SOUTH SUDAN
WITHIN A NEW SUDAN

THE CENTRE FOR CONFLICT RESOLUTION
CAPE TOWN, SOUTH AFRICA

POLICY SEMINAR
LE FRANSCHHOEK HOTEL, FRANSCHHOEK, 20 AND 21 APRIL 2006
SEMINAR REPORT

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WITHIN A NEW SUDAN

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LE FRANSCHHOEK HOTEL, FRANSCHHOEK, SOUTH AFRICA

20 AND 21 APRIL 2006

RAPPORTEURS

VANESSA JIMÉNEZ AND TIM MURITHI

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The Centre for Conflict Resolution

The Centre for Conflict Resolution is affiliated to the University of Cape Town (UCT) in South Africa. Established in 1968, the organisation has wide-ranging experience of conflict interventions in the Western Cape and southern Africa and is working increasingly on a pan-continental basis to strengthen the conflict management capacity of Africa's regional organisations, as well as on policy research on South Africa's role in Africa; the United Nations' (UN) role in Africa; African Union (AU)/New Partnership for Africa's Development (NEPAD) relations; and HIV/AIDS and Human Security.

The Rapporteurs

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Professor Francis Deng, Director of the Sudan Peace Support Project, has kindly granted permission to use portions of his concept paper, "South Sudan Within a New Sudan", in this report.

Executive Summary

The Centre for Conflict Resolution (CCR) in Cape Town, South Africa, hosted a two-day policy advisory group seminar on 20 and 21 April 2006 in Franschhoek, South Africa, on the theme, *South Sudan Within a New Sudan.*

The objective of this meeting was to assess the signing of the Comprehensive Peace Agreement (CPA) on 9 January 2005. This agreement was signed by the Government of Sudan (GOS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A). The seminar sought to devise policy recommendations on how South Sudan can use the opportunity of the signing of the CPA to promote peace, security and development. The meeting also assessed efforts to establish a new political and economic dispensation, and examined prospects for consolidating democratic governance through sustainable development in Sudan. Among the 25 participants at the seminar were academics and several senior officials from the recently-established Government of National Unity (GNU) of Sudan; the Government of South Sudan (GoSS); members of the South Sudan Legislative Assembly; representatives of the Government of South Africa; key members of the diplomatic community; as well as representatives of civil society organisations.

The meeting focused on the following seven key themes:

- The Long Road to the Comprehensive Peace Agreement
- Defining the CPA: An Agreement for All or for Just a Few?
- Achieving Democratic Governance and Culturally Appropriate Constitutional Processes
- Popular Participation, Human Rights and Gender Parity
- Development Priorities for South Sudan
- Engaging the International Community for Peace and Development in South Sudan
- CPA Implementation: Obstacles, Constraints and Incentives

The Long Road to the Comprehensive Peace Agreement

The diversity of Sudan's 38 million people, their languages and histories have complicated efforts to analyse the main sources of its conflicts. To categorise Sudanese as either "Arab" or "African" does not capture the complexities of identity, ethnicity, status and power in the country. British colonial rule adopted a policy of separate and unequal development for North and South Sudan, which laid the foundation for the marginalisation of Southerners. Sudan gained its independence in January 1956, but tensions that had arisen between the North and the South led to the outbreak of civil war. This first civil war lasted until 1972, when the first peace agreement between both regions was signed in Addis Ababa, Ethiopia. Failure by the Khartoum government to implement all the provisions of the agreement – including a referendum in the central oil-rich region of Abyei – led to the escalation of political violence. A second civil war broke out in 1983, with the creation of the SPLM/A in Ethiopia, and lasted for 22 years until the Comprehensive Peace Agreement was signed in January 2005. The main provisions of the CPA are: the creation of a Government of National Unity as well as a Government of South Sudan with representatives from both Northern and Southern political groupings; South Sudan will exercise the right of self-determination to decide whether to remain in a united Sudan or become

independent after a six-year interim period ending in 2011; a National and a South Sudan Legislative Assembly is to be established with representatives from both Northern and Southern political groupings; *Sharia* (Islamic) law will continue to apply in the North, except in the capital, Khartoum, where religious and cultural pluralism will be promoted, while the South will remain secular. During the interim period, the North and South will also retain their respective armed forces; integrated units will be established, which will form the nucleus of a national army if unity is affirmed; the North will be entitled to 50 percent of the oil revenues produced in the South; and all parties commit themselves to the pursuit of democratic governance and strive to promote human rights and development for all Sudanese.

Defining the CPA: An Agreement for All or for Just a Few?

There are different opinions about what the CPA is and which groups the accord is meant to benefit. Some have argued that the signatories to the CPA were unwilling to commit to the agreement until undue pressure was exerted by the international community. Questions have therefore been raised about whether the agreement will be implemented in good faith. The CPA has effectively turned parties which had – and still have – radically contrasting visions for Sudan into ruling partners. Under these circumstances, it is unclear whether this partnership can ever be a sincere and effective one. Another major problem is that, in attempting to resolve the North/South issue, the peace process leading up to the signing of the CPA excluded other marginalised groups in the West, East and North of Sudan. The implementation of the CPA must now include these groups. There are also concerns that the accord will merely function as a vehicle for the eventual dissolution of the Sudanese state. The CPA, if implemented faithfully, should deliver on most of the concerns and aspirations of the people of the South. The agreement has the potential to lay the foundations for a "New Sudan" based on a constitutional framework that promotes human rights, development, and democratic participation for all sectors of Sudanese society. This will involve bringing in other parties previously excluded from the agreement to increase support for the accord. The CPA can serve as a model for addressing other crises in Sudan, notably in the Darfur region, Beja, and Kordofan.

Achieving Democratic Governance and Culturally Appropriate Constitutional Processes

The 2005 Interim Constitution of South Sudan (ICSS) sets out a framework for inclusive and participatory governance, while guaranteeing the right of all citizens to take part at every level of government. The Constitution provides for the independence of the judiciary; the respect and protection of a bill of human rights; and the establishment of a number of commissions dedicated to maintaining the integrity of government and minimising corruption. The government must still establish an Anti-Corruption Commission and a strict code of conduct for its public officials. The Assessment and Evaluation Commission (AEC) has been mandated to monitor the genuine implementation of the CPA. However, the body has so far failed to fully achieve its objectives. A strengthening of this Commission and an increased commitment of its members will be essential if greater party transparency and accountability, as well as international influence, is to be secured and then translated into progress on the ground. Democratic governance in South Sudan will also be more sustainable if it is based on culturally appropriate constitutional processes centred on South Sudanese norms, values, and customs. The ICSS guarantees a role for traditional authorities in the form of Councils of Traditional Authority, and recognises the application of customary law, particularly with regard to land tenure.

Popular Participation, Human Rights and Gender Parity

One of the CPA's key objectives is to promote popular participation in order to ensure responsible, just, transparent, and integrity-based governance. The agreement also gives the people of South Sudan the right to control and govern affairs in their own region and to participate equitably in the national government in Khartoum. The CPA seeks to ensure that the distribution of powers in the New Sudan is guided by the need to promote the welfare of people and to protect their human rights and fundamental freedoms. The agreement also commits Sudan to respect and adhere to international conventions and human rights law. The CPA presents a unique opportunity for women to take part in establishing a democratic system of governance based on the principle of gender equality. The accord further outlines the equal right of men and women to enjoy all civil and political rights. It states that women will be accorded full and equal dignity, and that they will have the right to equal pay for equal work, as well as the right to own property and share in the estate of their deceased husbands. Naturally, the challenge will be how to translate these principles into practice. This will require decentralising political power in the South and establishing the public spaces for dialogue and communication between the people and their government. This process will be facilitated by the establishment and support of an effective media sector and the fostering of robust debate and dialogue.

Development Priorities for South Sudan

The CPA recognises the importance of maintaining security in South Sudan in order to create an enabling environment for development. The civil war that was largely waged in South Sudan significantly undermined the fabric of society and destroyed the infrastructure necessary for development. An immediate development priority is thus the repatriation, rehabilitation, and reintegration of former combatants into society. In tandem with these efforts, it will be necessary to rebuild the South's infrastructure, including roads; rail and waterways; communications systems; and postal services. There is also an urgent need for urban development, including housing; water and sewage systems; markets; lighting; and pavements. Bringing these "peace dividends" to the South will ensure greater stability. Article 40(1) of the South's Interim Constitution notes that the overall goal of economic development involves the eradication of poverty through the equitable distribution of wealth. Under the CPA, South Sudan is to receive 50 percent of the oil revenue generated in its territory. Combined with the resources being pledged by the international community, the South should have considerable start-up funds to promote development. There are, however, not enough skilled professionals to oversee necessary post-conflict reconstruction. The civil service of South Sudan is yet to be constituted, while the "absorptive capacity" of the region is low. In the medium- to long-term, the delivery of primary, secondary, and tertiary education as well as adult literacy must be improved and developed. As a short-term stop-gap measure, contracts for three-to-four years can be issued to professionals from neighbouring countries to assist with increasing the professional capacity on the ground, particularly in Juba, the capital of South Sudan.

Engaging the International Community for Peace and Development in South Sudan

The international donor and diplomatic communities must co-ordinate and increase their attention to post-conflict reconstruction efforts in South Sudan. International assistance can take various forms, including political pressure to ensure that the parties to the CPA live up to their commitments. The Intergovernmental Authority on Development (IGAD) – a grouping of seven countries in eastern Africa and the Horn – was involved in crafting the CPA, and must remain involved in ensuring that the political commitments enshrined in the CPA are met. In the area of post-conflict reconstruction, the international community must co-ordinate its efforts to

avoid the duplication of activities. International donors should also provide technical skills and expertise to assist South Sudan with its peacebuilding efforts. The United Nations (UN) system has a wealth of experience in post-conflict recovery, and its presence in Sudan has been instrumental on a number of issues. In particular, the UN Development Programme (UNDP) and the newly-created UN Peacebuilding Commission should be supported in their engagement with the Government of South Sudan. The African Union (AU) as well as the New Partnership for Africa's Development (NEPAD) have developed Post-Conflict Reconstruction Policy Frameworks. The GoSS and the GNU should engage these frameworks in order to establish the foundations for an agricultural and dairy industry.

CPA Implementation: Obstacles, Constraints and Incentives

In terms of the CPA, some progress has been made with regard to the adoption of constitutions and the establishment of the executives and legislatures of the GNU and the GoSS. However, there have been considerable delays in the establishment and effective functioning of numerous commissions and national institutions as stipulated in the CPA. This has resulted in delays in the implementation of power- and wealth-sharing. In the North, this is largely due to a lack of political will, rather than the absence of capacity and resources. There are fears among some Northerners that, if the CPA is genuinely implemented, it will dilute their power; alter their Islamisation agenda; and eventually reduce their control over oil revenues from the South. Some of the delays can also be attributed to the GoSS. IGAD, the AU and the UN must remain engaged in encouraging both parties to implement the accord. If the people of Sudan do not begin to experience a "peace dividend", tensions might arise. Ultimately, the Sudanese people, working with the international community, must pressure their governments to live up to their promises.

Policy Recommendations

The discussions at the seminar raised ten key policy issues which must be brought to the attention of decision-makers within the Government of South Sudan (GoSS), the Sudanese Government of National Unity (GNU), the African Union (AU), IGAD, as well as other external actors. These include:

- First, the urgent and effective implementation of the CPA is necessary in order to address the issue of the marginalisation of South Sudan. Members of the GNU, the GoSS, and Sudanese society should familiarise themselves with the CPA and take steps to internalise its principles. The viability of the agreement will require continued vigilance and monitoring.
- Second, South Sudan will only thrive in the New Sudan if the wealth and power that has been inequitably held by the North is redistributed and adequately used to provide health, education, and infrastructure, as well as to create jobs for Southerners. For the North, this means that there must be a genuine commitment towards sharing power, national wealth, social services, and promoting economic development opportunities with the South.
- Third, the South Sudanese now have an opportunity to restructure their constitutional and political frameworks by drawing on African cultural norms, values and institutions, rather than simply accepting colonial models. Lessons should be drawn on how to use cultural processes in consolidating peace, notably from Somaliland, where a hybrid system of governance was established using traditional leadership structures and colonial systems of governance. The South Sudan Councils of Traditional Authority Leaders should explore this potential, drawing lessons from similar experiences across Africa.
- Fourth, post-conflict reconstruction objectives should be adequately funded and the international

community must deliver on its pledges of $4.5 billion through 2007. Even though the "absorptive" capacity to utilise incoming resources in South Sudan is low – particularly in terms of skilled labour – professionals from neighbouring countries can be imported on short-term contracts. Development efforts must address the critical issue of the repatriation of Internally Displaced Persons (IDPs) and refugees, as well as relief, rehabilitation, reconstruction and reintegration.

- Fifth, the South Sudanese Diaspora should be engaged since its members can provide much-needed technical and financial resources to rebuild Sudan, including through the provision of skilled labour – at least in the short-term. The private sector has a role to play, particularly in supporting and investing in the agri-business and dairy industries in South Sudan.
- Sixth, the issue of land tenure must be urgently addressed in order to prevent future conflicts. The ruling elite in the North maintains that land belongs to the state, while the opposing view held by South Sudanese is that land belongs to local communities. These two competing views about land ownership must be reconciled, particularly in the context of returnees and economic development.
- Seventh, South Sudan needs to put in place a process of reconciliation, not simply by transposing reconciliation models from other countries, but by adopting a model that speaks to the South Sudanese context and experience and draws on its cultural heritage.
- Eighth, given the possibility that the South may vote for independence in 2011, regional and national strategies, as well as international support, must focus on priorities and programmes that will ensure a stable and viable Sudan in which the South is economically and politically capable of standing on its own.
- Ninth, the viability of the CPA will require the continued vigilance, monitoring and involvement of the international community, particularly in those areas, such as Abyei, that are identified as flashpoints capable of threatening the peace and the CPA's viability.
- Finally, the success of the CPA depends on whether all Sudanese take responsibility for its implementation. Only then can the notion of "attractive" unity become a reality, and a unity vote in 2011 succeed.

ABOVE: *From left:* Dr Tim Murithi, Centre for Conflict Resolution, Cape Town; Professor Francis Deng, School of Advanced International Studies, Washington, DC; Ms Vanessa Jiménez, Sudan Peace Support Project, Washington, DC

LEFT: Mr Arop Deng Kuol, Sudan People's Liberation Movement/Army, Addis Ababa, left; Dr Chris Landsberg, Centre for Policy Studies, Johannesburg

FAR LEFT: Ms Vanessa Jiménez, Sudan Peace Support Project, Washington, DC

Introduction

The Centre for Conflict Resolution (CCR) in Cape Town, South Africa, hosted a two-day policy advisory group seminar on 20 and 21 April 2006 in Franschhoek, South Africa, on the theme, *South Sudan Within a New Sudan.*

The objective of this meeting was to assess the signing of the Comprehensive Peace Agreement (CPA)[1] on 9 January 2005 by the Government of Sudan (GOS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A). The seminar sought to devise policy recommendations on how South Sudan can use the opportunity of the signing of the CPA to promote peace, security and development. The meeting further assessed efforts to establish a new political and economic dispensation which can consolidate democratic governance and sustain development in Sudan.

Among the 25 participants were academics and several senior officials from the recently-established Government of National Unity (GNU) of Sudan, the Government of South Sudan (GoSS), members of the South Sudan Legislative Assembly, representatives of the Government of South Africa, key members of the diplomatic community, as well as representatives of civil society organisations. (A list of participants is included in Annex III.)

The CPA offers a new model for governance in Sudan which heralds the promise of peace, security, democracy and sustainable development. Through this new framework, the CPA provides the South with an opportunity to forge its own identity. The agreement stipulates that, while the new GoSS will exercise certain autonomous powers and be provided with the resources to begin its reconstruction and development, it will also need to partner with its former enemy – the previous GOS – to forge a GNU. Under the CPA, both parties are responsible for creating a new system of government that will make unity "attractive". This applies particularly to South Sudanese who may see the CPA merely as a means to separate from Sudan in 2011. [2]

The vision of a "New Sudan" espoused by the SPLM/A and personally championed by its leader, the late John Garang de Mabior, who died in a helicopter crash in July 2005, has been integrated into the agreement. It envisions a governing framework grounded in human rights, equitable development, and democratic participation for all sectors of Sudanese society, and not just the South. There are many in the South who never understood or endorsed this vision. For those who rejected this view, Sudan's second civil war – which lasted from 1983 to 2005 – was about their liberation from the North and never about finding ways to further entangle themselves with the regime in Khartoum.[3] The fact remains, however, that even if Garang's vision of a New Sudan was no more than rhetoric and a political ploy to allay the fears of those who opposed Southern calls for secession, this vision resonated with non-Arab groups in the North: the Dinka in Abyei; the agrarian communities in Darfur; the Beja in the East; groups in Kordofan and the Southern Blue Nile; and many others who have felt marginalised by the government and the ruling elite in Khartoum. Consequently, these groups

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1 *The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army. Nairobi.* 9 January 2005 (available at http://www.iss.co.za/AF/profiles/Sudan/darfur/compax/ : accessed 26 June 2006).

2 *Comprehensive Peace Agreement: The Machakos Protocol.* Articles 1.3 and 2.5.

3 For a critical review of John Garang's "New Sudan" vision, see John Young, "John Garang's Legacy to the Peace Process, the SPLM/A and the South". *Review of African Political Economy.* No.106 (2005), pp.535-548.

expect the SPLM and its newly-formed GoSS to champion this vision on their behalf. The question is whether the SPLM has the capacity and political will to continue advocating for the vision of a "New Sudan".

It should be noted that about 80 percent of the North-South conflict took place in the South. Consequently, as the new GoSS struggles to create a New South and to bring the dividends of peace to its constituents through the establishment of a strong regional government and the construction of roads, provision of electricity and other social and economic programmes, the CPA also requires Southern Sudan to maintain a national focus. To many, it is the South that will be the focal point for the transformation of Sudan as a whole. In this context, an examination of the South's priorities, challenges, and needs was a critical aim of the Franschhoek meeting.

South Sudan confronts the challenges of reconstruction, development and nation-building. This is a unique opportunity since the region now has a chance to construct a system of constitutionalism and governance that builds on the indigenous cultural values and institutions that survived and were sustained during colonial occupation and the country's two civil wars. South Sudan was, to a large extent, left to its own devices in the sense that foreign concepts of development and nationhood are not fully entrenched in the region, as has been the case in most African countries. South Sudan therefore possesses the potential to build an African region or state of its choosing through a combination of traditional and western constitutional systems.

Objectives

The objective of the Franschhoek seminar was to bring together some representatives from South Sudan and the government in Khartoum, as well as other policymakers, academics, and representatives of civil society to begin to identify how the South can function within the New Sudan. The principal aim of the meeting was to develop a coherent and realistic strategy for South Sudan to thrive and flourish in the New Sudan. In this regard, the meeting had eight key objectives:

- To examine the CPA and its implication for peace, security, and development in South Sudan and the rest of Sudan;
- To assess what the CPA means in terms of renegotiating a new social, economic, and political dispensation for the whole of Sudan;
- To identify the priorities for post-conflict reconstruction in the South;
- To assess how popular participation can enhance the role of civil society in promoting peacebuilding and development based on the protection of human rights and achieving gender parity;
- To highlight potential obstacles to the successful implementation of the CPA;
- To contribute to policy debates on how the South can foster development through collaboration with the international community;
- To produce policy recommendations and promote an informed discussion on the most constructive strategies for consolidating peace and development in Sudan; and
- To provide a platform for policymakers to assess the challenges and opportunities for implementing the CPA.

1. The Long Road to the Comprehensive Peace Agreement

The conflict and the peace process that led to the signing of the Comprehensive Peace Agreement has a long history. This section will provide a brief analysis of the conflict and conclude with a look at the challenges ahead.

1.1 A Brief History of a Long Conflict

The diversity of Sudan's 38 million people and their languages and histories make it difficult to identify precisely the tensions that led to its modern-day conflicts. The standard rendition of early Sudanese history tells of Arab incursions and the "Arabisation" of African communities that populated this region.[4] However, the categories of identity, ethnicity, status and power were much more complex and nuanced than is often postulated by the simplistic Arab/African dichotomy.[5] The Turco-Egyptian conquest and occupation of the territory that is now Sudan, in the 19th century was driven by commercial interests.[6] Sudanese scholar Jok Madut Jok noted in 2001 that the slave trade had been rife in the region since the early 18th century, and also affected South Sudanese[7] who were forcefully trapped and recruited into "private slave armies".[8]

The Turco-Egyptian colonial government was overthrown in 1881 by Mohamed Ahmed Al-Mahdi who ruled Sudan until 1898.[9] Analysts have argued that racial attitudes in Northern Sudan remained unchanged from the period of Turco-Egyptian rule.[10] The Mahdist state undertook incursions into South Sudan, but was often met with resistance. To a large extent, "the Mahdist state developed its own form of internal colonialism".[11] The Mahdists imposed allegiance through religion; appointed non-indigenous administrators to govern the South; and subordinated indigenous leadership structures to their rule. Following the "Scramble for Africa" in the late 19th century, the British imperial government occupied Sudan in 1898 and tried to eradicate and suppress Mahdism. British rule adopted a strategy of re-asserting Egypt's old claims to the territory and effectively established an Anglo-Egyptian condominium over Sudan. The 1899 Anglo-Egyptian Treaty recognised Sudan as an Egyptian possession administered by British officials on behalf of the King of Egypt. Britain sought to colonise the whole of Sudan with a Governor-General appointed by the Egyptian King on the recommendation of officials in Whitehall.[12] In the South, the British turned out to be no different from previous colonisers: they "burned villages, seized cattle as 'fines' and carried off war captives and hostages to distant prisons or for

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4 See Yusuf Fadl Hasan. *The Arabs and the Sudan* (Edinburgh: Edinburgh University Press. 1967).
5 See Jay Spaulding. *The Heroic Age in Sinnar* (East Lansing: African Studies Center. Michigan State University. 1985).
6 See Afaf Lufti Al-Sayyid Marsot. *Egypt in the Reign of Muhammad Ali* (Cambridge: Cambridge University Press. 1984); and Richard Hill. *Egypt in the Sudan 1820-1881* (London: Oxford University Press. 1959).
7 Jok Madut Jok. *War and Slavery in Sudan* (Philadelphia: University of Pennsylvania Press. 2001); and Jay Spaulding. "Slavery. Land Tenure and Social Class in the Northern Turkish Sudan". *International Journal of African Historical Studies*. Vol.15. No.1. 1982.
8 Douglas Johnson. "Recruitment and Entrapment in Private Slave Armies: The Structure of the Zara'ib in the Southern Sudan". in E. Savage (ed.). *The Human Commodity: Perspectives of the Trans-Saharan Slave Trade* (London: Frank Cass. 1992).
9 See Lidwien Kapteijns. *Mahdist Faith and Sudanic Tradition: The History of the Masalit Sultanate. 1870-1930* (London: Routledge and Kegan Paul. 1985); and Peter Holt. *The Mahdist State in the Sudan 1881-1898*. Second Edition (Oxford: Clarendon Press. 1970).
10 Douglas Johnson. *The Root Causes of Sudan's Civil War* (Oxford: James Currey. 2003).
11 Johnson. *The Root Causes of Sudan's Civil War*. p.6.
12 Martin Daly. *Empire on the Nile: The Anglo-Egyptian Sudan. 1898-1934* Vol. I. and *Imperial Sudan: The Anglo-Egyptian Condominium. 1934-56*. Vol.2 (Cambridge: Cambridge University Press 1991).

conscription in the army, all in the name of establishing the government's authority".[13] Greater attention was placed on the development of the North and therefore, in many respects, the South was left to its own devices and not as strongly influenced by western concepts of development and governance.[14] Racial attitudes also had an impact on colonial educational policy, and Southerners were largely marginalised in the lower echelons of the colonial administration.

1.2 The Decolonisation of Sudan

In the lead up to the decolonisation process, the British established a Sudanese Legislative Assembly that included both Southerners and Northerners. The Assembly passed a self-government statute in 1952.[15] Northern Assembly members repeatedly rejected the incorporation of the post of "Minister for the South" into the new government. Subsequently, a series of agreements were reached between the Egyptian government and the Northern parties on "the terms for the forthcoming elections to the new parliament, and the process through which Sudan would finally choose its future".[16] No Southern Sudanese leaders were included in these agreements, and "thus the issues which most concerned Southerners were once again decided without their participation". [17]

In December 1953, elections took place to establish the first self-governing parliament in Sudan. A "Sudanisation" committee was established in the run-up to full independence, but Northerners were appointed to all the senior positions in the South.[18] Many "Southerners saw this as the beginning of the Northern colonisation of the South". In 1954, the South Sudanese leadership – including indigenous leaders and members of the Diaspora – convened their own conference in Juba to discuss the political future of the Sudan and, particularly, the place of the South within Sudan. The conference resolved to vote for independence from Egypt, and to establish a federal system for the entire country, with the South as an autonomous region. In the event that this was not achieved, "the South reserved its right to self-determination which included the option of complete independence from the North".[19] Discontent spread in the South when Northerners were appointed as their administrators; senior officers in the army; police officers; and teachers. In 1955, a mutiny erupted at a military garrison in Torit, the military headquarters of Equatorial province. This mutiny subsequently spread to other garrisons in the South.

Independence was granted to Sudan in January 1956, ushering in the post-colonial era in Africa. The mutiny which had begun in Torit plunged Sudan into its first civil war which lasted for 17 years until 1972. The Addis Ababa peace agreement between the North and the South was signed in February of that year. It was ratified and codified in the Regional Self-Government Act in March 1972, and subsequently incorporated into the constitution of Sudan. The failure to implement this agreement further generated a sense of marginalisation in the South. The leadership in the South gradually became disillusioned, and viewed the then Khartoum government of General Jaafar Nimeiri as illegitimate.[20] Politically, what became clear was that the South, like

13 Johnson. *The Root Causes of Sudan's Civil War.* p.10.
14 Johnson. *The Root Causes of Sudan's Civil War.* p.25.
15 Johnson. *The Root Causes of Sudan's Civil War.* p.26.
16 Johnson. *The Root Causes of Sudan's Civil War.* p.26.
17 Johnson. *The Root Causes of Sudan's Civil War.* p.26.
18 Johnson. *The Root Causes of Sudan's Civil War.* p.27.
19 Johnson. *The Root Causes of Sudan's Civil War.* p.27.
20 Abel Alier. *Southern Sudan: Too Many Agreements Dishonoured.* (Ithaca, New York: Ithaca Press, 1990).

other parts of Africa, was being ruled "by constitutional models that are external in origin and not adequately grounded in the African cultural values and institutions of the peoples they are supposed to reflect and serve".[21] This tension led to the birth of armed resistance movements, and political violence escalated. In March 1982, Nimeiri unilaterally abrogated the Addis Ababa agreement by reneging on the holding of a referendum in Abyei. In July 1983, the Sudanese People's Liberation Movement and Army was established in Ethiopia. This second civil war lasted for 22 years and ended with the signing of the Comprehensive Peace Agreement in January 2005.

The word "marginalisation" captures well the core of the problem in the "old" Sudan. The challenge for the New Sudan will be to remedy this marginalisation. The ways and means of addressing this problem is the central theme that runs throughout the CPA. The agreement is not only a peace accord to end a civil war, but also an attempt to restructure the country in a way that addresses the issue of the marginalisation in the South.[22]

Mr John G Yoh, University of South Africa, Tshwane, left; Dr Dr Iqbal Jhazbhay, University of South Africa, Tshwane

TOP: Ms Mariam Bibi Jooma, Institute for Security Studies, Tshwane

ABOVE: Dr David Nailo N Mayo, Southern Sudan Legislative Assembly, Juba

21 Francis Deng. "South Sudan Within a New Sudan". Concept Paper for CCR Seminar "South Sudan within a New Sudan". 21 February 2006. p.1.
22 Francis Deng. *War of Vision: Conflict of Identities in the Sudan* (Washington. D.C.: Brookings Institution Press. 1995).

2. Defining the CPA: An Agreement for All or for Just a Few?

There are different opinions about what the CPA is and whom it is meant to benefit. Some analysts see it as a political compact, a peace agreement, or an accord between two previously warring parties that genuinely tries to address their specific concerns.

Others have argued that both of the CPA's parties were simply unwilling participants coerced by the international community into a negotiated agreement. Those who hold this view have questioned whether both parties have the necessary political will to implement this agreement.

2.1 Something for Everyone: A Review of the CPA's Provisions

The CPA has turned two parties which had, and still have, radically contrasting visions for the country, into ruling partners. It remains to be seen whether these interlocutors have truly forged a sincere and credible partnership or continue to pursue their differences and disputes through other less violent means. The issue of popular ownership of the CPA has been made difficult by the exclusion by the SPLM and the National Congress Party (NCP)[23] of key northern and southern political forces from the peace process. Some of the actors excluded from this process were the National Democratic Alliance (NDA), the Sudan Southern Defence Forces (SSDF), as well as key members of civil society and leaders of other marginalised groups in the North, East and West of the country.[24] While the wisdom of limiting participation in the peace talks will continue to be debated, most agree that the CPA can only be implemented through an inclusive and transparent process that involves all sectors of society. However, there are doubts about whether the NCP and SPLM will accept any dilution of the power they now share under the agreement by bringing groups that were previously excluded into the implementation process. There are well-founded concerns that the agreement will merely be used as a vehicle for the eventual dissolution of the Sudanese state and the independence of the South. This may lead to the escalation of conflicts between the marginalised groups that remain in the predominantly Arab-Muslim North and throughout the areas of Darfur, Beja, Kordofan, the Southern Blue Nile and the Nubian mountains.

The CPA has formalised a framework that appears to go beyond merely redefining the relationship between the North and the South, but includes restructuring and redefining the social, economic and political fabric of Sudan.[25] However, the accord has been criticised for not incorporating explicit provisions that conclusively resolve other conflicts throughout Sudan, such as the killings and massive displacements occurring in Darfur; the simmering hostilities between the "Arab" Misseriya and Ngok Dinka of Abyei; and the low-level guerrilla war being waged in the Beja region.

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23 The National Congress Party was the ruling party in the previous Government of Sudan and is the dominant partner in the Government of National Unity.

24 See Institute for Security Studies, "The Sudan IGAD Peace Process: Signposts for the Way Forward". African Security Analysis Programme. Occasional Paper. Tshwane. South Africa. 13 February 2004. pp.7-12. which describes the problems of the lack of inclusiveness of the IGAD peace process since its beginning.

25 Mansour Khalid. "Conflict Resolution. Popular Participation and Democratic Governance". panel discussant at the CCR seminar. *South Sudan within a New Sudan*. Franschhoek. South Africa. 20 and 21 April 2006.

Dr David Nailo N Mayo, Southern Sudan Legislative Assembly, Juba, left; Mr Philip Browne, United Nations Development Programme, Tshwane.

Ambassador Kuol Alor, Sudan Embassy, Tshwane

The CPA largely delivered on most of the concerns and aspirations of the people of the South.[26] To a certain extent, there is a sense that there is "something for everyone" in this agreement. There is, however, a need for a public information campaign to allay any fears that the SPLM will abandon the CPA's New Sudan vision and focus exclusively on uniquely Southern interests. This is particularly true considering that there are elements in the North interested in conquering and dividing the South; diminishing SPLM support from non-Southern groups; and keeping the NCP's non-compliance with the agreement from public view. To contribute to the public awareness of the critical elements of the CPA, some of its provisions include the following 14 key points:

- The South will exercise the right of self-determination to decide whether to remain in a united Sudan or become independent through an internationally supervised referendum to be held after a six-year Interim Period, between 2005 and 2011, during which all efforts will be made to render unity an "attractive" option for the South.
- The establishment of a GNU with a National Assembly consisting, in the interim (pending elections), of diverse representatives: 52 percent from the National Congress Party, 28 percent from the SPLM, 14 percent from Northern political forces, and six percent from Southern political forces. Representation in the National Executive will be allocated in the same manner.
- The establishment of a GoSS with an Assembly consisting, in the interim, of diverse representatives: 15 percent from the National Congress Party, 70 percent from the SPLM, and 15 percent from Southern political forces. Representation in the executive branch of the GoSS will be allocated in the same manner.

26 Institute for Security Studies. "The Sudan IGAD Peace Process".

- During the Interim Period, *Sharia* (Islamic) law will continue to apply in the North. Religious and cultural pluralism will be respected in the national capital, Khartoum, and the South will remain secular.
- North and the South Sudan will retain their respective armed forces and both armies will be considered and treated equally as Sudan's national armed forces during the Interim Period. Integrated units will be established consisting of equal numbers of the two armed forces, which will form the nucleus of the national army if unity is affirmed by the South.
- The North will be entitled to 50 percent of the oil revenues produced in the South. Some of the South's revenue will go to the oil-producing localities. Revenue sharing should reflect a commitment to devolution of power and decentralisation of decision-making with regard to development, service delivery and governance.
- South Sudan and other war-torn regions will be developed to the same average level of socio-economic and public services standards as the North.
- The parties commit themselves to the pursuit of democratic governance, accountability, transparency, democracy and the rule of law at all levels of government in order to achieve lasting peace.
- The parties commit themselves to establishing a series of joint commissions and committees to oversee and carry out the CPA's implementation.
- The Nuba Mountains and Southern Blue Nile regions will be accorded a significant level of autonomy, and there will be popular consultation to assess the people's views on the terms of the CPA.
- The people of Abyei will exercise the right to decide whether to remain in the North or to join the South through an internationally supervised referendum to be held simultaneously with the referendum in the South. During the Interim Period, Abyei will administer itself under the auspices of the presidency. The people of Abyei will have dual Northern and Southern citizenship.
- A new commission – the Abyei Boundaries Commission (ABC) – which will include representatives of local communities, will determine the borders of the Abyei area.
- Revenues from the oil produced in Abyei will be divided in six ways: the National Government will receive 50 percent; the Government of the South 42 percent; the two neighboring states in the North and the South two percent each; Abyei two percent; and the neighbouring Missiriya Arab "tribe" to the North two percent.
- The parties also agreed to formulate a strategy to ensure the timely repatriation, resettlement, rehabilitation, reconstruction and development of the South. In particular, a commitment was made to address the needs of those areas affected by war and to redress the historical imbalances of socio-economic development and resource allocation.[27]

A close examination of the provisions of the CPA and an appreciation of the different points of view and motives of its stakeholders are important in understanding how the parties view their respective obligations, responsibilities, and potential benefits. Whether parties see the CPA as a vehicle for their liberation; the realisation of a New Sudan; or a threat to their power, largely informs their actions and motivation. In this light, five strategies could be adopted to ensure the faithful implementation of the CPA:

- The NCP and the SPLM must bring other parties into the implementation process and ensure that these actors also see themselves as partners in shaping and advancing the CPA's objectives. This would entail involving them in the elaboration of new CPA protocols or implementing legislation and supporting initiatives such as the National Congress Party/National Democratic Alliance dialogues and

27 *Comprehensive Peace Agreement*. 9 January 2005.

the Juba Declaration on the Unity and Integration between the SPLA and the SSDF of January 2006.[28]

- Affirmation by the SPLM that its goal is not limited only to creating a New South, but embraces a New Sudan where equality and self-governance is the right of all people and all states. This will solidify the movement's power-base throughout the country; improve the party's chances in national elections in 2009; increase international opinion of the GoSS as a partner in transforming Sudan; and strengthen its hand when negotiating with the more powerful NCP.
- If the CPA is to be successfully characterised as a model for peace that will have an impact throughout Sudan, the parties must commit to finding and supporting fair solutions to the other crises and emerging conflicts throughout the country, including those in Darfur, Beja, and Kordofan. Positive steps could include ensuring that the Darfur Peace Agreement (DPA) of May 2006 is respected as well as the Abyei Boundaries Commission Report of September 2005.
- Education campaigns that provide people with accessible information about the CPA and the obligations and responsibilities of the respective parties could help to ensure accountability for its implementation.
- Finally, by understanding the dynamics surrounding the signing of the CPA in 2005, the international community must remain diligently engaged in counteracting potential "spoilers" and promoting the credible implementation of the CPA.

ABOVE: From left: Dr Luka Biong Deng, Sudan People's Liberation Movement, Juba; Mr Arop Deng Kuol, Sudan People's Liberation Movement/Army, Addis Ababa; Prof George B Nyombe, Government of National Unity, Khartoum; Amb Kuol Alor, Sudan Embassy, Tshwane

LEFT: Mr John G Yoh, University of South Africa, Tshwane

FAR LEFT: Prof Ben Turok, South African Parliament, Cape Town

28 Juba Declaration (signed 8 January 2006). (available at www.sudantribune.com/article.php3?id_article=13483.24 : accessed 26 June 2006).

3. Achieving Democratic Governance and Culturally Appropriate Constitutional Processes

The vision of a New Sudan strives for "a free, just, democratic, and secular system of governance based on the free will and popular participation of all the people", where South Sudan is the "epi-center for the realization of this vision and a vehicle for transformation and change in the Sudan". [29]

Achieving this will involve respect for democratic governance and constitutional processes; establishing mechanisms to ensure transparency and accountability in government affairs – both at the local, regional, and national levels; and, culturally contextualising Sudan's solutions to reflect the norms, values, customs and needs of its distinct peoples. The following sub-sections will assess some of these issues.

3.1 Democratic Governance

Effective democratic governance is typically characterised by processes that are participatory and inclusive, and amounting to more than just free elections and the rule of the majority.[30] A democratic Sudan that merely displaces the Muslim minority in power and makes them New Sudan's latest disenfranchised and marginalised population is unlikely to generate and sustain peace. Delays in drafting and adopting the political party act – a national electoral law – and the establishment of the National Election Commission raise doubts about whether free and fair mid-term elections in 2009 will result in an inclusive government.

The 2005 Interim Constitution of Southern Sudan (ICSS), for example, sets out an initial framework for inclusive and participatory governance focused on serving its diverse people equitably. Among other things, this Constitution:

- Recognises, early on, the multi-ethnic, multi-cultural, multi-lingual, multi-religious, and multi-racial identity of the country (Article. 1(2));
- Guarantees the right of every citizen to take part in any level of government (Article. 30(1));
- Ensures that the composition of the government in Southern Sudan takes into account the ethnic, regional and social diversity of Sudan (Article. 39(4));
- Guarantees the equitable sharing of the wealth of South Sudan among all levels of government (Article. 40(3));
- Requires that at least 25 percent of the legislature comprises women (Article. 58(1)(b)) and that women are substantially represented in the judiciary (Article. 126(6)); and
- Mandates that the Ministers of the GoSS are selected with due regard to the need for inclusiveness based on ethnic and regional diversity and gender (Article. 117(3)).

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29 Luka Biong Deng "Southern Sudan within a New Sudan: Sudan Post-Conflict Priorities: The Challenge of Peace, Transformation and Change", paper presented at the CCR seminar, *South Sudan Within a New Sudan*, Franschhoek, 20 and 21 April 2006.

30 Philippe Schmitter, "Some Basic Assumptions about the Consolidation of Democracy", in Takashi Inoguchi, Edward Newman, and John Keane (eds.), *The Changing Nature of Democracy* (Tokyo: United Nations University, 1998), pp.236; and Jan Kooiman, *Modern Governance* (London: Sage, 1993). For more on this topic, see United Nations Economic and Social Commission for Asia and the Pacific, Human Settlements, "What is Good Governance" (available at http://www.unescap.org/huset/gg/governance.htm ; accessed 26 June 2006).

The Interim Constitution also provides for an Anti-Corruption Commission; a Human Rights Commission; and a Public Grievance Chamber in which citizens can submit complaints related to grievances suffered in relation to a government institution.[31] The signing of the Juba Declaration between the SPLA and the South Sudan Defence Forces in January 2006 could also help to establish a stable South Sudan.

More than nine months since the adoption of the ICSS, the work of the CPA's commissions and entities is not satisfactory as only a few of these bodies convene regularly and implement their mandates. Many of these bodies have not been established; others have rarely met; their members often disagree and many lack a legislative foundation for conducting their mandate and internal procedures.[32] In view of the principle of inclusion regarding the GoSS's ministerial appointments, the South Sudanese president, Lieutant-General Salva Kiir Mayardiit, has also been criticised for appointing a non-inclusive cabinet. A number of smaller ethnic groups and Southern Muslims communities were excluded from the cabinet, and only two of the 22 seats are occupied by women.[33] The GoSS has begun to acknowledge this problem and is considering reshuffling jobs to address this matter.

There are significant concerns that the SPLM, and by implication the GoSS, lacks the technical and resource capacity in the short-term to establish the necessary foundations for democratic governance within the South and to serve as an equal and effective partner to the NCP. It is often said that the SPLM leadership is spread too thin and lacks the full capacity quickly to train a cadre of qualified civil servants that can assist the various ministries and government departments in carrying out their duties. The SPLM is out-resourced and out-numbered by the NCP in the GNU. The CPA stipulated that at least 30 percent of the civil services jobs in the GNU should be allocated to individuals from South Sudan. To date, the National Civil Service Commission has not been constituted and the CPA-quota has not been met. Where SPLM ministers were appointed to national ministry positions, the NCP State Minister who would typically act as the deputy, or even the Under-Secretary, essentially continues to carry out the primary functions of the ministry. In addition, promises to grant the finance and energy ministry posts to the SPLM have not been respected.[34]

Following the signing of the CPA, SPLM leaders have been called upon to assume government posts in Khartoum, as well as in the GoSS. This has left the party without some of its principal officials and with a younger group of individuals who have limited administrative and professional civil service training. Urgent tasks for the GoSS include drafting legislation; establishing transparent accounting mechanisms for local governments; establishing an independent judiciary; creating mechanisms to protect human rights and to avoid corruption; elaborating an effective electoral law; and developing a social and economic policy. To enhance democratic governance the following eight strategies can be adopted:

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31 Government of Southern Sudan. *Interim Constitution of Southern Sudan*. 2005. Articles. 13-37. 128 and Chapters III. IV and V (available at http://www.cushcommunity.org/constitution.pd : accessed 26 June 2006).

32 See generally. the United Nations Mission in Sudan (UNMIS) CPA Monitor. Monthly Report on the Implementation of the CPA (June 2006). pp.1. 2. 9-11. 20 and Annex 3 (available at http://www.unmis.org/english/cpaMonitor.htm : accessed 26 June 2006). (hereinafter. "UNMIS CPA Monitor June 2006").

33 The UNMIS CPA Monitor. Monthly Report on the Implementation of the CPA (March 2006). pp.15-17 (available at http://www.unmis.org/english/cpaMonitor.htm : accessed 26 June 2006). This report notes that UNMIS has pre-recorded material to air on the radio in Juba. but while the Government of National Unity has allocated the UN a country-wide frequency. to date no formal license has been granted to the UNMIS radio (hereinafter. *"UNMIS CPA Monitor March 2006"*).

34 This is due to the failure to constitute the National Civil Service Commission tasked with training and recruitment to ensure that at least 30 percent of the civil service jobs are available to people from South Sudan. See International Crisis Group. "Sudan's Comprehensive Peace Agreement: The Long Road Ahead". Africa Report No. 106 (31 March 2006). p.6 (available at http://www.unhcr.org/cgi-bin/texis/vtx/ home/opendoc.pdf?tbl=RSDCOI&id=4455ff8a4 : accessed 26 June 2006). See also Human Rights Watch. *The Impact of the Comprehensive Peace Agreement and the New Government of National Unity on Southern Sudan*. No. 1. March 2006 (available at http://hrw.org/backgrounder/africa/sudan0306/sudan0306.pdf : accessed 26 June 2006).

- Ensuring that government officials at all levels have internalised the rights and obligations articulated in the ICSS and have been mandated to realise and protect its objectives;
- Guaranteeing that the political party and election laws developed for the GoSS elections which will take place in 2009 are completed;
- Ensuring the successful establishment of the GoSS's Anti-Corruption Commission and establishing a strict code of conduct for public officials;
- Ensuring mechanisms for public transparency, participation, and accountability not just with respect to GoSS management of finances, but for all government decision-making.
- Accessing human resources and technical expertise from outside Sudan as needed, including from the Sudanese Diaspora in the United States, Canada, Australia, and throughout Europe;
- Securing the technical and financial resources that may be needed to ensure the immediate and effective establishment of the commissions and chambers provided by the ICSS;
- Ensuring the faithful implementation of the Juba Declaration by drawing on national and international resources, political pressure, and incentives; and
- Taking steps to increase the number of Southern Sudanese representatives in the GNU.

3.2 The Constitutional Process

A constitutional process should ensure that the public remains engaged in the political life of Sudan by culturally grounding the legal and political frameworks in the values, norms, and beliefs of its citizens. There is widespread concern that, in the case of Sudan, its modern constitutional processes were not inclusive. Since the CPA was signed, the SPLM had sponsored just one event by June 2006 to publicise the ABC report. Some preliminary CPA dissemination has been targeted at local populations in Kassala and the Southern Kordofan states by the United Nations Mission in Sudan (UNMIS). However, beyond these efforts, neither of the parties to the agreement have significantly raised public awareness about the CPA and the constitutional processes that have since been implemented.[35] In fact, it was observed that, when leaders from the ten Southern states convened in Rumbek in February 2006 to begin the drafting of their respective constitutions and were handed copies of the CPA, the Interim National Constitution (INC) and the ICSS, "many remarked that this was their first opportunity to see and read these key documents". [36]

In addition, it is well known that the CPA framework and its implementing legislation and decrees have yet to be internalised by the large majority of government officials charged with carrying out its objectives. Moreover, the National Constitutional Review Commission which is tasked with "organising an inclusive Constitutional Revision Process" during the course of the six-year Interim Period, has been virtually inactive since it finished its initial task of drafting a national constitution.[37] As a result of considerable pressure, by presidential decree, the commission was reconstituted in January 2006 with a more limited mandate. If allowed to work as intended by

35 UNMIS CPA Monitor. (June 2006). p.3.

36 USAID Monthly Update on Sudan. April 2006 (available at http://www.usaid.gov/locations/sub-saharan_africa/countries/sudan/docs/sudan_monthly4_06.pdf : accessed 26 June 2006).

37 *See the Comprehensive Peace Agreement: The Machakos Protocol.* 20 July 2002. Articles. 2.12.5 and 2.12.10; International Crisis Group Report. "Sudan's Comprehensive Peace Agreement: The Long Road Ahead". p.6; and UNMIS CPA Monitor (June 2006). p.10.

the CPA, it can serve as a mechanism to ensure the independence of all CPA-required commissions. In light of the above, the following three strategies could be considered to ensure an inclusive and participatory constitutional process in Sudan:

- Ensure the immediate reconstitution of, and continue the work of, the National Constitutional Review Commission and provide it with the appropriate technical and fiscal resources to establish offices in North, South, East and West Sudan;[38]
- Take steps to ensure that both the future for the New Sudan and the New South are informed by culturally contextualised frameworks; and
- Ensure that the mechanisms for popular participation and civil society education (suggested in Section 4.0) below are fully implemented.

3.3 Transparency and Accountability

To monitor corruption and impunity, the CPA outlines a number of mechanisms to ensure greater checks and balances on the power and the accountability of political parties. These include the careful division and proportional allocation of executive and legislative positions; and the establishment of numerous joint commissions and committees to address everything from demilitarisation, repatriation and resettlement issues, to the equitable division of national revenues and the determination of numerous border issues within Sudan. The parties have also established a joint independent Assessment and Evaluation Commission (AEC) specifically to monitor the implementation of the CPA. This body's mid-term evaluation is due to take place in 2007. The Commission's effectiveness has been undermined by poor SPLM and NCP attendance at meetings, and the duplication of its authority by the reconstituted Joint National Transitional Team which is inconsistent with the CPA. In addition, NCP representatives do not always accept AEC conclusions and recommendations. The CPA also requires a public accounting of all national and regional fiscal expenditures.[39]

3.3.1 Transparency in the Oil Sector

The matter of the GNU contributing oil revenues to the GoSS has particularly highlighted the lack of transparency and accountability issues that have plagued the implementation of the CPA. Under the Joint Assessment Mission, the GoSS should have received $1.2 billion in oil transfers,[40] based on the CPA requirement that the GoSS would obtain 50 percent of all oil revenue produced in South Sudan. By January 2006, amidst public outcries by the SPLM and the GoSS, it was first reported that the South received only about $700 million.[41] During the Sudan Consortium meetings in March 2006, both the NCP and the SPLM reported that, by the end of October 2005, only $294 million was transferred from the North to the South.[42] This illustrates a degree of confusion regarding disbursements of oil revenues. Moreover, no information about production

38 On 7 January 2006, president Bashir issued a decree to re-establish the Commission, but its mandate was curtailed and its work has hardly begun. Progress on this front needs to be monitored. UNMIS CPA Monitor (June 2006), p.10.

39 Wealth Sharing Agreement, Section 12 requires all levels of government to "comply with generally accepted accounting standards and procedures", and to hold all income and revenues received open to "public scrutiny and accountability."

40 *UNMIS CPA Monitor* (June 2006), p.19.

41 International Crisis Group Report, "Sudan's Comprehensive Peace Agreement: The Long Road Ahead", p.18. See also *Sudan Tribune*, "South Sudan receives $700 million in 2005 oil money – official" (16 March 2006), (available at http://wwwsudantribune.com/article.php3?id_article=14570 : accessed 26 June 2006), notes that people in the South were not sure that they "were getting the right share" and that the Government of South Sudan expects close to $1.3 billion for 2006.

42 *UNMIS CPA Monitor* (June 2006), p.19.

figures, contracts for oil exploration, and calculation formulas was shared by the NCP, making the GoSS's verification of the accuracy and fairness of payments virtually impossible. This lack of transparency and accountability has been compounded by the ineffectiveness of the National Petroleum Commission (NPC) and the Fiscal and Financial Allocation and Monitoring Commission (FFAMC).[43] The NPC is charged with monitoring and assessing public policies and guidelines related to the development and management of the oil sector.[44] The Commission has been mired in procedural discussions and has yet to perform its proper functions of assisting the parties in addressing their disputes over the negotiation and approval of existing oil contracts. This will be essential in ensuring the proper calculation and dissemination of future oil revenues.[45] Equally troubling is the inadequate functioning of the FFAMC established by the agreement to "ensure transparency and fairness in the allocation of funds".[46] On a visit to Washington, DC, in August 2005, South Sudanese President Salva Kiir continued to "complain that Southerners have not been shown production or revenue figures so they can determine whether they've received their fair share or not". [47]

3.3.2 Problems with the Government of South Sudan Disclosures

The GoSS has also come under intense scrutiny for its alleged failure to operate in a transparent manner.[48] With regard to the funds received from the GNU, there is no public accounting of its use and little transparency in terms of the mechanisms and calculation formulas being used by the GoSS to distribute these funds to the ten Southern states equitably. Meanwhile, Southerners are painfully aware that thousands of their former soldiers who were promised sufficient pay, have received little or next to nothing, while numerous social and economic programmes remain unfunded and paralysed. To address some of these criticisms, the new Southern Sudan Legislative Assembly (SSLA) has established a committee to conduct inquiries into the disbursement of these funds.[49] This is a positive step, and should be reinforced by regular public statements explaining any delays in spending and service delivery.

3.3.3 Decentralisation and Public Access to Documentation

As the SPLM transforms itself from a liberation movement to a governing party, the training of its personnel to enhance its capacity has become a major issue. As the GoSS strives to create a pluralistic democracy, public accountability for all of its decisions will require mechanisms that allow for the open review of government documents; scrutiny by the media; the lodging of complaints; and the receipt of public comments and contributions. The following eight strategies can contribute to increased accountability and transparency: [50]

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43 Statement by the World Bank, the UN, and the IMF on Sudan. Press Release No. 06/50 March 10, 2006 (available at http://wwwimf.org/external/np/sec/pr/2006/pr0650.htm : accessed 26 June 2006).

44 CPA. Agreement on Wealth Sharing During the Pre-Interim and Interim Period (7 January 2004). Article 3.0(B) ("Wealth Sharing Agreement").

45 International Crisis Group Report. "Sudan's Comprehensive Peace Agreement: The Long Road Ahead". p.9; and UNMIS CPA Monitor (June 2006). pp.20.

46 CPA. Wealth Sharing Agreement. Section 8.

47 Washington Post Editorial. "Sudan's Long Slide." *Washington Post*. 22 July 2006. p.A16.

48 Notably, the ICSS also addresses fiscal transparency by providing for the establishment of a Southern Sudan Fiscal and Financial Allocation and Monitoring Commission. See ICSS. Chapter V.

49 David Nailo Mayo. "Development Priorities of the SPLM". paper presented at the CCR policy seminar. *South Sudan within a New Sudan*. Franschhoek. South Africa. 20 and 21 April 2006.

50 A number of these recommendations were informed by proposals shared at the Sudan Consortium that took place in Paris on 10 March 2006 and included in the presentation "Revenue. Transparency and Pro-Poor Spending" (available at http://wwwsudantribune.com/IMG/ppt/GOSS_Budget_Presentation.ppt#256.1.Government of Southern Sudan : accessed 27 October 2006).

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- Promote public and civic education about the CPA's provisions and the status of its implementation, in partnership with the international community;[51]
- Strengthen underlying systems of payments, accounts, the budgetary processes as well as public procurement, expenditure control, and auditing;
- Improve oil sector transparency and exchange of oil contract information, and enhance the functioning of the National Petroleum Commission;
- Ensure the establishment and functioning of both the GNU and Southern Sudan's Fiscal and Financial Allocation and Monitoring Commission;
- Provide capacity, training, and fiscal support to the GoSS tasked with managing and allocating revenue;
- Establish a comprehensive payroll and payment system for GoSS officials;
- Ensure that all government departments, ministries and agencies have internal rules and procedures governing the public disclosure of documents and public access to materials related to government decision-making; and
- Engage in greater civic education and public awareness campaigns designed to inform civil society of their rights to access and review government documents.

3.4 Cultural Contextualisation

An important factor in developing a system of governance that is appropriate to a given context and people, is the identification of elements of indigenous cultures, values and institutions that can promote and reinforce democracy and human rights. The CPA encourages a culturally contextualised vision of a New Sudan in the following three areas:

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51 The Security Council resolution establishing UNMIS specifically tasks the mission with "promoting understanding of the peace process" and assisting through "effective public information campaign[s], targeted at all sectors of society". UN Security Council Resolution 1590 (2005), adopted 24 March 2005, par.4(a)(v).

- A recognition that "religion, customs, and traditions are a source of moral strength and inspiration for the Sudanese people" (CPA, Machakos Article. 1.4);
- A commitment to "establish a democratic system of governance taking account of the cultural, ethnic, racial, religious and linguistic diversity and gender equality of the people of the Sudan". (Article 1.6); and
- Guaranteeing that national legislation having effect outside South Sudan shall have as its source "*Sharia* law and the consensus of the people". While such legislation, applicable within South Sudan, shall have as its source "popular consensus, the values and the customs of the people of Sudan, including their traditions and religious beliefs, having regard to Sudan's diversity". (Articles 3.2.2 and 3.2.3).

A framework for this culturally contextualised effort has already been established by a number of provisions in the ICSS, not the least of which include the following six areas:

- Recognition of the South Sudan "homeland" as one that is multi-ethnic, multi-cultural, multi-lingual, multi-religious, and multi-racial (Article 1(3));
- Recognition of all the indigenous languages in South Sudan as national languages deserving respect, development, and promotion (Article 6(1));
- Treatment of all religions and religious beliefs as equal (Article 8(2));
- Affirmation of the collective rights of all "ethnic and cultural communities" to "freely enjoy and develop their particular cultures" and the rights of their members to practice their beliefs, use their languages, observe their religions and raise their children within the context of their respective cultures and customs..." (Article 37);
- Commitment to interpret and apply the Constitution to "advance the individual dignity and address the particular needs of the people of South Sudan..." (Article 38(2)); and
- A guarantee to ensure the diverse composition of all governments and ministries in South Sudan by taking into account issues of ethnic, regional, and social diversity (Article 39(4) and 117 (3)).

The ICSS also guarantees a role for traditional authorities and recognises customary laws regarding community land tenure. Articles 174 and 175 guarantee respect for the "institution, status and role of traditional authority", and call upon Southern courts to apply customary law. These articles further guarantee that regional and state level legislation will "provide for the establishment, composition, functions and duties of the Councils of Traditional Authority Leaders". Article 180 of the ICSS goes on to (i) require that "all levels of government in South Sudan shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices"; (ii) provide protections in the law for "all lands traditionally and historically held or used by local communities"; and (iii) ensure that these communities share in the benefits of resource exploitation, are consulted, and their views taken into account with respect to the development of natural resources.[52]

Sudan's civil war has had a negative impact on traditional authorities. Some warring factions undermined the critical roles that these structures played in resolving disputes and in peacefully administering territories inhabited by distinct racial, ethnic and religious minorities. Moreover, the people of South Sudan are painfully aware of the conflicts that have erupted both domestically and internationally when the collective and customary land rights of traditional peoples have been violated and disregarded by Euro-centric notions of land

52 *Interim Constitution of Southern Sudan.* Government of Southern Sudan 2005. Article 180.

tenure and environmental stewardship. The ICSS provisions, if faithfully and innovatively implemented, would draw upon indigenous values, norms, and customs on the culturally-sensitive issue of land in South Sudan.

In establishing this culturally appropriate governing framework, the GoSS may wish to review and draw some inspiration from initiatives in other countries with diverse ethnic populations. The GoSS could draw lessons from Rwanda, which has revived its traditional dispute resolution mechanism – known as *gacaca* – to administer justice to the perpetrators of genocide. Some positive and negative lessons could also be learned from Botswana's constitutionally-established House of Chiefs.[53] The South African Constitution of 1996 also contains provisions regarding traditional authorities.[54] Additionally, lessons could be derived from the innovative hybrid systems of governance developed in Somaliland, which has brought together and combined western forms of government with traditional leadership structures to establish a functional system of governance. Somali values draw upon the strength and authority of the Council of Elders and the importance of clan and lineage. Somali tradition also uses *herr* (or customary law), and *shir* (traditional consultation mechanisms) to resolve disputes and to maintain social harmony. These values and traditions were used to address the manifold disputes between Somaliland's diverse clans.

In this context, cultural contextualisation in South Sudan can be promoted through the following seven strategies:

- Ensuring the faithful implementation of the CPA and ICSS in a manner that respects and incorporates indigenous customs and values, including the establishment of the Councils of Traditional Authority Leaders and the legal recognition of customary land tenure;
- Establishing civil service recruitment procedures, government appointments mechanisms, and electoral laws that will ensure that all levels of government are representative of all components of Sudanese society;
- Sending GoSS delegations to other countries such as Rwanda, Botswana, and South Africa, as well as Somaliland, to learn from their constitutional-making and governance experiences;
- Ensuring that in all GoSS bodies and actions, the values and norms of Muslim groups, as well as other minorities, are not excluded from nation-building processes;
- Staffing both the Southern and National Land Commissions with individuals who are familiar with the provisions of the ICSS regarding customary land rights;
- Consulting civil society on the development of the legal and political frameworks of both the country and the Southern region – including traditional and religious leaders; and
- Reviewing, documenting, and incorporating into South Sudan's new governing frameworks existing traditions, values, beliefs, institutions and customary laws of the various "ethnic and cultural communities".[55]

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53 *Constitution of the Republic of Botswana*. Part II, establishes a parliamentary system made up of an elected National Assembly and an unelected House of Chiefs. The latter is largely an advisory 15-member body, consisting of the chiefs of the eight principal ethnic groups and four elected sub-chiefs; these twelve then select three additional members. In concessions to the chiefs, the constitution stipulates that any draft National Assembly legislation pertaining to traditional matters must be referred to the House of Chiefs before passage. Notably, the UN Committee for the Elimination of Racial Discrimination (UN CERD) expressed concern to the Government of Botswana that this system discriminates against several ethnic groups which were subordinate to dominant ones and these groups are therefore not equally represented in the House of Chiefs. See Letter from Mario Yutzis, Chairman of CERD, to HE Charles T Ntwaagae, Permanent Mission of Botswana to the UN, 10 March 2005 (available at http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.66.BOTletter.pdf ; accessed 27 October).

54 *The Constitution of the Republic of South Africa*, 1996, Act. No. 108 of 1996, entered into force on 4 February 1997, Chapter 12, "Traditional Leaders", Articles 211 and 212.

55 See the discussion in Francis M Deng, *Customary Law in the Cross-Fire of Sudan's War of Identity*, (Washington, DC: U.S. Institute for Peace, 2006). See also Aleu Akechak Jok, Robert A Leitch and Carrie Vanderwint, *A Study of Customary Law in Contemporary Southern Sudan*, World Vision International and the South Sudan Secretariat for Legal and Constitutional Affairs, March 2004.

4. Popular Participation, Human Rights and Gender Parity

The section on powersharing in the CPA notes that its success or failure will hinge on "rallying the majority of the Sudanese people behind" the agreement.[56] The CPA further states that one of its objectives is to "usher in an era of responsible, just, transparent, people-led and integrity-based governance".[57] Achieving these objectives will require fostering popular participation, promoting human rights and establishing gender parity.

4.1 Popular Participation

The "Agreed Principles" of the CPA state that "the people of South Sudan have the right to control and govern affairs in their region and participate equitably in the National Government".[58] Popular participation in the South will not emerge immediately. After having gone through such a lengthy and debilitating conflict, it will take time to put in place the necessary strategies to empower South Sudanese citizens. Key among these strategies will be the establishment of a culture of education – in particular peace education – reinforced by civic education. The challenge will be to locate these governance structures as close to grassroots populations as possible. The CPA notes that "decentralization and empowerment of all levels of government are cardinal principles of effective and fair administration of the country".[59] Article 1.4.4 of the powersharing section of the CPA further recognises "the need for the involvement and participation of the people of South Sudan at all levels of government and National institutions as an expression of the national unity of the country". In this regard, the CPA acknowledges that "religions, customs and beliefs are a source of moral strength and inspiration for the Sudanese people".[60] An additional strategy for promoting popular participation will be the establishment of public spaces for dialogue and communication. This will require the establishment and support of an effective media sector and the fostering of robust debate and dialogue in order for effective communication to prevail. The UNMIS radio has been authorised to operate in the South, but it has not been granted a license to broadcast in Khartoum and other areas in the North.

4.2 Human Rights

The CPA also seeks to "find a comprehensive solution that addresses the economic and social deterioration of the Sudan and replaces war not just with peace, but also with social, political and economic justice which respects the fundamental human and political rights of all the Sudanese people".[61] Article 1.4.3 of the power sharing section of the CPA further notes that the distribution of powers shall be guided by the "acknowledgement of the need to promote the welfare of the people and protect their human rights and fundamental freedoms". Article 1.6.1 links the CPA to international conventions when it states that "the Republic of the Sudan, including all levels of government throughout the country, shall comply fully with its obligations under the international human rights

56 *The Comprehensive Peace Agreement.* p.II.
57 *The Comprehensive Peace Agreement.* p.II.
58 *The Comprehensive Peace Agreement: The Machakos Protocol.* p.2.
59 *The Comprehensive Peace Agreement.* p.II.
60 *The Comprehensive Peace Agreement: The Machakos Protocol.* p.2.
61 *The Comprehensive Peace Agreement: The Machakos Protocol.* p.2.

treaties to which it is or becomes a party".[62] This effectively establishes the duty of the GNU and the GoSS to respect international human rights laws. The CPA makes an explicit reference to the African Charter on Human and Peoples' Rights of 1981, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, and the Convention on the Rights of the Child, as well as the Slavery Convention of 1926.

The CPA goes on to outline the rights and freedoms to be enjoyed under Sudanese law with reference to life, personal liberty, slavery, torture, a fair trial, privacy, freedom of thought, conscience, and religion. It also emphasises the protection of rights to freedom of expression, assembly, association, family, marriage, the right to vote, equality before the law, freedom from discrimination, freedom of movement, and the rights of children.[63] The political will to promote and protect these rights will be vital for sustaining peace in Sudan. Currently, there are numerous existing laws which need to be repealed or reformed to ensure compliance with the human rights provisions of the CPA and the new Constitution of Sudan.[64] The delay in securing these changes is troubling, as is the GNU's failure thus far to establish the Human Rights Commission and the Commission for the Protection of the Rights of Non-Muslims in Khartoum.

4.3 Gender Parity

Women have been effectively marginalised from the peacemaking process in Sudan. In the post-conflict South, women must continue to play a prominent role in the social, economic, and political affairs of the region. The CPA commits to "establish a democratic system of governance taking account of the cultural, ethnic, racial, religious and linguistic diversity and gender equality of the people of the Sudan".[65] The power-sharing section of the CPA emphasises "the equal right of men and women to the enjoyment of all civil and political rights set forth in the International Covenant on Civil and Political Rights".[66] The ICSS is more explicit on the issue of gender parity. Article 20 of this document states that "women shall be accorded full and equal dignity of the person with men". It further notes that women will have the right to "equal pay for equal work", the "right to participate equally with men in the public life of Southern Sudan" and that all levels of government in South Sudan shall respect the laws that are enacted to "combat harmful customs and traditions which undermine the dignity and status of women".[67] The Interim Constitution further states that women will have the right to own property and to share in the estate of their deceased husbands. The GoSS has adopted a policy of "affirmative action" and 25 percent of positions in the Southern Sudan Legislative Assembly are designated as seats to be competed for solely by women. Women can also compete in the remaining 75 percent of the seats. Unfortunately, this same enlightened approach did not translate to the appointment of GoSS ministers. Only two of the 22 seats were given to women.[68] Overall, the inclusive CPA and ICSS provisions must be monitored to ensure their faithful implementation.

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62 *The Comprehensive Peace Agreement: The Machakos Protocol*. Article 1.6.1.
63 *The Comprehensive Peace Agreement: Power Sharing*. signed at Naivasha, Kenya on 26 May 2002. pars. 1.6 to 1.8.
64 These include aspects of the media law that are contrary to the freedoms guaranteed in the INC; the National Security Law which gives immunity to security agencies, while reported arbitrary detentions and torture continue unsanctioned; the "September Laws" which introduced *Sharia* to the Sudanese legal system, as well as the 1991 Presidential Decree No. 4 and subsequent amending decrees giving the police its national mandate.
65 *The Comprehensive Peace Agreement: The Machakos Protocol*. p.2.
66 *The Comprehensive Peace Agreement: Power Sharing*. Article 1.6.2.16.
67 *Interim Constitution of Southern Sudan*. Government of Southern Sudan 2005. Article 20.
68 *UNMIS CPA Monitor* (June 2006). p.15.

5. Development Priorities for South Sudan

5.1 The Challenges of Delivering Security for Development

For several decades the dominant issue in South Sudan was the achievement of peace so that security could be established. The expenditure on security was therefore substantial. The CPA recognises the importance of maintaining security in South Sudan in order to create an environment for investment, infrastructure development, and the realisation of social and economic programmes. UNMIS is now operational in the region with a peacekeeping mandate which also implies ensuring the provision of security. The problem of conflict has not completely abated in the South. The Lord's Resistance Army (LRA) has conducted an insurgency in Uganda and periodically operates out of South Sudan. Integration of other armed groups into the formal armies of the Sudan Armed Forces and the SPLA has yet to be completed amidst reports that the SAF continues to fund other armed elements.

5.2 Development Priorities for the South

During Sudan's civil conflict, the SPLM spent a significant amount of time formulating development policies based on its vision of a New Sudan. Slogans were drafted to inspire the people in their struggle for liberation such as: "Using oil revenues to fuel the locomotive of agriculture as the engine of economic growth" and "Take towns to people rather than people to towns". These slogans were designed to show that the struggle was about rebuilding a New Sudan and a New South. There is a continuing need to practicalise these slogans as a mobilising force for development in the New Sudan.

Development is the best guarantor for sustaining peace. The civil war completely destroyed the infrastructure necessary for on-going development in South Sudan. Societies were effectively transformed into war communities.[69] Development will only proceed with the rebuilding of infrastructure in the form of transport links, particularly roads; rail and waterways; communication systems, including information technology infrastructure and postal services; and urban development, specifically housing, water, sewage systems, markets, lighting and street pavements. In order to reinforce the development efforts being initiated, there is a pressing need to address the issue of the four million displaced people from South Sudan who are currently living in North Sudan. Effective strategies to undertake repatriation, relief, rehabilitation, reconstruction, and re-integration are necessary to lay a solid foundation for development.[70] This will include the safe, secure and dignified repatriation of IDPs and refugees, and the provision of relief to returnees in terms of food, health clinics and schools. Where large numbers of returnees are expected, there will be an increased need for economic development to ensure durable stability.

5.3 South Sudanese Legislation for Development

The strategy to promote the economic development of South Sudan is enshrined in the Interim Constitution of South Sudan. Article 40 (1) states that "the overall goal of economic development strategy in Southern Sudan shall be the eradication of poverty".[71] This Article also emphasises the importance of attaining the UN Millennium Development Goals of halving poverty by 2015, guaranteeing the equitable distribution of wealth,

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69 David Nailo Mayo, "Development Priorities of the SPLM", paper presented at the CCR policy seminar, *South Sudan within a New Sudan*, Franschhoek, South Africa, 20 and 21 April 2006.

70 See Mayo, "Development Priorities of the SPLM".

redressing imbalances of income, and achieving a decent standard of living for the people of South Sudan.[72] Article 40 (2a) states that all levels of government in Southern Sudan shall "protect and ensure the sustainable management and utilization of natural resources" for the benefit of the people of Southern Sudan. It also commits to "take the necessary measures to bring about balanced, integrated and equitable development of different areas of Southern Sudan" and to ensure that "the wealth of Southern Sudan is equitably shared among all the states of Southern Sudan". The legislation further commits the GoSS to "encourage private initiative and self-reliance and take all the necessary steps to involve the people in the formulation and implementation of development plans and programmes that affect them".[73]

5.4 The Problem of the "Absorptive Capacity" to Implement Development in Southern Sudan

There will be significant funds available for development work in South Sudan.[74] However, due to the civil war and years of underdevelopment, the "absorptive capacity" in South Sudan is still low in terms of sufficient personnel to implement post-conflict reconstruction and development strategies. In 2005, the South received a reported $700 million, but only $188 million was spent, due largely to a lack of administrative capacity.[75] There is a lack of skilled labour since the upper echelons of Sudanese society has a highly educated sector. While blue collar workers are few, unskilled labour is plentiful. The civil service of South Sudan has still to be fully constituted. Currently, there are predominantly only ministers, under-secretaries and other senior officials. Consequently, in the short-term, the budget for training and capacity development must be increased. In the long-term, primary, secondary and tertiary education should be improved, developed and made accessible to all South Sudanese. This includes the promotion of adult literacy since most of the adult population was deprived of adequate access to education as a result of past colonial practices and the country's long civil war. As an additional short-term measure, contracts for three to four years can be issued to professionals from neighbouring countries to enhance the professional capacity of the government, particularly in Juba. Furthermore, the South Sudanese Diaspora can play a significant role as initiators, implementers, and supporters of short-, medium- and long-term development projects.

From left: Mr Philip Browne, United Nations Development Programme, Tshwane; Ms Mariam Bibi Jooma, Institute for Security Studies, Tshwane; Amb Kuol Alor, Sudan Embassy, Tshwane

Dr Mansour Khalid, Government of National Unity, Khartoum

71 *Interim Constitution of Southern Sudan*. Government of Southern Sudan 2005. Article 40(1).
72 *Interim Constitution of Southern Sudan*. Government of Southern Sudan 2005. Article 40(1).
73 *Interim Constitution of Southern Sudan*. Government of Southern Sudan 2005. Article 40(2d).
74 *UNMIS CPA Monitor* (June 2006). p.16 (clarifying that the GoSS 2006 budget of $1.7 billion was to be derived from $1.3 billion in oil revenues, $393 million from donor grants, and $6.1 million from grants from the GNU (resulting in $400 million from non-oil resources).
75 George Bureng Nyombe. "Comparative Lessons from Africa", panel discussant at the CCR policy seminar. *South Sudan within a New Sudan*. Franschhoek, South Africa. 20 and 21 April 2006.

6. Engaging the International Community for Peace and Development in South Sudan

The Government of South Sudan's minister of transport, Rebecca Garang — wife of the late John Garang de Mabior — once said that Sudan is merely the "biological parent" of the CPA, and that the CPA should really be adopted and nurtured by the entire international community.[76]

United States Deputy Secretary of State Robert Zoellick made a plea to the world community to direct its attention and resources to Sudan: "The trials of millions of people in Sudan are testing our humanity as well as that of the Sudanese themselves."[77] International assistance must come in all forms, including political pressure on the parties to the CPA as well as potential "spoilers" from within (for example, NCP elements, Southern militias, and the LRA) and outside Sudan (for example, Libya and Egypt).[78]

6.1 A Role for the International Community and the United Nations in South Sudan

In the post-conflict development context, the international community must work closely to co-ordinate its efforts so as not to generate confusion with the duplication of activities. The international community can deliver technical skills and expertise to assist South Sudan's peacebuilding efforts. The UN system has experience in conflict and post-conflict recovery situations, and UNMIS is already actively involved in Sudan and has been critical in a number of areas, including security and assisting with the safe return of refugees and internally displaced persons. The UN Development Programme's (UNDP) Bureau for Crisis Prevention and Recovery (BCPR) can assist with consolidating democratic governance and justice systems, and address the issue of small arms. The newly-established UN Peacebuilding Commission can take the issue of South Sudan as an early test case. The government of Sudan should make its representations to the UN to encourage this Commission to become involved in post-conflict reconstruction efforts in South Sudan. The international community has a role to play in mobilising resources, as demonstrated by Norway's convening of a donor conference to finance a CPA-mandated National Reconstruction and Development Fund based on a South Sudan Reconstruction and Development Fund over the next five years. This initiative raised pledges of $2.6 billion to be deposited in a Multi-donor Trust Fund (MTFD). An office was recently established in Juba to assist in administering these funds.

6.2 A Role for AU/NEPAD in South Sudan?

The economy in South Sudan is largely based on a non-formal sector which has developed during the civil conflict, while the formal sector of the economy must still be developed. This can be achieved through micro-finance and credit facilities. Working in tandem with the GoSS, private industry can foster Foreign Direct

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76 Statement by Minister Rebecca Garang. United States Institute for Peace. Washington. DC. February 2006.

77 Remarks at the International Donors' Conference for Sudan. Robert Zoellick. US Deputy Secretary of State. Oslo. Norway (12 April 2005). (available at http://www.state.gov/s/d/rem/44536.htm ; accessed 27 October 2006).

78 *Sudan IGAD Peace Process*. p.5. notes Libya and Egypt's concerns with the lack of northern opposition to IGAD's efforts: as well as opposition to the concept of self-determination for South Sudan: and a fear that peace would threaten Egypt's access to the waters of the Nile.

Investments (FDI) especially in the South's agro-industry. Integrating South Sudan into the regional, continental and global economy is the responsibility of the office of the Minister for Regional and International Co-operation, Al-Tijani Saleh Hudeib. The New Partnership for Africa's Development (NEPAD) has a specific focus on infrastructure development and innovation in education. The NEPAD programme also developed an African Post-Conflict Reconstruction Policy Framework in June 2005 [79] which emphasises the link between the peace, security as well as humanitarian and development dimensions of post-conflict reconstruction and peacebuilding. The GoSS and the GNU can engage this NEPAD Framework directly, since Sudan is a member of the AU. NEPAD's African Peer Review Mechanism (APRM) can also be used to oversee the consolidation of democratic governance in Sudan. Four strategies can be adopted by the international community to support Sudan's peace process:

- Ensuring that IGAD, the AU, and UN actively support the implementation of the CPA through political, troop support, and financial and technical resources;
- Ensuring that the international community's financial commitments made in Oslo in April of 2005 are delivered;[80]
- Securing an exemption for the GoSS with respect to the economic sanctions imposed on Sudan by the US in October 1997; [81] and
- Directing financial and technical resources to areas that have the greatest risk of undermining the CPA, such as:
  - Inadequate oil sector transparency, accountability and management;
  - The failure to address the larger North-South border demarcations through the Ad Hoc North South Boundary Commission;
  - The delay in establishing joint integrated units; paying soldiers; and reintegrating them into civil society;
  - Khartoum's failure to implement the Abyei Boundaries Commission Report;
  - The SPLM's continued weakness within the GNU, and the National Civil Service Commission's failure to staff the GNU with Southern representatives as stipulated by the CPA;
  - The SPLM/A's potentially debilitating reorganisation and capacity issues;
  - The spontaneous return of IDPs to areas lacking critical social services;
  - The lagging work of the National and Southern Land Commissions; and
  - The continued interference of armed opposition in the South.

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79 New Partnership for Africa's Development. *African Post-Conflict Reconstruction Policy Framework*. Midrand: NEPAD Secretariat. June 2005.

80 Participants to the Oslo Donor Conference on Sudan pledged $4.5 billion for 2005-2007. Oslo Donors Conference on Sudan 2005. Chair's Conclusions. 12 April 2005 (available at http://www.iss.co.za/af/profiles/Sudan/darfur/oslodonor.pdf : accessed 26 June 2006). Sudan's Foreign Minister, Lam Akol, argued that the delay in the implementation of the CPA was a result of "non-fulfillment of the donors to the pledges they made in Oslo".

81 International Crisis Group. "Sudan's Comprehensive Peace Agreement: The Long Road Ahead". p.26. describes how US sanctions slowed the disbursement of $421.9 million pledged for 2006 and 2007 by donors to Multi-Donor Trust Funds (MTDFs) managed by the World Bank.

7. CPA Implementation: Obstacles, Constraints and Incentives

In his March 2006 report on Sudan to the United Nations Security Council, Secretary-General Kofi Annan[82] noted that "the spirit of cooperation, inclusiveness and transparency envisioned in the agreement [CPA] has been less than hoped for and there is an increasing possibility of misunderstandings between the two parties".[83]

There have been delays in establishing commissions and national institutions stipulated by the CPA, notably the failure to implement the binding report of the Abyei Boundaries Commission.[84] This has resulted in delays in consolidating power-sharing within the Abyei Assembly, in establishing an administrative regime in Abyei, and resulted in continuing disputes over the North/South border. It has also had a negative impact on the Sudanese government's authority over the oil wells in this area, as well as on the loyalties of the ethnic groups in the region.[85] By October 2006, the parties had not met the January 2006 deadline to incorporate Southern and Northern armed forces into the regular forces of the SAF and SPLA, and to integrate them into the civil service. Notably, most believe Abyei to be a flashpoint that could lead to the resumption of hostilities if not properly dealt with. Hence, it is critical that immediate efforts be undertaken to resolve this matter through diplomacy and to establish support of Dinka-Missiriya reconciliation processes as well as initiate frank discussions about how to resolve potential oil disputes.

There is considerable inertia in implementing the provisions of the CPA, including the NCP's support for the LRA in Southern Sudan and Northern Uganda, and President Omar Al-Beshir's insistence on ruling by decree when the CPA requires acts of the new National Assembly or National Constitutional Review Commission. The following five suggestions could encourage the promotion of a change in attitude, including:

- Professionalisation and strengthening of the SPLA in order to deter Khartoum from reneging on the peace process and risking a return to hostilities;
- Establishment of a strong GoSS and SPLM, with leaders that can act with equal bargaining power in engaging the NCP through their popular support;
- Increasing SPLM representation in the GNU through the 2006 elections by consolidating the party's support with marginalised groups outside of the Southern region through a demonstrable commitment to a New Sudan;

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82 Report of the Secretary-General on the Sudan S/2006/160, 14 March 2006 (available at http://www.securitycouncilreport.org/atf/cf/{65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/Sudan%20S2006160.pdf ; accessed 26 June 2006).

83 Report of the Secretary-General, 14 March 2006, notes that only the Ceasefire Joint Military Committee and the Assessment and Evaluation Commission have met regularly while others like the Ad Hoc Technical Border Committee have not convened once.

84 *See UNMIS CPA Monitor* (June 2006), Annex 3 (referring to the failure to establish the Human Rights Commission, the National Civil Service Commission, the National Land Commission, the National Electoral Commission, and the Commission for the Protection of the Rights of non-Muslims in the National Capital, and questioning the efficacy of the newly-established National Constitutional Review Commission and the significant delay in establishing numerous other commissions).

85 For a more detailed discussion of the background of the Abyei conflict and the events surrounding the release of the ABC Report, see "Sudan's Comprehensive Peace Agreement at One Year of Age: Cause for Celebration?", Working Paper FG6, 2006/02, German Institute for International and Security Affairs, Berlin, April 2006, p.5; International Crisis Group, "Sudan's Comprehensive Peace Agreement: The Long Road Ahead", pp.4-6; and "Resolving the Boundary Dispute in Sudan's Abyei Region", United States Institute for Peace Briefings, USIP, October 2005 (available at http://www.usip.org/pubs/usipeace_briefings/2005/1026_sudan.html ; accessed 26 June 2006).

- Pursuing of greater unity and inclusion of all armed and popular elements in the South to ensure good faith implementation of the Juba Declaration; and
- Increasing media attention when the NCP takes steps to undermine or violate the CPA.

Effective implementation of the CPA will involve an analysis of the factors that motivate both the NCP and the SPLM to be accountable to their constituencies. There are internal conflicts within the SPLM which might affect the implementation of the agreement. Ever since John Garang introduced the movement's platform of a New Sudan for all – as opposed to simply a separate South for the few – division in the ranks and popular confusion have set in. Undoubtedly, there are many in the South and within the SPLM and the GoSS who believe that the CPA is only a vehicle for the eventual and inevitable separation of the South from the north.[86] The following five suggestions could, however, help create incentives for the people of the South to support the implementation of the CPA:

- Educating the SPLM and its supporters about the importance of being seen as a partner in implementing the CPA;
- Acknowledging the thinking of the SPLM that after the 2009 elections gives it an increase in power at the national level, the movement will have greater influence and therefore more accountability for the policies of Sudan on issues of significant international concern (such as in Darfur or Abyei, as well as Southern development);
- Increased awareness by the SPLM and its supporters that self-determination is not only exercised in the 2011 referendum, but also in each step it takes in the formation and functioning of the national government as well as the government of the South;
- Recognition by the GoSS, the SPLM, and its supporters that a permanently transformed national government would provide a more stable and peaceful future, even if the South decides to secede in 2011; and
- The admission by the SPLM and its supporters that the New South can only be achieved through the CPA framework, and the SPLM thus needs the support of non-Southern Sudanese and international actors to succeed.

Durable peace will not be achieved in Sudan without the support of all its citizens. Post-conflict societies must be provided with the food, potable water, job opportunities, human rights, and security they need if they are ultimately to support the new political and constitutional framework being proposed by the CPA. In the absence of "peace dividends", people will have nothing to lose and a relapse to war will become more likely.

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86 This attitude is evidenced in the popular saying attributed to the soldiers, most of them Dinka: *"Ke tharku, angicku"*, meaning "What we are fighting for, we know."

8. Conclusion — The Way Forward

The signing of the CPA represents a new milestone in the 50-year history of Sudan. The CPA is an attempt to renegotiate the political and economic order of the country through its power and wealth-sharing agreements. Expectations are very high and the people of Southern Sudan want their government to deliver immediately on their promises.

The agreement will, however, be successful only when people in the South feel that they have benefited from peace in terms of democratic governance and economic development. The CPA has two seemingly opposing objectives: one of making unity "attractive", the other of ensuring the right to self-determination for the South in 2011. Unity maintains "territorial integrity", while self-determination exercised to the extreme tends more towards secession. If the CPA is successfully implemented, there is a possibility that a unity vote might succeed. It is uncertain, however, whether such unity can reasonably be made attractive in only five years, particularly given significant evidence that the NCP and SPLM have yet to forge a genuine partnership based on mutual trust and co-operation.[87] One can thus not understate the importance of implementing the CPA timeously. This crucial challenge is compounded by the fact that there are "spoilers" both within and outside Sudan who would like to see the agreement fail. The prospects for South Sudan on the whole depend on the willingness of its citizens to persevere even in the face of setbacks. Goodwill and reconciliation among all the parties concerned will be necessary to consolidate peace and build a New Sudan.

8.1 Policy Recommendations

The discussions at the seminar raised ten key policy issues which must be brought to the attention of decision-makers within the GoSS, the Sudanese GNU, the AU, IGAD, as well as other external actors. These include:

- First, the urgent and effective implementation of the CPA is necessary in order to address the issue of the marginalisation of South Sudan. Members of the GNU, GoSS, and Sudanese society should familiarise themselves with the CPA and take steps to internalise its principles. The viability of the agreement will require continued vigilance and monitoring.
- Second, South Sudan will only thrive in the New Sudan if the wealth and power that has been inequitably held by the North is redistributed and adequately used to provide health, education, and infrastructure, as well as to create jobs for Southerners. For the North, this means that there must be a genuine commitment towards sharing power, national wealth, social services, and promoting economic development opportunities with the South.
- Third, the South Sudanese now have an opportunity to restructure their constitutional and political frameworks by drawing on African cultural norms, values and institutions, rather than simply accepting colonial models. Lessons should be drawn on how to use cultural process in consolidating peace, notably from Somaliland where a hybrid system of governance was established using traditional leadership structures and colonial systems of governance. The South Sudan Councils of Traditional Authority Leaders should explore this potential, drawing lessons from similar experiences across Africa.

87 From 27-30 May 2006 the NCP and SPLM leadership met in Khartoum to address issues and problems related to the implementation of the CPA. One of the most contentious issues – the adoption and implementation of the Abyei Boundaries Commission – was left unresolved, and many expressed concern after the meeting that little was advanced in terms of moving past rhetoric and to creating a solid partnership.

- Fourth, post-conflict reconstruction objectives should be adequately funded and the international community must deliver on its pledges of $4.5 billion through 2007. Even though the "absorptive" capacity to utilise incoming resources in South Sudan is low – particularly in terms of skilled labour – professionals from neighbouring countries can be imported on short-term contracts. Development efforts must address the critical issue of the repatriation of IDPs and refugees, as well as relief, rehabilitation, reconstruction and reintegration.
- Fifth, the South Sudanese Diaspora should be engaged since its members can provide much-needed technical and financial resources to rebuild Sudan, including through the provision of skilled labour – at least in the short-term. The private sector has a role to play, particularly in supporting and investing in the agri-business and dairy industries in South Sudan.
- Sixth, the issue of land tenure must be urgently addressed in order to prevent future conflicts. The ruling elite in the North maintains that land belongs to the state, while the opposing view held by South Sudanese is that land belongs to local communities. These two competing views about land ownership must be reconciled, particularly in the context of returnees and economic development.
- Seventh, South Sudan needs to put in place a process of reconciliation, not simply by transposing reconciliation models from other countries, but by adopting a model that speaks to the South Sudanese context and experience and draws on its cultural heritage.
- Eighth, given the possibility that the South may vote for independence in 2011, regional and national strategies, as well as international support, must focus on priorities and programmes that will ensure a stable and viable Sudan in which the South is economically and politically capable of standing on its own.
- Ninth, the viability of the CPA will require the continued vigilance, monitoring and involvement of the international community, particularly in those areas, such as Abyei, identified as flashpoints capable of threatening the peace and the CPA's viability.
- Finally, the success of the CPA depends on whether all Sudanese take responsibility for its implementation. Only then can the notion of "attractive" unity become a reality, and a unity vote in 2011 succeed.

ABOVE : Ms Adele Fourie, Department of Foreign Affairs, Tshwane, left; Mr John Roux, Independent Evaluator, Cape Town

ABOVE LEFT: *From left:* Dr Musifiky Mwanasali, United Nations, New York; Ms Mariam Bibi Jooma, Institute for Security Studies, Tshwane; Mr Matt Bryden, International Crisis Group, Johannesburg; Dr George Bureng Nyombe, Government of Sudan, Khartoum.

LEFT: Ms Lillian Myakayaka-Manzini, African National Congress, Johannesburg

FAR LEFT: Mr Daniel Deng, Development Consultant on Sudan Policy Issues, Cape Town, left; Dr Luka Biong Deng, Sudan People's Liberation Movement, Juba

Annex I

List of Acronyms

ABC:	Abyei Boundaries Commission
AEC:	Assessment and Evaluation Commission
AU:	African Union
CCR:	Centre for Conflict Resolution
CPA:	Comprehensive Peace Agreement
FFAMC:	Fiscal and Financial Allocation and Monitoring Commission
GOS:	Government of Sudan
GoSS:	Government of South Sudan
GNU:	Government of National Unity
INC:	Interim National Constitution
ICSS:	Interim Constitution of South Sudan
LRA:	Lord's Resistance Army
MDTF:	Multi-Donor Trust Fund
NCP:	National Congress Party
NEPAD:	New Partnership for Africa's Development
NPC:	National Petroleum Commission
SAF:	Sudan Armed Forces
SPLM/A:	Sudan People's Liberation Movement and Army
SSDF:	South Sudan Defence Forces
TSSLA:	Transitional Southern Sudan Legislative Assembly
UN:	United Nations
UNMIS:	United Nations Mission in the Sudan

Annex II

Agenda

Wednesday 19 April 2006

19h30 Welcome Reception

20h00 Dinner

Day One: Thursday 20 April 2006

10h30 – 11h00 Coffee

11h00 – 11h15 Welcoming Remarks

Speakers: **Dr Adekeye Adebajo**, Centre for Conflict Resolution, Cape Town
Professor Francis Deng, School of Advanced International Studies, Washington, DC

11h15 – 13h00 Session I: Setting the Context

Chair: **HE Ambassador Kuol Alor**, Sudan Embassy, Tshwane

Speakers: **Professor Francis Deng**, School of Advanced International Studies, Washington, DC, "Normative Frameworks for the Development of South Sudan"

Discussant: **Dr Mansour Khalid**, Special Adviser to the First Vice-President of Sudan, Khartoum

13h00 – 14h00 Lunch

14h00 – 16h00 Session II: Development Priorities For South Sudan

Chair: **Dr Luka Biong Deng**, Sudan People's Liberation Movement, Juba

Speakers: **Dr David Nailo N Mayo MP**, Southern Sudan Legislative Assembly, Juba, "Development Priorities of the SPLM"
Mr Daniel Deng, Development Consultant, Cape Town, "Priorities and Issues in the Development of South Sudan"
Mr Philip Browne, United Nations Development Programme, Tshwane, "Post-Conflict Development and Governance Priorities: A UNDP Perspective"

16h00 Coffee
19h00 Dinner

Day Two: Friday 21 April 2006

09h30 – 12h00 **Session III: Key Issues: Conflict Resolution, Popular Participation, Governance, Human Rights and Environmental Issues**

Chair: **Dr Adekeye Adebajo**, Centre for Conflict Resolution, Cape Town

Speakers: **Mr John G Yoh**, University of South Africa, Tshwane

Dr Mansour Khalid, Special Adviser to the First Vice-President of Sudan, Khartoum

10h30 – 10h45 Coffee
10h45 – 12h00 Discussions on Session III
12h00 – 13h00 Lunch

13h00 – 15h00 **Session IV: Comparative Lessons from Africa in Building Traditional Governance Institutions**

Chair: **Ms Mariam Bibi Jooma**, Institute for Security Studies, Tshwane

Speakers: **Dr Musifiky Mwanasali**, United Nations, New York, "Lessons from the DRC"
Mr Matt Bryden, International Crisis Group, "Somaliland: Balancing Modernity and Traditional Governance"

Discussant: **Dr George Bureng Nyombe**, Minister of Trade, Southern Sudan

15h00 – 15h30 Coffee Break and Evaluation

15h30 – 16h30 **Session V: Rapporteurs Report**

Chair: **Professor Francis Deng**, School of Advanced International Studies, Washington, DC

Rapporteurs: **Dr Tim Murithi**, Centre for Conflict Resolution, Cape Town
Ms Vanessa Jiménez, Sudan Peace Support Project, Washington, DC

Annex III

List of Participants

1. Dr Adekeye Adebajo
   Centre for Conflict Resolution
   Cape Town

2. Ambassador Kuol Alor
   Sudan Embassy
   Tshwane

3. Mr Philip Browne
   United Nations Development Programme
   Tshwane

4. Mr Matt Bryden
   International Crisis Group
   Johannesburg

5. Mr Daniel Deng
   Development Consultant on Sudan
   Policy Issues
   Cape Town

6. Professor Francis Deng
   School of Advanced International Studies
   Washington, DC

7. Dr Luka Biong Deng
   Sudan People's Liberation Movement
   Juba

8. Ms Adele Fourie
   Department of Foreign Affairs
   Tshwane

9. Dr Iqbal Jhazbhay
   University of South Africa
   Tshwane

10. Ms Vanessa Jiménez
    Sudan Peace Support Project
    Washington, DC

11. Ms Mariam Bibi Jooma
    Institute for Security Studies
    Tshwane

12. Dr Mansour Khalid
    Government of National Unity
    Khartoum

13. Mr Arop Deng Kuol
    Sudan People's Liberation Movement/Army
    Addis Ababa

14. Dr Chris Landsberg
    Centre for Policy Studies
    Johannesburg

15. Dr David Nailo N Mayo
    Southern Sudan Legislative Assembly
    Juba

16. Dr Tim Murithi
    Centre for Conflict Resolution
    Cape Town

17. Dr Musifiky Mwanasali
    United Nations
    New York

18. Ms Lillian Myakayaka-Manzini
    African National Congress
    Johannesburg

19. Prof George B Nyombe
Government of National Unity
Khartoum

20. Mr Solly Tshivhula
Department of Foreign Affairs
Tshwane

21. Prof Ben Turok
South African Parliament
Cape Town

22. Mr John G Yoh
University of South Africa
Tshwane

Conference Team

23. Ms Pippa Segall
Centre for Conflict Resolution
Cape Town

24. Ms Selma Walters
Centre for Conflict Resolution
Cape Town

25. Mr John Roux
Independent Evaluator
Cape Town

26. Mr Fanie Jason
Independent Photographer
Cape Town

Participants in the seminar, *South Sudan within a New Sudan*, Franschhoek, South Africa, 20 and 21 April 2006

Other publications in this series

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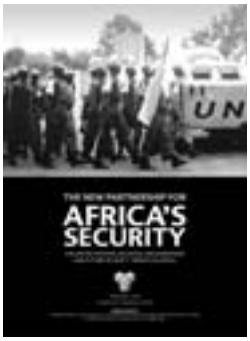


THE NEW PARTNERSHIP FOR AFRICA'S SECURITY

THE UNITED NATIONS, REGIONAL ORGANISATIONS AND FUTURE SECURITY THREATS IN AFRICA

The inter-related and vexing issues of political instability in Africa and international security were specifically focused on at this policy seminar, held from 21 – 23 May 2004 in Claremont, Cape Town.

THE AU/NEPAD AND AFRICA'S EVOLVING GOVERNANCE AND SECURITY ARCHITECURE

The state of governance and security in Africa under the AU and NEPAD were analysed and assessed at this policy advisory group meeting in Misty Hills, Johannesburg, on 11 and 12 December 2004.

WHITHER SADC?

SOUTHERN AFRICA'S POST-APARTHEID SECURITY AGENDA

The role and capacity of South Africa as Chair of the Southern African Development Community's (SADC) Organ on Politics, Defence and Security (OPDS) were focused on at this meeting in Oudekraal, Cape Town, on 18 and 19 June 2005.

SOUTH AFRICA IN AFRICA

THE POST-APARTHEID DECADE

The role that South Africa has played on the African continent and the challenges that persist in South Africa's domestic transformation 10 years into democracy were assessed at this meeting in Stellenbosch, Cape Town, from 29 July - 1 August 2004.

A MORE SECURE CONTINENT

AFRICAN PERSPECTIVES ON THE UN HIGH-LEVEL PANEL REPORT, A MORE SECURE WORLD: OUR SHARED RESPONSIBILITY

African perspectives on the United Nations' (UN) High-Level Panel report on Threats, Challenges and Change were considered at this policy advisory group meeting in Somerset West, Cape Town, on 23 and 24 April 2005.

BUILDING AN AFRICAN UNION FOR THE 21ST CENTURY

RELATIONS WITH REGIONAL ECONOMIC COMMUNITIES (RECS), NEPAD AND CIVIL SOCIETY

This seminar in Cape Town from 20 – 22 August 2005 made policy recommendations on how the AU's institutions, including NEPAD, could achieve their aims and objectives.

HIV/AIDS AND HUMAN SECURITY:

AN AGENDA FOR AFRICA

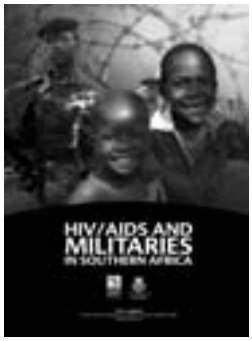
The links between human security and the HIV/AIDS pandemic in Africa, and the potential role of African leadership in addressing this crisis were analysed at this policy advisory group meeting in Addis Ababa, Ethiopia, on 9 and 10 September 2005.

THE PEACE-BUILDING ROLE OF CIVIL SOCIETY IN SOUTHERN AFRICA

This meeting, held in Maseru, Lesotho, on 14 and 15 October 2005, explores civil society in relation to southern Africa, democratic governance, its nexus with government, and draws on comparative experiences in peacebuilding.

WOMEN AND PEACEBUILDING IN AFRICA

This meeting, held in Cape Town on 27 and 28 October 2005, reviewed the progress of the implementation of UN Security Council Resolution 1325 in Africa in the five years since its adoption by the United Nations in 2000.



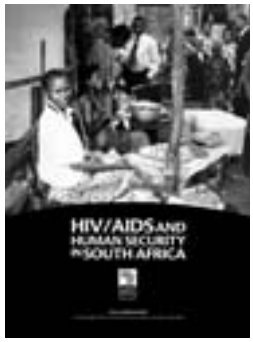
HIV/AIDS AND MILITARIES IN SOUTHERN AFRICA

This two-day policy advisory group seminar in Windhoek, Namibia, on 9 and 10 February 2006 examined ways of supporting and strengthening the government of Namibia's role as chair of the SADC Organ.

AIDS AND SOCIETY IN SOUTH AFRICA:

BUILDING A COMMUNITY OF PRACTICE

This policy and research seminar, held in Cape Town on 27 and 28 March 2006, developed and disseminated new knowledge on the impact of HIV/AIDS in South Africa in the three key areas of: democratic practice; sustainable development; and peace and security.



HIV/AIDS AND HUMAN SECURITY IN SOUTH AFRICA

This two-day policy seminar on 26 and 27 June 2006 took place in Cape Town and drew on knowledge and expertise on the scope and response to HIV/AIDS in South Africa and southern Africa.

Notes

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