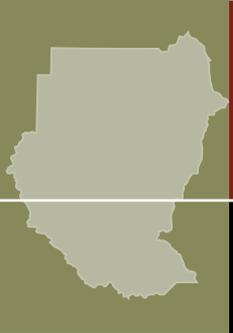




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Implementing Sudan's Comprehensive Peace Agreement:

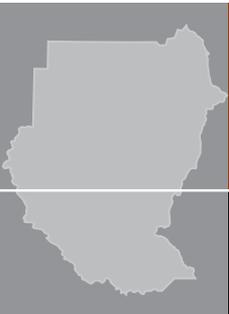
PROSPECTS AND CHALLENGES





Woodrow Wilson
International Center
for Scholars

Africa Program



Implementing Sudan's Comprehensive Peace Agreement:

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MAY 2008

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INTRODUCTION

Ambassadors Wolpe and Oakley

On September 11th, 2006, just over a year after the passing of John Garang, and 18 months after the signing of the Comprehensive Peace Agreement (CPA) on January 9, 2005, the Woodrow Wilson International Center for Scholars and the National Defense University convened a conference to assess the progress that had been made in implementing Sudan's landmark CPA. The conference brought together experts and policymakers to discuss the state of CPA implementation, the relationship between the CPA and political developments elsewhere in Sudan, notably in Darfur, and the ways in which the international community might assist in building a sustainable peace in Sudan.

In many ways, the end to Sudan's civil war appears to be one of the biggest diplomatic successes of recent years. The purpose of the conference was to take a serious look at the sustainability of that success and at what the international community might do to help keep the peace process on track.

Developments since the symposium—the reluctance of Sudan Armed Forces (SAF) and Sudan People's Liberation Army (SPLA) to redeploy from contested areas, as well as the continuing disagreements over Abyei and oil revenue-sharing—have amplified the concerns raised in the Fall '06 assessment. While substantial time has elapsed since the September 2006 conference, the issues and challenges that were at the center of the conference deliberations remain fundamentally unchanged. It is our hope, therefore, that this publication of the conference proceedings and further commentaries will contribute to the continuing international discourse concerning the fragility of the Sudan peace process and the ongoing Darfur tragedy.

In order to facilitate frank and free discussion, the conference was held on a not-for-attribution basis. The first chapter therefore summarizes (without attribution) the views, opinions, and information presented over the course of the day on the implementation of the agreement.

The second section of this report consists of two papers that focus on two of the most hotly contested areas of CPA implementation. The first paper, by David Goldwyn, examines the problem of implementing the CPA provision regarding the sharing of oil resources. The second, by Ambassador Donald Petterson, discusses the status of the highly contested Abyei State.

The report then presents the text of an address by U.N. Special Envoy Ambassador Legwaila Joseph Legwaila on the role of the international community in implementing the CPA, and the impact of the continuing Sudan conflict on other crises.

Finally, the paper concludes with a report on a subsequent November 7th, 2007 speech by Sudanese first vice-president Salva Kiir at the Woodrow Wilson Center, in which he discussed both the progress that had been made since September 2006, and the many still unresolved issues.

Ambassador Howard Wolpe
Ambassador Robert Oakley

THE CPA IMPLEMENTATION: TAKING STOCK

A SUMMARY OF CONFERENCE PROCEEDINGS FROM THE
SEPTEMBER 11TH, 2006 SYMPOSIUM ENTITLED, SUDAN'S PEACE
SETTLEMENT: PROGRESS AND PERILS

By Mike Jobbins

INTRODUCTION: A DIPLOMATIC SUCCESS GOING SOUTH?

With the signing of Sudan's Comprehensive Peace Agreement (CPA) in 2005, Africa's longest-running war was ended. The CPA established a seven-year transition period, de-facto autonomy for southern Sudan, a unity government in Khartoum, and incorporated agreements on security, boundaries, revenue sharing from southern oil fields and the administration of three contested areas straddling North and South. Under a new constitution that emerged from the CPA, national elections are to be held in 2009, followed by a referendum on independence for the South in 2011.

The CPA was the product of diplomatic efforts led by the East African regional organization, Intergovernmental Authority on Development (IGAD), and accompanied by the entire international community. In ending Africa's bloodiest war, the achievement of the CPA was considered by many to be one of the largest—and most unlikely—diplomatic successes in recent years. Though a success for the international community, the CPA was nonetheless a Sudanese agreement, and appeared to be a major step forward by the leadership both of the rebel Sudanese People's Liberation Movement (SPLM) and the National Congress Party (NCP)-led government.

The death of longtime SPLM leader and First Vice President of the Government of National Unity, John Garang, in July 2005, weeks after his inauguration, was a major blow to the political leadership of the SPLM. At the same time, the ever-worsening crisis in Darfur drew international attention away from the CPA, and deepened skepticism towards the intentions of the NCP throughout the country.

Despite these setbacks, implementation of the CPA has proceeded in fits and spurts. The extremely high level of detail and multiplicity of new institutions within the agreement have yielded delays, raising questions about the political will and the capacity of both sides to fully implement the agreement. The dangers posed by delays and low institutional capacity have increased, given the tremendous expectations of a Southern population that has experienced decades of war.

Although all conference participants recognized the significant delays in CPA implementation one year after its signature, interpretations of the significance of these delays varied. As one participant observed, at the moment “the train is on track, even if, like so many trains worldwide, it’s not running on time.” Others commented on the progress that had been made in the security sector, as security forces redeployed and relative security returned to the South. Some panelists focused on the risks of incomplete implementation and the danger that developments in flashpoint areas, such as Abyei, may combine with slow or incomplete implementation to produce a volatile situation ultimately leading to a return to war.

This section examines some of the central challenges to CPA implementation, highlights some of the successes that have been achieved, and then focuses on what conference participants identified as the three thematic issues that threaten full CPA implementation: a lack of capacity to meet the detailed terms set out in the agreement, a lack of political will, and the broader question of Sudanese identity.

I. CPA IMPLEMENTATION: CENTRAL CHALLENGES

Seeking to resolve two decades of war, and a much longer history of economic, social and political divisions, the CPA is ambitious in its scope. The agreement provides for radical changes in the government structure at the national level, the formation of a semi-autonomous government in the South, and separate protocols governing the border areas of Blue Nile State, South Kordofan, and Abyei.

These three levels of government have complex, but interrelated transitional structures and timetables. In one participant’s estimation, the agreement formed 40 new commissions charged with overseeing its implementation. Another observed that, if fully implemented, the CPA would be tantamount to “regime change” for all of Sudan.

This level of detail reflected both the complexity and consequences of Africa’s longest war. Specifically for the SPLM, the desire for detail was also

driven by their reflection on the failure of the 1972 Addis Agreement, which ended the first civil war in Sudan. To the SPLM, one of the shortcomings of the agreement was the shortness of the transition period before unification, and the lack of precision as to the future of the North–South relationship. The SPLM entered the 2005 Naivasha talks with a long memory, seeking a longer and more elaborate agreement on the transition period.

At the time of the agreement, opinions diverged on its wide breadth and level of detail. One participant recalled:

When the peace agreement was signed, at the reception which John Garang gave, I asked two people who were involved in the negotiations what the length of time it took to negotiate the agreement and the length of the agreement meant. One of them said it shows the depth of suspicion and lack of confidence between the parties. The other said it means that it is a good agreement.

Another participant observed that the negotiators and mediators faced a paradox. A less detailed agreement would have been unacceptable to both parties over the short or medium term, but the decision to lengthen and broaden the agreement compromised its longer-term viability. Participants agreed that the challenges of implementing the agreement were underemphasized during the negotiations, and diverging expectations about the roles of the parties themselves and the international partners were not fully addressed.

According to one diplomat close to the CPA negotiations, the international partners were skeptical about the low degree to which implementation of the agreement figured into the parties' calculations. Diplomats, he said, were concerned that while the negotiators were reaching agreements, neither side would be able or willing to actually put the agreements into practice. In this speaker's estimation, the negotiating parties did not internalize the importance of reaching an *implementable* agreement, instead focusing on easier but often ambiguous and imprecise compromises.

Another participant noted that the SPLM expected outside parties who facilitated the agreement to exert the same pressure to ensure its implementation. He cited previous remarks by Salva Kiir at the Wilson Center to illustrate the abandonment and frustration felt by the SPLM. In their view, the international community's minimal engagement with the implementation of the internationally facilitated agreement violated assurances given during the process.

II. SUCCESSES IN IMPLEMENTATION

Surviving Garang

One remarkable early success of the CPA implementation was that it withstood the sudden death of John Garang, who was killed in a helicopter crash weeks after being sworn in as First Vice President of the Government of National Unity. The impact of his death was felt acutely throughout the country and raised concerns that the CPA could not hold without his strong leadership.

The vision and public presence of Garang resonated both within Sudan and internationally. He represented the “New Sudan” vision of the SPLM to the people of the South and to the world, championing reform throughout the country rather than Southern independence. His charisma, strong personality and international experience, as well as his appeal throughout Sudan, led many to view him as essential to guaranteeing compliance with the terms of the agreement.

It appeared that Garang would be uniquely able to draw attention within and outside Sudan to any non-compliance, and that his relationship with NCP leaders throughout the talks would facilitate the implementation.

Rumors surrounding the circumstances of his death, and the immediate and violent reaction in some areas, posed a severe test of the fledgling agreement. However, the CPA withstood his passing, and the administration of his lesser-known successor, Salva Kiir Mayardit, scored several early successes in broadening inclusion within the South. In some ways, Salva Kiir was a less controversial figure among southern Sudanese, and one more able to include leaders who had been alienated by Garang’s authoritative leadership style.

One of his earliest achievements was the integration of forces loyal to Garang opponent Paulino Matip, who had fought against the SPLA during the war. The inclusion of Matip as second in command of the SPLA and the integration of his militia demonstrated the ability and willingness of the Kiir government to expand its influence. Although many participants noted the continued need for South-South reconciliation, the success in integrating the other armed groups into the SPLA represented a pivotal moment for the Kiir government.

Participants observed that although Kiir might serve as a unifying force within the South, it remained to be seen whether he was inclined or able to expand the SPLM’s following beyond the South. Garang had been closely identified with the New Sudan vision of promoting political change throughout the country, and observers wondered whether the SPLM under Kiir’s stewardship would maintain this approach, or be more focused on pursuing southern independence.

Security Sector

Participants observed that, contrary to what might have been expected before the signing of the CPA, the agreement had thus far been successful in providing security for most residents of the South. The formation of the mixed security institutions, the Joint Integrated Units and the Joint Defense Board did not comply with the timetable in the CPA, but were largely moving forward.

Unlike in the implementation of many other peace agreements, the international community did not play a large role in overseeing military reform, in terms of training and advising under the CPA. This was due in large part to the resistance of the NCP. Although joint activities had not begun at the time of the conference, panelists observed that the joint units were 60% staffed, and both ex-SAF and SPLA units were sharing the same locations mostly without incident.

Participants observed that, as of September 2006, SAF withdrawals from the South, and SPLA withdrawals from the Transition Areas had largely taken place on schedule. Speakers also focused on the importance—and the need to continue—reform, training, and professionalization of the SPLA and the police in order to both effectively provide security and facilitate South-South reconciliation.

At the same time, apart from the integration of Paulino Matip's forces, other armed groups supported by the NCP remained active in the South, in violation of the agreement's mandate that all groups integrate either into the SPLA or the SAF. Despite the possibility of deterioration, notably in the transition areas, there was a consensus that the implementation of the security components of the CPA did not pose an immediate threat to the overall peace.

III. WEAK CAPACITY

The large number of transitional institutions created in the CPA represented a challenge to the human and organizational capacities of the SPLM. The enormity of the task of post-war development, combined with the need to form and staff institutions within the Government of Southern Sudan and the Government of National Unity endangered the implementation of the agreement.

The general lack of formal education and technical capacity in the wake of the war created difficulties in staffing commissions and government ministries with qualified personnel beyond the ministerial level. At the same time, the absence of infrastructure obstructs the operations of the Government of Southern Sudan.

One panelist noted that the Government of Southern Sudan is “starting from scratch” in the wake of the war, and that much of the skilled workforce

and investment capital remain outside the country. The lack of functioning institutions deters highly-qualified Sudanese from returning, but the slow rate of returns weakens institutional capacity.

It is not cash that's the problem. The Government of Southern Sudan has cash. It is the lack of infrastructure, lack of qualified personnel, and ability and capacity to deliver services, which in turn deters Southerners from going home.

The reluctance of skilled Sudanese to return from abroad, both from neighboring countries and from the West, amplifies the lack of capacity and slows development.

One striking example of the danger posed by the lack of technical capacity relates to the implementation of the oil provisions of the agreement. Due to a lack of personnel, the Government of Southern Sudan was unable to participate in the making of national energy policy, or to effectively manage oil revenues.

At the time of the conference, the Government of Southern Sudan's audit committees were not operational. This meant that the southern Government did not have any accurate information on the nation's overall oil production, or the exact oil revenue, and could not ensure that the revenue was being shared according to the agreement.

Furthermore, overwhelmed by the magnitude of the tasks it confronted, the Government of Southern Sudan was unable to take advantage of the benefits of the CPA. As one participant remarked:

The Government of Southern Sudan has the power, or had the power, to review the contracts and all the materials from the North within 30 days of the signing of the agreement They have not sent a delegation.

And so the contracts haven't been reviewed, expert advisors haven't been retained, and so the ability of the Government of Southern Sudan to participate effectively in these institutions is undermined by their own hand.

The lack of capacity to manage oil revenue not only cuts into the ability of the Government of Southern Sudan to deliver services and the "peace dividend" hoped for by the population, but it also creates opportunities for corruption, mismanagement, and the evolution of a resource-cursed state. Offers of technical assistance to southern Sudan would be helpful in this regard, and participants suggested that the U.S., Norway, and other partners during the CPA talks, and other international stakeholders in the Sudanese oil sector, such as China, Malaysia and India play a larger role.

Beyond the oil sector, the lack of capacity to deliver services has hindered

development throughout the South. Panelists agreed that additional investment in building the capacity of the Government of Southern Sudan to act as a strong, democratic, credible and effective government is essential to fully meeting the terms of the CPA and to meeting the expectations of southern Sudanese.

IV. POLITICAL WILL

Conference participants highlighted the lack of political will on both sides, one of the most serious obstacles to effective CPA implementation. To the NCP, the full implementation of the CPA, with its promise of free and fair elections throughout the country in 2009, jeopardizes their political future nationwide. Even if an NCP-dominated government should emerge from those elections, “popular consultations” in the transition areas, followed by the 2011 Referendum for the South, threaten to remove large and oil-rich areas of the country from their control.

While the SPLM has more to gain from the implementation of the agreement, panelists raised doubts as to the SPLM’s level of commitment to seeing the national components of the agreement implemented, or whether the strategy consisted primarily of “biding time” until the referendum.

Panelists observed that both parties have shown some reluctance to address challenging aspects of the agreement, including passing the necessary civil service laws and other legislation through the National Assembly, and addressing issues pertaining to the transition areas.

The deadlock over the disposition of oil-rich Abyei state is a manifestation of this lack of will on both sides to tackle the thorniest issues of the CPA. The Abyei Boundary Commission, issued its report in July 2005, giving a substantial portion of the contested area to the South. This report was rejected by the NCP, (discussed in detail in later sections of this paper), the NCP rejected the Commission’s ruling, which gave a substantial portion of the contested region to the South. Since the commission’s report, neither the SPLM, nor the NCP has “brought the crisis to a head,” opting to defer addressing the explosive issue of how to draw the north-south boundary in Abyei, and how the area should be administered.

One explanation for the slowness of CPA implementation was the relative complacency favoring the status quo. One participant observed that the current situation enables the NCP to access the resources of the South, to expand the reliance of southern oilfields on northern refineries, and to focus on investment in northern infrastructure. Oil revenue has partly financed large-scale construction projects within Khartoum, road improvements, and dam construc-

tion in the North. At the same time, the power-sharing provisions marginalize Northern opposition parties not party to the agreement.

The SPLM has been particularly preoccupied with development within the South and constituting the Government of Southern Sudan, leading some to question its commitment to playing the national role envisioned under the accords.

One participant observed that with official corruption emerging, especially within the security sectors of both North and South, newly entrenched interests are emerging that do not see a benefit to any radical changes that might result in greater democracy. In this context, the implementation of free and fair elections and a referendum at the end of the CPA process hinges on internal political pressure for reform and accountability directed at increasingly entrenched actors on both sides of the North/South agreement.

V. IDENTITIES

Although the CPA ended the conflict between the Government and SPLM and even—as some panelists argued—provided an opening to address some of the other political crises in Sudan, several observed that it did little to address Sudan's fundamental crisis of identity. Panelists held that a central cause of the political crises facing Sudan lay in the self-perception of a minority of its citizens that Sudan is, and should be, an Arab nation. Although the SPLM and John Garang began their campaign not as a war to secede, but instead as a struggle to “transform the country,” the CPA has done little, in one panelist's estimation, to fundamentally resolve this identity crisis.

It was noted that the identity crisis manifests itself in two ways. The first is that the perception, held in some areas, that Sudan is an Arab country does not reflect the reality of the larger Sudanese population. The second manifestation is that the minority who perceive themselves as Arabs use this personal or communal identity as a framework for national identity. In this context, national identity is not simply a question of what people call themselves, but has a more pervasive influence on power sharing, the sense of belonging, the rights of citizenship, and all the political and social attributes that accrue from being equal citizens.

While the differences between groups in Sudan are in many ways artificially constructed, the fundamental reconstruction of national identity is not addressed under the CPA. Instead, the agreement has recognized these differences, giving the leaders of the North the right to continue an Arab-Islamic agenda, and giving the South in the interim its own virtual independence but with the option to secede.

The question, “what is Sudan?” remains unanswered. Sudanese leaders in

the North or South have not raised the question of how the issue of Sudanese identity might be addressed to create a more pluralistic system. As the same speaker observed:

When you ask people what the war was all about, in the South and now in Darfur and possibly in the East, one word summarizes it all: marginalization—marginalization by the Arab center of the non-Arab periphery. And to what extent has the agreement addressed this issue? Personally, I think that the issue of identity is critical and has not been addressed. And until that issue is addressed, there is a threat that the country could disintegrate.

The CPA in some ways gave the NCP legitimacy and international recognition of its Arab-centered view of Sudan by not addressing these issues. The agreement, some believed, conveyed the message that as long as the South was able to vote to leave, the NCP was free to push its Arab-centered agenda in the rest of the country. Should the South secede, the prospects for a more inclusive definition of Sudanese national identity of the kind that is hoped for by the people of Darfur or the East, would be greatly diminished.

Several speakers noted that perhaps the best chance of seeing the politically crucial question of national identity addressed lies in the 2009 elections. One part of Garang's strategy had been for the SPLM to reach out to regional parties representing excluded areas like Darfur, Nubia and the East, as well as the South, in order to mount a credible challenge to the NCP.

The success of such a challenge in the electoral context will determine whether the question of national identity is reevaluated before the 2011 referendum. According to some, southerners would have very little incentive to vote for unity if the government emergent from the 2009 elections did not seriously raise this issue.

VI. CONCLUSIONS: TAKING STOCK

The challenges in implementing the CPA result both from the ambitiousness of the agreement and from the selective commitment of both parties to its full implementation. The SPLM's decision to withdraw from the Government of National Unity in late 2007 underscored the lingering challenge of implementing the CPA. The Government of Southern Sudan's weak institutional capacity and oversight of oil sharing, and both parties' unwillingness to tackle the Abyei impasse yielded one of the greatest threats to Sudan's peace.

Many participants noted that the agreement was not yet "off-track," and im-

plementation was advancing in the security sector, the “dangerously slow” rate of progress was deepening a sense of crisis. Many of these issues remain unresolved.

Deep crises of identity and the violence and insecurity elsewhere in Sudan, including in Darfur, demonstrate that the success or failure of peace between North and South does not lie solely on the implementation of the political terms of the agreement. Instead, participants emphasized the need for a “whole Sudan solution.” Long-term peace requires a strong commitment to a political opening throughout the country, and to addressing deeper issues surrounding the politicization of national identity.

As many panelists observed, the CPA represented a solution that, while responding to the specific relationship between the government in Khartoum and the South, has broad implications for all Sudanese. The formation of the Government of National Unity, the provision for nationwide elections in 2009, civil service reform, and other political reforms within the national government, could be transformative. If fully implemented, the CPA could be an avenue of “regime change.”

All agreed that viewing the CPA implementation as separate from other crises facing Sudan, such as that in Darfur, is counterproductive. Some suggested that political changes under the CPA might provide a vector for greater inclusion of other marginalized groups. Others observed that the Darfur crisis has illustrated the weakness of the SPLM in Khartoum, strengthened northern hardliners, and confirmed southerners’ mistrust of the NCP. From this perspective, a failure in the CPA would undermine the prospects for peaceful change throughout Sudan, as well as lead to the real possibility of a return to hostilities.

While many panelists wondered whether the SPLM was merely “biding time” waiting for secession, they expressed concern that secession would risk violence between north and south, exacerbate violence elsewhere, and leave the newly-independent south with a weak economic base apart from oil revenue.

Whatever the ultimate result of the referendum, and however current disputes on particular components of the agreement are resolved, the more fundamental need is to establish more effective and sustainable working relationships between leaders, both north and south. As one participant framed it:

“the crucial point to get across is not to talk of the probability or the possibility of war, but to make all the Sudanese realize that whatever the outcome of the referendum, good working relations between North and South will be essential if the country is not to slip back into war and chaos.”

IMPLEMENTATION OF THE WEALTH SHARING ACCORDS:

OIL, ENERGY AND POLITICAL IMPLICATIONS

David L. Goldwyn, Senior Fellow, Center for Strategic and International Studies and President, Goldwyn International Strategies



I. SUMMARY

Implementation of the wealth sharing components of the Comprehensive Peace Agreement (CPA) has been slow, and in some cases, nonexistent. Disputes remain over which fields are subject to wealth sharing, how the new institutions are to function, and who determines the status of existing and new contracts. Teams that are tasked with auditing existing production and reviewing existing contracts have not been staffed.

While both the National Congress Party (NCP) and the Sudanese Peoples Liberation Movement (SPLM) express dissatisfaction with the way the accords are being implemented, neither side is acting with speed or diligence to change this. The Government of Southern Sudan has declined to take advantage of multiple and long standing offers of technical assistance to help them implement the accords and recruit the expertise they need to staff the new institutions.

The NCP has interpreted the accords, and the results of dispute resolution commissions, in a way that undermines the role of the Government of Southern Sudan in energy policy. The Government of Southern Sudan has signed contracts which flout the plain language of the accords and signal their mixed regard for a unity government.

The reasons for these actions are rooted in the disputes that were finessed in order to conclude the CPA and the uncertain commitment of both sides to implement the accords. With respect to issues finessed in the accords, the border is not settled, especially with respect to where the Heglig field lies.

The power of new institutions, like the National Petroleum Commission to advise or actually determine policy remains disputed. With respect to the

CPA, it may be that the NCP believes the Government of Southern Sudan does not want unity and is protecting its position for potential secession. The Government of Southern Sudan is divided on unity, is perhaps overwhelmed by the challenges at hand, and some factions may want to delay oil development until they can obtain 100% of potential revenues.

In any event, all is not well. Outside leadership, and pressure on both the NCP and the Government of Southern Sudan, will be required to achieve a chance at unity. Let me detail for you now what the accords were meant to do, where they are now, and steps the U.S. and other donors can take to change the status quo.

II. THE WEALTH SHARING COMPONENTS OF THE CPA

Key Provisions

The CPA called for establishment of a National Petroleum Commission (NPC) to formulate public policies, approve new oil contracts and monitor implementation of existing ones. The CPA granted the Government of Southern Sudan 50% of revenue from all oil produced in Southern Sudan, net of 2% to the producing state and a deduction for an Oil Stabilization Fund, if revenues go above a certain, and as yet undetermined, level.

Other revenues are subject to distribution through a National Revenue Fund through the equalization provision to be implemented by the Financial Allocation and Monitoring Commission. The CPA allowed the SPLM to have access to existing contracts and provided that contracts signed before the CPA was signed are not subject to renegotiation. It called for all income and revenue at all levels of government to be held in public accounts and be subject to public scrutiny and accountability and for the establishment of National and Government of Southern Sudan Audit Chambers.

A Scorecard

National Petroleum Commission. The NPC has been established, but it has not established rules of procedure for operating, subcommittees to perform real work, or a secretariat. There are disputes over whether the NPC is policymaking or advisory, if it is independent or part of the Ministry. A reported oral commitment to give the Government of Southern Sudan the Energy or Finance Ministry was not honored and the Government of Southern Sudan is by all accounts marginalized in the Ministry itself. Needless to say, the NPC is not setting or even deliberating over national energy policy.

Wealth Sharing. The NCP and The Government of Southern Sudan dispute whether the Heglig field, which produces 37% of Sudan's oil production, is in the North or South. The Government of Southern Sudan is not receiving 50% of these revenues. Measures to resolve this are not fruitful. The border is not established and disputes remain over other fields in the Melut Basin. The 1956 boundary has not been demarcated. The North-South Border Commission was established but is not functioning. The Technical Ad Hoc Border Committee, whose operation was reportedly delayed due to the rains, held its 6th meeting on July 20th, 2006. The results of the Abyei Border Commission were rejected by the NCP as exceeding its mandate.

Capacity Building for the Government of Southern Sudan. The Government of Southern Sudan has not hired technical advisors to assist it with the development and management of its oil sector. It does not lack for funds. The South was granted permission to read all oil contracts and to get advice on them, but never did. The Technical Team empowered to review contracts within 30 days of the signing of the CPA was not established.

Respect for Contracts. The Government of Southern Sudan and NCP disagree over the rights to sign oil contracts and the status of existing oil contracts. The Government of Southern Sudan is a minority owner of the White Nile Petroleum Corporation with whom it signed an agreement to develop an oil block already subject to a contract. This action appears to flout the plain terms of the CPA. White Nile itself is a shell of a company with no apparent capacity to exploit the block in question.

Transparency. There is very little transparency at any level in Sudan. The arrangement between the Sudanese government and its investors for production rights, contracts, refineries or pipelines is not public. The country's production is not verified. The accounting for the funds received by the Government of Southern Sudan from oil revenue, or donor aid for that matter, is not public. The Joint National Transition Team that was established in March 2005 announced in June 2005 that a new national accounting system had been developed and that the auditors' chambers were being set up. No progress has been made on this since. Vice President Kiir nominated four appointees to the Southern Sudan Audit Chamber, but it is still without legislative basis and not functioning.

III. IMPACT

The impacts of this lack of implementation are several. First, there is no effective Government of National Unity functional in the energy sector. There are competing and oppositional factions. Second, the flow of revenue to the Government of Southern Sudan is diminished by the dispute over the Heglig and Abyei fields, undermining a core element of the peace dividend for the South in the CPA itself. Third, interest by credible companies in development of the South's oil resources is minimal due to uncertainty over the Government of Southern Sudan's respect for contracts, uncertainty over the laws which would apply or what contracts would be respected if a secession were voted, and also by sanctions. Fourth, the Government of Southern Sudan appears to be undermining the Government of National Unity by its own actions, particularly the transaction concerning White Nile. Fifth, there is little transparency in the accounting production, contracts, or for the volume of oil or the accounting for oil revenues in the south. This creates enormous potential for mismanagement, waste and corruption and indeed risks that the Government of Southern Sudan will become yet another example of a resource rich entity whose governance is blighted by the resource curse.

IV. MOTIVATION OF THE PARTIES

The motivations for the NCP for delay are perhaps easiest to interpret. They have an obvious interest in maintaining control of the sector through the Ministry and no interest in defining a border which leaves substantial assets to the South as long as secession remains a possibility. Inaction leaves them with control of the export infrastructure, a share of current production from Heglig and the potential to explore and tap reserves in the Melut Basin which may lie on both sides of any future border. With strong investment support from China, India and Malaysia, they suffer no investment loss from current sanctions.

At current oil prices they can well afford to withstand international opprobrium. While by all accounts there are divisions in the North between those who favor a serious attempt to create a unity government now and those who are strategizing to defeat a referendum in five years, the status quo does not promote unity or the institutions created by the CPA. In addition, energy sector development in the North is robust: a contract was awarded to Petronas to build a new refinery in Port Sudan to refine Melut Basin crude. Malaysia's Peremba has begun construction of a new marine export terminal for the Melut Basin Development Project with a 2 million barrel per day ca-

capacity. Construction has begun on a new 870 mile pipeline linking the Melut Basin to the export terminal.

The motivations of the Government of Southern Sudan are harder to interpret. Without doubt there is very weak capacity for administration in the Government of Southern Sudan and the number of trusted people who can staff Ministries or an advisory commission is not great. A good deal of understanding is due the Government of Southern Sudan on this score. But this does not explain why the Government of Southern Sudan has neglected offers of technical assistance and opportunities to understand the sector, read contracts, audit production, or why it has flouted the CPA with the White Nile deal.

Another explanation for the Government of Southern Sudan's delay on implementation of the CPA is that the Government of Southern Sudan is deeply divided over support for the Government of National Unity. If you are bidding your time for secession, you need not bother to read existing contracts, you are in no rush to develop fields from which you will take 50% rather 100% of the revenues, and you do not prioritize mastery of the Government of National Unity institutions. There are many in the Government of Southern Sudan leadership who hold this view. Still others may simply need more time to develop confidence in the CPA and its new structures and to trust that even external advisers will provide untainted advice.

Another explanation is that the Government of Southern Sudan is overwhelmed by the pressure it faces and is making short sighted decisions. It is hard to imagine that they do not see how damaging the White Nile deal is to perceptions of their integrity, respect for contracts, and for investment of any kind. But it is very possible that the leadership does not see past a very short time horizon.

There are many explanations for the lack of transparency with respect to oil revenues. For the NCP, opacity covers the deals of the past and undermines the ability of the NPC to function. For the Government of Southern Sudan, it may be that there are divisions within the leadership and leadership factions making competing demands on the leadership to get "their" share of the oil wealth. Another possibility is that the Government of Southern Sudan does not want to reveal how much or how little of the enormous revenues they are taking are going for development versus armament.

V. WHAT SHOULD BE DONE?

If the U.S. and the donor community are serious about promoting a Government of National Unity, pressure and persuasion will need to be brought to bear on both sides to carry it out.

For the south, it is time for some tough love. The donor community should prioritize the Government of Southern Sudan's role in the implementation of the CPA, such as staffing of its positions in the national institutions, push for retention of advisers on oil, and insist on transparency in the accounting for oil wealth. Nearly \$800 million in oil revenues and \$400 million in donor aid flowed to the Government of Southern Sudan in the past year. There should be no more disbursements of cash. Any future aid flows should be conditioned on published and audited accounts.

For the U.S., it is time to take a leadership role in promoting unity in management of the energy sector. The U.S. has to date understandably left the energy sector issue to other countries, but the time has come for the U.S. to play a facilitating role, both diplomatically and analytically. Energy sector integration is fundamental to national unity. One step the U.S. can take is to support preparation of an analysis of the sector that illustrates the financial consequences of unity and of secession. No credible study has been undertaken which suggests how the returns of the energy sector could be optimized for all parties.

What are the consequences of development of the southern fields using the existing pipeline infrastructure? What are the costs and returns of adding a Kenya-Uganda line? Is there enough oil for both? What is the net present value of integration versus disaggregation over a twenty year period? What are the returns, through revenue sharing, of the supply of refineries sited in the north to the Government of Southern Sudan?

The U.S. Congress should fund and commission an independent study that assesses these scenarios, and convene a conference in Sudan which serves as a platform for discussing these fundamental issues. Such a study can also be a vehicle for helping the Government of Southern Sudan obtain copies of the relevant agreements for the existing concessions, pipelines and refineries and obtain an independent assessment of their value.

The U.S. must also ratchet up its diplomacy on CPA issues. Congressional supporters of the Government of Southern Sudan must be very clear that they support CPA implementation and unity so there is no misunderstanding about where the U.S. will stand if the Government of Southern Sudan undermines the CPA.

For the north, the U.S. and the international community must push for it to define the border, staff the auditing commission, and involve the Government of Southern Sudan deputies in Ministerial decisions. The U.S. and the international community should make clear to the NCP that support for the CPA and for unity is only sustainable if they allow the CPA institutions, like the National Petroleum Commission, to function.

Finally it is time for some creative engagement with China. To date most U.S. diplomacy appears to have focused, understandably, on obtaining

China's cooperation in the Security Council on Darfur. But the donor community and the U.S. should engage China on Sudan's long term stability. China's own energy interests and the sustainability of its investments are at stake in Sudan. A unified Sudan could vastly increase the value of their investments, while resumed war could destroy them. Surely this is a sufficient beginning of a conversation of how China can work to promote unity and implementation of the CPA.

With the war in Darfur spiraling downward, it is easy to shift attention away from the North and South accords. But these hard won gains must be nurtured if they are to be preserved. Today the NCP may believe that the Government of Southern Sudan does not want unity and many in the Government of Southern Sudan may doubt that unity is worthwhile. It will fall to external supporters to help both sides see their interests clearly. Sharing the oil wealth will be the key to the survival of Southern Sudan and to the long term future of the entire country. There are ample gains to be had from unity and greater exploration, long term earnings, the development gains which can flow from well managed oil resources and peace. Success will require consistent pressure on the NCP, but also quiet but frank talks with our friends in the South and forceful nurturing of their confidence in a Government of National Unity.



ABYEI UNRESOLVED:

A THREAT TO THE NORTH-SOUTH AGREEMENT

Ambassador Donald Petterson Chairman,
Abyei Boundary Commission

For years the Misseriya¹ and Ngok Dinka peoples have disputed which of them has primary occupancy of the Abyei Area, which lies in the southern part of Western Kordofan. Two major topographical features of the area are the Bahr el-Arab/Kir and Ragaba ez-Zarga/Ngol rivers. In referring to them, I'll use the Arabic, Bahr el-Arab, and the Dinka, Ngol. Another feature is a zone called the Goz, which lies north of Abyei Town and south of the Misseriya headquarters town of Muglad and runs roughly west to east. It is unsuitable for cattle grazing and is described by some as a natural boundary between the Ngok Dinka and the Misseriya.

There is historical evidence, disputed by some, that both tribes migrated to Kordofan in the 18th century. The Misseriya's migration took them from North Africa to Chad; subsequently they left the Sultanate of Wadai and arrived at the Muglad area. The Ngok moved west to Kordofan from Upper Nile. Indications are that the two peoples lived in relative harmony until the 19th century advent of the Turko-Egyptian occupation of Sudan.

Arab traders made alliance with Baggara groups, including Misseriya, to conduct slaving operations. The Dinka had believed that the coming of the Mahdi would end this dark time in their history. It did not, for most Dinka. However, during the Mahdiyya, largely through the diplomacy of Ngok leader Arop Biong, the Ngok were able to establish and maintain a mainly peaceful coexistence with the Misseriya. This changed after the British defeated the Mahdi's successor, the Khalifa Abdullahi, in 1898-1899. Most of the Misseriya had supported the Mahdists and many fought with the Khalifa. After the defeat they returned to Kordofan. Their leader, Ali Julla, who became Nazir in 1900, instigated raids against the Ngok.

Arop Biong complained to the new government, the Anglo-Egyptian Condominium. The British concluded that it made sense to put the two

contending groups under the same administration. For one thing it was much more difficult to reach the area from the British headquarters in Bahr al-Ghazal than it was from Kordofan. In addition, it would be more effective to adjudicate the dispute if the two parties were under the same provincial administration. Thus it was that in 1905 authority over the Ngok was transferred from Bahr el-Ghazal Province to Kordofan Province.² As a result, the anomaly of a southern Sudanese group being administered as part of northern Sudan was created.

Thanks to the leadership of Arop Biong's son, Kuol Arop, and his grandson, Deng Majok, Misseriya chiefs Nimur and Babo Nimur, and the British, the Ngok and Misseriya got along together quite well for the next half century. The two peoples shared cattle grazing rights in the territory. But then the first civil war came to the area and hostilities between the Misseriya and Ngok began, resulting in considerable killing beginning in 1965 and continuing even during the ten-year hiatus in the war.

In the years after the war resumed in 1983, successive governments in Khartoum armed and equipped the Misseriya to play a key role as militia in the North's fight against the SPLA. The Abyei area was virtually denuded of Ngok Dinka. By the time the war finally ended, the Misseriya had come to regard the area as rightfully theirs.

Because the Ngok and Misseriya were so intransigent on the question of to whom the area belonged, the negotiations that achieved the Comprehensive Peace Agreement failed to resolve the Abyei issue. But a basis for ending the dispute was laid by an American proposal.

The Americans, who played a vital role in the CPA negotiations, put forth a proposal on the Abyei issue in March 2004. This proposal, which became the Abyei Protocol of the CPA, was written by the staff of U.S. Special Envoy Senator John Danforth; it was adopted in May of that year.

- The protocol begins by stating that “the territory is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905.”
- In the interim period [i.e., from 2005 to 2011], Abyei will have a special status. Its residents will be citizens of both Western Kordofan and Bahr al-Ghazal states. The territory will be governed by an elected Executive Council. Revenues of oil produced in Abyei will be divided: 50% for the central government, 42% for the Government of Southern Sudan, 2% for Bahr el-Ghazal, 2% for Western Kordofan, 2% for the Misseriya, and 2% for the Ngok.
- After the interim period, residents will vote to either retain special administrative status in the north or be part of Bahr al-Ghazal, regardless of how

the southern people vote in their 2011 referendum on whether to become independent.

- The Protocol states that the presidency will establish the Abyei Boundaries Commission (ABC) to define and demarcate the area of the nine Ngok Dinka chiefdoms transferred from Bahr al-Ghazal to Kordofan in 1905.

In December of 2004 the Government of Sudan, and the SPLM adopted an annex to the protocol. It provided that the ABC would consist of fifteen members, five each named by the GOS and the SPLM, and five “impartial experts” nominated by the U.S., U.K., and IGAD.³ The Annex states that the experts would consult the British archives and other relevant sources. They would determine the rules of procedure of the ABC. The report of the experts would be “final and binding on the parties.”

Why did the two sides (a) decide to delegate to five outsiders the power to make the decision on the boundaries and (b) provide that that decision would be final and binding?

For one, they knew they couldn't do it themselves. And it's possible one or both sides figured it would be better that blame for an adverse decision would fall on the outsiders, not on themselves. Beyond that is the fact that each side believed its case was iron clad.

The ABC gathered in Nairobi in early April, 2005 and held our first meeting on the 10th. The GOS side was led by Ambassador El-Dirdeiry Mohammed Ahmed, the SPLM side by Commander Deng Alor. The five impartial experts were Godfrey Muriuki, professor of African history at the University of Nairobi; Kassahun Berhanu, professor of political science at the University of Addis Ababa; Douglas Johnson, scholar, publisher, and expert on southern Sudan; and me. The fifth expert, Shadrack Gutto, a South African lawyer, law professor and specialist on land usage would be selected by IGAD later. IGAD had asked a Ghanaian professor to be one of the five experts, but after accepting he equivocated and then at the last minute bowed out. In accordance with the wishes of the GOS and SPLM, I, as the American representative, became the ABC's chairman.

None of us, the five experts, was instructed by any government or by IGAD as to what we should do or how we should do it. We acted entirely on our own, guided by the terms of the Protocol, the Annex, and the Rules of Procedure.

In its initial presentation to the experts there in Nairobi, the GOS maintained that the nine Ngok chiefdoms in 1905 lay well south of the Bahr el-Arab. The SPLM insisted that the chiefdoms were, and remain, both north and south of the river. Neither side's arguments were convincing. When I suggested privately to Ambassador Dirdeiry that an equitable decision based

on compromise would be a good outcome, he told me flat out that there could be no compromise on a land issue. Later that same day, Deng Alor agreed with him.

Dirdeiry made much of the fact that the Protocol states that “the territory is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905.” He lauded what he said was “the genius” of the Americans for coming up with that definition. This, he claimed, meant that nothing that occurred before or after 1905 had any relevance to the Abyei issue and could not be considered by the ABC. He seemed to believe that hinging the ABC’s decision narrowly on that year would give the government’s case a decided advantage over the SPLM’s case.

Douglas Johnson heatedly took issue with Dirdeiry. He said we would need to refer to post-1905 documents to clarify earlier information. And he said a restriction on our ability to gather evidence would be intolerable. Dirdeiry backed down. It is possible, however, that the later claim by the government that the experts had exceeded their mandate stemmed at least in part from Dirdeiry’s stated position on this.

Why this terminology—the reference to the nine Ngok Dinka chiefdoms in 1905? I e-mailed Jeff Millington, who had been a State Department officer on Senator Danforth’s staff and was the principal drafter of the Protocol. He said, “It was clearly our view...that the area transferred in 1905 was roughly equivalent to the area of Abyei that was demarcated in later years.” In other words, the Americans had not meant to limit the gathering of information about Abyei strictly to information available in 1905, which my colleagues and I found to be extremely limited and manifestly insufficient upon which to base a decision on Abyei’s boundaries.

As prescribed by the Annex to the Protocol, the experts drafted rules of procedure. These laid out how the ABC would do its work and included a passage to the effect that the Commission would try to reach a decision by consensus but failing that, the experts would have the final say. That passage underscored the statement in the Annex that the report of the experts would be final and binding on the parties. This and the rigid adherence of the two sides to their respective positions made it clear from the outset that the experts would make the decision on the Abyei boundaries.

On the 14th, the commission flew to Khartoum and from there to Abyei Town via Kaidugli, where we boarded Russian-made helicopters flown by Ukrainian crews. Over the next week we listened to testimony by Ngok Dinka in Abyei Town; by mostly Misseriya in cattle camps northeast and northwest of Abyei Town; by Twic, Rek, and Rueng neighbors of the Ngok in the village of Agok; and by Misseriya in Muglad.

The essence of what we heard from the Ngok and their neighbors was that the Ngok chiefdoms included land south and north of the Bahr el-Arab and that the Ngok had permanent settlements well north of the river. At each Misseriya cattle camp we were told that it was a permanent settlement, even though it was clear to an objective observer that there was no physical evidence indicating permanency.

From the Misseriya at the camps and also those we interviewed in Muglad, we heard that the Misseriya were permanently settled in the Abyei area long before the Ngok, that in 1905 the destitute Ngok sought refuge from their enemies, that Misseriya leaders, Ali Julla in particular, welcomed them to the Abyei area, and that therefore the Ngok were guests and had no valid claim to the land.

Because the testimony was so similar to the GOS and SPLM positions and because of the sameness of the wording used by many of those who testified, it was obvious that both the Dinka and Misseriya had been coached. Most, though not all, of the testimony was of no use to the experts. This meant we would have to base whatever decision we made mainly on evidence gleaned from historical records.

Back in Nairobi we reviewed the testimony, made arrangements to have it translated into English and transcribed, and plotted out our research needs. Then we went to Khartoum at the end of April. For the next two weeks we pored over documents at the National Records Office and the University of Khartoum, and maps at the Sudan National Survey Authority. There was no map showing the extent of the territory of the nine Ngok Dinka chiefdoms in 1905, nor before then or afterward. Nor was there any written description of who had primary rights to the land.

But there was a wealth of material in the documents we studied in Khartoum and subsequently in England. These documents consisted mainly of records written by British colonial administrators during the first half of the 20th century: trip reports, province intelligence reports, correspondence between province headquarters and the central government, and some district records and private papers. We also consulted scholarly studies and memoirs written by former administrators. In the absence of demarcated and surveyed boundaries in 1905, we had to reconstruct what the boundaries—in particular the northern boundary—were by using legal, sociological, and historical scientific methods.

After doing some more work in Nairobi, three of us (Muriuki, Johnson and I) went to England to do more research at the universities of Oxford and Durham. We also went to Sussex, where we interviewed Michael Tibbs, the last British District Officer for Dar Misseriya, and to Hull, where we spoke

with Ian Cunnison, an anthropologist who had lived with the Misseriya in the early 1950s.

The Commission reconvened in Nairobi in mid-June for the final presentations of the two sides. There was no change in their basic positions. We five reviewed our preliminary findings, re-examined evidence, and fine-tuned our summary report. And we made our decision. Our work done, we dispersed in late June to await word from Khartoum as to when we would meet with the new presidency.

Before we left Nairobi, we took an oath not to reveal to anyone the decision we had just made. We were aware that a leak of the decision before it was made known to the presidency could spark violence in the Abyei area.

In doing our work we had had to consider all the assertions made by the two sides, both in the presentations by the government and the SPLM and in the testimony we had heard. Let me recapitulate the two positions:

The GOS and Misseriya insisted that the only area transferred from the authority of Bahr el-Ghazal to Kordofan in 1905 was a strip of land south of the Bahr el-Arab. They maintained that the Ngok Dinka lived south of the Bahr el-Arab before 1905 and migrated to the territory north of the river only after coming under the direct administration of Kordofan. Therefore the Abyei Area should be defined as lying south of the Bahr el-Arab, and should exclude all territory to the north of the river, including Abyei Town itself.

The crucial piece of evidence supporting the government's position was a trip report by a British official, Major E.B. Wilkinson, traveling from El-Obeid south to Dar el Jange, the land of the Dinka, in 1902. In his account of his journey, Wilkinson wrote that he did not encounter any Dinka until after he crossed the Bahr el-Arab.

The SPLM case was that the Ngok Dinka had well established historical claims to an area extending from the existing Kordofan/Bahr el-Ghazal boundary to north of the Ngol River, and that the northern boundary should run in a straight line along latitude 10°35' N. Before, during and after 1905, Ngok permanent settlements were situated both north and south of the Bahr el-Arab; and there had been no major changes to those areas of permanent settlement from 1905 to 1965.

On July 9, 2005 the new president was sworn in. On the 14, the ABC met with President Omar al-Bashir and Vice Presidents John Garang and Ali Osman Taha in a large formal room in the Presidential Palace. We, the five experts, made our presentation. Much of our summary report, which we read aloud, dealt with nine propositions, which were the claims that emerged from the presentations of the government and the SPLM and the testimony we had heard in the field. For each claim we offered an analysis and conclusion as to its validity.

For example, the Ngok had stated that their territory originally extended north as far as Muglad. We cited evidence that Muglad was and remains the heart of Dar Misseriya, and that contemporary documents showed that Ngok Dinka settlements did not extend that far north. Therefore, we rejected the claim.

Another proposition was the assertion by the Misseriya that their territory extended well south of the Bahr-el Arab. This too did not hold up to scrutiny, for in the early years of the 20th century the Misseriya had taken their cattle no farther south than the Ngol River, and they never lodged an official claim to ownership of land south of the Bahr el-Arab.

Another proposition, one which arose from Misseriya testimony and from the government's case, was that the Ngok are newcomers to the territory, not having left the Upper Nile area until the nineteenth century, and having been brought into Kordofan as destitute refugees at their own request to Humr leaders. This, too, was belied by historical evidence showing that the Ngok as well as the Humr arrived in Kordofan in the 18th century. There was no evidence that the Ngok asked Ali Julla, the Misseriya chief who was conducting raids against them, for refuge. And far from being destitute at the turn of the century, the Ngok were, as British officials noted, well off and owned lots of cattle.

Rather than go into each proposition, let me cite excerpts from our conclusions, which cover other claims by both sides:

- In 1905 there was no clearly demarcated boundary of the area transferred from Bahr el-Ghazal to Kordofan.
- The GOS belief that the area of the nine Ngok Dinka chiefdoms placed under the authority of Kordofan in 1905 lay entirely south of the Bahr el-Arab is mistaken. It is based largely on a report by a British official who incorrectly concluded that he had reached the Bahr el-Arab when in fact he had come to the Ngol, some 28 miles north of the Bahr el-Arab.
- The Ngok claim that their boundary with the Misseriya should run from Lake Keilak to Muglad has no foundation.
- The historical record and environmental factors refute the Misseriya contention that their territory extended well to the south of the Bahr el-Arab, an area to which they never made a formal claim during the Condominium period.
- Although the Misseriya have clear “secondary” (seasonal) grazing rights to specific locations north and south of Abyei Town, their allegation that they have “dominant” (permanent) rights to these places is not supported by documentary or material evidence.
- There is no substance to the Misseriya claim that because the Abyei Area was included in “Dar Messeria” District, it belongs to the Misseriya people.

The Ngok and the Humr were put under the authority of the same governor solely for reasons of administrative expediency in 1905. After that action, the Ngok retained their identity and control over their local affairs and maintained a separate court system and hierarchy of chiefs.

- There is compelling evidence to support the Ngok claims to having dominant rights to areas along the Bahr el-Arab and Ngol.
- The administrative record of the Condominium period and testimony of persons familiar with the area attest to the continuity of Ngok Dinka settlements in places north of the Bahr el-Arab between 1905 and 1965.
- The border zone between the Ngok and Misseriya falls in the middle of the Goz, roughly between latitudes 10°10' N and 10°35' N.

As for the decision, it includes the following:

- The Ngok have a legitimate dominant claim to the territory from the Kordofan-Bahr el-Ghazal boundary north to latitude 10°10' N, stretching from the boundary with Darfur to the boundary with Upper Nile.
- North of latitude 10°10' N, through the Goz up to and including Tebeldia (north of latitude 10°35' N) the Ngok and Misseriya share secondary rights.
- The two parties lay equal claim to the shared areas, and accordingly it is reasonable and equitable to divide the Goz between them and locate the northern boundary in a straight line at approximately latitude 10°22'30" N.
- The Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary.

What is the significance of our decision? During the years leading up to the 2011 referendum, the decision should have no effect. As we stated in our report, the boundary that we defined would not be a barrier to interaction between the Misseriya and Ngok Dinka communities. It should have no practical effect on the traditional grazing patterns that have been followed for many years. Nor does the boundary affect the distribution of oil revenues, the shares of which are laid out in the Protocol.

The placement of the Abyei boundary would become a serious issue only if in 2011 the South votes to become independent and at the same time the residents of Abyei vote to become part of Bahr el-Ghazal. In this way, Abyei would be part of the new country and Abyei's northern boundary would be an international boundary.

In addition there is the matter of oil. The oil-rich territory of Abyei would no longer belong to Sudan. And therein lays the rub. Some believe that no

matter what happens, the North will never relinquish so much oil.

It was clear that as he heard it being read, President Bashir was unhappy with the decision. Indeed several days later, after the Misseriya had rejected it, Bashir followed suit. The Misseriya had been confident that the decision would be favorable to them.

Before the Commission had convened in April, Ngok Dinka members of it had suggested to the Misseriya members that the two sides should themselves identify their boundaries as they knew them and present them to the ABC for endorsement. The Misseriya rejected the proposal. Apparently they were confident that the government's support for their position would determine the outcome. In fact, they had been assured this would occur.

A year and a month have passed since my colleagues and I presented our decision to the presidency, and it remains unimplemented. It is quite possible that this would not have been the case if John Garang had lived. This is not to take anything away from Salva Kiir, who insists that the ABC's decision must be implemented. It's just that Garang was in some ways bigger than life, a charismatic and persuasive man who had developed a close working relationship with Ali Osman Taha.

We, the five experts, met with Garang that night of July 14. He was in good form—good-humored, expansive, confident about the future of democracy in Sudan. I said the government had not permitted any exposure of my post-presentation remarks to the media, which had been limited to government radio and TV. In contrast Dirdeiry's comment that the decision would merely be studied was publicized. Garang said Dirdeiry was speaking for himself only and that clearly the decision was final and binding.

The northern political leadership and the Misseriya maintained, and continue to insist, that the ABC experts had exceeded their mandate and that, therefore, their decision was invalid. But Salva Kiir and the SPLM are adamant that the decision was just and that, as stipulated in agreements signed by both parties, it is final and binding.

My colleagues and I were fully aware that the Misseriya would strongly object to our decision. I for one, though, thought that in time the northerners would accept it, however reluctantly. After all, the presidency included a southerner as first vice president, and southerners would have no reason not to support our decision. Would President Bashir hold to a rejection that could have a devastating impact on the CPA as a whole? Well, thus far he has done just that.

Neither the NCP nor the SPLM appears to want to bring the issue to a head at this time. The same holds for the U.S. government. Although the Bush administration has stated its support for the ABC decision, the State Department

is too focused on Darfur to expend diplomatic resources on Abyei. It is also possible that Washington's desire not to hinder its intelligence relationship with the Sudanese government has inhibited the Americans from exerting strong pressure on the NCP's leaders to implement the ABC decision.

The issue is potentially explosive. The Misseriya have said they will fight if the decision is implemented. Salva Kiir told Americans during his October 2005 trip to the U.S. that the decision had to be implemented. He indicated that any effort to deny that would lead to fighting. Abyei has been a subject of several discussions between the president and first vice president, but there has been no progress at all in resolving the issue. If not overcome, failure to implement the ABC's decision—the first major test of the viability of the Comprehensive Peace Agreement—could well signify failure of the CPA itself.

NOTES

1. The people who today are known as Misseriya are Baggara Arabs who in the eighteenth century were composed of two tribal divisions, the Humr and the Zurg. The latter were referred to as Misseriya. The Humr settled in the Muglad/Babanusa area, the Zurg farther east. In 1942, the British amalgamated the two groups, who henceforth were both called the Misseriya.

2. The shift was one of authority over the Ngok, not a physical movement of them from Bahr el/Ghazal to Kordofan.

3. The U.S. and the U.K. each nominated one expert, and IGAD nominated three.



MORE THAN NORTH-SOUTH:

THE CPA AND THE GREATER CONFLICT(S) IN THE SUDAN

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First, the ongoing conflict in Sudan is one of the biggest challenges facing Africa today. As the largest country on the continent, bordering some nine other states, Sudan demonstrates acutely many of the challenges facing Africa today. Moreover, the most recent events, from the increasing divisions in the ranks of the Darfur rebels to the rejection of a U.N. peacekeeping force, highlight the problems inherent in the current negotiations being pursued by the international community. It is critical that more rebel groups in the region sign and implement the Darfur Peace Agreement (DPA) signed on May 5, 2006. There can be no military solution to the tragedy in Darfur. Only a real political settlement will end this conflict.

Before I share my insights on Sudan's prospects for a lasting peace, please allow me to acknowledge and pay tribute to Lt General Lazarus Sumbeiywo who negotiated the Comprehensive Peace Agreement (CPA) in Nairobi, Kenya between the southern Sudan People's Liberation Movement/ Army (SPLM/A) and the ruling Sudanese government's National Congress Party (NCP) on January 9, 2005. As you are all aware, the CPA ended the 21 year old civil war between the North and South and the establishment of the new interim constitution on July 9, 2005, marking the beginning of the six-year interim period. In 2011, a referendum will determine whether the South will remain part of a united Sudan or become independent.

I also want to acknowledge the efforts by the Kenyan Government as well as the Inter-governmental Authority on Development (IGAD). These show the continued and sustained will by African nations themselves to help resolve the conflicts in Africa. Last, but not least, I acknowledge the contributions of the international community, most notably, the U.S., Italy, Norway, the U.K. and other donor countries for their efforts in pushing for the signing and implementation of the CPA. It is indeed a great relief to the interna-

tional community that the CPA has been signed. What is important now is to implement it.

I therefore appeal to all parties involved in the signing of the CPA to remain committed to its implementation. I join with IGAD in calling for a speedy commencement of projects of repatriation and resettlement of refugees, returnees and displaced persons and urge the international community to quickly disburse the U.S. \$4.5 billion that was pledged for Sudan at the Oslo donors' Conference last year.

In my presentation today, I will try and highlight the status of the implementation of the CPA and discuss the United Nation's assessment of progress in its implementation.

But, first, a brief synopsis of the progress so far in the implementation of the CPA:

- 1) The Interim National Constitution (INC) was adopted on June 18, 2005 and the Sudan Government of National Unity President, Omar El Bashir, signed it into law on July 9, 2005.
- 2) The institution of the Presidency was established on July 9, 2005 when Dr. John Garang de Mabior was sworn in as the first Vice President of the Sudan Government of National Unity as well as President of the Government of Southern Sudan. His tenure did not last long as he perished in a plane crash hardly three weeks after the swearing-in. Following Dr. Garang's death, Gen. Salva Kiir was sworn in as the First Vice President of the Republic of Sudan and President of the Government of Southern Sudan.
- 3) The National Assembly was formed on August 31, 2005 comprised of 234 seats for the National Congress Party (NCP); 126 seats for the Sudan People's Liberation Movement (SPLM); 55 seats for the Northern political forces; 27 seats for the Southern political forces; and 8 seats for national personalities.
- 4) In September 2005 President Bashir issued four decrees establishing the Government of National Unity based on the CPA. Precisely, the Government was appointed on September 20, 2005.
- 5) The stage was then set for the formation of the Transitional Southern Sudan Legislative Assembly, which was appointed. It is this Assembly that approved the Interim Constitution of Southern

Sudan, which was signed into law by the President of Southern Sudan on December 5, 2005.

- 6) State Governors were appointed, State Legislative Assemblies formed and all state governments established except for Khartoum and Southern Kordofan. Perhaps most importantly, the Constitutional Court was established on December 24, 2005.
- 7) Different commissions have been set up as stipulated in the CPA. These include: the Assessment and Evaluation Commission (AEC), the National Petroleum Commission (NPC), the Cease-fire Political Commission (CPC), the Fiscal and Financial Allocation and Monitoring Commission (FFAMC), the Technical Ad hoc Border Committee and the National Judicial Service Commission.
- 8) In January 2006 South Sudan Defence Forces (SSDF) leader, Gen. Paulino Matip, signed an agreement with General Salva Kiir, merging the SSDF with the SPLA as provided for in the CPA. That was a good step, and other groups should be urged to follow suit as that will make the South-South dialogue process a productive reality.
- 9) The two Multi-Donor Trust Funds (MDTFs) for North and Southern Sudan have been established. The Board of Directors and two Deputy Governors have been appointed for the Central Bank of Sudan (CBOS). The Bank of Southern Sudan has also been established.

In a recent address to the Woodrow Wilson Center [November 4, 2005], the First Vice President and President of the Government of Southern Sudan, Mr. Salva Kiir Mayardit stated that there was some progress in the implementation of the CPA, but progress had been slow, in part due to the negotiating partners leaving the warring parties to implement the agreement of their own goodwill, and also due to the failure by the negotiating partners to stay the course and help the warring parties implement the CPA.

As a result, the parties have been unable to implement the Abyei Protocol as the NCP rejected the report of the Abyei Boundary Commission, which was set up to demarcate the borders under the Abyei administration. He also noted that the Federal ministry had not paid the necessary funds to the Commission that was supposed to demarcate the north-south border. This has stalled the re-deployment of forces; SAF, who were supposed to have withdrawn from

the south and be redeployed to the north, and the SPLA to be stationed in the south. Another problem resulting from the failure to agree on the respective boundaries of the north and south is the rising tension over the control of the newly discovered oil resources.

Mr. Salva Kiir Mayardit also noted that the National Petroleum Commission proposed by SPLM, as a secretariat independent from the Department of Energy, to focus on oil production, sales and management, is not functional. The oil revenues are currently being determined by the National Ministry of Energy and Mining and the Ministry of Finance—both controlled by the NCP. Its unpredictability thus represents an important obstacle to sound economic planning in the south.

He also noted that several commissions had not yet been established, for example, the Human Rights Commission, the National Civil Service Commission and the National Lands Commission, and stressed the importance of setting up the infrastructure for effective development to take place. He underlined the need for donors to honor their pledges made at the Oslo Donors Conference in April 2005 and the first ever Sudan Consortium, held in Paris, France in March 2006, which was organized jointly by the World Bank, the International Monetary Fund and the United Nations.

UNITED NATIONS ASSESSMENT OF PROGRESS IN THE IMPLEMENTATION OF THE CPA

Key developments since July 2006

1. The first anniversary of the inauguration of the Presidency and the signing of the Interim National Constitution was marked on the 9 of July with ceremonies throughout Sudan.
2. The Ceasefire Political Commission met for the fifth time on July 27, but failed to resolve a number of deadlocked issues, including movement restrictions on U.N. personnel north of Abyei.
3. The Other Armed Groups' Collaborative Committee (OAGCC) held its second meeting on the 5 of August; its first meeting was held in March 2005.
4. On the 3 of July, the Second Parliamentary Session of the National Assembly came to an end; Parliament is scheduled to resume on October 30.

5. The Assessment and Evaluation Commission (AEC) gathered momentum during July 2006, with more working group sessions and increased participation from the CPA parties. The AEC held its tenth plenary meeting on the 11 of July.
6. The Technical ad hoc Border Committee held its sixth meeting on July 20 and approved its budget. The rainy season has delayed substantive work.
7. On July 19, the Bank of Sudan opened its Juba branch.

UPDATES

1. Neither the national nor southern legislature passed any legislation establishing new CPA Commissions or other bodies during their recent sessions. Of all the CPA commissions, only a few are actually convening regularly.
2. The national commissions that are yet to be established include: the Human Rights Commission, the National Civil Service Commission, the National Land Commission, the National Electoral Commission, the Commission for the Protection of the Rights of non Muslims in the National Capital and the Council for Development and Promotion of National Languages.
3. The National Constitutional Review Commission (NCRC) has not met since it was re-established on January 7, 2006.
4. A number of commissions are yet to be established in Southern Sudan, including the Land Commission, the Civil Service Commission, the Human Rights Commission, the Anti-Corruption Commission, the Relief and Rehabilitation Commission and the Disarmament, Demobilization and Reintegration (DDR) Commission, although Commissioners have been appointed.
5. The Government of Southern Sudan and the Government of National Unity formally endorsed the Interim Disarmament, Demobilization and Reintegration Program (IDDRP) in January and May 2006, respectively. A May 3, 2006 presidential decree appointed

the Chairperson and the Deputy Chairperson for the Southern Sudan DDR Commission. However, the commission itself is yet to be established. The Northern DDR Commission, established on February 19, 2006, has yet to convene its first meeting.

6. The Ceasefire Political Commission (CPC), the National Population Census Council, the Technical ad hoc Border Committee and the Joint Defense Board all met during July.
7. Since mid-December 2005, the freedom of movement of U.N. Military Observers and humanitarian convoys has been restricted in Northern Abyei. There were further restrictions of movement in Eastern Sudan. In Southern Blue Nile, the parties continued to disagree on the definition of the ceasefire zone. These issues continued to be raised at the CPC.
8. The SAF reported 61.7% redeployment and the SPLA reported 64.9% redeployment.
9. As of July 31, 2006, 99% of U.N.MIS military personnel (9,595 out of a total of 9,692) have been deployed, including 689 U.N.MOs, 183 Staff Officers and 8,726 troops from the Troop Contributing Countries (TCCs). As of the 7 of August, 92% of U.N. Police have been deployed (659 out of a mandated strength of 715).

CONCLUSION

Mr. Chairman, I have tried to provide an accurate overview of the status of the implementation of the Comprehensive Peace Agreement. Much has been achieved, but a great deal remains to be done. It is particularly unfortunate that the tragedy in Darfur has, to a considerable extent, overshadowed and diverted international attention away from the progress and perils of the CPA. We must not allow the implementation of the CPA to falter for lack of adequate and sustained international support. But at the same time, parties to the CPA must scrupulously live up to their commitments. U.N.MIS, under the able leadership of SRSJ Jan Pronk, will continue to do its best in support of the parties.



IS THE COMPREHENSIVE PEACE AGREEMENT HOLDING?

SUMMARY OF COMMENTS BY H.E. SALVA KIIR, FIRST VICE PRESIDENT OF SUDAN AND PRESIDENT OF SOUTHERN SUDAN ON NOVEMBER 7, 2007 AT THE WOODROW WILSON CENTER.

By Roseline F. Tekeu and Alicia Ranck

President Kiir was invited to discuss the status of the CPA and the current crisis caused by the SPLM's October 2007 departure from the Government of National Unity. Kiir began by providing an overview of the strategic vision of the SPLM before highlighting the achievements and challenges of the CPA. He also discussed the crises in Darfur and between the Lord's Resistance Army (LRA) and the Ugandan Government, where the Government of Southern Sudan is acting as mediator.

Kiir re-emphasized the strategic location of Sudan and its centrality to U.S. and regional interests, noting that Sudan serves as a geographic buffer zone between two large arenas of conflict, the Horn of Africa and the Great Lakes Region. He argued that if the CPA were to collapse, the impact would be felt across Africa, and across the world. He restated his vision that the SPLM would not be a "protest party," but was committed to working with its partners in the Government of National Unity. During the question and answer session, Kiir reemphasized SPLM's willingness to work with all parties outside of government as well.

Kiir argued that the CPA should serve as a blueprint to resolve the multiplicity of conflicts facing Sudan, and that the South would not consider a unilateral declaration of independence before the referendum. In response to a participant's question, he emphasized that the SPLM signed the CPA in the hopes that unity would be a desirable option for southerners.

Since its signature, the CPA has brought about real political change. It led to peace and stability throughout the South, and provided a framework for the peace agreement in Eastern Sudan. By triggering constitutional revisions throughout the country, the CPA strengthened State constitutions and governments. These reforms included the establishment of a Bill of Rights and

fundamental freedoms, although these have often not been fully implemented. Kiir argued that the CPA also defined a new multicultural, multireligious, multilingual, multiethnic national identity for Sudan. Finally, Kiir argued that the CPA has brought economic benefits, including the introduction of the new Sudanese Pound currency and increased fiscal responsibility.

Despite these achievements, Salva Kiir argued that the CPA still faced four important challenges:

1. *The Abyei Protocol.* Kiir stated that during negotiations the National Congress Party (NCP) and SPLM committed to the binding arbitration of the Abyei Boundary Commission (ABC). He complained that since the NCP rejection of the ABC decision, there had been no progress.

2. *Armed Forces Withdrawal and Integration.* Kiir observed that Sudan's Armed Forces (SAF) remain in Abyei, Unity¹ and Upper Nile States, though the deadline for withdrawal was July 9, 2007, and recognized that the SPLA has not completed its withdrawal from the transition areas due to technical and logistical issues. In response to a question on anti-SPLA militia, Kiir stated that some had been integrated into the SPLA, but that all other armed groups are now being disarmed.

3. *Oil Sharing.* Currently the North and South each receive 50% of revenues from southern wells, while only the North receives profits from the northern wells. He repeated concerns that the border designating Northern from Southern fields continues to be pushed further southwards, and that the proper amount of revenue was not being transferred to the Government of Southern Sudan. Kiir restated the SPLM's position that the oil found in any part of Sudan should be a national asset.

4. *Absence of Reconciliation and Healing Processes.* Kiir turned to an explanation of the SPLM's reasons for leaving the Government of National Unit. He noted that despite talks between the NCP and SPLM since 2005, the two parties have "not always been using the same language." He objected to the ongoing NCP policy of Islamization and Arabization, citing the example of state-run television, which has downplayed the CPA in favor of promulgating the NCP message. He was also concerned that the head of the body charged with overseeing CPA implementation, the Commissioner of the Assessment and Evaluation Commission (AEC), might soon resign due to threats of expulsion.

On the topic of Darfur, Salva Kiir reiterated the support of the SPLM for the Darfur peace process as necessary to the stability of Sudan and the region.

SPLM had an initiative to bring together the factions in Darfur to decide on one common agenda and delegation with which to face the Government of National Unity. According to Kiir, the Juba talks failed because this was not yet accomplished. When asked about the U.S. role, he recognized the U.S. contribution in supporting the negotiations and mediators, and providing humanitarian relief to Sudan. However, he argued that the U.S. should not allow Darfur to distract it from its obligation, as one of fourteen international witnesses to the North-South negotiations, to monitoring the implementation of the CPA.. In Darfur, the U.S. should assist in the negotiations but the solution must ultimately be Sudanese.

Toward the end of his presentation, Kiir spoke briefly on the subject of the LRA in northern Uganda. He noted that while the SPLM initiative to mediate between the LRA and the government of Uganda received early criticism, it has now garnered results. “We were the first to show Museveni a photo of Joseph Kony,” Salva Kiir said. He noted that a LRA delegation was currently in Kampala and affirmed his belief that a permanent ceasefire would be signed.

Closing questions concerned the issue of dams being constructed by the Chinese near Merowe on the Nile River north of Khartoum, and corruption within the SPLM. Kiir noted that the dam project began before the SPLM was part of the government. He stated that the SPLM could not, therefore, oppose the dams but that it did not support the displacement of local peoples in the areas of the dams. He acknowledged that corruption has been rampant in Sudan since 1956 and had affected all political groups, including the SPLM. However, he argued, the SPLM’s recent reforms, including the establishment of an anti-corruption commission and recent major investigations, are having the desired effect.

In conclusion, Kiir observed that the CPA is struggling, but has not yet collapsed. Kiir called on the international community to be proactive, especially those states that were present at the signing of the CPA. He called for a summit where the two leaders, Presidents Bashir and Salva Kiir, could discuss the CPA with observer nations, including Egypt and South Africa, as well as those involved in the CPA negotiations.

NOTES

1. Unity (Al Wahda in Arabic) is the official name used by the Government of National Unity, while the Government of Southern Sudan refers to this state as Western Upper Nile

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