated in more detail throughout this document.

The Machakos Protocol secured the right of self-determination for Southern Sudan by

providing that the people of Southern Sudan will vote in a referendum at the end of the Interim Period, choosing between unity of the Sudan or secession.

## **APPENDIX B: INTERNAL SECURITY ARRANGEMENTS**

The Protocol on Security Arrangements (PSA) was signed in Naivasha, Kenya on 25 September 2003, and the Permanent Ceasefire and Security Arrangements Implementation Modalities and Appendices (PCF) was signed in Naivasha, Kenya on 31 December 2004. These two documents provide for the permanent end of hostilities between the Sudan Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA), and describe the structure and function of the armed forces during the Pre-Interim and Interim Periods.

Security arrangements in the Sudan during the Pre-Interim and Interim Periods are based on the following principles, among others:

- Respect for the ceasefire and the resolution of problems through dialogue and political will;
- Fostering of good governance, democracy and civil society;
- Free movement of people and services throughout Sudan; and,
- Full ceasefire and cessation of all hostilities.

The main security issues covered under the CPA are:

- Status of the Armed Forces, including redeployment and the formation of Joint Integrated Units (JIUs);
- Ceasefire and monitoring arrangements, including the treatment of Other Armed Groups (OAGs);
- Demobilization, Disarmament, Re-Integration, and Reconciliation;

### **Status of the Armed Forces**

The CPA establishes a system of three related armed forces:

- The Sudan Armed Forces (SAF);
- The Sudan People's Liberation Army; and,
- The Joint Integrated Units (JIUs)

The SAF and the SPLA will remain separate during the Pre-Interim and Interim Periods, but will be treated equally as the Sudan National Armed Forces (SNAF). All three armed forces shall be regular, professional and non-partisan, and shall respect the rule of law, basic human rights and the will of the people. The SAF and JIUs will be funded by the Government of National Unity, while the SPLA will be funded by the Government of Southern Sudan.

### **Sudan Armed Forces**

The SAF shall redeploy North of the 1/1/1956 border according to the following schedule:

- 17% by 9 July 2005;
- An additional 14% by 9 January 2006;
- An additional 19% by 9 July 2006;
- An additional 22% by 9 January 2007; and,
- The remaining 28% by 9 July 2007.

After redeployment, the SAF shall continue to be deployed throughout the North. Both parties will negotiate on proportionate downsizing of the SAF and SPLA.

### **Sudan People's Liberation Army**

The SPLA shall redeploy South of the 1/1/1956 border according to the following schedule:

- 30% SPLA forces in eastern Sudan by 9 May 2005;
- An additional 40% of SPLA forces in eastern Sudan by 9 September 2005;
- The remaining 30% of SPLA forces in eastern Sudan by 9 January 2006;

- All SPLA forces in Southern Kordofan and Southern Blue Nile by EITHER:
- 9 April 2006; or,
- Six (6) months after the deployment of JIUs in those areas.

After redeployment the SPLA shall continue to be deployed throughout the South. Both parties will negotiate on proportionate downsizing of the SAF and SPLA.

### **Joint Integrated Units**

While the SAF and SPLA will remain separate forces as described above, some elements from each one will be combined into JIUs, which will form the core of the future Sudan National Armed Forces (SNAF) if the result of the referendum in the South is to confirm unity. If Southern Sudan votes for secession, the JIUs will dissolve. The JIUs will be structured and deployed as follows:

- Command and control shall fall under the Joint Defense Board (JDB; see below) in Juba;
- Equatoria: 1st Infantry Division of 9,000 troops (“officers, NCOs and men”);
- Upper Nile: 2nd Infantry Division of 8,000 troops;
- Bahr El Ghazal: 3rd Infantry Division of 7,000 troops;
- Blue Nile: 4th Infantry Division of 6,000 troops;
- Southern Kordofan: 5th Infantry Division of 6,000 troops; and,
- Khartoum: Independent Brigade with 3,000 troops.

### **Other Armed Groups**

No armed groups shall be allowed to operate outside the SAF, SPLA and JIUs.

### **Ceasefire and Monitoring Arrangements**

The agreement provides for the permanent cessation of hostilities between the SAF and SPLA – as well as any forces allied and affiliated with them – within 72 hours of the signature of the CPA. The cessation prohibits some activities and permits others, such as:

#### **Violations**

- Unauthorized movement of troops;
- Unauthorized recruitment or drafting;
- Unauthorized replenishment of military equipment;
- Violation of human rights or humanitarian law; and,
- Recruitment of child soldiers.

#### **Permitted Activities**

- De-mining;
- Development, such as opening roads, bridges and other lines of transport;
- Ensuring access for humanitarian relief;
- Assisting free movement of people, goods and services;
- Training and refresher training

In order to monitor and verify the ceasefire, the CPA provides for the creation of four (4) levels of bodies:

- Ceasefire Political Commission (CPC);
- Ceasefire Joint Military Committee (CJMC);
- Area Joint Military Committee (AJMC); and,
- Joint Military Teams (JMTs).

### **Ceasefire Political Commission**

The CPC shall be established by the two parties by 9 February 2005. It will be answerable to the Presidency, be composed of representatives of both parties and of IGAD – with a rotating chair – and will reach decisions by consensus. Some of the key functions of the CPC are:

- To supervise, monitor and oversee the implementation of the ceasefire;
- To provide disciplinary measures for violations; and,
- To provide a forum for dialogue between the parties and the international community.

#### **Ceasefire Joint Military Committee**

The CJMC is to be located in Juba, and shall be established by the parties and the United Nations Mission in Sudan (UNMIS) by 24 April 2005 – becoming operational by 9 May 2005. It shall report to the CPC (above). Senior officers from the UNMIS, the SAF, and the SPLA will jointly control the CJMC, taking decisions by consensus. The CJMC will be a key military decision-making body, exercising the following functions, among others:

- Overseeing compliance with the ceasefire agreement;
- Monitoring and verifying all aspects of the implementation of the agreement, including:
  - disengagement, disarmament and redeployment of forces;
  - troop strength and stocks of military equipment; and,
  - disarmament of civilians;
- Receiving and rule on violations not resolved by the AJMC (below); and,
- Acting as a liaison and facilitator between the two parties.

#### **Area Joint Military Committee**

AJMCs shall be established by the two parties and UNMIS in Juba, Malakal, Wau, Kadugli, Abyei, and Damazien/Kurmuk on or before 7 June 2005, becoming operational by 22 June 2005. The AJMC in each location will be chaired by the most senior UNMIS officer in the area, and composed of equal numbers of SAF and SPLA officers. The AJMC's will monitor the ceasefire, attempt to verify and resolve alleged violations, and liaise with local Security Committees.

#### **Joint Military Teams**

JMTs will be established by each AJMC. JMTs will consist of at least one UNMIS officer and equal numbers of SAF and SPLA officers. They will conduct regular patrols of their assigned area, and report alleged violations to the AJMC.

#### **Demobilization, Disarmament, Re-Integration and Reconciliation**

The CPA provides for a Demobilization, Disarmament and Reintegration (DDR) process with the objective of creating an enabling environment for human security and to support social stabilization throughout the Sudan. The process will be transparent and accountable, and shall be led by state institutions with the international community playing a supporting role. Those institutions shall be established by the Presidency by 9 February 2005, and shall consist of:

- The National DDR Coordination Council (NDDRCC), which will set policy and oversee the activities of the NDDRC and SDDRC (below);
- The Northern Sudan DDR Commission (NDDRC), which will design, implement and manage the DDR process in Northern Sudan;
- The Southern Sudan DDR Commission (SDDRC), which will design, implement and manage the DDR process in Southern Sudan; and,
- State DDR Commissions, which will implement programmes at the state and local levels.

#### **APPENDIX C: THE PROTOCOL ON WEALTH SHARING**

The Protocol on Wealth Sharing was signed in Naivasha, Kenya on 7 January 2004, and the Implementation Modalities of the Framework Agreement on Wealth Sharing was signed on 31 December 2004 in Naivasha, Kenya. These two documents form part of the Comprehensive Peace Agreement (CPA), and together set out a comprehensive scheme for sharing common wealth so as to enable each level of government to function, and to ensure

the quality of life, dignity and living conditions of all citizens without discrimination.

The scheme rests on the following fundamental principles:

- The wealth of the Sudan shall be shared equitably;
- All parts of Sudan are entitled to development and wealth sharing;
- Revenue sharing should show a commitment to the devolution of power and decentralization of decision-making;
- Development will be transparent and accountable;
- Best-known practices for utilizing natural resources will be followed.

The CPA addresses the following major wealth-sharing issues:

- Land ownership;
- Oil resources and the sharing of oil revenue;
- Equalization and allocation of nationally-collected revenue
- Monetary and financial policies; and
- Reconstruction and development funds.

### **Land Ownership**

The parties to the CPA agreed to create a process to resolve conflict on land issues by developing and amending legislation to reflect customary laws and practices, local heritage, and international trends. The process will be initiated by land commissions at three levels:

- The National Land Commission (NLdC), to be established by the Presidency and the National Assembly after the adoption of the Interim National Constitution;
- The Southern Sudan Land Commission (SSLdC), to be established by the President of GoSS and the Legislative Assembly of Southern Sudan after the appointment of the GoSS; and,
- State Land Commissions (StLdC), to be established by each state as provided for in their respective state constitutions or legislation.

The land commissions will have the power to arbitrate and sort out claims over land, and to make recommendations for the revision of existing legislation. Those recommendations will be forwarded to the appropriate level of government (GoNU, GoSS, State) for a two-step process:

- With the facilitation and support of the GoNU or GoSS Ministry of Justice, the Executive Body approves and proposes necessary legislation; and,
- Appropriate legislative bodies promulgate amended laws.

### **Oil Resources and the Sharing of Oil Revenue**

The CPA establishes a national system for the management and sharing of all oil revenues in the Sudan, based on the principles of national interest and the public good, interest of the affected States, interest of people in the affected areas, and national environmental policies.

The three primary processes of the national system are intended to address:

- Existing oil contracts;
- Management of petroleum resources moving forward; and,
- Sharing of oil revenue among the National, Southern Sudan, and State governments.

### **Existing Oil Contracts**

The SPLM, in consultation with the Ministry of Energy and Mining, shall appoint a Technical Team of 6 members – plus technical advisors – by 9 February 2005. The Technical Team is to be provided access to existing oil contracts after signing a confidentiality agreement. On the understanding that existing contracts may not be renegotiated, the Technical Team is to prepare a consensual report by 9 March 2005 on any social or environmental problems with the contracts.

A Joint Technical Team, funded by the GoNU, will be appointed by the National Petroleum Commission (NPC) (below), after receipt of the report of the Technical Team. The Joint Technical Team will report to the NPC, which will then take action within 60 days.

Any person whose rights have been violated by existing oil contracts has a remedy in the courts as of 9 January 2005.

### **Management of Petroleum Resources**

A National Petroleum Commission (NPC) shall be established by the Presidency within two weeks of the establishment of the GoNU and GoSS. The NPC will formulate and monitor public policies and guidelines for the oil industry, negotiate and approve future oil contracts, and develop strategies for the development of the petroleum sector. In performing these functions, the NPC will take into account the benefits to local communities of proposed contracts, and the extent to which the views of the locality and State are incorporated into the contract.

### **Sharing of Oil Revenue**

The formula for sharing the oil resources will be as follows:

- 2% of revenue will go to oil producing States in proportion to their output;
- The remaining net revenue will be distributed as follows:
  - 50% of the net revenue from wells in Southern Sudan will go to the Government of Southern Sudan; and,
  - 50% of net revenue from wells in Southern Sudan will go to the National Government and States in Northern Sudan.

### **Equalization and Allocation of Nationally-collected Revenue**

The National Government, the Government of Southern Sudan, and States can collect revenue from various sources including taxes (income, business, excise), licenses, service charges and loans. States/Regions and Government of Southern Sudan shall have exclusive control of income collected under their own taxing powers. Government revenues and expenditures shall be made public. All levels of government shall comply with generally accepted accounting standards, which will be ensured by National and Southern Sudan Audit Chambers established by the National Assembly and the Southern Sudan Legislative Assembly immediately after the establishment of the GoNU and GoSS .

A National Revenue Fund (NRF) shall be created by the National Ministry of Finance by 10 January 2005. All revenues collected nationally by the GoNU will be pooled in the NRF, which will be an account in the Central Bank of Sudan administered by the Ministry of Finance.

A special account in the Bank of Southern Sudan (BOSS) (see below) will be opened by the National Ministry of Finance after the establishment of the GoSS. All revenue collected by the national government in Southern Sudan will be placed into that account. Thereafter, 50% will be transferred to the GoSS and 50% to the NRF. This allocation will be reviewed at the mid-term of the Interim Period by a Joint Technical Committee established by the National and GoSS Ministries of Finance.

A Fiscal and Financial Allocation and Monitoring Commission (FFAMC) shall be established by the GoNU and GoSS before 9 July 2005, based on the report of the National Constitutional Review Commission. The function of the FFAMC is to ensure fairness and transparency in the allocation of nationally-collected funds to the GoSS and the States by reporting every three months to the Presidency, which will take remedial action if necessary.



A Joint National Technical Team (JNTT) will be appointed by the President of the GoS and the Chairman of the SPLM immediately upon signature of the CPA in order to prepare a budget estimate for the establishment of all levels of government, organize a donor conference, and develop fundraising strategies.

### **Monetary and Financial Policies**

The CPA provides for the establishment by 9 July 2005 of a restructured banking system, which will reflect the duality of the banking system in Sudan. The system will consist of the:

- Central Bank of Sudan (CBOS); and,
- Bank of Southern Sudan (BOSS) as a branch of the Central Bank of Sudan.

### **Central Bank of Sudan**

The new CBOS will be established by 9 April 2005 through new and revised legislation passed by the National Assembly upon the recommendation of a Technical Team appointed by the Presidency immediately after the signature of the CPA. A Board of Directors (BoD) will be appointed by the Presidency by 16 May 2005. The BoD will ensure that the full restructuring of all levels of the CBOS is complete by 15 May 2005. The CBOS will be responsible for the conduct of monetary policy, which it shall implement through Islamic financing practices in the North.

### **Bank of Southern Sudan**

The BOSS will be established by the Board of Directors of the CBOS by 15 May 2005. The BOSS will be a window of the CBOS operating in Southern Sudan and implementing national monetary policy through conventional (non-Islamic) financing practices. It will be managed by the Deputy Governor of the CBOS and will act in accordance with the policies, rules and regulations of the CBOS.

### **Reconstruction and Development Funds**

The Southern Sudan Reconstruction and Development Fund (SSRDF) will receive funds from GoSS revenues, as well as foreign governments and multilateral donors, which will be disbursed for reconstruction, resettlement, reintegration and development in Southern Sudan. During the Pre-Interim Period, the SPLM will establish an Oversight Committee to initiate the process of establishing the SSRDF, and to establish a monitoring and evaluation system. The Oversight Committee will consist of members of GoS/GoNU, SPLM/GoSS, and international community.

The National Reconstruction and Development Fund (NRDF) will be established by the National Ministry of Finance and the Joint National Technical Team during the Pre-Interim Period to assist war-affected States outside of Southern Sudan. It will be overseen by a Steering Committee composed of representatives from the Ministries of Finance of the GoNU and GoSS, the National Ministry of International Cooperation, the National and Southern Sudan Audit Chambers, representatives of war-affected/least-developed States in the North, and the international community. 75% of the funds in the NRDF will go to war-affected States – especially Southern Kordofan and Blue Nile – and 25% to least-developed States.

## **APPENDIX D: THE POWER SHARING SYSTEM OF GOVERNANCE**

The Machakos Protocol was signed in Machakos, Kenya on 20 July 2002, the Power Sharing Protocol was signed in Naivasha, Kenya on 26 May 2004, and the Implementation Modalities of the Machakos and Power Sharing Protocols was signed in Naivasha, Kenya on 31 December 2004. Together, those three documents provide for a multi-level system of decentralised governance organized according to the following categories of general principles:



- Machakos principles;
- Inter-governmental linkages;
- Human rights and fundamental freedoms;
- Reconciliation; and,
- Population census, elections and representation.

These categories of general principles (discussed below) will apply to the four levels of government to be established in Sudan:

- The Government of National Unity (GoNU) protecting and promoting the sovereignty of the Sudan;
- The Government of Southern Sudan (GoSS) exercising authority in Southern Sudan;
- State government for each State throughout Sudan; and,
- Local government throughout the Sudan.

### **Machakos Principles**

The Machakos Protocol includes a set of Agreed Principles that form an integral part of the CPA and of the system of governance to be established during the Interim Period. These include:

- The unity of the Sudan, based on the free will of its people and good democratic governance, is and shall always be the priority of the parties;
- The People of Southern Sudan shall control and govern the affairs of the South as well as participate equitably in the National Government;
- The people of Southern Sudan shall have the right to Self-Determination through a referendum.
- The people of the Sudan agree to work together to:
  - Establish a democratic system of governance;
  - Find a comprehensive solution to the economic and social deterioration of the Sudan;
  - Make the unity of Sudan an attractive option especially to the people of Southern Sudan

### **Inter-governmental Linkages**

In the Power Sharing Protocol, the parties agreed to create a decentralized system of governance with significant devolution of powers. In that system, the GoNU will exercise sovereignty over the entire Sudan, but will link to the States of Southern Sudan through the GoSS. All levels of government will respect each others' autonomy, refrain on encroaching on one another's powers, and promote cooperation and coordination.

### **Human rights and fundamental freedoms**

All levels of government shall comply fully with all the provisions of all the human rights treaties to which Sudan is a party. Some of the rights included in those treaties are the rights to:

- Life;
- Personal Liberty;
- Freedom from slavery;
- Freedom from torture;
- Free trial;
- Freedom of thought, conscience and religion;
- Freedom of expression;
- Family and marriage;
- Vote;
- Equality before the law;
- Freedom from discrimination;
- Freedom of movement; as well as:
- The Rights of Children; and,

- Equal Rights of Men and Women.

### **Reconciliation**

A comprehensive process of national healing and reconciliation will be established by the Presidency after the adoption of the Interim National Constitution (INC) (below).

### **Population Census, Elections and Representation**

The CPA provides that a full census must take place before 9 July 2007, and general elections at all levels by 9 July 2008.

A Population Census Council (PCC) will be established by the Presidency, and will be composed of representatives of the GoNU, GoSS, the Council of States (below), the States and the Central Bureau of Statistics. The PCC will plan and set standards for a full census to take place before 9 July 2007.

A National Electoral Law will be adopted by the National Assembly by 9 January 2006, setting forth the procedures for establishing the National Electoral Commission and for conducting national elections.

A National Electoral Commission (NEC) will be established by the Presidency within one month of the adoption of the National Electoral Law. The NEC, with the assistance of the international community, will be responsible for conducting free and fair general elections.

### **Government of National Unity**

The National Constitutional Review Commission (NCRC) will be established by the parties by 25 January 2005. The NCRC will have several tasks:

- To produce a draft Interim National Constitution by 8 March 2005;
- To produce a Model State Constitution:
  - based on the INC in the case of States in the North; and,
  - based on the INC and the Southern Sudan Constitution in the case of States in the South; and,
- To produce legal instruments by 9 July 2005 providing for the establishment of:
  - A National Electoral Commission;
  - A Human Rights Commission;
  - A National Judicial Service Commission;
  - A National Civil Service Commission;
  - An ad hoc commission to monitor the referendum in Southern Sudan;
  - A Fiscal and Financial Allocation and Monitoring Commission (above); and,
  - Any other independent commission set forth in the CPA or agreed by the parties.

The National Assembly in the North and the National Liberation Council in the South will adopt the INC by 22 March 2005. Immediately upon adoption of the INC, the institution of the Presidency will be created, consisting of a President, a First Vice President, and a Vice President. Before Elections, the posts of the Presidency will be filled as follows:

- The President is the former President of the GoS, and will also be Commander in Chief of the Sudan Armed Forces (SAF);
- The First Vice President is the Chairman of the SPLM and will also hold the posts of President of the Government of Southern Sudan and Commander in Chief of the SPLA;

By the end of the Pre-Interim Period on 9 July 2005, a Government of National Unity (GoNU) – based on the CPA and the INC – will be formed with the following three branches:

- The Legislature;
- The Executive; and,

- The Judiciary.

Khartoum will be the capital of the GoNU. The Presidency, in consultation with the Governor of Khartoum State, will ensure that the administration of the capital is representative. Non-Muslims in the capital will not be subject to Shari'a law penalties, but to remitted penalties instead. The Presidency – immediately upon its own creation – will establish a commission to protect the rights of non-Muslims in Khartoum.

### **The National Legislature**

The Presidency will appoint and convene the national legislature by 5 April 2005. It shall consist of two houses:

- The National Assembly; composed of representatives from throughout Sudan, with representation based on population; and,
- The Council of States – composed of two representatives from each State as well as two observers from the Abyei area.

Before Elections, the Presidency will appoint the members of the National Assembly according to the following percentages:

- National Congress Party (NCP) will have 52%;
- Sudan People's Liberation Movement will have 28%;
- Other Northern political forces will have 14%; and,
- Other Southern political forces will have 6%.

### **The National Executive**

The President, in consultation with the First Vice President, will appoint a Council of Ministers consisting of 30 Ministers and 34 State Ministers (numbers subject to review) by 21 April 2005. Together, the Presidency and the Council of Ministers constitute the Executive. Any Executive Acts or other legal acts by the President of the Republic shall be discussed with, and adopted by the Council of Ministers.

Prior to elections, the seats of the Council of Ministers will be allocated according to the same percentages as in the Legislature (above).

### **The National Judiciary**

An independent Judiciary will be formed at the national level, consisting of:

- A Constitutional Court composed of 9 competent and nonpartisan figures who will:
  - Hear cases that arise under the INC or Northern State constitutions;
  - Hear appeals from the Supreme Court of Southern Sudan on cases arising under the Constitution of Southern Sudan; and,
  - Decide on constitutional disputes between organs or levels of government.
- A National Supreme Court:
  - Hearing appeals cases arising under national laws;
  - Reviewing death sentences;
  - Having any other competencies given by the INC or national laws.
- A National Court of Appeal; and,
- Any other National Courts/tribunals deemed necessary to be established by law.

A National Judicial Service Commission (NJSC) will be established by the Presidency – in accordance with the legal instrument drafted by the NCRC and adopted by the National Legislature – by 9 July 2005. The NJSC will be chaired by the Chief Justice and composed of judges, professors, advocates, and representatives from the National and Southern governments. It will be responsible for the nomination of judges, who will then be appointed by the Presidency. In the case of Justices of the Constitutional Court, nominations by the

NJSC and appointments by the Presidency must be confirmed by a 2/3 majority of the Council of States.

### **Government of Southern Sudan (GoSS)**

A Southern Sudan Constitutional Drafting Committee (SSCDC) will be appointed by the President of the GoSS after the adoption of the INC. The SSCDC will consist of 40 representatives, allocated according to the percentages of the Transitional Southern Sudan Legislative Assembly (TSSLA) (below), and will have three weeks to produce a draft Interim Constitution of Southern Sudan (ICSS). The TSSLA will have one week to adopt the ICSS, after which it will be forwarded to the National Ministry of Justice to be certified as compatible with the INC. Once the Ministry of Justice has issued certification, the ICSS will be signed by the President of the GoSS and thereby enter into force.

Within two weeks of the signature of the ICSS, the GoSS will be formed, with its own legislature, executive and judiciary.

### **The GoSS Legislature**

The Southern Sudan Legislative Assembly (SSLA) will exercise legislative authority in Southern Sudan. Elections to the SSLA, as well as its competencies and internal procedures, will be set forth in the ICSS or through legislation.

Before elections, a Transitional Southern Sudan Legislative Assembly (TSSLA) will be appointed by the President of the GoSS within two weeks of the adoption of the INC. The TSSLA will be constituted as follows:

- SPLM will have 70%;
- National Congress Party will have 15%; and,
- Other Southern political forces will have 15%.

### **The GoSS Executive**

The President of the GoSS – in consultation with the Vice President and with the approval of the SSLA – will appoint an Executive Council of Ministers (ExCoM). Members of the ExCoM will be accountable to the President and Vice President, and may be removed by a 2/3 majority vote in the SSLA. Together, the President, Vice President and ExCoM constitute the GoSS Executive; additional powers, institutions and functions of the Executive will be assigned by the ICSS.

Before elections, the President of the GoSS will appoint the ExCoM within one week of signing the ICSS. Seats in the GoSS Executive prior to elections will be allocated according to the same percentages as the TSSLA (above).

### **The GoSS Judiciary**

An independent Judiciary shall be established in Southern Sudan with the following judicial institutions:

- A Supreme Court of Southern Sudan, which shall:
  - Be the final court for all cases arising under the laws of the GoSS or the Southern States;
  - Hear cases arising under the ICSS or the constitutions of the Southern States; and,
  - Strike down laws or provisions of laws that contradict the ICSS or the constitutions of the Southern States;
- Courts of Appeal; and
- Any other courts or tribunals found necessary.

Members of the Supreme Court and Courts of Appeal of Southern Sudan shall be appointed by the President within one week of signing the ICSS, in accordance with the procedures set forth therein.

State Government (except Southern Kordofan and Blue Nile; see below)

The institutions at the State level shall consist of:

- A State Executive comprised of the Governor and the States' Council of Ministers;
- An elected State Legislature with the power to make laws as provided for in the INC, ICSS and State constitution; and,
- An independent State Judiciary, with courts hearing cases arising under State, Southern Sudan or National Laws.

Before elections, the composition of both the State Legislature and the State Executive shall be as follows:

- The National Congress Party will hold 70% in the Northern States; and,
- The SPLM will hold 70% of the seats in the States in Southern Sudan.

The remaining 30% in the Northern and Southern States shall be as follows:

- National Congress Party shall have 10% in the States in Southern Sudan; and,
- The SPLM shall have 10% of the seats in the States in the North.

The remaining 20% shall be filled by other political forces as follows:

- Northern Political Parties in the North; and,
- Southern Political Parties in the States in Southern Sudan.

## **APPENDIX E: THE SPECIAL STATUS OF SOUTHERN KORDOFAN AND BLUE NILE STATES**

The Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States – signed in Naivasha, Kenya on 26 May 2004, and the Implementation Modalities of the Protocol on the resolution of the Conflict in Southern Kordofan and Blue Nile States – signed in Naivasha, Kenya on 31 December 2004 – establish a special status for the two States based on the following general principles:

- The guarantee of human rights and fundamental freedoms to all individuals;
- The development and protection of the diverse cultural heritage and local languages of the population; and,
- The development of human resources and infrastructure as the main goal of the States; and,
- The conduct of that development in accordance with best-known practices, transparency, and accountability.

The agreement on Southern Kordofan and Blue Nile addresses the following key issues:

- Popular consultation;
- Structure of State government;
- State share of national wealth;
- State Land Commission;
- Security arrangements; and,
- Pre-election arrangements.

### **Popular Consultation**

In Southern Kordofan and Blue Nile the CPA will not be the final settlement of the political conflict in the States until it is subjected to the process of popular consultation.

State Parliamentary Assessment and Evaluation Commissions (SPAEC) will be established in each State immediately after the elected State Legislatures come into force at the end of the third year of the Interim Period (ending 9 July 2008). Each SPAEC will submit a report on the implementation of the CPA to the State Legislature, no later than 9 July 2009.

A Presidential Monitoring and Evaluation Commission will be established by the Presidency before 9 July 2007. It will submit a report to the GoNU and to the two State governments for use in ensuring the faithful implementation of the CPA.

Based on those reports, each State legislature may choose by 9 July 2009 either to endorse or to rectify the protocol. If a State legislature endorses the protocol, it becomes the final settlement of the conflict in that State. If a State Legislature chooses to rectify any shortcomings in constitutional, political or administrative arrangements, it must do so through negotiations with the GoNU.

### **Structure of the State Government**

The State Government shall consist of a Legislature, an Executive, and a Judiciary.

The State Executive shall consist of:

- An elected State Governor;
- A representative State Council of Ministers;
- Appointed local commissioners and elected local government councils;
- A State Security Committee; and,
- State Services for Police, Prisons, Wildlife, and Fire Brigade.

The State Legislature will be elected by registered voters of the State, and will have the following powers:

- To decide its own rules, procedures and committees;
- To legislate for the State;
- To relieve the Governor of the State from office on a vote with a 2/3 majority; and,
- Other powers as assigned by the State constitutions.

The State Judiciary will consist of such courts as may be established by the State constitutions, and shall hear cases arising under State and National laws. Appointment and dismissal of judges shall be subject to State legislation and the National Judicial Service Commission.

### **State Share in National Wealth**

The Fiscal and Financial Allocation and Monitoring Commission (FFAMC) (see page9), will have representatives from the two States as determined by the Presidency. By 9 July 2005, the FFAMC will establish specific formulae for allocating resources to war-affected areas, taking into account, among other things, population, social development indicators, and the effects of war.

The National Reconstruction and Development Fund (NRDF) (see page9) will ensure that war-affected areas are brought up to national standards. Seventy-five per cent (75%) of the NRDF will go to war-affected areas, especially Southern Kordofan and Blue Nile.

### **State Land Commission**

A State Land Commission will be established – one for each State – with the same powers as the National Land Commission. The State Land Commissions will regulate land rights concurrently with the National Land Commission based on the following considerations:

- The State Land Commission shall be able to review existing land contracts and recommend measures such as the restoration of land rights or compensation.
- Rights in land owned by the National Government within the States shall be exercised through the appropriate or designated level of government.
- In the event that the findings of the National and State Land Commissions are irreconcilable the matter will be decided by the Constitutional Court.



### **Security Arrangements**

During the Interim Period, Sudan Armed Forces (SAF) troop numbers in the States in questions will be determined by the Presidency.

In addition, the following deployments will be made under the Security Arrangements (see page 4-6):

- Joint Integrated Units, Blue Nile: 4th Infantry Division of 6,000;
- Joint Integrated Units, Southern Kordofan: 5th Infantry Division of 6,000 troops;
- Area Joint Military Committees will be established in Kadugli and Damazine/Kurmuk to monitor the ceasefire, attempt to verify and resolve alleged violations, and liaise with local Security Committees; and,
- Joint Military Teams will be established in each State to patrol, monitor and report alleged violations of the ceasefire.

### **Pre-Election Arrangements**

The Executive and Legislature in the two States will be allocated as follows:

- National Congress Party will have 55% of seats; and,
- SPLM will have 45% of seats.

In the two States, each party shall hold the Governorship on a rotating basis. Each party will hold the governorship for half of the pre-election period. No one party will hold the Governorship in both States at the same time.

The Deputy Governor will be from the party that is not holding the position of Governor.

Pending elections the two States will be represented at the National Institutions targeting a percentage not less than their proportional population size.

### **APPENDIX F: THE SPECIAL STATUS OF THE ABYEI AREA**

The Protocol on the Resolution of the Abyei Conflict was signed at Naivasha, Kenya on 26 May 2004. Implementation Modalities of the Protocol on the Resolution of the Abyei Conflict was signed at Naivasha, Kenya on 31 December 2004. The agreement is based on special administrative status for Abyei, in which:

- Residents of Abyei will be citizens of both Southern Kordofan and Warap;
- Abyei will be administered by a local, elected Executive Council composed of a Chief Administrator and 5 heads of departments;
- A local Abyei Area Council of 20 members will be elected;
- Net oil revenue from Abyei will be distributed six ways during the Interim Period:
  - 50% to the Government of National Unity;
  - 42% to the GoSS;
  - 2% to Bahr El Ghazal (Warap);
  - 2% to the previous Western Kordofan, which is now a part of the new State of Southern Kordofan. The 2% shall be distributed as follows:
    - > 1% to the previous Western Kordofan component; and,
    - > 1% to the Southern Kordofan component;
  - 2% to the Ngok Dinka; and,
  - 2% to the Misseriya People. The full 2% shall benefit the previous Western Kordofan Component;
- The GoNU will provide Abyei with assistance in development and urbanization; and,
- International monitors will be deployed to Abyei to ensure compliance with the agreements; and,
- The people of Abyei will have the opportunity to vote in a referendum. The referendum will run simultaneously with the one in Southern Sudan, and will offer the following choices (irrespective of the results of the Southern vote):



- That Abyei retain its special administrative status in the North; **or**,
- That Abyei be part of Bahr El Ghazal (Warap),

## **Administration in the Interim Period**

### **Executive Council**

A Local Executive Council will be elected by the residents of **Abyei** and shall:

- Render services;
- Supervise and promote stability and security; and,
- Propose development and urbanization projects to the Abyei **Area** Council (below) and the Presidency.

The Council shall consist of a Chief Administrator, a Deputy **Admin**istrator, and 5 representative and inclusive heads of departments.

Before the elections, the Presidency will appoint the Chief **Admin**istrator and the Deputy Administrator simultaneously with the GoSS and the Governments of the States of Southern Kordofan and Blue Nile (by 9 July 2005). The Presidency will **then** appoint the 5 heads on the recommendation of the Chief Administrator.

### **Abyei Area Council**

There shall be established a local, elected Abyei Area Council **composed** of 20 members which shall:

- Issue local enactments within the powers of local government;
- Approve the budget for the Abyei Area;
- Adopt reconstruction, development and urbanization plans; and,
- If necessary, recommend to the Presidency the removal of the **Chief** Administrator.

Prior to elections, the Presidency shall appoint the members of the **Abyei** Area Council within one week of appointing the Chief Administrator.

### **Financial Resources**

Oil revenue during the Interim Period will be distributed as above. **In** addition, Abyei will be entitled to:

- Its share of national revenue under the Wealth Sharing Protocol;
- Income tax and other taxes raised in Abyei;
- A share of the National Reconstruction and Development Fund **as** well as a share of the Southern Sudan Reconstruction and Development Fund; and.
- Allocation from the National Government to cover costs and to **set** up and run its administration.

An Abyei Resettlement, Construction and Development Fund **will be** established by the Abyei Executive Council upon the creation of the Abyei **Admin**istration to handle relief, repatriation, resettlement, reintegration, rehabilitation and reconstruction programmes.

### **Boundaries**

The Presidency will form an Abyei Boundaries Commission (**ABC**) to establish the official boundaries of the Abyei area. The ABC will be composed of:

- One representative from each party;
- Five (5) international experts nominated by the US, UK and IGAD – one of whom will be the chair;
- 2 members each from the present administrations (GoS and **SPLM**) of Abyei;
- 2 Misseryia nominated by the GoS; and
- 2 Ngok Dinka nominated by the **SPLM**.

The ABC will base its report on consultations with representatives of the peoples of the Abyei area, neighbours, and the two parties, as well as on research and analysis by the experts. The final report of the ABC will be binding on the two parties.

Residency: Residents will be those living in the area with residency criteria determined by the Abyei Referendum Commission.

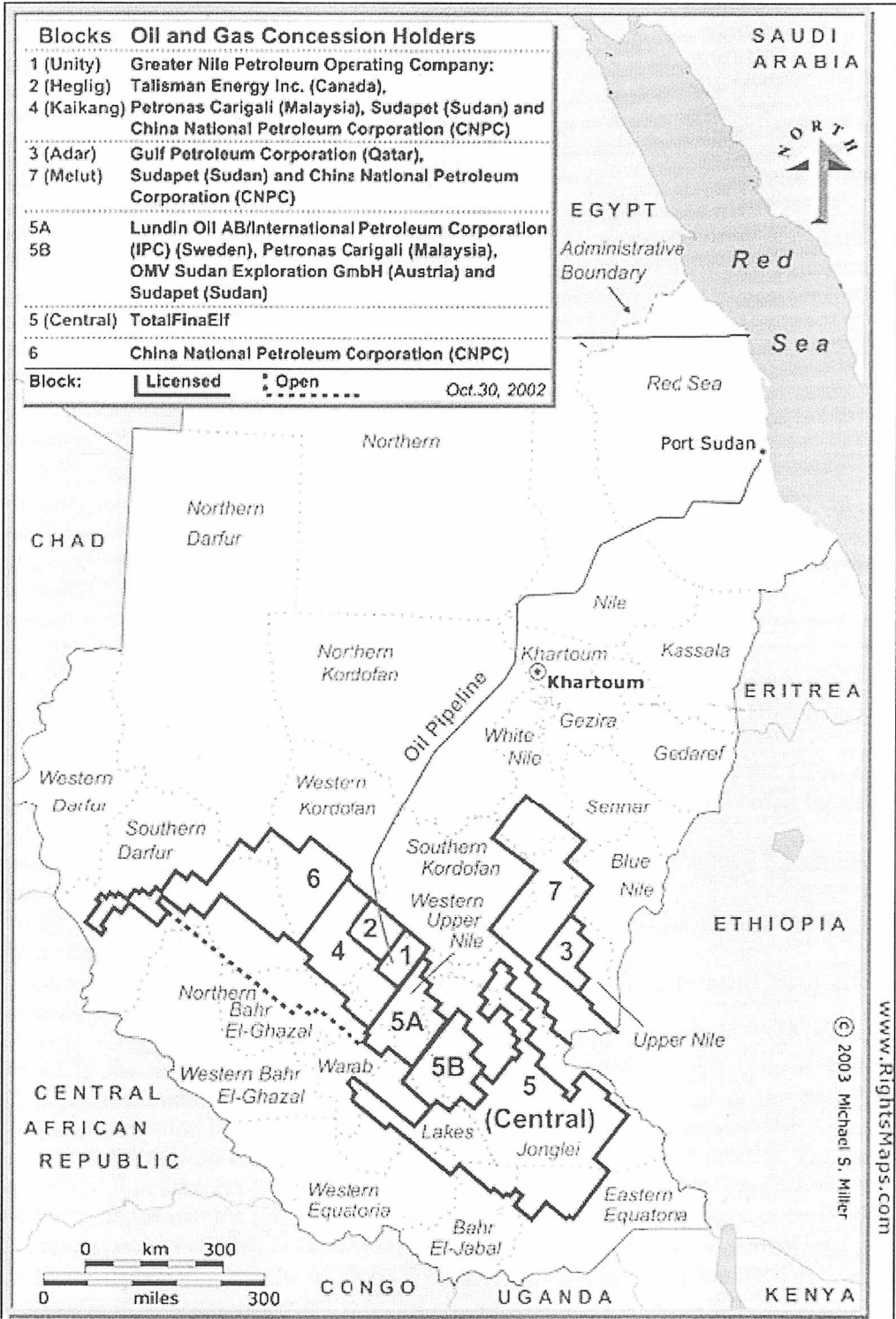
Security Arrangements: Immediately after the formation of the Abyei Administration, the Executive Council will establish an Abyei Area Security Committee. In addition, the two parties shall form and deploy an Abyei Area Independent Battalion attached to the Joint Integrated Units 3rd Infantry Division, Warap. The battalion will be accompanied by international monitors to ensure full implementation of the agreement.

Abyei Referendum Commission: The Presidency shall establish a commission simultaneously with the Southern Sudan Referendum Commission to determine the rules and procedures governing the referendum.

Reconciliation: The Presidency shall start the reconciliation and peace building process for Abyei as soon as the Comprehensive Peace Agreement is signed

Samson Kwaye , (2006) > <http://www.splmtoday.com>< 26 June 2007

Appendix VI: Oil and Gas Concession Holders



Source: Michael S. Miller, 2003, [www.RightsMaps.com](http://www.RightsMaps.com)

## **Appendix VII: Sampling procedures and interviews conducted in the Sudan and abroad.**

Explorative interviews were conducted to provide perspective for this study. The instruments used include face to face discussions; a questionnaire paper given by hand or sent through personal e-mail. Results of the interviews are summarised in Chapter I of this study.

Five groups of respondents were interviewed. The first group comprised Negotiators of the CPA, officials of the government of Southern Sudan, the government of National Unity, Southern Kordufan and Blue Nile States and the people of the Abyei Area. This group includes members of IGAD, The Partners of IGAD, Sudanese politicians, members of parliament, SPLA Soldiers/Officers and Directors. Second group was made up of the negotiators of the Addis Ababa Agreement of 1972, those who signed Khartoum Peace Agreement in 1996/97. Third group was made up of public and civil servants in Juba, Rumbek, Bor, Nuba Mountains, Blue Nile, Abyei area, Khartoum, NGOs, educational institutions staff, teachers, businesspersons, health personnel, bank officials and students. Fourth group was made up of UN officials, the observers and the peacekeepers (UNMIS). The fifth group was the Sudanese in the Diaspora.

The objective of the interviews was to elicit reactions regarding the following issues:

- the extent to which the CPA has addressed the root causes of the Sudanese civil war;
- the political commitment to implement fundamental change in the political, social and economic institutions of the Sudan;
- the state of readiness of the Sudanese people to participate in change and their expectation of such change;
- the extent to which the SPLM can lead a national agenda after the death of former leader Dr. John Garang;
- the implementation of the CPA and its possible effect on the unity of the Sudan as a country in the year 2011, in particular whether the implementation of the CPA is making unity attractive for Southern Sudanese or not;
- whether another civil war is possible in case the NCP fails to implement the CPA, especially with regard to the Abyei Protocol, the entire demarcation of South/North border, the collapse of the CPA in Nuba Mountains and Blue Nile;
- to assess whether Southern Sudanese will vote for an independent Southern Sudan or maintain the current arrangement (confederate system);
- to assess the performance of GOSS and the states' governments as viewed by the public in Southern Sudan;
- the extent to which the historical grievances and dishonoured agreements have affected the relationship between Northerners and Southern Sudanese;

With respect to the third group of respondents, the format was to interview them according to echelons of responsibility, starting with delegations from the Government of the Sudan and the Sudan People's Liberation Movement/Army, followed by the IGAD's members who were involved in the mediation process and members of the IGAD taking part in the peace process. The majority of this group agreed that the CPA has addressed the root causes of the Sudanese conflict, but it is up to the Sudanese to implement the provisions of the agreement. A total of 95% said at least 80% of the CPA has been implemented both at the national and regional level, but only in formal, and only 20% has not been implemented. The total of 5% said the CPA has not been implemented as aspect and is likely to trigger a resumption of another civil war.

With regard to the people of Southern Kordufan (Nuba Mountains) and Blue Nile 75% said the CPA has not addressed their expectations (mainly with regard to the issue of self-determination for the people of these two areas), 15% said their rights have been addressed through the CPA and 10% had mixed feelings. On the issue of the implementation of the CPA in the two areas, 95% blamed the national government for not providing finance for development, and only 5% said the government is

moving step by step in the right direction and things may improve later. In the Abyei Area 100% supported the CPA but 100% also said that the CPA has not been implemented in the Abyei Area, and is likely to lead to another civil war due to the economic interests of both parties and foreign interests.

With respect to the third group, located mainly in Southern Sudan, respondents were selected from national, regional and state levels of government, and from county or local governments and tribes. A total of 742 messages or answers were received; 82% of them were grievances against the government of Southern Sudan institutions, compared to only 15% who appreciated these institutions or were tolerant towards them; and 3% whose response was mixed. The number one leading concern in the minds of the public in Southern Sudan was insecurity, as shown below in the list of top thirteen most commonly stated grievances in the order of priority:

1. Insecurity,
2. Nepotism/Tribalism,
3. Corruption,
4. Bad roads/road traffic, accidents,
5. Lack of basic services e.g. health, clean water and electricity,
6. Unfair employment procedures,
7. Slow development,
8. Unemployment,
9. Lack of education/schools;
10. Lack of freedom of press,
11. Violations of human rights by security,
12. Oppression against women by men,
13. Lack of skilled personnel.

However, on the issue of whether the South and the North will go back to war if the CPA fails, 75% of the third group agreed that there will be no going back again to a civil war, if it will happen God forbid. In their view, it will be as a result of a misunderstanding of the CPA and not a lack of implementation of the CPA because all the parties failed through their respective governments to implement it well.

### Appendix VIII: Net Abyei Oil Revenues, 2005

Based on the production figures obtained by Crisis Group, the following calculations approximate net oil revenues from Abyei for 2005. All production figures are in thousand barrels per year; revenue figures are in million U.S. dollars per year.

1	Abyei production	26,665
2	Sudan production	100,250
3	Abyei as % of Sudan	26.6%
4	Sudan South production	72,756
5	South as % of Sudan production	72.6%
6	Government of Sudan (GoS) share of Sudan production	69,683
7	Govt. share as % of Sudan production	69.5%
8	Government share of Sudan South production	50,471
9	Government share of as % of Sudan South production	69.4%
10	Government of Sudan gross revenue from exports	\$1,793.70
11	Govt. gross revenue from refinery shipments	\$921.30
12	Total Government of the Sudan (GoS) gross revenue	\$2,715.00
13	Implicit fob oil price per barrel on Government oil	\$38.96
14	Net Government oil revenue from exports	\$1,492.3
15	Net Government of the Sudan (GoS) oil revenue from refinery shipments	\$759.4
16	Total Government net revenue	\$2,251.7
17	Total net Government of the Sudan revenue after 2% allocation to states	\$2,206.7
18	Government of Southern Sudan net revenue from exports	\$528.1
19	Government of Southern Sudan (GOSS) net revenue from refinery shipments	\$270.3
20	Total GOSS net revenue (50% of net Govt. revenue after state allocation that comes from the South)	\$798.4
21	Direct transfers from Govt. to GOSS for 2005 (some additional transfers took place in 2006)	\$523.3
22	Transfers from ORSA to GOSS for 2005 (some additional transfers took place in 2006)	\$96.3
23	Total transfers to GOSS for 2005 revenue earned	\$619.6
24	Direct expenditure from Govt. to GOSS in 2005	\$194.5
25	GOSS (budgetary) net position for 2005	\$80.6
26	State shares of Revenue (2%)	\$45.0
27	Unity State's share	\$32.6
28	South Kordufan's share	\$12.5
29	Abyei approximate net revenue	\$598.9
30	Abyei share of total net revenue (before 2% deduction for State distributions)	26.6%
31	50% share to Govt.	\$299.5
32	42% share to GOSS	\$251.5
33	2% share to Bahr al Ghazal State	\$12.0
34	2% share to South Kordufan State	\$12.0
35	2% share to local Ngok Dinka	\$12.0
36	2% share to local Misseriya people	\$12.0

Source: ICG Report October 2007

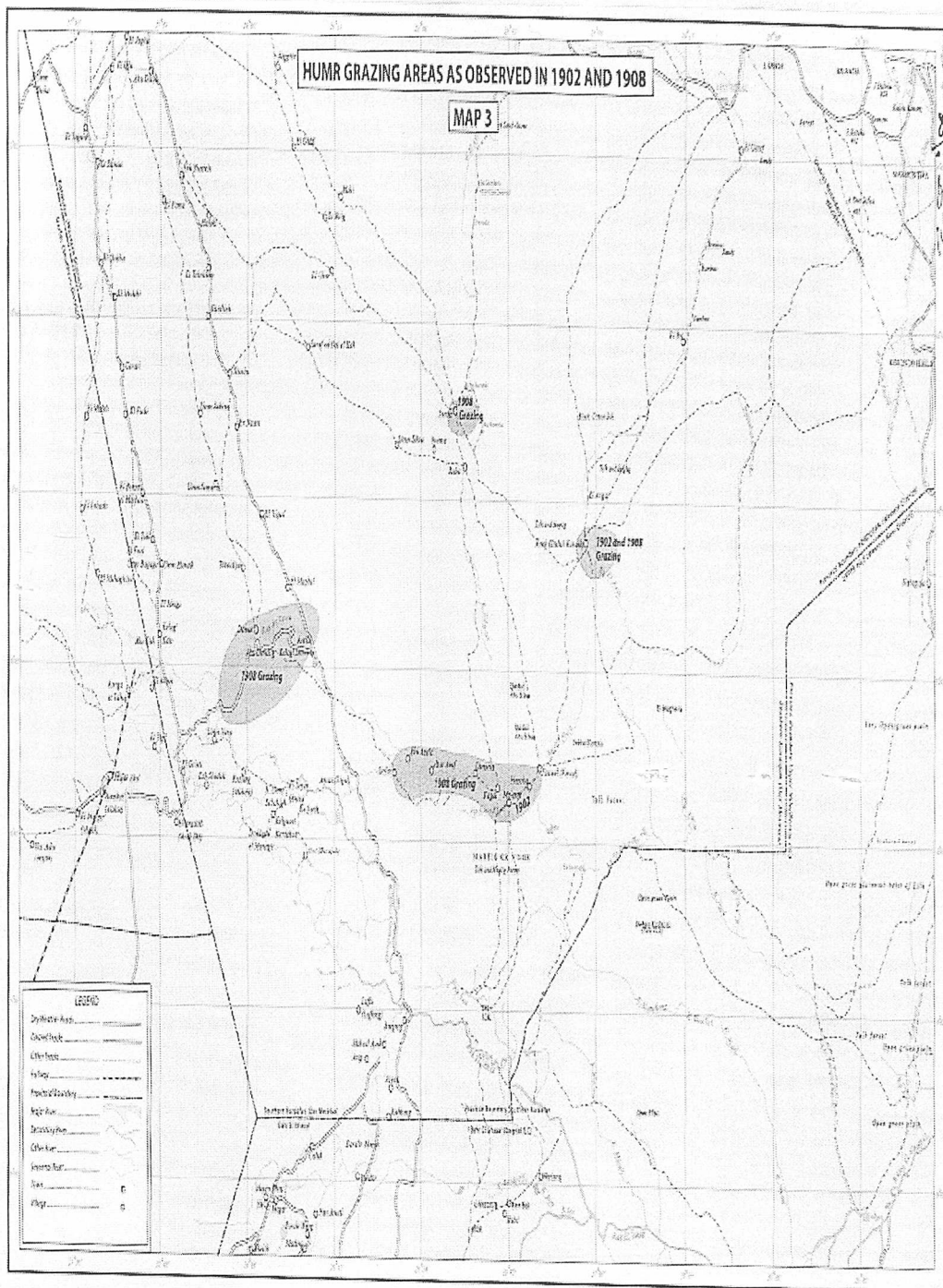


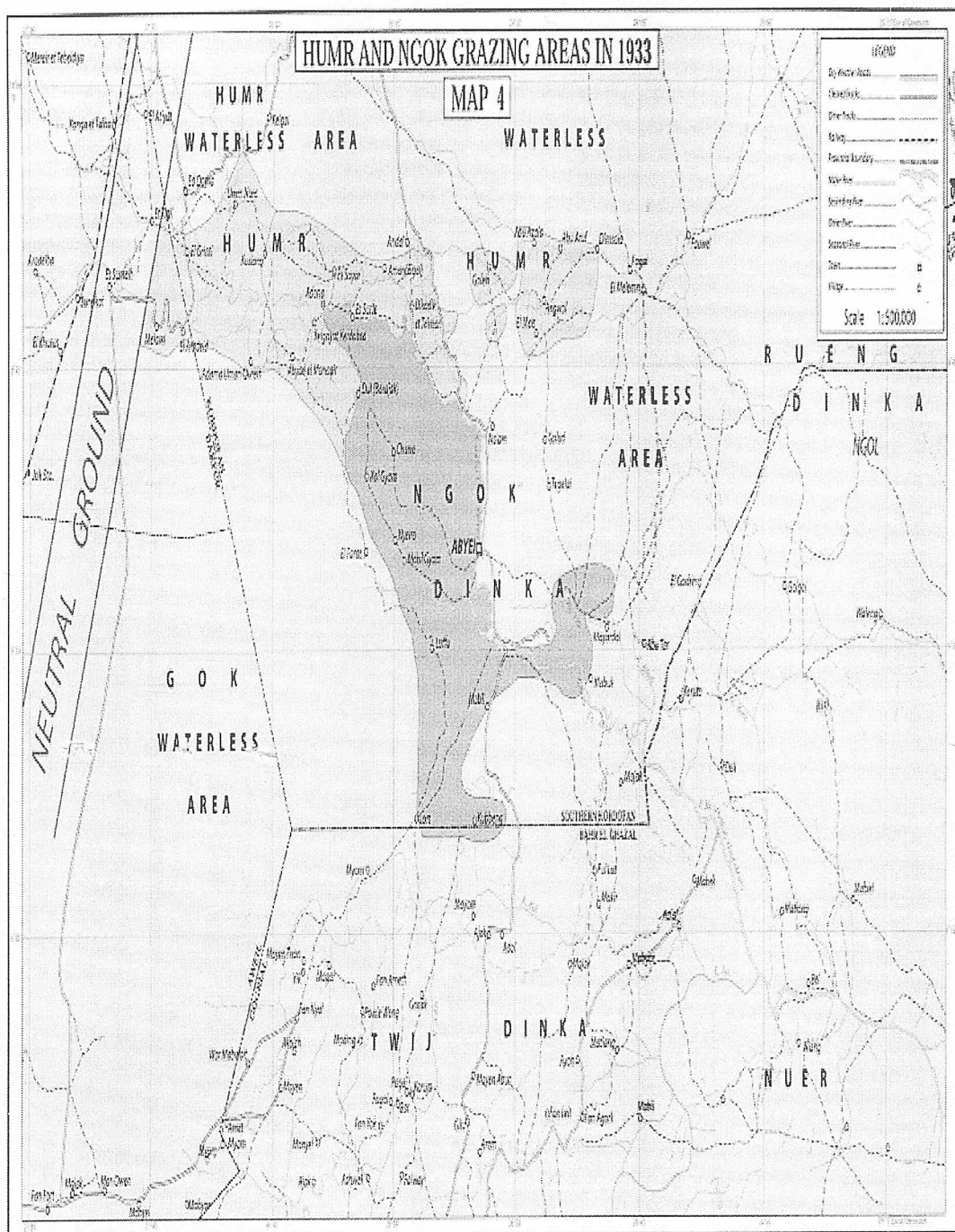
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Source: ICG Report, October 2007