

**Analysing the negotiation and implementation process of the
Comprehensive Peace Agreement on the Sudan question: lessons learnt**

**Submitted in partial fulfilment of the requirements of the LLM (Human
Rights and Democratisation in Africa) of the University of Pretoria**

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DECLARATION

I, Melanie Smuts declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

Signed.....

Date.....

Supervisor: Dr Ronald Naluwairo

Signature

Date.....

DEDICATION

To my loving friends and family. And to all the Sudanese who have struggled for peace for so long.

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LIST OF ABBREVIATIONS

ABC	Abyei Boundaries Commission
ACCORD	African Centre for the Constructive Resolution of Disputes
AU	African Union
AUHIP	African Union High Implementation Panel
CPA	Comprehensive Peace Agreement
DDR	Demobilization Disarmament Reintegration
DOP	Declaration of Principles
FFAMC	Fiscal and Financial Allocation and Monitoring Commission
GoS	Government of Sudan
GoSS	Government of South Sudan
ICC	International Criminal Court
IGAD	Inter-Governmental Authority on Development
INC	Interim National Constitution
JIU	Joint Integrated Unit
NCP	National Congress Party
NCRC	National Constitutional Review Commission
NGO	Non-governmental Organisation
NPC	National Petroleum Commission
PSC	Peace and Security Council
SAF	Sudan Armed Forces
SC	Security Council
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SSDF	South Sudan Defence Forces
TBC	Technical Border Committee
UN	United Nations
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan

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Chapter 1: Introduction

1.1 Background to the study

It is over seven years since the Comprehensive Peace Agreement (CPA) was signed on 9 July 2005 and over a year since the secession of South Sudan. The CPA is a landmark agreement designed to end the second civil war between the North and South of Sudan. This conflict was part of the longest-running war in Africa which spanned more than fifty years, consisted of two civil wars (1955-1972, 1983-2005). The second civil war alone caused 2.5 million deaths and displaced 4 million people.¹

The source of conflict originates in the divisions between profoundly different communities in the North and the South. Protracted warfare, religious and ideological differences, undemocratic governments and resource competition have all aggravated the long history of disagreement. These factors continued to compound as the civil wars dragged on until the loss of life, displacement of communities and damage to land and property became incalculable. The original reasons for the war intertwined with new drivers of conflict. Finding a resolution to the conflict became increasingly complex as motives for the war changed.

The conflict affected not only those within Sudan. Regional politics have always played a role in the conflict, as each of the nine bordering countries contributed at some stage either to peace negotiations, assisting a military group in the conflict, or sometimes doing both. These allegiances also shift over time with change of governments and political ideologies. At various times, international actors have played a similarly dualistic role. But African peace and security is entering a new era where mediation and intervention in conflict is becoming more supported and sophisticated: the CPA is largely a success-story of intervention through regional co-operation, in a balanced partnership with key international actors.

A residual challenge to peace in the region is the tendency for factors which cause and compound conflict to be the same factors that incentivise intervention and negotiation. The discovery of oil made independence- arguably what the South Sudanese have been fighting for all along- possible, as independent statehood suddenly became economically viable despite chronic lack of development. Access to oil certainly provided impetus to international donors to commit to funding a peace agreement and move the crisis up foreign policy agendas. Yet oil remains an enormous impediment to security for communities living near oil fields and provides the means for both sides to finance large-scale militaries.

It is against this background that this paper seeks to argue that the negotiation, signing and implementation of the CPA has the potential to provide many lessons for future peace processes in

¹ 'CIA World Factbook: Sudan' <https://www.cia.gov/library/publications/the-world-factbook/geos/su.html> (accessed 20 October 2012), 'CIA World Factbook: South Sudan' <https://www.cia.gov/library/publications/the-world-factbook/geos/od.html> (accessed 20 October 2012).

Africa. Because of the plurality of factors to the conflict, the importance of regional and international actors, the impact of natural resources and the enduring challenge of ethnic division, it is a situation that bears relevance to many other situations of conflict in Africa and provides meaningful insight into improving mechanisms that may lead to their resolution both in terms of its successes and failures.

1.2 Problem statement

We are entering a new era for peace and security in Africa. Recent years have seen a drastic reduction in all forms of violent conflict on the continent. Battle-related deaths have decreased by as much as 70% in the period 2002-2007.² Progress is being made in ending the wars that contribute to the underdevelopment and suffering in many regions. With the increasing sophistication of peace processes and intervention by African peacekeepers it is hoped that this trend will continue.

But peace studies have long recognised that peace means more than the absence of war. In Sudan, where there are so many sources of overlapping conflict, simply keeping war at bay is unlikely to result in lasting peace: lasting changes must be made. Signing the CPA was a pivotal moment in the decades of conflict between North and South of Sudan. But the nature of the conflict was never such that it could be ‘resolved’ even by a historic document such as the CPA. The sources of disagreement are simply too old and too many, and the peace is simply too fragile. The CPA has created a reference work for peace that did not exist before, allowing at least for the possibility of resolving the North-South conflict in the long term as well as disputes over oil. The international community, perhaps motivated by the success of the CPA process, has also been effective in pressuring leaders from both sides into more negotiated settlements after the signing of the CPA.

There have been numerous outbreaks of conflict post-CPA and a number of settlements had to be reached on the issues already addressed in the CPA since 2005. Omissions in the CPA on establishing transitional justice and accountability mechanisms, very weak provisions on democracy and an exclusion of key parties to building peace have all meant that implementation of the CPA has not been effective in ensuring peace. With a firmly embedded memory of war, weak state institutions, terrible poverty and no national unity many areas in both states risk having a new kind of war rather than a new kind of peace. Some of these consequences were due to foreseeable mistakes made during negotiations where mediators and external parties were willing to opt for compromise or expediency rather than securing the terms which would ensure lasting peace.

² ‘Mediating Peace in Africa: Securing Conflict Prevention. Strengthening the Mediation and Conflict Prevention Aspects of the African Peace and Security Architecture.’ (ACCORD), Ministry for Foreign Affairs of Finland at the United Nations Convention Centre, with the participation of the African Union/ACCORD Addis Ababa, Ethiopia (March 2009) 16.

These are not factors unique to Sudan, nor are the flaws in the peace agreement found only in this negotiation. Awareness of the strengths and weaknesses of the process is therefore an important analysis for understanding the resolution of future conflict in the region, but also for the usefulness of the experience of the CPA to other states in conflict.

1.3 Objectives of the study

This study seeks to analyse the impact of the CPA on sustainable peace building in Sudan and South Sudan.

The specific objectives are:

1. To explore the history and causes of the conflict between Northern Sudan and Southern Sudan (now South Sudan).
2. To analyse the CPA negotiation process, identifying the factors that led to its successful conclusion.
3. To address the strengths and weaknesses of the CPA document in terms of guaranteeing sustainable peace.
4. To explore the current threats to sustainable peace in Sudan and South Sudan.
5. To draw lessons from the CPA process that could be relevant to solving similar conflicts and promoting sustainable peace in Africa.

1.4 Research questions

This study addresses the following questions:

1. What is the history of the conflict in the Sudan and what are the underlying causes of conflict that may still pose a challenge to sustaining peace?
2. What were the key factors to the negotiation process that successfully led to the signing of the CPA?
3. What is the significance of the CPA for peace in the greater context and history of the Sudanese conflict and are there flaws to the document and process?
4. To what extent has the implementation of the CPA led to sustainable peace between Sudan and South Sudan and within South Sudan?

5. Drawing from the above lessons learnt, what are the important successes and failures of the CPA and its negotiation process that may be relevant to other situations of conflict in Africa?

1.5 Literature review

An accurate assessment of the strengths and weaknesses of the Sudanese peace process begins with understanding Sudanese statehood and how it has contributed to creating division and fuelling conflict. Alex de Waal is the leading authority on the history and politics of Sudan. His work on patrimonialism is critical to understanding the intersection between financial arrangements, the role of the military and the role of the elite as incentives for conflict. His analysis of political dynamics between the centre and periphery in Sudan explains one of the key factors of division in the society.³ His work is largely, however, on the global history of Sudan and predicting the impact of certain provisions of the CPA.⁴ He does not provide an account of how most of the provisions of the CPA have played out and does not analyse it from a perspective of how mediation can improve the region. El-Battahni provides a chronological overview of the major events in Sudanese history which instilled the drivers for conflict as well as addressing the key events which brought about the peace processes which ended the first and second civil war.⁵ Hutchison describes the rise of ethnic and communal war within Southern Sudan and the incentives for conflict between tribes created by military leaders.⁶

Zartman's seminal theory on conflict ripeness and mutually hurting stalemates are used to shed light on why certain mediation attempts failed but succeeded on very similar terms at a different time.⁷ His theory supports attempts in this paper to identify which factors in the conflict in Sudan could bring the parties closer to a stalemate and which issues historically were present when a mutually hurting stalemate leading to successful negotiations occurred. His theory is of general application but this paper extends it to what factors are specifically noteworthy in the Sudanese conflict.

Some crucial lessons learnt from the CPA process are derived from the negotiation of the peace agreement. Interviews with chief mediator Lazaro Sumbeiywo⁸ and mediation expert Nicolas Haysom⁹ contributed greatly to understanding this aspect. They address particularly the strengths of

³ De Waal 'Mission without end? Peacekeeping in the African political marketplace' (2009) 85 *Journal of International Affairs* 99

⁴ A De Waal 'Sudan's Choices: Scenarios beyond the CPA' (2010) 1 *Sudan – No Easy Ways Ahead* 1

⁵ A El-Battahni 'A Complex Web: Politics and Conflict in Sudan' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 10

⁶ S. E Hutchison 'A Curse from God? Religious and Political Dimensions of the post-1991 rise of ethnic violence in South Sudan' (2001) 39 *Journal of Modern African Studies* 307.

⁷ W Zartman 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments' (2001) 1 *The Global Review of Ethnopolitics* 1.

⁸ 'The mediator's perspective: an interview with General Lazaro Sumbeiywo' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 22.

⁹ 'Reflecting on the IGAD peace process: an interview with Nicholas (Fink) Haysom' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 30.

the negotiations and what factors led to its successful conclusion but are not critical enough of failures in the process.

The details of the CPA terms as well as the weaknesses of the negotiations have been covered most extensively by Young. He argues that the CPA failed on two critical components for a peaceful post-conflict society: justice mechanisms to ensure redress and closure, and democracy, to encourage functional and representative states. He writes on the exclusion of important parties to the negotiations¹⁰ and analyses the duality of John Garang's role in the peace process and his failings as a leader.¹¹ He expounds on the role of IGAD to the process.¹² Some of Young's articles were written, however, before the conclusion of the CPA and do not address the final outcome of the agreement. He also does not contextualise his analyses in terms of lessons learnt for other peace processes but frames his analyses for the future relevance to Sudan.

Nouwen provides a legal analysis of the terms of the CPA in terms of potential enforcement and consequences for their interpretation post-secession. She provides insight into the significance of the structuring of the peace agreement regarding the centres of political power, the creation of institutions and the likelihood of accountability. She only analyses the terms or their potential usefulness to other conflicts in Sudan and does not address the mediation or actual implementation of the CPA.¹³

Antwi-Boateng and O'Mahony analyse the CPA's overall effectiveness in terms of the underlying causes of the conflict using the Metrics Framework for Accessing Conflict Transformation and Stabilization' developed by the United States Institute of Peace. They find several important factors that led to the successful negotiation and signing of the agreement and identify which elements were not fully addressed during negotiations.¹⁴ They do not, however, address in detail how these factors have been implemented post signing of the CPA. Branch and Mampilly argue that ensuring real peace in Sudan will require more than implementation of the terms of the CPA. Specifically, they use as a case study the various ethnic tensions within South Sudan, as well as the disruption caused by the return of refugees after the signing of the CPA to show how the requirements of peace have changed since the signing of the CPA and how building a peaceful political culture is now needed.¹⁵

Brosché writes on the lessons learnt from the CPA's provisions on power-sharing. He considers the inclusion (and exclusion) of specific parties in the negotiation, the importance of regional and

¹⁰ J Young 'Sudan: a flawed peace process leading to a flawed peace' (2005) 32 *Review of African Political Economy* 99.

¹¹ J Young 'John Garang's Legacy to the Peace Process, the SPLM/A & the South' (2005) 32 *Review of African Political Economy* 539.

¹² J Young 'Sudan IGAD Peace Process: an Evaluation' at http://www.sudantribune.com/IMG/pdf/Igad_in_Sudan_Peace_Process.pdf (accessed 07 September 2012).

¹³ S Nouwen 'Sudan's Divided (and divisive?) Peace Agreements' (2007) 19 *Hague Yearbook for International Law* 113

¹⁴ O Antwi-Boateng & G O'Mahony 'A Framework for the Analysis of Peace Agreements and Lessons Learned: The Case of the Sudanese Comprehensive Peace Agreement' (2008) 36 *Politics & Policy* 132.

¹⁵ Branch & Mampilly 'Winning the War, But Losing the Peace: The Dilemma of SPLM/A Civil Administration and the Task Ahead' (2005) 43 *Journal of Modern African Studies* 1.

international actors in the negotiation and local capacity-building to create meaningful methods of power-sharing.¹⁶ He only addresses the power-sharing aspects of the CPA and does not draw lessons from the other components.

Oil is an important component of the war as well as disagreements between the government of the North and South. Harneit-Sievers expounds on the tension between oil as a major source of instability where oil fields are found while also being a factor which made independence and separate development a viable possibility for the South and continues to be an important factor in power-relations between the two states.¹⁷ Wennmann draws the distinction between resource-ownership and resource-management and argues that deferring to the latter in difficult situations provides a powerful tool for dispute resolution.¹⁸

Reports from reputable institutions including the International Crisis Group, the UN Office on Coordination of Humanitarian Affairs' weekly bulletin, the conflict barometer from Uppsala University's Department of Peace and Conflict Research 'UCDP database' provide information on ongoing situations of conflict. For the implementation of the CPA, the *CPA Monitor*, published by the United Nations Mission in the Sudan¹⁹ provides factual details on the implementation of the peace agreement.

1.6 Significance

The peace process on the North-South conflict in Sudan was the first important intervention to occur after the formation of the African Union (from the Organisation of African Unity) under the newly-established African Peace and Security Council (PSC).²⁰ A new era of African peacekeeping is emerging where domestic ownership of peace and security is prioritised. Partnerships between international, regional and local stakeholders are becoming more balanced and effective.

The negotiations in Sudan were an important first test for the emerging framework and their strengths and weaknesses are crucial to building a body of knowledge about African peace processes. This paper seeks to contribute to this new era of knowledge by analysing what the strengths and weaknesses of the Sudan experience were, how they may be avoided or reinforced in future processes and which parties are best placed for what roles.

¹⁶ J Brosché 'Sharing Power – Enabling Peace? Evaluating Sudan's Comprehensive Peace Agreement 2005' Published by Uppsala University, Sweden and the Mediation Support Unit, United Nations, New York, USA (2009).

¹⁷ A Harneit-Sievers 'Oil in Sudan: Fuelling Conflict – Fuelling Development? (2010) 18 *Sudan – No Easy Ways Ahead* 98

¹⁸ A Wennmann 'Wealth-sharing beyond 2011: Economic Issues in Sudan's North-South Peace Process' (2011) 'CCDP Working Paper' Graduate Institute, Geneva 10 quoting J Madut *Sudan: Race, Religion, and Violence* (2007) 1.

¹⁹ <http://www.unmis.org/english/cpaMonitor.htm> (accessed 7 September 2012).

²⁰ 'Mediating Peace in Africa' (n 2 above) 10.

1.7 Limitations

Khartoum has long been responsible for war (possibly genocide) in Darfur and conflict in other regions in Sudan as well as proxy wars. It is beyond the scope of this paper to address all these conflicts even though they are inter-related. The study is limited to the conflict between the Government of Sudan (GoS) and the Sudan People's Liberation Army/Movement (SPLA/M). Both parties support other conflicts in the region it is beyond the scope of this paper to address proxy wars.

Though the research is on Sudan and South Sudan, this paper was written in Kampala. Time, logistical and financial constraints have made it impossible to conduct any fieldwork. It was also written at the time when the only library with resource materials on the subject was closed for refurbishment therefore many of the sources relied upon was found online. Certain important scholarly works, especially books, could not be accessed.

1.8 Methodology

This study relies upon a library and desk research methodology. Primary sources include the preliminary agreements signed between the parties, texts of the peace agreements signed and Security Council resolutions. Secondary sources include textbooks, journals and internet research. Interviews of key negotiators, mediators and leaders have been used but the author was unable to conduct interviews herself.

1.9 Chapters overview

1. Introduction

This chapter gives an overview of the paper including background information on the topic of research, problem statement, research questions and objectives and methodology.

2. Background to the Conflict

This chapter provides a brief history of the origins of discontent, inequality and conflict in the Sudan which caused the two civil wars. It identifies key actors in the wars and what impact new factors, such as oil and international and regional partnerships had in changing the conflict.

3. Negotiations Leading to the CPA.

This chapter looks factors leading to the success of CPA negotiations. The role of IGAD, International donors and John Garang and Ali Osman are considered. It addresses the key omissions and failures of the process.

4. The CPA.

This chapter considers the legal structure of the CPA and provides an overview of the six agreements and their specific provisions.

5. Implementing the CPA.

This chapter considers implementation successes and failures of the CPA including the referendum and elections, the outbreak of conflict in the disputed border regions ethnic clashes within South Sudan and the acrimonious oil disputes. It touches on dispute resolution processes post-CPA

6. Lessons for Similar Future Dispute Resolution and Peace Processes in Africa

This chapter draws on the above four chapters to consider the overall experience of the CPA and what lessons can be learnt from the process for other conflicts in Africa.

Chapter 2: Background to the North-South conflict in Sudan

Mr. Owen addressed the Northern Sudanese and explained that they were still suffering from the sins of Zubeir Pasha and the slavers. "The sins of the Fathers shall be vested upon their children even unto the third and fourth generation". He said that the South had not forgotten the days of oppression even if the North had done so, and even today the Southerners' view was dominated by fear and suspicion.

Juba Conference, June 1947

The Sudan has for decades suffered from an enduring relationship between the memory and potentiality of war.²¹ Its history has been marred by severe political militarism and civil wars; establishing a nation with a pattern of obtaining and holding power through violence and conflict. Only eleven of the forty-eight years of statehood managed to sustain a semblance of peace.²²

This chapter will provide a brief overview of the origins of the state of Sudan and the main drivers of conflict which led to the outbreak of the two civil wars between the Northern and Southern Sudanese (1955-1972, 1983-2005). The nature of the divisions within the society including social, religious, political and geographic delineation are all relevant to the conflict. Over time these factors have merged; as political power overlaps with religious factions and ethnic rivalry overlaps with resource-competition.²³ By providing some detail on the historical origins of the conflict, insight can be gained as to whether the CPA was drafted and is being implemented in a manner that addresses the root causes, as well as the critical divergences that have evolved through the conflicts.

2.1. Precursors to Northern Dominance: Ottoman and British Rule

The history of political marginalisation of Southern Sudan started around 1820 when the Arab and Islamic Ottoman-Egyptian Turkiyya regime was founded in the region. This empire represented the first form of organised political control that exploited communities in Southern Sudan for slave-trading (often selling slaves to Britain).²⁴ Britain and Egypt gained control over the Sudan after defeating the Ottomans. The division between North and South was first institutionalised under British colonial rule in the 1920's. The colonial administration prohibited access to the South for northerners and implemented a policy of indirect rule through local chiefs and sheiks known as the Native Administration System.²⁵

²¹ "And through war, the memory of war, and the potentiality of war, the relations between tribes are defined and expressed." Quoted from 'Sudan: Transcending tribe'

http://www.aljazeera.com/photo_galleries/africa/201111010324526960 (accessed 15 July 2012).

²² United Nations Mission in Sudan <http://unmis.unmissions.org/Default.aspx?tabid=515> (accessed 20 October 2012).

²³ Hutchinson (n 6 above) 308, El-Battahni (n 5 above) 10.

²⁴ El-Battahni (n 5 above) 11.

²⁵ El-Battahni (n 5 above) 11.

This form of administration led to the assumption that the country would eventually become two separate entities. However, in an abrupt change of policy, the British decided during the Sudan Administrative Conference of 1946 that North and South would become one country. The unification of Sudan allowed the British to place Northerners in administrative positions in the South and allow Northern traders, with whom they had a good relationship, in the region once more. This conference was held in Khartoum and no South Sudanese delegates were present.²⁶ A year later, at the Juba Conference of 1947,²⁷ Southerners were informed of the decision to create one administration, seated in Khartoum. The administration would greatly disadvantage the South: the official language of government proceedings would be Arabic and only 13 of the legislative seats were allocated to Southerners.²⁸ Of the 800 new governmental positions eventually vacated by the British in 1953, only six junior posts were given to Southerners. This was partly due to the dearth of South Sudanese who understood Arabic and were educated in participating in a British Parliamentary system but also because of active discrimination.²⁹ The new overwhelmingly Arab political elite attempted to unify the state of Sudan under Islam and Arabic culture.³⁰ Yet, at the time, only 30 per cent of Sudan would have identified as ‘Arab’ and the form of Islam driven by government became increasingly radicalised and unrepresentative.³¹

2.2. First Sudanese Civil War 1955-1972

The first civil war broke out in 1955, a year before Sudan’s independence from the British. The conflict was predominantly due to unhappiness in the South over their marginalisation in the political representation of the country as described above. The conflict escalated by 1962 due to the consolidation and improved organisation of Southern forces under the rebel group *Anyanya* led by Joseph Lagu who fought for independence for the South.³² The war continued until 1972, when the Addis Ababa peace agreement was signed between Sudanese President Jaafar Nimeri and Joseph Lagu.

²⁶ ‘The Role of Arab-Islamic Elite in the Matters of War and Peace: North-South Relationship by Charles K Deng’ <http://www.sudaneseonline.com/earticle2005/apr22-14420.shtml> (accessed 22 October 2012).

²⁷ The Juba conference followed the Sudan Administrative Conference and was the meeting at which the British Colonial secretaries attempted to persuade the Southerners to accept unity A Ylonen ‘Grievances and the Roots of Insurgencies: Southern Sudan and Darfur’ (2005) 7 *Peace, Conflict and Development: An Interdisciplinary Journal* 109.

²⁸ The Juba Conference June 1947, accessed at http://www.gurtong.org/resourcecenter/Documents/Articles/juba_conference_1947.pdf. The transcript itself provides fascinating insights into how little the psychologies of the different role-players have changed in the interceding years. Perhaps with some prescience, a delegate from the British administration states, p 8.

²⁹ Ylonen (n 29 above) 108.

³⁰ El-Battahni (sn 5 above) 11.

³¹ A Wennmann (n 18 above) 5.

³² D Shinn ‘Addis Ababa Agreement: was it destined to fail and are there lessons for the Current Sudan Peace Process?’ (2004) 20 *Annales d’Ethiopie* 241.

A number of factors led to the signing of this peace agreement. The conflict had reached a stalemate.³³ Jaafar Nimeiri, who came to power through a *coup* in 1969, made attempts at demonstrating a change from previous Northern administrations, and had support in the South.³⁴ Joseph Lagu united the Southern rebellion into an organised force which made collective bargaining possible. Furthermore, Ethiopian Emperor Haile Selassie stepped in to oversee the mediation process with input from the World Council of Churches and the Sudan Council of Churches. The agreement granted the South regional autonomy, a secular government and an independent presidential system.³⁵ Lagu was appointed Second Vice President in the Sudan.³⁶

Concurrent to the civil war between the North and South, there was also consistent disunity within regions. The North faced a series of *coups* which ousted their leaders and the South struggled to unify amidst ethnic differences and internal conflict. General Abboud (the first president of Sudan) stepped down and the brief democratic rule that followed after him was removed by Nimeiri in a *coup* in 1969. Nimeiri himself was removed through a bloodless coup in 1989 by the current President of Sudan President Omar Al-Bashir. The South was characterised by frequent violent conflict for the duration of both civil wars, with little overall unity.³⁷

2.3. Second Sudanese Civil War 1983-2005

In 1983, Nimeiri unilaterally abrogated the Addis Ababa peace agreement and declared that the entire Sudan would be governed by Islamic (Sharia) law, thereby causing the outbreak of the second civil war. His decision was due to the power of the Arab elite more than popular demand Islamic statehood. Nimeiri had destroyed many of the sectarian and communist parties in northern Sudan and needed to buy political allies to rally support through recently-discovered oil revenues. Nimeiri also struck deals over land, industries and commerce with other factions such as the army and Islamist banking institutions to hold onto his power.³⁸ Nimeiri finally attempted to broaden his support-base by including as-Sadiq al-Mahdi and Hassan al-Turabi of the Muslim Brotherhood into his government. It is ultimately the inclusion of the religious ideologue al-Turabi which led to the 1983 decree on Islamisation of the State. Along with this decree, Nimeiri declared that the Addis Ababa agreement and its provisions on Southern independence had been abrogated.³⁹ This ended the tenuous peace enjoyed under the Addis Ababa agreement and ignited the second civil war. In reaction to the outbreak

³³ Peter Schumann 'International Actors in Sudan: The Politics of Implementing Comprehensive Peace' (2010) 18 *Sudan – No Easy Ways Ahead* 103.

³⁴ Shinn (n 32 above) 241, El-Battahni (n 5 above) 11.

³⁵ El-Battahni (n 32 above) 12.

³⁶ Shinn (n 14 above) 254.

³⁷ Branch & Mampilly (n 15 above) 5.

³⁸ De Waal (n 4 above) 16.

³⁹ El-Battahni (n 5 above) 12.

of this war Dr John Garang de Mabior, who had a soldier in *Anyanya*, formed the Sudan People's Liberation Army (SPLA) in 1983.

Nimeiri was removed from power in 1985 by his army chief of staff and eventually replaced by as-Sadiq al-Mahdi in 1986 in what was to be the last general election held in Sudan until 2010. The current President of Sudan, Omar Al-Bashir and his National Congress Party (NCP) removed al-Mahdi in a bloodless *coup* in 1989 and Bashir has been President ever since.

2.4. Discovery of Oil

Just before the outbreak of the second civil war, Chevron Oil discovered significant oil reserves on the border region between North and South Sudan. The abrogation of the Addis agreement caused the second civil war but the discovery of oil significantly escalated the scale and stakes of the conflict. The Sudanese government actively employed a 'depopulation' or scorched earth strategy to clear areas with oil, ordering militia forces to attack civilian populations and destroy crops. The SPLA in turn attacked the oil fields that the Sudanese government were mining, causing devastation to the local communities in the process.⁴⁰

The significant oil revenues facilitated the Sudanese governments' increase in military expenditure. From 1999 to 2002, total government revenue increased from \$799.9 million to \$1.798 billion with the percentage of revenue from oil increasing from 7.64% in 1999 to 44.76 % in 2002. Military spending as percentage in the same time period increased from \$242 to \$312.7 million, a percentage increase of 11.42%.⁴¹ For the period 2004-2006, military spending had increased to \$386 million.⁴² The expenditure focused on providing Khartoum with an aerial advantage, which would drastically reduce the South's chances of winning the war militarily.⁴³

Additionally, a proliferation of small arms led to an increase in tribal and other violence in both South Sudan and parts of North Sudan. It is estimated that up to 2 million small arms are spread amongst civilians and non-state armed groups in the whole of Sudan, including up to 750,000 in South Sudan.⁴⁴ Conflict and gun-violence became normalised as the civil war dragged on and communal violence increased in the environment of lawlessness. These conflicts were supported and aggravated by the government in the North who helped militarise ethnic tensions into large-scale violent conflict.⁴⁵

⁴⁰ Harneit-Sievers (n 16 above) 99.

⁴¹ Human Rights Watch *Sudan, Oil and Human Rights* (2003) 345.

⁴² Memorandum by Dr P Holtom & P Wezeman 'The EU's Conflict Prevention and Peace-keeping role in Sudan' United Kingdom Parliament 'Foreign Affairs, Defence and Development policy' (House of Lords, 2011) 62 available at <http://www.parliament.uk/documents/lords-committees/eu-sub-com-c/Sudan/SudanWrittenEvidence.pdf> (accessed 14 October 2012).

⁴³ Wezeman 'Arms supplies to North and South Sudan' (2010) 18 *Sudan – No Easy Ways Ahead* 62.

⁴⁴ Wezeman (n 43 above) 62.

⁴⁵ Hutchinson (n 6 above), J Rone 'Sudan: Oil & War' (2003) 30 *Review of African Political Economy* 506.

2.5. IGAD Peace Process

From 1993 onwards, motivated by interests in regional stability, the Inter-Governmental Authority on Development (IGAD) began a protracted effort to mediate between the NCP and the SPLA and its political arm the Sudan People's Liberation Movement (SPLM). The process received financial and tactical support from the United Kingdom, The United States, Italy and Norway. In 2002 a ceasefire agreement, known as the Machakos Protocol was implemented, which once more provided the possibility for self-determination in the South. Even though there were sporadic incidents of conflict subsequent to the signing of the Machakos Protocol, the ceasefire generally held and provided an opportunity for broader negotiations on ending the civil war to take place.

On 9 January 2005 the NCP and the SPLA/M signed the CPA after 15 months of negotiation in Kenya under the leadership of General Lazaro Sumbeiywo. Key provisions included an option for secession of South Sudan, as well as power-sharing terms between the North and the South and resource-sharing agreements mostly concerning oil. For a time, a Government of National Unity (GoNU) operated in Sudan with John Garang acting as Vice president. He was, however, killed in a helicopter crash only 21 days later and replaced by SPLM second-in-command Salva Kiir. After a referendum held in January 2011, in which over 99% of South Sudanese voted for secession, South Sudan became an independent state on 9 July 2011 with Salva Kiir (who is from the majority Dinka tribe) as President.

2.6. Remaining sources of conflict

This division between the North and South is considered the most important cause of the second civil war in Sudan. But after decades of fighting, instability and fracturing of alliances and cultural systems, this simple dichotomy does not convey the complexity of the situation.⁴⁶ Decades of civil war have invariably caused massive displacement especially in the contested regions of Darfur, Abyei, Southern Kordofan and Blue Nile and many communities are constantly moving, or settled in areas that are not their homelands.

The second divide (largely caused by the long history of political dominance of the Arab North) is between peripheral communities and those communities close to centres of regional power.⁴⁷ The centralisation of power has meant that the control of resources, the wealth of the country and all political power remains only with a small percentage of largely Arab elite.⁴⁸ Control of resources, political power and loyalty from armed groups or powerful communities is often connected to a

⁴⁶ Branch & Mampilly (n 15 above) 4.

⁴⁷ De Waal (n 4 above) 11.

⁴⁸ Nouwen (n 13 above) 120.

patrimonial system, a ‘political marketplace’ where allegiance is bought by those with political power.⁴⁹

These divisions historically caused a powerful partition in Sudan between those citizens perceived to be at the centre, those near Khartoum, or regional political elites and those who are largely perceived as peripheral citizens – those particularly who are not close to Khartoum, who are not Arab or not part of a political or military network. The general approach, however, was that the Arab political leadership treated non-Arabs in Sudan as lesser citizens. It is clear from the chronic underdevelopment in health, education, infrastructure and administrative institutions in the South that development was not based on statehood but on religious and ethnic affiliation.⁵⁰

2.7. Conclusion

Hope remains that South Sudanese independence will lead to greater stability and peace in the region.⁵¹ But numerous sources of conflict remain. Both Sudanese economies are almost entirely driven by oil but oil resources are geographically located on the border regions between the countries. Fighting between North and South Sudanese military forces continue to cause humanitarian crises and large-scale displacement.

Escalating ethnic tension and outbreaks of violence between different tribes within the diverse countries is of great concern. Ethnic conflict, in South Sudan especially, a country that has historically been neglected and deprived of development, is inextricably linked with competition to gain control over resources such as oil, water and cattle. Ethnic difference is easily manipulated by military generals, local leaders or politicians to fuel division if it affords them greater advantage over limited resources.⁵² This is not a new or unforeseen element of the conflict in the Sudan. Conflict between rival factions of the SPLM divided along ethnicity caused more death in the 1990s than the war against the North.⁵³ Numerous challenges therefore remain in resolving the underlying sources of conflict.

⁴⁹ De Waal (n 3 above) 100, De Waal (n 4 above) 23.

⁵⁰ For statistics on poverty and security indicators in South Sudan see www.reliefweb.int/country/sdn (accessed 21 October 2012).

⁵¹ ‘The background to Sudan's Comprehensive Peace Agreement’ UN Mission in Sudan <http://unmis.unmissions.org/Default.aspx?tabid=515> (accessed 24 June 2012).

⁵² See generally, Hutchinson (n 6 above).

⁵³ Branch & Mampilly (n 15 above) 4.

Chapter 3: Negotiations Leading to the Comprehensive Peace Agreement

Between 1972 and 1989, three major peace talks occurred and one peace agreement was signed on the North-South conflict. From 1992- 2005, six major peace talks and eight major peace agreements were concluded, including the CPA. IGAD orchestrated most of the processes since 1992.⁵⁴ The peace process could only succeed when both sides were losing the war and both sides had strong leadership who could negotiate. These two factors coincided more frequently from 1992 onwards, allowing for more meaningful negotiations.

3.1. Military position and mutually hurting stalemate

Over time, key factors changed which brought the SPLA and NCP to the point of negotiation. The civil war was becoming unwinnable for either side.⁵⁵ The SPLA became more organised and the traditional tactic of ‘divide and conquer’ followed by the North became less effective under the unifying leadership of John Garang in the South. Defeating the SPLA increasingly required decimating the entire Southern population and the region was already largely ungovernable.

Meanwhile, the North had been able since the early 1990’s to upgrade its army using oil revenues. The SPLA could not match the force of aerial bombardments and heavy weaponry. In 1991, the SPLA faced two further setbacks as their main foreign ally, Ethiopian President Mengistu, was overthrown and the SPLA fractured in two: the Dinka-led SPLA under Garang, and the splinter-group the Nuer SPLA-Nasir, under Riek Machar. Thus both sides ended up in a position where neither could gain advantage through military means. This impasse could be considered a mutually hurting stalemate between the parties, dis-incentivising conflict as a means to achieving the desired ends.⁵⁶

The political will to end the war began already in 1989, when Al-Bashir took control of the NCP. Within weeks of assuming power, Al-Bashir attempted to institute a peace deal with the South, establishing a dialogue with Southern leaders to determine a policy for governing the South. But the South was not conciliated enough, still confident in its military strength and unwilling to negotiate.⁵⁷ By 1994, the NCP under Bashir was established enough as a government to seriously start negotiating an end to the war and called for the creation of the IGAD principles.⁵⁸

⁵⁴ ‘Major Sudanese peace processes and agreements’ (2006) 18 *Peace by Pieces: Addressing Sudan’s Conflict* 17.

⁵⁵ C. H. Ofuho ‘Negotiating Peace: Restarting a moribund process’ 2006) 18 *Peace by Pieces: Addressing Sudan’s Conflict* 20.

⁵⁶ Zartman (n 7 above) 8, Antwi-Boateng & O’Mahony (n 14 above) 134.

⁵⁷ M Hussein ‘Negotiating Peace: The Road to Naivasha’ (2006) 18 *Peace by Pieces: Addressing Sudan’s Conflict* 18.

⁵⁸ C. H. Ofuho (n 55 above) 20

The discovery of oil also altered the incentives of the conflict drastically. The long-term infrastructure investments required to properly exploit the resource could only be attained if there were relative levels of security and stability. Parties could therefore gain more financially through peace than war.⁵⁹ The revenue potential from oil could also allow South Sudan to undergo a drastic socio-economic transformation within six years, making independent government a realistic demand during negotiations.⁶⁰

An enormous test for the sustainability of the negotiations came in September 2002, when the SPLA attacked the town of Torit, causing the Government of Sudan (GoS) to pull out of the Machakos Protocol negotiations. This was a potential breaking point but fortunately the attack on Torit came at a time when the faith that the mediation was leading to a meaningful agreement was stronger than the desire to seek military advantage once more.⁶¹ This was a profound moment in the conflict and signifies the moment where parties had sufficient reason for negotiation, trust in each other and willingness to concede on the terms to prioritise committing to a peaceful resolution.

3.2. IGAD

The Inter-Governmental Authority on Drought and Development (the precursor to IGAD) was first established due to pressure from international agencies but extended its mandate to issues of peace in the region in subsequent years.⁶² To this end, a Peace Committee consisting of the heads of state of Ethiopia, Eritrea, Uganda, and Kenya (with President arap Moi chairing) was created on 7 September 1993 at a summit in Addis Ababa. Under the Peace Committee, IGAD drew up the IGAD Declaration of Principles which became the conceptual precursor to the CPA.⁶³

IGAD had an advantage over other actors: being composed of regional powers, it had local understanding and clout which made them a key player. Having a strong relationship with neighbour countries is crucial to most states politically and economically. Both the NCP and SPLA/M had alliances within the organisation which they believed could be used to their advantage.⁶⁴

It was also fortunate that Kenya formed part of IGAD. Within IGAD, Kenya was the only state that was reasonably neutral during the second Sudanese civil war. Ethiopia had at various times either supported the SPLA or Khartoum, Eritrea supported Khartoum, and Uganda was seen as allied with

⁵⁹ Wennmann (n 18 above) 8.

⁶⁰ De Waal (n 4 above) 13.

⁶¹ 'Sudan's Best Chance for Peace: How Not to Lose It' *Africa Report 51* International Crisis Group (September 2002) 2.

⁶² Young (n 12 above) 9.

⁶³ IGAD Peace Initiative Declaration of Principles, Nairobi, 20th July, 1994

http://www.gosmission.org/goss/images/agreements/igad_DOP.pdf (accessed 25 October 2012).

⁶⁴ M Hussein (n 57 above) 19.

the SPLA.⁶⁵ Kenya could, however, facilitate and host negotiations within the region whilst being sufficiently removed from the parties. Kenya also had historically strong diplomatic ties with Britain and America, thereby providing a bridge between international observers and the Sudanese role-players.⁶⁶

3.3. International Actors

Two factors especially determine the role foreign policy in Sudan: the US-led global war on terror and an interest in oil. Khartoum presented itself as an ally to the US in tracking down Al-Qaeda suspects (even though it had at one point hosted Osama Bin Laden). At the same time, the sanctions regime imposed by the US on Khartoum for human rights violations became increasingly less effective as the oil boom in the country allowed the government to form trade relationships and strategic partnerships with Asian states which bought oil from them.⁶⁷

The US has the strongest agenda in Sudan and South Sudan but its political motives are also the most complicated. Especially after the attacks of September 11, 2001, the US has maintained the difficult diplomatic position of both accusing Khartoum of genocide in Darfur and seeking their co-operation to find terror suspects.⁶⁸ At times, therefore, the US would engage Khartoum as either a legitimate government or as an oppressive regime. During the CPA negotiations, the Bush administration chose to treat them as legitimate, thereby facilitating cooperation.

The European Unions' role remains largely humanitarian rather than political as they seek to foster a genuine long-term partnership supporting African peacekeeping whilst collaborating on a political level between the AU and the UN.⁶⁹ This strategy also includes specific EU countries taking responsibility specific issues thereby providing stable funding. This was the approach in the present mediation and was a very significant contribution to supporting the process.⁷⁰

Britain, with its long history of involvement in the colonial administration, feels perhaps fittingly responsible to play a role in creating peace in the region. But the country is also opening trade

⁶⁵ Young (n 12 above) 10.

⁶⁶ Young (n 12 above) 12.

⁶⁷ Schumann (n 33 above) 105.

⁶⁸ Schumann (n 33 above) 109.

⁶⁹ 'Mediating Peace in Africa' (n 2 above) 13-14.

⁷⁰ 'National Sudan Multi-Donor Trust Fund (MDTF-N) Factsheet'

http://siteresources.worldbank.org/INTAFRICA/Resources/MDTF-N_factsheet.pdf (accessed 25 October 2012), 'Aid in transition: South Sudan' 4 <http://www.globalhumanitarianassistance.org/wp-content/uploads/2011/07/gha-aid-in-transition-South-Sudan.pdf> (accessed 25 October 2012).

relations in Sudan and there is a strong interest in competing with China in oil investments in the region.⁷¹

3.5. General Lazaro Sumbeiywo

General Lazaro Sumbeiywo, the chief mediator for the CPA negotiations could be described as the right man at the right time. As a Kenyan, General Sumbeiywo was able to successfully position himself with the Sudanese delegates, IGAD and the international actors to leverage their specific capabilities when needed without being at the behest of any of them. This brought balance to the CPA negotiations and ensured the parties had control of the negotiation process.

As a retired Chief of the Kenyan army, his outlook was military rather than a political which endeared him to the warring parties and is reflected in his pragmatic approach to obtaining solutions. The crucial characteristics that he attributes himself as having include being retired and therefore able to spend as much uninterrupted time as needed on negotiations, getting to know the representatives of the parties and touring Sudan to speak to ordinary citizens and various stakeholders.⁷² This allowed for tenacity in his negotiation style to keep parties at negotiations until a conclusion was reached, rather than having to postpone and allowing other events to interfere.

He was also perceived by parties as impartial, a crucial feature of a good mediator for gaining trust where parties cannot trust each other.⁷³ His ability to call in experts, diplomats or powerful politicians when it was needed provided depth and insight in to the process. Ultimately, it was his ability to allow the parties to take ownership of the substantive issues whilst ensuring progress on the mediation proceedings which made him such an effective mediator.⁷⁴

General Sumbeiywo's first role was to negotiate the Machakos Protocol which marked the point at which a broader peace process became a real possibility in Sudan. General Sumbeiywo was responsible for crystallising the main points of contention during these negotiations as the inability to balance self-determination and separation of religion from state.⁷⁵ Once the ceasefire agreement was reached by finding an acceptable compromise on these contentious issues, the ability to negotiate a broader peace became not only inevitable (due to the mutually hurting stalemate) but also conceptually viable.

⁷¹ 'UK opens up to Sudanese oil business, just as the country may be headed back to war in 2011' <http://blogs.lse.ac.uk/politicsandpolicy/2010/10/12/uk-opens-up-to-sudanese-oil-business-just-as-the-country-may-be-headed-back-to-war-in-2011/> (accessed 25 October 2012).

⁷² 'The mediator's perspective' (n 8 above) 25.

⁷³ L. Brahimi & S. Ahmed 'In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation' 2008 *Centre on International Cooperation New York University* 7.

⁷⁴ 'Reflecting on the IGAD peace process' (n 9 above) 31.

⁷⁵ 'The mediator's perspective' (n 8 above) 23.

The relationship of the US to the process was one which General Sumbeiywo actively managed. The role of the most powerful state in negotiations could have led to interference in the process for their domestic agenda, leading to ‘deadline diplomacy’. General Sumbeiywo succeeded in resisting pressure to rush negotiations based on timelines in Washington while at the same time leveraging the pressure and influence certain American politicians had in the process such as then-Secretary of State Colin Powell as well as Senator John Danforth when negotiations stalled.⁷⁶

Further, General Sumbeiywo was able to balance the relationship of the international actors against each other. Upon the signing of the Machakos protocol, the US initially refused to provide support to it because Washington had not been consulted before it was signed. General Sumbeiywo, however, ignored their rejection and due to the fact that the other foreign states supported the agreement was able to bring the US to support the resolution.⁷⁷

3.5. Dr John Garang

John Garang was a visionary and strong leader for Southern Sudanese and it is generally accepted that he was central to the success of the peace process in terms of his vision and temperament as well as his relationship with the chief NCP negotiator, Sudanese Vice President Ali Osman.⁷⁸ However, his role needs to be placed in context and considered in greater detail.

The most difficult negotiations that promoted the viability of a broader peace process were the Machakos Protocol negotiations, which preceded the CPA negotiations. The Machakos Protocol was signed by General (now President) Salva Kiir for the SPLM/A and Dr Ghazi Salahdien for GoS. The Machakos Protocol talks created the trust in the process which enabled the CPA negotiations to take place.

The unifying, singular voice which Garang brought to the SPLA/M negotiations is another strength which needs to be further scrutinised. Though a unified SPLA/M certainly improved their negotiating position, it was often the case that the opinion of Garang, which counted in the process, was not the view held by the rest of the SPLA/M and not the view held democratically in Southern Sudan. The clearest example of this is of Garang’s vision of a ‘New Sudan’ which sought to make state unity attractive. Basing negotiations and spending six years on preparing a Government of National Unity is difficult to understand unless it provided some unknown advantage to the South Sudanese during negotiation. More likely, it was merely because it was the incontestable will of John Garang.⁷⁹ But, it was not reflective of the general will in the country which was strongly advocating independence.

⁷⁶ The mediator’s perspective’ (n 8 above) 22.

⁷⁷ Young (n 12 above) 14.

⁷⁸ The mediator’s perspective’ (n 8 above) 25.

⁷⁹ Young (n 11 above) 539.

Garang is widely respected for his ability to court international actors, engage Northern leadership and unify the South. But he was harshly criticised by high-ranking leadership within the SPLA for many of the key failures that undermine peace and security at present. Specifically, his top commanders criticised him severely a year before his death for being an autocratic leader who was blind to corruption amongst his allies and guilty of favouring certain ethnic groups.⁸⁰ Corruption, ethnic tension and the partisan nature of government are precisely the issues that South Sudanese raise as their greatest concerns in the country in the years since signing the CPA.⁸¹

3.6. Exclusion of key parties and principles

The omission of principles and parties from the negotiations and the CPA is a serious weakness. The negotiation process was allowed to continue exclusively between the NCP and SPLA, and sometimes even between Taha and Garang with the tacit approval of the international parties. This allowed them to use the negotiations to consolidate their power bases and exclude opposition powers.⁸² The USA, for instance, was willing to have only the NCP and SPLA present for negotiations because they somehow believed that unrepresentativeness could be corrected during implementation.⁸³ The strength of individuals within the leadership- especially Garang in the South- was bargained upon to ensure that, even where terms were weak, the creation of institutions under strong leadership would result in implementation of a sustainable peace process.⁸⁴ The hope was also that Garang could effectively bargain with the NCP that the actual outcomes would not be detrimental as he had done before. These were irresponsible and overly expedient rationalisations by the external parties which has damaged the sustainability of peace.

The NCP and SPLA both had no interest in raising certain issues however vital to the long-term peace and functioning of both societies. It was therefore up to IGAD or the international contingent to press for these. Their failure to do so has been decried by numerous authors and institutions.⁸⁵

Critical to the acceptance of any peace terms for the NCP was obtaining a guarantee that Sharia law would still be practiced in the North. The NCP came into power through a *coup* and held only 7% of the vote at the last democratic elections in 1986. Their interpretation of Sharia law is unrepresentative

⁸⁰ Young (n 11 above) 541.

⁸¹ International Crisis Group 'Politics and Transition in the New South Sudan' Africa Report 172 (April 2011).

⁸² Schuman (n 15 above) 113.

⁸³ E Thomas 'Against the Gathering Storm: Securing Sudan's Comprehensive Peace Agreement' 2009 *Chatham House Royal Institute of International Affairs* 14.

⁸⁴ Thomas (n 83 above) 16.

⁸⁵ Branch & Mampilly (n 15 above), Nouwen (n 13 above), Young (n 10 above), 'Sudan Comprehensive Peace Agreement: The Long Road Ahead' *Africa Report 106* International Crisis Group (March 2006).

of the population. The continuance of the Islamic state as envisaged by the NCP is likely to remain problematic for freedom and good governance in Sudan in the long term.⁸⁶

But it is not only the NCP who was guilty of exclusionary terms. The most important opposition to the SPLM in South Sudan is the South Sudan Defence Forces (SSDF). Garang was not interested in providing the opposition-SSDF a part in negotiations during the CPA and managed to convince international role-players to support their exclusion.⁸⁷ The CPA provides for the creation of two independent national armies under which these groups could fall, as well as the Joint Integrated Units (JIU's). The SSDF were willing to accede to the CPA terms, so long as Southern independence was still an option and proposed that the forces be integrated either into the JIU's or the Government of South Sudan (GoSS) army as provided for in the CPA. Garang unilaterally rejected both options and would only accept SSDF integration into the SLPA.⁸⁸

The failure to regularise the presence of the SSDF in some of the most volatile states led the region to the brink of a large-scale security crisis. Salva Kiir, who has a history of successfully settling communal conflict, has subsequently been able to negotiate and sign the Juba Declaration on Unity and Integration agreement with the SSDF, uniting them with the SPLA, but also including provisions ensuring their equal status.⁸⁹ As will be addressed in subsequent chapters, security in the border regions is one of the greatest threats to peace between the North and the South. Garang's decision to alienate the largest armed opposition in the South and excluding them from the peace process created one of the most dangerous threats to stability yet.⁹⁰

Other exclusions crucial to groups living in the South but not considered in the agreement include the omission of provisions relating to water and very weak provisions on land allocation. This is a very important issue especially because, after years of displacement ownership, of land is likely to be contested between returning and settled communities. But because it is not one of the incentives for fighting (or peace) for the leadership, it was not addressed in the CPA.⁹¹ Civil society was also only informed after concluding an agreement. By the chief negotiators' own admission, it remains unclear why other parties were not included during the negotiations.⁹² This weak answer for his passivity in these exclusions suggests an overly deferential attitude of the mediator to the NCP and SPLA/M.

Another blatant omission reflecting the interest of the negotiating parties but not society is the silence on accountability for war crimes and human rights abuses. The CPA contains only an opaque

⁸⁶ Schuman (n 15 above) 113.

⁸⁷ Young (n 10 above) 101.

⁸⁸ Young (n 11 above) 543.

⁸⁹ Juba Declaration on Unity and Integration between the Sudan People's Liberation Army (SPLA) And the South Sudan Defence Forces (SSDF) January 8, 2006' <http://www.sudantribune.com/Juba-Declaration-on-Unity-and.13483> (accessed on 18 September 2012).

⁹⁰ De Waal (n 4 above).

⁹¹ Antwi-Boateng & O'Mahony (n 14 above) 147.

⁹² The mediator's perspective' (n 8 above) 27.

reference to a national program of reconciliation worked out by the GoNU.⁹³ Once the euphoria of separation wears off, a tangible transitional justice program will become more important. Communities who live with the atrocities of war will not simply forget what has been done to them, often at the hands of the SPLA.⁹⁴ Furthermore, impunity for war crimes is likely to make leaders in the army more likely to continue committing such crimes in areas that lack security. There is already evidence of this in South Kordofan and Blue Nile.⁹⁵

The tension between the GoNU and the right to an independent Southern state is another provision which was unrepresentative. For many years, Southerners did not believe that secession was a viable possibility as there was virtually no central administration capable of becoming a government. The secession of Eritrea from Ethiopia and the advent of the SPLM changed this perception: increasingly in the 1990's South Sudanese began to consider separate statehood as a possibility. A crucial turning point in the Machakos Protocol negotiation was Khartoum's willingness to recognise the Southern right to secession.⁹⁶ Yet, John Garang, leader of the South Sudanese had never advocated for an independent South. The results of the referendum on secession which showed a 98.83% vote in favour of secession indicates the importance of the issue to South Sudanese.⁹⁷ But, as discussed in the above section, chief representative for the SPLM Garang pushed his own vision for a unified Sudan and did not deal honestly during the CPA negotiations with secession as the reality that it was. Therefore, agreements which could have provided for adequate measures to address secession were not prioritised.

3.7. Conclusion

Certain factors were crucial to the successful negotiations leading to the CPA. Both sides realised that there would be no winning the war outright. General Sumbeiywo as chief mediator was impartial, practical and patient. The negotiations had sufficient time: donors of the process were committed to a successful and sustainable conclusion over an expedient one. Because there was a certain measure of trust between the NCP and SPLM representatives Garang and Taha, and because the individuals could legitimately represent their support base, a wide margin of settlement could be attained.

It is, however, also this wide margin which subsequently has made implementation difficult: just because these key individuals could envision making good such promises does not necessarily mean that everyone else in the political machinery could adhere to such terms. This is especially true

⁹³ Antwi-Boateng & O'Mahony (n 14 above) 169.

⁹⁴ Branch & Mampilly (n 15 above) 5.

⁹⁵ 'Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011' Thirteenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan, August 2011.

⁹⁶ Thomas (n 83 above) 13.

⁹⁷ 'Sudan votes to secede' 07 Feb 2011 <http://www.aljazeera.com/news/africa/2011/02/20112714264792774.html> (accessed 17 September 2012).

because, since the signing of the CPA, Garang has died and Osman no longer holds the same influence in the NCP. The implementation process therefore relies on persons who do not have the same insight or trust in the other side, requiring perpetual third party intervention as well as large scope for misunderstandings.⁹⁸ The exclusions created by the convenience of having only the SPLM and NCP present is one of the most critical failures of the entire CPA process which seriously jeopardises sustainable peace.

⁹⁸ De Waal (n 4 above) 14.

Chapter 4: The Comprehensive Peace Agreement

The CPA is comprised of six peace agreements signed between 2002 and 2005, at various negotiation processes, by different representatives and actors.⁹⁹ The agreements establish a ceasefire, address power-sharing in government, divides of oil resources and contains other wealth-sharing provisions, provides for conflict resolution and governance in the three contested areas (Abyei, Southern Kordofan and Blue Nile State) and restructures and role of the military for peacetime.

4.1. Machakos Protocol

The Machakos Protocol was the first peace agreement signed. Part A consists of principles underlying the peace process as a whole. These include the prioritisation of unity over secession, the Southern right of secession based on a referendum, the importance of religion but the right of persons to be governed by their own beliefs. The principles also support creating a democratic system of governance and lasting peace through securing social equality and rule of law.

The Machakos Principles are very similar to the IGAD the Declaration of Principles (DOP) drafted in 1994.¹⁰⁰ The DOP was the conceptual progenitor of the CPA and recognised the superiority of a negotiated settlement over a military solution,¹⁰¹ the right of Southern independence through referendum but that unity should be prioritised by all parties;¹⁰² full recognition of all cultural and religious identities in the Sudan, political equality for all, the creation of a secular state and accommodating for religious law in family and customary matters.¹⁰³ It further recognised the need for wealth-sharing provisions, protection of human rights and independence of the judiciary¹⁰⁴ and provided for an interim arrangement to implement these principles and negotiate a ceasefire.¹⁰⁵

Comparing the Machakos Principles and the IGAD DOP shows how for many years external parties have understood what sources of contention needed to be balanced against each other to end the conflict. But it is not only the principles, but also the military position and negotiations that matter, coupled with clear provisions on how to implement such principles that could ensure peace.

Part B titled ‘Transition Process’ sets out the six year interim period before the referendum on secession. It envisions creating institutions for joint administration of the country and implementation

⁹⁹ The Machakos Protocol, The Agreement on Power Sharing, the Agreement on Wealth Sharing, The Resolution of the Abyei Conflict, The Resolution of the Conflict in Southern Kordofan and Blue Nile States and The Agreement on Security Arrangements.

¹⁰⁰ ‘IGAD Declaration of Principles’ presented to the GoS, the SPLM/A and the SPLM/SPLA-United on 20 July 1994.

¹⁰¹ 1.1-1.2.

¹⁰² 2- 3.

¹⁰³ 3.1., 3.2. & 3.4.

¹⁰⁴ 3.5-3.7.

¹⁰⁵ 5 & 6.

of the ceasefire. It creates the Assessment and Evaluation Commission (AEC) tasked with monitoring the implementation of the agreement, consisting of members from the SPLM, NCP, IGAD member states, observer states and any other ‘countries or regional or international bodies’ the parties deem appropriate. Critically, this component concludes with a term stating that ‘parties shall refrain from any form of unilateral revocation or abrogation of the Peace Agreement’.¹⁰⁶

This is an important lesson learnt from the previous negotiations where Al-Turabi, after his successful *coup* of the Khartoum government revoked the Addis Ababa peace agreement, starting the second civil war. This clause guards against such an action legally but enforcement would be problematic. The inclusion of other parties to monitor the implementation of the ceasefire is a positive step for sustaining implementation on these terms as the parties have to demonstrate efforts to independent organisations, domestically, regionally and internationally.

The next section, ‘State and Religion’ balances the Sudanese interest in maintaining an Islamic state with the South’s right to be free from religious laws. The agreement recognises religious freedom for all citizens, but stipulates that while religion may govern private and family matters, it shall not be relevant to public offices. It explicitly safeguards against discrimination on the basis of religion and states that the above provisions shall be incorporated into the constitution. By promoting religious freedom whilst safeguarding against religious discrimination, this section does well to balance freedom and protection of minorities thereby defusing a major source of conflict.

Part C, ‘Structures of Government’ prescribes that a National Constitution of Sudan shall be the supreme law of the country, shall incorporate the terms of the peace agreement and cannot be amended or repealed except through proper legal process requiring majorities so that the ‘provisions of the Peace Agreement are protected.’¹⁰⁷ This constitutionalises and democratises the agreement, taking the terms out of the exclusive control of the NCP and SPLA who signed the document and subjects it to democratic control, at least in law. Though an important principle, without strong institutions and few effective non-military mechanisms, should either the NCP or SPLA dishonour any terms it will be difficult to effectively safeguard these rights and therefore does not go far enough to guarantee peace or security for citizens.

Part D, ‘The right to self-determination for the people of the South’ confirms the right to Southern secession determined through a referendum. It stipulates that in the six year interim period attempts to ‘make unity attractive’ shall be made. Once again this section prohibits a unilateral revocation or abrogation of its terms by either party.

¹⁰⁶ 2.6. Chapter I: The Machakos Protocol, signed at Machakos, Kenya, 20 July 2002.

¹⁰⁷ 3.1.1.-3.1.5

4.2. Power-sharing agreement

The power-sharing agreement builds on the Machakos Protocol and reaffirms the principles the parties settled therein relating to governance of Sudan.¹⁰⁸ The Principles of Administration sub-section states that the GoNU shall prioritise government decentralisation with more power in local administration,¹⁰⁹ it upholds the supremacy of the National Constitution,¹¹⁰ and creates the autonomous Government of Southern Sudan to operate in the Southern States.¹¹¹ Government decentralisation and judicial controls are progressive steps to sustainable peace in Sudan as conflict in the Sudan is very often attributed to the centralisation of power in Khartoum and the marginalisation of communities further away. Placing checks and balances on the power of Khartoum is essential to lasting peace.

The agreement specifies the duty of all forms of government in Sudan to comply with international human rights treaties and urges Sudan to accede to the international treaties they are not part of.¹¹² It guarantees the right to life, personal liberty, freedom from slavery and torture, the right to a fair trial, privacy, freedom of thought, conscience and religion, freedom of expression, assembly and association, family and marriage, the right to vote, equality before the law, freedom from discrimination, freedom of movement, children's rights and equality between men and women (with no derogation permitted and no 'claw back' provision on religious exceptions).¹¹³ The section envisages a program for national reconciliation to be worked out by the GoNU and undertaking elections within 3 years of the agreement, requiring representation from both the North and South. Only candidates who are willing to respect and implement the Peace Agreement are allowed to run in the election.¹¹⁴

The recognition of international human rights standards and entrenching a kind of bill of rights in the agreement is laudable, though weak institutions still undermine enforcement capacity. Far more distressing is the program for national reconciliation: this is the only provision which addresses transitional justice in the CPA. It is vague, not time-specific and does not make any substantive requirements. Failure to address transitional justice undermines the viability of peace as those aggrieved by the war do not receive justice or closure.

Part II addresses Institutions at the National level which include the Legislature, Executive, Judiciary and 'the Institutions and Commissions specified in this Agreement and the Interim National Constitution' (INC).¹¹⁵ The agreement sets out the percentages of representation pending

¹⁰⁸ 1.1. - 1.3. Chapter II: Power Sharing, signed at Naivasha, Kenya, 26 May, 2004.

¹⁰⁹ 1.5.1.1.

¹¹⁰ 1.5.1.2.

¹¹¹ 1.5.1.3-4.

¹¹² 1.6.1.

¹¹³ 1.6.1.2.- 1.6.1.16.

¹¹⁴ 1.7.-1.8.

¹¹⁵ 2.1.

parliamentary elections as follows: 52% to the NCP, 28% to the SPLM; ‘other Northern political forces’ 14% and ‘other Southern political forces’ 6%.¹¹⁶

In terms of the National Executive, the agreement provides for one president and two vice presidents.¹¹⁷ In the run-up to elections, the President shall be the incumbent ‘President and commander of the Sudan Armed Forces (SAF)’ or his successor and the First Vice President shall be the incumbent leader of the SPLM or his successor. He shall simultaneously be the president of the Government of South Sudan (GoSS) and commander-in-chief of the SPLA.¹¹⁸ The other Vice President shall be appointed by the President and shall be from the North.¹¹⁹ Percentages are also pre-determined for the National Executive with seats allocated according to the following percentages pending elections: 52% NCP, 28% SPLM, other Northern political forces 14% and other Southern political forces 6%.¹²⁰

These provisions show the dominance of the NCP and SPLA/M in the negotiations. For at least three years pending elections, both parties gave themselves control of the legislature and executive of the country with only tiny percentages allocated to other political parties. Not only does this signify an entrenched three years of undemocratic rule, but also allows the NCP and SPLM to unfairly entrench themselves in the political arena. These provisions seriously undermine the chance of democracy in Sudan and South Sudan from the start. It represents a serious long-term cost to the institutions of the country for the short-term appeasement of the SPLA/M and NCP.

The GoNU is described within the Power Sharing Agreement as the organ responsible for making unity attractive.¹²¹ It had a wide range of powers and responsibilities including implementation of national policy,¹²² determining the role of the UN, other international organisations and non-governmental organisations (NGO’s) in the state¹²³ and ensuring that the national civil service is representative.¹²⁴

The Power Sharing Agreement also sets up numerous institutions and commissions including the National Security Council and Service (NSCS),¹²⁵ the National Constitutional Review Commission (NCRC), a Human Rights Commission and A Fiscal and Financial Allocation and Monitoring Commission (FFMAC).¹²⁶

¹¹⁶ 2.2.5.

¹¹⁷ 2.3.2.

¹¹⁸ 2.3.5.

¹¹⁹ 2.3.7.

¹²⁰ 2.5.5.

¹²¹ 2.5.1.

¹²² 2.5.6.

¹²³ 2.5.8.

¹²⁴ 2.6.1.

¹²⁵ 2.7.1-2.

¹²⁶ 2.10.

The agreement creates a Constitutional Court tasked with adjudicating under the INC. It gives standing to individuals, juridical entities and government as well as criminal jurisdiction over the President and two Vice Presidents, the speakers of the National Assembly and justices of the Supreme Courts.¹²⁷ The National Supreme Court in turn has jurisdiction over the Constitutional Court justices.¹²⁸ Judges may only be removed for serious misconduct or incompetence and then only with the approval of the National Judicial Services Commission.¹²⁹

The section which follows sets out the procedure for constitutionalising the Peace Agreement. The National Constitutional Review Commission consisting of the SPLM, NCP and ‘representatives of such other political forces and civil society as agreed *by the parties*’ (own emphasis) are responsible.¹³⁰ It is problematic to have the parties determine who is part of this consultation process as they are likely to exclude opposition organisations and prefer politically sympathetic parties. Protecting or entrenching a broader consultation process in this case would have been preferable to provide greater legitimacy and an increased likelihood of sustainable peace.

Part III outlines the Government of South Sudan (GoSS) and determines that the government is responsible for all states that constitute Southern Sudan according to the border at 01/01/1956.¹³¹ Once more, the legislature and executive’s seats are given as a predetermined percentage, namely: 75% for the SPLM, 15% for the NCP and 15% for ‘other Southern political forces’ pending elections.¹³²

Part IV describes the institutions at the State level: the legislature and executive on a state level is predetermined (pending elections) by the Power Sharing Agreement, with the NCP holding 70% of seats in Northern states and the SPLM 70% in Southern states. The other 30% is allocated either 10% to NCP or SPLM depending on whether they hold the 70% or not and 20% to be filled by other Northern or Southern political forces depending on whether it is a Northern or Southern state.¹³³

4.3. Wealth Sharing Agreement

In the preamble, the agreement recognises the connection between oil and the war by acknowledging the need for peace, security and development in the South, especially in the three contested areas. Interestingly, the preamble and agreement focuses on the importance of adhering to international best practice and standards on resource sharing, suggesting more international input to this agreement. The

¹²⁷ 2.11.3.2.

¹²⁸ 2.11.4.

¹²⁹ 2.11.4.7.

¹³⁰ 2.1.4.

¹³¹ 3.1-3.4.

¹³² 3.5.1. and 3.6.4.

¹³³ 4.4.2. and 4.5.1.

agreement seeks to establish who is responsible for the *management* of resources rather than determine *ownership* of land and subterranean resources.¹³⁴

The agreement firstly establishes the National Land Commission, responsible for all matters relating to the allocation, policies and dispute resolution for ownership of land.¹³⁵ A Southern Sudan Land Commission is set up with the purpose of arbitrating disputes, dealing with land claims, making recommendations to government on land reform policies and to conduct studies on land issues.¹³⁶ Disputes between the National Land Commission and Southern Sudan Land Commission are to be finally resolved by the Constitutional Court.¹³⁷

Compared to the considerable detail given to division of oil resources it is clear that land was not a priority. This poses serious difficulties for long-term security in many areas especially as the displacement caused by the civil war had meant that many communities fled their land. With the ceasefire, communities have returned to find others living on ‘their’ land. Such situations may easily aggravate communal violence and it would have been preferable if the agreement spent more time on presenting solutions to such foreseeable challenges.

The provisions on oil-sharing set out a broad framework of principles for the management of the resource, including protecting the national and states’ interests as well as considering the best interests of the local population and environment. Priority should be given to creating policies favourable for foreign direct investment and ensuring macroeconomic stability. Respect and compensation for local communities and their right to participate in the contract negotiation process is affirmed.¹³⁸

The agreement creates the National Petroleum Commission jointly governed by representatives from the North, South and oil-producing state to monitor any new oil-contracts that are signed.¹³⁹ Existing oil contracts remain unchanged except that the SPLM may appoint special representatives to ‘have access’ to oil contracts concluded before the CPA. It stipulates that persons who had their rights violated due to oil contracts have a compensation claim.¹⁴⁰ The agreement divides oil resources as follows: 2% of oil revenue goes to the oil-producing state first; subsequently 50% of revenue goes to the GoSS and 50% to the ‘National Government and States in Northern Sudan’.¹⁴¹

Non-oil revenue is addressed in less detail in the Wealth Sharing Agreement. A list of tax sources for the National and South Sudan government is provided.¹⁴² A Fiscal and Financial Allocation and

¹³⁴ 2.1.-2.2. Chapter III: Wealth Sharing, signed at Naivasha, Kenya, 7 January 2004.

¹³⁵ 2.6.6.

¹³⁶ 2.7.

¹³⁷ 2.9.

¹³⁸ 3.1.1.

¹³⁹ 3.2.-3.5.

¹⁴⁰ 4.1.-4.5.

¹⁴¹ 5.5.-5.6.

¹⁴² 6.1.-6.3.

Monitoring Commission (FFMAC) is set up to ensure accountability and transparency for revenue collected.¹⁴³

Reconstruction funds are established including the Southern Sudan Reconstruction and Development Fund (SSRDF) to address matters such as rectifying displacement and assisting in developing infrastructure.¹⁴⁴ The National Reconstruction and Redevelopment Fund (NRDF) is created with a similar aim, namely to assist in reconstructing and developing areas particularly devastated by the war.¹⁴⁵

4.4. The Abyei Protocol

The principles of the protocol describe Abyei as a territory ‘defined by the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905’ but that the ‘Misseryia and other nomadic people maintain their traditional rights to graze cattle and move across the territory of Abyei’.¹⁴⁶

Abyei is placed under ‘special administrative status’ for the interim period, its people granted citizenship of two provinces and administered by a local elected council. Oil revenues from Abyei are split: 50% to the National Government, 42% to GoSS, 2% each to the two local provinces Abyei is located in and 2% each to the Ngok Dinka and the Misseryia people.¹⁴⁷

Abyei is granted a referendum, to be conducted at the same time as the referendum for Southern Sudan. Regardless of the outcome of the Southern referendum, Abyei could then choose between: retaining special administrative status in the North or for Abyei to become part of the Southern province of Bahr el Ghazal. In all other matters, it maintains the 1956 border line.¹⁴⁸

Administration falls to the Executive Council which controls the finances and reconstruction and development of the area.¹⁴⁹ The Abyei Area Council is set up to encourage public participation in the area, has oversight of some budget and reconstruction efforts and is responsible for promoting reconciliation.¹⁵⁰

The determination of the geographic boundaries of Abyei falls to the Abyei Boundaries Commission (ABC) who must report its findings to the Presidency as soon as possible.¹⁵¹ An Abyei Area Security

¹⁴³ 8.1.-8.2.

¹⁴⁴ 15.1.

¹⁴⁵ 15.4.4.

¹⁴⁶ 1.1.2-1.1.3. Chapter IV: The Resolution of the Abyei Conflict signed at Naivasha, Kenya on 26th May, 2004.

¹⁴⁷ 1.2.1-1.2.4

¹⁴⁸ 1.3.-1.4.

¹⁴⁹ 2.1-3.5.

¹⁵⁰ 4.1-4.3.

¹⁵¹ 5.1-5.3.

Committee sets up a joint battalion of NCP and SPLA forces in the region, with international monitors deployed to observe implementation.¹⁵²

The structure of the Abyei agreement is actually commendable: it addresses all the sources of conflict, gives the SPLA/M and NCP joint but equal responsibility monitored by external parties and provides relatively simple mechanisms to address disputes. As the next chapter will show, however, the Abyei agreement has been completely dishonoured by both parties and therefore the region remains a serious threat to peace.

4.5. The Resolution of the Conflict in Southern Kordofan and Blue Nile States

Though dealing with similar issues to Abyei, this agreement is longer and more detailed. The first provision states that the resolution of conflict in the area rests upon guaranteeing the human rights and fundamental freedoms of all individuals as envisaged under the INC, protecting cultural diversity and ‘development of human resources and infrastructure’ as the most important goal.¹⁵³

The agreement encourages popular consultation of citizens in these areas to gauge their views on the agreement reached. A commission is set up to monitor implementation and the finality of the agreement rests upon acceptance of the agreement under the local legislature.¹⁵⁴

The rest of the agreement sets out the structure for the state legislature, executive and judiciary. Pre-election allocation for seats to the Legislature and Executive are 55% NCP and 45% SPLM.¹⁵⁵ The Governor of the state is granted many powers of appointment in the executive, who in turn has control over security and military operations in the state.¹⁵⁶ The State Security Committee for instance is chaired by the Governor.¹⁵⁷ It also contains perplexing provisions such as the following: ‘the Governor of the State may demand the transfer of the Director of the National Security Branch from the State’.¹⁵⁸

It is difficult, from a peace perspective, to see what granting unilateral powers to the Governor achieves. There is no analogous provision in the Abyei agreement. As will be seen in the following chapter, the governorship in South Kordofan has proven disastrous for the citizens of that state, having finally been won in a highly contested vote by Ahmed Haroun, wanted by the ICC for orchestrating

¹⁵² 7.1-7.4.

¹⁵³ 1.1-1.3. Chapter V: The Resolution of the Conflict in Southern Kordofan and Blue Nile States, signed at Naivasha, Kenya on 26th May, 2004.

¹⁵⁴ 3.1.-3.6.

¹⁵⁵ 11.1.1.

¹⁵⁶ 5.3-5.5.

¹⁵⁷ 5.6.

¹⁵⁸ 5.7.

crimes against humanity in Darfur. Additionally, SAF troops are singled out as permitted in the territory, in numbers determined by the Presidency.¹⁵⁹

Not only do these provisions fail to safeguard peace, but by granting excessive authority to the governor, emphasising the powers of police and military and singling out an SAF presence, it actively promoted a heightened chance of military conflict in the region.

4.6. Chapter VI: Security Arrangements

This agreement addresses ceasefire implementation, demilitarisation and organisation of the armies post conflict. The ‘Status of the Two Armed Forces’ chapter stipulates that the SAF and SPLA forces shall remain separate in the interim period. Both parties agree to proportionately downsize their armed forces and that they shall have no mandate to maintain internal law and order following the ceasefire other than for state emergencies.¹⁶⁰

The agreement reinforces the Machakos Protocol ceasefire by calling for forces to be ‘disengaged, separated, encamped and redeployed’: the SAF forces north of the 1956 border and the SPLA south of the 1956 border.¹⁶¹ Southern Sudanese that formed part of SAF forces should be integrated into the SPLA/GoSS and both parties commit to internationally assisted DDR programmes.¹⁶²

The agreement then sets up the JIU’s comprised of forces from both sides to serve as a symbol of national unity. They are to be deployed in Southern Sudan, Nuba Mountains, Southern Blue Nile, Khartoum and Eastern Sudan for the interim period. The Joint Defence Board (JDB) commands the forces.¹⁶³

The agreement states that ‘no armed group allied to either party shall be allowed to operate outside the two forces.’¹⁶⁴ These parties may either join the military forces outlined in the agreement or enter into civil service in a manner that promotes peace.¹⁶⁵ This provision could be seen as a sensible attempt to mitigate the risk of proxy wars. But, as discussed in the previous chapter, it was also a convenient *coup de grâce* to splinter groups, especially in the South, where the parties wanted to avoid groups with independent control in their territories. It is unlikely, if these parties were granted access to the negotiations, that such a unilateral provision would have survived. Excluding armed groups within a territory trying to end a civil war does not promote long-term peace: the short-term appeasement of

¹⁵⁹ 10.1.

¹⁶⁰ 1.a-d. Chapter VI: Security Arrangements, signed at Naivasha, Kenya, 25 September 2003.

¹⁶¹ 3 a-c.

¹⁶² 3 d-e.

¹⁶³ 4.1.-5.2.

¹⁶⁴ 7a.

¹⁶⁵ 7b-c.

SAF and SPLA forces in this arrangement drastically undermines security and is a serious shortcoming in the agreement.

4.7. Conclusion

The strength of the CPA provisions is mixed. Some agreements such as the Machakos Protocol and the Abyei agreement do well to mitigate the sources of conflict and attempt to ensure peace. But the other agreements all contain problematic elements: power-sharing entrenches an undemocratic advantage to the SPLM and the NCP and insufficiently provides for transitional justice. Wealth-sharing provisions only meaningfully address oil revenues but neglect other important issues. The Southern Kordofan and Blue Nile agreement actively undermines peace and security in the region. The Security provisions exclude military splinter groups: a decision that seriously harms the potential for peace and stability.

Chapter 5: Implementation of the Comprehensive Peace Agreement

There are two frameworks for implementing a peace agreement. The *maximalist route* emphasises the involvement of external mediators with international peacekeeping forces for the creation of stable institutions and elections leading to democratic state transformation.¹⁶⁶ The *minimalist route* operates through an elite pact amongst local leaders and established networks of loyalties to enforce the peace agreement.¹⁶⁷

The CPA contains elements of both: the agreement relied heavily on the mediation of third parties; sets up institutions geared towards transforming the state and includes a UN peace-keeping force. However, the ultimate implementation and sustainable realisation of the terms of the CPA rests on the networks of elites that exist within Sudan and South Sudan. The UN and international actors are still a critical part of implementation. Their continued humanitarian support to areas of conflict and their intervention and backing of negotiations plays a central role in maintaining stability.

Cornwell made three predictions which have over time proven to be the central issues marring implementation of the CPA. Firstly, insufficient capacity for implementation of such complex terms and secondly lack of political will for proper implementation. The third challenge relates to the problematic nature of Sudanese citizenship and identity including the divisions between Northern and Southern communities and peripheral, marginalised Sudanese versus elite, powerful Sudanese.¹⁶⁸ These three issues have significant overlap. For instance, technical failures due to lack of capacity can easily become politicised and manipulated into issues of identity (such as in Abyei). Further, lack of political will on resolution of the border issues and demilitarisation coupled with insufficient capacity to implement terms have resulted in serious security crises.

5.1. Power-sharing and Elections

The majority of political organisation post-CPA occurs under highly technical commissions with membership from the North and the South. The proposed commissions ranged from the NCP-SPLM Joint Leadership Committee and its various sub-committees, the Ceasefire Political Commission (CPC), the Fiscal and Financial Allocation and Monitoring Commission (FFAMC), the National Judicial Service Commission (NJSC) and many others. The enforcement capacity and overall legitimacy of the commissions are severely undermined by autocratic institutional processes that are still the political norm. All existing commissions were created by presidential decrees instead of legislative process, except the National Civil Service Commission (NCSC). This undermines credible

¹⁶⁶ D Rothchild 'Ethnic Insecurity, Peace Agreements and State Building' ed R Joseph in *State, Conflict and Democracy in Africa* (1999), 328.

¹⁶⁷ Rothchild 'Ethnic Insecurity, Peace Agreements and State Building' ed R Joseph (n 166 above) 330-1.

¹⁶⁸ R Cornwell 'Implementing Sudan's Comprehensive Peace Agreement: Prospects and Challenges' (2008) 1 *Woodrow Wilson International Centre for Scholars* 6.

enforcement especially for key commissions such as the Fiscal and Financial Allocation and Monitoring Commission (FFAMC) and the National Petroleum Commission (NPC).¹⁶⁹

The CPA brought about the first multi-party democratic elections in Sudan since 1986.¹⁷⁰ The complex electoral process created under the CPA caused delays in implementation along with insufficient local capacity to fully operationalize the terms. The complexity of the system was vulnerable to abuse and lack of transparency.¹⁷¹ Nonetheless, the process continued and was accepted by the international community as imperfect but passable, despite dismay over human rights abuses.¹⁷² In April 2012, it was announced that Al-Bashir gained 68.24% of the vote for presidency of the NCP and Salva Kiir 93% for leadership of the SPLM. On a state level, 13 Northern states went to NCP and one (Blue Nile) to SPLM candidates while in the South nine provinces elected SPLM officials. Central Equatoria State elected an independent candidate and elections in Southern Kordofan State, after numerous delays, resulted in a highly contested win for the NCP.¹⁷³ The January 2011 referendum on the independence of South Sudan indicated that 98:83% of votes were cast for independence, with voter turn-out at 97.58%.¹⁷⁴ The Abyei referendum has been repeatedly postponed.

5.2. Resource-sharing

Wealth-sharing provisions took considerable time to negotiate and were a crucial component to the peace agreement overall, perhaps because of significant international interest in its outcome. Especially for the South Sudanese, implementation is marred once more by capacity. Many of the institutions responsible for the implementation of the wealth-sharing provisions are not fully functional or not operational at all due to staff shortages in key ministries and auditing committees. The CPA gave persons who were victims of rights-violations due to oil contracts signed prior to the CPA a claim to compensation. No compensation mechanism has been created to date.¹⁷⁵

Reports had predicted two challenges with this state of affairs as early as 2006: South Sudan, not capable of harnessing full information on oil production could easily be cheated out of their agreed-upon share; and weak institutions would be open to corruption and mismanagement.¹⁷⁶ Both of these predictions have, to a certain extent, come true. The greatest political crisis in resource-sharing since

¹⁶⁹ *CPA Monitor* (May 2011) 9.

¹⁷⁰ 'President Omar al-Bashir re-elected in Sudan elections' http://www.bbc.co.uk/worldservice/news/2010/04/100426_sudan_elections_hs.shtml (accessed 1 October 2012).

¹⁷¹ M Gustafson 'Electoral Designs: Proportionality, representation, and constituency boundaries in Sudan's 2010 elections' (2010) *Rift Valley Institute* 8.

¹⁷² 'Democracy on Hold: Rights Violations in the April 2010 Sudan Elections' Human Rights Watch (June 2010) 8 'Sudan elections 'failed' to meet international norms' <http://news.bbc.co.uk/2/hi/8626677.stm> (accessed 25 October 2012).

¹⁷³ *CPA Monitor* (May 2011) 12.

¹⁷⁴ *CPA Monitor* (May 2011) 13.

¹⁷⁵ *CPA Monitor* (May 2011) 22.

¹⁷⁶ Cornwell (n 168 above) 10.

the signing of the CPA came in January 2012 when South Sudan shut off oil production to Sudan and accused Khartoum of stealing \$815 million worth of crude oil. Sudan claims that the crude oil was kept in lieu of unpaid transshipment fees from GoSS.¹⁷⁷ With a poorly functioning resource sharing committee, the accuracy of either side's claims could not be verified and the dispute became once more political. The ensuing months saw South Sudan shut off oil production entirely, crippling both countries' economies for months. The South Sudanese government revenue was reduced by a colossal 98%.¹⁷⁸

An agreement brokered by the African Union High Implementation Panel (AUHIP) and signed by Al-Bashir and Salva Kiir on 27 September 2012 created a new framework for oil arrangements. Under the agreement, South Sudan would restart the halted oil production to 350,000 barrels per day as well as agreeing on many outstanding issues of financing and administration for wealth-sharing post-independence.¹⁷⁹ The talks broke down, however, over the disputed Abyei region and oil production and wealth-sharing for this area remains unresolved.

It is too soon to tell whether the new arrangement will prove sustainable as the profound distrust between the parties remains unchanged. Additionally, it will be several months before oil production can actually resume as the oil pipelines are currently filled with water.¹⁸⁰

5.3. Ceasefire implementation and Demilitarisation

Ceasefire implementation rests on a combination of international peacekeepers backed by UN Security Council (SC) mandates; JIU's created under the CPA as well as redeployment of the SAF and SPLA forces out of disputed territories.

The success of the JIU's has been mixed. Some implementation was successful in terms of improved coordination in some areas; benefitting from international support and being better resourced and trained than SPLA forces.¹⁸¹ Ultimately, the JIU's reached 83.36% deployment before being mostly disbanded after the referendum on secession. Some JIU troops are yet to be dissolved in Southern Kordofan and Blue Nile States.¹⁸² Conflicts between rebel groups, SPLA factions and former SAF

¹⁷⁷ 'South Sudan Shuts off Oil in Dispute with Sudan' <http://www.nytimes.com/2012/01/24/world/africa/south-sudan-shuts-off-oil-in-dispute-with-sudan.html> (accessed 26 September 2012).

¹⁷⁸ CIA World fact book country profile South Sudan <https://www.cia.gov/library/publications/the-world-factbook/geos/od.html> (accessed 26 September 2012).

¹⁷⁹ 'Agreement between the Government of the Republic of South Sudan and the Government of the Republic of Sudan on Oil and Related Economic Matters' <http://sites.tufts.edu/reinventingpeace/files/2012/09/Oil-Agreement-between-SudanSouth-Sudan0001.pdf> (accessed 02 October 2012).

¹⁸⁰ 'Sudan and South Sudan reach deal to restart oil exports' <http://www.trust.org/alertnet/news/sudan-and-south-sudan-reach-deal-to-restart-oil-exports/> (accessed 03 October 2012).

¹⁸¹ Human Baseline Security Assessment 'Neither 'joint' nor 'integrated': The Joint Integrated Units and the future of the CPA' *Sudan Issue Brief*, Small Arms Survey 10 (March 2008).

¹⁸² *CPA Monitor* (May 2011) 37.

groups in the South who were meant to be integrated have broken out and the integration of these forces have been largely unsuccessful.

The DDR programs have made some progress. By end May 2011 a total of 48,594 DDR participants had been demobilised in areas stipulated by the CPA. A further 31,525 had taken part in some kind of reintegration program, such as returning to agricultural livelihoods.¹⁸³ Significant advances have been made in the removal of anti-personnel mines with the assistance of international NGO's.¹⁸⁴

There is, however, evidence that in certain states in South Sudan, rearmament occurred virtually as soon as disarmament programs were completed. Many communities rely on young men with weapons to ensure security for the group and for defence against cattle raids.¹⁸⁵ The abundance of small arms in South Sudan remains a major security concern. Non-state conflict in South Sudan has been acute post-CPA. In states such as Jonglei, tribal warfare has caused at least 1400 deaths in 2011 alone.¹⁸⁶

International assistance has been crucial to maintaining the ceasefire that exists and the parties have not successfully managed to implement these provisions on their own. Under SC Resolution 1590 of 2005,¹⁸⁷ the United Nations created a peacekeeping force responsible for assisting continuance of the ceasefire agreed upon in the CPA. The United Nations Mission in Sudan (UNMIS) had a mandate to run for the interim period until the referendum on secession, held 09 July 2011.¹⁸⁸ Upon the results of the referendum establishing that the South would secede, the SC passed Resolution 1996 of 2011 establishing the United Nations Mission in South Sudan (UNMISS).¹⁸⁹ This was not originally envisioned under the CPA. The SC determined, however, that the situation in South Sudan at the time 'continued to constitute a threat to international peace and security in the region.'¹⁹⁰ The initial mandate was for a twelve month period commencing 9 July 2011. SC resolution 2057 of 2012 extended the UNMISS mandate until 05 July 2013 in recognition of the continuing need for an international peacekeeping force.¹⁹¹

¹⁸³ *CPA Monitor* May 2011, p 39.

¹⁸⁴ *CPA Monitor*, May 2011, p 40.

¹⁸⁵ South Sudan: Rearmament In Warrap State, Naomi Pendle <http://africanarguments.org/2012/03/27/a-letter-from-warrap-state-south-sudan-the-remedy-of-rearmament-%E2%80%93-by-naomi-pendle/> (accessed 03 October 2012).

¹⁸⁶ 'Uppsala Conflict Data Program UCDP Conflict Encyclopaedia' http://www.ucdp.uu.se/gpdata/gpcountry.php?id=199®ionSelect=1-Northern_Africa (accessed 26 September 2012).

¹⁸⁷ SC S/RES/1590 (2005) [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1590\(2005\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1590(2005)) (accessed 27 September 2012).

¹⁸⁸ Key terms of UNMIS mandate include: monitor ceasefire and investigate ceasefire violations (4(a)(i)), Assist in DDR programs (4(a)(iii)), help prepare for a peaceful referendum (4(a)(x)), provide 'humanitarian demining assistance' (4(c)), 'contribute' to human rights protection especially for vulnerable groups (4(d)) and to help with the reintegration of refugees and providing humanitarian assistance by supporting security (4(b)).

¹⁸⁹ S/RES/1996 (2011) [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1996\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1996(2011)) (accessed 27 September 2012).

¹⁹⁰ 'UNMISS' <http://www.un.org/en/peacekeeping/missions/unmiss/> (accessed 22 September 2012).

¹⁹¹ S/RES/2057 (2012) [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2057\(2012\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2057(2012)) (accessed 02 October 2012).

5.4. Abyei

Abyei has the misfortune of containing all the features that cause conflict in the Sudan and has suffered constant fighting and humanitarian crises. Lack of implementation of the terms set out in the CPA on Abyei could be the factor most likely to cause a relapse to civil war between the NCP and SPLA.¹⁹² Abyei is located on the border between the North and South and is also adjacent to Darfur. The territorial demarcation is contested between the NCP and SPLM, though this is clearly a political manoeuvre and not a technical issue. The NCP has consistently rejected every proposal to end the conflict since 2009 and is predominantly responsible for the lack of progress on the area.¹⁹³ The potential for conflict is further fuelled by ethnic competition, as the Abyei is home to both Arab nomads (the Misseriya) and African pastoralist communities- mainly Ngok Dinka tribes.

Under the CPA, the borders for Abyei were to be determined by the Abyei Boundaries Commission (ABC) made up of Dinka and Misseryia representatives, SPLM and NCP leaders and delegates from IGAD and the international community. The presidency refused to adopt the findings of the 2005 report and the matter went for arbitration before the Permanent Court of Arbitration (PCA) in The Hague in 2008. The parties accepted the finding of the PCA and committed to upholding it.¹⁹⁴ However, since 2009 and up to the most recent mediation efforts on Abyei on 26 September 2012 no resolution on this dispute has been forthcoming and the referendum on secession keeps being postponed. The present date is October 2013.¹⁹⁵

The Misseryia have become a political minority by the CPA terms and the Abyei Protocol in the state of Southern Kordofan and, by allowing Abyei a referendum for succession, risks placing the Misseryia's migration routes across an international boundary.¹⁹⁶ The referendum is also controversial because, due to the migration, it is possible that many Misseryia may not be considered permanent citizens of Abyei and thereby fails to qualify for the vote.¹⁹⁷ Abyei also contains significant oil resources which have meant that Khartoum is able to benefit from uncertainties over the border delineation.

The arbitration agreements, protocols and studies on the boundaries signify a lack on the part of international actors to appreciate the true drivers of the conflict in Abyei and therefore to provide adequate responses to the peacekeeping failures in this area. The detailed commissions of enquiry,

¹⁹² 'Sudan: Breaking the Abyei Deadlock' <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan/B047-sudan-breaking-the-abyei-deadlock.aspx> (accessed 02 October 2012).

¹⁹³ 'Bashir and Kiir fail to reach comprehensive deal over post-S. Sudan independence issues' <http://www.sudantribune.com/spip.php?article44027> (accessed 02 October 2012).

¹⁹⁴ 'Peace Accords Matrix, Boundary Demarcation, Comprehensive Peace Agreement' https://peaceaccords.nd.edu/matrix/status/65/boundary_demarcation (accessed 28 September 2012).

¹⁹⁵ 'Bashir and Kiir fail to reach comprehensive deal over post-S. Sudan independence issues' <http://www.sudantribune.com/spip.php?article44027> (accessed 27 September 2012).

¹⁹⁶ S Pantuliano 'Oil, land and conflict: the decline of Misseriyya pastoralism in Sudan' (2010) 37 *Review of African Political Economy* 8.

¹⁹⁷ 'Bashir and Kiir fail to reach comprehensive deal over post-S. Sudan independence issues' <http://www.sudantribune.com/spip.php?article44027> (accessed 27 September 2012).

committees and agonising over the colonial borderline are a meaningless pursuit. The factual determination of the border, when the stakes over oil resources are so high does nothing to disincentivise conflict. Nor is it in any way helpful in assuaging the Misseriya's concerns over migration which provides helpful political leverage to the Khartoum government in stalling negotiations and fuelling tensions. The passivity of the SPLM on the technical committees further halts meaningful progress and serves to politicise an attempt to get to a resolution.

5.5. South Kordofan and Blue Nile State

The implementation of the agreement on South Kordofan and Blue Nile has been a complete failure. The region currently suffers arguably the worst humanitarian crisis in the Sudan. After Sudanese Ahmed Haroun, wanted by the ICC on war crimes charges in Darfur, retained governorship by a contested victory over the SPLM candidate in May 2011 in the elections required by the peace agreement, minor conflicts broke out between SPLM and SAF forces. Initial reports suggest that the fighting was due to SAF forces targeting SPLM members for extrajudicial killings (SAF forces were permitted in the region by the agreement, though other military forces had to withdraw).¹⁹⁸ Subsequently, the SAF started indiscriminately targeting towns and land ostensibly as an offensive against rebels. The series of aerial bombings in the Nuba Mountains region have caused massive displacement, forcing entire communities to retreat to mountain caves.

The situation had become so grave that by May 2012, the Security Council invoked its powers under Chapter VII to issue SC Resolution 2046, deeming the on-going disputes between North and South Sudan to be 'a serious threat to international peace and security.' The wording of the resolution is categorical and specific. It maintains that the states

...shall unconditionally resume negotiations, under the auspices of the AUHIP and with the support of the Chairman of IGAD, at a time to be set by the AUHIP in consultation with relevant international partners, but within no more than two weeks from the time of adoption of this resolution.¹⁹⁹

The most recent reports indicate that there are approximately 350 000 people from Blue Nile and South Kordofan areas currently in refugee camps in South Sudan and Ethiopia.²⁰⁰ The estimated number of internally displaced persons are as high as 665 000.²⁰¹ The bombings have made it

¹⁹⁸ 'UN Office of the High Commissioner for Human Rights, *Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011*, August 2011,

3 <http://www.unhcr.org/refworld/docid/4e4d1b2a2.html> (accessed 31 October 2012)

¹⁹⁹ Article 2, S/RES/2046 (2012).

²⁰⁰ 'OCHA Humanitarian Bulletin Sudan Issue 37, 17 – 23 Sep 2012'

<http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sudan%20Weekly%20Humanitarian%20Bulletin%20Issue%2037%20%2817%20-%202023%20Sep%202012%29.pdf> (accessed 02 October 2012).

²⁰¹ OCHA Humanitarian Bulletin Sudan Issue 06, 01 - 31 Jul 2012

http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sudan%20Humanitarian%20Bulletin_July%202012.pdf (accessed 02 October 2012).

impossible for most communities in the area to farm, thereby placing 250 000- 325 000 people at critical levels of food shortages.²⁰² In total, therefore, over a million people in this region have either been displaced or risk starvation.

The situation in South Kordofan and Blue Nile is a profound failure in terms of granting Sudanese peace and security in the post-CPA environment. It has been caused in part by the provisions granting power of the governor over the security forces and permitting the SAF to stay in the state whilst ordering all other forces to withdraw. The region shows how catastrophic the implementation of poorly drafted terms can be to security in the region.

5.6. Post-secession challenges: borders and citizenship

The demarcation of the border is another example of implementation being marred by political disagreement. The Technical Border Committee (TBC) was tasked with marking the border on the 1956 boundary line. Most of the border is uncontested and has been marked by the TBC.²⁰³ The contested areas cause serious threats to peace and stability. The TBC has failed to handle the disputes over the contested border areas as a political issue and rather has sought to look at it as a technical problem of implementation. But, as with Abyei, establishing from maps where the historic border demarcation lies does not ameliorate disputes on contested areas.²⁰⁴ There have been several incidents of conflict and occupation of territory in disputed areas by both SPLA and SAF troops especially in areas with oil.

Under the auspices of the AUHIP, backed by a UN threat to impose sanctions if negotiations were not concluded by 22 September 2012, the parties created a new set of agreements on 27 September. This most recent agreement between South Sudan and Sudan has established a 10 km demilitarised zone on the border where both parties shall withdraw all troops.²⁰⁵ The deal has been praised by the UN, but finding a resolution to the conflict in Abyei still remains of critical concern to peace between the states.²⁰⁶

Another victory of the 27 September agreement is the creation of a soft border, recognising the right and supporting the freedom of movement of peoples. The *Framework Agreement on the Status of Nationals of the Other State and Related Matters between the Republic of Sudan and the Republic of*

²⁰² ‘Famine Early Warnings System, Sudan’ <http://www.fews.net/pages/country.aspx?gb=sd> (accessed 02 October 2012).

²⁰³ *CPA Monitor* (May 2011) 10.

²⁰⁴ ‘Sudan: Defining the North-South Border’ *Africa Report 75* International Crisis Group (September 2010) 1.

²⁰⁵ ‘Agreement of The Republic of the Sudan and The Republic of South Sudan on Border Issues’ <http://sites.tufts.edu/reinventingpeace/files/2012/09/Agreement-on-Border-Issues-2709120001.pdf> (accessed 03 October 2012).

²⁰⁶ ‘Secretary-General, in consultative forum, urges Sudan, South Sudan to finalise agreements on outstanding issues, lead constitutional review with vision’ <http://www.un.org/News/Press/docs/2012/sgsm14551.doc.htm> (accessed 03 October 2012).

*South Sudan*²⁰⁷ recognises ‘four freedoms’ for Sudanese and South Sudanese, namely freedom of residence, movement; freedom to undertake economic activity and freedom to acquire and dispose of property. Under the agreement, these freedoms apply to nationals of both countries even if they are in the territory of the other state. Coupled with the border agreement, this is a good start to protecting the rights, freedom and livelihoods of many communities residing in border regions. Whether implementation of the agreement will be successful remains to be seen. It also provides a more flexible framework over Sudanese identity and nationality. Since this remains an underlying problem in many areas of conflict, this element of the new agreement is a positive step.

5.7. Conclusion

Obtaining a global picture of the implementation of the CPA is difficult. The net result, after seven years, is still an improvement from the second civil war. The parties are pressured into non-violent dispute resolution over outstanding issues of conflict and challenges created by the independence of South Sudan due to the continued intervention of the AU, IGAD, international donors and the UN. But to say that there is ‘comprehensive peace’ in the Sudan, or that the implementation of the CPA has improved conditions for all Sudanese is not true.

The South has finally gained independence but administration is marred by a lack of institutional capacity, continued disagreements with the North, economic collapse and corruption. Southern Sudanese populations living in South Kordofan and Blue Nile are facing a humanitarian fiasco. Abyei remains unresolved and in perpetual crisis. Khartoum is still a violent and unaccountable government which reacts to insurgency with staggering ferocity.

Implementation where politicisation of the CPA terms has been successfully avoided has been moderately positive. Where agreed-upon terms of the CPA are respected and not derailed into new disputes over old issues, genuine potential for the sustainability of the peace process seems more viable. But the overall situation is not stable, and much of the peace no longer depends on the implementation of the CPA but on constant intervention by international actors to drag the two states into new negotiations.

²⁰⁷ <http://sites.tufts.edu/reinventingpeace/files/2012/09/Nationals-Agreement-2709120001.pdf> (accessed 03 October 2012).

Chapter 6: Lessons for similar future peace processes

The negotiation, terms and implementation of the CPA can provide lessons for future peace processes especially in Africa. Every situation will be unique but the aim here is to distil principles, drivers and concepts rather than detailed or context-specific examples.

6.1. Equilibrium between parties

In situations of conflict where one party has disproportionate military power or superior political organisation, negotiations are unlikely to be ultimately successful. There are a number of factors which influence whether warring parties have reached the mutually hurting stalemate at which non-violent dispute resolution becomes a possibility.²⁰⁸ The conflict between the SPLA and the NCP had been nearing a stalemate which would allow for mediation.²⁰⁹ IGAD particularly was persistent enough to continue urging parties to negotiate for over a decade until such negotiations finally bore fruit.

Those involved in dispute resolution processes therefore need to thoroughly analyse the drivers of conflict and be sensitive to changes which indicate ripeness for dispute resolution. Some factors especially could drive the parties to attaining more equilibrium.

6.1.1. Political organisation

The Khartoum policy of ‘divide and conquer’ in the South was effective for many years.²¹⁰ Both the 1972 Addis Ababa peace agreement and the CPA came at a time of political organisation and unification in the South. Joseph Lagu, the leader of *Anyanya* was responsible for concluding the Addis Ababa agreement. John Garang who was a soldier in *Anyanya* and went on to form the SPLA/M was indispensable to creating the collective political voice which ultimately culminated in the CPA process. He was also the main SPLA/M negotiator for the CPA.

Without a political arm to the rebel group, agreements are unlikely to progress beyond planning a ceasefire. In the 1990’s, the SPLA formed its political wing, the SPLM which made the demand for an independent government far more feasible and meaningful. Devising the terms and envisioning a sustainable peace process which includes political institutions is more possible when there aren’t only military groups to depend on for the peace process.

²⁰⁸ Zartman (n 7 above) 8.

²⁰⁹ Antwi-Boateng & O’Mahony (n 14 above) 134.

²¹⁰ El-Battahni (n 5 above) 13.

The conclusion of a viable peace agreement requires a level of political understanding from the parties. War is a military phenomenon but peace requires successful politics. External parties interested in supporting the peace process should prioritise support to political organisation over military strength. Such support makes negotiations more sustainable as parties are able to take ownership of the agreement and reach sophisticated, locally relevant compromises. The ability of military powers to think long-term and politically will increase the likelihood of the process leading to a lasting peace.

6.1.2. Natural resources as a new tool for bargaining

The shutting of the oil pipelines in January 2012 added a new dimension to the negotiation process between the disputing parties. The escalation of the disagreement to the point of shutting off oil production by the GoSS caused economic devastation to both states, heightened the acrimony between them and worsened the security situation in oil-producing areas. But it also demonstrated that the GoSS is capable of creating a mutually hurting stalemate when no progress is being made on matters of disagreement. When Sudan solely controlled oil, there would be no incentive to seek a non-violent solution as Southern Sudanese could not financially benefit off the oil fields. Shutting off the oil pipeline was drastic but also effective from a negotiation perspective: suddenly international role-players with economic interests made it an agenda item; the AU stepped in and negotiations were supported and happened to strict timelines.

There are therefore indicators that military conflict is no longer the only measures the states have of coercing each other. This is a positive gain from a broader peace perspective. It is therefore valuable to consider whether any powerful tools of coercion exist outside military conflict that could lead to more favourable conditions for negotiation.

6.2. Which parties matter to the negotiation?

The personalities, motivation and beliefs of individuals at the negotiations affect the nature of the agreement. The conclusion of the CPA was possible because, on virtually all levels, the right individuals were at the negotiation table at the right time.

This strength can also manifest as a weakness: items which the parties considered undesirable or unimportant were marginalised despite being crucial to lasting peace. Noticeable silences or gaps in the agreement should be on the agenda of regional bodies, international state parties and civic interests groups.

6.2.1. Primary Parties

Garang and Taha, for the NCP and SPLA/M were men capable of negotiation, compromise and decision-making. General Lazaro Sumbeiywo was a skilled chief mediator, adept at making good assessments, being neutral and earning the respect of the parties. He was also available full-time for the almost 13 months it took to draw up the CPA. ‘Deadline diplomacy’ seriously undermines peace processes and has been blamed for the failure of other peace talks in Sudan.²¹¹

But this also represents a key failure of the CPA: the talks remained overly exclusive. It should not only be those responsible for the conflict that provides input. The CPA purports in its preamble to ‘guarantee lasting peace, security for all, justice and equality for the Sudan’.²¹² It ought then surely to rely on more stakeholders than simply the NCP and SPLM. Otherwise, it is foreseeable that narrow and more immediate interests will be addressed but long-term issues that are not priorities to the warring parties will be left off the table.

It is truly a challenge to engage the parties with the power to end violent conflict while also including parties who can create sustainable peace and justice. Both are needed. Excluding other actors causes resentment, hampers the accountability and transparency of the process and undercuts alternative viewpoints and expertise.

The same caution applies to the representatives who participate in the negotiations. Garang especially negotiated on terms which were not representative of the SPLA/M or the South more broadly. The process further relied upon these men being able to reach understandings subsequent to negotiations on issues that remained contentious. But shortly after signing the CPA, Garang died and Taha was marginalised in the NCP. The mutual trust and partnership they fostered became meaningless to the enforcement of the agreement.

Power-sharing provisions demonstrate a manifestation of this failure. Creating the GoNU and ‘making unity attractive’ was popular only with the NCP, John Garang and some international actors wishing to improve the deeply problematic Khartoum government through this form of indirect restructuring. Virtually the entire SPLM and almost all Southern Sudanese did not consider unity an option: the war was largely a battle for independence. As long as secession was in the agreement, unity was not going to be a realistic option. Still endless energy and resources went to forming the GoNU, the JIU’s and other commissions on unity. The fundamental disagreements and drivers of conflict remain unresolved when the terms provide an unrepresentative solution. The potential for discontent and violent conflict therefore remains high in such instances.

²¹¹ L Nathan ‘No Ownership, No Peace: the Darfur Peace Agreement’ *Working Paper 5* Crisis States Research Centre (September 2006) 3.

²¹² Comprehensive Peace Agreement, 2005 ‘Chapeau of the CPA’ 9 January 2005 <http://www.unhcr.org/refworld/docid/4c037782.html> (accessed 31 October 2012).

The absence of clauses on promoting democracy and accountability also shows the exclusivity of the negotiations. Where it is not in the interests of the negotiating parties to pursue issues important to victims of the conflict then it is the responsibility of regional and international actors to skilfully push for prioritisation of these issues.

There are many lessons from this failure. External partners have a responsibility to advocate for provisions that are important but not on the agenda of those negotiating. Broad consultation processes should be favoured. Victim participation procedures should be included in a manner that is both sensitive to needs and aware of the politically sensitive nature of negotiations. Field work, input from civil society and other military groups should form part of the process. Crucial issues over rebuilding the state and providing for transitional justice has to be considered. A peace process cannot simply be an appeasement of the warring parties.

6.2.2. International actors

The regional and international actors are inextricably linked to the negotiations and peace process leading to the CPA. IGAD and especially the US, UK, Norway and Italy provided a sustained commitment to setting up the negotiation and peace process. Everything from providing the venues for negotiation to take place, planning the budgets, finding mediators, securing experts and writing up draft agreements were done by IGAD and international partners. Ensuring meaningful enforcement of the CPA also often fell to these partners as Sudan and South Sudan, still largely incapable of trusting each other, frequently reached political deadlocks. Pressure to maintain the ceasefire and enter into negotiations was essentially the work of IGAD, the AU and the UNSC.

Regional intervention made a tremendous difference. IGAD's role in resolving the conflict remains central. IGAD managed to avoid coming across as an enemy to either side, yet was often successful in getting the parties to resolve matters over which they had stalled. Third parties ought to recognise this role especially as a responsibility. Where they do not put pressure on primary parties to resolve issues on which they are unenthusiastic to compromise, it is virtually inevitable that these will be the causes for new conflict.

External actors should contextualise their roles so that a workable relationship exists with the primary parties. There has to be co-operation and co-ordination between the different roles and as little duplication of effort as possible to avoid grey areas, loopholes and unclear distribution of responsibility. The different interests and inputs of several actors heighten the risk of forming an overly ambitious and complex process that is ultimately unmanageable. Political will for a peace document that the parties do not feel a sense of ownership over is difficult to maintain.

6.3. One negotiation and peace agreement are unlikely to suffice depending on the issues

The CPA stresses from the outset that it is more than just a peace agreement in the narrow sense. It aims to transform Sudanese society and address underlying sources of conflict in the state and society.²¹³ This broader recognition of the contexts of peace is laudable but change in such a difficult situation can only happen incrementally. The attempt to use the CPA as a panacea to the deeper challenges of the state in Sudan is admirable in certain contexts but ultimately unrealistic. South Sudanese independence was a virtual certainty and the many institutions and attempts at ‘making unity attractive’ was largely a waste of time and resources.

6.3.1. Contemplating the potential for failure

Parties to the peace process ought to believe in the ultimate success of the agreement. But it is important to consider from the outset the potential ways in which the agreement might fail. Thoughtful analysis of the structural weaknesses and compromises in an agreement may provide a safeguard for what happens when disputes arise. There is evidence that this was considered in some CPA provisions. The Machakos Protocol clauses prohibiting unilateral rejection of the agreement are a positive step and probably a lesson learnt from the Addis Ababa agreement which was abrogated by Al-Turabi after a *coup*.²¹⁴

Failures of the CPA to settle disputes have led to new agreements being signed. When the vote for secession was finalised it was virtually inevitable that new conflicts would arise, as the CPA tacitly assumes the unity of Sudan. How those have been handled provide evidence of a mixed result. Border delineation has been disastrous in some areas. Resource-sharing descended into chaos when South Sudan shut off the oil pipelines in January 2012. Abyei not only remains unresolved but there seems to be no clear answer as to how to resolve it.

What does become clear in the case of Sudan and South Sudan is that momentum could be preserved, once the process had started. The CPA continues to be the return-point for continued negotiations: this is clear from the rhetoric used when political leaders discuss subsequent talks.²¹⁵ Especially in situations of protracted conflict, a political culture of reverting to talks has to be actively encouraged. When this cannot be done by the parties themselves international actors should support and manage the process. There has been modest success at achieving this in the present case through strategic intervention, coercion and negotiation by the joint efforts of the AU, IGAD and the Security Council.

²¹³ S Nouwen (n 13 above) 115.

²¹⁴ El-Battahni (n 5 above) 12.

²¹⁵ Responding to the SPLM’s refusal to withdraw from a contested territory, Al-Bashir angrily retorted “we ceded the whole south for you and you’re refusing to withdraw from [few] kilometres” referring to the CPA agreement on secession, ‘Bashir and Kiir fail to reach comprehensive deal over post-S. Sudan independence issues’ <http://www.sudantribune.com/spip.php?article44027> (accessed 27 September 2012).

Depending on the scale of the conflict one peace-deal may not suffice. Where the sources of conflict are complex and the incentives for fighting many perpetual peace-keeping may be required for a long time.

6.4. Simplicity and equality is preferable to complexity and specificity

It may seem counter-intuitive that simplicity and equality should be helpful to resolving conflicts as complex and protracted as the North-South conflict in Sudan. But in a situation with so many different ethnic, religious and geographical identities it is nearly impossible to tailor a solution or declaration for every group without somehow undermining another. In such a scenario, legal equality and state neutrality towards identity is preferable.²¹⁶

Agreements, institutional and legal frameworks and governments should guard against structural inequalities and respect cultural and religious difference. But institutionalising so many differences would, firstly, be unmanageable and secondly, may lead to potential unequal treatment and further disputes. Identifying Sudanese citizens by groupings: ethnic identity, geographic location or even as Sudanese or South Sudanese and thereby legally entrenching difference is certain to heighten the risk of fragmentation and unequal administrative treatment.²¹⁷ The ideal is to create a fundamental legal equality between all citizens: entrenched within the society through constitutional guarantees and provided for (in the case of this conflict) between citizens of both states. It is to this end that the latest agreement providing four freedoms to nationals across borders ought to be commended.²¹⁸

Attempts at creating simpler, more manageable processes would have drastically reduced the burden on implementation. There would have been fewer loopholes for mismanagement and corruption the potential disagreements on facts and policy would have been less. These disagreements are dangerous as they may easily lead to political disputes and violent conflict.

There should be a balance between the capabilities and the needs of those involved. The creation of numerous highly complex institutions in the South without people who could fully manage these committees was misguided. The complexity of the agreement ought to match the capacity of those with the primary responsibility for implementation.

²¹⁶ S Nouwen (n 13 above) 133.

²¹⁷ S Nouwen (n 13 above) 133.

²¹⁸ Framework Agreement on the Status of Nationals of the Other State and Related Matters between the Republic of Sudan and the Republic of South Sudan' <http://sites.tufts.edu/reinventingpeace/files/2012/09/Nationals-Agreement-2709120001.pdf> (accessed 03 October 2012). Though, problematically, it still does not give full citizenship rights to ethnic South Sudanese living in Sudan.

6.5. Conclusion

Essentially the lessons of the CPA process concern prioritisation. Resolving the core drivers of the conflict should be more important than narrow foreign policy interests. Political organisation should be prioritised over military power. Primary parties to the negotiation and third parties should put broader interests of the society before the appeasement of the narrow and immediate interests of elites. International actors should ensure reinforcement of their competencies rather than overlap. Conceptually, agreements should also have a preference for equality over specificity or difference, and simplicity over complexity.

Chapter 7: Conclusion and general recommendations

The gravity of the CPA in providing the conditions for peace after the decades of conflict between North and South Sudan cannot be overstated. However, the historical, underlying sources of the conflict remain interrelated and complex and cannot truly be ‘resolved’. Rather, patient changes towards peace and freedom should be encouraged over time from local communities, regional powers and international actors.

Both the continuation and the resolution of the conflict depended upon the relationship of the warring parties to regional and international actors. The role of IGAD in sustaining attempts at conflict resolution for over a decade is probably the single most important factor, the *condition sine qua non* to successfully concluding the CPA. But the funding of EU countries, political muscle from the US and expertise from various international agencies all came together to contribute. This effective form of partnership between so many actors in the CPA negotiations is a vital lesson for the future of peacekeeping operations in Africa: getting the right balance between African ownership over the process and international support can lead to success even in very challenging conflicts.

Support to the right parties in the domestic arena was another important lesson from the CPA experience. Strong leadership representing the warring parties at the negotiations and strong leadership from the chief mediator made the process possible. But strength should not equate to dominance. Arguably the worst flaw in the CPA process was that the NCP and SPLA/M ultimately set the peace on their terms instead of representing their communities. This meant that democracy and transitional justice was excluded from the CPA provisions as it was in neither party’s interest. Key voices including civil society groups, other military groups and other political parties, were not heard in the process. Vesting such power in two agents to take ownership of peace in the countries undermines the capabilities of other role-players who may be more equipped to foster a peaceful society than the two predominant military groups. It is also risky as excluding groups with military power may easily lead to resentment, unresolved disputes and ultimately, more violent conflict.

Many sources of conflict, challenges to statehood, grievances over losses suffered and needs for reconstruction remain. It will continue to be a difficult period for the two states as they reshape their own identities and re-establish their relationship. Though the second civil war has now ended, Sudan and South Sudan is by no means free from violent conflict. People living in the three contested areas (Abyei, South Kordofan and Blue Nile) still suffer egregious human rights abuses on an astronomical scale. The unresolved crisis over oil cost the South Sudanese government 98% of its budget for most of this year. Communal violence in South Sudan and uprisings in Khartoum indicate continued instability.

The same partners who ensured the success of the CPA process cannot rest on their laurels but need to ensure the continued intervention in disputes. The September 2012 agreements which attempt to resolve post-CPA and secession issues is a positive indicator of continued commitment. The SC, AU, IGAD and EU states came together once more to ensure that coercion, co-operation, mediation and adequate funding were available to set out the new agreements. The terms of the negotiations were rightly met with cynicism due to the continued animosity between the SPLA/M and NCP as well as the corruption in both organisations. But intervention and negotiation- even should these agreements fail once more- is still preferable to continued conflict.

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BIBLIOGRAPHY

Books

Human Rights Watch (2003) *Sudan, Oil and Human Rights* New York: Human Rights Watch

Rothchild, D 'Ethnic Insecurity, Peace Agreements and State Building' in (ed.) (1999) Joseph, R *State, Conflict and Democracy in Africa* Boulder: Lynne Rienner

Journal Articles

'Major Sudanese peace processes and agreements' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 16.

'Reflecting on the IGAD peace process: an interview with Nicholas (Fink) Haysom' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 30.

'The mediator's perspective: an interview with General Lazaro Sumbeiywo' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 22

Antwi-Boateng O & O'Mahony, G 'A Framework for the Analysis of Peace Agreements and Lessons Learned: The Case of the Sudanese Comprehensive Peace Agreement' (2008) 36 *Politics & Policy* 132.

Brahimi, L & Ahmed, S 'In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation' 2008 *Centre on International Cooperation New York University* 1

Branch A & Mampilly Z. C. 'Winning the War, But Losing the Peace: The Dilemma of SPLM/A Civil Administration and the Task Ahead' (2005) 43 *Journal of Modern African Studies* 1

Cornwell, R 'Implementing Sudan's Comprehensive Peace Agreement: Prospects and Challenges' (2008) 1 *Woodrow Wilson International Centre for Scholars* 1

De Waal, A 'Mission without end? Peacekeeping in the African political marketplace' (2009) 85 *Journal of International Affairs* 99

De Waal, A 'Sudan's Choices: Scenarios beyond the CPA' (2010) 1 *Sudan – No Easy Ways Ahead* 1

El-Battahni, A 'A Complex Web: Politics and Conflict in Sudan' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 10

- Gustafson, M 'Electoral Designs: Proportionality, representation, and constituency boundaries in Sudan's 2010 elections' (2010) *Rift Valley Institute* 1
- Harneit-Sievers, A 'Oil in Sudan: Fuelling Conflict – Fuelling Development?' (2010) 18 *Sudan – No Easy Ways Ahead* 98
- Hussein, M 'Negotiating Peace: The Road to Naivasha' (2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 18
- Hutchinson, S. E. 'A Curse from God? Religious and Political Dimensions of the post-1991 rise of ethnic violence in South Sudan' (2001) 39 *Journal of Modern African Studies* 307
- Nouwen, S 'Sudan's Divided (and divisive?) Peace Agreements' (2007) 19 *Hague Yearbook for International Law* 113.
- Ofuho, C. H. 'Negotiating Peace: Restarting a moribund process' 2006) 18 *Peace by Pieces: Addressing Sudan's Conflict* 20
- Pantuliano, S 'Oil, land and conflict: the decline of Misseriyya pastoralism in Sudan' (2010) 37 *Review of African Political Economy* 7
- Patey, L 'State rules: Oil companies and armed conflict in Sudan' (2007) 8 *Third World Quarterly* 997
- Peter, M 'Blue Nile, Nuba Mountains and Abyei: Three Areas in Transition' (2010) 1 *Sudan – No Easy Ways Ahead* 65.
- Rone, J 'Sudan: Oil & War' (2003) 30 *Review of African Political Economy* 504
- Schumann, P 'International Actors in Sudan: The Politics of Implementing Comprehensive Peace' (2010) 18 *Sudan – No Easy Ways Ahead* 102
- Shinn, D 'Addis Ababa Agreement: was it destined to fail and are there lessons for the Current Sudan Peace Process?' (2004) 20 *Annales d'Ethiopie* 239
- Thomas, E 'Against the Gathering Storm: Securing Sudan's Comprehensive Peace Agreement' 2009 *Chatham House Royal Institute of International Affairs* 1
- Wezeman P 'Arms supplies to North and South Sudan' (2010) 18 *Sudan – No Easy Ways Ahead* 62
- Ylonen, A 'Grievances and the Roots of Insurgencies: Southern Sudan and Darfur' (2005) 7 *Peace, Conflict and Development: An Interdisciplinary Journal* 99.
- Young J 'Sudan: a flawed peace process leading to a flawed peace' (2005) 32 *Review of African Political Economy* 99

Young, J 'John Garang's Legacy to the Peace Process, the SPLM/A & the South' (2005) 32 *Review of African Political Economy* 539

Zartman, W 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments' (2001) 1 *The Global Review of Ethnopolitics* 1

Reports/Documents/Working Papers

Brosché, J 'Sharing Power – Enabling Peace? Evaluating Sudan's Comprehensive Peace Agreement 2005' Published by Uppsala University, Sweden and the Mediation Support Unit, United Nations, New York, USA (2009)

'Democracy on Hold: Rights Violations in the April 2010 Sudan Elections' Human Rights Watch (June 2010)

'Memorandum by Dr P Holtom & P Wezeman, Senior Researcher 'The EU's Conflict Prevention and Peace-keeping role in Sudan' United Kingdom Parliament 'Foreign Affairs, Defence and Development policy' (House of Lords, 2011) sourced at <http://www.parliament.uk/documents/lords-committees/eu-sub-com-c/Sudan/SudanWrittenEvidence.pdf> (accessed 14 October 2012)

Nathan, L 'No Ownership, No Peace: the Darfur Peace Agreement' *Working Paper 5* Crisis States Research Centre (September 2006)

'Neither 'joint' nor 'integrated': The Joint Integrated Units and the future of the CPA' *Sudan Issue Brief Small Arms Survey 10* Human Baseline Security Assessment (March 2008).

'Politics and Transition in the New South Sudan' *Africa Report 172*, International Crisis Group (April 2011)

'Research report based on a seminar held on Mediating Peace in Africa: Securing Conflict Prevention. Strengthening the Mediation and Conflict Prevention Aspects of the African Peace and Security Architecture.' African Centre for the Constructive Resolution of Disputes (ACCORD), Ministry for Foreign Affairs of Finland at the United Nations Convention Centre, with the participation of the African Union/ACCORD Addis Ababa, Ethiopia (March 2009)

'Sudan's Best Chance for Peace: How Not to Lose It' *Africa Report 51* International Crisis Group (September 2002)

'Sudan: Defining the North-South Border' *Africa Report 75* International Crisis Group (September 2010)

'Sudan Comprehensive Peace Agreement: The Long Road Ahead' *Africa Report 106* International Crisis Group (March 2006)

Wennmann, A 'Wealth-sharing beyond 2011: Economic Issues in Sudan's North-South Peace Process' *CCDP Working Paper 1* Graduate Institute, Geneva (2011)

Young, J 'Sudan IGAD Peace Process: an Evaluation' available at:

http://www.sudantribune.com/IMG/pdf/Igad_in_Sudan_Peace_Process.pdf (accessed 07 September 2012)

Security Council Resolutions and UN Reports

Security Council Resolution 1590 (2005) (on establishment of the UN Mission in Sudan (UNMIS)

[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1590\(2005\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1590(2005)) (accessed 27 September 2012)

Security Council Resolution 1996 (2011) adopted by the Security Council at its 6576th meeting, on 8

July 2011 [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1996\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1996(2011)) (accessed 27 September 2012)

Security Council resolution 2046 (2012) [on the situation in Sudan and South Sudan] (2012)

<http://www.unhcr.org/refworld/country,...SSD.456d621e2,4fbe0206195,0.html> (accessed 5 October 2012)

Security Council resolution 2057 (2012) (on extension of the mandate of the UN Mission in South Sudan (UNMISS) through 15 July 2013)

[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2057\(2012\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2057(2012)) (accessed 2 October 2012)

'UN Office of the High Commissioner for Human Rights, *Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011*, August 2011 <http://www.unhcr.org/refworld/docid/4e4d1b2a2.html> (accessed 31 October 2012)

UNMIS *CPA Monitor* (May 2011) <http://www.unmis.org/english/cpaMonitor.htm> (accessed 7 September 2012)

Peace Agreements

Agreement of The Republic of the Sudan and The Republic of South Sudan on Border Issues

<http://sites.tufts.edu/reinventingpeace/files/2012/09/Agreement-on-Border-Issues-2709120001.pdf> (accessed 03 October 2012)

Agreement between the Government of the Republic of South Sudan and the Government of the Republic of Sudan on Oil and Related Economic Matters

<http://sites.tufts.edu/reinventingpeace/files/2012/09/Oil-Agreement-between-SudanSouth-Sudan0001.pdf> (accessed 4 October 2012)

Comprehensive Peace Agreement between the National Congress Party and the Sudan People's Liberation Movement/Army, 9 January 2005 <http://www.unhcr.org/refworld/docid/4c0377872.html> (accessed 31 October 2012)

IGAD Declaration of Principles presented to the GoS, the SPLM/A and the SPLM/SPLA-United on 20 July 1994 http://www.gossmission.org/goss/images/agreements/igad_DOP.pdf (accessed 25 September 2012)

Juba Declaration on Unity and Integration between the Sudan People's Liberation Army (SPLA) And the South Sudan Defence Forces (SSDF) January 8, 2006, <http://www.sudantribune.com/Juba-Declaration-on-Unity-and,13483> (accessed on 18 September 2012)

Framework Agreement on the Status of Nationals of the Other State and Related Matters between the Republic of Sudan and the Republic of South Sudan <http://sites.tufts.edu/reinventingpeace/files/2012/09/Nationals-Agreement-2709120001.pdf> (accessed 4 October 2012)

Websites

'Aid in transition: South Sudan' <http://www.globalhumanitarianassistance.org/wp-content/uploads/2011/07/gha-aid-in-transition-South-Sudan.pdf> (accessed 25 October 2012)

'Aljazeera, 'Sudan: Transcending tribe' http://www.aljazeera.com/photo_galleries/africa/201111010324526960 (accessed 15 July 2012)

'Bashir and Kiir fail to reach comprehensive deal over post-S. Sudan independence issues' <http://www.sudantribune.com/spip.php?article44027> (accessed 02 October 2012)

'CIA World Factbook: South Sudan' <https://www.cia.gov/library/publications/the-world-factbook/geos/od.html> (accessed 20 October 2012)

'CIA World Factbook: Sudan' <https://www.cia.gov/library/publications/the-world-factbook/geos/su.html> (accessed 20 October 2012)

'Country profile: Sudan' www.reliefweb.int/country/sdn (accessed 21 October 2012)

'Famine Early Warnings System, Sudan' <http://www.fews.net/pages/country.aspx?gb=sd> (accessed 02 October 2012)

'Final Award in Abyei Arbitration' <http://www.haguejusticeportal.net/index.php?id=10881> (accessed 28 September 2012)

'History of Sudan' <http://www.sudanupdate.org/HISTORY/chron.htm> (accessed 22 October 2012)

‘Interview with Lise Grand, United Nations humanitarian Coordinator and deputy special representative of the UN secretary-general for South Sudan’

<http://www.aljazeera.com/indepth/features/2012/07/201271221451370886.html> (accessed 27 September 2012)

‘National Sudan Multi-Donor Trust Fund (MDTF-N) Factsheet’

http://siteresources.worldbank.org/INTAFRICA/Resources/MDTF-N_factsheet.pdf (accessed 25 October 2012)

‘OCHA Humanitarian Bulletin Sudan Issue 06, 01 - 31 Jul 2012’

http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sudan%20Humanitarian%20Bulletin_July%202012.pdf (accessed 02 October 2012)

‘OCHA Humanitarian Bulletin Sudan Issue 37, 17 – 23 Sep 2012’

<http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sudan%20Weekly%20Humanitarian%20Bulletin%20Issue%2037%20%2817%20-%2023%20Sep%202012%29.pdf> (accessed 02 October 2012)

‘Peace Accords Matrix, Boundary Demarcation, Comprehensive Peace Agreement’

https://peaceaccords.nd.edu/matrix/status/65/boundary_demarcation (accessed 28 September 2012)

‘President Omar al-Bashir re-elected in Sudan elections’

http://www.bbc.co.uk/worldservice/news/2010/04/100426_sudan_elections_hs.shtml (accessed 01 October 2012)

‘Secretary-General, in consultative forum, urges Sudan, South Sudan to finalise agreements on outstanding issues, lead constitutional review with vision’

<http://www.un.org/News/Press/docs/2012/sgsm14551.doc.htm> (accessed 03 October 2012)

‘South Sudan Shuts off Oil in Dispute with Sudan’

<http://www.nytimes.com/2012/01/24/world/africa/south-sudan-shuts-off-oil-in-dispute-with-sudan.html> (accessed 26 September 2012)

‘South Sudan: Rearmament in Warrap State, Naomi Pendle’ <http://africanarguments.org/2012/03/27/a-letter-from-warrap-state-south-sudan-the-remedy-of-rearmament-%E2%80%93-by-naomi-pendle/> (accessed 03 October 2012)

‘Sudan and South Sudan reach deal to restart oil exports’ <http://www.trust.org/alertnet/news/sudan-and-south-sudan-reach-deal-to-restart-oil-exports/> (accessed 03 October 2012)

‘Sudan elections 'failed' to meet international norms’ <http://news.bbc.co.uk/2/hi/8626677.stm> (accessed 25 October 2012)

‘Sudan votes to secede’ <http://www.aljazeera.com/news/africa/2011/02/20112714264792774.html>
(accessed 17 September 2012)

‘Sudan: Breaking the Abyei Deadlock’ <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan/B047-sudan-breaking-the-abyei-deadlock.aspx> (accessed 02 October 2012)

‘The background to Sudan's Comprehensive Peace Agreement’ UN Mission in Sudan
<http://unmis.unmissions.org/Default.aspx?tabid=515> (accessed 24 June 2012)

‘The Juba Conference, June 1947’
http://www.gurtong.org/resourcecenter/Documents/Articles/juba_conference_1947.pdf (accessed 22 August 2012)

‘The Role of Arab-Islamic Elite in the Matters of War and Peace: North-South Relationship by Charles K Deng’ <http://www.sudaneseonline.com/earticle2005/apr22-14420.shtml> (accessed 22 October 2012)

‘UK opens up to Sudanese oil business, just as the country may be headed back to war in 2011’
<http://blogs.lse.ac.uk/politicsandpolicy/2010/10/12/uk-opens-up-to-sudanese-oil-business-just-as-the-country-may-be-headed-back-to-war-in-2011/> (accessed 25 October 2012).

‘United Nations Mission in Sudan’ <http://unmis.unmissions.org/Default.aspx?tabid=515> (accessed 20 October 2012)

‘UNMIS ‘Protection of Civilians’
<http://unmis.unmissions.org/LinkClick.aspx?fileticket=z%2fvZ3LOOXUc%3d&tabid=4379>
(accessed 24 June 2012)

‘Uppsala Conflict Data Program UCDP Conflict Encyclopaedia’
http://www.ucdp.uu.se/gpdatabase/gpcountry.php?id=199®ionSelect=1-Northern_Africa (accessed 26 September 2012)

Annex 1: Map of Sudan and South Sudan



Annex 2: Timeline of events

*Chronological
overview of
conflict and
statehood in
Sudan*

1820-21 Ottoman-Egyptian Turkiyya occupation

1885–98 Mahdist control

1882-1922 Sudan as British protectorate, co-administered by Egypt and Britain

1922-3 Closing of borders between North and South Sudan, commencement of Native Administration

1947 Juba conference deciding on unified statehood for North and South Sudan

1955 Outbreak of the first civil war between the North and South (1955-1972)

1956 Independence

1958 First *coup d'etat*. General Abboud comes to power

1964 Abboud steps down

1969 Numeiri takes control of government after a *coup*

1972 Signing of the Addis Ababa Peace agreement between Numeiri and Joseph Lagu, commander in the South

1983 'Islamic Revolution' and abrogation of Addis Ababa agreement. Creation of People's Liberation Movement/Army (SPLM/A) under John Garang de Mabior. Beginning of second civil war

1985 Overthrow of Nimeiri regime

1989 Al-Bashir comes to power

1993-4 First round of IGAD peace-talks

2002 Machakos Protocol signed between SPLA and NCP establishing ceasefire between North and South

2005 Comprehensive Peace Agreement signed creating option of southern secession. Death of John Garang in a helicopter crash

2009 Referendum on southern secession. ICC issues arrest warrant for Al-Bashir for alleged genocide in Darfur

2011 Creation of new Republic of South Sudan. Outbreak of numerous clashes in Heglig, South Sudan shuts down oil reserves for seven months.

2011 July: UN Security Council Resolution 1996 establishes UNMISS: United Nations Peacekeeping Mission in South Sudan
