

# **SUDAN ENDGAME**

7 July 2003



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ICG Africa Report N°65  
Nairobi/Brussels

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## SUDAN ENDGAME

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Sudan peace process is in its endgame. One year ago, the parties signed the Machakos Protocol, a provisional “grand bargain” that effectively traded a southern self-determination referendum for *Sharia* in the North. It is time for a second “grand bargain” on the remaining issues such as the status of the national capital, the presidency and the security arrangements to close the deal. This requires major tradeoffs – or new solutions – to meet the bottom lines of the parties and protect the original Protocol as well as incentives for implementation. Commitments on the U.S.-Sudan bilateral relationship and assurances that the U.S. will remain closely involved in the post-agreement process are the glue without which a deal is unlikely to stick. With them, peace has a chance.

The mediators will put forth a draft framework document in mid-July on which they will seek agreement by mid-August from the government of Sudan and the rebel Sudan People’s Liberation Movement/Army (hereafter SPLA) to end a civil war that has already lasted more than 20 years. The process, under the auspices of the regional African organisation, the Inter-Governmental Authority on Development (IGAD), has come closer than any of its predecessors to peace. However, the last steps will be the most difficult, and a misstep could plunge the country back into full scale civil war.

The manner in which the final text is structured, namely whether unity is prioritised to the maximum extent possible and how the issues of the conflict areas outside the South are addressed, will have a critical impact on whether an agreement is sustainable. A minimalist deal can be reached that stops the war for now and puts the South on a fast

track to independence. However, such an agreement likely would be systematically undermined by key actors in the ruling party in Khartoum and thus lead to resumption of war. Therefore, all efforts should be directed toward getting a comprehensive pact that promotes the unity of the country but with radically restructured governing arrangements that promote equal rights and equal opportunities for all Sudanese.

Despite the imperative to stress unity, independence for the South must remain a valid and acceptable possible outcome of the referendum, as a fundamental confidence building measure for southerners to give a unified state a chance. In order to avoid future conflict, the parties should also agree on provisions now that would come into effect should the South vote for independence after the interim period. By agreeing to extend modalities on certain issues beyond the six-year interim period – for example, on sharing oil revenue – the referendum would cease to be a zero-sum affair.

A second element that would help insure sustainability of an agreement would be mechanisms for broadening participation in its implementation throughout the interim period beyond the current ruling party and the SPLA. This could best be achieved by free and fair but staggered elections at the local, regional, and national levels, as well as a broadly inclusive constitutional review process. SPLA and government must both recognise that their interests are ultimately served by broadening participation, and therefore make every effort to accommodate other voices. In particular, the devolution of state powers within the federal

framework should give marginalised areas in the North a meaningful role in running their affairs.

The parties have each made significant sacrifices, and the international community has put a tremendous amount of effort and resources into support of the process. As the talks reach their final stage, senior political leadership from neighbouring IGAD countries and the international observer countries should elevate their involvement to the highest levels possible. However, the process should not be jeopardised by artificial deadlines. The goal of having a comprehensive agreement by the end of the summer is admirable, but the mediators should be flexible enough to allow the talks to be extended if one or both of the parties are not quite ready to finalise the peace.

## **RECOMMENDATIONS**

### **To the IGAD Envoys, the IGAD Secretariat and the International Observers:**

1. Focus mediation efforts on developing proposals that will make unity attractive to southern voters in a self-determination referendum six years hence, including:
  - (a) On power sharing, prioritise unity by:
    - (i) proposing a small enclave around “administrative Khartoum” – effectively the key government buildings in the capital – where all religions will have equal legal standing;
    - (ii) proposing that southerners receive one-third representation in the civil service, the cabinet, and the Lower House, and 40 per cent representation in the Upper House; and
    - (iii) proposing a presidency that rotates between the government and the SPLA.
  - (b) On wealth sharing, prioritise unity by having a single fiscal and monetary policy, with a single central bank and currency, and negotiate the extension of wealth sharing provisions beyond the interim period.
  - (c) On security arrangements, prioritise unity by maintaining a separate force under southern command while maximising cooperation and coordination of policies and movements with the national army.

- (d) On the Three Areas, prioritise unity by setting up a joint administration for Abyei between the southern and central governments, until Abyei holds a referendum on whether to join the South or remain in the North, and by granting the Nuba Mountains and the Southern Blue Nile further measures of autonomy beyond those applicable to other states.

2. Negotiate extension of certain provisions of the peace agreement beyond the interim period in order to help stabilise the potential fallout of a pro-independence vote in the southern referendum.
3. Establish a mechanism to monitor and limit arms purchases and manufacturing by both sides so that an arms race does not develop after an agreement is signed.

### **To the International Observers (the U.S., UK, Norway, Italy, the United Nations and the African Union):**

4. Coordinate the phased lifting of existing punitive measures and provision of financial and political benefits, with the U.S. in particular sequencing improvement of its bilateral relationship with Sudan on conclusion and implementation of a peace agreement.
5. Inject ministerial and UN Secretary General-level involvement in the process, in order to show support to the parties and help close a peace deal.
6. Begin immediate planning for a UN Observer Mission to support implementation of the agreement, despite competition for peacekeeping resources from other crises such as those in the Democratic Republic of the Congo and Liberia.

### **To the Heads of State of the IGAD Countries, and High Level Representatives of Other Key Governments:**

7. Become directly involved during the final stages of the peace process in support of the IGAD mediation, in order to send a signal to the parties that the region is firmly behind a peace agreement.

**Nairobi/Brussels, 7 July 2003**



## **SUDAN ENDGAME**

### **I. INTRODUCTION**

Building on the momentum of pledges from President Omar al-Bashir and SPLA Chairman John Garang, IGAD mediator Lazaro Sumbeiywo has decided to press for a final agreement by mid-August 2003. As with many peace processes, the closer the endgame draws, the more strident, obstructionist and legalistic the parties become. The government and the SPLA both are drawing lines in the sand and claiming they cannot cross them. Religious issues have reasserted themselves in the form of a dispute over the legal framework for the national capital, and security issues remain vitally important. Furthermore, fighting has broken out or is threatened in other parts of the country in anticipation of a final agreement and fear of being left out.<sup>1</sup>

Publicly, most Sudanese government officials are optimistic, saying that the August target is realistic. A surge of fighting outside the South adds pressure on the government to close a deal with the SPLA as quickly as possible. “If IGAD drags on, more and more problems will intrude on the government, mostly from the North”, said one European official.<sup>2</sup> The SPLA has been much more sceptical. “Since the Machakos Protocol, we have only been initialling principles”, said SPLA Chairman John Garang. “That is not enough. The government feels that it can retain all existing structures and identities. But we need much more substantive changes in the system. Nothing has been agreed

yet, despite the positive rhetoric from the mediators”.<sup>3</sup>

There is a wide expectation among northern opposition forces and the public at large that the final agreement must secure sustainable peace and lay the legal and constitutional foundations for democratic transformation. The mediators and observers will need to take this interplay between the peace process and the internal and external political dynamics into full consideration.

Independent assessments range from acknowledgment that this is the farthest any peace process has ever progressed to fear the government is simply buying time to prepare a military solution. The most tangible benefits have been the marked improvement in the humanitarian environment: aid is less obstructed than at any time since the war began, and a cessation of hostilities – though not fully adhered to – provides a welcome respite from active fighting in most of the South and the Three Areas.<sup>4</sup>

The issues are extremely complex and date back decades, if not centuries. Therefore, some patience will be needed as the endgame is begun. Progress may be slower than some mediators and observers would like. “The do-or-die approach could be counterproductive”, warned one regional specialist. “More time might be required for the parties to come to terms with any agreement”.<sup>5</sup> A balance must be found between allowing for flexibility on behalf of the parties, and guarding against the process dragging on indefinitely.

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<sup>1</sup> See ICG Africa Briefing, *Sudan's Other Wars*, 25 June 2003.

<sup>2</sup> ICG interview, May 2003.

<sup>3</sup> ICG interview, June 2003.

<sup>4</sup> Ted Dagne, “The Sudan Peace Process”, Congressional Research Service Report for Congress, 4 June 2003, p. 15.

<sup>5</sup> ICG interview, June 2003.

One of the important ingredients of a successful final push will be to ensure that existing agreements are honoured. For example, although the cessation of hostilities agreement, originally signed in October 2002, has been repeatedly violated by both parties – most persistently by the government – the international reaction has been inconsistent.<sup>6</sup> Intense fighting in Eastern Upper Nile between the SPLA and government-sponsored Nuer militias provides a fresh threat to the cessation of hostilities agreement, and perhaps to the larger peace process. Oilfield battles continue in Western Upper Nile.<sup>7</sup> The Verification and Monitoring Team for the cessation of hostilities that was agreed in early February 2003 has only recently been officially cleared by the parties, after weeks of wrangling.<sup>8</sup> Questions persist, particularly among influential U.S. critics, as to whether the verification mechanisms can work at all.<sup>9</sup>

If these agreements are seen by the parties to be treated lightly, a signal will be sent that perhaps the implementation of the larger peace agreement will not be a high international priority to the international actors as well. It is a mistake to not see these interim humanitarian agreements as confidence building measures for the larger peace deal. In fact, the parties passed two major tests at the end of June by extending the cessation of hostilities agreement for another three months, and the Nuba Mountains Cease-Fire through January 2004.<sup>10</sup>

This leads to a broader point. Rather than a diminution of international effort as the process enters its final phase, much more robust and higher level engagement is needed, particularly by the IGAD and observer countries. IGAD heads of state should become directly engaged at the direction of General Sumbeiywo and his envoy colleagues. Presidents Isaias Afwerki of Eritrea and Yoweri Museveni Uganda and Prime Minister Meles Zenawi of Ethiopia all have much to contribute.<sup>11</sup> President Mwai Kibaki of Kenya has already proven he can play a key role in moving the process forward by convening the April 2003 meeting between Chairman Garang and President al-Bashir.

Similarly, more active ministerial involvement is now required by the observer countries (U.S., UK, Norway and Italy) and institutions. Washington's recent hosting of the Sudanese Foreign Minister and of Garang was well-timed, as was President Bush's announcement that he is sending his Special Envoy, former Senator John Danforth, back to the region in mid-July. More robust and higher level assistance from Canada, France and other countries that have been supporting the talks should also be made available to General Sumbeiywo. Crucially, Secretary General Kofi Annan should be available to support his Special Envoy, Mohamed Sahnoun. Others with a sustained interest should also be engaged when necessary, including Arab League Secretary General Amr Musa, and key African and Middle Eastern heads of state.

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<sup>6</sup> See ICG Africa Briefing, *Sudan's Oilfields Burn Again: Brinkmanship Endangers the Peace Process*, 10 February 2003.

<sup>7</sup> The Global Internally Displaced Persons Project estimates that more than a half million people have been displaced – mostly from the oilfields – in the year since the Machakos process began. *Africa Confidential*, volume 44, number 13, 27 June 2003. Fresh fighting within the SSDF between forces loyal to Paulino Matiep, and those aligned with Peter Gadet, Tito Biel and James Lieh Diu, over the control of Bentiu, further threatens the already devastated area.

<sup>8</sup> "Sudan: Monitoring Team to Begin to Work" IRIN, 28 May 2003.

<sup>9</sup> Eric Reeves, "Can Peace Ever Be Made with the National Islamic Front", 13 June 2003, electronic column.

<sup>10</sup> See "Sudanese government, rebels extend cessation of hostilities agreement", Associated Press, 30 June, 2003 and "Warring parties agree to renew cease-fire in Nuba Mountains", Associated Press, 24 June 2003. Renewal of the general cessation of hostilities agreement came against some resistance from SPLA field commanders, who pressed SPLA

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Chairman Garang not to extend the agreement if it continued to be violated in Upper Nile by construction of new garrisons, government-supported militia attacks, and redeployments. The Nuba Mountains Cease-Fire Agreement of 19 January 2002 was brokered by the U.S. and Swiss governments and their special envoys, Senator Danforth and Ambassador Bucher respectively, and signed at Burgenstock, Switzerland. It provides for humanitarian assistance through humanitarian corridors and an international monitoring team to be drawn from donor countries.

<sup>11</sup> Recent events in the region signal an increase in tensions amongst the neighboring countries that could work against the peace process. In particular, an Eritrean plane ferrying support to Ethiopian rebel movements, via the government of Sudan sponsored South Sudan Liberation Movement, was captured when the SPLA re-took Akobo on 6 June. The plane was released to return to Eritrea. Also, allegations by President Museveni of continued Khartoum support for the Lord's Resistance Army, operating in northern Uganda threaten the regional partnership.

## II. TIME FOR ANOTHER GRAND BARGAIN

Since the signing of the Machakos Protocol in July 2002, the negotiations have been structured exclusively along thematic lines. Prior to the May 2003 round, there had been two sessions devoted to power and wealth sharing, one to security arrangements, and one – although officially outside the IGAD process – on the Three Areas.<sup>12</sup> Entering the May round, the mediators, with support from the observer countries, altered strategy and adopted a “holistic” approach, in the hopes of allowing for tradeoffs between issues.

This decision stemmed from an overall sense that the negotiations had reached a point at which neither party could further compromise on any given issue unless it was part of a broader tradeoff, as well as indications that the government was ready to compromise on key issues on security arrangements and power sharing.<sup>13</sup> Both parties immediately withdrew to maximalist positions but everybody understands that peace will not be made if they stay with their opening positions. Developing solutions in the context of the entire agreement, rather than within specific issue-based subsets of the agreement, is a promising approach.<sup>14</sup>

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<sup>12</sup> On treatment of the Three Areas – Nuba Mountains, Southern Blue Nile and Abyei – and the issues involved, see ICG Briefing, *Sudan's Other Wars*, op. cit.

<sup>13</sup> ICG interviews, May 2003. General Sumbeiywo described the rationale for adopting the holistic approach as follows: “When you are a driver, you will not be good enough if you continue driving in the same gear from start to finish. Otherwise, it will be monotonous. I also come from a profession [military] where two principles are very important: flexibility and an element of surprise. You also have to be able to read the situation, the mood and make sure you do not tire your forces by engaging them in a mission that is taking you nowhere”. “Sudan: Interview with Lazarus Sumbeiywo, chief mediator in the peace talks”, IRIN, 30 May 2003.

<sup>14</sup> The change in tactics was correct but not everyone was pleased. One NGO official working in Sudan charged, “The basket strategy meets the interests of those who want a quick deal. In this scenario, the Three Areas become pawns in the larger deal. There is very little discussion of the issues inside Sudan, and no opportunity to influence the talks. The mediators just want to stop the war, not resolve its causes. Darfur is a case study of the fundamental flaws

The perception among Sudanese from all across the political spectrum is that a peace deal is possible primarily because it would facilitate the survival – at least for another six years – of the current leadership of the Khartoum government and the SPLA. The parties had a great deal to gain from entering into serious negotiations in search of a peace agreement. They have now reached the endgame, and the political rationales that underlie any possible agreement must be turned into specific compromises and tradeoffs as the essential elements of a comprehensive peace.

In the July 2002 Machakos Protocol, which opened the door to peace, the government accepted the right of southerners to self-determination in the form of a referendum after a six-year interim period, while the SPLA accepted that *Sharia* law could be maintained in the North during that same period. Since then, however, the momentum has eroded. Therefore, the mediators must make their next and urgent priority the striking of a set of major tradeoffs – or new solutions – that meet bottom lines, protect already agreed principles of the Machakos Protocol, and contain incentives for implementation. Tradeoffs would be made on issues for which the parties cannot sell compromises to their constituencies. This will require an acute level of political analysis on the part of the mediators, who must determine the difference between bluffs and real ‘red lines’.

In very general terms, the outlines of the new grand bargain, involving painful compromises on both sides, could include the following:

- With some restrictions, the SPLA would maintain its army during the interim period – including in some form in the Three Areas – as a guarantee. In exchange, it would have to maximise its commitment to sharing power at the centre, as a means of promoting unity, and thereby reduce its demands for absolute powers for a Southern government and for the wealth sharing percentage it would demand for the South. It would also have to back away from its insistence that each of the Three Areas be granted a self-determination

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in the process, which is planting the seeds of its own destruction by not being more inclusive”. ICG interview, May 2003.

referendum, as this could be construed to be paving the way for an independent state in the South and bordering areas.

- The government would accept an SPLA-controlled force during the interim period and would be more forthcoming in sharing power at the centre in order to demonstrate its commitment to increasing the chances of a referendum vote in favour of unity. This would require accommodating the diversity of the country in some more specific way for the national capital and allowing for a rotating presidency, which would be the surest way to persuade the SPLA to support unity in advance of the referendum. The government would also allow the Three Areas more radical autonomy.

It should be noted that Khartoum has already enacted legislation to implement compromises similar to those outlined above. The terms of the 1997 Khartoum Peace Agreement it signed with six splinter SPLA factions allowed for a southern army that would remain separate from the national army and be stationed in the South under its own command. The security arrangements under the agreement provided for reduction of government troops in the South to 'peace time' levels. The agreement also provided for the national application of general laws derived from general principles, while empowering states to enact complementary laws to accommodate their unique characteristics.<sup>15</sup> This approach has the potential for resolving the stalemate over the status of the capital. The government also promulgated in 1997 a constitutional decree that incorporates the peace agreement of that year into the constitution.<sup>16</sup> While the government had apparently no intention of implementing any of the most progressive provisions of the 1997 agreement, the difference today is the IGAD process' incorporation of strict provisions for international monitoring.

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<sup>15</sup> Khartoum Peace Agreement (1997), Chapter VI, "Security Arrangements During the Interim", and Chapter III, "Political Issues, Constitutional and Legal Matters, A. Religion and the State".

<sup>16</sup> The Fourteenth Constitutional Decree (Implementation of the Peace Agreement 1997 & the Southern States Peace and Transitional Measures Act, 1997)..

Unlike the grand bargain struck in the Machakos Protocol, the proposed second set of deals will by necessity need to involve payoffs from a third party – the U.S. In order to entice the government into a final status deal, Washington will have to put its bilateral relationship on the table. Most significantly, the unilateral sanctions regime will have to be dismantled progressively from the time of signing and through the implementation process, and Sudan will have to be removed from the terrorism list if it is indeed complying with the terms required for its removal. Normalisation of diplomatic relations including sending an ambassador to Khartoum, will have to occur early. The U.S. will have to be prepared to support Sudan's reengagement with the IMF and World Bank for debt relief, balance of payments credits, and major post-war reconstruction funding. U.S. private investment would have to be encouraged. U.S. pledges will also be crucial if the SPLA is to have confidence enough to sign and implement a deal. If Washington does not play a substantial role in observing, monitoring and supporting the implementation of the agreement during the entire interim period, the SPLA will not be prepared to accept Khartoum's assurances.

The mediators' package should be specifically supported at the right moment and in close coordination with General Sumbeiywo by a high ranking U.S. official such as Secretary of State Colin Powell directly with President al-Bashir and SPLA Chairman Garang.<sup>17</sup>

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<sup>17</sup> The departure of U.S. Ambassador to Kenya Johnnie Carson will be a blow to the mediation effort, as he has been a central figure behind the scenes in helping to revitalise the IGAD process and move it forward. The U.S. should devise some role for Ambassador Carson to remain at least partially engaged in support of its efforts in the process, even as he moves on to his next assignment. The retirement of Jeff Millington, a long-time State Department official who has focused for years on Sudan, is also a loss. The U.S. needs continuity and higher level engagement during this home stretch, and having two of its most significant actors depart the scene simultaneously – regardless of the reasons – does not send a good message to the parties about Washington's seriousness and long-term commitment.



## **A. KEY QUESTIONS FOR A SUSTAINABLE, COMPREHENSIVE AGREEMENT**

### **1. What Makes Unity A More Likely Outcome?**

In seeking to address Khartoum's fears about agreeing to a deal and – just as importantly – implementing it, hard questions must be asked now about how unity can become a more likely outcome of the eventual referendum. This question should be central to how all the sub-issues are addressed throughout the agreement. Structuring a deal to promote a unified Sudan will ensure that not only northern elements are on board for the implementation process, but also neighbouring states such as Egypt with a strong interest in avoiding balkanisation of the region.

A fundamental reality must be understood by all concerned with peace in Sudan. Southerners are not seeking to create an independent state for its own sake. The rapacious and extractive policies of successive northern governments, and their colonial and condominium predecessors, have persuaded southerners that independence is their only protection from further exploitation. It is up to the North to demonstrate that a new era has dawned in which it is in the collective self-interest of all Sudanese to band together and in which the benefits of unity outweigh its costs for southerners.

A number of prerequisites will have to emerge during the interim period. Trust will have to begin to be built and cooperation promoted. Real power sharing at the centre will have to be instituted and respected and wealth sharing transparently demonstrated. Given the root issues of citizenship and identity, equality will have to be perceived to be an immediate benefit and right.

This idea of promoting unity must drive the nature and scope of Khartoum's compromises. Without a real effort to promote unity, the South will likely vote for separation, a scenario that is likely to inspire hard line elements in the North to undermine any referendum or other attempt at realising independence. They would utilise tried-and-true strategies to destabilise the South, make it appear ungovernable, and use that as a pretext to delay the referendum, thus in effect re-starting the

war. Southern militias opposed to the SPLA would be the likely instruments of instability.<sup>18</sup> The government cannot have unity without comprehensive structural change. It must make its vision for unity clear to the South, and back it up with actions.

For its part, if the SPLA is perceived to be making an exclusive commitment to independence, and not giving unity a chance, the likelihood of Khartoum obstructing the referendum will increase exponentially. As it stands now, the SPLA is not focusing on preparing for unity, because the government is not making a clear offer that favours that outcome. "How can we promote unity when the SPLA is promoting confederation?" asked one source close to the mediation.<sup>19</sup> The SPLA's natural affinity for a confederal solution does not encourage the government to make compromises, but can only be countered by real power sharing at the national government level, where the size of the pie and the share the SPLA can receive is much bigger than if it were simply a southern state in a confederal arrangement.

Ultimately, success will have been achieved fully if southerners approach the referendum in six years as what is best for the future of all Sudan, not just the South. That requires the government to give a great deal in the negotiations, to ensure that the SPLA is vested in a national solution, not just a southern one. However, the government should note well that the SPLA is perhaps the only southern Sudanese organisation that is on record as supporting unity as the priority.<sup>20</sup> Most southern groups take outright pro-independence positions. If the government works with the SPLA and gives it a meaningful role in running the country, the chances of maintaining unity will only increase.

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<sup>18</sup> The Mundari militia in Equatoria has received instructions from its government handlers to boost its numbers from the 6,000 it claims it commands to 10,000 in preparation for peace. ICG interviews, May 2003

<sup>19</sup> ICG interview, May 2003.

<sup>20</sup> "The SPLA stands for unity on a new basis, that of equal rights, sharing of resources, and a sense of belonging", one of its high ranking officials said. ICG interview, May 2003.

## 2. What Makes Separation Acceptable?

A second question is also important in avoiding the worst-case scenario of a resumption of war: can provisions be inserted in any agreement that would address the relationship between the government of Sudan and the government of a potential independent state? In other words, can a deal be structured that allows a referendum to be held that is not all or nothing? How will oil revenues be shared in the context of a two-state scenario? Beyond that, how will other key parts of the relationship be structured, such as military to military? If a southern referendum is viewed as an opportunity for the South to divorce itself from the North, and it opts to do so, can there be a “pre-nuptial agreement” that would make for an amicable divorce, rather than a contested break that would lead to an inevitable resumption of conflict?

Avoiding questions dealing with post-referendum issues may reduce tensions during the negotiations, but it would be highly irresponsible and simply start the clock running on a time bomb. Addressing such questions would, on the other hand, give southerners confidence that the government really would allow them to separate, thus discouraging the conviction that the only way to achieve their political goals was through violence.

The agreement can be structured in a way that does not envision a zero-sum decision at the end of the interim period. Extending wealth-sharing provisions beyond the referendum, no matter how the South votes, would be one important way to ensure the integrity of the process and its result. If the North does not believe it will be left with nothing if the South becomes independent, its hardliners are less likely to be able to undermine the agreement. And if the South would lose something by voting for independence, then those favouring a take-the-oil-and-run scenario would be forced to think twice.

Most symbolic would be post-referendum revenue-sharing arrangements regarding oil. But other wealth-sharing items should be referenced. Most crucial would be a mechanism for sharing the Nile waters, and any joint efforts to increase its flow northward to Egypt, if that initiative is resurrected. This is a potentially explosive matter that must be treated with caution. After the Addis Ababa Agreement of 1972, work began on the Jonglei

Canal, a massive project that would have increased water reaching the North by diverting it around the massive swamp called the *Sudd*, where much is lost to evaporation. Both the Dinka and the Nuer, the two largest ethnic groups in the South, depend on the seasonal flooding of the *Sudd* to sustain their herds, and the promised projects to compensate them for the loss of their prime grazing land failed to materialise. Nuer-Dinka resentment led in part to the resumed civil war in 1983.<sup>21</sup> If construction begins again, it must be preceded by a thorough ecological impact evaluation and accompanied by increased investment in sustainable development and solid assurances that the water will be reasonably shared between North and South.

An understanding on agricultural production would also be important, as the North’s fear of being left with little but a desert twenty years hence impacts its calculations.<sup>22</sup> The South and the Three Areas contain the vast majority of Sudan’s productive agricultural land.<sup>23</sup> Government-controlled agricultural lands under commercial cultivation are experiencing soil degradation and desertification, so there is constant need to expand the acreage under cultivation. Nevertheless, after oil, agricultural exports are the government’s key source of revenue.

One need not venture far to find examples of the pitfalls if there is inadequate preparation for potential southern independence. The parties and the mediators of the Sudan peace process should heed the lesson of what occurred in 1993, when Eritrea obtained its formal independence from Ethiopia after an internationally monitored referendum. A longstanding strategic alliance had existed between the Eritrean and Tigrean liberation fronts during their joint struggle against the autocratic rule of Mengistu Haile Mariam. After transformation of the two into de facto ruling parties, they neglected reaching formal agreements

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<sup>21</sup> See ICG Africa Report No. 39, *God, Oil and Country: Changing the Logic of War in Sudan*, 28 January 2002.

<sup>22</sup> ICG interviews, November 2002 and May 2003.

<sup>23</sup> The bulk of Sudan’s current food production comes from the rich clay plains covering the entire Gezira area between the two branches of the Nile and extending into the eastern plains of Gedaref and Kassala areas. Areas in southern Darfur and the Butana plains to the east also significantly contribute to agricultural production.

on key issues such as border demarcation, the modalities for the use of Ethiopian currency in independent Eritrea, and citizenship. By 1998, tensions around these issues were so high that a relatively minor border incident rapidly degenerated into full-scale war that all but ruined the fragile economies of both nations. Despite the deployment of a full-fledged UN peacekeeping force, the border issue remains volatile.<sup>24</sup>

Other issues that should be addressed to prepare for the eventuality of the South opting for independence include: the outlines of modalities for a binding demarcation of the border; citizenship status of southern displaced who would opt to stay in the North and of northern traders settled for generations in the South, who have raised families, acquired property and built businesses there; the regulation of formal and informal border trade; property rights; codification of taxation patterns; and provisions for continued security coordination and cooperation.

It will be difficult to broach this topic with the parties in the context of an agreement that is supposed to prioritise unity and does not look beyond the six years. However, one way could be through an appendix to the main agreement on provisions that would only come into force in the event of secession. The issue could be further examined throughout the interim period by a new commission, perhaps with international involvement, that would be tasked with preparing for the post-interim period.

### **III. THE ENVISIONED COMPREHENSIVE AGREEMENT**

The parties are digging in, holding on to their bottom lines so tightly that it becomes difficult to envision the kind of package deal that could satisfy the fundamental objectives of both. But it is possible. The following is an attempt to describe a comprehensive agreement that would be a win-win scenario. Neither party can get everything it wants: that could only be done – perhaps – through an outright military victory, which is impossible at this stage of the war. Therefore compromises are necessary, both within each issue group and through tradeoffs between issue groups, as ‘red lines’ are respected and flexibility is maximised.

As they make the final push, it is imperative that the parties and the mediators are acutely aware of the domestic political repercussions of each compromise and tradeoff. By understanding just what flexibility the government and the SPLA have positions on each issue, a package can be crafted which contains acceptable – albeit painful – solutions.

#### **A. THE OVERALL FRAMEWORK/VISION**

The mediators must have a vision of a workable peace agreement, an overall model that addresses bottom lines and incorporates creative compromises. ICG’s vision of an implementable comprehensive agreement involves an asymmetrical federal state, with the South having the highest level of autonomy, as foreshadowed in the Machakos Protocol and guaranteed through the mechanism of an internationally supervised referendum on its status after a six year interim period. This is a model of transitional unity. In addition to the asymmetry already envisioned for the South in the Protocol, power should be devolved in two additional layers beyond the central government and the southern entity:

- ❑ The central government would be a radically restructured entity, with almost revolutionary power sharing, including southerners assuming roughly a third of the responsibility of the national government through ministries,

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<sup>24</sup> See John Prendergast, “U.S. Leadership in Resolving African Conflict: The Case of Ethiopia-Eritrea”, U.S. Institute of Peace Report, September 2001.

civil service, diplomatic service and parliament.

- An autonomous administration for the South would have its own armed force and would govern most of the affairs of the South.
- A second layer of asymmetry would involve decentralisation to states. This would have to be meaningful enough at least to begin to address the lack of a stake felt by citizens of the West, East and far North. These areas would be subject to further processes of reconciliation or conflict resolution during the interim period and also participate in any constitutional review process.<sup>25</sup>
- A third layer of asymmetry would address the specific nature of the Three Areas. The state governments in the Nuba Mountains and Southern Blue Nile would have more elaborate autonomy mechanisms, with extra protections taking into account their tortured histories. They would be governed by separate security arrangements, with the SPLA maintaining forces in garrisons, similar to those maintained by the central government in the South. Abyei would be jointly administered until a referendum was held in which it could opt to remain in the North or join the South.

If the deal for an asymmetrical federal state cannot be made, the fallback will surely be a confederal model. If the government will not give real power sharing in the centre, the SPLA will be left to advocate a powerful southern entity that will govern itself, with its own security organs, including a separate military. This would end the war temporarily but not address any of the national structural problems that concentrate too much power in the hands of a small group in Khartoum. It would certainly lead to continued conflict in much of the country, cause the northern state to seek to undermine stability in the southern state, and result in resumption of war when the South sought to hold a status referendum that the government would be

sure to oppose or obstruct based on the fear that independence would be a foregone conclusion.

This solution would not be unpalatable to most southerners. They believe it is the logical fallback position, one that would be unavoidable if Khartoum remains unwilling to share central powers more meaningfully. Key southern leaders have downplayed this option, perhaps believing they can get it anyway if the government is not more forthcoming.<sup>26</sup>

## **B. THE DECISIVE COMPROMISES**

It cannot be stressed enough that how compromises on the following issues are constructed will have a major bearing on the outcome of the referendum. On several of these issues, a number of solutions could elicit a final agreement and stop the fighting. However, the more forthcoming the government is in its willingness to restructure power relations at the centre, the more possible the outcome of a unified state will be. Solutions that truly prioritise unity, although painful for the parties in the short term, are far more likely to result in lasting peace, and it is for these that mediators and parties should strive.

### **1. Religion and State, and Southern Referendum**

These tradeoffs and compromises are already in the Machakos Protocol but will continue to weigh heavily on everything else. Thus, the government's narrow interpretation regarding a referendum just for the South serves its argument against such a solution for the Three Areas, while a similarly limited SPLA interpretation on state and religion allows it to argue for further concessions relating to the national capital and the Three Areas. However flawed and incomplete the Protocol is, the significant concessions both sides made in it form the basis for a potential final deal and should be preserved to the maximum extent possible. But in constructing a comprehensive peace agreement more detail will have to be added. For example, specific procedures and timelines will have to be laid out for the referendum and the constitutional

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<sup>25</sup> Total inclusion cannot be attained instantly with the signing of a peace deal, but processes can be put into place that will lead to a more widely representative government by the end of the transition period. The three key elements to this are the electoral process, the constitutional review commission, and the devolution of political power.

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<sup>26</sup> ICG interviews, May 2003.

framework for the interim period, including provisions guaranteeing the fair representation of opposition political forces in North and South in the interim government.

## 2. Power Sharing

This broad category contains several issues that have emerged as among the thorniest in the negotiations.

**The Capital.** The issue of the national capital, with symbolic value far beyond its practical significance, is the principal point of division at this stage of the process. The party that makes a significant concession on it should garner major concessions on other issues.

SPLA Chairman Garang told ICG, “We cannot function in a *Sharia*-dominated capital.... I will not sit in Khartoum if *Sharia* is in force. This issue is the litmus test for unity”.<sup>27</sup> President Bashir dismissed a deal on a non-Islamic capital, arguing that, “We [the National Islamic Front] took power on June 30 (1989) to foil a conspiracy to abrogate Islamic *sharia*”.<sup>28</sup>

This standoff was put in even sharper relief in late May 2003 when the leaders of Sudan’s northern opposition parties, the Umma Party and the DUP (Democratic Unionist Party), endorsed the idea of an enclave in the capital that would be religiously neutral. Put on the defensive, the government made clear that this was a make-or-break issue for the peace process. Dr. Nafei Ali Nafei, its powerful Minister of Presidential Affairs and former Director of National Security, warned, “The Machakos Protocol has settled the issue of the national capital in a manner that doesn’t allow any manoeuvring room except backtracking. The SPLA and mediators know that if they reopen the Protocol for discussion, we will reopen it from beginning to end, and consider its self determination, power and wealth sharing provisions (as renegotiable)”.<sup>29</sup>

The prospect that the splinter Popular Congress (PC, formerly the Popular National Congress) of Hassan al-Turabi was contemplating supporting the SPLA’s position on the national capital, as vaguely suggested in a “Working Paper” the two parties signed in London in early June, provoked a further government warning that the issue could unravel the peace process.<sup>30</sup> In fact, some argue that the government’s vehement response stems from the insertion of the PC into this issue, reflecting deep divisions within the Islamist polity. A radical Islamist group, the Society of Muslims-Koranic Battalion even threatened to assassinate prominent secularists in Khartoum, and the government came down hard on the organisers of a planned demonstration in support of the Umma/DUP position. Equally disturbing to the government was that their common paper was signed with the quiet support of the Egyptian government and has come to be called the Cairo Declaration.<sup>31</sup>

The SPLA’s demand for a religiously neutral capital is based on cultural grounds since Khartoum is ethnically and religiously diverse. The Umma Party and the DUP, both with religious constituencies, believe that religious neutrality in an enclave of Khartoum would foster dialogue and coexistence among religions. The government, on the other hand, invokes geographic and legal grounds, arguing that the Machakos Protocol has already decided that the North could be subject to *Sharia*, that Khartoum, which is in the North, should, therefore, remain under Islamic law, and any attempt to carve out a religiously neutral zone would constitute renegeing by the SPLA on its commitments. It adds that Khartoum should remain under *Sharia* out of respect for its Muslim majority

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Similarly, Presidential Peace Advisor Ghazi Salah al-Din Atabani said that “the issue ‘of the capital’ was settled under ‘religion and the state’ at Machakos; it is possible to re-open it for discussion, but on the condition that all other issues that were settled (in the Machakos Protocol) be renegotiated”. “Sudanese government: the capital is national, and the Three Areas won’t be exempted from the application of *Sharia*”, in Arabic, *Al-Quds al-Arabi*, 30 May 2003.

<sup>30</sup> “Sudan: Official says national capital issue likely to derail Kenya peace talks”, Sudan News Agency, 2 June 2003. See below regarding the PC’s position on the national capital.

<sup>31</sup> “Prospects for Peace in Sudan”, *Justice Africa*, 28 June 2003.

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<sup>27</sup> ICG interview, 29 May 2003.

<sup>28</sup> “Sudan’s Bashir slams call for secular capital”, Agence France-Presse, 18 June 2003.

<sup>29</sup> “Dr. Nafei warns: opening file of secular capital will push the government to review self-determination and other items”, in Arabic, *Akhbar al-Youm*, 31 May 2003.

and says that exempting the capital would force 90 per cent of the Islamised economy, which is concentrated in the capital, to seek another base for its operations.<sup>32</sup> The SPLA argues that the Protocol did not deal with the national capital.

Government spokespersons often equate religious neutrality with the licensing of public bars and prostitution. Many Sudanese believe that the issue of the capital comes down to being free to consume alcohol in Khartoum, an opinion that some in the international community share: "It boils down to booze", said one regional specialist. "Religious freedoms are protected and encoded. Freedom from the law of the state if it goes against one's beliefs is the only thing that is not protected. So the practical consideration is alcohol, which you won't be able to drink publicly in Khartoum".<sup>33</sup> A northern Sudanese commentator said, "It comes down to public bars. One notion would be to allow the international hotels to carry whatever they want, as liberal zones, as is done in some Gulf states. 'Toleration' would be the choice word. Non-Islamic practices should be tolerated in certain parts of the capital".<sup>34</sup>

However, for the SPLA and its northern allies, as well as for many in the government the issue has a much broader significance than mere alcohol consumption. It pits the principle of equality of all creeds and cultural values in a diverse city of some seven million against the ascendancy of the majority's Islamic values.

In a peace that promotes national unity, the capital should not be limited by the legal regime of either North or South. A capital is needed that is truly cosmopolitan and non-sectarian, and its laws should recognise its actual diversity. Given that the majority in Khartoum very likely wants it to be a Muslim city – not least because of Islamist success in portraying attempts to reinstate secular rules on geographic or personal grounds as a conspiracy to reverse the rule of Islam itself – the SPLA's demand for a "sharia-free city", however, has

poisoned the debate and hardened the government's position.

There is a range of possible options to break the stalemate. The best is that of the enclave. The carve-out should comprise an 'Administrative Khartoum', i.e. the buildings of ministries and other government departments that are located parallel to the banks of the Blue and main Niles, while 'Greater Khartoum' would remain under *Sharia*.

Similarly, but more broadly, the enclave position put forward by the UMMA and DUP envisions the creation of a limited area of Khartoum that would be governed by secular laws and that could act as a symbol of religious tolerance and equality for southerners and other non-Muslims. Support for this position by the political leaders of the Ansar and the Khatmiyaa Muslim sects is significant. Any wording, however, would have to avoid calling an enclave "secular" or "Sharia-free". The stress should be on the equality of all religions and religious practices and the symbolic value as a reflection of unity.

Critically, the government must be able to show that *Sharia* continues to function for Muslims in any enclave. That is why the option might be combined with a supplementary one providing for enforcement of laws throughout Khartoum State on personal grounds, thus permitting the application of *Sharia* to Muslims and a parallel judicial system for non-Muslims.<sup>35</sup>

A much more problematic fall-back would be a twin city arrangement, in which a southern city could act as a second capital or at least house some ministries and perhaps parliament and host some cabinet meetings.<sup>36</sup> This might have the added benefit of developing further the administrative capacity of the South through the national investment that would result from a two-capital

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<sup>32</sup> "Sudanese Government: the national capital and the three areas won't be exempted from *Sharia*", in Arabic, *Al-Bayan*, 30 May.

<sup>33</sup> ICG interview, May 2003.

<sup>34</sup> ICG interview, May 2003.

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<sup>35</sup> When a Muslim and a non-Muslim engage legally, such as where one presses charges against the other, the secular law would need to take precedence since *sharia* openly favours Muslims while secular law bases rights on citizenship, not religion.

<sup>36</sup> South Africa might provide a model. Its parliament meets part of the year in Pretoria, another part of the year in Cape Town. The operative capital is also dictated by where the President is resident at a given time.

approach. However, it could lay the groundwork for an independent southern state by building-up the architecture of its future capital and by leaving *Sharia* untouched in the northern capital. A variant would construct a new and neutral capital in an area along the North/South border. This presents even greater practical problems but it is a possibility that both sides have not rejected and that is limited mostly by financial considerations.

Regardless of the outcome of this debate, constitutional and legal protections for the rights of non-Muslims in the North and Muslims in the South will be key in fostering a national spirit. "If unity is to be given a chance, southerners must be exempt from *Sharia* wherever they are", a southern civil society leader insisted.<sup>37</sup> This is most difficult, but also most important, in the capital.

The agreed-upon solution for this issue will have a huge bearing on how the South votes in its referendum. The government feels it is justified in not compromising because of the Machakos Protocol's provision on *Sharia* in the North.<sup>38</sup> Mutrif Siddiq, a leading government negotiator, suggested that his side would consider as negotiable in the final round guarantees for the rights of non-Muslims in Khartoum but he firmly rejected any discussion of a secular capital.<sup>39</sup> If the government holds to this line, a minimalist solution might still be found but it would probably ensure that the SPLA – and other southern leaders – would campaign for independence in the referendum vote.

Anything less than a neutral<sup>40</sup> 'administrative capital', where southerners feel truly equal, will go a long way towards dissuading southerners from voting for unity and limit the SPLA's willingness to support unity. Already facing an uphill battle after twenty years of conflict, the government must swallow this very bitter pill, if unity is in fact to be the ultimate goal of this agreement. The enclave is the least bitter of the options.

**The Presidency and Vice Presidency.** The composition of the Presidency and Vice Presidency is fraught with both real and symbolic meaning. Once again, the parties – particularly the government – have a choice as to whether to find a solution that promotes unity to the maximum extent possible, or one that ends the war but leaves the medium- to long-term outcomes uncertain and perhaps unstable. A reasonable way forward that would end the war for now would envision SPLA Chairman Garang assuming a sole vice presidency, with provisions for a specific decision making process with President al-Bashir on critical questions. In this scenario, the vice president must have real and specific powers, including that of de facto commander-in-chief of a southern force. The job description would be key to building the confidence of southerners – especially the SPLA – in the agreement. In the event of death or incapacitation, the president could be succeeded by the speaker of the assembly, until the National Congress Party nominated a successor to fill out the term of office. Alternatively, the president could be succeeded by a ruling council, headed by the vice-president and including the speaker of the assembly. Each member of the council would have specific allocated powers until the National Congress Party nominated a presidential successor to complete the term.

However, if the government really desires to maximise the chances of a unity outcome in the referendum, it should consider a rotating presidency that would maintain al-Bashir as president for the first half of the period before elections and allow Garang to assume the office for the second half of that period. The symbolic value to southerners would be enormous and help solidify SPLA backing for a unity outcome in the referendum. By the same token, if southerners are perceived to be blocked from holding the top position, a unity outcome would be much more problematic.

At this juncture, the government has ruled out a rotational presidency, and the mediators have largely written it off. However, this would be a fundamental plank of any package promoting unity, and positions should be reconsidered on all sides in the endgame. If this idea were placed back on the table, it would require rethinking of the security arrangements for the South (see below), as it could

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<sup>37</sup> ICG interview, May 2003.

<sup>38</sup> Some involved with negotiating the Machakos Protocol hold that it was never meant to resolve the capital issue, which was to be dealt with at a later stage.

<sup>39</sup> "The Sudanese government is ready to discuss rights of non-Muslims in Khartoum", *Al-Bayan*, 27 June 2003.

<sup>40</sup> The provocative language of "*Sharia*-free" should be avoided by the SPLA.

not be expected that the president would be in charge of both a national and a southern army. Provision would have to be made for a northern vice president or a national security council with northern leadership to control the national army when there was a southern president. This would in turn require an SPLA compromise.

At a bare minimum, functions pertaining to the central state authority should be exercised by the vice president when the president is out of the country. To reduce the bitterness of the debate over the presidency and vice presidency, however, a national security council should in any event be established, with significant southern involvement, to discuss and decide major decisions. A variant proposal was floated by DUP leader Mohamed Osman al-Mirgani, who suggested that a five-man republican council run the country, with representation from across parties and regions and consequently wider participation at the decision making level.<sup>41</sup>

Several other vital issues in the power sharing category are open but slightly less contentious:

**Percentages.** Southerners should receive 33.3 per cent of the civil service and cabinet positions and lower house seats. Although the SPLA will sign an agreement on behalf of the South, there must be a mechanism for allocating posts to non-SPLA southerners. Similarly, northern opposition groups should be included in the distribution of positions. Affirmative action programs should be undertaken in the civil service as well as in educational institutions in order to achieve these figures. Specific provisions in the existing constitution that prioritise the role of Islam in public institutions and public service must be removed, and the equality of all Sudanese within government structures should be clearly stated.<sup>42</sup>

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<sup>41</sup> "Prospects for Peace in Sudan", *Justice Africa*, 28 June 2003.

<sup>42</sup> For example, Article 18 of the current constitution states: "Those in the service of the state and public life shall envisage the dedication thereof for the worship of Allah, wherein Muslims stick to the Koran (scripture) and Sunna (tradition), and all shall maintain religious motivation and give due regard to such spirit in plans, laws, policies and official business in the political, economic, social and cultural fields in order to prompt public life towards its

If the SPLA chooses to maintain the current administrative framework in which there are ten states in the South and sixteen in the North, it would be entitled to 20 of the 52 seats in the upper house (two seats to each state). If it maintains instead its present idea of three regions in the South, it should still be guaranteed a 40 per cent stake in the upper house.

Both the government and SPLA will have to make special efforts to include representatives of the Three Areas in their allocations. This would be an important demonstration to the residents that they are determined to create new opportunities for these contested regions.

Allocation of cabinet seats will be a fiercely contested process. Again, if the government wishes to prioritise unity, it will ensure that the SPLA gets key ministerial positions, including sensitive posts in the security organs.

**Elections.** Any electoral process will be a prime candidate for manipulation if hard line elements in Khartoum seek to undermine southern unity and self-government during the interim period in an attempt to show that the referendum would be impractical. Therefore, great care must be taken in devising an electoral schedule in advance of the referendum.

Promotion of democracy should begin by ensuring that the fundamental rights of speech, assembly, press and others are respected and prioritised. The Machakos Protocol provides a basis that can be built upon. Political pluralism can be promoted by beginning with a genuine process of local elections, followed by state and parliamentary elections. In particular, parliamentary elections in the second half of the interim period, including for a southern parliament, would underpin a democratic transition. Concurrently, a census and a voter registration campaign should be undertaken, the latter overseen by an independent national electoral commission, while internally displaced and refugee populations are being resettled. International involvement

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objectives and adjust them toward justice and uprightness to be directed toward the grace of Allah in The Hereafter. See, Abel Alier, "The Role of the Affirmative Action in Peace-Making and Post-War Reconstruction" June 2003, presented to the Inter-Sudanese Consultation on Peace and Justice.



should be high at that stage, supporting the development of institutions and seeding the ground for sustainable democracy.

There is a robust debate about when and whether to have national elections for president and vice president during the interim period. Some believe that elections are the best and only mechanism to widen the governing stake of non-participants in the IGAD process and that democracy should not take a back seat to other priorities. They argue that authoritarianism is a root cause of Sudan's ills and can only be remedied by a democratic transformation. "What is key to the agreement is getting democratic processes moving forward", said a long-time analyst of Sudan affairs.<sup>43</sup> "There should be processes spelled out in the agreement that are inclusive that determine how the electoral process unfolds in a timely manner".<sup>44</sup> Furthermore, supporters of elections, especially early elections, believe they will limit violence. "Elections have a remarkably stabilising effect", said one regional expert.<sup>45</sup> Presidential elections also could generate more international involvement at a crucial time in the implementation process. "It is better to force the issue sooner, to get it on the table earlier, while international interest is still high", said a high ranking diplomat. "If you delay until the end, having presidential elections around the time of the referendum will create a double whammy effect".<sup>46</sup>

On the other hand, fears abound about the potential for instability associated with a national electoral process. "As much as democracy is a valued goal, we must keep in mind the priorities", said one diplomat. There is a danger that if presidential elections are forced prematurely and put above the core issues of ending the war and improving human rights, they could do more harm than good. National elections risk unearthing all the structural weakness of the Sudanese political system, with the difficult and destabilising effects that accompany elections in such an environment.

Therefore, national elections for president and vice president should either be fairly early in the process (by the end of Year Three in the implementation

period, while international engagement and attention is presumably still high), or be delayed as long as possible, perhaps even to after the referendum (so that core elements of the agreement are well on their way to full implementation). Whether or not such elections precede the referendum will also have a bearing on the practicality of a rotational presidency.

Whatever is agreed concerning the timetable for national elections, there should be robust mechanisms for international observation of the census, voter registration, campaign and vote count. This would help dissuade elements that might attempt to use fault lines within the South to destabilise the situation.

**Decentralisation.** Inclusivity in government will be an important determinant of success in the implementation of any agreement. It 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 and allowing representative elections to be held in order to determine authentic leadership at those levels. Decentralisation is essential to address concerns that go beyond SPLA-government disagreements, including:

- ❑ intra-South issues involving the aspirations of non-Dinka groups;
- ❑ political demands of traditionally marginalised northern groups, including those from Darfur, the Beja of the East, and the Nubians of the far north;<sup>47</sup>
- ❑ aspirations of traditional political parties, such as the Umma and DUP, which will not be addressed in the National Congress Party-SPLA negotiations;
- ❑ unfulfilled demands by leaders from the Nuba Mountains and Southern Blue Nile for some kind of referendum (and perhaps Abyei, though it has a stronger case to get a referendum); and
- ❑ service delivery, such as health care, education, and transportation infrastructure, which will ultimately help determine how southerners vote in their referendum.

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<sup>43</sup> ICG interview, May 2003.

<sup>44</sup> ICG interview, May 2003.

<sup>45</sup> ICG interview, June 2003.

<sup>46</sup> ICG interview, June 2003.

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<sup>47</sup> See ICG Briefing, *Sudan's Other Wars*, op. cit.

**Constitution.** Although the Machakos Protocol already provides for a National Constitutional Review Commission during a six-month pre-interim period, and an inclusive Constitutional Review Process during the six-year interim period, there must be ironclad guarantees that these forums will allow wider participation in the crafting of new institutions than just the current government and the SPLA. Significant involvement by the Umma Party, PC, DUP, other National Democratic Alliance (NDA) parties, the Sudan Liberation Army (SLA), southern opposition groups, civil society groups, and other actors will address concerns that the IGAD process has been too exclusive and that the vast majority of Sudanese will not have an active stake in the implementation of the agreement.

A further question is whether the existing constitution will be used as the basis for the new constitution, with amendments from the peace agreement, at least during the interim period. The SPLA have consistently rejected this option, and called for a fully new constitution. The skeleton document drafted by members of both parties under the auspices of the Max Planck Institute, could provide a mutually acceptable alternative.

### **3. Wealth Sharing**

The mediator-engineered entrance of World Bank and IMF representatives introduced a technical expertise and pragmatism into the wealth sharing discussions that has led to more progress than on any other set of issues. By providing case studies of how issues similar to those in Sudan have been addressed elsewhere, many of the gaps between the parties have been narrowed.

One issue that remains is the percentage regions are to receive. The government argues that it has already invested in the development of the oil fields and attracted international partners, and that this should be taken into account when dividing oil proceeds. The SPLA responds that since most of the oil is in the South (according to the SPLA's geographical definition) and it has been taken at the cost of many southern lives, it deserves the lion's share. Although it might be tempting to divide the revenues according to population or land area, a simple division (i.e. 60:40) would contain the seeds of secession. A better way forward – one that

prioritises unity – would be to split the percentages among a number of categories, perhaps offering 20 per cent to southern authorities and 30 per cent to northern authorities, while reserving 10 per cent for maintaining and expanding oil infrastructure and 40 per cent for inter-regional projects that foster communication and cross-ethnic and cross-regional solidarity. Whatever the decision, the resources the South receives should be tied to absorptive capacity and gradually increased over six years as that increases.

Several SPLA positions on wealth sharing already favour a secession vote. To prioritise unity, the SPLA should withdraw its demand for an independent currency, which is perceived to be a step towards independence. The world is moving further towards linked currencies; dividing Sudan's would be an economic drag and undermine sovereignty. Likewise, the SPLA demand for a southern central bank is just, but only within the context of a national Sudanese economic framework, and in coordination with the central bank in Khartoum. Of course, it would be much easier for the SPLA to back down in this area if the government accepted pro-unity positions on the capital or the presidency.

The procedure over new oil contracts also continues to divide the parties. A commission for dealing with existing and new contracts should be established, with veto power and international participation to enhance transparency.

### **4. Security Arrangements**

Southerners correctly believe that the only guarantee they can rely on to ensure implementation of whatever is agreed is for the SPLA to maintain a separate military force during the interim period. An overall national army could have two components with separate command and control structures that exercised the true authority but, ideally, a single commander, with limited responsibilities, at the very top. Throughout the interim period, it would be beneficial for joint activities and preparation for the creation of one unified army to be part of the implementation process in tangible ways. Furthermore, a cap on the size of both the national army and the southern force could be written into the agreement or constitution in order to avoid a costly arms race.

In any of these scenarios, a military command council or joint military commission could make policy on issues relating to both forces, such as size, recruitment, joint training participation and priorities, major arms purchases, or troop movements. International observers could participate in a joint military commission if the parties believed that would build confidence in implementation.

Despite the necessity of a two-force solution during the interim period, the government could greatly increase the odds in favour of unity if it were to give the SPLA a meaningful stake in the security structures at the centre. The more that Khartoum can vest the SPLA in the national structures, and the more the SPLA invests in its participation in those structures, the more of a stake the latter would have in a referendum vote for unity.

To the maximum degree possible, joint activities should be promoted during the interim period. Considerations of sovereignty and practicality would dictate that border security be a function of joint patrols. Neither the government nor the SPLA acting alone could address this adequately, given the porous border and extensive arms trafficking between Sudan and Eritrea, Ethiopia, Kenya, Uganda, Congo, the Central African Republic, Chad, and Libya. Air traffic control would also be an issue of sovereignty best addressed through cooperative or joint administration.

Joint activities could also productively be extended to training exercises, a military staff college, military visits to other countries, and protection of sensitive infrastructure. Security cooperation should be promoted at every opportunity. Joint units could even be created that would be useful for promoting unity but could also be easily unravelled if the South voted for independence. Southern forces should receive equal opportunities for enhanced training and professional development, plus an allowance for remedial needs.

Central government troops will have to have a reasonable presence in the South during the interim period, but one that is tightly controlled and monitored, and perhaps a third the size of the southern force. They should be cantoned in garrisons outside major towns and clear procedures – including accompaniment by SPLA forces – should be followed for their movement and

rotation. The government's heavy armour should be dramatically downsized during the interim period.

In exchange for northern forces remaining in the South, specific initiatives should be taken for southern forces in the North. For example, the government should allow an SPLA battalion to be stationed outside Khartoum or an SPLA force to provide security for the southern leaders operating in the North.<sup>48</sup>

Both the national army and the southern forces should quickly be subjected to a credible and internationally supervised and supported program of disarmament and reintegration (DR).<sup>49</sup> Significant downsizing of force levels on the basis of a realistic assessment of defence needs during the interim period will help reduce mutual suspicions. In order to compensate for any resulting power vacuum and unemployment, police forces could be strengthened and their mandates expanded to take on internal duties formerly performed by the armies, such as road or canal construction.<sup>50</sup>

The precedent set in 1997 is highly relevant. The fourteenth Constitutional Decree promulgated for implementation of the 1997 peace agreement signed by the government with SPLA splinter groups provides (article 6-1 and 2) that “The Southern Sudan Defence Force shall stand separate from the Sudanese Armed Forces, in the positions thereof, and under its own command”, and that the Sudanese Armed Forces’ presence in the South would be scaled down to a ‘peace time level’ during a transitional period. A Joint Military Technical Committee was tasked with providing supplies, training, and armaments to both forces during the interim period. The government thought correctly at the time that these were purely window

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<sup>48</sup> The latter option “will be akin to sanctioning a smaller SPLA force in Khartoum, though it may not necessarily be presented in this way”. “Prospects for Peace in Sudan”, *Justice Africa*, 28 June 2003, and 27 May 2003.

<sup>49</sup> The concepts of disarmament and reintegration encompass also the ideas of demobilisation, repatriation and rehabilitation. In the interests of simplicity and to minimise impenetrable jargon, ICG uses the abbreviation DR in place of DDRRR and encourages others to follow this example.

<sup>50</sup> See Abdelwahab el-Affendi, “For a State of Peace: Conflict and the Future of Democracy in Sudan”, the Centre for the Study of Democracy, 2002, mimeographed article.

arrangements, with no chance of implementation but they deserve consideration now as legal mechanisms that could be used for implementing new but similar agreements with the SPLA.

The government-aligned southern militias, most of which operate under the umbrella of the Southern Sudan Defence Forces (SSDF), are a challenge for security arrangements, as long as their position within the South remains unclear. The SPLA wants the militias disarmed as an institution but would allow former SSDF soldiers to join the southern army as individuals. If the SPLA maintains a separate army, the government would like to see the SSDF remain an independent force. Ideally, a percentage of the SSDF could be transferred directly into a southern army and the remainder demobilised.

Without an agreement between the SPLA and the SSDF, the latter would remain a hostile armed group in the South, capable of destabilising large areas, particularly in Upper Nile. The SPLA believes the militias could not survive cessation of support from Khartoum, as they are totally dependent. The agreement must, therefore, create mechanisms to ensure that the assistance indeed is stopped, and the SPLA must do the maximum to include representatives of the factions in southern interim governing structures.

The SPLA forces in the Three Areas are another difficult challenge for the mediators. Elements of the southern force will have to be stationed there in order to guarantee the implementation of the relevant parts of the agreement but specific initiatives such as experimentation with unified arrangements or dual commands to promote cooperation and equality might be undertaken as confidence building measures.

## **5. The Three Areas**

The IGAD peace process cannot produce a comprehensive peace agreement without addressing the Three Areas. Having some kind of an addendum attached to the main agreement would be barely acceptable but the mediators should

simply stick to their insistence that these issues be addressed directly and within the agreement itself.<sup>51</sup>

During the interim period, joint governing arrangements should be constructed within the asymmetrical federal model that allow radical autonomy for Southern Blue Nile and the Nuba Mountains and joint oversight by the national government and the southern entity. These areas should have additional representation in the centre, more direct powers of taxation, more local control of education curriculum, increased reconstruction assistance, and freedom to determine legal codes at the state legislature level. Elections could be held earlier in these two states in order to allow a genuine popular authority to emerge. A further mechanism for popular consultation could be created by voting on whether the local arrangements for autonomy are acceptable to the populations of the two states.

Perhaps most importantly as a guarantee, SPLA military forces – reduced in line with the overall agreement – could maintain a presence outside of the garrison towns in the Three Areas just as the central government should be allowed to do in the South during the interim period. The current Nuba Mountains ceasefire could help form the basis of this arrangement, extended to Southern Blue Nile and with additional protections built in. Furthermore, it might be wise to maintain these interim security arrangements for longer than the interim period to ensure whatever autonomy has been accepted.

Abyei is a different story altogether, made more difficult to resolve because of the discovery of oil in its vicinity, thereby complicating claims and attracting the most predatory elements of Sudanese political leadership. A traditionally Dinka area, it was granted a referendum in the 1972 Addis Ababa Agreement to choose between remaining in the North or joining the South but this was never implemented. Abyei should be jointly governed by the central and southern governments during the first four years of the interim period, during which time efforts should be made to resettle large internally displaced and refugee populations

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<sup>51</sup> ICG examined these issues at length in ICG Africa Briefing, *Sudan's Other Wars*, op. cit. They are accordingly merely sketched below.

scattered by war and government policy. Then a referendum should be held on joining the North or South.

A referendum would guarantee the people of Abyei that if their grievances were not addressed, they could use political means to resolve their situation. Consequently, the same logic that should motivate the comprehensive agreement as a whole is relevant for Abyei. If long-term unity is to be given priority a lengthy interim period before the referendum is necessary to allow the government the opportunity to make unity attractive and undo its policies of oppression and marginalisation. The leaders of the Ngok Dinka of Abyei have opted in the past to remain in the North, and they could once again serve as a link between North and South that would reinforce national unity if their grievances were adequately addressed.

Opposition to a referendum in the Nuba Mountains and Southern Blue Nile is a government 'red line'. It fears being "pushed into the desert" if all areas with the highest potential for agricultural production can vote on whether to remain in Sudan.<sup>52</sup> However, the SPLA is committed to supporting its Nuba and Southern Blue Nile allies and also insists that it cannot compromise. "The leaders of these areas won't accept being traded off", said a source close to the negotiations.<sup>53</sup> And some key high-ranking SPLA officials are committed to defending the positions of the leaders from these areas, no matter how extreme.<sup>54</sup> "What the government says it won't accept it will eventually accept at some point as a result of military pressure", said one of the latter. "After 40 years the government has accepted self-determination for the South. Eventually pressure works. It doesn't take much to bring insecurity".<sup>55</sup> Another leader from the area said simply, "We will continue to fight if our demands are left out of the agreement. The only way to secure our rights is to fight".<sup>56</sup>

The Ethiopian constitution, which allows self-determination up to and including independence for

any area of Ethiopia, may be helpful in crafting a creative compromise. Ethiopian Prime Minister Meles Zenawi and Foreign Minister Seyoum Mesfin should involve themselves directly in support of the negotiations on this issue. If not, even a fair deal may not be enough to end the fighting in Southern Blue Nile and the Nuba Mountains.

Given that these areas are in the North, which is capitalising on them to expand its agricultural output and resource base, everything must be done to make unity attractive for them. The creation of an additional independent Assessment and Evaluation Commission to review and promote mechanisms that favour unity for these areas during the interim period, as is stipulated for the South in the Machakos Protocol, would be a helpful first step.

The central government, of which the SPLA will be a main partner if there is a comprehensive agreement, will also need to alter its policies drastically. Most importantly, land ownership and land grabbing, and by extension the economic rights of the citizens of these areas, must be addressed. The status quo, whereby 28 per cent of the Nuba Mountains and nearly 50 per cent of Southern Blue Nile have been turned into agricultural development projects owned by individuals from outside these areas, must be rectified.<sup>57</sup> A system should be developed through a dialogue supported by international experts that addresses local concerns about traditional land ownership and provides adequate wealth sharing while protecting agricultural production and revenues on which Khartoum relies.

A second policy change must involve the imposition of external values, be they religious, cultural or social. Although the areas have large Muslim populations, the people of both have made it clear that religious oppression is a key factor that continues to fuel the fighting. The radical autonomy granted to these states should allow them to legislate their own educational curriculum, development and social service spending, and the

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<sup>52</sup> ICG interviews, May 2003.

<sup>53</sup> ICG interview, May 2003.

<sup>54</sup> ICG interviews, December 2002 and May 2003.

<sup>55</sup> ICG interview, May 2003.

<sup>56</sup> ICG interview, May 2003.

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<sup>57</sup> ICG interviews in Nairobi and Southern Blue Nile, March and April 2003.

role and extent of religious laws.<sup>58</sup> Khartoum must accept devolution of these issues in order to gain an improved and mutually beneficial longer term relationship with these areas.

Several other changes could also help make unity more attractive. Just as in the South, there is a dire need to prioritise development of social services during the interim period. Increased political participation in the central government from these regions would go a long way towards convincing their inhabitants that their fate was safe.

Ironically, the leaders of the Three Areas could actually enjoy less freedom if they joined the South through a referendum during the interim period. Under the drafts that are being discussed, the autonomy that these areas would have as decentralised, federal states would outstrip what would be available as part of a larger southern government that could appropriate the powers of its southern states. In other words, northern states will likely be more autonomous than southern states, a fact that should influence the thinking of the Three Areas. Furthermore, trusting the central government to respect an agreement on radical autonomy would be a safer bet with the SPLA entrenched in that central government and helping represent Three Area interest.

However, SPLA advocacy for the Three Areas to be administered by the South stems from lack of trust in the current government. Although they might have more powers on paper by remaining in the North, SPLA leaders argue, the implementation of *Sharia* over these areas, as stipulated in the Machakos Protocol, would greatly restrict actual autonomous decision making, regardless of what was negotiated. "Autonomy under a *Sharia*-based system is a trick", said one high-ranking SPLA official from the Three Areas. "If we're under *Sharia*, it means that we are subject to Islamic

education policies, land policies, and economic and banking policies. That is not autonomy".<sup>59</sup>

Specific attention must, therefore, be focused on the practical boundaries of autonomy in the North. If the government is unwilling to back down from its claim to *Sharia* as a basis of legislation throughout the North, then a mechanism for consulting the population should be constructed for the Three Areas to determine whether they support the such a system. Barring this, detailed provisions that protect the right of these areas to maintain broad control over their policies must be included in any agreement if autonomy is to be a reasonable solution.

### C. INTERNATIONAL COMMUNITY GUARANTEES

A package of incentives and pressures needs to be constructed in support of implementation of a comprehensive agreement. Thus far, mediators have focused on the possible benefits to an agreement such as the incentives being crafted in the context of the "Planning for Peace" donors process. High level participation in and generous support for the Assessment and Evaluation Commission already envisioned in the agreement would be a catalyst to ensure that a broad panoply of issues were moving forward. "The intrusive nature of international involvement makes this different than the failed 1972 agreement", said one high level diplomat.<sup>60</sup>

However, one of the central contributions of the international community could be preparation of a range of punitive measures that would be applied in the event of non-compliance with the agreement. There must be costs associated with obstructing progress during the interim period. Ultimately, the most important external inputs will be those put on the table by the United States but other key governments, including the European Union (EU) and its member states, should be prepared to spell out those costs, which could include targeted sanctions against the leadership of the offending party, suspension of aid and debt relief, and the preparation of dossiers for possible war crimes

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<sup>58</sup> Both these areas have been subject to laws and educational policies and prescriptions devised in Khartoum, with little or no input from the home areas. According to one member of the SPLA administration in Kurmuk, Southern Blue Nile: "The central government has always tried to assimilate us, culturally and religiously, through externally imposed education policies. We want a strong state where we control these things ourselves". ICG interview in Southern Blue Nile, 16 April 2003.

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<sup>59</sup> ICG interview, 21 May 2003.

<sup>60</sup> ICG interview, June 2003.

trials of those responsible for crimes against humanity during the civil war.<sup>61</sup>

The largest and most expensive element of the international community's involvement will be in the form of an international observer force to oversee the main tenets of the agreement, particularly the vital security arrangements. This will involve monitoring the initial repositioning and cantonment of forces and then helping to implement whatever is agreed regarding DR.

The size of an international force would be dictated by the demands of the parties and the functions for which it was constructed, but any on-the-ground observation would have to be supplemented by meaningful aerial surveillance capabilities to monitor troop movements and resupply, as well as potential supply of hostile proxy militias. The Ethiopia/Eritrea agreement, in which part of the border observation was accomplished by satellite and aerial reconnaissance, is a useful precedent.<sup>62</sup> Cessna aircraft to do low flying, infrared, and tactical air surveillance would enhance the mission's ability to monitor developments on the ground at sensitive times.<sup>63</sup> It will obviously be impractical to deploy military observers to every bush airstrip, Nile River drop point, and other potential resupply point in the war zones, so aerial monitoring capacity would be a vital confidence building measure. This capacity would be particularly relevant early in the interim period, when violations in the oilfields would be potentially high, and again near its end, before the referendum, when spoilers would be likely to try to stir up divisions throughout the South by providing

military aid to disaffected elements. The international community should begin planning now for an observer force, so that it is ready for immediate deployment after the signing of an agreement. The long delays in becoming operational that accompanied the creation of the Civilian Protection Monitoring Team and Verification and Monitoring Team would be fatal for an observer force in the critical period immediately following the signing of an agreement.

In order to guard against an arms race between the central government and the southern entity, a mechanism will be needed to monitor arms purchases, especially as oil revenues begin to expand and in the event of residual or new tensions. However, over the past few years the government has steadily increased its domestic arms production capacity,<sup>64</sup> so placing limits solely on imports would put the SPLA at a disadvantage and aggravate southern fear of northern domination. Therefore, the observer force will need to monitor domestic armaments as well as the international market.

International participation could be useful as well for the commission that will need to be established to determine the exact border separating North and South as of 1 January 1956, which in turn will identify the precise boundary of that part of Sudan entitled, pursuant to the Machakos Protocol, to conduct a self-determination referendum at the end of the six-year interim period.<sup>65</sup>

The international community will also need to support implementation of wealth sharing protocols that require added transparency. An international mechanism for monitoring revenues and expenditures, for example, would reduce concern over diverted assets.

Similarly, interested parties should continue to prepare a package of incentives for making the deal. This includes further judicious and careful work on the donor-led "Planning for Peace"

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<sup>61</sup> It would likewise be desirable for the UN Security Council to prepare specific penalties that could be quickly applied in the event of significant violations of the agreement, though China's presence on the Council makes the prospect of such advance preparations problematic. It is also questionable how practical a threat war crimes trials would be since the new International Criminal Court has jurisdiction only over possible cases arising after 1 July 2002, and no other court with jurisdiction is in prospect. The U.S. role in providing incentives for implementation and disincentives for sabotage of an agreement are discussed separately above.

<sup>62</sup> See Prendergast, "U.S. Leadership in Resolving African Conflict", *op. cit.*

<sup>63</sup> The cost is estimated at U.S.\$3 million per plane per year. ICG interviews, June 2003.

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<sup>64</sup> See The Economist Intelligence Unit, "Sudan Country Report 2003", and Strategic Forecasting Services Report, "Sudan and Russia Forging New Ties Around Oil and Arms", 22 January 2002.

<sup>65</sup> See *Justice Africa's* briefing paper, "Prospects for Peace in Sudan", 27 May 2003.

framework that would spell out the kinds of resources that could be generated and for what they could be used. This will have to involve a major relief package from Sudan's U.S.\$22 billion debt – one of the highest proportional burdens in the world – to free the new interim government from overwhelming debt service requirements that would cripple its ability to provide a peace dividend in the form of social services and productive investment.<sup>66</sup>

However, some feel that the donors are heading in the wrong direction. "The idea of the quick start to the peace dividend is part of the problem", said a senior aid official with long experience in Sudan. "This kind of mentality undermines participation, accountability and transparency, and bypasses fundamental issues of governance".<sup>67</sup> Better, this expert suggests, might be widespread micro-lending programs, which are relatively immune to abuse.

No matter what form the assistance takes, much of it should be oriented towards building bridges between North and South. Serious efforts must be undertaken to improve the SPLA's governing capacity, and resources should be invested in strengthening civil society groups, especially in the South and in the historically underdeveloped regions in the West and East.

## IV. THE POLITICS OF THE DEAL

### A. GOVERNMENT

The 24 May 2003 meeting in Cairo between Sadiq al-Mahdi and Mohamed Osman al-Mirghani, leaders of the Umma Party and DUP, and John Garang was a turning point that maximised the pressure on the government to clarify its positions on the final compromises. The concurrent meeting in Khartoum of the *Shura* (Consultative) Council of the ruling National Congress Party reportedly was a tense affair at which hardliners, led by Vice President Ali Osman Mohamed Taha, made a stand for what they labelled the defence of *Sharia* that they said was threatened, *inter alia*, by a religiously neutral capital. President al-Bashir and his supporters reportedly called for doing what was required to end the war. To preserve internal unity, the ruling party and government adopted the median course of welcoming the Cairo 'summit' endorsement of the peace process, while forcefully rejecting its proposed compromise of a neutral capital enclave.<sup>68</sup>

Spokespersons for the government and the ruling party also rejected with equal force self-determination for the Three Areas. Reflecting this hardening of positions, the secretary general of the ruling party warned that "these areas fall in the North, and therefore there should be no talk of exemption (from Islamic laws). The issue of self-determination is relevant only for the South. The matter is settled".<sup>69</sup>

An indication of a worst case scenario of constituency fallout for the government was in clear evidence when five thousand uniformed and armed fighters of the paramilitary Popular Defence Forces (PDF) made a threatening display of force in the streets of Khartoum on 26 June.<sup>70</sup> In their addresses to the demonstrators and the public at large, government officials, including the PDF commander and the federal state minister of

<sup>66</sup> Forgiveness or moratoriums will be needed from not only the IMF, but also OECD, Arab and Eastern European governments, and private banks. "Prospects for Peace in Sudan", *Justice Africa*, 28 June 2003.

<sup>67</sup> ICG interview, May 2003.

<sup>68</sup> ICG interviews, May 2003.

<sup>69</sup> "Al-Bashir: Sudan is crossing a delicate phase, stepping out of war into peace", in Arabic, *Al-Sharq al-Awsat*, 29 May 2003.

<sup>70</sup> "PDF parades in Khartoum in favour of holy war", DPA, June 27, 2003.



defence, stressed that the PDF and its Jihad agenda were there to stay regardless of expected changes and called upon the PDF to intensify its grassroots activities so that “enemies and negotiators” alike would take note of its strength.<sup>71</sup>

The show of force triggered harsh public criticism as it indicated the readiness of the ruling party and the government to put to partisan use a uniformed paramilitary force under the chain of command of the national army. It also suggested that some in the regime might ultimately be prepared to resort to military means to preserve their political and religious agenda.

The troubling insertion of the PDF into the political debate and subsequent statements from its commander seeking to reassure the public displayed the inclination of the regime to send conflicting signals. In this case, the government wanted to reassure its core constituency that nothing had changed and at the same time show flexibility to an international community pressing for compromises to end the war. The danger of this approach is that by sustaining the extreme expectations of core supporters, the regime raises the likelihood of a severe backlash when those supporters absorb the extent of the real concessions it has made. . President al-Bashir typically alternated hard-line and conciliatory statements during the public festivities that marked the fourteenth anniversary of the June 30 1989 coup d’etat. President al-Bashir unusually was praised by some in the opposition for his warning to party operatives that the exiled opposition was preparing to return to Sudan, and they would be required to prepare for democratic competition with the reinvigorated opposition.<sup>72</sup> In response, hardliner Nafie Ali Nafie ridiculed the notion that the peace process would ultimately help ‘dismantle’ the *Inghaz* (Salvation) regime: “We mounted *al-Inghaz*, and nobody could dismantle it except Allah ... We will not dismantle it because of the will of the Americans, the National Democratic Alliance, or that of neighbouring countries” – the last reference a barely-disguised criticism of Egypt for

hosting the meeting between the northern opposition and the SPLA.<sup>73</sup> Still, Nafie defended building a ruling partnership with the SPLA.<sup>74</sup>

The SPLA’s overtures towards the northern opposition as well as parties as its early June accord with the PC left the government scrambling to limit damage. President al-Bashir accused the DUP and Umma leaders of undermining the peace process by making it easier for Garang to resume demands on *Sharia* after the issue was settled in the Machakos Protocol.<sup>75</sup> To counter this, the ruling party and government resorted to a public campaign on defence of *Sharia*.

The advisory meeting of the ruling party, apparently the last before a peace agreement should be signed, confirmed the rupture of the Islamist movement, as it failed to discuss reconciliation with the breakaway PC, led by the movement’s spiritual leader and the architect of its rise to power, Hassan al-Turabi.

## B. SPLA

If a peace agreement is signed, the SPLA will have succeeded in ending the war and enshrining the option of an independent South after the interim period, while gaining a meaningful role in governing the country at the centre and maintaining an independent force as a credible guarantee. However, it faces several acute threats. The first is resolution of the Three Areas problem. Should the SPLA agree to a deal for the South that ultimately fails to satisfy the aspirations of its allies in the Three Areas, there is a possibility that those forces will leave it to pursue their own agendas. That would damage the SPLA’s image as a national party in search of a new Sudan. Should the war then resume, it would potentially be without its key allies from the Nuba Mountains and Southern Blue Nile.

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<sup>71</sup> See “Military demonstration in the heart of Khartoum,” in Arabic, *Al-Sahafa*, 30 June 2003.

<sup>72</sup> “Opposition forces welcome Bashir’s address to his party members, say it erased his earlier conduct”, *Al-Quds al-Arabi*, 26 May 2003.

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<sup>73</sup> “Dr. Nafie warns: opening file of secular capital will push the government to review self-determination and other items”, in Arabic, *Akhbar al-Youm*, 31 May 2003.

<sup>74</sup> Ibid.

<sup>75</sup> “Sudan’s Bashir slams call for secular capital”, Agence France-Presse, 18 June 2003.

Secondly, should there be peace, the SPLA will have to change from a military organisation to a government in the South. This will require opening up political space, including for opposition voices, something that military rebel movements in Africa have a particularly poor record at doing. The South's ethnic and tribal divisions will have to be carefully managed once the common enemy of the North is removed by a peace deal. The intensification of a South-South dialogue will be critical to address many of the existing and potential conflicts. Fear among government-aligned southern armed groups that they will be left out of the peace process continues to present a threat. The New Sudan Council of Churches organised a South-South meeting in Entebbe at the end of May, but the SPLA withdrew at the last minute due to concerns about the objectives of the conference.

The SPLA leadership must increase its efforts at reconciliation with disaffected southern groups. Its hope that all southern government militias will fold if their funding and arms from Khartoum dry up after peace is signed is based on a dangerous assumption. Elements within the North may continue to arm these southern proxies if they deem it to be in their interests to undermine the SPLA. As well, the history of dozens of rebel movements throughout Africa proves that arms can be circulated much more easily than they can be restrained.

A number of internal congresses within the South in the past three months have helped to nurture the seeds of democracy but have also provided a forum for disgruntled voices. The most potent example came during the May Bahr al-Ghazal regional congress, when Salva Kiir, number two in the movement, spoke out in opposition to John Garang's attempts to alter SPLA administrative boundaries within Bahr al-Ghazal.<sup>76</sup>

The temptation for hard line northern elements to exacerbate or manipulate any divisions will be present throughout the interim period. Much of the southern population is already focused on the referendum and independence and is unhappy with the talk of unity for the six-year interim period. A tremendous amount of work will have to be done

by the national government to create a working infrastructure in the South and win over its population before a unity outcome in a referendum can seriously be considered. That the SPLA will be a major part of that central government means it is all the more important that an agreement is crafted that prioritises unity through real power sharing and guarantees of equal and full rights.

SPLA Chairman Garang has become increasingly vocal on national issues and appears to be positioning himself on the national scene. His high profile meeting in Cairo with al-Mahdi of the Umma Party and the DUP's al-Mirghani, and the working paper the SPLA signed with in London with the PC are evidence of his efforts to strengthen alliances and broaden the discussion in the North. His activities provide the best chance for "inclusion" in the peace process for excluded parties, and he recently lauded the uprising of the marginalised people of the Nuba Mountains, Southern Blue Nile, and Darfur against Khartoum as a way of getting attention for their concerns.<sup>77</sup>

### **C. NDA AND THE ALLIED INTERNAL OPPOSITION**

The split in the Islamist movement that caused the ruling faction to prioritise its own survival at the expense of its ambitious goal of remaking Sudanese society to its image occurred in 2000. Around that time, Sudan became the target of severe regional and wider international pressure on account of its horrendous human rights record and flouting of international humanitarian standards in its conduct of the civil war. Desperate for breathing space, the government gradually eased restrictions on political activities that it had strictly enforced during its first decade in power. It currently tolerates some freedom of association, assembly, and expression, but has made known the "red lines", such as discussion of official corruption, beyond which the transgressor would be punished. Opposition groups and a vibrant local private media have seized on these openings to push for more, while the government's tendency remains to manage the process strictly.

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<sup>76</sup> ICG interviews, May and June 2003.

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<sup>77</sup> "SPLA sympathises with western Darfur rebellion", Agence France-Presse, 17 June 2003.

The peace process has further energised the political and civil society environment. The exiled National Democratic Alliance (NDA) and other opposition forces operating within Sudan, chief among which are the Umma and DUP parties, the PC, southern political parties, a cluster of small leftist and Arab nationalist parties, and an increasingly vocal civil society, sought strength in unity by coordinating their pressure to be included in the peace process. Both the exiled and internal opposition consider that process a way to dismantle the rule of the Islamists, and they warn that without their participation there will be no consensus around its outcome.

Government-SPLA talks on the Three Areas parallel to the main IGAD process set in motion a wave of both armed and political protests from other marginalised regions that likewise want their issues to be taken into consideration at the negotiations.<sup>78</sup>

#### **D. UMMAPARTY**

The Umma Party has used the available limited freedoms to reorganise thoroughly. Testifying to the survival of democratic culture in the country after a decade of repression, it convened over the last two years some 4,473 self-financed village and residential quarter-level meetings that, through district congresses, elected representatives to the party's national convention in Khartoum in mid April 2003.<sup>79</sup> The convention elected leadership bodies, unanimously retaining Sadiq al-Mahdi as chairman, and adopted comprehensive programs. The Umma proceeded over the last few months to rebuild bridges with the SPLA that had been severely damaged when it froze its membership in the NDA in 1999. The participation of its chairman in the Cairo meeting with Garang and the DUP's al-Mirghani demonstrated the party's increasing influence on the peace agenda.

The Umma Party has consistently supported the peace process and has been instrumental in persuading other northern parties to accept the Machakos Protocol. Sadiq al-Mahdi in late 2002

launched an Initiative for a National Contract, a proposal to unify all political forces around a charter of agreed national goals, chief among which is achievement of an equitable and durable peace and democratic transformation of Sudan. He explained that:

up to now most ideas for solutions come from foreign think tanks, such as the International Crisis Group in Brussels, and the Africa Research Centre of South Africa...We counted 21 such centres presenting ideas that are not Sudanese. Our proposed charter is a source of Sudanese ideas; it will influence the mediators and will be a source of great pressure on them. We offer a third way, different from that of the government or the SPLA..."<sup>80</sup>

The party sent a delegation of three to follow the latest round of negotiations informally, to share ideas with the parties and the mediators and to press for opening the process to other political forces.<sup>81</sup> Kenya initially denied the delegation a visa, delaying it and forcing it to fly to Kampala and come to Nairobi by road. When it showed up at the 21 May closing session, which was public, the government pulled its delegates from the room.

Because of their stature as religious leaders as well as chairmen of the two leading political parties, Sadiq al-Mahdi and al-Mirghani's endorsement of a religiously neutral national capital gave the proposed compromise considerable credibility. The government's rhetorical violence in response forced the Umma leadership to ask Sadiq al-Mahdi to extend his stay abroad out of fear for his safety.

#### **E. THE POPULAR CONGRESS, OTHER ISLAMISTFACTIONS**

The invigorating influence of the peace process on internal political dynamics, particularly as the talks enter their final phase, can also be felt in the "working paper" signed in London on 3 June 2003

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<sup>78</sup> See Prendergast, *U.S. Leadership in Resolving African Conflict*, op. cit.

<sup>79</sup> ICG interview, June 2003.

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<sup>80</sup> "Sadiq al-Mahdi: we are sounding the alarm about foreign intervention (in Sudan) because some of its triggers are already in place", in Arabic, *Al-Bayan*, 28 May 2003.

<sup>81</sup> ICG interview with Umma delegation, Nairobi, 22 May 2003.

by the SPLA and Turabi's Popular Congress (PC). The two parties reiterated their endorsement of the Machakos Protocol, including its provisions for southern self-determination, power-sharing, and decentralisation, and called for broader participation to ensure that the peace process leads to democratic transformation. The working paper proposed several concrete steps: a broad-based interim government including all political forces; effective involvement of these forces and civil society groups in drafting the interim constitution; and internationally monitored elections for federal and state institutions at all levels. According to the document, "national consensus" should provide the basis for legislation and policies during the interim period. The controversial issue of the national capital received a vague mention, reflecting difficulties to agree despite three days of negotiations.<sup>82</sup> A permanent constitution, it was said, would have to await full democratisation, and a joint action program was detailed that was to protect and promote human rights, consolidate chances of just peace and reject military solutions such as applied in Darfur (see below).<sup>83</sup>

Observers interpreted the ambiguous reference to "a single national capital" that would make unity a likely referendum outcome as aligning the PC with the Cairo Declaration. However, at the same time some PC leaders were negotiating with the SPLA in London, other equally prominent PC leaders came out strongly on the government's side of the issue. Mohamed al-Hassan al-Amin, the PC's secretary for legal and constitutional affairs, said the party's Islamist orientation led it to reject the trend to make the capital "secular" and to refuse its transfer to another location "away from the influence of religion". He warned that attempts to separate religion from society or introduce radical changes in the country would trigger "security disturbances" and foster religious fanaticism.

Convincing the SPLA to accept the status quo, with adjustments to guarantee rights of the non-Muslim minority, could spare the country such disruptions, he said.<sup>84</sup>

The government and the ruling National Congress deployed a three-pronged response. First, they used the issue of the capital to mobilise their own grassroots and revive the unity of the broader Islamist movement. They succeeded in securing the backing of the Muslim Brothers, a faction of the Justice Party led by ruling party dissident Amin Banani, and a loose but influential association of prayer leaders. A group of imams of mosques and other religious leaders resuscitated the Popular Organisation for the Defence of the Faith and the Homeland, a loose alliance of convenience among Islamist groups that has, through street pressure, repeatedly helped the Islamists keep *Sharia* laws on the books since their enactment in 1983.<sup>85</sup> Secondly, supporters of the National Congress mounted a major public campaign to challenge the religious credentials of leaders and parties that endorsed a secular capital, forcing Sadiq al-Mahdi and Turabi's PC to deny that their signing of the Cairo Declaration and the London working paper respectively was an endorsement of a "secular" status for the capital.<sup>86</sup>

Thirdly, and most significantly, the government mobilised its southern supporters to issue a statement endorsing its position and rejecting what they characterised as ongoing attempts to renegotiate the issue of religion and state. Making good on a threat by Presidential Peace Advisor Ghazi Salah al-Din Attabani that the government would respond to the reopening of the state and religion issue by challenging the SPLA's legitimacy as representative for all the South, pro-government southern factions demanded to participate in the negotiations when they met with

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<sup>82</sup> The SPLA and the PC agreed that the interim period should unfold in a manner "preventing the vice of war [and] presenting a model for a single national capital" that would make "the unity of Sudan an attractive and overwhelming option upon the referendum for self-determination". "Working Paper between The Sudan Peoples Liberation Movement & The Popular Congress on the Issues of Peace & Democratic Transition", posted and accessed on 3 June 2003 at: <http://www.sudan.net/>.

<sup>83</sup> Ibid.

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<sup>84</sup> "Turabi's party opposes 'secularisation' of the capital, and strongly supports the government", in Arabic, *Al-Bayan*, 1 June 2003.

<sup>85</sup> "After the Cairo Declaration, former President Nimeiri nominated to chair the Front for the Defence of Islamic *Sharia*", in Arabic, *Al-Wifaq*, 30 May 2003.

<sup>86</sup> See for instance: "Reaffirming its commitment to the current constitution and rejection of the secularisation of the capital, Turabi's party backtracks on London agreement with vague explanations", in Arabic, *Al-Bayan* 6 June 2003.

the visiting IGAD chief mediator, General Sumbeiywo. They also demanded southern elections within eighteen months of a peace agreement so they could challenge the SPLA democratically.<sup>87</sup>

By the end of the first week of June 2003, the campaign had gained such momentum that the government felt confident to affirm that the capital issue was non-negotiable no matter the costs at the peace talks. Reflecting this hardening, Vice-President Taha pledged before cadres of the ruling party that "the government will not allow or concede to any entity, be it internal or external, seeking to impose a new agenda regarding the capital other than the status quo."<sup>88</sup>

The heated environment triggered by the debate on the capital appeared to have encouraged a shadowy extremist "Society of Muslims – Koranic Battalion" to promise a bounty of 10 million pounds (approximately U.S.\$4,000) for the head of each of eleven politicians, journalists, and lawyers the group named in a widely circulated leaflet.<sup>89</sup> Some of those are known secularists, such as Farouk Kadoda, a university lecturer and spokesman for the Communist Party, and al-Haj Waraq, a leading journalist and former Communist; others, such as al-Nayel Abu Gurun, one of three authors of the 1983 *Sharia* laws and the head of a major Suffi sect, and two government jurists are known for their Islamic affiliations. However, the statement accused all alike of daring to question Islamic *Sharia*.<sup>90</sup>

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<sup>87</sup> See "Government holds mediators responsible for the SPLA's lack of commitment to the ethics of negotiations ...", in Arabic, *Al-Ray Al-Aam*, 5 June 2003. See also "Khartoum responds to Garang by activating its allies; allied southern forces reject Cairo Declaration and London document", in Arabic, *Al-Bayan*, 6 June 03.

<sup>88</sup> "Important statements by the Vice-President on the status of the capital..." *Akhbar al-Youm*, 3 June 03.

<sup>89</sup> Some in the U.S. intelligence community believe that there is continuing support within the middle grades of the officers corps for al-Qaeda and other radical organisations. They are supported by – and supporters of – a residue of hardliners who masterminded many of the most extreme policies of the early and mid-1990s but have lowered their profile in the post-11 September environment.

<sup>90</sup> See "A Sudanese group calls for the killing of politicians, journalists, and judges", in Arabic, *Al-Wifaq*, 4 June 2003.

## F. THE SUDAN LIBERATION MOVEMENT/ARMY

A stark reminder that Sudan's crisis is more than the North/South dispute underlying the Machakos process occurred with the eruption in early 2003 of a potent armed rebellion in the drought prone western region of Darfur, as the parties prepared to discuss for the first time the status of the Three Areas.<sup>91</sup> On 3 June 2003, the new Sudan Liberation Movement and Army (hereafter SLA) publicly demanded participation in the IGAD peace talks.<sup>92</sup>

The SLA maintained that it was not a separatist movement and that it sought to preserve Sudan's unity. Its political manifesto and subsequent statements to the Arab media demanded respect of human rights throughout the country, balanced development efforts in all regions, and an equitable share for Darfur in allocation of national wealth and political power. Reflecting marked SPLA influence, its political manifesto advocated "a united democratic Sudan" and separation of state and religion. The SLA said it was committed to armed struggle and called on groups of "Arab background" to join it against a government it accused of deliberately manipulating the ethnic factor.<sup>93</sup> The SLA repeatedly expressed readiness to negotiate with the government but set as a precondition the cessation of government attacks. It said it had decided to talk with the SPLA to achieve a comprehensive peaceful settlement throughout Sudan.<sup>94</sup> The opposition NDA in late June accepted an application by the SLA to join its ranks, noting that the SLA was a force to reckon with that could not be left out of any peace agreement.<sup>95</sup>

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<sup>91</sup> The Darfur problem, which is only summarised here, is discussed in greater depth in ICG Briefing, *Sudan's Other Wars*, op. cit..

<sup>92</sup> "Darfur rebels demand to participate in the peace talks in Kenya", in Arabic, *Azzaman*, 2 June 2003. Sources told ICG that the SLA had submitted a formal application to the IGAD Secretariat two months prior to the public statement. ICG interview, 2 June 2003.

<sup>93</sup> "Ceasefire reportedly breaks down in Darfur", IRIN, 20 March 2003; See also, "Darfur rebels adopt a charter", Agence France-Presse, 14 March 2003.

<sup>94</sup> "Darfur rebels demand to participate in the peace talks in Kenya", in Arabic, *Azzaman*, 2 June 2003.

<sup>95</sup> "The armed elements of Darfur join the NDA", in Arabic, *Al-Ayam*, 1 July 2003.

The SLA, said to have been created by intellectuals and retired soldiers, is rooted in the ethnic tensions that tore Darfur apart from the early 1980s as successive governments in Khartoum armed nomadic Arab tribes to counter the SPLA. It is believed to be 6,000 strong and enjoy wide popular support in its strongholds.<sup>96</sup> A major reason for that popular support is that unlike most other military forces in the Sudan, the SLA has thus far struck exclusively military and government targets and shown respect for civilians. One person with ties to the SLA explained that:

The only way we can win is to maintain the support of the population. If we make one mistake and attack civilians, or alienate a certain tribe or area, we're finished. That's why we're putting such a focus on education among our troops, unlike other forces in the country".<sup>97</sup>

While many rumours and theories circulate about the SLA's ties and why it has emerged dramatically just now, grievances at the failure of the government to follow through with promises to uphold justice in the region will continue to fuel its rebellion, and others, such as the PC, the SPLA and exiled Darfuri parties will seek to ride the rebellion for their own purposes.<sup>98</sup>

Government plans to crush the SLA militarily suffered a humiliating setback when on 25 April the SLA raided and briefly occupied al-Fashir, capital of North Darfur state.<sup>99</sup> On 11 May it also briefly occupied Mellit, North Darfur's second largest town and an important customs post on the border with Libya. The government reshuffled its political and military representatives in the area, sent in troop reinforcements and acknowledged it was conducting joint operations against the insurgents with soldiers from neighbouring Chad.<sup>100</sup>

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<sup>96</sup> ICG interviews, May-June 2003.

<sup>97</sup> ICG interview, June 2003.

<sup>98</sup> See ICG Briefing, *Sudan's Other Wars*, op. cit.

<sup>99</sup> "Darfur fighters abduct commander of the Air Force of the Sudanese army", in Arabic, *al-Sharq al-Awsat*, 29 April 2003.

<sup>100</sup> Chad government troops are said no longer to be assisting Khartoum and perhaps to have left Sudan. Recently allegations have surfaced that some Chad fighters may actually be assisting the SLA, which at least seems to have a number of fighters trained in Chad in its ranks.

The situation was on the verge of dramatic escalation as this report was written.

The military build-up on both sides prompted opposition parties to join intellectuals and other leaders from Darfur and even moderates from the ruling party in appealing to the government to resolve the conflict through dialogue and address root causes by paying more attention to Darfur's developmental needs. While publicly refusing these appeals, the government is said to have covertly sought to start a dialogue with the SLA.<sup>101</sup>

The events in Darfur have put great pressure on the government to conclude a final peace deal with the SPLA before the various marginalised regions in the North succeed in forcing their way to the negotiating table through either military or political means or both. The SPLA denied any links with the SLA as claimed by the government but forcefully expressed political solidarity as well as fears that once a comprehensive agreement was concluded in the South, the government would focus on crushing the rebellion. It warned that as a governing partner during the interim period it would take no part in such repression. Using an argument that appeals to many in the North, John Garang invited the government to tackle the simmering or active "rural resistance against injustice" at the talks on the marginalised areas so that an agreement would be genuinely comprehensive and capable of delivering lasting peace.<sup>102</sup>

## G. THE BEJA CONGRESS

The Beja Congress is showing increasing displeasure at its continued exclusion from the peace process. Elements within it are seriously considering resuming hostilities in the East, as a means of demonstrating frustration at being denied a voice at the negotiating table.<sup>103</sup> As a member of the NDA, the Beja feel their actions are restricted by the Cessation of Hostilities agreement, as the SPLA is understood to represent the NDA by proxy. However, the Beja have floated to the SPLA an intention to withdraw from the NDA in order to

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<sup>101</sup> ICG interviews, 4 June 2003.

<sup>102</sup> "SPLA sympathises with western Darfur rebellion", Agence France-Presse, 17 June 2003.

<sup>103</sup> ICG interviews, June 2003.

have a free hand on the battlefield.<sup>104</sup> A renewed offensive in the East could threaten IGAD's efforts to conclude a peace agreement and further highlight the precarious situation in which the government finds itself in the North.

## **H. CIVIL SOCIETY, NORTH AND SOUTH**

Southern civil society elements have gradually been marginalised at the negotiations in Machakos. They have no structured input through either the mediators or the SPLA. Therefore, they have turned their attention to making an impact during the interim period. One leader commented, "The interim period will be a test case of whether the South can govern itself. We need to put structures in place".<sup>105</sup> As a result, a significant segment of southern civil society is increasingly focusing on governance issues.

The immediate demands on the SPLA for effective structures in the South are likely to be quite high, and therefore unrealistic. Southern civil society organisations have a positive role to play in building and developing these structures but they must maintain a positive relationship with the SPLA.

The civil society movement in the North is gradually but surely recovering from a decade of severe repression during which activists were targeted for arbitrary arrest, and independent organisations were stifled or banned outright. This adversarial relationship has its origin in the fact that Sudan's civil society movement was closest to liberal and leftist circles at its beginnings in the 1940s and through the peak of its power during the country's brief democratic interludes, particularly in the 1980s. When the current regime toppled an elected government and took power in 1989, civil society found itself engaged in bitter confrontations with the new junta. The Islamist movement had in the interim developed a vast social and humanitarian sector during its rise to political prominence in the late 1970s that in turn propelled its cause further.

The peace process encouraged the emergence of new, mostly independent peace-building associations and networks and fostered lively debates about the core issues at the talks. Machakos became a popular subject in Khartoum cultural circles, discussed at countless public seminars and in newspaper columns. The government met this peace euphoria with a laissez-faire attitude but on several occasions stepped in to disrupt initiatives of which it did not approve.

That is what happened with the initiative led by the Sudan First Forum (SFF). A voluntary grouping of civil society and opinion leaders, academics, professionals, and representatives of all political parties, SFF formed in mid 2002 several working groups to study the core Machakos issues and identify compromises to propose to the two parties and the mediators. It argued that the IGAD process was almost exclusively informed by influential international and regional think tanks and had limited access to Sudanese professional and peace-building expertise on the issues at hand. It proposed to redress this imbalance by making available the product of dozens of brainstorming sessions and meetings on such issues as power and wealth sharing and security arrangements.<sup>106</sup> The government thought otherwise and on 14 April 2003 sent its security agents to disband a three-day workshop that was meant to present to the public the proposals drawn from a half-year of intensive consultation among SFF participants.<sup>107</sup> The raid disrupted the SFF initiative, denying concerned Sudanese politicians, scholars and professionals the opportunity they sought to contribute to the peace process.

## **I. NUBA**

The people of Nuba have already taken advantage of the January 2002 humanitarian ceasefire to consolidate their political views and develop a consensus on the peace process. Depending on the outcome of the talks on the Nuba Mountains, the populace is certain to continue the process of reconciliation and become a stronger political force. Should the agreement on the Nuba Mountains fall far short of the general demands and

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<sup>104</sup> ICG interview, 1 July 2003.

<sup>105</sup> ICG interview, 15 May 2003.

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<sup>106</sup> ICG interviews, February 2003.

<sup>107</sup> SFF press release dated 17 April 2003.

expectations, there remains a very real possibility that the SPLA's Nuban leaders will continue an armed struggle against the government, or perhaps even against the SPLA.

## **J. SOUTHERN BLUE NILE**

Like Nuba, the SPLA leaders of Southern Blue Nile may threaten to continue their rebellion against the centre if they do not feel satisfied with their deal. As a whole, cohesion and organisation in Southern Blue Nile is perceived to be significantly less than in the Nuba Mountains, and the indigenous troops currently in the SPLA are fewer than those from Nuba. Regardless, continued rebellion in Southern Blue Nile could easily spread to Upper Nile, or eastern Sudan and cause a tremendous problem for a new National Congress/SPLA government.

## **K. SOUTHERN SPOILERS**

The government-aligned southern militias have become increasingly anxious about their position in a post-conflict Sudan. One motivation for the fighting in Western Upper Nile since January 2003 can be attributed to the SSDF pressing for recognition and to have its voice heard in the process.<sup>108</sup> The SSDF has publicly warned that no agreement will be possible if it is kept out of the talks. Some southerners worry that the militias could be a problem from the outset of the pre-interim period. "The government strategy will be to keep the militias out of the agreement", forecast a leading civil society official from the South. "They will tell the militias to go back to the South, but Garang will reject them, and so they will go back to the government, which will support them to continue to fight the SPLA and divide the South during the interim period". A joint statement signed on 29 May by the three largest southern opposition groups stressed the need for reconciliation and unity among southern military and political groups and the inclusion of all southern groups in the peace process.<sup>109</sup>

Recent fighting in Western Upper Nile between the forces of Paulino Matiep, Chief of Staff of the umbrella SSDF, and the forces of Peter Gadet, Tito Biel, and James Lih Diu (all three SSDF commanders) illustrates the serious divisions among the government-supported southern militias. Sources close to the fighting allege that the violence stemmed from Khartoum's efforts to transfer control of Bentiu town from Matiep to Gadet, Biel and Diu, in order to undermine the former's leadership position.<sup>110</sup> The government wants to replace Matiep because he refuses to accept integration of the SSDF into the national army, and he expressed support for the Joint Statement of 29 May on self-determination for the South.

Beyond the rogue militias in Upper Nile, the South has many fault lines that could be exploited during the interim period to undermine Southern unity, destabilise the South, and create a case for postponement of the referendum. For example, the Equatorian Defence Force (EDF), operating with Khartoum's support in the far southeast, could potentially ally during the interim period with the Ugandan Lord's Resistance Army (LRA), which operates in the same theatre along the Ugandan border. "In the worst case, the EDF would press for its own country, its own referendum, to escape SPLA rule", said a Sudanese civil society leader. "The Equatorians feel cheated by the Dinka".<sup>111</sup>

Similar worst case scenarios are imaginable throughout the South. Said one pessimistic southerner involved in peace-building there, "I'm not sure if the South can govern itself for the interim period. It will be a test for the South, but there are no structures in place. The referendum is hypothetical, and a lot can happen in six years".<sup>112</sup>

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internationally supervised referendum. The statement was signed by Paulino Matiep on behalf of the SSDF, Lam Akol on behalf of SPLM-United, and Wal Duany on behalf of the SSLM/A.

<sup>110</sup> ICG interview, 2 July 2003.

<sup>111</sup> ICG interview, May 2003.

<sup>112</sup> ICG interview, 10 May 2003.

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<sup>108</sup> See ICG Briefing, *Sudan's Oilfields Burn Again*, op. cit.

<sup>109</sup> "Joint Statement by the SSDF, SPLM-United, and SSLM/A", 29 May 2003. The joint statement also affirms the right of self-determination for the South through an



## **V. CONCLUSION: HERDING ALL THE CATS**

General Sumbeiywo's negotiating strategy is sound, and the structure supporting the peace process is a well-crafted, real partnership between regional actors (IGAD, led by Kenya) and the broader international community (led by the U.S., UK, Norway and Italy, with UN support). Further consultations underway will allow the mediation to craft a general proposal that would capture the essential tradeoffs and compromises necessary to get a deal while protecting the parties' most important bottom lines. That proposal will be taken to President al-Bashir and Chairman Garang for their endorsement later this summer. If that is forthcoming, it would be taken back to the negotiating teams in Machakos to fill out with details, which would likely require at least another few months, if not until the end of the year. Once a more detailed final proposal is crafted, it would be returned to the two leaders for their definitive agreement.

At all these junctures, higher level engagement as spelled out above – from both the IGAD and observer countries, as well as the UN, African Union and Arab League – will be indispensable for ensuring that a final agreement is reached. The U.S. in particular needs to engage in a way that demonstrates its seriousness and places aspects of the bilateral relationship in the scales.

At this advanced stage in the peace process, and in order to inform fully the drafting of final comprehensive proposals, the mediators should create increased opportunities for wider input by various Sudanese actors into the process, even if only informally. There could be parallel consultations to gather the views of political parties and civil society representatives on the remaining issues. "We have been left out of the peace process", said one Sudanese civil society leader, echoing widely shared sentiments. "This is more and more like the 1972 agreement, when no one knew what the agreement was or how to participate in its implementation".<sup>113</sup> A long-time regional analyst suggested that "proximity observers" be allowed to receive briefings on issues, sit in on open sessions, and comment on issues of the

day.<sup>114</sup> These civil society leaders could then connect the process inside Sudan. A full time liaison might be able to help General Sumbeiywo receive input from the political parties inside and outside the NDA as well as from civil society, and leaders of the Beja in the East and of Darfur in the West.

Efforts already underway on parallel tracks have been helpful in vesting other actors in the peace process. Consultations hosted by the Max Planck Institute (focusing on constitutional issues) and the Inter-Sudanese Consultation on Peace and Justice (ISCOP), have provided meaningful forums for those outside the IGAD process to share ideas, formulate alternatives, and develop a broader sense of what lies ahead. ICG has also sponsored informal information-sharing opportunities between civil society organisations and members of the IGAD mediation and observers.

Planning should begin already in order to prepare for some of the crucial processes that will unfold during the interim period. A great deal of preparation will be required for local and state elections. A Constitutional Review Process will aim to revise the interim constitution and create a new one in the most inclusive manner possible. "The marginalised areas will revolt if the constitutional process is closed", a Sudanese analyst warned.<sup>115</sup>

Egypt still poses a possibly formidable threat – particularly late in the interim period – to any agreement that leaves open the option of southern secession and thus control of the Nile waters. However, it has a real interest in a secular government in Khartoum. The mediators need to continue to demonstrate to Egyptian officials that an agreement giving the southerners fair representation in the central government and the option of secession is necessary to achieve peaceful unity and a moderate national government. In addition, on a parallel track to the negotiations, the U.S. and its observer partners, along with experts from the World Bank and the Nile Basin Initiative, could convene officials from Egypt, Ethiopia, the government of Sudan and the SPLA to discuss and alleviate Egypt's water-related fears and begin to formulate possible solutions to the water problem. If its concerns can be dealt with, Egypt, together

<sup>113</sup> ICG interview, May 2003.

<sup>114</sup> ICG interview, June 2003.

<sup>115</sup> ICG interview, May 2003.

with the Arab League, could play a central role in encouraging the parties to implement an agreement. Senator Danforth, President Bush's Special Envoy for Sudan, should travel again to Cairo and ensure that Egyptian efforts are consonant with those of the IGAD mediation and observer team.

**Nairobi/Brussels, 7 July 2003**

# APPENDIX A

## MAP OF SUDAN

