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REPUBLIC OF SUDAN: NEGOTIATION SIMULATION

Briefing Packet for National Democratic Alliance Delegation

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Table of Contents

Introduction

Agenda

List of Participants

History of the Republic of Sudan

Delegation Instructions

Background

Views of Other Participants

Issues

Self-Determination

Wealth Sharing

Power Sharing

Southern Representation in the National Government

The National Capital

Security

Humanitarian Issues

Child Soldiers

Slavery

Women

Refugees and Internally Displaced Persons

Main Objectives

Appendices

A: List of Websites for more Information

B: Humanitarian Issues Background Paper

Introduction

Welcome to the Republic of Sudan Negotiation Simulation. The purpose of this negotiation simulation is to surface key issues that real world negotiators will confront in the Sudanese peace talks, as well as potential solutions to the points of impasse which will likely arise. The negotiation simulation has been developed using the methodology employed by the US Department of State's National Foreign Affairs Training Institute which runs similar negotiations to train US diplomats prior to negotiations.

This simulation exercise is not intended to be a comprehensive review of all the issues involved, nor is it intended to endorse one view over the other. The participants in the simulation naturally will have varying levels of substantive or area expertise, as well as professional commitment to the issue. Participants are therefore encouraged to draw upon their individual experiences as they deem appropriate.

The participants in this simulation have been divided into six delegations. Three of these delegations represent the elite networks: the Government of Sudan (GoS), Sudan People's Liberation Movement (SPLM) and the National Democratic Alliance (NDA). The other three teams represent mediators and observers in the international community.

To provide the necessary information to conduct this simulation, this briefing packet contains a brief review of the history of the conflict, the principal interests of the parties and other relevant actors, a discussion of the primary issues which are likely to be discussed during negotiations, and negotiating instructions for the delegations. Each delegation is provided only their instructions. Two appendices are also provided. The first includes links to further sources of information on the main issues of the conflict. The second is a report providing background information on humanitarian issues caused by the conflict in Sudan.

For the purposes of this simulation, the negotiation is occurring pursuant to the Machakos Protocol. This protocol, signed in 2002, allowed for a six-year interim period that would culminate in an internationally monitored referendum to the people of Southern Sudan to "confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession." A cease-fire agreement signed in October of 2002 is also in place, although both the Government of Sudan and the SPLM have violated it on numerous occasions.

Although this simulation does not have any specific rules, there are strict time allotments for group meetings, private negotiations and plenary sessions to address modalities of the process and substantive issues. We are not assuming that all of the issues can be negotiated during the simulation or that agreement can be reached on each of them. Rather, each delegation will need to decide its own priorities and tactics.

The negotiation simulation has been prepared by the Public International Law & Policy Group in cooperation with American University and is made possible by a grant from the Carnegie Corporation of New York. The Public International Law & Policy Group (PILPG) is a 501(c)(3) non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

Agenda

- 9:00–9:30 AM** Coffee and doughnuts available for participants
- 9:30–9:45 AM** Introduction and review of simulation schedule and procedures
- 9:45–10:15 AM** Individual delegation meetings to review positions
- 10:15–10:35 AM** Members of mediating groups (IGAD, Int’l Observers, Egypt) meet with Sudanese delegations
- 10:35–10:45 AM** Coffee break/Shuttle Diplomacy
- 10:45–11:15 AM** Small Group Meetings
- Wealth Sharing / Natural Resources / Humanitarian Issues
 - Self-determination / Power Sharing / Security
- 11:15–11:30 AM** Members of mediating groups meet with Sudanese delegations
- 11:30–12:00 PM** Small Group Meetings (Continued)
- 12:00–12:30 PM** Individual delegation meetings to focus on substantive negotiating issues
(Lunch will be served during this meeting)
- 12:30–1:00 PM** Plenary Session
- 1:00–1:20 PM** Resume Small Group Meetings as necessary
- 1:20–1:45 PM** Final Plenary Session
- 1:45–2:20 PM** Review and Lessons Learned

List of Participants:

Government of Sudan (GoS)

(President Omar Hassan Ahmed al-Bashir and Special Envoy on Peace Dr Ghazi Salah al-Din Atabani)

The Government of Sudan (GoS) is made up of member of the National Congress Party, which is a front for the National Islamic Front (NIF), which is an Islamic extremist group who believe that Sudan is an Arab-Muslim country and that the people of the South must be forced to convert to Islam and coerced into Arab cultural assimilation.

Sudan People's Liberation Movement and Sudan People's Liberation Army (SPLM/A)

(Dr. John Garang de Mabior, Chairman and Commander in Chief of the SPLM/A and Special Envoy for Peace is Cdr. Salva Kiir Mayardit)

The SPLM/A is a Southern rebel group that has been fighting since 1983 for self-determination and the governance of secular democratic government.

National Democratic Alliance (NDA)

The NDA is not part of the peace negotiations, but it has insisted on being part of it. The SPLM/A has allowed them to sit in on the peace negotiations, but it is the GoS that does not allow them to participate on its own behalf. The NDA is a Northern umbrella opposition group that advocates for a united secular multi-party government that has democratic underpinnings and protects the human rights of all its citizens.

Internationals:

Inter-Governmental Authority for Development (IGAD)

(The main mediator is the Kenyan Special Envoy for Peace, Lieutenant General Lazarus Sumbeiywo)

IGAD is a regional group made up of representatives from Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and Uganda. IGAD is holding the platform for the Sudanese peace negotiations. Until now, there have been four sets of peace negotiations held in Kenya under IGAD auspices.

International Observers (The main mediator is the U.S. Special Envoy for Peace, John C. Danforth)

The United States is the key international observer which has pushed the GoS and the SPLM/A into consenting to four agreements. The U.S. is accompanied by the United Kingdom, which had condominium with Egypt over Sudan until January 1, 1956, the Kingdom of Norway, which has provided technical, financial, and humanitarian aid, and the Italian Republic.

Arab Republic of Egypt (Egypt) (along with the Arab League and the African Union)

Though not official observers, these parties have all sent Special Envoys for Peace to the IGAD Peace Talks. Their presence there is important since they are regional groups that will affect and be affected by the peace process. The Arab League and the AU follow Egypt's lead in the negotiations. They emphasize the unity of Sudan.

A Brief History of the Republic of Sudan

The Republic of Sudan, holding the title of the largest country in Africa, has a population of approximately 36 million people mainly of Arab descent in the North and Africans in the South. It is located in the North-Eastern part of Africa, where it borders with nine countries: Central African Republic, Chad, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Kenya, Libya, and Uganda. Sudan contains nineteen major ethnic groups (with almost 600 subgroups), speaking more than 115 tribal languages. Arabic is the official language, which is one of the reasons that Sudan has been amidst a civil war since August 18, 1955 even though it won its independence from Egypt and the United Kingdom on January 1, 1956. During the period prior to independence, Southern Sudan was administered separately from the North. The British administered the South while Egypt administered the North under the Anglo-Egyptian condominium government, which had ruled Sudan since the beginning of the twentieth century. Thus, while the instructional language in Northern Sudan was Arabic, the language of instruction in Southern schools was English and they used customary law. Since decolonization, Khartoum elite, which have identified with Arabic and Islamic culture, have ruled Sudan.

The first civil war began in the South under the leadership of the Southern separatist forces, Anya Nya movement. The war lasted for 17 years, ending in 1972 when the World Council of Churches and the former Emperor of Ethiopia, Haile Selassie, brokered a peace agreement called the Addis Ababa agreement. Under the Addis Ababa agreement between the government and the Anya Nya, the South becomes a self-governing region. Anya Nya members were to be integrated into the national army, the local police, the prison service and the wildlife service. However, in 1978, oil was discovered in Bentiu in Southern Sudan. Thus, just ten years after the Addis Ababa agreement, Sudan's President Jaafar Nimeiri breached the agreement. The Arab Muslim North had managed to exclude the Christian and animist South—the Nuba Mountains and Southern Blue Nile—from state affairs. The GoS pursued various racial and religious discriminatory policies and, thus, managed to marginalize the 60 percent of the population that is not Arab and the 40 percent of the population that is not Muslim. Additionally, it divided the South into three regions, enabling the central government to deal separately with each and to play them off against each other on tribal basis. The government also asserted control over the two most valuable natural resources of the South and of all Sudan—the Nile River and oil—while failing to live up to promises to develop and educate the South.

In 1983, Nimeiri announced the application of Islamic law in the South, and the war resumed. In response, the Sudan People's Liberation Army (SPLA) was formed in 1983 in Ethiopia from Anya Nya II groups and Sudan army mutineers from the 105 Battalion stationed in Bor, Upper Nile, who escaped to Ethiopia, where they were joined with others. The SPLM/A experienced political divisions almost immediately. John Garang, a former Anya Nya I guerrilla, emerged as

their leader. He advocated for a united secular Sudan. Many Anya Nya II leaders sought the Anya Nya I objective of secession or self-determination; thus, they split from Garang. The GoS and political parties aligned with the government tried to tribalized the civil war by using local rebels to fight guerrillas in neighboring territories. In the mid-1980s, the remaining Anya Nya II dissident officers and troops, mostly Nuers, formed a government militia also called Anya Nya II. The Anya Nya II rallied Nuers in its native Upper Nile province against the Dinka, who were predominately represented by the SPLM/A. Many Nuers, however, remained with the SPLM/A despite government efforts to portray the war as a tribal clash of the Dinka against everyone else. As for the SPLM/A, they undertook a policy of trying to win over Anya Nya II, with some success. Commander Gordon Kong Cuol of Anya Nya II led his men into an alliance with the SPLA in late 1987, and other Anya Nya II forces followed suit, leaving a few Anya Nya II with the government.

In 1989, there was a military coup overthrowing a democratically elected government and placing the National Congress Party, which is a front for the National Islamic Front (NIF), in power with Lieutenant General Omar Hassan Al-Bashir heading the government. The NIF is an Islamic extremist regime that believes that Sudan should be an Arab-Muslim state and all those who are not Muslim shall be forced or coerced into Islam and Arab cultural assimilation. Proof of such motives is apparent from the National Assembly's adoption and President Bashir's signing of a NIF drafted Islamic constitution.

Although racial and religious issues are causes of the civil war, it is not limited to those. It also encompasses regional, resources (the Nile water and government controlled oil), land, ideology, demands for self-determination and cultural disputes. The main parties to the conflict since 1983 were those supporting the government - including the Sudanese People's Armed Forces (the national army), the paramilitary Popular Defense Forces, and various militia groups known as the *Murahaleen* - and the opposition forces made up of the SPLA and various allied militias. The drive for oil and territorial control over the oil fields was central to the war between the government and the armed opposition forces, as well as to the ongoing conflict between the various militia factions. For example, the 1,600 km oil pipeline, which came into operation in August 1999, continued to be the target of repeated attacks by opposition forces. In addition to the conflict between the regular army and the SPLA, another conflict raged between the various militias allied with the government or the SPLA. These forces frequently changed sides depending on their perceived interests or simply the supply of arms. It was estimated that during the past few years more people had lost their lives as a result of interfactional fighting between militias than in armed encounters with government forces. The GoS pursued a policy of providing support and weapons to the various militia commanders and encouraging interfactional fighting, which resulted in widespread destruction and destitution for the local civilian population.

The Southern division was centered around the different tribes. The South is divided into two major tribes that are at war with each other: the Dinka, the largest tribe, and the Nuer, the second largest tribe in Southern Sudan. Both have been burning homes, villages, community structures, and grain, and killing women and children, which have been the proximate cause of several famines in recent years. Control over oil has played a major role in this war. In the Eastern Upper Nile, the Nuer government militias have been actively attempting to drive opposing forces

out from the areas adjacent to the oilfields. The GoS has also attempted to move about 100,000 civilians and rebels away from oil installations, which triggered the SPLM/A's capture of Torit, which controls a major road to the government-held Juba, the principal city in Southern Sudan.

In attempt to bring peace and stability to the region, in December 1993, the leaders of Eritrea, Ethiopia, Uganda, and Kenya launched a peace initiative under the auspices of the Inter-Governmental Authority for Development (IGAD). Both the GoS and the SPLM/A agreed that the IGAD should assume the task of mediating their differences in an effort to contribute to a lasting peace in Sudan. The IGAD has made some progress, as the negotiating parties have accepted the 1994 Declaration of Principles (DOP) as the basis for negotiations, albeit with some resistance from the GoS. The DOP, in essence, gives the unity of Sudan a chance, while it also allows the people of South Sudan to opt for independence should it become necessary. However, the division in Sudan grew in 1999, when President Bashir dissolved the National Assembly and declared a state of emergency following a power struggle with parliamentary speaker, Hasan al-Turabi. That year, Sudan began exploiting the oil fields from Southern Sudan.

In July 2001, Egypt and Libya attempted to bring peace to Sudan through their Joint Egyptian Libyan Initiative, which established a Declaration of Principles calling for an all-party transitional government, but does not deal with the issue of self-determination for the South. The GoS accepted the DoP without reservation and the SPLM/A accepted it with conditions. Peace seemed very distant until January 2002, when the SPLM/A merged with the SPDF, and the SPLM/A came to agreements with the Sudan Alliance Forces (SAF) in the North, the Umma Party and the Popular National Congress party, which encouraged the Khartoum government to further negotiate. That same month, the GoS and the SPLM/A signed a landmark ceasefire agreement providing for a six-month renewable ceasefire in the Nuba Mountains region of south-central Sudan. Additionally, in July 20, 2002, through IGAD, the GoS and the SPLM/A reached an agreement on the issues of the right to self-determination and the separation of state and religion. This agreement came to be widely known as the Machakos Protocol. However, the Machakos Protocol is not a comprehensive agreement but a framework for negotiations. After the Machakos Protocol, the Joint Egyptian Libyan Initiative was dropped. Various other agreements followed. However, besides obtaining a cease-fire and minor agreements on power and wealth sharing, the IGAD peace negotiations have been slow. No agreements as to the contentious details of this 20-year war have yet been made.

DELEGATION INSTRUCTIONS

1. BACKGROUND

Sudan has an authoritarian government in which all effective political power is in the hands of President Omar Hassan al-Bashir. Bashir has controlled the government since he led a 1989 military coup, with the instigation and support of the fundamentalist National Islamic Front (NIF). Bashir along with the NIF managed to overthrow the country's democratically elected government. Bashir declared himself President and placed NIF leaders in the National Assembly. On December 12, 1999, President Bashir dismissed the National Assembly during an internal power struggle between the President and speaker of the National Assembly, Hasan al-Turbabi of the Popular National Congress. He disbanded Parliament, suspended the 1998 presidentially decreed Constitution, and declared a state of national emergency that suspended basic liberties.

In 2000, Bashir was reelected and his political party, the National Congress / NIF won 340 out of 360 seats in Parliament in a deeply flawed presidential and parliamentary elections that all major opposition parties boycotted. Parliament resumed 14 months later in February 2001, and in December 2001, the state of emergency was extended for another year. The GoS allowed for certain political associations on the condition that the party accepts the constitution and refrains from advocating or using violence against the regime. The approved parties only included those that were pro-government parties.

In reaction to the President's actions as well as to the human rights violations occurring in Sudan, the National Democratic Alliance (NDA) was created as a Northern and Southern umbrella opposition group. The NDA encompasses various political groups with the aim of a working for a comprehensive peace that includes all the Sudanese political forces. The NDA represents various political parties, including the Sudan Alliance Forces (SAF), Popular National Congress Party (PNC), the Beja Congress, the Democratic Unionist Party's (DUP) Fatah Forces, Umma Party, the Rashaida's Free Lions, the Federal Alliance, and the SPLM/A. The SPLM/A is part and parcel of the NDA and has no objection in the active participation of the other partners.

The NDA advocates that they should be included in the peace negotiations. The NDA believes that they should be allowed to participate in the negotiations, especially since it perceives that the current approach to peace generally has relegated democratization and human rights to secondary positions. The NDA are focused on the most inclusive and democratic transition process possible. Without an inclusive process and interim period that includes elections to legitimize authority, the SPLM/A would risk the fate of other principally Southern rebel groups that have tried to implement past bilateral agreements: another dishonored deal. Unlike the SPLM/A, the GoS is opposed to the NDA's involvement, and, currently, the SPLM/A is representing their views. Yet, the NDA fears that the South will leave them alone in their battle against Bashir's government once the South wins a degree of autonomy, and, thus, they are still demanding to be involved in the peace process.

2. VIEWS OF OTHER PARTICIPANTS

The GoS has adamantly opposed any NDA role. The GoS argues that the IGAD initiative was only concerned with the South. Thus, the NDA plays no role in the peace negotiations.

While the GoS has consistently rejected the NDA's participation, the SPLM/A has endorsed their participation. The SPLM/A leader, Garang, reassured the NDA that Sudan's unity would remain an SPLM/A priority if the North showed genuine commitment to equality and justice during the interim period. The final communiqué gave the SPLM/A a conditional mandate to negotiate for the NDA during the second phase. It also asked the SPLM/A to submit any final agreement for leadership council approval before signature. It appears, therefore, that the SPLM/A indirectly represents the NDA in the still bilateral process.

The NDA has lobbied various IGAD and observer countries for their endorsement of the NDA's inclusion. Many have agreed with the NDA in the importance of having the NDA in the negotiation arguing that, without the participation of other political forces, it will be impossible to achieve permanent peace in Sudan. However, they have left the NDA's fate in the hands of the GoS.

3. ISSUES

a. Self-Determination

In the Machakos agreement, the SPLM/A and the GoS agreed that Southern Sudan would enjoy autonomy for six years, after which an internationally monitored referendum to the people of Southern Sudan would be held to either confirm their unity by voting to adopt the system established under the Peace Agreement or vote for secession. There will also be a six-month pre-interim period during which an independent Assessment and Evaluation Commission will be established, made up of the parties and representatives from relevant regional and international partners. The NDA advocates for a more inclusive transitional period that would involve various governmental reforms, which would convince the Southern voters to opt for a decentralized but united government.

Any agreement to the South on self-determination should not be at the expense of the special needs of the Nuba community, the people of Abyei and Southern Blue Nile. The specific arrangements for the contested North-South border areas of Abyei, Southern Blue Nile, and the Nuba Mountains have not yet been decided. Although the GoS has been willing to agree to the referendum, it only includes the South within its 1956 boundaries, and excludes the Nuba Mountains, the Eastern Southern Blue Nile, and the traditional Dinka area around Abyei. The GoS insists that because the three areas are geographically located in the North according to 1956 colonial boundaries, they will not have the option of self-determination.

Furthermore, the GoS argues that the three areas do not fall under the purview of peace negotiations between the two parties. The GoS sees the problem as one of underdevelopment, and so it is a Northern problem that is not a legitimate SPLM/A interest or within IGAD's

mandate. It holds firmly to the Machakos Protocol as a reason not to discuss self-determination or state and religion in either of these areas. The NDA condones this stand point because in order to have a lasting peace the issues affecting political parties must be discussed.

The SPLM/A wants these areas to be given the right to self-determination as well as allowing these areas the right to be considered in the power-sharing process. The presence of SPLM/A leaders from the Nuba Mountains and Southern Blue Nile on its negotiating team in Machakos strengthens the SPLM/A resolve to push for some form of referendum in these areas.

The NDA's Asmara Declaration states that after a political solution is found that deals with existing grievances, a referendum should ascertain the wishes of the people of these areas over their political and administrative future. In November 2002, the Nuba people held a convention in which they affirmed their wish to remain within SPLM/A-administered territory, and the people of Southern Blue Nile followed suit in December. The people of Abyei have not held a convention but are also reported to favor remaining within SPLM/A territory, thereby ensuring their right to opt for self-determination.

Abyei is uniquely tied with the SPLM/A given its large indigenous Dinka population and traditional ties with the South, in particular with South Kordofan for historical reasons. The Addis Ababa Agreement of 1972 granted it the right to a referendum on staying in the North or joining the South, a position also supported by the NDA's 1995 Asmara Declaration. Thus, there is a strong case that its inhabitants should be given a choice whether they should belong to South Kordofan or Bahr el Ghazal.

Along with the issue over the three contested areas is the issue over the ultimate status of the South as a federal, confederal, or separate entity. The GoS's first preference is a unitary state, with assimilation—"arabization" and "Islamization"—of the Southern peoples. The SPLM/A is advocating for a confederal arrangement during the interim period, which would consist of two states: North and South. The Northern confederal state would embrace the Islamic Constitution passed by the National Assembly, and the Southern confederal state would opt for a secular constitution.

The position taken by the SPLM/A has caused internal problems with the NDA, which wants a secular united Sudan, and with the SPDF, who wants to be a separate entity. An unrepresentative NIF-SPLM/A "national unity government," with the NIF in exclusive control of the North and the SPLM/A in the South, would likely promote independence as well as alienate the bulk of the Sudanese electorate. The Sudanese war would not end; it would only move itself to a different area of Sudan. Regional and state governments should be inclusive, involving Northerners and Southerners beyond the NIF and the SPLM/A.

b. Wealth Sharing

Sudan has managed to obtain a gross domestic product (GDP) estimated to grow at 5.1 percent this year, almost twice the global average, despite the upsurge in fighting in 2002. This growth has been through the GoS's exploitation of the countries' main natural resources: oil and the Nile river. Through exploitation of where the boundaries lie in the South, the Northern regime has managed to keep all the profits from the revenues obtained in oil and water exploitation. They have reaped the benefits even though Southern Sudan is rich in oil and water and Northern Sudan is largely desert. While the North became richer, the South remained largely pastoralist with no formal economy.

The GoS has agreed to share its revenues as well as its debt with the South, but it is not willing to give even half the profits to the South. The GoS holds that within the federal framework, oil revenues and other natural resources should be handled nationally, with an agreed percentage then disbursed to the South. The GoS argues that because it has invested heavily in setting up the oilfields and attracting international partners, any agreement must recognize this stake in current revenues.

Conversely, the SPLM/A wants most of the profits to be given to the South since the revenues are coming to the South and had come to the North originally due to human atrocities committed against the people of the South. The SPLM/A wants the oil located in the South to belong to the regional entity, which could then pass a percentage to the national government. The GoS deliberately kept Southern Sudan under-developed through their "policy of exclusion," and, thus, when determining fair shares, the fact that the South has far greater need for development assistance should be taken into account. The more oil revenues improve infrastructure and facilities there, the more attractive unity will appear. Both parties agreed to set up a Petroleum Commission that, among other things, would oversee revenues coming from the oil fields of Southern Sudan. The NDA believes that the revenues should be split equally between the area where natural wealth is located, the fund for equitable development, and the national treasury.

c. Power Sharing

The SPLM/A prefers a very weak national government with a powerful Southern regional government and weaker states in the South, and the same structure replicated in the North. The SPLM/A advocates for strong Northern states in order to minimize the powers of the center, which the GoS would like to strengthen the Southern states relative to the Northern states. The GoS promotes the devolution of maximum powers to the Southern states – and equating the powers of these states with those in the North.

The SPLM/A believes that there can be no equality if the Northern states identify with the national government while the Southern states answer to the Southern regional government. The NDA promotes a decentralized system within a united Sudan, which guarantees the principle of multi-party democracy, freedom of judiciary, separation of powers and securing the freedom of expression and organization. The powers of the federal government should be limited to national sovereignty, currency, armed forces, planning, and the constitutional judiciary. All other powers should be allocated to the states.

The ultimate objective is to dilute the present regime in Khartoum, replacing the ruling party's exclusive authority with a broader government that would create the environment for democracy during the interim period. At the bare minimum, a broad-based government in which all Sudanese parties have a stake must lead during the interim period, some reduction of the powers of the presidency must be negotiated to give democracy a chance, and specific timetables for elections should be established in the agreement itself. Democratization will ultimately be a key guarantee of full implementation of the agreement and the country's unity.

d. Representation in the National Government

In recognition of the importance of having an open system that represents a wider set of constituencies, the SPLM/A advocates that all political parties should be fully integrated into the national government in order to guarantee the changes needed there and help make national policy. The parties have agreed in principle that the national government should include a bicameral legislature, with a lower house reflective of state populations and an upper house with equal representation from all states. The GoS agrees that an equitable level of Southern participation must be safeguarded, but it disagrees over the actual percentage of Southern representation in the various organs of power. The GoS accepts to have a national census during the interim period to decide on the South's proportion of the national population.

If the president's power sharing scenario prevailed, the SPLM/A could invite the NDA into the interim government, but at the expense of its own quota of senior posts. The burden of representing the NDA's regional parties, the mainstream DUP, and the trade unions would fall on the SPLM/A and might also suggest that the main Umma Party would be left out in the cold. The Machakos Protocol provides for an inclusive National Constitutional Review Commission but groups not part of that accord have the daunting task of pressing for their views to be taken into account in the Commission's mandate, the criteria for its membership, and the laws that need to be amended to transform Sudan from a one party state to a multiparty democracy.

Quantifying inclusiveness will be challenging, as one government official previewed: "We have agreed the Review Commission should be representative, but mainly from the two negotiating parties". Asserting that it will not allow any issue addressed in the Protocol to be reopened, the GoS strongly opposes a constitutional conference, while the NDA urges the SPLM/A to push for it. National, Northern and Southern constitutions should be fine-tuned to correspond to Sudanese aspirations for basic human rights, and the peaceful contest of power through free elections. A constitutional conference or review process must be held early in the interim period that involves all political parties as well as civil society in resolving outstanding issues and ratifying a new political order.

e. The National Capital

In accordance with the SPLM/A, the NDA believes that the shared capital should be secular. In fact, the NDA goes even further in advocating that there should be a secular national government whose powers should be constrained to national sovereignty, currency, armed forces, planning, and the constitutional judiciary. All other powers should be allocated to the states. The states, through the people's vote, should decide whether they should be secular. The GoS is unwilling

to compromise on the issue of whether the capital should be secular. In fact, President Bashir stated that the capital “will never be secular.” The GoS argues that Khartoum is an integral part of Northern Sudan as well as the capital, and, thus, it will not be secular.

Furthermore, the GoS argues that the SPLM/A is trying to renegotiate issues resolved implicitly in the Machakos Protocol while the SPLM/A says that this is a national matter and thus not addressed by the agreement to allow *Shari’a* law in the North. In the Machakos Protocol, the SPLM/A and the GoS agreed to allow *Shari’a* law in the North. The Machakos Protocol affirmed the right of the South to a secular administration, by providing that the national government can “introduce legislation so as to allow or provide for institutions or practices in that region [that are] consistent with their religion or customs,” while confirming the role of *Shari’a* in the North. However, the SPLM/A argues that it agreed to have *Shari’a* as the basis of legislation in the North, but there was no agreement on the status of the capital, Khartoum.

f. Security

The Sudanese security force is perhaps the most contentious topic remaining to be negotiated. The GoS wants to maintain a military presence in the South in case the agreement breaks down and war resumes. They argue that the GoS’s national mandate is not subject to compromises. However, the GoS is willing to reduce its forces in accordance with the security arrangements of the final peace agreement. The SPLM/A, however, insists upon full withdrawal.

The SPLM/A would be willing to consider having a joint general command with separate operational units and co-chiefs of staff, with the SPLM/A in control of the South and existing government forces of the North. Joint security arrangements could also be negotiated around the oil infrastructure and other assets considered national. A Joint Military Commission – with international, GoS and SPLM/A representatives – could oversee implementation of the security arrangements and investigate alleged violations. The SPLM/A officers could then be integrated into significant national army and security positions.

The NDA proposes a phased program that should be implemented for the armed forces until the issue of voluntary unity is settled. Phase one would coincide with the ceasefire, during which the armed forces should be redeployed according to the model set by the Nuba Mountains agreement. During phase two, linked to the interim period, distinct Southern and Northern units should operate as allied forces under a unified command. Phase three would depend on the referendum’s outcome. In the event of a vote for unity, the armed forces would be merged according to a program elaborated during the interim period to avoid past mistakes and guarantee a genuinely national army. Paramilitary forces such as the PDF and other government militias should be disbanded and disarmed according to a program that should also provide for reintegrating combatants

g. Humanitarian Issues

The NDA’s main political agenda is democratization and human rights. The NDA insists that national Northern and Southern constitutions be fine tuned to correspond to Sudanese aspirations for basic human rights, and the peaceful contest of power through free elections. The twenty

years of civil war has cost Sudan the lives of 2 million people and resulted in a further 4.5 million internally displaced persons. Additionally, some 500,000 Sudanese have sought asylum in other countries. The war brought about various human rights violations caused by all parties to the conflict.

The GoS is party to various human rights conventions, but it has frequently violated the rights it has agreed to protect. In particular, the GoS has violated all four Geneva Conventions. International humanitarian law prohibits killing civilians, torture, forcible displacement, and the destruction of civilian property without absolute military necessity. However, both parties to the conflict have committed such abuses.

Pressured to protect human rights, President Bashir agreed to and has set up a National Commission on the Application of International Humanitarian Law in the country. The commission would be chaired by a top official of the Justice Ministry and would be responsible for revising existing laws in line with international humanitarian law. The commission would consult with civil society groups and trade unions when necessary. The commission would also be required to set up implementation mechanisms and is mandated to “execute the requirements of international humanitarian law.” In order to assure that human rights are protected, international conventions on human rights need to be entrenched in the constitution and the independence of the judiciary guaranteed.

h. Child Soldiers

The SPLM/A has promised UNICEF that they would demobilize everyone under the age of eighteen and all SPLM/A commanders would follow instructions not to recruit anyone under that age. The U.S. State Department reported that, during 2002, the SPLM/A actively engaged in efforts to demobilize child soldiers; however, there were reports that child soldiers were involved in military incidents during December 2002, which raised concerns that the SPLM/A again was using forced recruitment of children.

As the GoS focuses the world attention on the SPLM/A’s use of child soldiers, underage boys are forcibly recruited into the government’s army and government-sponsored militias. Conscription into the armed forces is compulsory for both men and women and the law stipulates that military training is a precondition for entry into further and higher education or into certain jobs. The Sudanese law sets eighteen as the minimum age, but the U.S. State Department has reported that the GoS forcibly conscripted young men and boys into the military forces to fight in the civil war. Human Rights Watch reported that boys as young as twelve were collected, not only from public buses and other vehicles but also at football stadiums and other recreation centers. The army also forcibly drafted underage Southerners in garrison towns to fight against their fellow Southerners in the SPLM/A.

i. Slavery

The U.S. State Department reported that although the 1998 Constitution prohibits forced or bonded labor, including by children, slavery and forced labor in Sudan persisted, affecting women and children in particular. Militia raiders, *Murahileen*, with the support of forces directly

under the control of government authorities, systematically raided villages and captured women and children as remuneration for their services in Bahr el-Ghazal and Upper Nile. The GoS took no action to halt these practices and continued to support tribal militias. Human Rights Watch reported that this practice is conducted almost entirely by “government-backed and armed militia of the Baggara tribe in western Sudan”—*Murahaleen*. Abductees frequently were forced to herd cattle, work in the fields, fetch water, dig wells, or do housework. They also were subjected to arbitrary punishment, torture, and rape, and at times, killed. These practices had a pronounced racial aspect, as the victims exclusively were black Southerners and members of indigenous tribes of the Nuba Mountains. There were reports of the sale and purchase of children, some in alleged slave markets; however, the GoS continued to deny slavery and forced labor existed but acknowledged that abductions occurred.

The GoS has stated that the situation described as slavery is actually a matter of rival tribes engaging in hostage-taking, over which they have little control. Among pastoral groups in North and South Sudan, small-scale inter-tribal abduction or hostage-taking is commonplace. Such groups depend on access to shared seasonal resources of pasture and water. During conflicts over water and grazing, livestock may be stolen, men killed and women and children abducted. The resolution of disputes in such cases involves compensation for loss of life and stolen livestock and the return of abducted women and children. This problem has increased as there has been advancement of desertification in western Sudan, which has led some Baggara to depend more on access to grazing resources in the territory of the Dinka in Southern Sudan.

j. Women

Both sides of the war have been guilty of raping and enslaving women and children. Thousands of women and children abducted during the 20-year conflict reportedly remained unaccounted for, despite the existence since 1999 of a governmental Committee for the Eradication of Abduction of Women and Children, mandated to trace and reunite them with their families. In November 2001, the GoS announced the establishment of special civilian tribunals in the border regions separating the South and the North of the country to prosecute persons involved in the abduction, transport, holding, and selling or exchanging of women and children from war zones. However, the tribunals were never created nor were administrative procedures promulgated.

Despite Sudan's Constitution and its ratification of international and regional human rights instruments which prohibit discrimination on the basis of sex, the subordination of women and girls continues to be part of the law and customs, which are strongly based in male dominance. President Bashir stated that Sudan would not sign the UN Women's Convention because it was contrary to Sudanese family values. In accordance with this standpoint, a number of government directives required that women in public places and government offices and female students and teachers conform to what the government deemed an Islamic dress code. Furthermore, the government amended the Labor Law by decree to prohibit women from working in physically demanding jobs.

Going a step further, the governor of Khartoum issued a decree banning women from working in public places. The decree was challenged based on its constitutionality in the Constitutional Court, which temporarily suspended the ban. The Court's final decision was still pending at the end of the year. However, the Minister of Justice, while recognizing that the Constitution and

international conventions guarantee a woman's right to work, would not condemn the ban as unconstitutional. Women in Khartoum State continued to be harassed and ill-treated by police enforcing the Public Order Law, which restricts women's freedom of movement and regulates their behavior and dress under threat of summary trial, flogging and imprisonment. Under Sudanese law, women cannot travel abroad without the permission of their husbands or male guardians.

k. Refugees and Internally Displaced Persons (IDPs)

The GoS and pro-government militias implemented a scorched earth policy aimed at removing populations from around the oil pipeline and other oil production facilities. Civilians living in and around the oil fields have been deliberately targeted. Under the auspices of security, the military destroyed the civilians' harvests, looted livestock and occupied the territory so as to prevent the IDPs from returning. GoS troops have not only used air attacks but also have committed gross human rights violations in order to create an uninhabited security zone: forced displacement, aerial bombardments, strafing villages from helicopter gunships, mass executions, nailing women and children to trees with iron spikes, slitting children's throats, hammering nails into male prisoners' foreheads, and crushing people tanks.

The official camps, all several miles outside the city, are designated by the government as areas where internally displaced persons (IDPs) are allowed to reside, although they have no property rights. The displaced in official camps tend to have better access to services because of the comparative willingness of the government to allow access to international agencies and the traditional targeting of international donor funds to "defined" populations.

The health situation in many squatter areas and settlements, where international access is limited and funding is difficult to obtain, has become extremely poor. In squatter areas, the displaced build houses on unauthorized plots owned by the government or by private individuals, hoping to take advantage of economic opportunities in the city. The GoS frequently forced relocations from squatter areas. With each relocation, established communities are scattered, homes destroyed, and jobs lost, all without compensation to victims. The settlements where the displaced people from squatter areas are moved are far from Khartoum in areas devoid of services. Residents must rebuild homes at their own expense.

Human Rights Watch has reported that many Southerners have fled to the capitol of Khartoum to escape the war, only to meet severe racial discrimination, forcible displacement and crowding into subhuman living quarters by the GoS, and state-supported attempts to convert them to Islam. Most of the aid provided has been in the form of emergency relief, which has frequently been diverted or withheld from the civilian population of Southern Sudan by all parties to the conflict. Around Khartoum, where the GoS provides some resources to schools, classes are taught in Arabic and a Muslim curriculum is required in all schools. The Southern parents who can afford fees are deeply concerned about efforts to "Islamicize" children at school.

4. MAIN OBJECTIVES

- The NDA agrees to the referendum and having the people of the Nuba Mountains, the Eastern Southern Blue Nile, and Abyei decide their own political fate.

Acceptable minimum—allow the three contested areas to vote on whether they want to be part of the South.

- The NDA believes that the oil revenues should be split equally between the area where natural wealth is located, the fund for equitable development, and the national treasury.

Acceptable minimum—A wealth sharing that takes into account where the resources are located at and the need of development in that area.

- The NDA prefers a decentralized administrative system that guarantees a multi-party democracy, freedom of judiciary as well as separation of powers. A

Acceptable Minimum—a secular united Sudan that represents all interests.

- The NDA proposes a three phase that would first phase the government troops out of the South, demobilize both sides, and eventually integrate the armed forces of the North and South.

Acceptable minimums—minimum Northern troops in the South.

- The NDA emphasizes the importance of protecting human rights through ingraining them in the constitution as well as maintaining an independent judicial system that is free from undue influence.

Acceptable minimums—securing human rights through revising existing laws in line with international humanitarian law and setting up implementation mechanisms as well as assuring an independent judicial system.

Appendices

Appendix A – Websites for Further Information on the Conflict

MAPS

Perry-Castaneda Library Map Collection of the University of Texas at Austin
http://www.lib.utexas.edu/Libs/PCL/Map_collection/sudan.html

Save the Children UK maps of Southern Sudan
<http://www.state.gov/www/issues/relief/sudan.html>

UN Map of Sudan
<http://www.un.org/Depts/Cartographic/map/profile/sudan.pdf>

TIMELINES

BBC TIMELINE
http://news.bbc.co.uk/2/hi/middle_east/827425.stm

IRIN: Webspecial on the Sudan Peace Process
<http://www.irinnews.org/webspecials/Sudan/chronology.asp>

ESPAC – Working for Peace in Sudan: The Peace Process
http://www.espac.org/peace_process/search_for_peace26.html

Background Reports/History

Human Rights Watch: Background to the War in Sudan
<http://www.hrw.org/campaigns/sudan98/testim/houise-01.htm>

Human Rights Watch:
<http://www.hrw.org/reports98/sudan/Sudarm988-03.htm>

Human Rights Watch: World Reports 2003: Sudan
<http://www.hrw.org/wr2k3/africa12.html>

All Africa: Sudan and Her Neighbors – Part 1
<http://allafrica.com/stories/printable/200303070101.html>

Peace Agreements

IGAD Declaration of Principles
<http://www.irinnews.org/webspecials/Sudan/sudanDOP.html>

Joint Egyptian – Libyan Initiative for Peace

<http://www.sudanbuc.net/egyptian.html>

The Nuba Mountains Cease-Fire Agreement

<http://www.gurtong.net/nubapeace.htm>

Agreement to Protect Non-Combatant Civilians

<http://www.alarm-inc.org/alar mold/sudanagree.htm>

MOU on the Cessation of Hostilities Extended

<http://www.sudanembassy.org/asp/print.asp?ID=151>

Machakos Protocol

<http://www.sudan.net/news/press/postedr/164.shtml>

MOU on Aspects of Structures of Government

<http://www.sudan.net/news/press/postedr/202.shtml>

MOU Regarding Points of Agreement on Power Sharing and Wealth Sharing

http://www.gurtong.net/igad_index.htm

IGAD: Sudan Peace Process

<http://www.igad.org/pressroom/sudpress.html>

Self-Determination

The Road to Peace in Sudan: Bringing the I.G.A.D. Process to a Conclusion by Abdul Mohamed

<http://www.usip.org/oc/sr/abdul-mohamed.pdf>

Wealth Sharing

Oil

Amnesty International: Sudan Human Rights Violations Mount as Oil Production Expands

http://www.amnesty.ca/library/Talisman_Statement.htm

Amnesty International: Sudan: Mixing Oil and Blood

<http://www.amnestyusa.org/amnestynow/sudan.html>

Amnesty International: Wining Oil – Losing People

http://library.amnesty.it/isdocs/aidoc_everything.nsf/Index/AFR54001200

Energy Information Administration: Country Analysis Brief: Sudan

<http://www.eia.doe.gov/emeu/cabs/sudan.html>

IRIN Webspecial on the Sudan Peace Process: Sudan: Wealth-sharing
<http://www.irinnews.org/webspecials/Sudan/wealthsharing.asp>

Water

Global Policy: Nile River Politics: Who Receives Water?
<http://www.globalpolicy.org/security/natres/nile.htm>

AQUASTAT—FAO's Information System on Water and Agriculture: Sudan
<http://www.fao.org/ag/agl/aglw/aquastat/countries/sudan/print1.stm>

American University: ICE: Case Studies: Blue Nile
<http://gurukul.ucc.american.edu/ted/ice/bluenile.htm>

The Nile Waters Agreements
http://www.transboundarywaters.orst.edu/projects/casestudies/nile_agreement.html

Power Sharing

ICG: Power and Wealth Sharing: Make or Break Time in Sudan's Peace Process
<http://www.intl-crisis-group.org/projects/showreport.cfm?reportid=854>

Power Sharing and International Mediation in Ethnic Conflicts
<http://wwics.si.edu/subsites/ccpdc/pubs/power/pw1.htm>

IRIN Webspecial on the Sudan Peace Process: Sudan: State and Religion
<http://www.irinnews.org/webspecials/Sudan/statereligion.asp>

Security

IRIN Webspecial on the Sudan Peace Process: Sudan: Nuba ceasefire experience suggests points to ponder
<http://www.irinnews.org/webspecials/Sudan/nubaceasefire.asp>

Humanitarian Issues

Human Rights Watch: Civilian Devastation: Abuses by All Parties in the War in Southern Sudan
<http://www.hrw.org/reports/1993/sudan/>

Amnesty International: Annual Report 2002
<http://web.amnesty.org/web/ar2002.nsf/afr/sudan!Open#bottom>

U.S. Department of State Country Reports on Human Rights Practices in Sudan 2002
<http://www.state.gov/g/drl/rls/hrrpt/2002/18228.htm>

Child Soldiers

Human Rights Watch: Children in Sudan: Slaves, Street Children and Child Soldiers
<http://www.hrw.org/reports/1995/Sudan.htm>

Slavery

U.S. Department of State: Slavery, Abduction and Forced Servitude in Sudan
<http://www.state.gov/p/af/rls/rpt/10445pf.htm>

Human Rights Watch: Slavery and Slave Redemption in the Sudan
<http://www.hrw.org/backgroundunder/africa/sudanupdate.htm>

Human Rights Watch: Children in Sudan: Slaves, Street Children and Child Soldiers
<http://www.hrw.org/reports/1995/Sudan.htm>

Refugees / IDPS

U.S. Committee for Refugees: Country Report: Sudan 2002
<http://www.refugees.org/world/countryrpt/africa/sudan.htm>

Amnesty International: Sudan Human Rights Violations Mount as Oil Production Expands
http://www.amnesty.ca/library/Talisman_Statement.htm

Women's Commission: Only Through Peace: Hope for Breaking the Cycle of Famine and War in Sudan
<http://www.womenscommission.org/pdf/sd.pdf>

Appendix B - Background Paper on Humanitarian Issues Caused by the Conflict

International law today is changing from being more state-orientated to focusing on the protection of human rights and seeking accountability of those individuals, not merely states, who are responsible for violations of these rights. War and war-like conflicts seem to go hand in hand with brutalities and flagrant violations of the law and human dignity. International humanitarian law is concerned with the protection of civilians, combatants and persons *hors de combat*. Hostilities in armed conflict inevitably have the strongest effect on the most vulnerable people that are present in the area where the conflict is taking place. Three vulnerable groups that have been identified by the international community as in need of extra protection are refugees and internally displaced persons (IDP), women, and children. Many international treaties seek to protect refugees and IDP, United Nations strives to mainstream a gender sensitive policy in all UN institutions, and most recently the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict has entered into force.

Refugees and Internally Displaced Persons (IDP)

I. The international law governing refugees and internally displaced persons

International instruments that govern the rights and protection of refugees and internally displaced persons are the 1951 Convention Relating to the Status of refugees, the 1967 Protocol, the 1967 Convention governing the specific aspects of refugee problems in Africa, and the Guiding Principles on Internal Displacement.

The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee. Furthermore it assesses what their rights are and what legal obligations rest on states in this respect. Amongst many others Burundi, DRC, Rwanda and Uganda are state parties to both the 1951 Convention and the 1967 Protocol. The 1967 Protocol removed geographical and temporal restrictions from the Convention.

Key issues that need to be dealt with are malnutrition, health & epidemic problems (the World Health Organization has recently reported on a cholera outbreak, see WHO website: <http://www.who.int/disasters/emergency.cfm?emergencyID=8&doctypeID=2>), asylum rights, minority rights.

Position of Women

I. Prohibition of rape and sexual violence under international humanitarian law and women's rights

Despite the clear prohibition of rape and sexual assault by international law, no conventional or other international instrument defines this international crime. Rape and other crimes of a sexual nature are explicitly prohibited in the Geneva Conventions of 1949 and the two additional protocols. Article 27 of the Fourth Geneva Convention (Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted 12 August 1949) applicable to international armed conflicts provides: "Women shall be especially protected against any attack

on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.” Similar provisions can be found in Article 76 (1) of Protocol I and in Article 4(2) (e) of Protocol II. (Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, entry into force 7 December 1978 and Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts, entry into force 7 December 1978). The latter applies in situations of non-international armed conflict.

In the Statute of the International Criminal Court rape and outrages upon personal dignity are explicitly listed as separate offences under War Crimes in Article 8 paragraph 2 (b) subparagraphs (xxi) and (xxii). Many interesting reports on this issue can be found on the United Nations website (www.un.org), one of which is: Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflicts, Report of the High Commissioner for Human Rights, 27 June 2000, E/CN.4/Sub.2/2000/20

Another very important document which is often described as an international bill of rights for women is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 (UN General Assembly).

II. Recommendations

Gender mainstreaming through national institutions

It is imperative that any attempt to improve the situation of women in Sudan finds its way through regional systems even though it is based on international law notions. An enforced westernized model that does not succeed in its goals or survives simply because it does not meet the needs and demands of the situation at hand would not be suitable for its purpose. Gender mainstreaming should take place in at all levels and in every aspect, such as equitable treatment under and access to the justice system, access to education, work, and health care. Gender mainstreaming benefits economic development, community development, and creates healthier and more wealth for families.

Adequate protection and legal redress

Victims of sexual crimes in armed conflict rarely have access to adequate legal redress. It is unimaginable for them to simply call the local police to report the crime and expect to have that crime properly investigated. In many cases institutions such as the World Bank finance projects relating to access to justice, empowerment of women, and gender mainstreaming.

Deterrence and Prevention

The foundations of gender-based violence lie in the low status which women and girls have in society. To end the cycle of sexual violence and discrimination, which are aggravated in armed conflicts, the equal rights of women in society must be promoted and protected. Without the full equality and participation of women in the economic, political and cultural life of their societies, any measures taken to prevent the systematic rape and sexual slavery of women during armed conflict, in fact any form of gender-based violence, will fail.

A critical and practical point of consideration in deterrence of future crimes against women is related to the many women that stay in refugee camps. In refugee camps there should be a

separation between different parties and between men and women in order to prevent further attacks within the compound. Women due to their weaker position are often victimized, get less relief than male refugees (or in return for sexual favors), and are subject to nightly retributions. Furthermore, there should be a facility where people can have their story registered. This will facilitate future justice and prevents the disappearance of anonymous victims.

Medical assistance

In a report submitted by the High Commissioner for Human Rights, the Committee on the Elimination of Discrimination against women recommends specific legislative and structural steps to shelter women from attacks and abuse. Further, it is suggested to provide women who are victims of violence with comfort, assistance, advice, guidance and information concerning legal redress. (Report of the High Commissioner for Human rights, on: *Contemporary Forms of Slavery; Systematic rape, sexual slavery and slavery-like practices during armed conflicts*, E/CN.4/Sub.2/2000/20. These recommendations relate to the women suffering under attacks from terrorist groups in Algeria, however, they are equally relevant to the situation in DRC).

Child Soldiers

I. International law governing child soldiers

International humanitarian law gives children special protection and sets a minimum age for participating in hostilities. The international law that deals with the issue of child soldiers consists of the 1949 Geneva Conventions and the 1977 Additional Protocols, the Convention on the Rights of the Child of 20 November 1989, The Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000 (entry into force 12 February 2002), the ILO Convention 182 on the Worst Forms of Child Labour of 1999 (particularly articles 1 and 3), and the African Charter on the Rights and Welfare of the Child of 1990. (For the text of these treaties see www.icrc.org under humanitarian law > children in war).

The Convention on the Rights of the Child (CRC) establishes the definition of a child. When dealing with the applicable legal regime for children and armed conflict the Convention defers to the Geneva Conventions and Additional Protocols. In the CRC all provisions apply to children of the age of 18 and younger. However, the deferral to the Geneva Conventions creates a discrepancy with regard to the age limitation that has been set. Under Geneva law a child is allowed to participate in hostilities from the age of 15 and older. Participation from the age of 15 to 18 it is permissible under certain conditions, such as voluntary participation, no conscription etc. The part of the Geneva Conventions that applies to internal armed conflict is Common Article 3 which offers a more narrow protection than the other provisions of the Geneva Conventions which applies to international armed conflict. Thus, it seems that children between the age of 15 and 18 may participate in hostilities and therefore may be held liable for crimes they commit. However, the most recent Optional Protocol to the CRC on children and armed conflict reiterates a child as a person of the age of 18 and younger. Thus it prohibits the participation of children in hostilities. Pay attention to the language of the protocol: is it an obligation or a recommendation? This is relevant in cases of prosecution under national law.

The ILO Convention qualifies the use of children as soldiers in war and other hostilities as one of the worst forms of forced labor. The Convention also qualifies a person under the age of 18 as a child. With regards to age the ILO Convention uses the CRC definition.

II. Accountability of child soldiers

The case of forced child soldiers has been addressed for the first time in the context of the Special Court for Sierra Leone. The Special Court deals with the issue of child soldiers under specific provisions. It is focused on children between the ages of 15 to 18. The fact that they can be held liable is yet very controversial. However, it has been expressed that the overall goal is to prosecute those with the most responsibility. This is formulated in the introduction and the objective of the Statute of the Special Court. This has been interpreted to mean the leaders, those who forced the children to take part in the hostilities. Definitely the prohibition is clear on the age of 15 and below. Also the way of recruitment is taken into consideration. The persons that can be deemed responsible can be prosecuted for the war crime of forcibly recruiting children. (the prosecutor of the Special Court has stated not to prosecute the children themselves). The International Criminal Court also has jurisdiction to prosecute the conscripting and enlisting of children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities, under the war crimes provision, article 8 (xxvi), of its Statute. (unless the signatory State to the ICC Statute decides to prosecute the offender(s) itself).

III. Recommendations and Rehabilitation

The battle to help the child soldiers is not just limited to preventing recruitment, but extends to rehabilitation. There are many reports issued on the psychological effects on children. The international community gives a strong push for rehabilitation. Even when children were to be prosecuted the punishment should be in the form of rehabilitation. (http://www.hrw.org/press/2001/05/congo_soldiers0529.htm).