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REPUBLIC OF SUDAN: NEGOTIATION SIMULATION

**Briefing Packet for International Observers Delegation
(United States, United Kingdom, Italian Republic, Kingdom
of Norway)**

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(April 13, 2004)

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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 tribalize 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

The United Kingdom along with Egypt ruled Sudan as a colony from 1898 until Sudan won its independence on January 1, 1956. During the period prior to independence, Southern Sudan was administered separately from the North by the British under the Anglo-Egyptian condominium government, which had ruled Sudan since the beginning of the twentieth century. While in the North the instructional language was Arabic with an emphasis on Shari'a law, the language of instruction in the South was English and customary law was applied. Thus, from colonization, Southern Sudan has been administered differently from Northern Sudan. However, the Northern government, which has identified with Arabic and Islamic culture, has attempted their dominion over the South ever since decolonization.

The United States has also played a key role in Sudan. Until now, the United States has had a very anti-Sudanese government policy. In fact, since 1995, the United States had allied itself with Uganda, Eritrea, and Ethiopia against Islamic extremism in Sudan by funneling weapons through Uganda, Eritrea, and Ethiopia. Furthermore, in November 1997, the U.S. unilaterally tightened sanctions on the GoS—sanctions that were initially imposed in 1989 and strengthened several times since then—by blocking all Sudanese assets in the U.S. and barring U.S. individuals and companies from most transactions with Sudan.

In issuing the November 3, 1997 Executive Order, President Clinton accused the GoS of “continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom.” In February 2000, the sanctions were broadened to include a prohibition against U.S. citizens and companies conducting business with the Greater Nile Petroleum Operating Company (GNPOC), an international consortium of petroleum companies currently extracting oil from Sudan. The sanctions, however, do not apply to the foreign individual parent companies of GNPOC, which include Calgary-based Talisman Energy, Malaysia's Petronas, and the Chinese National Petroleum Corporation (CNPC).

Under the Bush administration, the U.S. has sent a Special Envoy for Peace to the IGAD negotiations. John Danforth, a former Republican senator from Missouri an ex-Episcopalian pastor, was sent to Sudan on May 20, 2002.

Danforth approached his mission by proposing four tests for the two main parties to the conflict to prove their commitment to a peace process: (1) The signing of a cease-fire agreement for the conflict in the Nuba Mountains, allowing humanitarian access, to be monitored by a team of fifteen to twenty-five international personnel; (2) An agreement by both sides not to attack or target civilians or civilian objects, also to be monitored, by a verification mission of fifteen internal professional staff; (3) The appointment of a commission consisting of eminent persons from many countries, which will investigate and make recommendations for practical solutions

to the problem of slavery in Sudan; and (4) Respect for “zones of tranquility” in the conflict areas, enabling humanitarian agencies to carry out polio vaccinations and campaigns against rinderpest and guinea worm. By late March 2002, both the GoS and the SPLM/A had agreed to the four points. However, the sides have not yet fully adhered to the four points.

Although the U.S. managed to make substantive progress, its progress took two steps back when, in October 21, 2002, the Bush administration passed the Sudan Peace Act. The law would impose greater sanctions on the GoS should it walk away from talks or not negotiate in good faith with the SPLM/A. The Act mandates that the U.S. President certify within six months of enactment, and each six months thereafter, that the GoS and the SPLM/A are negotiating in “good faith” and that the negotiations should continue.

However, the conditions do not apply to the SPLM/A. It merely states that if the SPLM/A was not conducting talks in good faith, any sanctions imposed on the GoS would then be dropped. Additionally, if the GoS does cooperate, the U.S. government would spend U.S. \$100 million a year until 2005 in areas not under the GoS’s control.

Unlike the U.S., the United Kingdom, the Kingdom of Norway and the Italian Republic have decided to not place pressure on the peace negotiations, but, instead, they have decided to pledge financial and technical support as an incentive to make the peace process work.

2. VIEWS OF OTHER PARTICIPANTS

President Bashir has attacked the new U.S. law as an attempt to force concessions on the GoS on fundamental issues such as *Shari’a*. The GoS has condoned the Sudan Peace Act as a hostile, biased and religiously motivated bill which will only prolong the war and the suffering in Sudan. The GoS has intensified its efforts to reduce American influence over the peace process by actively encouraging others to play more significant roles.

Conversely, the SPLM/A’s attitude has been further hardened by the Sudan Peace Act, which it partly misreads as a promise that the U.S. will give substantial aid if negotiations fail for any reason, even SPLM/A intransigence. The SPLM/A must realize that the Bush administration is only prepared to provide large-scale aid to SPLM/A areas if it is clearly the GoS that is to blame for blocking the peace process.

The NDA supports the international observers’ involvement and has lobbied them to place pressure on the GoS to allow the NDA in the peace talks. The NDA wants to be involved in the peace negotiations, but the GoS has refused to allow the NDA to participate and has told the NDA that they could make separate agreements with the GoS. The NDA argues that, if the peace negotiation is not inclusive of all the political parties, the peace agreement will bring lasting peace. In response to the GoS’s refusal, the NDA has allied itself with the SPLM/A, who is representing the NDA’s views.

The IGAD countries are supportive of the international observers and have often looked to them for technical and financial advice. Furthermore, they have commended Mr. Danforth’s

achievement of the Nuba Mountains Cease-Fire Agreement as well as the various other agreements.

Egypt supports the U.S.'s involvement in the peace process, especially since the U.S. assured Egypt that they too are working for Sudan's unity and not for two separate Sudans. Egypt has expressed its belief that the active engagement of the U.S. offered the only hope for finally ending this conflict. Thus, because the peace talks have continued under IGAD auspices, Egypt has decided to play a more active role in the present IGAD peace negotiations although they are not an official observer.

The Arab League and the African Union have followed suit in obtaining a much stronger role in the peace negotiations in the hopes of bringing peace to a "United Sudan." In fact, the Arab League has agreed to investment money into developing Southern Sudan.

3. ISSUES

a. Self-Determination

In July 2002, the SPLM/A and the GoS agreed to a referendum for the South. The South would enjoy autonomy for six years, after which an internationally monitored referendum to the people of Southern Sudan would be held 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."

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 GoS has agreed to this before, in the peace agreement it made in Khartoum in 1997 with Southern splinter factions and, indeed, in its own 1998 constitution, but never in a way that compels it to implement the commitment. Although the GoS was willing to give the South the right to self-determination, what is included in the South is still contested.

The presence of SPLM/A leaders from the Nuba Mountains and Southern Blue Nile on its negotiating team in Machakos strengthens SPLM/A resolve to push for some form of referendum in these areas. In November 2002, however, 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. However, the 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 GoS is only willing to include the South within its 1956 boundaries, and exclude the Nuba Mountains, the Eastern Southern Blue Nile, and Abyei, for those areas are geographically located in the North according to 1956 colonial boundaries. The GoS argues that the parties which signed the Machakos peace protocol agreed that the right to self-determination be given exclusively to Southern Sudan and not any other region. However, these issues were eventually

discussed in a separate peace talk that was not under IGAD but it was with Lt. Gen. Sumbeiywo's supervision. However, after the talks on the contested areas finished, the SPLM/A walked out without any decision.

As for the ultimate status of the South as a federal, confederal, or separate entity, the NIF-dominated government sees federation as the maximum degree of devolution it will concede and categorically rejects self-determination for the South. 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 view that self-determination includes the guaranteed option of secession is contained in the IGAD Declaration of Principles, and is supported by many Sudanese. However, secession would be strongly resisted by the GoS, and would be exceedingly difficult to achieve. Thus, the internationals propose that self-determination be ensured through the right of the people of Southern Sudan to live under a government that respects their human rights, especially their religious and cultural rights.

b. Wealth Sharing

The parties have agreed on a structure for resource sharing, including taxation, revenue generation, and transparency mechanisms. Despite this, they remain far apart on the actual percentage distribution of oil and other resources between North and South, with the biggest difference being around the management and share of the proposed Southern Blue Nile, but also ownership of land matters and the modalities for banking and currency. 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 struggle for control of the oil resources has been a major cause of human rights violations. The GoS regards oil fields as vulnerable, strategic assets, which it seeks to defend preemptively through attacks upon Southern insurgents and their alleged civilian supporters. Numerous international human rights organizations have accused the GoS of financing wide-scale human rights abuses with oil revenues, including the mass displacement of civilians living near the oil fields. The SPLM/A has declared that it considers oil installations a "legitimate military target," as oil development has provided the GoS the financial resources to expand its war effort. The GoS has already mortgaged oil revenues for years to buy weapons. Oil revenue was at least 20 percent of the GoS income in 2001, and the military budget consumed about 60 percent of oil revenue in that year.

Although Southern Sudan is rich in oil and water while the North is largely desert, the Northern regime has completely ignored the South's interest in these resources and has often exploited these resources to the detriment of the Southerners. The Northern government has been able to reap the benefits of these natural resources while the South remains largely pastoralist with no formal economy. The revenue that will come to the Southern government under a wealth sharing agreement will be critical for development, but a great deal of international aid and expertise will also be required.

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. Conversely, 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. 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. Furthermore, it wants the GoS's debt to be factored into the wealth sharing negotiation, which would also involve a burden sharing element.

c. Power Sharing

The main areas of contention are the Presidency, the status of the national capital, and the specific percentage of Southern participation at various levels of the national government. Last minute hesitations by both parties stymied what was nearly a deal on the Presidency and Southern representation in November 2002.

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 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. Conversely, the GoS would prefer a stronger national government with powers devolved from the center to the states, arguing that the federal government can provide for the South and make unity attractive without weakening the national structures.

Encouraging the SPLM/A to become more than a Southern party and to share power in the Southern government are critical prerequisites for a successful peace agreement. Ethnically mixed and balanced entities and governing arrangements are crucial to consolidating peace in the South. Emphasizing ethnically based states in the South would promote infighting, draw attention away from the national level, and increase prospects for a secession vote.

Besides creating the right structures, the best antidote to Southern tensions will be an SPLM/A commitment to share regional power, to create democratic means of representation, and to carve out a meaningful role for the states. Democracy at the state level – North and South – is vital for implementation of any peace agreement. Making state government more participatory and responsive will have a positive impact.

d. The Presidency

One model of leadership at the top of the national government during the interim period envisions a rotating presidency, which could involve the major Northern political parties. Another postulates a collective executive or presidential council with representation from all parties. The latter was used during democratic periods in post-independence Sudan (1956-1958, 1964-1969, 1986-1989) when a Council of State represented different constituencies. Yet another possibility would leave the current structure intact but provide internationally monitored elections throughout the country to decide both the new national parliament and national

leadership. A rotating presidency would involve the SPLM/A most directly in the national government and make it much easier to sell unity to the South at the referendum. Elections, of course, would vest other parties in the agreement.

The SPLM/A proposed that President Bashir serve as President for the first three years of the interim period, and John Garang for the second three years. However, the GoS rejected this proposal. The GoS instead proposed Garang as the First Vice President, but it has slowly retracted itself from this proposition. The proposition sparked the GoS's fears that there could be a Southern President if something happened to President Bashir.

The GoS fears regarding the ascendancy of Garang to the Presidency also stem from the assumption that the SPLM/A will maintain a separate army during the interim period. The fear is that if Bashir disappeared, then Garang would effectively become the commander-in-chief of both the Northern and Southern armies, a situation unacceptable to the government. However, the specific functions of the vice presidents could be negotiated. It is likely that the parties will need to get a sense of the final security arrangements before they can agree on Presidency issues, however.

e. Southern Representation in the National Government

The parties have agreed in principle that the national government include a bicameral legislature, with a lower house reflective of state populations and an upper house with equal representation from all states. There is a great deal of debate within both the GoS and SPLM/A as to how elections should be addressed.

The GoS supports elections early in the interim period. Participation in elections should be conditioned upon acceptance of and commitment to democratization. The elections could be phased, starting with local contests and proceeding to the national level, so that the process is not destabilizing, particularly along ethnic lines in the South. The GoS recognizes that an equitable level of Southern participation must be safeguarded. The area of disagreement is over the actual percentage of Southern representation in the various organs of power.

The GoS accepts the idea of a national census during the interim period to decide on the South's proportion of the national population. The GoS proposes a 1000-seat legislature in which the current national assembly and SPLM/A National Liberation Council will be supplemented by 300-plus representatives of other parties appointed jointly by Bashir and Garang. A 33.3 percent representation for Southerners throughout the various levels of government –except the Upper House, which will require either more equal numbers or a veto for certain legislation – was being discussed as a compromise. This could be adjusted after the census.

SPLM/A officials and Southerners representing other parties should be integrated fully into the national government in order to guarantee the changes needed there and help make national policy. The SPLM/A and other parties must get significant ministerial posts in a broad-based interim government. To prioritize unity and increase commitment to the reformed national polity, real authority will have to be given to Southerners and representatives of other political parties. Institutions will have to be restructured to make them more accountable and

participatory. This will require a new approach to staffing and hiring. Decades of institutionalized discrimination have concentrated administrative authority in the hands of bureaucrats representing a small segment of the population. If the SPLM/A's energy and top talent is fully invested in an all-powerful Southern regional administration, it will likely be predisposed to support secession when it is time for the referendum. If its energies are at least meaningfully turned to the national level, however, and benefits are gained from real power sharing at the center, there is a greater likelihood it will support unity. Power sharing must be built into any constitution in concrete, measurable and verifiable ways. The goal of the constitutional reform process must be to establish a lasting structure for deciding issues. If the constitution focuses on this in a way that promotes unity through a democratic and inclusive decision-making process, it will promote unity.

This, more than anything else, requires the participation of all political forces, well beyond those represented by Khartoum and the SPLM/A. A constitutional conference or review process must be held early in the interim period, therefore, that involves all political parties as well as civil society in resolving outstanding issues and ratifying a new political order.

The Machakos Protocol has laid the groundwork for an inclusive process by providing for a National Constitutional Review Commission that is "representative" during the pre-interim period, and for an inclusive Constitutional Review Process during the interim period. Inclusiveness is key in promoting unity. An unrepresentative NIF-SPLM/A "national unity government", with the NIF in exclusive control of the North and the SPLM/A of the South, would likely promote independence as well as alienate the bulk of the Sudanese electorate. The power sharing system should entice the SPLM/A to become a national party, part of a national government that makes real policy for the admittedly smaller role of a national government in a decentralized system. Regional and state governments should be inclusive as well, involving Northerners and Southerners beyond the NIF and SPLM/A.

f. The National Capital

The Machakos Protocol envisages a unique situation, within a federal framework, whereby *Shari'a* law and the "consensus of the people" would inform national legislation applicable to the North, while a regional consensus and values would inform legislation applicable to the South. Where existing national legislation is based on *Shari'a*, the South would have the option to introduce separate legislation based on Southern values – essentially a veto over and ability to shape national legislation.

The final peace agreement, as well as the interim arrangements to be formalized by the National Constitutional Review Committee called for in the Protocol, would eventually be integrated into a national constitution. The South would also likely have a separate regional constitution, consistent with the national constitution. However, the SPLM/A demands that the shared capital be secular because there are many non-Muslim residents in Khartoum. The GoS argues that because Khartoum is an integral part of Northern Sudan as well as the capital, and it will not be secular.

Discussion about the national capital should shift from a “*Shari’a*-free” zone to developing a special status that would respect all religious beliefs equally. Framing the discussion in this manner would save face for the government, which would no longer be forced to accept the “*Shari’a*-free” label, and would allow the SPLM/A to guarantee religious freedom for the many non-Muslim Southerners in and around Khartoum, as well as for SPLM/A members who will be operating out of the capital after an agreement. The significant compromise on this issue – particularly by the government – that would prioritize unity in the interim period and beyond would be to allow the “consensus of the people” to be the source of legislation for the national authority. Combined with veto power vested in the proposed Upper House, this would give Southerners confidence that discrimination will not be at the heart of the Sudanese polity, allow the government to maintain that it protected *Shari’a* for majority Muslim states, and be a major confidence-builder for a unity outcome in the self-determination referendum. Finally, exempting non-Muslims in Northern states from application of *Shari’a* would also boost a unity vote.

g. Security

Despite small skirmishes, the success of the cessation of hostilities agreement thus far proves that implementation of a comprehensive ceasefire will depend much more on the will of the parties than its monitoring mechanism. Nonetheless, a monitoring mission will be important. International monitors will be necessary, but if separate armies are maintained, it will be difficult to persuade the GoS to leave entirely. However, the continued presence of its troops would constitute a dangerous flashpoint and constant reminder for Southerners that they were still “ruled” by the North. This would not be conducive for ensuring unity beyond the six-year interim period. Serious regional and wider international guarantees are needed to secure a deal, including an observer mission to monitor implementation and certainty of repercussions for a side that breaks the agreement.

A ceasefire will need three components: withdrawal of much of the GoS’s force structure and termination of all support to militias; training and modernization of the SPLM/A in the context of merger with the GoS army; and introduction of observers to prevent violations and territorial encroachment. A large-scale demobilization will be needed on both sides in order to lower the other’s concerns and minimize the chances of continued fighting. Ideally, demobilization should be undertaken jointly, under the auspices of an international military mission, to help build trust and confidence. The international military mission should also assist both SPLM/A and GoS forces in modernizing and becoming more professional through joint training programs. This would allow the international community to monitor activities, provide opportunities for information sharing, military exercises, and confidence building, and also offer each side monitoring opportunities.

The GoS will have to end all assistance to the militias and factions it has supported for years. For the SPLM/A to be able to campaign effectively for a unity vote at the end of the interim period, government soldiers must not be present in large numbers, acting as a constant reminder of domination and discrimination. General Sumbeiywo should invite military personnel from key observer countries to present case studies. The Nuba Mountains ceasefire could be particularly instructive.

Rather than maintaining two separate armies, a joint general command could be established 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. GoS forces might withdraw from most of the South, except for borders where they could provide light security, while foreign monitors or observers and joint Sudanese (GoS and SPLM/A) patrols could provide security at other sensitive points. 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. SPLM/A officers could then be integrated into significant national army and security positions. Such concepts would promote unity rather than independence, which would logically follow from a simpler two-army scenario with a buffer international observer mission. Joint patrolling by the GoS and SPLM/A of the oil infrastructure in the South would build confidence in a vote for unity, as would joint patrolling of some Northern infrastructure, such as the pipeline.

h. Humanitarian Issues

The international observer's main focus is on stopping the human atrocities that are occurring in Sudan. The internationals have provided the financial, staffing, technical needs of the Sudanese people. The protection of human rights must not only be engrained in the national Northern and Southern constitutions but most also be monitored by the internationals. Furthermore, these rights need to be protected not only by independent judicial system, but also by the police and military. Thus, there needs to be a retraining of the police and military forces. The twenty years of civil war has been at cost of various human rights violations caused by all sides of the party. Both parties to the conflict have committed such abuses.

Under pressure to protect human rights, President Bashir has 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.”

i. 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. The army and the government-sponsored militias have also been reported as forcibly recruiting underage boys.

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.

j. Slavery

There is probably no issue other than civilian bombings that concerns Americans more than the continued existence of slavery in Sudan. 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, *Murahaleen*, 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 actually are 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 have been 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 have 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.

In January 2002, the GoS agreed with the U.S. special envoy for peace in Sudan, Senator John Danforth, to allow an international commission to study incidents of slavery and forced labor, and to make recommendations on practical steps to end these practices. The commission found that abduction of civilians and forcible recruitment by the armed forces of all sides in the war was commonplace. The commission found that attacks by the *Murahaleen* are characterized by: capture through abduction; the forced transfer of victims to another community; subjection to forced labor for no pay; denial of victims’ freedom of movement and choice; and, frequently, assaults on personal identity such as renaming, forced religious conversion, involuntary circumcision, prohibition on the use of native languages and the denial of contacts with the

victims' families and communities of origin. The GoS does not take responsibility for acts committed by militias and other forces.

k. 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 stand point, a number of GoS directives required that women in public places and government offices and female students and teachers conform to what the GoS deemed an Islamic dress code. At the least, this necessitated wearing a head covering; however, enforcement of the dress code regulations was inconsistent. The GoS also amended the Labor Law by decree to prohibit women from working in physically demanding jobs.

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.

Female genital mutilation (FGM) is most common among uneducated families in the North and east. Some estimate that the rate of FGM is as high as 90 percent in these areas. However, even displaced Southerners who have not traditionally practiced FGM are giving in to pressure to fit in and have their daughters circumcised. Infibulation, the most severe type of FGM, was the most common type. Usually it was performed on girls between the ages of 4 and 7 by traditional practitioners in improvised, unsanitary conditions, which caused severe pain, trauma, and risk of infection to the child. Because of dirty razors and un-sterile needles and stitching, HIV-infection has become also substantial problem in Sudan.

Moreover, recent statistics show that the maternal mortality rate is over 550 per 100,000 of childbirths, with one of the main causes of this high maternity mortality rate being female genital mutilation and its complications. The GoS does not support FGM, and it has introduced

information about FGM in some public education curriculums. Although the health law forbade doctors and midwives from performing infibulation, no form of FGM was illegal under the Criminal Code. The GoS neither arrested nor prosecuted any persons for violating the health law against infibulation.

1. Refugees and Internally Displaced Persons (IDPs)

More than 10 percent of the world's uprooted population is Sudanese. Approximately 500,000 Sudanese have fled as refugees. The refugees primarily live in Uganda (150,000), Ethiopia (80,000), Kenya (70,000), Congo-Kinshasa (70,000), Central African Republic (35,000), Egypt (18,000), Chad (15,000), Eritrea (1,000) and in Western countries (3,000).

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 International observers agree to the referendum and believe that the status of the three contested areas should be determined in order to obtain a lasting peace.
- The International observers believe that the oil revenues should go towards developing the South.
- The International observers propose a united secular government that protects civil rights and civil liberties of all its people.
- The International observers envision large demobilization with a very limited government troops in the South under an internationally monitored cease-fire.
- The International observers demand that human rights be effectively protected by the GoS.

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/alarmold/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/af/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/background/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).