

THE KHARTOUM-SPLM AGREEMENT:

SUDAN'S UNCERTAIN PEACE

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THE KHARTOUM-SPLM AGREEMENT: SUDAN'S UNCERTAIN PEACE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The January 2005 Comprehensive Peace Agreement (CPA) formally ended war between the Khartoum government and the insurgent Sudan People's Liberation Movement/Army (SPLM/A), Africa's longest civil conflict. Yet as SPLM Chairman John Garang was sworn in as 1st Vice-President on 9 July, implementation lags badly. The main obstacles are the old regime's lack of will to embrace genuine power sharing and elections, and ultimately allow a southern self-determination referendum after the six-year interim period and lack of capacity in the South to establish and empower basic structures of governance. To keep the accords on track, the international community must focus on broadening participation and transparency, particularly handling of oil revenues, promote SPLM dialogue with the government-allied militias and quickly deploy the UN peace support mission, whose monitoring operations will be key to breaking the links between Khartoum and those southern proxies.

The peace deal poses a real threat to many groups associated with the National Congress Party (NCP) regime, which signed the CPA under some duress both to deflect international pressure over Darfur and to strengthen its domestic power base by securing a partnership with the SPLM. Most members recognise the free and fair elections required in 2009 would likely remove them from power. Many also fear the self-determination referendum will produce an independent South, thus costing Khartoum much of its oil and other mineral wealth. There are signs the NCP seeks to undercut implementation through its use of the militias (the South Sudan Defence Forces, SSDF), bribery, and through the tactics of divide and rule. It actively encourages hostility between southern groups, with the hope that intra-south fighting will prove sufficiently destabilising that the referendum can be postponed indefinitely without its being blamed. These tactics will likely intensify if pressure over Darfur diminishes.

If the SPLM is to do its part in preventing an eventual breakdown of the CPA and return to war, it must make fundamental shifts in the way it operates. It has struggled, however, in its transition from a rebel movement to a political party, indeed to the point that its lack of inclusiveness and transparent decision-making has mirrored in some ways its long-time foe's approach to

governance. It is far behind its timetable for converting its guerrillas into a new army and has made little progress in creating institutional structures of governance and changing overly centralised methods of taking decisions, weaknesses that have been compounded by lack of money. There is growing frustration as early expectations of the peace have not been met.

The SPLM leadership must begin to democratise its movement and empower the nascent civil institutions of the new Government of Southern Sudan. The South-South Dialogue with southern political opposition groups launched in Nairobi in April was a positive step, but the late June negotiations with the SSDF fell short of an agreement. The recently concluded National Constitutional Review Commission failed to bring in most of the main northern opposition parties -- they boycotted it as rigged in favour of the NCP and the SPLM -- as well as the armed groups from the east and west.

Recent deals signed by the SPLM to develop oil concessions in the South violate the CPA, have generated considerable criticism both from the government and within the SPLM itself, and should be scrapped. Given that Khartoum's approach to oil has long been even more problematic, it is urgent to create the National Petroleum Commission called for in the CPA's Wealth Sharing Agreement so it can review all contracts signed in the past year. The CPA has no mechanism, however, for rapidly resolving disputes that have arisen over North-South boundaries in the oil areas and that promise at least to delay disbursement of oil revenue the Government of Southern Sudan vitally needs to meet its CPA commitments. International actors, including the Intergovernmental Authority on Development (IGAD), the U.S. and the UK, should work with the parties to immediately form a commission to delimit those boundaries.

RECOMMENDATIONS

ON THE DELAYS IN IMPLEMENTATION

To the Government of Sudan and the SPLM:

1. Request the IGAD Secretariat to work with the Joint National Transition Team as a focal point for implementation of the peace accords.

ON THE OTHER ARMED GROUPS IN THE SOUTH

To the Government of Sudan:

2. End all support to South Sudan Defence Forces (SSDF) members who have not been integrated into the Sudan Armed Forces and stop directing misinformation to the SSDF regarding the peace accords.
3. Allow SSDF members to participate in the dialogue process with the SPLM.

To the Sudan People's Liberation Movement /Army (SPLM/A):

4. Seek internal agreement on the structures of the new SPLA army and speed up its reorganisation, in order to facilitate a transparent, participatory dialogue with the SSDF without pre-conditions.

To the UN, U.S., UK, Norway, Italy, Other Donor Countries and IGAD Member States:

5. Press the government to cease all efforts to recruit and arm new factions in the South and immediately stop inciting clashes there.
6. Give more technical expertise to assist the SPLA transition from a guerrilla force to a professional army.
7. Advance stability in the South by pushing for a reopened SPLM-SSDF dialogue, providing technical expertise and high-level diplomatic support to the efforts of the Moi African Institute to facilitate a swift agreement, and working with churches, women's organisations and other civil society groups to begin an SPLM-SSDF reconciliation process.
8. Establish a mechanism to hold all parties accountable for the actions of former SSDF officers integrated into their respective forces.

To the UN Mission in Sudan:

9. Deploy rapidly throughout the South to monitor and interdict supply lines and especially arms shipments from government garrisons to non-integrated SSDF.
10. Ensure that the peacekeeping force in the South has sufficient rapid response capacity to protect civilians and respond to outbreaks of violence, particularly offensive actions by rogue militias.

TO ADDRESS SPLM CONSTRAINTS

To the SPLM:

11. Broaden internal participation in decision-making processes and empower institutions of governance in order to help build the Government of Southern Sudan.
12. Prioritise a 2nd SPLM National Convention as the body to endorse the process of transition to government and support internal democratisation.
13. Address transparency and accountability in the new Government of Southern Sudan by establishing an anti-corruption commission and formalising in the constitution for southern Sudan an auditor general position, a code of conduct for officials, and a requirement for ministers to declare assets, as in the Interim National Constitution.

TO ADDRESS PROBLEMS IN THE OIL SECTOR

To the SPLM:

14. Deregister the deal granting White Nile Ltd. an oil concession in Block Ba, sign no new deals until the National Petroleum Commission is established, and clarify the legal status of Nile Petroleum Corp. with respect to the Government of Southern Sudan.

To the Government of Sudan:

15. Cease new activities in the oil sector -- including contracts and operations -- until the National Petroleum Commission is established.

To the Government of Sudan and the SPLM:

16. Establish the National Petroleum Commission quickly and use it to review contracts signed since conclusion of the Wealth Sharing Agreement and otherwise provide transparency and civilian oversight of the sector.

To the SPLM, the Government of Sudan, the UN Mission, the IGAD Secretariat, and Other Capable Parties:

17. Establish a border commission, similar to the Abyei Boundary Commission, to determine the North-South borders in the oil producing areas..

To the U.S., UK, Norway, Italy, Other Donor Countries and IGAD Member States:

18. Urge the SPLM to cancel the deal granting an oil concession to White Nile Ltd.

ON THE NEED FOR BROADER POLITICAL PARTICIPATION

To the Government of Sudan and the SPLM:

19. Take steps either to empower the inclusive Constitutional Review Process called for in the Machakos Protocol to function as a genuine national dialogue or re-constitute the National Constitutional Review Commission after the 2009 elections, with each party represented as

determined by election results and provisions in place to protect key terms of the peace accords.

20. Include women in all positions, including as ministers and members of commissions and as administrators and employees in the civil service of the government of Sudan and the Government of Southern Sudan.

Nairobi/Brussels, 25 July 2005

THE KHARTOUM-SPLM AGREEMENT: SUDAN'S UNCERTAIN PEACE

I. INTRODUCTION

Implementation of the 9 January 2005 Comprehensive Peace Agreement (CPA) to end the war between the Khartoum government and the Sudan People's Liberation Movement/Army (SPLM/SPLA) has been slow and uneven. The conflict in Darfur may torpedo the accord if the international community does not act more assertively to end it¹ but even without Darfur, the North-South peace is in trouble.

Like most negotiated agreements, the CPA included something for everyone but left all parties short of their full goals. There is growing frustration in the South over the lack of visible implementation, little enthusiasm in the North due to Darfur and potential for renewed conflict in the East. The SPLM has begun to take its place in Khartoum, and there has been an initial meeting in Nairobi of many of the opposed groupings in the South (the South-South Dialogue).² However, the South Sudan Defence Forces (SSDF) did not attend the initial April session, and direct follow-up talks between that important Khartoum ally and the SPLA have not gone well. The process for drafting and adopting the Interim National Constitution included few opposition parties, leaving the peace accords with a dangerously narrow base.³ Though SPLM Chairman John Garang was sworn in as Sudan's 1st Vice-President on 9 July 2005, it is expected to take at least one month before the Government of National Unity (GNU) will be formed, and eight to ten weeks before the regional Government of Southern Sudan can

be legally established, which in turn will allow oil revenue to flow south.⁴

Many delays in the first half-year have been prolonged because there is no clear mechanism to hold the parties to agreed timetables. The government-SPLM Joint National Transition Team, created for development issues, has expanded its mandate to include CPA implementation coordination but with only partial success. The Intergovernmental Authority on Development (IGAD) Secretariat -- the focal point during the CPA negotiations -- is involved in implementation on an ad hoc basis but lacks a mandate. Other bodies created by the CPA which could be relevant are not yet operational.⁵ The parties need to give the IGAD Secretariat a mandate to work with the Joint National Transition Team on monitoring CPA implementation, and the international community more broadly needs to hold the parties to the CPA timetable, balancing support with pressure.

¹ See Crisis Group Africa Briefing N°28, *The AU's Mission in Darfur: Bridging the Gaps*, 6 July 2005.

² Following signature of the peace agreement, the SPLM and SPLA exist as formally separate entities for the first time. This paper uses both terms, depending on whether the military or political entity is meant.

³ The 18 June 2005 agreement between the government and the umbrella opposition grouping, the National Democratic Alliance (NDA), is a positive development, although, as discussed below, the most difficult issues remain outstanding, and not all NDA members accept the agreement. The NDA participated in the Constitutional Review Commission at the last minute, thereby giving that process a greater though far from satisfactory degree of inclusiveness.

⁴ The southern constitution must be drafted and adopted before the Government of Southern Sudan can be legally established. The technical drafting committee began its work on 18 July 2005 and is expected to continue through August.

⁵ For example, neither the Assessment and Evaluation Commission nor the Ceasefire Political Commission have been formed. The UN Peace Support Mission could also play an oversight role, but it is not yet fully functional. Its deployment is roughly two months behind schedule. As of 13 July, only 1,200 of its troops were in Sudan, well short of the 4,000 troops scheduled to have arrived by that date. Crisis Group interview, 13 July 2005.

II. THE TERMS OF AGREEMENT

The CPA was the culmination of two and a half years of intense negotiations between the government and the SPLM facilitated by IGAD. It is premised on a fundamental compromise: a self-determination referendum for the South after a six-year interim period in exchange for the continuation of Islamic (Sharia) law in the North.⁶ The deal was predicated on extensive sharing of power, wealth and security arrangements and established an asymmetrical federal system, with the Government of Southern Sudan existing as a buffer between the central government and southern states but no parallel regional government in the North.

The power sharing arrangements provided for fixed representation in national institutions, including parliament, among the formerly warring parties,⁷ who also agreed to conduct elections at all levels of government by the end of the fourth year of the interim period.⁸ A number of other institutions, commissions and committees were also created, including a new Upper House in Khartoum -- the Council of States -- with two representatives from each of the 25 states.

The detailed Wealth Sharing Agreement provided for a new national currency, created parallel central banks for North and South, and set specific revenue sharing formulas for the South and the disputed areas of Southern Kordofan state, Blue Nile state, and Abyei (the so-called Three Areas). The Government of Southern Sudan and the central government are to split all oil and other revenue derived from the South evenly.

⁶ For analysis of the IGAD peace process, see Crisis Group Africa Report N°51, *Sudan's Best Chance for Peace: How Not to Lose It*, 17 September 2002; Crisis Group Africa Report N°55, *Power and Wealth Sharing: Make or Break in Sudan's Peace Process*, 18 December 2002; Crisis Group Africa Briefing N°14, *Sudan's Other Wars*, 23 June 2003; Crisis Group Africa Report N°65, *Sudan Endgame*, 7 July 2003; Crisis Group Africa Report N°73, *Toward an Incomplete Peace*, 11 December 2003, and Crisis Group Africa Briefing N°19, *Sudan's Dual Crisis: Refocusing on IGAD*, 5 October 2004.

⁷ Seats were accorded as follows: 52 per cent for the ruling National Congress Party; 28 per cent for the SPLM, 14 per cent for other northern forces; and 6 per cent for other southern forces at the national level. The SPLM was granted 70 per cent of positions in the southern states and the Government of Southern Sudan. The National Congress Party was granted 70 per cent of positions in the northern states.

⁸ The Protocol on Power Sharing actually called for local, state and national (parliamentary) elections to be held by the end of the third year of the interim period but the parties agreed to shift all elections to the fourth year in the final agreement on implementation modalities, signed on 31 December 2004.

Various protocols cover security arrangements and the status and treatment of the government-aligned armed groups in the South gathered under the SSDF umbrella. The parties agreed to establish joint integrated units with equal numbers from the SPLA and the Sudan Armed Forces.⁹ The SPLA and Sudan Armed Forces are to maintain their troops in the South and North respectively. The agreement provides in effect for elimination of the SSDF, since no armed groups other than the SPLA or the Sudan Armed Forces are permitted. However, the SSDF is given the opportunity to qualify for integration into the security structures or civil institutions of either party.¹⁰ The Final Ceasefire Agreement spelled out a clear timetable for SSDF demobilisation.¹¹

Although the CPA is detailed and comprehensive, it reflects the direct interests of only the SPLA and the Khartoum government. The exclusion of the many groups on the periphery threatens the long-term viability of the agreement. The National Congress Party (the Khartoum government's ruling party) and the SPLM -- long-time sworn enemies -- have become strange bedfellows who must work together on implementation at the expense of former allies left on the outside.

The CPA, if implemented, will challenge vested interests. Free and fair elections, if held in four years, would likely cost the National Congress Party its power. The southern self-determination referendum, if held in six years, would likely lead to secession. The first prospect explains why northern opposition groups like the Umma Party and those in the umbrella National Democratic Alliance (NDA) who gain little politically in the short term are willing to go along with the CPA but the second prospect explains why many northerners have reservations.

SPLM calculations are less clear. Most southern members consider the self-determination referendum the end goal,

⁹ There are to be 24,000 joint integrated forces in the South, 6,000 in both Southern Kordofan and Blue Nile states, and 3,000 in Khartoum.

¹⁰ Article 7a and 7b, "Agreement on Security Arrangements During the Interim Period", 25 September 2003.

¹¹ The parties agreed to set up a Collaborative Committee to deal with the other armed groups, with three representatives each from the government and SPLM, and one UN observer. It is to determine the size and strength of each of the other armed groups and by the six-month mark ascertain the choices for integration of each group. By the end of the first year, the other armed groups are to be fully integrated into either the SPLA or Sudan Armed Forces. The Committee met for the first time in early April and agreed to hold a second meeting in Malakal, and potentially a third in Juba. This process appears to have been overtaken, however, by the SPLA-SSDF dialogue in Nairobi from 30 June-3 July at which the parties agreed to meet again inside Sudan (see below).

so are generally supportive of a partnership with the National Congress Party as a means to get there. Other members, including those from Southern Kordofan and Blue Nile, would prefer to pursue broader political alliances in the North in order to change the system of government and ultimately end the rule of the National Congress Party.¹² In the first test -- the process of adopting the interim national constitution -- the SPLM leadership leaned toward cooperation with Khartoum.

III. THE QUEST FOR POLITICAL INCLUSIVITY

Shortly after the CPA was signed, a technical team from the SPLM and the National Congress Party drafted an interim national constitution, based on the peace accords and the 1998 government constitution. This document was to be submitted to a National Constitutional Review Commission, whose 60 members were to be allocated pursuant to the CPA's formula for national power sharing -- 52 per cent for the National Congress Party, 28 per cent for the SPLM, 14 per cent for other northern political forces, and 6 per cent for other southern political forces -- and then ratified by the two parties. Decisions in the Commission were to be taken by consensus if possible, otherwise by a two-thirds majority, which meant the two former enemies could push through any part of their common draft if they stayed together.

The Commission opened on 30 April 2005, more than two months late, due to the unhappiness of the main opposition groups, which argued that the constitution should be national in its creation as well as name, so other political parties should have a fairer say in the deliberations. The government and SPLM did make an effort to accommodate. As they did not want to re-open the CPA's terms, they expanded the Commission in effect to 180 members by providing two alternates for each delegate. They also first gave ten of their voting seats (four SPLM seats, six National Congress Party seats) to the opposition, and then a further nine specifically to the NDA. The second concession helped bring an NDA delegation to Khartoum as the Commission neared the end of its work. A number of its amendments were incorporated at the eleventh hour, allowing President Bashir to proclaim when he received the draft document on 26 June that it reflected the widest national consensus since independence.¹³

In fact, however, most northern opposition groups boycotted the process and remain outside that consensus. The agreement the government and the NDA signed in Cairo on 18 June with great fanfare in the presence of the Sudanese and Egyptian presidents and other dignitaries and that led the NDA to give its last-minute support to the interim constitution deferred for further negotiations the two most hotly disputed issues. The government insists on keeping at 14 per cent the basic allocation for the northern political opposition in the power sharing arrangements during the interim period (the NDA wants

¹² The agreements for Southern Kordofan and Blue Nile states did not grant self-determination referenda.

¹³ See "In response to the Cairo accord between the GOS and the opposition NDA: Sudanese parties ask: 'where is the agreement?'" in Arabic, *al-Sharq al-Awsat*, 20 June 2005.

33 per cent) and refuses to give NDA forces in northeastern Sudan the same preferential treatment as the SPLA's forces. Garang tried to mediate a compromise but in the end elected not to break with his new partners in Khartoum.¹⁴

The NDA's negotiations with the government, the peculiar "suspended" agreement, and the last moment participation in the Commission have been controversial within the organisation. The Darfur rebels and east Sudan insurgents distanced themselves. The latter reignited the eastern front days after the Cairo ceremony by attacking several government garrisons in the region and abducting government troops.¹⁵ The second largest NDA Party, the Sudan Communist Party, vehemently denounced the Cairo accord and said it would not join the new government even if the NDA did.¹⁶ The discomfited NDA leadership instructed exiled cadres to return to Sudan and join the political process but the chairman and other top figures declared they would not return until the two pending issues were settled. More broadly, the NDA continues to stress the need to restructure the army, civil service, judiciary and security services along national, non-partisan principles.

How little national consensus there actually is behind the new constitution and the CPA's political dispensation was underlined by formation in June 2005 of a second national opposition alliance. It consists of more than 20 parties inside Sudan and is headed by the Umma Party and the Popular Congress Party of Dr Hassan el-Turabi, the one-time ideas man of the National Congress Party who has been jailed by his former colleagues for much of

the past few years.¹⁷ The new alliance calls for a national conference to discuss and endorse the peace accords but its program is broadly consistent with the NDA's. Both regard the interim constitution process as rigged in favour of the SPLM and National Congress Party, the latest unfair development in a peace process which props up the government at the expense of real democracy and the people of the North.

The opposition groups are reluctantly prepared to put up with the situation for the time being in the hope that free and fair elections will eventually give them a chance to demonstrate their true strength. But the comment of a leading Umma Party member is representative of the sense of discrimination:

We were supporting the talks for the good of the country, even though it wasn't fair but we assumed that we'd get a say in the formation of the national committees and commissions. How can we participate in commissions like the National Constitutional Review Commission when they [the National Congress Party and SPLM] have drafted the text, they have a mechanical majority, and they ratify it through their own partisan parliaments. We are nothing more than a rubber-stamp opposition.¹⁸

The Khartoum government has been clever in using the SPLM and its spokesperson, Yassir Arman, as the bearer of bad news to the northern opposition during the interim constitutional process.¹⁹ The SPLM, which needs to get CPA implementation moving faster, not least so that the Government of Southern Sudan can begin to receive oil revenue, has been at a tactical disadvantage and sees itself with little choice but to favour its old enemy and new partner over its allies in the NDA. The resulting political victories have strengthened the government's ties with the SPLM while weakening the SPLM-NDA alliance and damaging SPLM credibility in the North.

In the immediate future the government can be expected to try to neutralise the SPLM further by offering its officials multiple incentives. "The government has been preparing for the SPLM's arrival in Khartoum for over a year", said a member of the ruling National Congress

¹⁴ Immediately after the staged signing, Garang joined the two heads of delegations, Vice-President Taha and al-Mirghani of the NDA, in intense negotiations that again failed to resolve the two sticking points. They broke off with a promise to resume at a later date. The Parties did agree on a number of broad principles related to the democratic transition and elections, decentralisation, voluntary unity of the country, and issues related to national reconciliation and compensation. The agreement also stipulated it would take effect only after the two disputed issues were resolved, although the NDA justified its subsequent acceptance that the agreement could take effect immediately as a gesture of loyalty to the SPLA (a leading member of the umbrella organisation) as it prepared to enter a governing partnership with the National Congress Party.

¹⁵ The government retaliated by launching air raids on civilian targets, according to the rebels. Khartoum also lodged a complaint at the UN Security Council against Eritrea, which it believes is behind the rebels.

¹⁶ "Nugud insists on Marxism; troops build-up on border with Eritrea; in Khartoum, al-Mahdi indicates confrontation against the bilateralism of al-Bashir/Garang", in Arabic, *al-Hayat*, 29 June 2005.

¹⁷ "Sudan's opposition parties form national alliance", Reuters, 2 June 2005.

¹⁸ Crisis Group interview, 13 May 2005.

¹⁹ A particularly damaging moment was in early May 2005 when he announced that a party which did not participate in the Commission and accept the resulting document would be barred from subsequent elections. The SPLM and the National Congress Party had agreed among themselves in their technical drafting group that a party that runs in the elections should pledge to uphold both the CPA and the interim constitution.

Party. "They have new cars and houses set aside to offer. Each strong SPLM figure will be assigned a deputy from the government security services to watch over them".²⁰ Members of the first SPLM delegation to reach the capital in early April 2005 joked that they would be "subsidised" upon arrival. This is what was done with many southern politicians during the peaceful interlude of 1972-1983 that was ushered in by the Addis Ababa Agreement and what has been done to weaken other opposition groups since the present government came to power in 1989.

As long as it can maintain the upper hand, the National Congress Party is likely to seek a joint electoral list with the SPLM in 2009 since this may well be its best chance to retain power over the longer term if the CPA is kept on track. However, it will also continue with efforts -- like the Cairo agreement with the NDA -- to woo the northern opposition back into its camp. The finalisation of the interim constitution, which coincided with the sixteenth anniversary, on 30 June 2005, of its acquisition of power, was used by President Beshir to lift the state of emergency throughout the country, with the exception of Darfur and Eastern Sudan, and to free political prisoners including Turabi and members of his Popular Congress Party, which was authorised to resume operations.

Nevertheless, as the interim constitution was signed into law by Beshir and Garang on 9 July, it was clear that the new political order had much less acceptance than was good for either member of the new partnership or for the country. Consideration needs to be given to the two options available for truly nationalising the interim constitution and thereby creating a broader national basis for CPA implementation. The first is to empower the "inclusive Constitutional Review Process" which is to take place during the six-year interim period.²¹ The second is to reopen the National Constitutional Review Commission after national elections, with each party represented to the degree it showed political strength at the ballot box.

There are problems with both. The agreement on implementation modalities defined the Constitutional Review Process in a minimalist manner as dealing with such informational matters as public rallies, seminars

and media programs rather than a true national dialogue. Reopening of the Commission would have to wait four years, and safeguards would need to be established to protect the core agreements in the peace accords. Yet, something must change. The government and SPLM cannot continue to call themselves and the implementation process inclusive and democratic if they are not willing to accommodate opposition parties, significant representation of women, or meaningful consultations with civil society groups.

²⁰ Crisis Group interview, 14 May 2005. As explained by a leading northern opposition figure, "over the past year the government has been setting the web for the entrapment of the SPLM. This government believes everyone has a price". Crisis Group interview, 13 May 2005.

²¹ Article 3.1.4, Machakos Protocol, 20 July 2002. The Machakos Protocol was one of the major steps leading to eventual conclusion of the CPA and is an integral part of the comprehensive settlement.

IV. THE SOUTH SUDAN DEFENCE FORCES (SSDF)

The National Congress Party's political will to implement the CPA is ultimately questionable because, as noted, full implementation would pose at least two major risks: the loss of power through free elections and the loss of the South, with its considerable oil and other mineral and agricultural wealth, through the self-determination referendum. It wishes to be seen as cooperative, not least to keep international pressure on it over the Darfur situation at bay, but has considerable incentive to undercut the agreement over time.²²

In the longer term, the National Congress Party may try to build on the widespread sentiment within northern elites, seemingly across the political spectrum, that the peace accords gave too much to the South and that secession -- seen as the likely outcome -- would be undesirable. By building a coalition of northern political forces around this goal, the National Congress Party could well find willing partners to shore up its domestic support and to share blame should CPA implementation stall. However, the government-aligned SSDF remains the primary vehicle through which the National Congress Party could work to undermine implementation. It might be able to keep its fingerprints fairly well hidden while using these militia forces to produce the kind of South-South fighting that would make the region ungovernable and unfit to hold a self-determination referendum.

The SSDF is largely a creation of Khartoum's longstanding "divide and conquer" approach to waging war, which has sought to maximise tribal and other parochial splits among the southern population. In many ways, the SSDF is the odd man out in the peace accords, which recognised the SPLA as the sole armed force in the South. Its fighters will be a threat to the CPA until they are fully demobilised and reintegrated.

²² Passage of UN Security Council Resolution 1593 caused a panic within the National Congress Party in part because it referred the Darfur situation to the International Criminal Court for prosecution of individuals, including government and party officials responsible for atrocities there. Members of the ruling elite realise that staying in power, no matter the other costs, is a promising strategy for avoiding trial in The Hague. Crisis Group interviews, March and April 2005. Thus, the Darfur situation also operates as an incentive for at least part of that ruling elite to undermine the CPA lest its implementation eventually leaves them out of power and more vulnerable to prosecution.

A. MOTIVATIONS

Although often used by Khartoum as its proxy forces in the South, the SSDF has a more complex history and set of interests. Theoretically an organisation under a single command structure, it is in reality more of an umbrella organisation that links disparate armed groups under a largely symbolic overall leadership. In part, SSDF decentralisation has been encouraged by the government's military intelligence branch to ensure the movement does not evolve into a political threat in the South. The most fundamental of its divisions is between the "militias" -- the local forces essentially developed by the government -- and the "liberation movements", which are groups that allied with the government via the 1997 Khartoum Peace Agreement but have genuinely strong southern sympathies and suspicions of the North. The Juba Conference of April 2001 wove the two strands only loosely together as the SSDF under the leadership of Paulino Matiep.²³ In general, the militias are viewed as more closely aligned to the government, more susceptible to manipulation by military intelligence, and less accepting of Matiep's leadership.

There is also a political division between those closer to the government and those who appear to support broader goals such as southern self-determination. The fault line (as well as Matiep's weakness) could be seen in the Shilluk Kingdom in the spring of 2004. The dirty work of burning villages and displacing thousands of villagers was largely carried out by Gabriel Tang Ginye and Thomas Mabior, without the sanction of the SSDF leadership,²⁴ Matiep, Gordon Kuang, and Benson Kuany, who made clear their disgust. Others SSDF figures called for the expulsion of those responsible, whom they accused, in language similar to the SPLM's, of being mere government agents.²⁵

In theory, the SSDF has a political wing -- the United Democratic Salvation Front -- established under the 1997 Khartoum Peace Agreement by Dr Riek Machar but with Machar's defection in 2001,²⁶ its remnants have no control over military operations. Moreover, after Machar left, the government insisted that the Chairman of the South Sudan Coordinating Council, the body created to administer areas under its control in the South, come from the ruling National Congress Party.²⁷ While members of the United

²³ Crisis Group interviews, January-March 2005.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Machar reconciled with Garang and is now 2nd Vice-President of the SPLM, see below.

²⁷ The South Sudan Coordinating Council was created in the 1997 Khartoum Peace Agreement to serve as the coordinating body for the administration of the southern territory under the control of the government. According to the agreement, it

Democratic Salvation Front served on the Coordinating Council, and two are ministers in the national government, the tiny party has almost no influence over the SSDF.²⁸ The same goes for a break-away faction, the United Democratic Front, headed by Peter Sule.

The former Chairman of the Coordinating Council, Dr Riek Gai, long endeavoured to appoint SSDF leaders to positions in his Council as a means to bring them under control but with little success. He is widely viewed by politically active southerners as opposed to the IGAD peace process and is accused of attempting to undermine the April South-South Dialogue in an effort to undercut John Garang's political support.²⁹

Paulino Matiep's South Sudan Unity Movement (SSUM), the South Sudan Independence Movement (SSIM), and Peter Gadet's Wangkai contingent (now dissolved), all from Western Upper Nile, have been the major criminal elements in the SSDF, blatantly carrying out informal taxation, forced conscription, and confiscation of property, kidnapping wives for commanders, and conducting extortion rackets in both Western Upper Nile and on the streets of Khartoum. Their actions have been largely ignored by the security services and, more surprisingly, by the international community.³⁰ No peace process will be complete until such abuses end.³¹

Many SSDF leaders feel humiliated and cheated by John Garang, whose commitment to southern self-determination

originally was envisioned as the Government of Southern Sudan, with powers similar to those granted to the South under the CPA. However, the Council and the Khartoum Peace Agreement which created it, were undermined by Khartoum and soon became little more than government shells. The Council was dissolved by the SPLM following Garang's appointment as 1st Vice-President on 9 July. The SPLM is now focusing on merging its administrative institutions in the South with that earlier administration, ahead of the formation of the new Government of Southern Sudan.

²⁸ The two are Maquatch Teng, State Minister for Federal Affairs, and Joseph Malwal, Civil Aviation Minister.

²⁹ Crisis Group interviews, January-May 2005.

³⁰ The Civilian Protection Monitoring Team (CPMT) did investigate several cases, including a murder by Gadet's forces of a civilian and extortion by Paulino's forces, but because the Nuer community in Khartoum is fearful, few members are willing to talk to investigators. The CPMT was created in March 2002 as part of a government/SPLA agreement not to attack civilians or civilian facilities negotiated by the then-U.S. Special Envoy, ex-Senator John Danforth, Available at <http://www.cpmtsudan.org/>.

³¹ For more on this, see Crisis Group Africa Briefing N°13, *Sudan's Oilfields Burn Again: Brinkmanship Endangers the Peace Process*, 10 February 2003, and Crisis Group Briefing, *Sudan's Dual Crisis*, op. cit.

they doubt.³² Although the 1997 Khartoum Peace Agreement was to some extent just a device to bring Riek Machar into the government, the forces loyal to him fought the SPLA not on behalf of the national government but under the banner of southern self-determination, which still has far more resonance for most southerners than Garang's vision of a "New Sudan".

The SSDF is searching for suitable political representation in the new era on which Sudan is embarked. It has mostly rebuffed the bridge-building efforts of the South Sudan Democratic Forum, a group of southern politicians based in London and largely opposed to the SPLM. Recently there has been talk of rebuilding the alliance with the United Democratic Salvation Front despite its obvious disarray.³³ The wild card is Riek Machar, now a deputy to Garang. SSDF members from his Nuer tribe still admire him and say they would follow him should he gain the leadership of the SPLM or form another organisation.³⁴ Even Paulino Matiep has said Riek Machar represents the democratic wing of the SPLM and that he would accept him as his leader.³⁵

The SSDF, like other southern opposition groups, took heart from the recent power struggle in the SPLM between Garang and his top deputy and military commander, Salva Kiir, which many saw as vindicating their charge that Garang has become dictatorial and opening possibilities for alliances with disaffected groups within his movement. Indeed, the manner in which that struggle was resolved indicated that many in the SPLM are more sympathetic to intra-south reconciliation, including with the SSDF, than Garang.³⁶

SSDF leaders acknowledge that the 1997 Khartoum Peace Agreement is dead, although they continue to seek recognition that it was the precursor to the present peace accords. They have concluded that the main difference between 1997 and 2005 is that the CPA gained international recognition but they profess not to understand why their deal with the government was perceived as a sell-out for the South, while the CPA is generally held to be the harbinger of freedom for the region. They resent the claim that their alliance with the government makes them agents of the jellaba (Arab Northerners) while the various agreements the SPLM has signed with northern political parties are justified as advancing southern

³² Crisis Group interviews, January-March 2005.

³³ Ibid.

³⁴ Ibid.

³⁵ Crisis Group interview, 25 February 2005.

³⁶ Crisis Group interviews, January-March 2005 and see Section V. A. below.

interests. SSDF dignity is also affronted by the term "government militia" the SPLM applies to them.³⁷

The Nuer, Dinka and Equatorian tribes are the three main pillars of the South, whose relationships have always determined the success or failure of governments in the region.³⁸ Nuer in the SSDF think in terms of a potential alliance with the Equatorians, but almost never with the Dinka.³⁹ They believe they have good prospects for such a partnership because the Equatorians suffered at the hands of the Dinkas during the 1972-1983 period of southern autonomy, and the Dinka perceive that the Equatorians undermined them at the time by supporting a re-division of the South.⁴⁰ However, while such an alliance is by no means impossible, its political weakness means that as presently structured the SSDF cannot be the vehicle for realising Nuer aspirations. The better options would appear to be either arrangements with SPLM factions or a strengthened relationship with opposition political parties based in Khartoum. A third, but much less promising option, is continued military resistance.

B. RELATIONS WITH THE GOVERNMENT

While the SSDF was an effective government ally during the long civil war, it has little genuine loyalty to Khartoum. Its soldiers largely consider that they have been manipulated, abhor the North, and favour separation of the South.⁴¹ Since most now recognise that the government failed to abide by the 1997 Khartoum Peace Agreement, and it has been overtaken by the CPA, they remain in the government camp largely due to material incentives, their hostility toward John Garang and a desire for recognition.

Bribery has long been the government's most effective means for acquiring southern allies. The SSDF offered a military force capable of challenging the SPLA and protecting government assets, particularly the oil fields, when the national army was increasingly reluctant to fight. The SSDF was also relatively cheap: most of its fighters received no pay and only limited training and weapons. Use of the SSDF deepened divisions in the

South and weakened the appeal of the SPLM. To the extent that SSDF soldiers were dying in the conflict rather than northerners from the regular army, the government incurred fewer political costs from the war among its natural constituencies. With peace, however, the price of buying SSDF loyalty will certainly increase.

The SSDF-government alliance is best seen as a pragmatic exchange of services. If the National Congress Party wants to maintain it and not violate the CPA, it must take SSDF leaders and fighters into the national army. But this will be difficult. Through the beginning of April 2005, the government had brought in more than 420 as majors and above.⁴² More are expected but no numbers are given, and because most SSDF officers are poorly educated, considerable effort will be needed to bring them up to acceptable standards if the effort is to go beyond tokenism.⁴³ At least one government official did not deny the possibility that SSDF officers might be dismissed as rapidly as they were integrated.⁴⁴

The ultimate worth of these officers to Khartoum, politically as well as militarily, is that they control troops on the ground but for this to have lasting value, the rank and file will have to be integrated as well. Until that happens, however, there are bound to be confusing and bloody incidents of the sort that can be used by the government at least to maintain a degree of instability in the South. A recent example was the 15 February 2005 attack on Akobo by non-integrated SSDF from the South Sudan Liberation Army (SSLA), led by Cdr. Timothy Taban Juuc, who had earlier become a Brigadier in the regular army. The government denied any involvement and claimed to be working with SPLM Cdr. Taban Deng Gai to contain the situation.⁴⁵ This was categorically denied by Taban, who accused the government of being behind the attack.⁴⁶ The international community remained largely silent about a seemingly clear ceasefire violation.⁴⁷

³⁷ The SPLM agreed at the 2002 Entebbe Conference to use the neutral term "armed group" for the SSDF but the commitment was not kept.

³⁸ For more on this, see Crisis Group Africa Report N°39, *God, Oil and Country: Changing the Logic of War in Sudan*, 28 January 2002.

³⁹ Crisis Group interviews, January-March 2005.

⁴⁰ The Khartoum government has always been quick to promote Nuer-Dinka hostility and a Nuer-Equatorian alliance, which is why it has required that the South Sudan Coordinating Council always be led by a Nuer, with the vice-president from Equatoria.

⁴¹ Crisis Group interviews, January-March 2005.

⁴² While acknowledging the promotions, a senior SSDF official explained that SSDF officers were not being integrated into the regular army but were remaining part of a separate southern force. Crisis Group interview, 15 May 2005.

⁴³ Estimates vary widely about the actual size of the SSDF. Based on interviews with the SSDF, SPLA and international observers, Crisis Group estimates the strength of its combined forces to be at least 12,000. Crisis Group interviews, January-July 2005.

⁴⁴ Crisis Group interview, February 2005.

⁴⁵ "Sudanese Armed Forces say not involved in Upper Nile incidents", Sudan News Agency (SUNA), 19 February 2005.

⁴⁶ Crisis Group interview, 7 March 2005.

⁴⁷ "The Process of South-South Dialogue is Launched", SPLM press release, 4 March 2005. Cdr. Salva Kiir also accused the government of complicity in the attack during a BBC radio interview in late February. The status of Akobo has been contested since the SPLA captured it in November 2002, shortly

In Northern Upper Nile following the signing of the CPA, as many as 200 SSDF soldiers from the militias of Deng Guer and Thon Mum defected to the local SPLA. In response, government-backed militias attacked their families, burning up to 30 villages and displacing some 4,000 civilians to SPLA areas.⁴⁸ Khartoum also ordered the militias in Melut and Renk to raise an additional 400 men each to compensate for the defections.⁴⁹ The international indifference to these attacks and the laxity shown in dealing with violations by ex-SSDF personnel who have been integrated into the army needs to be reversed. The international community must do a better job of holding the government responsible for the actions of SSDF officers who have been taken into the army and pushing it to cut ties with non-integrated soldiers, as required by the peace accords.

The SSDF presents the government with a number of real problems, however. Its expectations are high that many will be taken into the government's share of the Joint/Integrated Units in the South called for by the CPA. A failure to meet these expectations would cause disappointment and anger.⁵⁰ Under the CPA, however, the government's entire armed presence in the South is restricted to its 12,000 army troops in those Joint/Integrated Units. If it opts not to use SSDF personnel, it will have to re-deploy any it integrates to the North. The ex-SSDF would not like this and could well rebel, desert and go home, or defect to the SPLA. Likewise, the government would have good reason to fear the consequences should it use ex-SSDF to make up a large part of its share of the Joint/Integrated Units. It worries that they might reach agreement with their southern SPLA counterparts and even press for a unilateral declaration of southern independence. It has attempted to limit SSDF-SPLA interaction for this reason for years.

Another major problem with using SSDF in the Joint/Integrated Units -- which are intended as the model core for a future national army should the South choose unity -- is lack of professionalism. Most have had neither training nor a basic education and are unfamiliar with sophisticated military technologies. Crisis Group recently learned that

the government promised at least 1,500 positions within the Joint/Integrated Units to SSDF Equatorial elements, include the Murle and SPLM/Bor group.⁵¹ However, when it submitted the names of its soldiers for those units, reportedly fewer than 150 spots were set aside for each of these groups, leading to considerable anger and disappointment.⁵²

Lastly, there is the problem of how to integrate back into society SSDF personnel who are not taken into the Khartoum forces, and who will do it. The troops of SSDF leaders like Paulino Matiep, Gordon Kong, Ismael Konyi, and others are wedded to their particular territories. They argue that as southerners they have as much right to be there as the SPLA, and no one can remove them, but the CPA requires that they be demobilised because only the SPLA and the government can maintain armed elements in the South. Riek Gai is among those who have expressed concern about this issue, but SSDF officials have shown few signs of accommodation, in part because they were kept out of the decision-making process that produced the CPA.⁵³

There is good reason to conclude that the government and military intelligence have not decided how to deal with the SSDF. Nevertheless, there is ample evidence that they are not yet ready to renounce irrevocably the opportunity to use them for subversive military purposes. In addition to the attacks mentioned above, there have been steady reports that the army has expanded its positions in the South and rearmed allied militia, including those that have not been integrated into the regular army. The SPLA alleges that in Southern Blue Nile the government recently distributed 3,000 weapons to the Fellata to fight against it.⁵⁴ A recent report released by the Civilian Protection Monitoring Team found that the government systematically armed and incited Lou Nuer against other communities in Northern Upper Nile from March through June 2005.⁵⁵ Since signing the CPA, the government has established at least nine new fortified garrisons along the Sobat River, and it re-supplied its southern allies with weapons via barges along that waterway in March and

after the signing of the cessation of hostilities agreement. Control has shifted repeatedly since then. The latest attack comes roughly a month after the SSLA leadership signed a declaration to merge with the SPLA. The force led by Taban started from Malakal, allegedly with government logistical support, and launched an unsuccessful attack on Wandī before briefly taking Akobo. Crisis Group interviews, February-April 2005.

⁴⁸ Crisis Group interviews in Northern Upper Nile, April 2005.

⁴⁹ Ibid.

⁵⁰ Crisis Group interviews, February-March 2005.

⁵¹ Crisis Group interview, 22 April 2005.

⁵² Fewer than 150 positions each in the government's Joint/Integrated Units were given to the Mundari forces of Clement Wani, the remnants of the Equatorial Defence Forces (EDF), the Murle forces of Ismael Konyi, and the SPLM/Bor group -- an SPLM splinter faction which signed the 1997 Khartoum Peace Agreement. Crisis Group interviews, 15 May 2005, 17 July 2005.

⁵³ Crisis Group interview, 26 February 2005.

⁵⁴ Crisis Group interview, 1 May 2005.

⁵⁵ CPMT Report No. 95, 29 June 2005. Available at <http://www.cpmtsudan.org>.

April.⁵⁶ An airplane full of new weapons and ammunition made an unscheduled emergency landing in Yambio on 15 July. Although it is not yet clear for whom the weapons were intended, SPLA elements in the region suspect government involvement.⁵⁷

C. RELATIONS WITH THE SPLM

Although the SSDF leadership is politically immature, it appreciates that the people in its communities support the CPA as a mechanism to achieve southern independence. Despite misgivings about Garang's leadership, he is credited with achieving a peace agreement and a means to end the generally hated relationship with the North. As a result, SSDF leaders cannot appear to oppose the CPA or they risk being seen solely as government tools. During the civil war, hatred of Garang and the SPLA, animosity toward the Dinka and heavy handed coercion was sufficient to keep civilians in line and justify the never popular alliance with Khartoum. But in peacetime, these mechanisms are rapidly losing their effectiveness.

SSDF leaders have long sought a dialogue with the SPLM: for reconciliation, to escape pariah status and to gain recognition of their role in the struggle for southern rights. They believe the SPLM does not want to take in many of their predominately Nuer commanders because that would change the ethnic balance of the movement and advance the fortunes of Riek Macher, Garang's principal challenger for leadership. However, the SSDF leaders have never properly appreciated that although southerners want reconciliation (particularly those from Upper Nile who suffered the most from the SPLA-SSDF conflict), the SPLM has largely been able to ignore the pressure because it enjoys strong international support.

A string of individual SSDF commanders have returned to the SPLM since the 2002 Machakos Protocol, most in expectation that they would be fairly integrated into its institutions.⁵⁸ All have been disappointed with the speed of integration and their new positions.⁵⁹ This has had a chilling effect on others considering an SPLA option. While individual SSDF members have no doubt defected subsequently, just as SPLA members have gone in the other direction, the 18 January 2005 agreement with elements of the South Sudan Liberation Army has been

the lone significant recent return.⁶⁰ By contrast, hundreds of senior SSDF commanders have agreed to be integrated into the regular army. Nothing could speak more forcefully to their deep animosity toward Garang. More positively, the SSDF leadership has unanimously endorsed the CPA, an endorsement that was renewed before the April South-South Dialogue in Nairobi⁶¹ and again after its unsuccessful 30 June-3 July talks with the SPLM.⁶²

The SSDF has set conditions for joining the SPLA. In a position paper prepared for the South-South Dialogue and echoed in interviews with Crisis Group, it called for continued existence of the organisation in the South, based on its legal foundation in the 1997 Khartoum Peace Agreement. It also called for the SSDF to be equally represented in the Joint/Integrated Units in the South, obtaining 4,000 slots from the government and SPLA allotments alike so that all three parties would have 8,000 troops. Its third condition was for the independent southern army that is to exist outside the Joint/Integrated Units to be renamed from "SPLA" to something like the "Southern Sudan Armed Force" or "Territorial Army" and to include non-integrated SSDF troops. Finally, it sought inclusion in the police, prison, and other southern security services foreseen by the CPA.⁶³

The parties finally met face to face on 30 June, under the auspices of the Moi African Institute. Despite high expectations, the talks were difficult. "We underestimated the deep-seated grievances that these parties held against each other", explained an observer. "There was no social interaction...no camaraderie".⁶⁴ A twenty-person council of "Wise Men" was established, and at the urging of ex-President Moi, Garang and Matiep held direct talks. Disagreements remained on two key points: the name and composition of the southern army, and the level of SSDF

⁵⁶ Crisis Group interviews, April 2005.

⁵⁷ Crisis Group interview, 17 July 2005.

⁵⁸ Beginning with Dr. Lam Akol's SPLM/United in November 2003, Commanders Tito Biel and James Lieh Diuh in January 2004, and the Equatorian Defence Forces (EDF) in February 2004.

⁵⁹ Crisis Group interviews, 2003-2005.

⁶⁰ The SSLA are a predominantly Nuer group based in Eastern Upper Nile, led by Dr. Michael Wal Duany. Several hundred rank and file soldiers from the militias of Thon Mum and Deng Guer have also returned to the SPLA in Central Upper Nile. There is a rumour of an agreement between the SPLA/M and the Mundari forces of Clement Wani. Garang's appointment of Wani as the caretaker supervisor of Bahr al-Jebel state until the formation of the Government of Southern Sudan strongly supports this. "Garang appoints southern state administrators, advisors", Sudan News Agency (SUNA), 19 July 2005.

⁶¹ Although most SSDF delegates were barred from attending the April session by the government, the political opposition in attendance firmly endorsed the CPA.

⁶² Crisis Group interviews, July 2005.

⁶³ "South-South Dialogue: For Peace, Reconciliation and Unity among Southern Sudanese", signed by Major General Paulino Matiep Nhial, Chief of Staff of the South Sudan Defence Forces (SSDF), 18 April 2005. Received by Crisis Group 25 April 2005.

⁶⁴ Crisis Group interview, 8 July 2005.

representation in the Joint/Integrated Units. Nevertheless there was agreement on the principle of integration of forces, an immediate cessation of hostilities, and joint endorsement of the CPA.⁶⁵ Failure to resolve all issues at the first meeting was not unexpected. "We were not defeated militarily by the SPLA, so how can we submit entirely to their will?", a senior SSDF commander asked.⁶⁶ Most importantly, the parties agreed to continue their discussions inside Sudan.

D. POLICY ALTERNATIVES

The SPLM wants to stick literally with the provision that there can be no third armed group in the South but the SSDF needs guarantees about the security of its forces, positions in the SPLA army and the like, much as the SPLM needed guarantees from the government and the international community during negotiation of the CPA. The best solution would be for members of the SSDF to be integrated into the SPLA, or demobilised, as per the CPA.⁶⁷ However, this should happen peacefully and voluntarily. Forcible disarmament of any group that refuses to abide by the CPA, whether by a Sudanese army or the UN mission, should be kept as an absolute last option, to be activated only after everything else has failed. The SSDF is a large and viable force, and many of its grievances are justifiable, given that it was kept out of the CPA negotiation.

The SPLM needs to reach an internal consensus about the nature of its armed forces in the South. Debate continues, for example, over the reorganisation, size and purpose of the SPLA, as well as about doctrine. Very little has been achieved on this in the first six months of the CPA, in part because of Garang's continued distrust of his deputy and military Chief of Staff, Salva Kiir.⁶⁸ This will be an ongoing process, but a basic understanding would help

facilitate discussions with the SSDF. "Until the SPLM knows how big the SPLA pie is, they won't be able to share a slice", commented a regional military analyst.⁶⁹ At the same time, the international community must become much more engaged in pushing dialogue with the SSDF forward. The recent talks were observed by the cream of the Kenyan civil service, including Generals Sumbeiywo and Opende and Ambassador Bethuel Kiplagat, but only four other outsiders.⁷⁰ While the Moi Africa Institute remains an acceptable forum, particularly as it allows for the continued involvement of Sumbeiywo, future discussions require much greater support, in the form of military experts and high-level diplomats, including from the U.S. and UK.

The dialogue will continue to be largely technical, over details related to integration, but there is also need for some form of parallel reconciliation process in view of the long-standing mutual hatred. Additionally, until the SPLM can get oil revenue to pay for its military, it will be unable to implement any agreement or offer meaningful incentives to SSDF soldiers considering joining the SPLA.

The SSDF demand for a set number of positions within the SPLA's share of the Joint/Integrated Units should be resolvable. The peace deal states that the SSDF ceases to exist as a separate organisation, even within the SPLA or the army, but this is largely semantics. Insistence on a guaranteed number is reasonable given the mutual mistrust. The SPLA would prefer to create a joint committee to determine numbers, timeframe and ranks for integration, as it has done with other movements that have rejoined it. In this scenario, any SSDF troops assigned to the Joint/Integrated Units would be chosen as individuals within the SPLA, rather than as a separate component. At the June-July talks, the SSDF asked for half the SPLA's 12,000 positions, while the SPLA reportedly offered 1,000.⁷¹ The SPLM has won the political battle for the South via the IGAD negotiations but should not deny its old foe some dignity. Garang should offer something substantial so integration into the SPLA does not seem synonymous with defeat. "The SPLM needs to be the generous victor", noted a Western diplomat.⁷²

⁶⁵ "Statement on Reconciliation talks between the SSDF and SPLA/SPLM in Kenya", signed by Brig. Gathoth Gatkuoth. Received by Crisis Group 8 July 2005.

⁶⁶ Crisis Group interview, May 2005.

⁶⁷ Integration of the SSDF into the northern army could cause considerable dilemmas in the future, particularly following the re-deployment of the bulk of the army's troops to the North by the end of the two and a half year period envisaged in the agreement and should the southern referendum result in a vote for independence.

⁶⁸ On 19 July 2005 Salva was appointed interim Vice-President for the South, and Garang ally Oyai Deng Ajak was promoted to replace him as military Chief of Staff. This is expected to pave the way for more rapid progress on SPLA reorganisation. Ironically, one senior SPLM commander suggested that the lack of progress until now on reorganisation could facilitate integration of SSDF forces, as the whole army is soon to be shaken-up. Crisis Group interviews, 17 July 2005.

⁶⁹ Crisis Group interview, 4 May 2005.

⁷⁰ They represented the Dutch and Norwegian governments, the UN and the EU. Other observers attended the opening ceremony.

⁷¹ Crisis Group interview, 17 July 2005. The 1,000 offer was reportedly made without Garang's consent.

⁷² Crisis Group interview, 29 April 2005. An SPLM delegate to the Dialogue suggested that an acceptable compromise could be to offer the SSDF 30 per cent of the positions in the Joint/Integrated Units and the SPLA, as per the terms of the Power Sharing arrangements in the South. However, this

The SPLA is less likely to accept the demand that it be transformed into a formal "southern army", instead of its current partisan format. On its face the demand is reasonable since for all intents and purposes, that is what it will be.⁷³ But, the SPLA remains tied to allies in Southern Kordofan and Blue Nile (where it will maintain a presence in the Joint/Integrated Units), and in eastern Sudan until it withdraws. With the increasingly southern focus of the SPLM already straining bonds with the northern allies, the SPLA military command is one of the few that still holds the movement together, and it guarantees implementation of the agreement in these two areas. For these reasons, the SPLA cannot be expected to change its name. The SPLM should, therefore, work all the harder to accommodate the other SSDF requirements, including considering non-conventional solutions such as agreeing to maintain local or tribal militias in their areas of origin. If agreement over the name of the army remains a stumbling block, ex-SSDF troops could possibly be dual-labelled (SPLA/SSDF) for an agreed period, after which the issue could be revisited.

- deploying the UN peace monitoring force in the South as soon as possible, with the aim of monitoring, and ideally severing, lines of supply between government forces and non-integrated SSDF, and ensuring it has the capability to respond rapidly to outbreaks of violence.

E. THE INTERNATIONAL ROLE

The international community can do a number of things to neutralise the dangerous spoiler potential of the SSDF and facilitate the chances for meaningful southern reconciliation. These include:

- helping the SPLA's transition from a guerrilla movement to a professional army;
- putting pressure on the government to stop recruiting and arming new factions in the South and to cease inciting clashes there;
- encouraging both SSDF and SPLM to continue their dialogue on integration without pre-conditions and insisting that Khartoum not block any SSDF from participating;
- supporting a long-term solution by helping to establish a reconciliation process that includes churches, women's organisations and other civil society groups;
- pressuring the government to stick to the timetable for withdrawal of its troops from the South;
- holding the parties accountable for actions by any SSDF members who are integrated into their armed forces; and

issue remains hotly contested issue within the SPLM. Crisis Group interview, 17 July 2005.

⁷³ Also, the SPLA agreed at the April 2005 South-South Dialogue that it would not allow itself to be used for political purposes by any party.

V. SPLM DIFFICULTIES

The SPLM faces steep challenges in its efforts to transform from a rebel movement to a government, political party and professional army. The ethnic politics of the South are fragile and can be manipulated by Khartoum and self-interested southern politicians alike. However, the peace deal is a good one for it, and the SPLM, realises it must be the force driving implementation, since the National Congress Party cannot be counted upon to do so. This makes delays related to its limited capacity and internal difficulties all the more unfortunate.

The self-determination referendum is the end-goal for many in the SPLM as well as the vast majority of southerners. However, it will have to walk a careful path during the interim period. The SPLM anticipates maintaining a working partnership with the National Congress Party, based on joint implementation of the CPA, at least until elections in 2009.⁷⁴ Although it has resisted calls to date, this partnership may be made even more robust as elections near, and the SPLM weighs the various alliances on offer. At the same time, it is allied with parts of the northern opposition within the NDA. An electoral coalition of the "marginalised" embracing groups from Darfur, Eastern Sudan, and Kordofan against the centre might seem the more natural progression given its stance for 21 years but could well push the National Congress Party into scuttling the peace agreement. Debate is on-going between the "secessionists" who largely support partnership with the National Congress Party as the safest road to the referendum, and those who support the "New Sudan" idea and are committed to a fundamental change in Khartoum and removing the National Congress Party from power. Most if not all senior SPLM leaders expect their unnatural partner to attempt to undermine the agreement but do not want to challenge it too early or too often for fear of stimulating this.

The complexity of the SPLM position was clearly demonstrated following passage of UN Security Council Resolution 1593. The NDA and other opposition groups called for a weakened government, whose senior leadership was at risk of indictment for war crimes, to step down and permit a new, more broad-based government to take power. The National Congress Party expected SPLM support. The actual SPLM reaction fell somewhere in the middle. An 11 April press release during the Oslo donors conference expressed solidarity with all Sudan's marginalised people and pledged support for justice in

Darfur and Eastern Sudan but also acknowledged the partnership with the National Congress Party for CPA implementation. Rather than taking a position in favour or against Resolution 1593, the SPLM called on the Security Council and the government to find a way past the impasse.⁷⁵

Given these competing pressures, the SPLM is likely to be moderate in government. In addition to juggling old and new alliances, it must act carefully on the referendum issue. Rhetoric favouring preservation of Sudan as a unified state by Garang and other leaders sparks a backlash among southern secessionists, including within the SPLM.⁷⁶ At the same time, the movement's representatives in Khartoum must sell the idea to the National Congress Party and other northern parties that a unity vote is possible, if only the central government acts more responsibly.

The SPLM must also do more to keep its constituencies in the Nuba Mountains and Southern Blue Nile satisfied. The agreement on these areas failed to meet a number of core demands, particularly in the former. In addition, the SPLM's gradual shift of focus toward the South with establishment of the Government of Southern Sudan risks alienating its northern members and undermining its broad national appeal. There is an ever present threat that war could resume in either of these areas if people feel they are not directly benefiting from peace.

Implementation of the Abyei agreement is yet another area requiring close attention. Indeed, the late April visit by the Abyei Boundary Commission⁷⁷ was a wake-up call for the SPLM, as government-mobilised Misseriya tribesmen physically intimidated the international experts and SPLM delegates and limited their ability to travel freely. Security improved enough for the Commission to

⁷⁴ "We will have a partnership with National Congress for six years, and that is a good thing", opening speech of John Garang at the South-South Dialogue, organised by the Moi Africa Institute in Mbagathi, 19 April 2005.

⁷⁵ "SPLM Position on UNSC 1593 and Situation in Darfur", SPLM Press Release, 11 April 2005.

⁷⁶ Focus groups conducted by the U.S.-based National Democratic Institute (NDI) throughout southern Sudan found that southerners overwhelmingly supported secession and were in many cases hostile to the possibility of unity with the North. "On the threshold of Peace: Perspectives from South Sudan", National Democratic Institute, 20 December 2004. Available at <http://www.ndi.org>.

⁷⁷ The Agreement on Abyei established a special Local Executive Council, under the presidency, to govern during the interim period. Although Abyei was defined as "the territory of the nine Ngok Dinka Chieftans transferred to Kordofan in 1905", there is disagreement between the government and SPLM over the precise definition of this area. A commission made up of international experts was created to determine these historical boundaries. Abyei will hold a referendum to choose between joining the South or remaining in the North at the same time as the southern self-determination referendum.

travel to Western Kordofan only after a call from Garang to Vice-President Taha.⁷⁸ Unfortunately, the government and SPLM still appear to view Abyei as a zero sum game, with the forum simply shifted from the IGAD CPA talks, where it was a hotly contested issue, to boundary delineation.⁷⁹ Political leaders from the Ngok Dinka and the Misseriya have warned Crisis Group that war will break out if the Commission does not decide their way.⁸⁰

The report of the Boundary Commission was presented to the presidency on 10 July 2005 and reportedly defined the traditional Ngok Dinka area as reaching far north of the Bahr al-Arab (River Kiir), into current Misseriya territory.⁸¹ Fighting followed between the SPLA and government-aligned southern militia based in Abyei town but it is not yet known if this was linked to the report.⁸² Misseriya leaders and local government bodies also vehemently rejected the Commission's findings.⁸³ De-escalation is needed, as well as guarantees that the rights of both peoples will be protected irrespective of the outcome of the Abyei referendum.

There are two ways to stabilise the situation. First, leaders from the Ngok Dinka and Misseriya should sit together and attempt to find a mutually acceptable solution. Secondly, the government and the SPLM should begin informal talks in preparation for the Abyei referendum, which is to be concurrent with the South's self-determination referendum. The parties should examine potential solutions, such as giving the local Ngok Dinka and Misseriya dual citizenship should Abyei join an independent South and guarantees for Misseriya grazing rights so that the Commission decision and, ultimately, the referendum, do not become winner-take-all matters.

The SPLM is dealing from a position of strength with the southern political and armed opposition, based on the peace agreement's reaffirmation that it is the political

and military leader in the region, but the South-South Dialogue offered it an important opportunity to hold formal face-to-face discussions, in some cases for the first time. After multiple delays, the talks finally opened in Nairobi on 18 April 2005, under the watchful eye of the former Kenyan president.⁸⁴ The meeting was broadly inclusive, although participation was heavily weighted toward political opposition and civil society groups. Even the senior SSDF military leaders who had been expected failed to show up, due to administrative confusion between the Moi Institute and the government and efforts from within the National Congress Party and the Southern Sudan Coordinating Council to block the delegation from attending.⁸⁵ Although a delegation from Khartoum did eventually appear, Clement Wani was its only senior SSDF representative, and he reportedly paid his own fare.

The parties came to the table with wildly different expectations. Garang insisted that the CPA's terms on political representation for the opposition and on the SSDF were sacrosanct and pleaded with the SSDF to integrate its troops into the SPLA rather than the Khartoum army, "There's no reason for the other armed groups to join [the] Sudan Armed Forces, other than through misinformation. Your rightful place is in the South, with the SPLA/M".⁸⁶ Despite the differing expectations, the meeting helped form the basis for future reconciliation efforts and agreed two key points: endorsement of the CPA and that the SPLA should be the de facto army for the South, rather than a strictly partisan force. The attendees also agreed on specific resolutions, such as a formula for inclusiveness in the drafting committee for the southern constitution, and formed a follow-up committee to meet bi-monthly under the auspices of the Moi Institute and the IGAD Secretariat to report on the implementation of these resolutions.⁸⁷

⁷⁸ Crisis Group interview, 28 April 2005.

⁷⁹ For analysis of the Abyei question, see Crisis Group Briefing, *Sudan's Other Wars*, op. cit; Crisis Group Report, *Sudan Endgame*, op. cit; and Crisis Group Report, *Toward an Incomplete Peace*, op cit.

⁸⁰ "War will definitely follow if the Ngok land is given to the Misseriya, and it will be very bloody", said a leading Ngok Dinka within the SPLM. Crisis Group interview, 17 May 2005. "If Abyei goes to the South, and we require a visa for our own land, it will happen over our dead bodies", explained a prominent Misseriya politician. Crisis Group interview, 19 May 2005.

⁸¹ Crisis Group interviews, 15-17 July 2005.

⁸² Ibid.

⁸³ See for instance, "The Abyei Legislative Council: The Commission's ruling is based on lies, partisanship, and dishonesty", in Arabic, accessed on 21 July 05, at <http://www.sudaneseonline.com/anews2005/jul20-84549.shtml>.

⁸⁴ Garang called for such a dialogue on 3 February 2005, to be chaired by the Moi African Institute. A steering committee met twice in Nairobi in March and agreed on the agenda and participation.

⁸⁵ Crisis Group interviews, April-May 2005.

⁸⁶ On the choice of SSDF integration in the SPLA or the Sudan Armed Forces, Garang said: "You will have equal right, as will all other groups. There's no reason for the other armed groups to join [the] Sudan Armed Forces, other than through misinformation. Your rightful place is in the South, with the SPLA/M". Opening speech of John Garang at the South-South Dialogue, op. cit.

⁸⁷ See, "The Covenant of the People of Southern Sudan", 21 April 2005, and "Resolutions of the South-South Dialogue Conference", 21 April 2005.

A. INTERNAL OBSTACLES AND CENTRALISED DECISION-MAKING

The SPLM has strong political will to implement the CPA but it lacks resources and institutional capacity to react quickly to the multiple demands it faces. Many members admit they greatly underestimated the work and difficulty involved.⁸⁸ Efforts thus far have focused on establishing the Government of Southern Sudan, reorganising the movement into a political party and developing the SPLA into a professional army for the South. The SPLM has struggled to fill personnel appointments in a timely fashion and to give its decision-making process and operations transparency. It must overcome a legacy of centralised decision-making that stems from more than two decades as a military movement and build institutions that can function free of John Garang's direct influence. This is testing both internal cohesion and the capacity to implement the CPA.

The peace negotiations were conducted by a select group around Garang, creating resentment among those excluded. In late November 2004 an open rift emerged between Garang and his top deputy, Commander Salva Kiir. Although much of the background is disputed, it is confirmed that Salva was reacting, at least in part, to rumours that he had been replaced as First Deputy Chairman by Garang ally Nhial Deng Nhial and that he was unhappy with lack of consultation by Garang and other senior leaders.⁸⁹ He reportedly surrounded himself with loyal troops and refused to leave his compound in Yei to meet with Garang. The situation was partially defused by visits to Yei from senior SPLM figures, and an emergency conference of the top military and civilian leadership was held in Rumbek the following month, which became a forum for grievances to be voiced generally. Salva's complaints about decision-making during the peace talks and overall lack of consultations were widely shared, and cadres also criticised Garang for establishing "friendly" power structures, while purposely circumventing the institutions created by the SPLM's sole national convention in 1994, and delaying a South-South Dialogue with other southern opposition groups.⁹⁰ Nevertheless most participants backed Garang's

leadership and urged Salva not to endanger the peace negotiations, then mere weeks from completion.⁹¹

The Rumbek meeting established committees focusing on: reorganisation of the SPLA along the terms set out in the CPA, led by Salva; governance issues in SPLM areas, led by Second Deputy Chairman Dr Riek Machar; and transformation of the SPLM into a political movement, led by Third Deputy Chairman James Wani Igga. These met from January 2005 through March, although only the first completed its work, and reorganisation of the SPLA, as noted, nevertheless remains far behind schedule. Rumbek and the subsequent committees went some way toward rebuilding trust and confidence in the leadership but the core issues of Garang's centralised decision-making and lack of delegation to institutions of governance remain. Senior SPLM officials complain that the recommendations of the committees are at Garang's mercy.⁹² A number of examples highlight the difficult road ahead.

Following ratification of the CPA by the SPLM's National Liberation Council, Garang unilaterally dissolved the body on 3 February. Without consultation he also announced a South-South Dialogue and a date for a second SPLM National Convention. These steps shocked most SPLM members, particularly dissolution of the National Liberation Council, which the CPA required to sit at least one more time to ratify the interim national constitution. Realising his mistake, Garang said that the institution had simply been recessed, and it not only met again in July to ratify the new constitution but is likely to remain in some form as the movement's parliamentary body. The point of contention in all these decisions was not substance but how they were made.

Tensions were further inflamed in late March 2005, when Garang handpicked delegations to receive diplomatic and governance training in South Africa and to represent the SPLM in Khartoum. The former, 85 strong and including the most senior leaders, was divided into 24 sectors, most apparently along the lines of anticipated government ministries.⁹³ Because delegates were assigned to specific sectors, it appeared that cadres were being assigned to their future positions in the governments of Southern Sudan and of national unity. Many of the assignments

⁸⁸ Crisis Group interviews with SPLM officials, January-April 2005.

⁸⁹ Various camps within the SPLM gave their own explanations of the dispute. For example, circles close to Garang suggested Salva had attempted to overthrow Garang with the support of Khartoum and dissident southerner politicians like Bona Malwal. Those opposed to Garang pointed to the widely shared grievances voiced in Rumbek as indication that Garang had lost support within the movement. Crisis Group interviews, November 2004-March 2005.

⁹⁰ One example cited was Garang's unilateral creation of the

Leadership Council, a sixteen-member body to make decisions on behalf of the movement instead of the National Liberation Council, the SPLM parliament which had not sat since 1999.

⁹¹ Crisis Group interviews, December 2004.

⁹² Crisis Group interviews in Rumbek, March 2005.

⁹³ While most of the sectors corresponded directly with future Government of Southern Sudan ministries, trainees were also assigned to several broader sectors such as "SPLM Transformation" and "Democratic Governance, Institutions and Local Government Policy". Crisis Group interview, 1 April 2005.

were surprising. The shift of Salva Kiir -- the head of the military since the rebellion began in 1983 -- to the SPLM transformation sector and of Riek Machar from democratic governance to transport and communications in particular were interpreted by some as a violation of the Rumbek resolutions.⁹⁴ The ethnic make up of the delegation caused unhappiness among many southerners, especially that 22 delegates were from Bor, Garang's home area.⁹⁵ All this produced an uproar among the delegates themselves, who decided they would not accept these appointments as permanent job placements.⁹⁶ Garang gave an assurance they were being sent for general training in a wide range of sectors, with no permanence to the assignments.

The Khartoum delegation was less contentious, although it also had a high proportion from Bor.⁹⁷ The most glaring absence was the lack of delegates from the Aweil area in northern Bahr el-Ghazal, a Dinka stronghold that has regularly backed Salva, including in the November-December 2004 showdown with Garang.⁹⁸ Cdr. Paul Malong, the deputy zonal commander for Bahr el-Ghazal and a native of Malual Kon (in northern Bahr el-Ghazal), had been included in the delegation to South Africa but had been shifted from the military to the wildlife sector, which was widely seen as a demotion. He reportedly refused to accept the transfer.⁹⁹ "There was a clear pattern of punishing those who supported Salva in the November-December split, via the distribution of positions", a senior SPLM official said.¹⁰⁰ This appears to have been confirmed by his recent replacement as military Chief of Staff by Garang's ally, Oyai Deng Ajak, formerly the zonal commander for Eastern Equatoria.¹⁰¹

⁹⁴ Crisis Group interviews, April 2005.

⁹⁵ The delegation included 22 representatives from Bor, twelve from the rest of Upper Nile, twenty from Equatoria, 24 from Bahr el-Ghazal, three from Abyei, three from the Nuba Mountains, and one from Southern Blue Nile. Crisis Group interview, 1 April 2005.

⁹⁶ Crisis Group interviews with SPLM delegates to South Africa, April 2005.

⁹⁷ The delegation of 107 included twelve representatives from Bor. Crisis Group interview, 1 April 2005.

⁹⁸ Other southern communities also complained of inadequate representation, fearing that the composition of the delegations to Khartoum and South Africa presaged that of the future Government of Southern Sudan. See for example, "Azande Unhappy about Continued Marginalisation in SPLM/A", Worldwide Zande Community Network press statement, 1 April 2005, available at http://www.sudantribune.com/article.php?id_article=8827&var_recherche=azande.

⁹⁹ Crisis Group interviews, April 2005.

¹⁰⁰ Crisis Group interview, 11 April 2005.

¹⁰¹ "Those senior officers who supported Salva in November and December are being purged from the military", a senior SPLA commander said. Crisis Group interview, 17 July 2005.

More telling is the lack of progress the SPLM and SPLA have made over the six months since the signing of the CPA. Little has been accomplished in Rumbek in terms of building the new administration, while rumours fly about positions, and few members of the movement are willing to take an initiative for fear of reprisal by Garang.¹⁰²

B. MONEY PROBLEMS

The delivery of oil revenues has been delayed pending legal creation of the Government of Southern Sudan, and may be further delayed due to the border dispute.¹⁰³ Donor funds for the Government of Southern Sudan in the Capacity Building Trust Fund (CBTF) are mostly earmarked for training and do not give the SPLM the financial flexibility it badly needs at the moment. Money from the pledges at the April Oslo donors conference will not arrive for several months, whether via the Multi-Donor Trust Fund for the South or bilaterally.¹⁰⁴ In the meantime, the SPLM cannot pay for its cadres dispersed throughout the South and the wider region or for the reorganisation or salaries of the SPLA. The CBTF could be used to pay civil but not military salaries, and the SPLM dares not pay one without the other. With both oil revenue and donor funding stuck in the pipeline, CPA implementation has moved slowly.¹⁰⁵

SPLA delays in assembling troops and appointing participants in the Joint/Integrated Units (officers, non-commissioned officers and soldiers should have been identified by 8 April) stem not only from the cash flow problem but also shortages of food and logistical

¹⁰² Crisis Group interviews, Rumbek, March and July 2005.

¹⁰³ At a mid-May 2005 meeting of the Joint National Transition Team, the government agreed to advance the SPLM \$60 million from its future oil revenues, ahead of the formation of the Government of Southern Sudan. While some of this money has been used to purchase food for the SPLA soldiers, most of it remains locked in a bank in Nairobi, and has not yet alleviated the SPLM's financial needs, as evidenced by the movement's inability to pay for its own leadership to fly to Khartoum for the 9 July swearing-in ceremony. Crisis Group interviews, May-July 2005.

¹⁰⁴ A tracking mechanism is being established for the pledges made at Oslo. The World Bank is administering the Multi-Donor Trust Funds (MDTFs) and tracking donor pledges to them. Official figures on the dispersal of funds via the MDTFs will be available in August 2005. The UN is also tracking the donor progress towards fulfilling commitments, and a report that includes MDTF and bilateral funding information is forthcoming. Correspondence with the UN and World Bank, July 2005.

¹⁰⁵ "Every discussion we have on implementation comes back to our lack of resources. It is a major problem, until we get the oil money". Crisis Group interview with senior SPLM official, 22 April 2005.

constraints. The SPLA has yet to assemble most of its troops for assessment and reorganisation. The SPLM has just begun to buy food for the eventual assembly of troops thanks to the oil revenue advance granted by the government in late May, although food had only been distributed to three locations.¹⁰⁶ The 1,500 SPLA soldiers sent to participate in the Joint/Integrated Units in Khartoum came from eastern Sudan. This shortfall stems in part from expectations, fed by U.S. representatives during the final months of the IGAD negotiations, that Washington would help pay for the bulk of the movement's military-related costs in the South.¹⁰⁷ Although the recent U.S. commitment of \$20 million for military training, doctrine and equipment will help fill the gap, it is far less than the SPLM expected and had been promised.¹⁰⁸ The SPLA needs more technical expertise from donors to turn itself into a professional standing army.

As a result of these delays in reorganisation and pay, morale is poor among many troops.¹⁰⁹ Yet there are continuing reports of systematic, large-scale SPLA recruitment in the South and of southerners in Khartoum. There are two possible explanations for this. The first is that it wants to make the most of donor aid to the military sector by expanding the numbers of those eligible for help through the formal UN-led disarmament, demobilisation and rehabilitation (DDR) process.¹¹⁰ The second is that it actually needs the new troops, in part because it would otherwise have few left over after filling its positions in the Joint/Integrated Units and in part because many of its rank and file may have deserted and gone home after the peace accords were signed.¹¹¹

Urgent action is also needed by the SPLM to shore up its financial structures and restore its fading credibility. Many members acknowledge corruption will be one of the biggest problems in the South and call for help in developing mechanisms for financial oversight and accountability. "Corruption is the biggest danger to the South", worried a senior SPLM official. "If we pay ourselves instead of paying down and giving rights and payback to the people of the South, we're doomed".¹¹² The oil agreements fiasco discussed below as well as the unilateral -- and highly unprofessional -- release of the new SPLM currency in April 2005 have hurt the SPLM with potential investors. It should move quickly against the onset of corruption in the Government of Southern Sudan by: establishing an anti-corruption commission; formalising the position of auditor general and including a code of conduct for officials in the southern constitution; and inserting in the southern constitution a requirement for ministers to declare their assets like that in the Interim National Constitution.

More generally, the SPLM must democratise as a movement by providing significant representation for women,¹¹³ ethnic minorities and other marginalised groups if it is to avoid an internal explosion and become a successful political party. Centralised decision-making mechanisms, made worse by the lack of resources, are producing anger and frustration over failure to meet peacetime expectations and a dangerous and unsustainable situation within the movement. The SPLM would be wise to begin genuine democratisation sooner rather than later, within both its own ranks and the Government of Southern Sudan if it wishes to survive the interim period intact.

¹⁰⁶ Food had been distributed to forces in Rumbek, New Kush and Nimule as of this writing. Crisis Group interview, 17 July 2005.

¹⁰⁷ U.S. government representatives at the negotiations promised the SPLM that Washington would provide substantial support to the SPLA over the interim period, either as a one-time payment or over the six years. Crisis Group interviews, November 2004-January 2005.

¹⁰⁸ Carol Giacomo, "U.S. looking to help southern Sudan's ex-rebels", Reuters, 15 April 2005. Crisis Group interviews, December 2004-January 2005.

¹⁰⁹ Crisis Group interview with a senior SPLA commander, 17 July 2005.

¹¹⁰ Garang has told the World Bank and the UN that there are 370,000 SPLA soldiers to be included in the formal DDR process, roughly seven to ten times the average estimate of international military observers. Crisis Group interviews, February-May 2005.

¹¹¹ The desertions stem from the minimal progress that has been made toward either reorganising the SPLA or paying soldiers' salaries. Crisis Group interview with a regional military analyst, 4 May 2005.

¹¹² Crisis Group interview with a senior SPLM official in south Sudan, 19 January 2005.

¹¹³ The constitution of the SPLM guarantees women 25 per cent participation in all structures of governance. The former constitution of the government of Sudan reserved 25 per cent of National Assembly seats for women.

VI. THE OIL FIASCO

Early disagreements in the oil sector are symptomatic of CPA implementation obstacles and pose an immediate challenge to the viability of the peace process. Full implementation of the Wealth Sharing Agreement is crucial, in particular management of the oil sector and transfer of southern oil revenues by the central government to the Government of Southern Sudan. Negotiations over this money were difficult, and oil remains an emotional issue for many southerners. Extended delays by Khartoum in disbursing revenue could lead to calls within the SPLM for a return to war. The Government of Southern Sudan will rely heavily on the money to pay many of its initial costs, especially those related to the military, as donors are unlikely to provide substantial support to this sector.

The disagreement over boundaries in the oil areas is a potential deal-breaker, as the Government of Southern Sudan is only entitled to revenue from what is produced in the South. Moreover, a number of ill-advised deals signed by senior SPLM officials in the months leading up to the CPA that granted oil concessions in the South violate the peace agreement and are being challenged by the Khartoum government. Although several of these deals have already collapsed, a concession to White Nile Ltd. in Block Ba is moving forward even though it is also being challenged within the SPLM.

A. BORDER CONFUSION

Delineation of the border in the oil-producing areas was not addressed during the CPA negotiations. The agreement on oil revenue states that 50 per cent of net oil revenue from "oil producing wells in southern Sudan" is to be allocated to the Government of Southern Sudan as of the signing of the CPA.¹¹⁴ Although the North-South borders are defined under the peace accords as those at the time of independence on 1 January 1956, these are contested, and Khartoum governments have several times attempted to alter them to place oil within the North.¹¹⁵ The parties

¹¹⁴ A set payment is first to be made to the Oil Revenue Stabilisation Account, and 2 per cent of oil revenue is to be paid to the oil producing state before the remainder is divided between the central government and the Government of Southern Sudan. Article 5.6, "Framework Agreement on Wealth Sharing During the Pre-Interim and Interim Period between the Government of Sudan and the Sudan People's Liberation Movement/Army", 7 January 2004.

¹¹⁵ Following discovery of oil in 1979, the government of President Jaafar al-Nimeiri proposed changing the boundaries to shift Bentiu from Upper Nile to Southern Kordofan. It withdrew the proposal in response to southern outrage but

did agree to establish a border commission to determine the line as of 1956.¹¹⁶ However, this commission is only to be appointed by the presidency once the interim period has begun and the new Government of National Unity is a fact. This is likely to be too slow, and there is no other mechanism in the CPA for dealing with this high stakes issue. The National Petroleum Commission that is to review existing oil contracts could potentially play a part but it has not yet been formed.¹¹⁷

Crisis Group has obtained a copy of a 14 June 2004 government document, signed by Minister of Federal Affairs Nafie Ali Nafie, informing the Governor of Unity state that the Heglig region did not belong to Unity state (South) as indicated in a map annexed to the state's annual performance report to the Council of Ministers, but rather to Western Kordofan state (North), as shown on a map drawn by the National Geodesy Corporation.¹¹⁸ The Heglig oil field is one of the country's largest, at the centre of the oil industry in the region. Southern Sudanese canvassed by Crisis Group unanimously assumed that Heglig was part of the South, just as northern Sudanese unanimously assumed it was part of the North. The region is listed in the Final Ceasefire Agreement as an assembly point for SPLA troops in the Western Upper Nile region of Upper Nile, presumably indicating that both parties agree that at least some part of Heglig is in the South.¹¹⁹

Such disagreements have the potential to delay disbursement of oil revenues indefinitely, which would undermine the SPLM's ability to implement the peace accords as well as heighten mutual distrust. The parties, in

continued to tamper with the southern oil areas, for example, shifting a proposed refinery from Bentiu to Kosti (in the North), replacing the southern troops in Bentiu with northerners, and pocketing proceeds from licenses belonging to the southern regional government under the 1972 Addis Ababa Agreement. In 1993, the current government redrew the border to locate resources in the North, including the Pan-Thau area of Bentiu from Upper Nile to Southern Kordofan. Ann Mosely Lesch, *The Sudan: Contested National Identities*, (Bloomington, 1998), pp. 48, 127.

¹¹⁶ Article 46, "The Implementation Modalities of the Protocol on Power Sharing, dated 26th May 2004", 31 December 2004.

¹¹⁷ The National Petroleum Commission is to be appointed by the presidency two weeks after the adoption of the Interim National Constitution. The SPLM Technical Team to review existing oil contracts, which could help by raising these issues with the government, should have been formed 30 days after the CPA was signed but is also not yet in existence.

¹¹⁸ "Letter from the Minister of the Federal Government Chambers to the Governor of Unity State, Subject: position of Heglig on the map", in Arabic, dated 14 June 2004.

¹¹⁹ "Agreement on Permanent Ceasefire and Security Arrangements Implementation Modalities during the Pre-Interim and the Interim Periods", 31 December 2004, Annex 1.

conjunction with international experts acting on behalf of IGAD and the UN, should set up a boundary commission as soon as possible to resolve the border issue, as well as more technical issues such as the formula for defining the geographic placement of an oil well (i.e. site of subterranean resources vs. site of pumping station).

B. NEW DEALS

For years, the government has run the oil sector as its own fiefdom, with little transparency or accountability. The SPLM appear to be following in Khartoum's footsteps. The Wealth Sharing Agreement stated that existing contracts would remain valid but could be reviewed for environmental or ecological deficiencies. It allowed the aforementioned SPLM technical team to review existing contracts but made no mention of a similar body from the government side to review SPLM contracts because at the time there were no SPLM contracts, and it was understood there could not be without violating at least the spirit of the Wealth Sharing Agreement. The parties agreed that new oil contracts, post-CPA, would be decided consensually by the National Petroleum Commission, which is to be a joint government-SPLM body.¹²⁰ Once formed, it will be responsible for the sector, including the negotiation and approval of all new oil exploration and development contracts.¹²¹

Following rumours of an oil deal signed with the Government of Southern Sudan and until trading was suspended pending clarification, the stock of White Nile Ltd. rose dramatically on the London Stock Exchange from its launch price of 10 pence on 10 February 2005 to 137 pence five days later.¹²² Trading resumed on 23 May following the release of a White Nile circular on 19 May, only to be suspended a second time for several days.¹²³ Khartoum reacted with understandable anger to the deal, as the White Nile concession infringed on a concession

area leased by the government to a consortium which has held the rights since 1980.¹²⁴

In 1980, Total gained the 118,000 square kilometre concession, the country's largest, for Block 5 (also known as Block B) in southern Sudan. It froze operations in 1985 due to the civil war, which qualified as "force majeure", excusing it from the timetable for oil development in the contract,¹²⁵ but maintained ownership and concession rights, visited Sudan yearly and paid annual fees to the government to keep its license valid.¹²⁶ The concession is now owned by a consortium that includes TotalFinaElf (32.5 per cent), Marathon Petroleum Sudan¹²⁷ (32.5 per cent), Kufpec Sudan (25 per cent), and the state-owned Sudapet (10 per cent).¹²⁸ In late December 2004, just weeks before the peace accords, TotalFinaElf signed a renewed production sharing agreement with the government, making clear that its return was conditional on peace and an improved security situation.¹²⁹

A few SPLM officials had been quietly negotiating with investors to develop the southern oil sector prior to the conclusion of the CPA.¹³⁰ "We have been trying to get in touch with Total for a long time", explained a senior SPLM official. "They ignored us throughout the '90s and have been paying annual fees to Khartoum. Some of us became angry with them".¹³¹ "The White Nile agreement is a violation of the peace deal", a senior SPLM official admitted, "but it was also a signal to Khartoum. Since

¹²⁰ The National Petroleum Commission will be co-chaired by the President of the Republic and the President of the Government of Southern Sudan, have four permanent representatives from the central government and four permanent representatives from the Government of Southern Sudan, and as many as three non-permanent representatives from the oil producing state/region in question.

¹²¹ "Framework Agreement on Wealth Sharing During the Pre-Interim and Interim Period between the Government of Sudan and the Sudan People's Liberation Movement/Army", 7 January 2004, Article 3.4.4.

¹²² "UK oil explorer White Nile strikes deal in Sudan", Reuters, 16 February 2005.

¹²³ James Boxell, "London stock market halts White Nile trade again", *Financial Times*, 28 May 2005.

¹²⁴ Numerous government officials have challenged the legality of the White Nile deal as "an open and direct violation of the peace agreement of 9 January". "Khartoum accuses southern rebels of violating peace accord with oil deal", Agence France-Presse, 16 March 2005. See also, "Sudanese official: Southerners signing of oil drilling deals 'unacceptable'", Sudan News Agency (SUNA), 25 February 2005; and "Sudan oil minister: No Central Government deal with White Nile Ltd", Dow Jones, 21 February 2005.

¹²⁵ "Sudan, Oil and Human Rights", Human Rights Watch, 25 November 2003, p. 489. Total merged with PetroFina in 1999 and Elf-Acquitane in 2000 to become TotalFinaElf.

¹²⁶ Ibid.

¹²⁷ Marathon Petroleum is the only American petroleum company with legal assets in Sudan. The economic sanctions imposed on Sudan by President Clinton's Executive Order 13067 in 1997 prohibited any business or trade between U.S. companies and Sudan, with the exception of gum arabic. The other consortium partners have paid Marathon's annual dues since 1997 to avoid the sanctions. Marathon received a special exemption from the U.S. government to sign the renewed Production Sharing Agreement in December 2004. Crisis Group interviews, April-June 2005.

¹²⁸ "Total updates Sudan contract, but will return only if peace holds", Agence France-Presse, 21 December 2004.

¹²⁹ Ibid. Crisis Group interview, 17 June 2005.

¹³⁰ Crisis Group interviews, February-March 2005.

¹³¹ Crisis Group interview, 22 February 2005.

the signing of the Wealth Sharing Agreement, the government began to sell off nearly all the remaining concessions in the country, which went against the spirit... We needed to show that we can play that game too".¹³²

The SPLM team broke Block B into three sub-concessions -- all within the TotalFinaElf concession -- and signed deals for Blocks Ba (White Nile), Bb (Planitis, an American company) and Bc (Supiri Energy Corp., a Canadian company), or at least the last two, on 23 December 2004, days after the consortium had renewed its agreement.¹³³ However, the Planitis and Supiri deals required large cash payments to the SPLM up front, reportedly \$5 million and \$10 million (followed by an additional \$5 million) respectively.¹³⁴ Neither company was able to make the payments, causing their arrangements to fall through.¹³⁵ The SPLM negotiators created Nile Petroleum Corp. to serve as the state petroleum company for the Government of Southern Sudan and as a partner with the external investors in each concession area. The SPLM hoped to build the in-house capacity of Nile Petroleum Corp. so that it could eventually to handle the oil demands of southern Sudan by itself.¹³⁶

The White Nile deal went forward, with the company and the SPLM arguing it had been signed in August 2004, thus predating the contract renewal by the TotalFinaElf consortium.¹³⁷ However, the consortium's concession had

been maintained consistently and would appear to be the "existing" agreement for Block B and protected under the terms of the peace accords. The White Nile deal is challenged on two further levels. The first is the legality of a rebel movement signing an oil agreement as the Government of Southern Sudan prior to conclusion of the CPA and establishment of that entity. On this point, the SPLM argues that it has long controlled the territory in Block B, provided services to its population, and, therefore, enjoyed de facto sovereignty there.¹³⁸

The second challenge comes from inside the SPLM, where the establishment of Nile Petroleum as the state petroleum company for the Government of Southern Sudan is questioned. By internal regulation, to be considered a legal SPLM entity a parastatal body must be registered under the New Sudan Public Corporation Act of 2003.¹³⁹ However, when approached in December 2004 to help register Nile Petroleum Ltd., SPLM Attorney General and head of Legal Affairs Michael Makuei reportedly refused.¹⁴⁰ Makuei reportedly blocked earlier efforts to negotiate oil deals as well, fearing that any done ahead of the peace agreement would be illegal.¹⁴¹ As a result, the three agreements were negotiated without SPLM lawyers. The only "registration" for Nile Petroleum Corp. discovered by Crisis Group is an 18 February 2005 memo signed by SPLM Second Deputy Chairman Dr Riek Machar, nearly six weeks after the CPA.¹⁴² The apparent result is that Nile Petroleum Corp., which holds a 50 per cent stake in White Nile Ltd. and could be worth hundreds of millions of dollars, is neither technically a legal entity of the SPLM nor included within the still emerging structures of the Government of Southern Sudan. Opportunities for corruption within the SPLM are ripe.

It is difficult to tell if the White Nile fiasco is a case of nascent corruption among a few or a symptom of inefficiency and lack of governance structures. It is likely a mix of each that at least demonstrates how the SPLM's lack of transparency can potentially ruin the CPA. Garang reportedly announced in Rumbek on 3 February 2005 a decision to de-register any concessions the SPLM had granted and to sign nothing new but there has been no change in the movement's position since

¹³² Crisis Group interview, 12 May 2005.

¹³³ Crisis Group interviews, February-April 2005.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Crisis Group interview, 12 March 2004.

¹³⁷ Crisis Group interviews, February-March 2005. On 24 February 2005, SPLM Spokesman Samson Kwaje told Dow Jones that the White Nile deal had been signed in August 2004. "S Sudan: White Nile's oil deal for contested block valid", Dow Jones, 24 February 2005. White Nile spokesman Hugo de Salis presented this as the basis for the company's case in a 9 March interview with Agence France-Presse: "There are conflicting deals but the fields are out of the sphere of influence of the government, and White Nile signed its deal before Total... Total had an agreement in the early '80s, but when President Omar el-Bashir made his coup in 1989, he cancelled all existing deals". "Oil causes first crack in Sudan peace deal but stability not endangered", Agence France-Presse, 9 March 2005. A circular released by White Nile on 19 May 2005, a copy of which has been obtained by Crisis Group, explained that the SPLM (acting as the Government of Southern Sudan, which has yet to be formed) granted concession rights to its own Nile Petroleum Company on 12 August 2004. The same circular also appeared to clarify that, contrary to its previous claim, the earliest agreement concluded with White Nile was on 17 February 2005, more than five weeks after the signing of the CPA.

¹³⁸ Crisis Group interviews with SPLM officials, March 2005.

¹³⁹ The New Sudan Public Corporation Act, 2003, Article 7, available at <http://www.gurtong.net>.

¹⁴⁰ Crisis Group interviews with senior SPLM officials, February-April 2005.

¹⁴¹ Crisis Group interviews, February-March 2005.

¹⁴² The memo, titled "To Whom it May Concern", is printed on the letterhead of the "SPLM Secretariat of Finance and Economic Planning South Sudan", rather than, as might have been expected, that of the "Secretariat of Legal Affairs".

then.¹⁴³ Combined with the late April release of the New Sudan Pound, with disregard for sound monetary policy and ongoing discussions over the currency with the government in Khartoum, the SPLM has damaged the South's image as a promising investment market.¹⁴⁴

Garang and the SPLM Leadership Council should immediately de-register the White Nile concession, as it poses a serious challenge to the sustainability of the peace accords. Recent reports of a new deal signed by the SPLM in block Bb (5b), formerly held by Lundin Oil, must also be scrutinised.¹⁴⁵ Friends of the SPLM, such as the U.S. and Norway, should also press the movement to cancel the White Nile deal and to fix the rotten culture that threatens to take root in the economic dealings of the Government of Southern Sudan. More broadly, the government and SPLM should use the National Petroleum Commission, as soon as it is set up, to review all agreements signed since the Wealth Sharing Agreement was finalised in January 2004.¹⁴⁶

VII. CONCLUSION

If implemented, the CPA can lead to Sudan's peaceful and fundamental transformation, resolving the root causes behind the 21-year civil war with the SPLM and providing the basis to resolve the ongoing conflict in Darfur and festering conflicts in the east and centre of the country. Yet, this is by no means guaranteed. The most troubling obstacle that has emerged is lack of political will on the side of the government and its ruling National Congress Party, which realise fundamental change would necessarily come at the expense of their special interests. As they need the peace accords and partnership with the SPLM in the short-term, principally to deflect international pressure over Darfur, the challenge for the former insurgents, all Sudanese democratic forces and the international community is to do everything possible to bring the CPA's provisions to life as quickly as possible, making them harder to undo with each passing day.

SPLM implementation, however, has been slowed to a snail's pace by overly centralised decision-making, lack of some capacities and cash flow problems. While Garang's arrival in Khartoum signals the beginning of a new political era, it is uncertain whether the SPLM will be effective as a national party or will be bogged down in southern politics. What to do about the government-allied militias in the South (the SSDF) poses an immediate and critical challenge to its plans in that region. By reaching an agreement with those militias, it can neutralise a potential spoiler and unite the South for the six-year interim period preceding the self-determination referendum the CPA promises. Accommodating the SSDF, however, would mean sharing considerable power, at least on the military side, with many former enemies and might force the SPLM to open political space in the South faster than it would like.

The international community must be aware of the likelihood that the National Congress Party will seek to undermine implementation in the coming months and years. It will need to help in preventing use of the SSDF as subversive proxies, in building the capacities of the SPLM and the new Government of Southern Sudan and in holding all sides accountable to their commitments and timelines under the CPA.

Even if implementation moves forward, Sudan is likely to remain unstable for the foreseeable future given the problems in Darfur and elsewhere that have no easy answers. Six months on from signature of the CPA, its people have taken a small but important step towards turning the country around but the road ahead is far from certain.

Nairobi/Brussels, 25 July 2005

¹⁴³ Crisis Group interviews, February-March 2005.

¹⁴⁴ The New Sudan Pound has been described as "Mickey Mouse" money by one observer. Many bills have the same serial numbers and many denominations inconsistent colouring, facilitating counterfeiting. Nile Commercial Bank, a non-SPLM private bank, was responsible for collecting the roughly \$40 million in floating currency throughout southern Sudan. It was also challenged by the government and has been labeled a violation of the CPA by Finance Minister Zubeir Ahmed Hassan. The new currency was eventually recalled by the SPLM, following its mass rejection by southerners, the international community, and the Khartoum government. Crisis Group interviews, May-July 2005. See also: "SPLM Flexible on currency question: Minister", *Sudan Vision*, 31 May 2005, available at <http://www.sudanvisiondaily.com/modules.php?name=News&file=article&sid=6987>.

¹⁴⁵ Crisis Group interview, 17 July 2005.

¹⁴⁶ The Wealth Sharing Agreement, one of a number of preliminary agreements reached during the long peace process, preceded the CPA by a year.

APPENDIX A

MAP OF SUDAN



APPENDIX B

CPA TIMELINE

- 9 January 2005:** Signing of the Comprehensive Peace Agreement in Nairobi; beginning of the six month pre-interim period.
- 30 April 2005:** Formation of the National Constitutional Review Commission.
- 18 June 2005:** Agreement signed between the Government of Sudan and the National Democratic Alliance (NDA).
- 26 June 2005:** The National Constitutional Review Commission concludes work on the new interim national constitution and sends it to the parliamentary bodies of the government and the SPLM for ratification.
- 9 July 2005:** SPLM Chairman Dr John Garang sworn in as 1st Vice-President, launching the new institution of the presidency; Interim National Constitution signed by Garang and President Omer el-Bashir; pre-interim period ends, six-year interim period begins.
- 18 July 2005:** The Southern Sudan Constitution drafting committee is formed.
- 19 July 2005:** Garang dissolves existing administrative structures in the South and appoints caretaker administrators in the ten southern states to unify the SPLM and government administrations in the South ahead of the formation of the Government of Southern Sudan.
- 9 August 2005:** The Government of National Unity is expected to be formed.
- 9 September 2005:** The Government of Southern Sudan is expected to be formed.
- 9 July 2009:** The deadline for holding local, state, national and presidential elections, according to the CPA.
- 9 July 2011:** The end of the interim period, and the holding of the southern self-determination referendum.

APPENDIX C

GLOSSARY

- CPA** The Comprehensive Peace Agreement, the culmination of two and a half years of negotiations between the SPLM and the Government of Sudan, under the auspices of IGAD. The CPA, which was signed on 9 January 2005, includes the Machakos Protocol of July 2002, the Security Arrangements Agreement of September 2003, the Wealth Sharing Agreement of January 2004, the Power Sharing Agreement, Abyei Agreement, and Southern Kordofan/Southern Blue Nile Agreements of May 2004, and the Implementation Modalities Agreement of December 2004.
- CPMT** The Civilian Protection Monitoring Team, created through a March 2002 agreement between the Government of Sudan and the SPLM, brokered by then-US Special Envoy John Danforth. It became operational in September 2002, investigating allegations of attacks against civilians by either party. It is due to cease operations in October 2005.
- IGAD** Intergovernmental Authority on Development, the regional body for the Horn of Africa, comprising Kenya, Uganda, Ethiopia, Eritrea, Sudan, Djibouti and Somalia. It chaired the peace talks between the Government of Sudan and the SPLA beginning in 1994.
- NDA** National Democratic Alliance, the umbrella body of Sudanese opposition parties movements, based in Asmara. Its members include the SPLA, the SLA, and most northern opposition groups. JEM is not a member. Although the NDA signed a partial agreement with the Government of Sudan on 18 June 2005, many members have rejected the agreement.
- SSDF** The South Sudan Defence Forces, formed as the umbrella organisation for the southern groups which signed the 1997 Khartoum Peace Agreement with the government. In 2001, it was expanded to cover all government-aligned southern armed groups.
- UNMIS** The United Nations Mission in Sudan, formally approved by the UN Security Council on 24 March 2005 in Resolution 1590. It includes a 10,000-strong military component, up to 715 civilian police, and a sizeable civilian component. Its primary task is to support and monitor implementation of the CPA.

APPENDIX D

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