

Machakos Protocol

IGAD "Secretariat on Peace in the Sudan"

Machakos Protocol

July 20, 2002

WHEREAS the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (the Parties) having met in Machakos Kenya, from 18 June 2002 through 20 July 2002 under the auspices of the IGAD Peace Process; and

WHEREAS the Parties have reiterated their commitment to a negotiated, peaceful, comprehensive resolution to the Sudan Conflict within the Unity of Sudan; and

WHEREAS the Parties discussed at length and agreed on a broad framework which sets forth the principles of governance, the general procedures to be followed during the transitional process and the structures of government to be created under legal and constitutional arrangements to be established; and

NOW RECORD THAT the Parties have agreed to negotiate and elaborate in greater detail the specific terms of the Framework, including aspects not covered in this phase of the negotiations, as part of the overall Peace Agreement; and

FURTHER RECORD THAT within the above context, the Parties have reached specific agreement on the Right to Self-Determination for the people of South Sudan, State and Religion, as well as the Preamble, Principles, and the Transition Process from the Draft Framework, the initialed texts of which are annexed hereto, and all of which will be subsequently incorporated into the Final Agreement; and

IT IS AGREED AND CONFIRMED THAT the Parties shall resume negotiations in August, 2002 with the aim of resolving outstanding issues and realizing comprehensive peace in the Sudan.

Dr. Ghazi Salahuddin Atabani
For: The Government of Sudan

Cdr. Salva Kiir Mayardit
For: The Sudan People's Liberation Movement/Army

Witnessed by:

Lt. Gen. Lazaro K. Sumbeiywo
Special Envoy

IGAD Sudan Peace Process and
On behalf of the IGAD Envoys

**AGREED TEXT ON THE PREAMBLE, PRINCIPLES, AND THE TRANSITION
PROCESS**

**BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE SUDAN AND
THE SUDAN PEOPLE'S LIBERATION MOVEMENT/SUDAN PEOPLE'S
LIBERATION ARMY**

WHEREAS the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (hereafter referred to as the Parties) having met in Machakos, Kenya, from 18 June 2002 through 20 July 2002; and

WHEREAS the Parties are desirous of resolving the Sudan Conflict in a just and sustainable manner by addressing the root causes of the conflict and by establishing a framework for governance through which power and wealth shall be equitably shared and human rights guaranteed; and

MINDFUL that the conflict in the Sudan is the longest running conflict in Africa, that it has caused horrendous loss of life and destroyed the infrastructure of the country, wasted economic resources, and has caused untold suffering, particularly with regard to the people of South Sudan; and

SENSITIVE to historical injustices and inequalities in development between the different regions of the Sudan that need to be redressed; and

RECOGNIZING that the present moment offers a window of opportunity to reach a just peace agreement to end the war; and

CONVINCED that the rejuvenated IGAD peace process under the chairmanship of the Kenyan President, H.E. Daniel T. arap Moi, provides the means to resolve the conflict and reach a just and sustainable peace; and

COMMITTED to a negotiated, peaceful, comprehensive resolution to the conflict based on the Declaration of Principles (DOP) for the benefit of all the people of the Sudan;

NOW THEREFORE, the Parties hereto hereby agree as follows:

PART A

(AGREED PRINCIPLES)

1.1 That the unity of the Sudan, based on the free will of its people democratic governance, accountability, equality, respect, and justice for all citizens of the Sudan is and shall be the priority of the parties and that it is possible to redress the grievances of the people of South Sudan and to meet their aspirations within such a framework.

1.2 That the people of South Sudan have the right to control and govern affairs in their region and participate equitably in the National Government.

1.3 That the people of South Sudan have the right to self-determination, inter alia, through a referendum to determine their future status.

1.4 That religion, customs, and traditions are a source of moral strength and inspiration for the Sudanese people.

1.5 That the people of the Sudan share a common heritage and aspirations and accordingly agree to work together to:

1.6 Establish a democratic system of governance taking account of the cultural, ethnic, racial, religious and linguistic diversity and gender equality of the people of the Sudan.

1.7 Find a comprehensive solution that addresses the economic and social deterioration of the Sudan and replaces war not just with peace, but also with social, political and economic justice which respects the fundamental human and political rights of all the Sudanese people.

1.8 Negotiate and implement a comprehensive cease-fire to end the suffering and killing of the Sudanese people.

1.9 Formulate a repatriation, resettlement, rehabilitation, reconstruction and development plan to address the needs of those areas affected by the war and redress the historical imbalances of development and resource allocation.

1.10 Design and implement the Peace Agreement so as to make the unity of the Sudan an attractive option especially to the people of South Sudan.

1.11 Undertake the challenge by finding a framework by which these common objectives can be best realized and expressed for the benefit of all the Sudanese.

PART B

(THE TRANSITION PROCESS)

In order to end the conflict and to secure a peaceful and prosperous future for all the people of the Sudan and in order to collaborate in the task of governing the country, the Parties hereby agree to the implementation of the Peace Agreement in accordance with the sequence, time periods and process set out below.

2. There shall be a Pre-Interim Period, the duration of which shall be six (6) months.

2.1 During the Pre-Interim Period:

- a) The institutions and mechanisms provided for in the Peace Agreement shall be established;
- b) If not already in force, there shall be a cessation of hostilities with appropriate monitoring mechanisms established;
- c) Mechanisms to implement and monitor the Peace Agreement shall be created;
- d) Preparations shall be made for the implementation of a comprehensive cease-fire as soon as possible;
- e) International assistance shall be sought; and
- f) A Constitutional Framework for the Peace Agreement and the institutions referred to in 2.1 (a) shall be established.

2.2 The Interim Period will commence at the end of the Pre-Interim Period and shall last for six years.

2.3 Throughout the Interim Period:

- a) The institutions and mechanisms established during the Pre-Interim Period shall be operating in accordance with the arrangements and principles set out in the Peace Agreement.
- b) If not already accomplished, the negotiated comprehensive cease-fire will be implemented and international monitoring mechanisms shall be established and operationalized.

2.4 An independent Assessment and Evaluation Commission shall be established during the Pre-Interim Period to monitor the implementation of the Peace Agreement and conduct a mid-term evaluation of the unity arrangements established under the Peace Agreement.

2.4.1 The composition of the Assessment and Evaluation Commission shall consist of equal representation from the GOS and the SPLM/A, and not more than two (2) representatives, respectively, from each of the following categories:

* Member states of the IGAD Sub-Committee on Sudan (Djibouti, Eritrea, Ethiopia, Kenya, and Uganda);

* Observer States (Italy, Norway, UK, and US); and

* Any other countries or regional or international bodies to be agreed upon by the parties.

2.4.2 The Parties shall work with the Commission during the Interim Period with a view to improving the institutions and arrangements created under the Agreement and making the unity of Sudan attractive to the people of South Sudan.

2.5 At the end of the six (6) year Interim Period there shall be an internationally monitored referendum, organized jointly by the GOS and the SPLM/A, for the people of South Sudan to: confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession.

2.6 The parties shall refrain from any form of unilateral revocation or abrogation of the Peace Agreement.

Part C

(Structures of Government)

To give effect to the agreements set out in Part A, the Parties, within a framework of a unified Sudan which recognizes the right to self-determination for the people of Southern Sudan, hereby agree that with respect to the division of powers and the structures and functions of the different organs of government, the political framework of governance in the Sudan shall be structured as follows:

3.1 Supreme Law

3.1.1 The National Constitution of the Sudan shall be the Supreme Law of the land. All laws must comply with the National Constitution. This constitution shall regulate the relations and allocate the powers and functions between the different levels of government as well as prescribe the wealth sharing arrangements between the same. The National Constitution shall guarantee freedom of belief, worship and religious practice in full to all Sudanese citizens.

3.1.2 A representative National Constitutional Review Commission shall be established during the Pre-Transition Period which shall have as its first task the drafting of a Legal and Constitutional Framework to govern the Interim Period and which incorporates the Peace Agreement.

3.1.3 The Framework mentioned above shall be adopted as shall be agreed upon by the Parties.

3.1.4 During the Interim Period an inclusive Constitutional Review Process shall be undertaken.

3.1.5 The Constitution shall not be amended or repealed except by way of special procedures and qualified majorities in order that the provisions of the Peace Agreement are protected.

3.2 National Government

3.2.1 There shall be a National Government which shall exercise such functions and pass such laws as must necessarily be exercised by a sovereign state at national level. The National Government in all its laws shall take into account the religious and cultural diversity of the Sudanese people.

3.2.2 Nationally enacted legislation having effect only in respect of the states outside Southern Sudan shall have as its source of legislation Sharia and the consensus of the people.

3.2.3 Nationally enacted legislation applicable to the southern States and/or the Southern Region shall have as its source of legislation popular consensus, the values and the customs of the people of Sudan including their traditions and religious beliefs, having regard to Sudan's diversity).

3.2.4 Where national legislation is currently in operation or is enacted and its source is religious or customary law, then a state or region, the majority of whose residents do not practice such religion or customs may:

(i) Either introduce legislation so as to allow or provide for institutions or practices in that region consistent with their religion or customs, or

(ii) Refer the law to the Council of States for it to approve by a two-thirds majority or initiate national legislation which will provide for such necessary alternative institutions as is appropriate.

[sections 4 and 5 are not yet available; indications are that the subjects of these sections are still under negotiation]

AGREED TEXT ON STATE AND RELIGION

Recognizing that Sudan is a multi-cultural, multi-racial, multi-ethnic, multi-religious, and multi-lingual country and confirming that religion shall not be used as a divisive factor, the Parties hereby agree as follows:

6.1 Religions, customs and beliefs are a source of moral strength and inspiration for the Sudanese people.

6.2 There shall be freedom of belief, worship and conscience for followers of all religions or beliefs or customs and no one shall be discriminated against on such grounds.

6.3 Eligibility for public office, including the presidency, public service and the enjoyment of all rights and duties shall be based on citizenship and not on religion, beliefs, or customs.

6.4 All personal and family matters including marriage, divorce, inheritance, succession, and affiliation may be governed by the personal laws (including Sharia or other religious laws, customs, or traditions) of those concerned.

6.5 The Parties agree to respect the following Rights:

- * To worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes;
- * To establish and maintain appropriate charitable or humanitarian institutions;
- * To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- * To write, issue and disseminate relevant publications in these areas;
- * To teach religion or belief in places suitable for these purposes;
- * To solicit and receive voluntary financial and other contributions from individuals and institutions;
- * To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- * To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religious beliefs;
- * To establish and maintain communications with individuals and communities in matters of religion and belief and at the national and international levels;
- * For avoidance of doubt, no one shall be subject to discrimination by the National Government, state, institutions, group of persons or person on grounds of religion or other beliefs.

6.6 The Principles enumerated in Section 6.1 through 6.5 shall be reflected in the Constitution.

AGREED TEXT ON THE RIGHT TO SELF-DETERMINATION FOR THE PEOPLE OF SOUTH SUDAN

1.3 That the people of South Sudan have the right to self-determination, inter alia, through a referendum to determine their future status.

2.4 An independent Assessment and Evaluation Commission shall be established during the Pre-Transition period to monitor the implementation of the Peace Agreement during the Interim Period. This Commission shall conduct a mid-term evaluation of the unity arrangements established under the Peace Agreement.

2.4.1 The composition of the Assessment and Evaluation Commission shall consist of equal representation from the GOS and the SPLM/A, and not more than two (2) representatives, respectively, from each of the following categories:

* Member states of the IGAD Sub-Committee on Sudan (Djibouti, Eritrea, Ethiopia, Kenya, and Uganda);

* Observer States (Italy, Norway, UK, and US); and

* Any other countries or regional or international bodies to be agreed upon by the parties.

2.4.2 The Parties shall work with the Commission during the Interim Period with a view to improving the institutions and arrangements created under the Agreement and making the unity of Sudan attractive to the people of South Sudan.

2.5 At the end of the six (6) year interim period there shall be an internationally monitored referendum, organized jointly by the GOS and the SPLM/A, for the people of South Sudan to: confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession.

2.6 The Parties shall refrain from any form of unilateral revocation or abrogation of the Peace Agreement.

Protocol

Between

**THE GOVERNMENT OF SUDAN
(GOS)**

AND

**THE SUDAN PEOPLE'S LIBERATION
MOVEMENT (SPLM)**

ON

POWER SHARING

Naivasha, Kenya, Wednesday, May 26, 2004

PREAMBLE:

CONSCIOUS of the need for an expeditious termination of Sudan's protracted and costly war;

MINDFUL AND AWARE of the yearning of all the Sudanese for a quick, just and sustainable peace;

ENCOURAGED by the progress made thus far in our pursuit for realizing comprehensive Peace Agreement in the Sudan;

DETERMINED to crown the valuable achievement of this Peace Process by arriving at an equitable and fair formula for sharing power in the Sudan;

RESOLVED to usher in an era of responsible, just, transparent, people-led and integrity based governance;

CONVINCED that decentralization and empowerment of all levels of government are cardinal principles of effective and fair administration of the country;

COGNIZANT of the fact that the smooth and successful implementation of this agreement shall, to a large measure, hinge on rallying the majority of the Sudanese people behind it; and

CONVINCED that the successful implementation of this agreement shall provide a model for good governance in Sudan that shall help to create a solid basis to make unity of the country attractive and preserve peace.

NOW THEREFORE, the Government of the Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) hereby agree as follows:-

PART I

1. GENERAL PRINCIPLES

- 1.1 In accordance with the Machakos Protocol agreed to at Machakos, Kenya, on 20th July, 2002, the following Protocol on Power Sharing forms an integral part of the overall Peace Agreement.
- 1.2 The Parties reaffirm their acceptance of the Agreed Principles (of Governance) as stipulated in the Machakos Protocol of 20th July, 2002. The modalities of implementation of these principles are the object of the present Protocol on Power Sharing.
- 1.3 In accordance with the Machakos Protocol, the structures of governments in the Sudan shall be as follows during the Interim Period:-
 - 1.3.1 The National level of Government which shall exercise authority so as to protect and promote the national sovereignty of Sudan and the welfare of its people;
 - 1.3.2 The Southern Sudan level of Government which shall exercise authority in respect of the people and States in the South;
 - 1.3.3 The States throughout Sudan which shall exercise authority at the state level and render public services through the level of government close to the people; and
 - 1.3.4 The level of local government throughout the Sudan.

- 1.4 The Parties agree that the following principles shall guide the distribution of powers and the establishment of structures:
- 1.4.1 Recognition of both the sovereignty of the nation as vested in its people as well as the need for autonomy of the Government of Southern Sudan and States throughout the Sudan;
 - 1.4.2 Affirmation of the need for both national as well as state and Southern Sudan norms and standards so as to reflect the unity of the country and the diversity of the Sudanese people;
 - 1.4.3 Acknowledgement of the need to promote the welfare of the people and protect their human rights and fundamental freedoms;
 - 1.4.4 Recognition of the need for the involvement and participation of the people of South Sudan at all levels of government and National institutions as an expression of the national unity of the country;
 - 1.4.5 Pursuit of good governance, accountability, transparency, democracy, and the rule of law at all levels of government to achieve lasting peace;
 - 1.4.6 Recognizing the need to legitimize the arrangements agreed to herein, fair electoral laws shall be adopted, including the free establishment of political parties. Elections at all levels of government shall be held by universal adult suffrage.

1.5 Principles of Administration and Inter-Governmental Linkages:

1.5.1 In the administration of the Government of National Unity, the following provisions shall be respected:-

1.5.1.1 There shall be a decentralized system of government with significant devolution of powers, having regard to the National, Southern Sudan, State, and Local levels of government;

1.5.1.2 The Interim National Constitution, being the legal and constitutional framework text adopted as contemplated in paragraph 2.12.6 herein, shall be the Supreme Law of the land and the Southern Sudan Constitution, state constitutions, and the laws of all levels of government must comply with it;

1.5.1.3 The linkage between the National Government and the states in the Southern Sudan shall be through the Government of Southern Sudan, subject to paragraph 1.5.1.4 below, and as provided for in the Interim National Constitution and the Southern Sudan Constitution;

1.5.1.4 In their relationships with each other or with other government organs, all levels of government and particularly National, Southern Sudan, and State Governments shall:

(a) Respect each others' autonomy;

- (b) Collaborate rather than compete, in the task of governing and assist each other in fulfilling each others' constitutional obligations;
- (c) Perform their functions and exercise their powers so as:
 - i) Not to encroach on another level's powers or functions;
 - ii) Not to assume another level's powers or functions conferred upon it by the Constitution;
 - iii) To promote co-operation between them;
 - iv) To promote open communication between government and levels of government;
 - v) To strive to render assistance and support to other levels of government;
 - vi) To advance the good co-ordination of governmental functions;
 - vii) To adhere to procedures of inter-governmental interaction as agreed upon;
 - viii) To promote amicable settlement of disputes before attempting litigation;
 - ix) To respect the status and institutions of other levels of government.
- (d) Allow the harmonious and collaborative interaction of the different levels of government within the context of national unity and for the achievement of a better quality of life for all.

1.6 **Human Rights and Fundamental Freedoms:**

1.6.1 The Republic of the Sudan, including all levels of Government throughout the country, shall comply fully with its obligations under the international human rights treaties to which it is or becomes a party. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Slavery Convention of 1926, as amended, and the related Supplementary Convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention Against Apartheid in Sports, the Convention Relating to the Status of Refugees and the Related Protocol, and the African Charter on Human and People's Rights. The Republic of the Sudan should endeavor to ratify other human rights treaties which it has signed.

1.6.2. The rights and freedoms to be enjoyed under Sudanese law, in accordance with the provisions of the treaties referred to above, include in particular the following:-

1.6.2.1 **Life**

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life;

1.6.2.2 **Personal Liberty**

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law;

1.6.2.3 **Slavery**

No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. No one shall be held in servitude or be required to perform forced or compulsory labour;

1.6.2.4 **Torture**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

1.6.2.5 Fair Trial

- (a) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her;
- (b) In the determination of any criminal charges against him/her, or of his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;
- (c) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law;
- (d) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed;
- (e) In the determination of any criminal charge against him/her, everyone shall be entitled, in full equality, to be tried without undue delay, to be tried in his/her presence and to defend himself/herself in person or through legal assistance of his/her own choosing and to have legal assistance assigned to him/her in any case where the interests of justice so require.

1.6.2.6 Privacy

No one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence;

1.6.2.7 Freedom of Thought, Conscience and Religion

Everyone shall have the right to freedom of thought, conscience and religion;

1.6.2.8 Freedom of Expression

Everyone shall have the right to freedom of expression;

1.6.2.9 Freedom of Assembly and Association

The right of peaceful assembly shall be recognized. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his/her interests;

1.6.2.10 Family and Marriage

- (a) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State;
- (b) The right of men and women of marriageable age to marry and to found a family shall be recognized, according to their respective family laws.

1.6.2.11 Right to Vote

Every citizen shall have the right and the opportunity, without distinctions and unreasonable restrictions, to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

1.6.2.12 Equality Before the Law

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law;

1.6.2.13 Freedom from Discrimination

The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

1.6.2.14 **Freedom of Movement**

Everyone has the right to liberty of movement and freedom to choose his/her residence;

1.6.2.15 **The Rights of Children**

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his/her status as a minor.;

1.6.2.16 **Equal Rights of Men and Women**

- (a) The equal right of men and women to the enjoyment of all civil and political rights set forth in the International Covenant on Civil and Political Rights and all economic, social, and cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights shall be ensured;
- (b) The human rights and fundamental freedoms embodied in the International Covenant on Civil and Political Rights (ICCPR) shall also be reflected in the Interim National Constitution. No derogation from these rights and freedoms shall be made under the Constitution or under the ICCPR except in accordance with the provisions thereof and only with the approval of the Presidency and the National Legislature, as required by Section 2.3.14 herein;

- (c) These human rights and fundamental freedoms shall be monitored by the Human Rights Commission specified in paragraph 2.10.1.2 herein.

1.7 Reconciliation:

The Parties agree to initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peace building process. Its mechanisms and forms shall be worked out by the Government of National Unity.

1.8 Population Census, Elections and Representation:

- 1.8.1 Population census throughout the Sudan shall be conducted and completed by the end of the second year of the Interim Period;
- 1.8.2 The preparation, planning and organization for the census shall commence as soon as the Peace Agreement is signed;
- 1.8.3 General Elections at all levels of government shall be completed by the end of the third year of the Interim Period;
- 1.8.4 Six months before the end of the periods referred to in Sub-Paragraphs. 1.8.1 and 1.8.3 the Parties shall meet and review the feasibility of the dates set out in the above-mentioned sub-Paragraphs.

- 1.8.5 Certain considerations, while not conditional upon their completion, should be taken into account with respect to the timing of the elections (including, *inter alia*, resettlement, rehabilitation, reconstruction, repatriation, building of structures and institutions, and consolidation of the Peace Agreement);
- 1.8.6 Whoever runs in any election must respect, abide by, and enforce the Peace Agreement;
- 1.8.7 International observers shall participate in the observation of elections;
- 1.8.8 Representation of the north and the south at the National level shall be based on population ratio;
- 1.8.9 The percentages agreed herein are temporary and shall either be confirmed or adjusted on the basis of the census results.

PART II

2. INSTITUTIONS AT THE NATIONAL LEVEL:

- 2.1 During the Interim Period, the Institutions at the National level shall consist of:-
 - 2.1.1 The Legislature;
 - 2.1.2 The Executive;
 - 2.1.3 The Judiciary; and
 - 2.1.4 The Institutions and Commissions specified in this Agreement and the Interim National Constitution.

- 2.2. **The National Legislature:**
 - 2.2.1 There shall be a bicameral National Legislature comprised of:-
 - 2.2.1.1 A National Assembly; and
 - 2.2.1.2 A Council of States.

 - 2.2.2. In the establishment of the National Legislature, the following principles shall apply:-
 - 2.2.2.1. There shall be equitable representation of the people of South Sudan in both legislative chambers; and
 - 2.2.2.2. Relevant considerations shall be taken into account in determining what constitutes equitable representation.

2.2.3 The National Legislature shall be structured and operate as follows:-

2.2.3.1 The National Assembly shall be elected in accordance with the procedures set forth by an impartial and representative Electoral Commission and in accordance with fair electoral laws;

2.2.3.2 There shall be a Council of States comprised of two representatives from each state;

2.2.3.3 Free and fair elections for the National Assembly shall be conducted in accordance with the Interim National Constitution governing the Interim Period. The date shall be determined by the Parties signatory to this Agreement, after consulting with the Electoral Commission.

2.2.4 Pending the elections referred to above, the National Assembly shall consist of such members representing the Parties to the Agreement, and other forces in the North and South so as to promote inclusiveness and stability, in such proportions to be determined by the parties prior to the conclusion of the Peace Agreement.

2.2.5 Prior to the Parliamentary elections, the seats of the National Assembly shall be allocated as follows:

- (a) National Congress Party (NCP) shall be represented by Fifty Two Per Cent (52%);
- (b) Sudan People's Liberation Movement (SPLM) shall be represented by Twenty Eight Per Cent (28%);
- (c) Other Northern political forces shall be represented by Fourteen Per Cent (14%);
- (d) Other Southern political forces shall be represented by Six Percent (6%);

2.2.6 Both Chambers of the National Legislature shall approve the allocation of resources and revenues, in accordance with the agreement of Wealth Sharing. The National Assembly shall approve the annual National budget.

2.2.7 Amendments to the National Constitution shall require:-

2.2.7.1 The approval of three-quarters (75%) of all the members of each chamber, both chambers sitting separately, and only after introduction of the draft amendment at least two months prior to debate;

2.2.7.2 Amendments to the Interim National Constitution affecting the provisions of the Peace Agreement may be introduced only with the approval of both Parties signatory to this Agreement;

2.2.7.3 A sixty-six and two-thirds percent (66.6%) majority in the Council of States is required to pass legislation that affects the interests of the states and a simple majority vote of both chambers is required to pass all other legislation.

- 2.2.8 Any bill duly approved by the National Legislature shall be signed into law by the President within thirty (30) days, failing which it shall be deemed to have been so signed. Where the President withholds his/her signature, he/she must present reasons for his/her refusal to so sign when re-introducing the bill to the National Legislature within the 30-day period stated herein. The Bill shall become law if the National Legislature again passes the bill by a two-thirds majority of all the members of the respective house or houses and the assent of the President shall not be required.
- 2.2.9. The exclusive legislative powers of the National Legislature shall be in respect of the matters set forth in Schedule A, annexed hereto.
- 2.2.10 The concurrent legislative powers of the National Legislature shall be those matters as set forth in Schedule D, read together with Schedule F, annexed hereto.
- 2.2.11 The residual legislative powers shall be exercised in accordance with Schedule E annexed hereto.
- 2.2.12 Both chambers of the National Legislature shall elect their respective Speakers, Deputy Speakers and other officers at their first sitting. The two Parties shall be adequately represented in these offices.
- 2.2.13 Both Chambers of the National Legislature shall respectively determine their own rules, procedures, committees, and other matters of a similar nature.

2.3. The National Executive:

2.3.1 The National Executive shall consist of the Presidency and a Council of Ministers.

2.3.2 There shall be established the Institution of the Presidency consisting of the President and two Vice Presidents.

2.3.3 The functions of the two Vice Presidents shall be clearly defined by the parties to this agreement.

2.3.4 There shall be a partnership and collegial decision-making process within the Institution of the Presidency in order to safeguard the Peace Agreement.

2.3.5 Until such time as elections are held, the current incumbent President (or his successor) shall be the President and Commander-in-Chief of the Sudan Armed Forces {SAF}. The current SPLM Chairman (or his successor) shall be the First Vice President and shall at the same time hold the posts of President of the Government of Southern Sudan (GOSS) and Commander-in-Chief of the Sudan People's Liberation Army (SPLA).

2.3.6 In respect of the following matters, the President shall take decisions with the consent of the First Vice President, namely:-

2.3.6.1 Declaration and termination of a state of emergency;

- 2.3.6.2 Declaration of war;
 - 2.3.6.3 Appointments that the President is required to make according to the Peace Agreement, {to be specified}; and
 - 2.3.6.4 Summoning, adjourning, or proroguing the National Legislature.
- 2.3.7 The President shall be elected in national elections, the timing of which shall be subject to the agreement of the two parties. The President elect shall appoint two Vice Presidents, one from the South and the other from the North. If the President-elect is from the North, the position of the First Vice President shall be filled by the person who has been elected to the post of President of the Government of Southern Sudan, as the President's appointee to the said position. In the event that a person from the South wins the Presidential elections, the President-elect shall appoint the First Vice President from the North. All the other provisions in this agreement relating to the presidency shall continue to apply.
- 2.3.8 Should the post of the President fall vacant, the functions of the President shall be assumed by a Presidential Council comprising of the Speaker of the National Assembly, the First Vice President and the Vice President.
- 2.3.8.1 The Speaker of the National Assembly shall be Chairperson of the Council in the period prior to elections, after elections the First Vice President shall be the chairperson of the Council;
 - 2.3.8.2 The Presidential Council shall take its decision by consensus;
 - 2.3.8.3 The Vice President shall be Commander-in-Chief of the Sudan Armed Forces {SAF}.

- 2.3.9 Should the post of the President fall vacant in the period prior to elections, the Office of the President shall be filled by the nominee of the National Congress Party within two weeks.
- 2.3.10 Should the post of the President fall vacant in the period after the elections, the post shall be filled through presidential elections which shall be held within sixty {60} days.
- 2.3.11 Should the post of the First Vice President fall vacant:-
- 2.3.11.1 Prior to elections, the office of the First Vice President shall be filled by the nominee of the SPLM within two weeks;
- 2.3.11.2 After the elections, the President shall appoint a First Vice President in accordance with the Interim National Constitution and the provisions of this Peace Agreement.
- 2.3.12 The President shall, within 30 days of the entry into force of the Peace Agreement, and in consultation with the First Vice President, establish a Council of Ministers, having due regard to the need for inclusiveness and diversity in the establishment of a Government of National Unity. The Cabinet Ministers shall be accountable to the President and the National Assembly in the performance of their functions and may be removed by a resolution supported by two-thirds of all the members of the National Assembly.

- 2.3. 13 The President, the First Vice President and the Vice President shall be members of the Council of Ministers.
- 2.3. 14 The National Legislature shall be required to approve declarations of war or state of emergency, but in either event, there shall be no derogation from the provisions of the Peace Agreement, except as may be provided herein.
- 2.3. 15 Any Executive Orders or other legal acts by the President of the Republic shall be discussed with, and adopted by the Council of Ministers.

2.4 National Capital:

- 2.4.1 Khartoum shall be the Capital of the Republic of the Sudan. The National Capital shall be a symbol of national unity that reflects the diversity of Sudan.
- 2.4.2 The Administration of the National Capital shall be representative; and during the Interim Period the two Parties shall be adequately represented in the administration of the National Capital.
- 2.4.3 Human rights and fundamental freedoms as specified in the Machakos Protocol, and in the Agreement herein, including respect for all religions, beliefs and customs, shall be guaranteed and enforced in the National Capital, as well as throughout the whole of Sudan, and shall be enshrined in the Interim National Constitution.

2.4.4 Law enforcement agencies of the Capital shall be representative of the population of Sudan and shall be adequately trained and made sensitive to the cultural, religious and social diversity of all Sudanese.

2.4.5 Without prejudice to the competency of any National Institution to promulgate laws, Judges and law enforcement agents shall, in dispensing justice and enforcing current laws in the National Capital be guided by the following:-

- 2.4.5.1 Tolerance shall be the basis of coexistence between the Sudanese people of different cultures, religions and traditions;
- 2.4.5.2 Behavior based on cultural practices and traditions which does not disturb public order, is not disdainful of other traditions, and not in flagrant disregard of the law or disturbing public order shall be deemed in the eyes of the law as an exercise of personal freedoms;
- 2.4.5.3 Personal privacy is inviolable and evidence obtained in violation of such privacy shall not be admissible in the court of law;
- 2.4.5.4 The judicial discretion of courts to impose penalties on non-Muslims shall observe the long-established legal {Sharia} principle that non-Muslims are not subject to prescribed penalties, and therefore remitted penalties shall apply;
- 2.4.5.5 Leniency and granting the accused the benefit of doubt are legal principles of universal application, especially in the circumstances of a poor society like the Sudan, which is just emerging from war, characterized by prevalent poverty and subject to massive displacement of people.

2.4.6 A special commission shall be appointed by the Presidency to ensure that the rights of non-Muslims are protected in accordance with the aforementioned guidelines and not adversely affected by the application of Sharia Law in the Capital. The said commission shall make its observations and recommendations to the Presidency.

2.4.7 Additionally, a system of mechanisms of guarantees shall be established to operationalize the above points, which includes:-

2.4.7.1 Judicial circulars to guide the courts as to how to observe the foregoing principles;

2.4.7.2 Establishment of specialized courts; and

2.4.7.3 Establishment of specialized Attorney General circuits to conduct investigations and pre-trial proceedings related to offences involving these principles.

2.5. The Government of National Unity:

2.5.1 During the Interim Period, there shall be a Government of National Unity reflecting the need for inclusiveness, the promotion of national unity, and the defense of national sovereignty, and the respect and implementation of Peace Agreement.

- 2.5.2 The Presidency and Council of Ministers shall exercise the Executive powers and competencies in respect of the matters in Schedules A and D, read together with Schedules E and F, and as conferred upon it by this Agreement and the Interim National Constitution.
- 2.5.3 Cabinet posts and portfolios in all clusters, including the National Sovereignty Ministries, shall be shared equitably and qualitatively by the two Parties. The Parties agree to cluster the National ministries under the implementation modalities.
- 2.5.4 Representation of the SPLM and other political forces from the South in each of the clusters shall be determined by the Parties Signatory to Agreement prior to the conclusion of the Peace Agreement.
- 2.5.5 Prior to elections, the seats of the National Executive shall be allocated as follows:-
- (a) The National Congress Party shall be represented by Fifty Two Percent (52%);
 - (b) Sudan People's Liberation Movement (SPLM) shall be represented by Twenty Eight Per Cent (28%);
 - (c) Other Northern political forces shall be represented by Fourteen Per Cent (14%);
 - (d) Other Southern political forces shall be represented by Six Percent (6%);

- 2.5.6 The Government of National Unity shall be responsible for the administration and functioning of the State and the formulation and implementation of national policies in accordance with the Interim National Constitution.
- 2.5.6 The Government of National Unity shall be responsible for establishing recruitment systems and admission policies to national universities, national institutes, and other institutions of higher education based on fair competition, giving equal opportunity to all citizens.
- 2.5.8 The Government of National Unity shall make decisions related to the ongoing or future activities of the organizations of the United Nations, bilateral, national, or international governmental and non-governmental organizations (NGOs), with a view toward ensuring equitable and transparent distribution of projects, activities, and employment of personnel in the whole of Sudan and especially the reconstruction of the war affected areas. There is to be an equivalent obligation on all levels of Government.
- 2.5.9. The Government of National Unity shall implement an information campaign throughout Sudan in all national languages in Sudan to popularize the Peace Agreement, and to foster national unity, reconciliation and mutual understanding.

2.6 **Civil Service:-**

2.6.1 The Government of National Unity shall also ensure that the National Civil Service, notably at the senior and middle-levels, is representative of the people of Sudan. In so doing, the following principles shall be recognized:-

2.6.1.1 Imbalances and disadvantages which exist must be redressed;

2.6.1.2 Merit is important and training is necessary;

2.6.1.3 There must be fair competition for jobs in the National Civil Service;

2.6.1.4 No level of government shall discriminate against any qualified Sudanese citizen on the basis of religion, ethnicity, region, gender, or political beliefs;

2.6.1.5 The National Civil Service will fairly represent all the people of the Sudan and will utilize affirmative action and job training to achieve equitable targets for representation within an agreed time frame;

2.6.1.6 Additional educational opportunities shall be created for war- affected people.

2.6.2 In order to create a sense of national belonging and address imbalances in the National Civil Service, a National Civil Service Commission shall be established with the task of:-

2.6.2.1 Formulating policies for training and recruitment into the civil service, targeting between Twenty – Thirty Percent (20% - 30%) of the positions, confirmed upon the outcome of the census referred to herein, for people of South Sudan who qualify;

- 2.6.2.2 Ensuring that not less than Twenty Percent (20%) of the middle and upper level positions in the National Civil Service (including the positions of Under Secretaries) are filled with qualified persons from the South within the first three years and achieving twenty Five Percent (25%) in five years and the final target figure referred to in sub-paragraph 2.6.2.1 above, within six years; and
- 2.6.2.3 Reviewing, after the first three years of the beginning of the Interim Period the progress made as a result of the policies and setting new goals and targets as necessary, taking into account the census results.

2.7 National Security:

2.7.1 The National Security Council:

- 2.7.1.1 There shall be at the National level a National Security Council, the composition and functions of which shall be determined by the law;
- 2.7.1.2 The National Security Council shall define the new national security strategy based on the analysis of the new security threats.

2.7.2 National Security Service:

- 2.7.2.1 There shall be one National Security Service. The details of its establishment shall be worked out under the implementation modalities;
- 2.7.2.2 The National Security Service shall be representative of the population and reflect the partnership of the negotiating Parties;
- 2.7.2.3 The South shall be equitably represented in the National Security Service;
- 2.7.2.4 The National Security Service shall be professional and its mandate shall be advisory and focused on information gathering and analysis;
- 2.7.2.5 There shall be established security committees at the Government of Southern Sudan and State levels, their composition and functions shall be determined by the law;
- 2.7.2.6 The National Security Service shall be anchored in the Presidency;
- 2.7.2.7 There shall be a National Security Act that shall reflect the mandate of the National Security Service and the provisions of this Agreement relating to the National Security;
- 2.7.2.8 That all the assets of the respective security organs of the two Parties shall accrue to the National Security Service.

2.8 Language:

- 2.8.1 All the indigenous languages are national languages which shall be respected, developed and promoted.

- 2.8.2 Arabic language is the widely spoken national language in the Sudan.
- 2.8.3 Arabic, as a major language at the national level, and English shall be the official working languages of the National Government business and languages of instruction for higher education.
- 2.8.4 In addition to Arabic and English, the legislature of any sub-national level of government may adopt any other national language(s) as additional official working language(s) at its level.
- 2.8.5 The use of either language at any level of government or education shall not be discriminated against.

2.9 Foreign Policy:

- 2.9.1 During the Interim Period, as a matter of principle Sudan's Foreign Policy shall serve first and foremost Sudan's national interests to achieve the following objectives:-
 - 2.9.1.1 Promotion of international cooperation, especially within the UN and other International and Regional Organizations for the consolidation of universal peace, respect of international law and treaty obligations and the promotion of a just world economic order;
 - 2.9.1.2 To achieve the latter, enhancement of South-South and international cooperation;

- 2.9.1.3 Striving to achieve African and Arab integration, each within the ongoing regional plans and forums as well as promoting African and Arab Unity and Afro-Arab cooperation;
- 2.9.1.4 Non-interference in the affairs of other states and promotion of good-neighborliness and mutual cooperation among all Sudan's neighbors;
- 2.9.1.5 Combating international and transnational organized crimes and terrorism.

2.10 Other Independent and/or National Institutions to be Established in Accordance with the Peace Agreement:

- 2.10.1 The National Constitutional Review Commission, as detailed in Section 2.12 herein, shall also detail the mandate and provide for the appointment and other mechanisms to ensure the independence of the following institutions:-
 - 2.10.1.1 An impartial and representative National Electoral Commission;
 - 2.10.1.2 A Human Rights Commission;
 - 2.10.1.3 A National Judicial Service Commission;
 - 2.10.1.4 A National Civil Service Commission;
 - 2.10.1.5 An ad-hoc Commission to monitor and ensure accuracy, legitimacy, and transparency of the Referendum as mentioned in the Machakos Protocol on Self-Determination for the People of South Sudan, which shall also include international experts;

2.10.1.6 A Fiscal and Financial Allocation and Monitoring Commission;

2.10.1.7 Any other independent commission/institution set forth in the Peace Agreement or as agreed upon by the Parties.

2.11 **The National Judiciary:**

2.11.1 The powers of the Judiciary shall be exercised by Courts and other tribunals. The Judiciary shall be independent of the Legislature and the Executive. Its independence shall be guaranteed in the Interim National Constitution.

2.11.2. There shall be established at the National Level:-

2.11.2.1. A Constitutional Court;

2.11.2.2. A National Supreme Court;

2.11.2.3. National Courts of Appeal; and

2.11.2.4. Any other National Courts or tribunals as deemed necessary to be established by law.

2.11.3. The Constitutional Court:

2.11.3.1 There shall be established a Constitutional Court in accordance with the provisions of this Peace Agreement and the Interim National Constitution.

2. 11.3.2. The Constitutional Court shall:-

- (i) Be independent from the Judiciary and any other courts in the country. It shall be headed by the President of the Constitutional Court, duly appointed by the President with the consent of the First Vice President, and shall be answerable to the Presidency;
- (ii) Uphold the Interim National, Southern Sudan, and State Constitutions and its composition shall be representative;
- (iii) Have original jurisdiction to decide disputes that arise under the National Interim Constitution and the constitutions of Northern States at the instance of individuals, juridical entities or of government;
- (iv) Adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws that do not comply with the National, Southern Sudan, or the relevant State constitutions;
- (v) Have appellate jurisdiction on appeals against the decisions of Southern Sudan Supreme Court on the Constitution of Southern Sudan and the constitutions of Southern Sudan states;
- (vi) Adjudicate on constitutional disputes between organs and levels of government, with respect to areas of exclusive or concurrent competencies;
- (vii) Protect human rights and fundamental freedoms;
- (viii) Have criminal jurisdiction over the President, the two Vice Presidents of the Republic, the two Speakers of the National Legislature, and the Justices of the National and Southern Sudan Supreme Courts.

2. 11.3.3. Decisions of the Constitutional Court shall be final and binding.

2. 11.4. The National Supreme Court:

2. 11.4.1 The National Supreme Court shall:-

- (i) Be a court of review and cassation in respect of any criminal or civil matter arising out of or under national laws;
- (ii) Have criminal jurisdiction over the Justices of the Constitutional Court;
- (iii) Review death sentences imposed by any Court in respect to matters arising out of or under National Laws; and
- (iv) Have such other jurisdiction as determined by the Interim National Constitution, the Peace Agreement, and law.

2. 11.4.2. The National Supreme Court may establish panels for the purposes of considering and deciding appeals on matters requiring special expertise including commercial, personal, or labour matters.

2. 11.4.3. The Justices of the Constitutional and National Supreme Courts and all the judges of other National Courts shall perform their functions without political interference; they shall be independent, and shall administer justice without fear or favour. The Interim National Constitution and the law shall protect their independence.

2. 11.4.4. Judges other than the Justices referred to in Section 2.11.4.6 herein shall be appointed by the Presidency on the recommendation of the National Judicial Service Commission.
2. 11.4.5. The National Judicial Service Commission shall be chaired by the Chief Justice. Amongst others, representatives of academia, judges, members of the legal profession, members of the National Legislature, and the Minister of Justice shall sit on this Commission. The National Judicial Service Commission shall be as determined in the Interim National Constitution referred to in paragraph 2.12 herein and shall reflect the need for appropriate representation, inclusiveness, and diversity.
2. 11.4.6. (i) All Justices of the Constitutional Court shall be appointed by the Presidency on the recommendation of the National Judicial Service Commission, subject to approval by two-thirds majority of all the members of the Council of States, having regard to competence, credibility and the need for fair representation.
- (ii) All Justices of the National Supreme Court shall be appointed by the Presidency on the recommendation of the National Judicial Service Commission, having regard to competence and credibility.

(iii) Southern Sudan shall be adequately represented in the Constitutional Court, the National Supreme Court and other national courts that are situated in the National Capital, by qualified lawyers having regard to competence and credibility;

2. 11.4.7. The tenure of Judges shall not be affected by their judicial decisions. Judges may only be removed for gross misconduct, incompetence, incapacity, or otherwise in accordance with the law, and only on the recommendation of the National Judicial Service Commission.

2.12 **Constitutional Review Process:**

2.12.1 The Peace Agreement shall be signed by the leaders of the two Parties.

2.12.2 Upon signature, the Parties shall be bound by the Agreement and shall assume the obligations arising therefrom, more especially the obligations to implement the Agreement and to give legal and constitutional effect to the arrangements agreed therein.

2.12.3 Upon signature the Parties commit themselves to ensure that all the organs, committees and structures under their control, including their members, shall observe the terms of the Agreement.

2.12.4 After the Agreement has been signed:-

- 2.12.4.1 The text thereof shall be forwarded to the National Assembly and the SPLM National Liberation Council for approval as is;
- 2.12.4.2 A representative National Constitutional Review Commission shall be established, as is more fully described below, which shall within six (6) weeks of receipt of the Agreement prepare a Legal and Constitutional Framework (“The Constitutional Text”);
- 2.12.4.3 The National Constitutional Review Commission shall be comprised of the NCP, SPLM and representatives of such other political forces and civil society as agreed by the Parties. Such composition shall be reflected in the final Peace Agreement.
- 2.12.5 The National Constitutional Review Commission shall have as its first task the preparation of a Legal and Constitutional Framework text in the constitutionally appropriate form, based on the Peace Agreement and the current Sudan Constitution, for adoption by the National Assembly. The same text shall be presented to the SPLM National Liberation Council for adoption. In the event of a contradiction, the terms of the Peace Agreement shall prevail in so far as that contradiction exists.
- 2.12.6 Without prejudice to the provisions of 2.12.5 above, the National Constitutional Review Commission in the preparation of the Legal and Constitutional Framework Text, shall draw upon relevant experiences and documents as may be presented by the Parties.

- 2.12.7 Upon adoption by the National Assembly and the SPLM National Liberation Council, the Constitutional Text shall become the Interim National Constitution for the Sudan during the Interim Period.
- 2.12.8 Pending the adoption of the Constitutional Text, the Parties agree that the legal status quo in their respective areas shall remain in force.
- 2.12.9 The National Constitutional Review Commission shall also be required to prepare such other legal instruments as is required to give effect to the Peace Agreement. It shall provide in such draft statutes or in the Constitutional Text for the appointment and other mechanisms to ensure the independence of such National Institutions as are referred to in Section 2.10 herein.
- 2.12.10 Without prejudice to the provisions of the Peace Agreement, as a subsequent task and during the course of the six-year Interim Period, the National Constitutional Review Commission shall be responsible for organizing an inclusive Constitutional Review Process. The process must provide for political inclusiveness and public participation.
- 2.12.11 Without prejudice to the functions of the State Legislatures, the National Constitutional Review Commission shall prepare model Constitutions for the States, subject to compliance with the National Constitution, and, as relevant, the Constitution of Southern Sudan.

2.12.12 The National Ministry of Justice shall, with the assistance of concerned attorneys, declare the compatibility of the constitution of Southern Sudan with the Interim National Constitution, and also declare the compatibility of the constitutions of the States with the Interim National Constitution and, as appropriate, with the constitution of Southern Sudan. Upon such declaration, the same constitutions shall be signed by the head of the appropriate level of government.

PART III

3. GOVERNMENT OF SOUTHERN SUDAN:

- 3.1 In respect of the Southern Sudan, there shall be a Government of Southern Sudan {GOSS}, as per the borders of 1/1/56, which shall consist of:-
- 3.1.1 The Legislature of Southern Sudan;
 - 3.1.2 The Executive of Southern Sudan;
 - 3.1.3 The Judiciary of Southern Sudan;
- 3.2 The Government of Southern Sudan shall function in accordance with a Southern Sudan Constitution, which shall be drafted by an inclusive Southern Sudan Constitutional Drafting Committee and adopted by the Transitional Assembly of Southern Sudan by a two-thirds majority of all members. It shall conform with the Interim National Constitution.
- 3.3 The powers of the Government of Southern Sudan shall be as set forth in Schedules B and D, read together with Schedules E and F, the Interim National Constitution, Southern Sudan Constitution, and the Peace Agreement.
- 3.4 A primary responsibility of the Government of Southern Sudan will be to act as an authority in respect of the States of Southern Sudan, to act as a link with the National Government and to ensure that the rights and interests of the people of Southern Sudan are safeguarded during the Interim Period.

3.5 Legislature of Southern Sudan:

3.5.1 Pending the elections, the First Southern Sudan Assembly shall be an inclusive, constituent legislature comprised of:-

3.5.1.1 The SPLM shall be represented by Seventy Percent (70%);

3.5.1.2 The NCP shall be represented by Fifteen Percent (15%);

3.5.1.3 The other Southern political forces shall be represented by Fifteen Percent (15%).

3.5.2 The Southern Sudan Assembly shall, in accordance with the Constitution adopted by it, provide for the election of its Speaker and other office holders.

3.5.3 When enacting the Constitution of Southern Sudan, the Assembly of Southern Sudan shall be empowered to assign such powers as set forth in Schedules B and D, read together with Schedules E and F, to the Government of Southern Sudan.

3.5.4 The Southern Sudan Constitution shall make provision for the Assembly of Southern Sudan to be re-constituted through elections in accordance with the provisions herein related to the timing of general elections. The Constitution of the Southern Sudan shall also make provision for the election of the President and appointment of the Vice President of the Government of Southern Sudan. Such elections shall be in accordance with the provisions set forth by the National Electoral Commission specified in sub-paragraph 2.10.1.1 herein.

- 3.5.5 The Assembly of Southern Sudan may amend the Constitution of the Southern Sudan by a two-thirds majority vote of all members.
- 3.5.6 Apart from applicable national legislation, legislative authority in Southern Sudan shall be vested in the Assembly of Southern Sudan. It shall establish its own offices, committees and rules of procedure. It shall elect a Speaker and Deputy Speaker and other officers at its first meeting.

3.6 The Southern Sudan Executive:

- 3.6.1 An Executive Council of Ministers appointed by the President of the Government of Southern Sudan, in consultation with his/her Vice President and approved by the Assembly of Southern Sudan, shall be established in accordance with the Southern Sudan Constitution. The Executive Council of Ministers shall be accountable to the President of the Government of Southern Sudan and the Southern Sudan Assembly in the performance of their functions and may be removed by a motion supported by two-thirds of all the members of the Southern Sudan Assembly.
- 3.6.2 The Executive Authority of Southern Sudan shall establish such independent institutions as the Peace Agreement, the Interim National Constitution and the Southern Sudan Constitution contemplate. It shall be empowered to establish such further commissions and institutions compatible with its powers as it deems necessary to promote the welfare of its people, good governance and justice.

- 3.6.3 The Government of Southern Sudan shall be established with due regard to the need for inclusiveness.
- 3.6.4 Prior to elections, the Government of Southern Sudan shall be allocated as follows:-
- 3.6.4.1 The SPLM shall be represented by Seventy Percent (70%);
 - 3.6.4.2 The NCP shall be represented by Fifteen Percent (15%);
 - 3.6.4.3 The other Southern political forces shall be represented by Fifteen Percent (15%).
- 3.6.5 The Government of Southern Sudan shall discharge its obligations and exercise such rights and powers in regard to administration, security, financial, and development issues as is set forth in the Southern Sudan Constitution, the Interim National Constitution, the Peace Agreement and any other agreement relating to the reconstruction and development of the Southern Sudan.
- 3.6.6 (a) Should the post of the President of GOSS fall vacant, and pending the nomination and swearing in of the new President, the functions of the President shall be assumed by the Vice President of GOSS;
- (b) Should the post of the President of GOSS fall vacant in the period prior to elections, the Office of the President of GOSS shall be filled by a nominee of the SPLM within two weeks;

- (c) Should the post of the President fall vacant in the period after the elections, the post shall be filled through elections which shall be held within sixty (60) days.

3.7 The Judiciary of Southern Sudan:

3.7.1 There shall be at the Southern Sudan Level:-

3.7.1.1 A Supreme Court of Southern Sudan;

3.7.1.2 Courts of Appeal; and

3.7.1.3 Any such other courts or tribunals as deemed necessary to be established in accordance with the Southern Sudan Constitution and the law.

3.7.2 The Constitution of Southern Sudan shall provide for a Supreme Court for Southern Sudan which shall be the highest court in the South and to which appeals may lie from Southern state courts or other Courts of Southern Sudan on matters brought under or relating to Southern state, Southern Sudan or National law, as may be determined by the Constitution of Southern Sudan.

3.7.3 The Southern Sudan Supreme Court shall:-

- 3.7.3.1 Be the court of final judicial instance in respect of any litigation or prosecution under Southern State or Southern Sudan law, including statutory and customary law, save that any decisions arising under National Laws shall be subject to review and decision by the National Supreme Court;
- 3.7.3.2 Have original jurisdiction to decide on disputes that arise under the Constitution of Southern Sudan and the constitutions of Southern Sudan states at the instance of individuals, juridical entities or of government;
- 3.7.3.3 Adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws that contradict the Constitution of Southern Sudan or the constitutions of Southern Sudan states;
- 3.7.3.4 Be a court of review and cassation in respect of any criminal or civil matter arising out or under Southern Sudan Laws;
- 3.7.3.5 Have criminal jurisdiction over the President and Vice President of the Government of Southern Sudan and the Speaker of Southern Sudan Legislature;
- 3.7.3.6 Review death sentences imposed by Southern Sudan courts in respect of matters arising out of or under Southern Sudan Laws;
- 3.7.3.7 Have such other jurisdictions as determined by Southern Sudan Constitution, the Peace Agreement and the Law.

3.7.4 Judges of the Courts of Southern Sudan shall perform their functions without political interference, shall be independent, and shall administer the law without fear or favour. The provisions of the Southern Sudan Constitution and the Law shall protect their independence.

3.7.5 Without prejudice to Sub-Para. 2.11.4.4, the Legislature of Southern Sudan shall provide for appointments, terms of service and dismissal of Southern Sudan appointed Judges.

PART IV

4. INSTITUTIONS AT THE STATE LEVEL

4.1 The Institutions at the State level shall consist of:-

4.1.1 The State Legislature;

4.1.2 The State Executive; and

4.1.3 The State Judiciary.

4.2 There shall be legislative, executive, and judicial institutions at state level which shall function in accordance with this Agreement, the Interim National Constitution and, in respect of the states of Southern Sudan, also with the Constitution of Southern Sudan.

4.3 Local Government is an important level of Government and its election, organization and proper functioning shall be the responsibility of the states, in accordance with the relevant state constitution.

4.4 The State Legislature:

4.4.1 There shall be a State Legislature comprised of members elected in accordance with the electoral provisions herein and as set forth by the National Electoral Commission referred to in subparagraph 2.10.1.1 herein.

4.4.2 Pending the elections referred to in sub-article 4.4.1 herein, the composition of the state legislatures shall be comprised as follows:-

4.4.2.1. The NCP is to hold Seventy Percent (70%) in the Northern states, and the SPLM Seventy Percent (70%) in the Southern states;

4.4.2.2. The remaining Thirty Percent (30%) in the Northern and the Southern states shall be allocated as follows:-

(i) Ten Percent (10%) in the Southern states to be filled by the NCP;

(ii) Ten Percent (10%) in the Northern states to be filled by the SPLM; and

(iii) Twenty Percent (20%) in the Northern and Southern states to be filled by representatives of other Northern and Southern political forces respectively.

4.4.3. The elections referred to in sub-article 4.4.1. herein shall take place on the same date as the elections for the National Assembly referred to in Section 1.8.3.

4.4.4. The state legislatures shall prepare and adopt state constitutions provided that they are in conformity with the National Constitution, the Peace Agreement, and for Southern States, also in conformity with the Constitution of Southern Sudan.

- 4.4.5. The State Legislature shall have law-making competency in respect of the functional areas listed in Schedules C and D, read together with Schedules E and F.
- 4.4.6. Members of the State Legislature and the State Council of Ministers, including the Governor, shall have such immunities as are provided by law.
- 4.4.7. The State Legislature shall decide its own rules, procedures, and committees, and elect its Speaker and other officers.

4.5 The State Executive:

4.5.1 Prior to elections the state executives shall be allocated as follows:-

4.5.1.1 The NCP is to hold Seventy Percent (70%) in the Northern states, and the SPLM Seventy Percent (70%) in the Southern states;

4.5.1.2 The remaining Thirty Percent (30%) in the Northern and the Southern states shall be allocated as follows:-

- (i) Ten Percent (10%) in the Southern states to be filled by the NCP;
- (ii) Ten Percent (10%) in the Northern states to be filled by the SPLM; and
- (iii) Twenty Percent (20%) in the Northern and Southern states to be filled by representatives of other Northern and Southern political forces, respectively.

4.5.2 As part of the Ten Percent (10%) share of the NCP in Southern states the two Parties agreed as follows:-

- (i) The Governor of one Southern State shall be a nominee of the NCP;
- (ii) One Deputy Governor in a different Southern State shall be a nominee of the NCP.

4.5.3 The States' Council of Ministers shall be appointed by the Governor in accordance with the State Constitution, having regard to the need for inclusiveness. The State Ministers shall be accountable to the Governor and the State Legislature in the performance of their functions and may be removed by the Governor on a motion supported by two-thirds of all the members of the State Legislature.

4.5.4 The Governor shall, together with the States' Council of Ministers appointed by him/her, exercise the executive powers of the state which shall be in respect of the functional areas listed in Schedules C and D, read together with Schedules E and F, and such other executive competencies as are conferred upon the State by the Interim National Constitution, the Southern Sudan Constitutions, the State Constitutions, and the Peace Agreement.

4.5.5 State Governors must sign any law duly approved by the State Legislature, failing which, after thirty (30) days it shall be deemed to have been signed into law by the State Governor. Where the State Governor withholds his/her signature, he/she must present reasons for his/her refusal to so sign when re-introducing the bill to the State Legislature within the 30-day period stated within. The Bill shall become law if the State Legislature again passes the bill by two-thirds majority of all the members and the assent of the Governor shall not be required.

4.6 **State Judicial Institutions:**

4.6.1 The State Constitutions shall provide for the establishment of such state courts by the State Judiciary as necessary.

4.6.2 State legislation must provide for:-

4.6.2.1 The appointment and dismissal of State-appointed judges (lay magistrates); and

4.6.2.2 Guarantees of the independence and impartiality of the judiciary and ensure that judges shall not be subject to political or other interference.

4.6.3 State Courts shall have civil and criminal jurisdiction in respect of State, Southern Sudan, and National Laws, save that a right of appeal shall lie as provided in this Agreement.

- 4.6.4 Notwithstanding sub-paragraph 4.6.3, the National Legislature shall determine the civil and criminal procedures to be followed in respect of litigation or prosecution under National laws in accordance with the Interim National Constitution.
- 4.6.5 The structures and powers of the Courts of the States of Southern Sudan shall be subject to the provisions of this Agreement and the Constitution of Southern Sudan.

PART V: SCHEDULES

SCHEDULE A: NATIONAL POWERS

Exclusive competencies (Legislative and Executive Powers) of the National Government.

1. National Defense and National Security and Protection of the National Borders;
2. Foreign Affairs and International Representation;
3. Nationality and Naturalization;
4. Passports and Visas;
5. Immigration and Aliens;
6. Currency, Coinage and Exchange Control;
7. Constitutional Court and such National Courts responsible for enforcing or applying National laws;
8. National Police (including Criminal Investigation Department - CID), Coordination of International, Regional and bilateral Criminal Matters, and Standards and Regulations including the standards for training the police in the National Capital);
9. The fixing of and providing for salaries and allowances of civil and other officers of the National Government;
10. Postal Services;
11. Civil Aviation;
12. Maritime shipment;
13. Beacons;

14. Navigation and Shipment;
15. National Lands and National natural resources;
16. Central Bank, the Incorporation of National banks and issuing of paper money;
17. Bills of Exchange and Promissory Notes;
18. Weights, Measures and Standards, Dates and Standards of Time;
19. Meteorology;
20. Establishment and Maintenance of National Prisons;
21. National Institutions as envisaged under the Peace Agreement or as set forth in the Interim National Constitution;
22. Customs, Excise and Export Duties;
23. Intellectual Property Rights, including Patents and Copyright;
24. National Flag, National Emblem and National Anthem;
25. Signing of International Treaties on behalf of the Republic of Sudan;
26. National Debt and borrowing on public credit;
27. National Census, National Surveys and National Statistics;
28. National States of Emergency;
29. International and Inter-State Transport, including roads, airports, waterways, harbours and railways;
30. National Public Utilities;
31. National Museums and National Heritage Sites;
32. National Economic Policy and Planning;
33. Nile Water Commission, the management of the Nile Waters, transboundary waters and disputes arising from the management of interstate waters between Northern states and any dispute between Northern and Southern states;
34. National information, publications, telecommunications regulations;

35. National Taxation and National Revenue Raising;
36. National Budget;
37. Laws providing for National elections and their supervision by the Electoral Commission;
38. Issuance of National ID Card.

SCHEDULE B: POWERS OF THE GOVERNMENT OF SOUTHERN SUDAN

The exclusive legislative and executive powers of the Government of Southern Sudan shall be:

1. The adoption and amendment of the Constitution of the Government of Southern Sudan (subject to compliance with the Interim National Constitution);
2. Police, Prisons and Wildlife Services;
3. Security and military forces during the Interim Period (subject to Agreement on Security Arrangements);
4. Legislation relating to the Government of Southern Sudan structures for the delivery of services at all levels of Government of Southern Sudan;
5. Borrowing of money on the sole credit of the Government of Southern Sudan within the national macro-economic policy;
6. Planning for Southern Sudan Government services including health, education, and welfare, etc;
7. The appointment, tenure and payment of Government of Southern Sudan (GOSS) officers and civil servants;
8. Development of financial resources for the Government of Southern Sudan;

9. The co-ordination of Southern Sudan services or the establishment of minimum Southern Sudan standards or the establishment of Southern Sudan uniform norms in respect of any matter or service referred to in Schedule C or Schedule D, read together with Schedule E, with the exception of Item 1 of Schedule C, including but not limited to, education, health, welfare, police (without prejudice to the National Standards and Regulations), prisons, state public services, such authority over civil and criminal laws and judicial institutions as is specified in the Schedules, lands, reformatories, personal law, intra-state business, commerce and trade, tourism, environment, agriculture, disaster intervention, fire and medical emergency services, commercial regulation, provision of electricity, water and waste management services, local Government, animal control and veterinary services, consumer protection, and any other matters referred to in the above Schedules;
10. Any power that a State or the National Government requests it to exercise on its behalf, subject to the agreement of the Government of Southern Sudan or that for reasons of efficiency the Government of Southern Sudan itself requests to exercise in Southern Sudan and that other level agrees;
11. Referenda in Southern Sudan on matters affecting Southern Sudan as a whole within the competencies of Southern Sudan Government;
12. Taxation and revenue raising in Southern Sudan as a whole;
13. Southern Sudan Budget, subject to the agreement on Wealth Sharing;
14. GOSS Public utilities;
15. GOSS flag, emblem;
16. Reconstruction and development of the Southern Sudan as a whole, subject to the provisions of the Wealth Sharing Agreement;
17. GOSS information, publications, media and telecommunications utilities;

18. Rehabilitation and benefits to disabled war veterans, orphans, widows and care for the dependents of deceased war fallen heroes;
19. Any matter relating to an item referred to in schedule D that cannot be dealt with effectively by a single State and requires GOSS legislation or intervention including, but not limited to the following:-
 - 19.1. Matters relating to businesses, trade licenses and conditions of operation;
 - 19.2. Natural resources and forestry;
 - 19.3. Town and rural planning;
 - 19.4. Disputes arising from the management of interstate waters strictly within Southern Sudan;
 - 19.5. Fire fighting and ambulance services;
 - 19.6. GOSS reformatory institutions;
 - 19.7. Firearm licenses within Southern Sudan; and
 - 19.8. GOSS recreation and sports.
20. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing as a matter or matters in regard to which the Government of Southern Sudan is accorded exclusive authority;
21. Southern Sudan census and statistics within the competence of the Southern Sudan Government;
22. Issuance of identity cards within Southern Sudan, driving licenses and other appropriate documentation.

SCHEDULE C: POWERS OF STATES

Exclusive executive and legislative competencies of the individual States of Sudan shall be as set out hereunder:-

1. The Constitution of the State, subject to compliance with the National Constitution, and, as relevant, the Constitution of Southern Sudan;
2. State Police, prisons;
3. Local Government;
4. State information, state publications and state media;
5. Social Welfare including State pensions;
6. The Civil Service at the State level;
7. The State Judiciary and administration of justice at State level including maintenance and organization of State Courts, and subject to national norms and standards, civil and criminal procedure;
8. State Land and State Natural Resources;
9. Cultural matters within the State;
10. Regulation of religious matters subject to the National Constitution and the Peace Agreement;
11. Internal and external borrowing of money on the sole credit of the State within the National macro-economic framework;
12. The establishment, tenure, appointment, and payment of State officers;
13. The management, lease and utilization of lands belonging to the State;
14. The establishment, maintenance and management of reformatory institutions;

15. The establishment, regulation, and provision of health care, including hospitals and other health institutions;
16. Regulation of businesses, trade licenses, working conditions, hours, and holidays within the State;
17. Local works and undertakings;
18. Registration of marriage, divorce, inheritance, births, deaths, adoption and affiliations;
19. Enforcement of State laws;
20. Statutes enacted under the Penal Law power, save for the penalization for the breach of National laws relating to the national competencies;
21. The development, conservation and management of State natural resources and State forestry resources;
22. Primary and secondary schools and education administration in regard thereto;
23. Laws in relation to Agriculture within the State;
24. Airstrips other than international and national airports within civil aviation regulations;
25. Intrastate public transport and roads;
26. Population policy and family planning;
27. Pollution control;
28. State statistics, and State surveys;
29. State referenda;
30. Charities and endowment;
31. Quarrying regulations, (subject to the Agreement on Wealth Sharing);
32. Town and rural planning;
33. State cultural and heritage sites, State libraries, State museums, and other historical sites;

34. Traditional and customary law;
35. State finances;
36. State irrigation and embankments;
37. State Budget;
38. State archives, antiquities, and monuments;
39. Direct and indirect taxation within the State in order to raise revenue for the State;
40. State public utilities;
41. Vehicle licensing;
42. Fire fighting and ambulance services;
43. Recreation and sport within the State;
44. Firearms Licenses;
45. Flag and emblem.

SCHEDULE D: CONCURRENT POWERS

The National Government, the Government of Southern Sudan and State Governments, shall have legislative and executive competencies on any of the matters listed below during the Interim Period:-

1. Economic and Social Development in Southern Sudan;
2. Legal and other professions and their associations;
3. Tertiary education, education policy and scientific research;
4. Health policy;
5. Urban development, planning and housing;
6. Trade, commerce, Industry and industrial development;
7. Delivery of public services;

8. Banking and insurance;
9. Bankruptcy and insolvency;
10. Manufacturing licenses;
11. Airports only with respect to the GOSS in accordance with Civil Aviation standards and regulations;
12. River transport;
13. Disaster preparedness, management and relief and epidemics control;
14. Traffic regulations;
15. Electricity generation and water and waste management;
16. Information, Publications, Media, Broadcasting and Telecommunications;
17. Environmental management, conservation and protection;
18. Relief, Repatriation, Resettlement, Rehabilitation and Reconstruction;
19. Without prejudice to the National Regulation, and in the case of Southern States, the regulation of Southern Sudan Government, the initiation, negotiation and conclusion of International and Regional Agreements on culture, sports, trade, investment, credit, loans, grants and technical assistance with foreign governments and foreign non-governmental organizations;
20. Financial and economic policies and planning;
21. Women's empowerment;
22. Gender policy;
23. Animal and livestock control, animal diseases, pastures and veterinary services;
24. Consumer safety and protection;
25. Residual powers, subject to schedule E;
26. Mother, Child protection and care;
27. Water Resources other than interstate waters;

28. Notwithstanding Schedules A, B and C, such matters relating to taxation, royalties and economic planning as specified in the Agreement on Wealth Sharing;
29. Southern Sudan and State Courts responsible for enforcing or applying National laws;
30. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing as a matter or matters in regard to which the Government of Southern Sudan is accorded concurrent authority;
31. Human and animal drug quality control.

SCHEDULE E: RESIDUAL POWERS

The residual powers shall be dealt with according to its nature (e.g., if the power pertains to a national matter, requires a national standard, or is a matter which cannot be regulated by a single state, it shall be exercised by the National Government. If the power pertains to a matter that is usually exercised by the state or local government, it shall be exercised by the state). Where a matter is susceptible to Southern Sudan regulation, in respect of the states of Southern Sudan, it shall be exercised by the Government of Southern Sudan.

SCHEDULE F: Resolution of Conflicts in Respect of Concurrent Powers:

If there is a contradiction between the provisions of Southern Sudan law and/or a State law and/or a National law, on the matters referred in Schedule D, the law of the level of government which shall prevail shall be that which most effectively deals with the subject matter of the law, having regard to:-

1. The need to recognize the sovereignty of the Nation while accommodating the autonomy of Southern Sudan or of the States;
2. Whether there is a need for National or Southern Sudan norms and standards;
3. The principle of subsidiarity;
4. The need to promote the welfare of the people and to protect each person's human rights and fundamental freedoms.

AGREEMENT ON WEALTH SHARING DURING THE PRE-INTERIM AND INTERIM PERIOD

Naivasha, Kenya: Wednesday, January 7th, 2004

WHEREAS the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (the Parties) have been conducting negotiations in Naivasha, Kenya, since 6th December, 2003, under the auspices of the IGAD Peace mediated Process; and having taken up the division of wealth in pursuit of a comprehensive agreement, that will ensure a just and durable peace in the Sudan;

NOW RECORD THAT they have reached agreement on Wealth Sharing, covering the division of oil and non-oil revenues, the management of the oil sector, the monetary authority and the reconstruction of the South and other war-affected areas during the Pre-Interim and Interim Period;

THE PARTIES AGREE AND CONFIRM THAT they are determined to build on this important Agreement until a comprehensive peace Agreement is reached. It is within this context, that the Parties agree to continue negotiations on the remaining outstanding issues on the Conflict Areas and Power Sharing and subsequently negotiate a comprehensive ceasefire Agreement and Implementation Modalities in order to achieve a final comprehensive Peace Agreement in the Sudan.

Hon. Idris Mohamed Abdelgadir
For: The Government of the Sudan

Cdr. Nhial Deng Nhial
For: The Sudan People's Liberation Movement/Army

WITNESSED BY: Lt. Gen. Lazaro K. Sumbeiywo (Rtd)
Special Envoy
IGAD Sudan Peace Process and
On behalf of the IGAD Envoys

WEALTH SHARING

1.0 GUIDING PRINCIPLES IN RESPECT OF AN EQUITABLE SHARING OF COMMON WEALTH

1.1 The Parties agree that the guiding principles and provisions below shall be the basis for the comprehensive text on Wealth Sharing.

1.2 The wealth of Sudan shall be shared equitably so as to enable each level of government to discharge its legal and constitutional responsibilities and duties.

1.3 The National Government shall also fulfil its obligation to provide transfers to the Government of Southern Sudan.

1.4 The sharing and allocation of wealth emanating from the resources of the Sudan shall ensure that the quality of life, dignity and living conditions of all the citizens are promoted without discrimination on grounds of gender, race, religion, political affiliation, ethnicity, language, or region. The sharing and allocation of this wealth shall be based on the premise that all parts of Sudan are entitled to development.

1.5 The Parties agree that Southern Sudan faces serious needs to: (i) be able to perform basic government functions, (ii) build up the civil administration, and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan.

1.6 The Parties agree that Nuba Mountains, Southern Blue Nile, Abyei and other war affected areas face serious needs to: (i) be able to perform basic government functions, (ii) establish and build civil administration and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan.

1.7 That, without prejudice to the provisions of paragraph 1.3 herein, Southern Sudan, and those areas in need of construction/reconstruction, shall be brought up to the same average level of socio-economic and public services standard as the Northern states. To achieve these objectives will take time and effort to build up local institutional, human, and economic capacity. For this purpose, two special funds shall be established as provided herein.

1.8 That revenue sharing should reflect a commitment to devolution of power and decentralisation of decision-making in regard to development, service delivery and governance.

1.9 The development of infrastructure, human resources, sustainable economic development and the capacity to meet human needs shall be conducted within a framework of transparent and accountable government.

1.10 That the best known practices in the sustainable utilization and control of natural resources shall be followed.

1.11 This Agreement sets out the respective types of income, revenue, taxes and other sources of wealth to which the various levels of government are entitled.

1.12 The Parties recognize that the National Government, during the Interim Period, will need to mobilize additional national resources.

1.13 There is a limit on how much additional national resources can be mobilized and part of the national needs in a post-conflict Sudan will have to be met by external assistance.

1.14 The National Government shall not withhold an allocation due to a state/region [1] or the Government of Southern Sudan. Any level of Government may initiate proceedings in the Constitutional Court should any other organ or level withhold monies due to it. The National Government shall make transfers to the Government of Southern Sudan based on the principles established.

1.15 In agreeing to these wealth sharing arrangements the Parties signal to the international community that it will have to play a strong and constructive role in providing post-conflict construction/reconstruction assistance to Sudan, especially to Southern Sudan and other war affected and least developed areas.

1.16 The National Government shall assist the Government of Southern Sudan, during the pre-Interim Period, in cooperation with international organizations, to develop and implement a program for capacity enhancement in the South. The highest priority should be public finance and intergovernmental relations, including expenditure management to ensure accountability.

2.0 OWNERSHIP OF LAND AND NATURAL RESOURCES

2.1 Without prejudice to the position of the Parties with respect to ownership of land and subterranean natural resources, including in Southern Sudan, this Agreement is not intended to address the ownership of those resources. The Parties agree to establish a process to resolve this issue.

2.2. The Parties agree that the regulation, management, and the process for the sharing of wealth from subterranean natural resources are addressed below.

2.3. The Parties record that the regulation of land tenure, usage and exercise of rights in land is to be a concurrent competency exercised at the appropriate levels of government.

2.4. Rights in land owned by the Government of Sudan shall be exercised through the appropriate or designated levels of Government.

2.5. The Parties agree that a process be instituted to progressively develop and amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices.

2.6 Without prejudice to the jurisdiction of courts, there shall be established a National Land Commission that shall have the following functions:

2.6.1 Arbitrate between willing contending Parties on claims over land, and sort out such claims.

2.6.2 The party or group making claims in respect of land may make a claim against the relevant government and/or other Parties interested in the land.

2.6.3 The National Land Commission may at its discretion entertain such claims.

2.6.4 The Parties to the arbitration shall be bound by the decision of the National Land Commission on mutual consent and upon registration of the award in a court of law.

2.6.5 The National Land Commission shall apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agree, including principles of equity.

2.6.6 Accept references on request from the relevant government, or in the process of resolving claims, and make recommendations to the appropriate levels of government concerning:

2.6.6.1 Land reform policies;

2.6.6.2 Recognition of customary land rights and/or law.

2.6.7 Assess appropriate land compensation, which need not be limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court.

2.6.8 Advise different levels of government on how to co-ordinate policies on national projects.

2.6.9 Study and record land use practices in areas where natural resource exploitation occurs.

2.6.10 The National Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the National Land Commission shall be set by the legislation constituting it. The Chairperson of the National Land Commission shall be appointed by the Presidency.

2.6.11 The National Land Commission may conduct hearings and formulate its own rules of procedure.

2.6.12 The National Land Commission will have its budget approved by the Presidency and will be accountable to the Presidency for the due performance of its functions.

2.7 In accordance with this Agreement and without prejudice to the jurisdiction of courts, there shall be established a Southern Sudan Land Commission which shall have the following functions:

2.7.1 Arbitrate between willing contending Parties on claims over land, and sort out such claims.

2.7.2 The party or group making claims in respect of land may make a claim against the relevant government and/or other Parties interested in the land.

2.7.3 The Southern Sudan Land Commission may entertain such claims at its discretion.

2.7.4 The Parties to the arbitration shall be bound by the Southern Sudan Land Commission's decision on mutual consent and upon registration of the award in a court of law.

2.7.5 The Southern Sudan Land Commission shall apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agree, including principles of equity.

2.7.6 Accept references on request from the relevant government, or in the process of resolving claims, and make recommendations to the appropriate levels of government concerning:

2.7.6.1 Land reform policies;

2.7.6.2 Recognition of customary land rights and/or law.

2.7.7 Assess appropriate land compensation, which need not be limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court.

2.7.8 Advise different levels of government on how to co-ordinate policies on GOSS projects.

2.7.9 Study and record land use practices in areas where natural resource exploitation occurs.

2.7.10 The Southern Sudan Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the Southern Sudan Land Commission shall be set by the legislation constituting it. The Chairperson of the Southern Sudan Land Commission shall be appointed by the President of the Government of Southern Sudan.

2.7.11 The Southern Sudan Land Commission may conduct hearings and formulate its own rules of procedure.

2.7.12 The Southern Sudan Land Commission shall have its budget approved by the Government of Southern Sudan and shall be accountable to the President of the Government of Southern Sudan for the due performance of its functions.

2.8 The National Land Commission and the Southern Sudan Land Commission shall co-operate and co-ordinate their activities so as to use their resources efficiently. Without limiting the matters of coordination, the National Land Commission and the Southern Sudan Land Commission may agree:

- a) to exchange information and decisions of each Commission;
- b) that certain functions of the National Land Commission, including collection of data and research, may be carried out through the Southern Sudan Land Commission;
- c) on the way in which any conflict between the findings or recommendations of each Commission may be resolved.

2.9 In the case of conflict between the findings or recommendations of the National Land Commission and the Southern Sudan Land Commission, which cannot be resolved by agreement, the two Commissions shall reconcile their positions. Failure to reconcile, the matter shall be referred to the Constitutional Court.

3.0 OIL RESOURCES

A. Guiding Principles for the management and development of the petroleum sector

3.1 The Parties agree that the basis for an agreed and definitive framework for the management of the development of the petroleum sector during the Interim Period shall include the following:

3.1.1 Sustainable utilization of oil as a non-renewable natural resource consistent with:

- a) the national interest and the public good;
- b) the interest of the affected states/regions;
- c) the interests of the local population in affected areas;
- d) national environmental policies, biodiversity conservation guidelines, and cultural heritage protection principles.

3.1.2 Empowerment of the appropriate levels of government to develop and manage, in consultation with the relevant communities, the various stages of oil production within the overall framework for the management of petroleum development during the Interim Period.

3.1.3 Give due attention to enabling policy environment for the flow of foreign direct investment by reducing risks associated with uncertainties regarding the outcome of the referendum on self-determination at the end of the Interim Period.

3.1.4 A stable macroeconomic environment that emphasizes stability of the petroleum sector.

3.1.5 Persons enjoying rights in land shall be consulted and their views shall duly be taken into account in respect of decisions to develop subterranean natural resources from the area in which they have rights, and shall share in the benefits of that development.

3.1.6 Persons enjoying rights in land are entitled to compensation on just terms arising from acquisition or development of land for the extraction of subterranean natural resources from the area in respect of which they have rights.

3.1.7 The communities in whose areas development of subterranean natural resources occurs have the right to participate, through their respective states/regions, in the negotiation of contracts for the development of those resources.

3.1.8 Regardless of the contention over the ownership of land and associated natural resources, the Parties agree on a framework for the regulation and management of petroleum development in Sudan during the Interim Period.

B. National Petroleum Commission (NPC)

3.2 The Parties agree that an independent National Petroleum Commission (NPC) shall be established during the Pre-Interim Period and its decisions shall be by consensus.

3.3 Taking into account the provisions elsewhere in this Agreement, the NPC shall be constituted as follows:

- a) The President of the Republic and President of the GOSS as Co-chairs and permanent members;
- b) Four (4) permanent members representing the National Government;
- c) Four (4) permanent members representing the GOSS; and
- d) Not more than three (3) representatives of an oil producing State/Region in which petroleum development is being considered, non-permanent members.

3.4 The NPC shall have the following functions:

3.4.1 Formulate public policies and guidelines in relation to the development and management of the petroleum sector consistent with paragraph 3.1.1.

3.4.2 Monitor and assess the implementation of those policies to ensure that they work in the best interests of the people of Sudan.

3.4.3 Develop strategies and programs for the petroleum sector.

3.4.4 Negotiate and approve all oil contracts for the exploration and development of oil in the Sudan, and ensure they are consistent with the NPC's principles, policies and guidelines.

3.4.5 Develop its internal regulations and procedures.

3.5 In performing the functions referred to in paragraph 3.4 above, the NPC shall take into account relevant considerations, including the following:

3.5.1 The extent to which the contract provides benefits to local communities affected by the development.

3.5.2 The extent to which the views of the state/region and the affected groups are incorporated in the proposed contracts.

3.5.3 If the NPC decides to approve the contract, persons holding rights in land who are aggrieved by the decision shall seek relief through arbitration or in a court of law.

3.5.4 If the non-permanent members of the NPC representing the oil producing State/Region collectively disagree with the decision of the NPC to approve the contract related to their State/Region, the National Minister of Petroleum shall not sign the contract and shall refer the matter to the Council of States/Regions. If the Council of States/Regions rejects the objection by two-thirds majority, the National Minister of Petroleum shall sign the contract. If the Council of States/Regions does not reject the objection by two-thirds majority within 24 sitting days of receiving it, the Council of States/Regions shall remit the objection within that period and by two-thirds majority to a mechanism established by the Council to arbitrate on the objection. The arbitration decision shall be made within six calendar months of referral to arbitration. The arbitration decision shall be binding.

3.5.5. If the NPC approves the contract the National Minister of Petroleum shall sign the contract on behalf of the Government of the Sudan.

3.5.6 In performing functions 3.4.1, 3.4.2, 3.4.3, and 3.4.5 of paragraph 3.4, the NPC shall include only its permanent members.

3.5.7 In performing function 3.4.4 of paragraph 3.4, the NPC shall include its permanent members and representatives of oil producing State/Region in which contracts for the exploration and development of the petroleum are being negotiated and considered for approval.

4.0 EXISTING OIL CONTRACTS

4.1 The SPLM shall appoint a limited number of representatives to have access to all existing oil contracts. The representatives shall have the right to engage technical experts. All those who have access to the contracts will sign confidentiality agreements.

4.2 Contracts shall not be subject to re-negotiation.

4.3 If contracts are deemed to have fundamental social and environmental problems the Government of Sudan will implement necessary remedial measures.

4.4 The Parties agree that "existing oil contracts" mean contracts signed before the date of signature of the comprehensive Peace Agreement.

4.5 Persons whose rights have been violated by oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused.

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5.0 GUIDING PRINCIPLES FOR SHARING OIL REVENUE

5.1 The Parties agree that the basis for an agreed and definitive framework for the sharing of the wealth emanating from oil resources of Southern Sudan shall include the following:

5.1.1 The framework for sharing wealth from the extraction of natural resources should balance the needs for national development and reconstruction of Southern Sudan.

5.2 The Parties agree that a formula for sharing the revenue from oil resources shall be as set forth in this Agreement.

5.3 For the purposes of this Agreement 'Net revenue from oil' shall be the sum of the net revenue (i) from exports of government oil and (ii) from deliveries of government oil to the refineries. Exports shall be valued at the actual Free on Board (FOB) export prices less the charges to deliver the oil to any export destination including pipeline and management charges. Oil delivered to the refinery shall be valued at the average FOB export prices during the last calendar month in which there was an export sale less the charges that would have been incurred to deliver the oil to any export destination including pipeline and management charges.

5.4 An Oil Revenue Stabilization Account shall be established from government oil net revenue derived from actual export sales above an agreed benchmark price. The benchmark price will be established annually as part of the national budget reflecting changing economic circumstances.

5.5 The Parties agree that at least two percent (2%) of oil revenue shall be allocated to the oil producing states/regions in proportion to output produced in such states/regions.

5.6 After the payment to the Oil Revenue Stabilization Account and to the oil producing states/regions, fifty percent (50%) of net oil revenue derived from oil producing wells in Southern Sudan shall be allocated to the Government of Southern Sudan (GOSS) as of the beginning of the Pre-Interim Period and the remaining fifty percent (50%) to the National Government and States in Northern Sudan.

5.7 A Future Generation Fund shall be established once national oil production reaches two (2) million barrels per day. This production criterion may, as part of the National Government's normal budget process, be reduced down to one (1) million barrels per day.

5.8 The Parties agree that all funds/special accounts referred to in this Agreement and future accounts shall be on-budget operations.

6 SHARING OF NON-OIL REVENUE

6.1 The National Government shall be entitled to legislate, raise and collect the below-listed taxes and to collect revenue from these sources:

6.1.1 National Personal Income Tax;

6.1.2 Corporate or Business Profit Tax;

6.1.3 Customs Duties and import taxes; and

6.1.4 Sea-ports and Airports Revenue;

6.1.5 Service charges;

6.1.6 Oil revenues as set out herein;

6.1.7 National Government Enterprises and projects;

6.1.8 VAT or GST or other retail taxes on goods and services;

6.1.9 Excise Tax;

6.1.10 Any other tax as agreed upon in these negotiations;

- 6.1.11 Loans, including borrowing from the Central Bank and the public.
- 6.2 The Government of Southern Sudan shall be entitled to revenue from the following sources and to raise and collect the below-listed taxes:
- 6.2.1 The National revenue allocation to the Government of Southern Sudan and States/Regions from the National Revenue Fund as set forth in section 7.0 of this Agreement;
- 6.2.2 Revenue from any of the sources listed as state/region revenue sources referred to in paragraph 6.3 herein;
- 6.2.3 The Southern Sudan Reconstruction and Development Fund (SSRDF);
- 6.2.4 Oil revenues as is set out in this Agreement;
- 6.2.5 Southern Sudan Government Taxes, which do not encroach on the exclusive National Government taxing powers or which are contemplated in the Power Sharing Protocol;
- 6.2.6 Service charges of the Government of Southern Sudan;
- 6.2.7 Government of Southern Sudan enterprises and projects;
- 6.2.8 Grants in Aid and Foreign Aid;
- 6.2.9 Taxes and levies on small and medium business;
- 6.2.10 Excise taxes on goods within the region deemed to be luxury consumables;
- 6.2.11 Southern Sudan Personal Income Tax;
- 6.2.12 Any other taxes as may be agreed to from time to time;
- 6.2.13 Loans and Borrowing in accordance with the Monetary Policy, Banking, Currency and Borrowing sections of this Agreement.
- 6.3 The states/regions shall be entitled to raise and collect the below-listed taxes and revenue from the below listed sources:
- 6.3.1 State/Regional Land and property tax and royalties;
- 6.3.2 Service charges for state/regional services;
- 6.3.3 Licences;
- 6.3.4 State/Regional Personal Income Tax;
- 6.3.5 Levies on Tourism;
- 6.3.6 State/Regional share of oil Revenues as is set out in paragraphs 5.5 and 5.6 of this Agreement;
- 6.3.7 State/Regional Government projects and state/regional nature parks;
- 6.3.8 Stamp duties;
- 6.3.9 Agricultural Taxes;
- 6.3.10 Grants in Aid and Foreign Aid through the National Government and the GOSS;

6.3.11 Excise taxes;

6.3.12 Border Trade charges or levies in accordance with National Legislation;

6.3.13 Other state/region taxes which do not encroach on national or Southern Sudan Government taxes;

6.3.14 Any other tax as may be agreed to from time to time; and

6.3.15 Loans and borrowing in accordance with the Monetary Policy, Banking, Currency and Borrowing sections of this Agreement.

7 EQUALIZATION AND ALLOCATION TO THE NATIONAL, SOUTHERN SUDAN AND STATE / REGIONAL LEVELS OF GOVERNMENT IN RESPECT OF REVENUE COLLECTED NATIONALLY

7.1. All revenues collected nationally for or by the National Government shall be pooled in a National Revenue Fund (NRF) administered by the National Treasury. Such Fund shall embrace all accounts and sub-funds into which monies due to the Government are collected, reported or deposited.

7.2 All the revenues and expenditures of the Government will be on-budget operations and made public.

7.3 notwithstanding the provisions of paragraphs 5.6, 7.1 and 13.1, the National Government shall allocate fifty percent (50%) of the national non-oil revenue collected in Southern Sudan, as provided for herein under paragraph 6.1 above, to the GOSS to partially meet the development cost and other activities during the Interim Period. The Parties agree to review this arrangement, at mid-term of the Interim Period, with the view of the National Government allocating additional resources to the Government of Southern Sudan.

7.4 As a result of the allocation arrangements in paragraph 7.3 above, the Parties agree to appeal to the international and donor community to help the Government of Southern Sudan by providing post-conflict reconstruction assistance especially at the beginning of the transition.

7.5 The states/regions and the Government of Southern Sudan shall retain and dispose of such other income raised and collected under their own taxing powers.

8. FISCAL AND FINANCIAL ALLOCATION AND MONITORING COMMISSION (FFAMC)

8.1 To ensure transparency and fairness both in regard to the allocation of nationally collected funds to the states/regions and the Government of Southern Sudan, a Fiscal and Financial Allocation and Monitoring Commission shall be established. This body shall be comprised of experts nominated by the various states/regions, the Government of Southern Sudan and the National Government. Decision making arrangements of the FFAMC shall be as agreed to by the Parties.

8.2 The FFAMC shall undertake the following duties and responsibilities:

8.2.1 Monitor and ensure that equalization grants from the National Revenue Fund are promptly transferred to respective levels of government;

8.2.2 Ensure appropriate utilization and sharing of financial resources;

8.2.3 Ensure that resources allocated to war affected areas are transferred in accordance with agreed upon formulae; and

8.2.4 Ensure transparency and fairness in the allocation of funds to the GOSS and states/regions according to established ratios or percentages stipulated in this Agreement.

8.3. The FFAMC shall be composed of representatives from the National Government and the Government of Southern Sudan and States/Regions as follows:

- a) Three Representatives of the National Government;
- b) Three Representatives of the Government of Southern Sudan (GOSS);
- c) All Finance Ministers in all States/Regions of Sudan

8.4 The Chairperson of the FFAMC shall be appointed by the Presidency.

8.5 The FFAMC shall work out its own rules and procedures, which shall be approved by the Presidency.

9.0 INTERSTATE COMMERCE

9.1 There shall be no legal impediment to interstate commerce or the flow of goods and services, capital, or labour between the states/regions.

10.0 GOVERNMENT LIABILITIES

10.1 Any debts/liabilities incurred by any level of government shall be the responsibility of that level of government.

11.0 DIVISION OF GOVERNMENT ASSETS

11.1 There shall be a fair and equitable division of government assets. An asset shall in the first instance be allocated to the level of government responsible for the function in respect of which the asset is related (e.g. school buildings to the level of government responsible for education). In the event of a dispute, the Parties agree that such dispute shall be referred to a committee comprising a representative of each of the Parties involved in the dispute and a mutually agreed expert.

12.0 ACCOUNTING STANDARDS AND PROCEDURES AND FISCAL ACCOUNTABILITY

12.1 All levels of government shall comply with generally accepted accounting standards and procedures. There shall be institutions at the state/region, Government of Southern Sudan and National levels to ensure that funds are distributed according to the agreed government budget, and properly expended having regard to value for money.

12.2 To ensure the effective operation of such institutions, there shall be independent National and Southern Sudan Audit Chambers, which shall have responsibility for the functions referred to above. The National Audit Chamber shall set auditing standards. Appointments to the National Audit Chamber shall be made by the Presidency and confirmed by the National Assembly.

12.3 All levels of government shall hold all income and revenue received by it in public accounts and subject to public scrutiny and accountability.

13 FINANCING THE TRANSITION

13.1 The National Government shall assist, during the Pre-Interim Period to the extent that it is able, the SPLM/A in the establishment of the new transitional governments at the State/Regional level and the Government of Southern Sudan. The Government of Southern Sudan shall meet the direct costs of establishing these levels of government, with the assistance from the international community.

13.2 Upon signature of a comprehensive Peace Agreement, the Parties shall establish a Joint National Transition Team to undertake the following:

13.2.1 Prepare budget estimates for the establishment of Governments at the National, Southern Sudan, and state/regional levels as provided for by the Peace Agreement;

13.2.2 Organize and prepare relevant documents for the donor conference, including the agenda of the conference, letters of invitations and be a secretariat to the donors' conference;

13.2.3 Develop fund raising strategies, and assist in the identification of potential sources of funds necessary for a smooth and timely commencement of the Interim Period.

14.0 MONETARY POLICY, BANKING, CURRENCY AND BORROWING

A. MONETARY POLICY, BANKING AND CURRENCY

14.1. The Parties agree, consistent with the Machakos Protocol of 20th July 2002, to have a dual banking system in Sudan during the Interim Period. An Islamic banking system shall operate in Northern Sudan and conventional banking system shall operate in Southern Sudan.

14.2. The Parties agree that conventional banking facilities are urgently needed in Southern Sudan. The Parties therefore agree to establish, during the Pre-Interim period, the Bank of Southern Sudan (BOSS) as a branch of Central Bank of Sudan (CBOS) consistent with paragraph 14.1 above.

14.3. The Parties agree to restructure, during the Pre-Interim Period, the CBOS so as to reflect the duality of the banking system in Sudan. The CBOS shall therefore use and develop two sets of banking instruments, one Islamic and the other Conventional, to regulate and supervise the implementation of a single monetary policy through: (i) an Islamic financing window in Northern Sudan under a deputy governor of CBOS using Islamic financing instruments to implement the national monetary policy in Northern Sudan; and (ii) the Bank of Southern Sudan (BOSS), headed by a deputy governor of CBOS, to manage the conventional window using conventional financing instruments in implementing the same national monetary policy in Southern Sudan.

14.4. The CBOS shall be responsible for the conduct of monetary policy. All banking institutions shall be subject to the rules and regulations set by the CBOS.

14.5. The primary responsibility and mandate of the CBOS shall be ensuring price stability, maintaining stable exchange rate, sound banking system and issuance of currency. The monetary policy shall be carried out accordingly relying primarily on market-based instruments instead of administrative allocation of credit.

14.6. The CBOS shall be fully independent in its pursuit of monetary policy.

14.7. The Governor of CBOS and his/her two deputies shall be appointed by the Presidency. The Governor of CBOS shall appoint in consultation with his/her two deputies other senior officers within the Central Bank.

14.8. The Parties agree to establish, during the Pre-Interim Period, an independent Board of Directors (BOD). Decisions of BOD on matters that may affect adversely the interest of either Party to this Agreement shall be by consensus. The BOD shall be responsible to the Presidency on the accountability of the CBOS and shall consist of nine (9) members as follows:

- a) Governor of CBOS (Chairperson) and his/her two deputies and;
- b) Six highly qualified Sudanese to be appointed by the Presidency taking into account the agreed formula in the Power Sharing Protocol for the institutions of the National Government.

14.9 The CBOS shall adopt a program to issue a new currency as soon as is practical during the Interim Period. The design of the new currency shall reflect the cultural diversity of Sudan. Until a new currency has been issued with the approval of the Parties on the recommendations of the CBOS, the circulating currencies in Southern Sudan shall be recognised.

14.10 The BOSS shall be responsible for chartering and supervising financial institutions in Southern Sudan.

14.11 All financial institutions shall be subject to internationally recognized regulatory and prudential standards for Islamic and conventional finance, as set by the CBOS.

14.12 All financial institutions shall be bound to implement monetary policies set by the CBOS.

B. BORROWING:

14.13. The Government of Southern Sudan and the states/regions may borrow money based on their respective credit worthiness. Neither the National Government nor the CBOS shall be required or expected to guarantee borrowing by sub-national governments.

14.14 The GOSS and all sub-national governments shall report financial and fiscal data to the relevant National Government bodies for statistical purposes.

14.15 The Government of Southern Sudan and the states/regions may borrow money from foreign sources based on their respective credit worthiness.

14.16 Foreign borrowing by all sub-national governments shall be done in a manner that does not undermine national macroeconomic policies and shall be consistent with the objective of maintaining external financial viability. All sub-national governments' foreign borrowing transactions shall conform to the CBOS specifications.

15 RECONSTRUCTION AND DEVELOPMENT FUNDS

A. Southern Sudan Reconstruction and Development Fund (SSRDF)

15.1. There shall be established a Southern Sudan Reconstruction and Development Fund (SSRDF) to solicit, raise and collect funds from domestic and international donors and disburse such funds for the reconstruction and rehabilitation of the infrastructure of the South, for the resettlement and reintegration of internally and externally displaced persons, and to address past imbalances in regional development and infrastructure.

15.2. A monitoring and evaluation system shall be established to ensure accountability, transparency, efficiency, equity and fairness in the utilization of resources.

15.3. The Government of Southern Sudan shall be responsible for expenditure from the fund and shall be entitled to raise additional funds by way of donation from foreign States, multilateral organizations, or other bodies for the purposes of the reconstruction and development of the southern states/regions. The Fund shall be transparently administered and professionally managed subject to an oversight committee appointed by the Government of Southern Sudan but having on it a representative of the National Ministry of Finance and of the National Audit Chamber.

B. National Reconstruction and Development Fund (NRDF)

15.4. There shall be established by the Treasury, a National Reconstruction and Development Fund (NRDF) having the mission of developing the war affected areas and least developed areas outside Southern Sudan and a steering committee with appropriate representation from such areas. A member of the Southern Sudan Ministry of Finance shall be a member of the Steering Committee. A report on the income, expenditure and the projects supported by the fund shall be placed before the National Assembly and the Council of States/Regions, which shall exercise oversight over the Fund.

C. Multi-Donor Trust Funds

15.5. The Parties recognize the need to establish, during the Pre-Interim Period, two Multi-Donor Trust Funds (MDTFs), one for the National Government and one for the Government of Southern Sudan to support urgent recurrent and investment budget costs under clearly stated criteria of eligible financing components. The Trust Funds shall be operational for the Pre-Interim Period, and shall thereafter be transformed into (i) one MDTF dedicated to the Southern Sudan Reconstruction and Development Fund (the "SRRDF"); and (ii) one MDTF dedicated to the National Reconstruction and Development Fund (the "NRDF").

15.6. The MDTFs shall commence immediately to support, among other things, priority areas of capacity building and institutional strengthening and quick start/impact programs identified by the Parties.

15.7. Both funds shall support urgent recurrent and investment budget costs under clearly stated criteria of eligible financing components, and both shall have the right to solicit, raise and collect funds from foreign donors.

15.8. All trust funds shall report the flow of funds to the CBOS.

15.9. To ensure proper accountability for funds disbursed through the MDTFs the Parties shall cause audits to be performed on funds used within six (6) months of the close of the recipient's financial year.

15.10. During the Pre-Interim as well as the Interim Period, funds may be channeled directly to finance activities beneficial to the National Government or the GOSS as the case may be.

15.11. During the Pre-Interim Period, the flow of foreign funds shall be through special accounts established in the Bank of Sudan for areas outside Southern Sudan and for Southern Sudan in a commercial bank in Southern Sudan until the Bank of Southern Sudan is established and operational. For the Interim Period: (i) the flow of foreign funds for the National Fund will go through the CBOS; and (ii) for the Southern Fund, the foreign funds will be disbursed through a special account at the Bank of Southern Sudan designated for the Government of Southern Sudan; or through arrangements as specified in the MDTF.

PROTOCOL

Between

THE GOVERNMENT OF THE SUDAN (GOS)

And

**THE SUDAN PEOPLE'S LIBERATION
MOVEMENT/ARMY (SPLM/A)**

On

THE RESOLUTION OF ABYEI CONFLICT

Naivasha, Kenya May 26th, 2004

1. PRINCIPLES OF AGREEMENT ON ABYEI*

1.1 In General

- 1.1.1 Abyei is a bridge between the north and the south, linking the people of Sudan;
- 1.1.2 The territory is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905;
- 1.1.3 The Misseriya and other nomadic peoples retain their traditional rights to graze cattle and move across the territory of Abyei.

1.2 Interim Period:

Upon signing the peace agreement, Abyei will be accorded special administrative status, in which:

- 1.2.1 Residents of Abyei will be citizens of both Western Kordofan and Bahr el Ghazal, with representation in the legislatures of both states;
- 1.2.2 Abyei will be administered by a local Executive Council, elected by the residents of Abyei. Pending the election of the Executive Council, its initial members will be appointed by the Presidency;
- 1.2.3 Net oil revenues from Abyei will be divided six ways during the Interim Period: the National Government (50 percent); the Government of Southern Sudan (42 percent); Bahr el Ghazal region (2 percent); Western Kordofan (2 percent); locally with the Ngok Dinka (2 percent); and locally with the Misseriya people (2 percent);

* This is the full text of the proposal entitled "Principles of Agreement on Abyei," presented by US Special Envoy Senator John Danforth to H.E. First Vice President Ali Osman Mohamed Taha and SPLM/A Chairman Dr. John Garang on the 19th March, 2004. The Parties hereby declare to adopt these Principles as the basis for the resolution of Abyei Conflict.

- 1.2.4 The National Government will provide Abyei with assistance to improve the lives of the peoples of Abyei, including urbanization and development projects;
- 1.2.5 International monitors will be deployed to Abyei to ensure full implementation of these agreements.

1.3 End of Interim Period:

Simultaneously with the referendum for southern Sudan, the residents of Abyei will cast a separate ballot. The proposition voted on in the separate ballot will present the residents of Abyei with the following choices, irrespective of the results of the southern referendum:

- a. That Abyei retain its special administrative status in the north;
- b. That Abyei be part of Bahr el Ghazal.

- 1.4 The January 1, 1956 line between north and south will be inviolate, except as agreed above.

2. ADMINISTRATIVE STRUCTURE:

- 2.1 Upon signing the Peace Agreement, Abyei Area shall be accorded special administrative status under the institution of the Presidency.
- 2.2 Abyei area shall be administered by a local Executive Council, elected by the residents of Abyei. Pending the election of the Executive Council, its initial members shall be appointed by the Presidency.

- 2.3 The administration of the Abyei Area shall be representative and inclusive of all the residents of the area.
- 2.4 The Executive Council shall be composed of the Chief Administrator, his/her Deputy and not more than five heads of departments. Prior to elections, the Chief Administrator and his/her Deputy shall be appointed by the Presidency. The Chief Administrator shall make recommendations to the Presidency regarding the appointments of the heads of departments.
- 2.5 The Executive Council, in exercise of its executive powers, shall:
 - 2.5.1 render necessary services;
 - 2.5.2 supervise and promote security and stability in the area;
 - 2.5.3 Propose development and urbanization projects for the area to both the Abyei Area Council and to the Presidency;
 - 2.5.4 Present to the National Government proposals regarding the provision of assistance to improve the lives of the peoples of Abyei, including urbanization and development;
- 2.6 The Presidency, upon the recommendation of the Executive Council, shall determine the executive, legislative and financial powers and competencies of the special status of Abyei Area, having regard to this protocol, other protocols, agreements, and the Comprehensive Peace Agreement.

- 2.7 In view of the special status of Abyei Area, the Presidency shall apply to the Judiciary to establish courts for Abyei Area as deemed appropriate.

3. FINANCIAL RESOURCES:

- 3.1 Without prejudice to the provisions of the Wealth Sharing Agreement, the net-oil revenue from the oil produced in Abyei Area shall be shared during the Interim Period as follows:

- 3.1.1 Fifty Percent (50%) to the National Government;
- 3.1.2 Forty Two Percent (42%) to the Government of Southern Sudan;
- 3.1.3 Two Percent (2%) to Bahr el Ghazal Region;
- 3.1.4 Two Percent (2%) to Western Kordofan;
- 3.1.5 Two Percent (2%) locally with the Ngok Dinka;
- 3.1.6 Two Percent (2%) locally with the Misseriya people.

- 3.2 In addition to the above financial resources, Abyei Area shall be entitled to:

- 3.2.1 The area share of the national revenue as per the Wealth Sharing Agreement;
- 3.2.2 The revenues raised in the Abyei Area from Income Tax and other taxes and levies;
- 3.2.3 The share of the Area in the National Reconstruction and Development Fund;
- 3.2.4 An equitable share of Southern Sudan Development and Reconstruction Fund;
- 3.2.5 Allocations from the National Government to cover the cost of establishment of the new administration, its running and provision of services;
- 3.2.6 Donations and grants.

- 3.3 There shall be established, under the Executive Council, Abyei Resettlement, Construction and Development Fund to handle relief, repatriation, resettlement, reintegration, rehabilitation and reconstruction programmes in the Area. The Fund may establish specialized agencies.
- 3.4 The National Government shall appeal to the international and donor community to facilitate the return and resettlement of the residents of Abyei Area.
- 3.5 The financial resources due to Abyei Area as provided in section 3 herein shall be deposited in special accounts, acceptable to the Presidency, from which the administration of the Area shall make withdrawals.

4. PUBLIC PARTICIPATION:

- 4.1 There shall be established Abyei Area Council comprised of not more than twenty members.
- 4.2 Prior to elections, the Presidency shall appoint the members of the Abyei Area Council.
- 4.3 The Abyei Area Council shall:
 - 4.3.1 Issue local enactments within the powers of local government and on customary matters;
 - 4.3.2 Approve the budget of the Area;
 - 4.3.3 Adopt reconstruction, development and urbanization plans for the Area;
 - 4.3.4 If necessary, recommend to the Presidency the relief of the Chief Administrator or his/her Deputy;
 - 4.3.5 Participate in the promotion of reconciliation efforts in the Area.

5. DETERMINATION OF GEOGRAPHIC BOUNDARIES:

- 5.1 There shall be established by the Presidency, Abyei Boundaries Commission (ABC) to define and demarcate the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905, referred to herein as Abyei Area.
- 5.2 The composition and timeframe of the Abyei Boundaries Commission (ABC) shall be determined by the Presidency. However, the Commission shall include, *inter alia*, experts, representatives of the local communities and the local administration. The Commission shall finish its work within the first two years of the Interim Period.
- 5.3 The Abyei Boundaries Commission (ABC) shall present its final report to the Presidency as soon as it is ready. Upon presentation of the final report, the Presidency shall take necessary action to put the special administrative status of Abyei Area into immediate effect.

6. RESIDENTS OF THE AREA:

- 6.1 The residents of Abyei Area shall be:
 - (a) The Members of Ngok Dinka community and other Sudanese residing in the area;
 - (b) The criteria of residence shall be worked out by the Abyei Referendum Commission.
- 6.2 Residents of Abyei shall be citizens of both Western Kordofan and Bahr el Ghazal with representation in the legislatures of both States as determined by the National Electoral Commission. However, prior to elections, the Presidency shall determine such representation.

7. SECURITY ARRANGEMENTS:

- 7.1 There shall be established Abyei Area Security Committee, chaired by the Chief Administrator, and shall comprise of the Deputy Chief Administrator, the Army Commander, the Police Chief, and the representative of the Security Organ.
- 7.2 Without prejudice to the Agreement on Security Arrangements, the two Parties shall, through the Interim Period form and deploy one joint battalion in the Area.
- 7.3 International monitors, as shall be agreed in the comprehensive Cease-fire Agreement shall also be deployed in the Area through the Interim Period.
- 7.4 International monitors shall be deployed to Abyei to ensure full implementation of these Agreements.

8. ABYEI REFERENDUM COMMISSION

- 8.1 There shall be established by the Presidency an Abyei Referendum Commission to conduct Abyei referendum simultaneously with the referendum of Southern Sudan. The composition of the Commission shall be determined by the Presidency.
- 8.2 The residents of Abyei shall cast a separate ballot. The proposition voted on in the separate ballot shall present residents of Abyei with the following choices; irrespective of the results of the Southern referendum:

- a. That Abyei retain its special administrative status in the north;
 - b. That Abyei be part of Bahr el Ghazal.
- 8.3 The January 1, 1956 line between north and south shall be inviolate, except as agreed above.

9. RECONCILIATION PROCESS

Upon signing the Comprehensive Peace Agreement, the Presidency shall, as a matter of urgency, start peace and reconciliation process for Abyei that shall work for harmony and peaceful co-existence in the Area.

PROTOCOL

Between

**THE GOVERNMENT OF SUDAN
(GOS)**

AND

**THE SUDAN PEOPLE'S LIBERATION
MOVEMENT (SPLM)**

ON

**THE RESOLUTION OF CONFLICT IN
SOUTHERN KORDOFAN/NUBA MOUNTAINS
AND BLUE NILE STATES**

Naivasha, Kenya, 26TH May, 2004

PREAMBLE:-

RECOGNIZING that the conclusion of the comprehensive peace settlement that the Sudanese people are longing for requires solving the problems in **Southern Kordofan/Nuba Mountains¹** and Blue Nile States as a model for solving problems throughout the country; and

REAFFIRMING that citizenship shall be the basis for equal rights and duties for all Sudanese citizens regardless of their ethnicity or religion; and

UNDERLINING the importance of recognizing the cultural and social diversity of the Sudan as a source of strength and unity; and

EMPHASIZING equality, fairness, economic development, social welfare and stability as overarching goals of the Sudanese people in general and the population of the conflict affected areas in particular;

NOW THEREFORE, the Parties hereby agree as follows:-

1. General Principles:

The Parties agree on the following, as the basis for political, administrative, economic and social solution to the conflict in Southern Kordofan/Nuba Mountains and Blue Nile:

¹ The name of the State shall be settled before the conclusion of the Peace Agreement by a committee representing the State formed by the two Parties.

- 1.1. Human rights and fundamental freedoms shall be guaranteed to all individuals in the State as prescribed in the Interim National Constitution;
- 1.2. The diverse cultural heritage and local languages of the population of the State shall be developed and protected;
- 1.3. Development of human resources and infrastructure shall be the main goal of the State. It shall be conducted to meet human needs in accordance with the best-known practices of sustainable development within a transparent and accountable framework.

2. Definition of the Two Areas:

- 2.1. The boundaries of Southern Kordofan/Nuba Mountains State shall be the same boundaries of former Southern Kordofan Province when Greater Kordofan was sub-divided into two provinces.
- 2.2. For the purpose of this Protocol, Blue Nile State shall be understood as referring to the presently existing Blue Nile State.

3. Popular Consultation:

The Government of Sudan and the Sudan People's Liberation Movement (the Parties), committed to reaching a just, fair and comprehensive peace agreement to end the war in Southern Kordofan/Nuba Mountains and Blue Nile States, agree on the following:-

- 3.1. Popular consultation is a democratic right and mechanism to ascertain the views of the people of Southern Kordofan/Nuba Mountains and Blue Nile States on the comprehensive agreement reached by the Government of Sudan and the Sudan People's Liberation Movement.
- 3.2. That this comprehensive agreement shall be subjected to the will of the people of the two States through their respective democratically elected legislatures.
- 3.3. That the legislatures of the two States shall each establish a Parliamentary Assessment and Evaluation Commission to assess and evaluate the implementation of the agreement in each State. The two Commissions shall submit their reports to the legislatures of the two States by the fourth year of the signing of the comprehensive Peace Agreement.
- 3.4. An independent Commission shall be established by the Presidency to assess and evaluate the implementation of the comprehensive Peace Agreement in each of the two States. The Commission shall submit its reports to the National Government and the Governments of the two States who shall use the reports to rectify any procedure that needs to be rectified to ensure faithful implementation of the Agreement.
- 3.5. Once this agreement is endorsed by the people through the legislature of any of the two States as meeting their aspirations, then the agreement becomes the final settlement of the political conflict in that State.

- 3.6. Should any of the legislatures of the two States, after reviewing the Agreement, decide to rectify, within the framework of the Agreement, any shortcomings in the constitutional, political and administrative arrangements of the Agreement, then such legislature shall engage in negotiations with the National Government with the view of rectifying these shortcomings.

4. Structure of the State Government:

- 4.1. The State shall have the following structure:-
 - 4.2. The State Executive, which shall comprise of:-
 - 4.2.1 The State Governor;
 - 4.2.2 The State Council of Ministers; and
 - 4.2.3 Local Governments.
- 4.3. The State Legislature (SL).
- 4.4. The State Judiciary.

5. The State Executive:

- 5.1. The Governor of the State shall be directly elected by the registered voters of the State in a public adult suffrage.
- 5.2. The Governor shall appoint the ministers and the commissioners of the state in accordance with the State Interim Constitution. The State Council of Ministers shall be representative.

- 5.3. The Governor shall, together with the State Council of Ministers, exercise the Executive Powers of the State which shall be in respect of the functional areas listed in Schedules A and B, read together with Schedule C, attached hereto, and in accordance with the State Interim Constitution.
- 5.4. The State Council of Ministers shall be accountable to the Governor and the State Legislature in the performance of their duties.
- 5.5. The State shall have commissioners and elected local councils. The organization and proper functioning of the Local Governments shall be the responsibility of the Government of the State.
- 5.6. There shall be State Security Committee to be chaired by the Governor of the State. The Committee shall include, among others, the Military Commander of the area, his Deputy, the Director of the State Police and Director of the State National Security Branch.
- 5.7. Without prejudice to the provisions of paragraph 5.6 above, the Governor of the State may demand the transfer of the Director of the National Security Branch from the State.
- 5.8. The State Police Service shall adhere to the National standards and regulations as set forth by National Police Service.
- 5.9. Police, Prisons, Wildlife and Fire Brigade Officers shall be recruited by the State Service according to the National standards, trained and commissioned nationally and returned to the State for service. The other ranks shall be locally recruited to serve within the State.

Recruitment and training regulations shall be designed and standardized by the National Police Service.

- 5.10 Without prejudice to the provisions of paragraph 5.9 above, the National Authority may agree with the State Authority to transfer any number of police officers from the State police to the National Police Service whenever necessary.
- 5.11 The State Authority may request the National Authority to transfer to the State any number of police officers to fill any vacancies in the State.

6. The State Legislature:

- 6.1. Members of the State Legislature (SL) shall be elected by the registered voters of the State in accordance with the State Law and in conformity with the general guidelines as set forth by electoral provisions as set forth by the National Electoral Commission.
- 6.2. The State Legislature shall prepare and adopt the State Constitution, provided that it shall conform to the Interim National Constitution.
- 6.3. The Governor of the State shall sign any law duly approved by the State Legislature, failing which, after thirty (30) days it shall be deemed to have been signed into law, unless the Governor has submitted the law to the Constitutional Court for a ruling on its constitutionality. If the Constitutional Court finds the law constitutional, the Governor shall immediately sign such law.

- 6.4. The State Legislature shall legislate for the state within its legislative powers as stipulated in schedule (A) attached herewith.
- 6.5. State laws currently applicable in the State shall continue until new legislation is duly enacted by the SL within its competence.
- 6.6. The State Legislature shall decide its own rules, procedures, and committees, and elect its Speaker and other officers.
- 6.7. The State Legislature may relieve the Governor of the State of his/her functions by a motion supported by two-thirds of its membership.
- 6.8. Members of the State Legislature and the State Executive shall have such immunities as are provided by law.

7. The State Courts:

- 7.1. The structures and powers of the courts of the States shall be subject to the Interim National Constitution.
- 7.2. The State Constitution shall provide for the establishment of such state courts as are necessary.
- 7.3. The State Legislature shall provide for the appointment and dismissal of state appointed judges, subject to the State Constitution and the approval of the National Judicial Service Commission.

- 7.4. The State legislations shall provide for guarantees for the independence and impartiality of the State judiciary and ensures that state judges shall not be subject to political or other interference.
- 7.5. The state courts shall have civil and criminal jurisdiction in respect of State and National Laws, save that a right of appeal shall lie to the National Courts in respect of matters brought before or heard under National laws.
- 7.6. The National Legislature shall determine the civil and criminal procedures to be followed in respect of litigation or prosecution under National laws in accordance with the Interim National Constitution.

8. The State Share in the National Wealth:

- 8.1. The National wealth shall be shared equitably between different levels of Government so as to allow enough resources for each level of Government to exercise its constitutional competencies.
- 8.2. The States shall raise and collect taxes and revenues as listed in Schedule (D), annexed herewith.
- 8.3. Oil producing state is entitled to two percent (2%) of the oil produced in that state, as specified in the Wealth Sharing Agreement.
- 8.4. The state shall be represented in the Fiscal and Financial Allocation and Monitoring Commission, which shall ensure transparency and fairness in regard to allocation of the share due to the state from the Nationally

collected revenues and ensure that allocations due to the state are not withheld.

- 8.5. The general objective of the National Reconstruction and Development Fund (NRDF) is to develop the war affected areas and least developed areas in the Sudan with the aim of bringing these areas to the national average standards and level of development.
- 8.6. In allocating the funds to the war-affected areas and least developed areas, NRDF shall use the effects of war and level of development as the main criteria. The Parties agree to allocate seventy-five percent (75%) of the total fund to the war-affected areas, particularly to Southern Kordofan/Nuba Mountains and Blue Nile States, while the remaining balance shall be earmarked to the least developed areas.
- 8.7. The allocation of funds among the areas affected shall be determined during the Pre-Interim Period by the Joint National Transition Team (JNTT) that shall be established as agreed to in the Wealth Sharing Agreement, within the agreed percentages as in the above paragraph, taking into consideration the actual needs based on the results of Joint Assessment Mission.
- 8.8. The Fiscal and Financial Allocation and Monitoring Commission (FFAMC), as agreed to in the Wealth Sharing Agreement, shall allocate current transfers to Southern Kordofan/Nuba Mountains, Blue Nile and other war-affected areas and least developed areas according to the following criteria:-

- 8.8.1. Population;

- 8.8.2. Minimum expenditure responsibilities;
 - 8.8.3. Human Development Index / Social Indicators (social development factor);
 - 8.8.4. Geographical area (cost disability factor);
 - 8.8.5. Fiscal effort (internal revenue effort); and
 - 8.8.6. The effect of war factor.
- 8.9. In addition to the budgetary allocations and the two states' share in the NRDF, the President shall allocate an amount of money to each of the two states.
- 8.10 The Parties agree to appeal to the donor community to provide technical assistance to the FFAMC to develop comprehensive equalization criteria.
- 8.11. The states shall hold all income and revenue received in audited public accounts and shall comply with the regulations and auditing standards set by the Chamber of the Auditor General, who may audit the state's accounts.
- 8.12. There shall be no impediment to interstate commerce or the flow of goods and services, capital, or labour to and from the state.
- 8.13 Any debts/liabilities incurred by any level of government shall be the responsibility of that level of government.
- 8.14 There shall be a fair and equitable division of government assets. An asset shall in the first instance be allocated to the level of government responsible for the function in respect of which the asset is related

(e.g., school buildings to the level of government responsible for education). In the event of a dispute, the Parties agree that such dispute shall be referred to a committee comprising a representative of each of the Parties involved in the dispute and a mutually agreed expert.

- 8.15 There shall be at the State's level accounting standards, procedures and fiscal accountability institutions operating in accordance with generally accepted accounting standards and procedures to ensure that funds are distributed according to the agreed Government budget and properly expended having regard to value for money.

9. State Land Commission:

- 9.1. The regulation of the land tenure, usage and exercise of rights in land shall be a concurrent competency exercised by the National and State Governments.
- 9.2. Rights in land owned by the National Government within the State shall be exercised through the appropriate or designated level of government.
- 9.3. There shall be established a State Land Commission in the State of Southern Kordofan/Nuba Mountains and Blue Nile, respectively.
- 9.4. The State Land Commission shall be composed of persons from the State concerned.

- 9.5. The State Land Commission shall exercise all the powers of the National Land Commission at the State level.
- 9.6. The State Land Commission shall be competent to review existing land leases and contracts and examine the criteria for the present land allocations and recommend to the State authority the introduction of such necessary changes, including restitution of land rights or compensation.
- 9.7. The National Land Commission and the State Land Commission shall cooperate and coordinate their activities so as to use their resources efficiently. Without limiting the matters of coordination, the National Land Commission and the State Land Commission may agree as follows:-
- 9.7.1. To exchange information and decisions of each Commission;
 - 9.7.2. That certain functions of the National Land Commission, including collection of data and research, may be carried out through the State Land Commission; and
 - 9.7.3. On the way in which any conflict between the findings or recommendations of each Commission may be resolved.
- 9.8. In case of conflict between the findings and recommendations of the National Land Commission and the State Land Commission which cannot be resolved by agreement, the two Commissions shall reconcile their positions. Failure to reconcile, the matter shall be referred to the Constitutional Court for adjudication.

10. Security Arrangements:

10.1 Without prejudice to the Agreement on the Security Arrangements and the right of Sudan Armed Forces (SAF) Command to deploy forces all over North Sudan as it deems fit, SAF troop levels in Southern Kordofan/Nuba Mountains and Blue Nile during the Interim Period shall be determined by the Presidency.

11. Pre-Election Arrangements:

11.1. As part of pre-election arrangements, the Parties agree on the following:-

11.1.1. The Executive and Legislature in the two states shall be allocated as follows:-

- (a) Fifty-five Percent (55%) to the National Congress Party;
- (b) Forty-five Percent (45%) to the SPLM.

11.1.2. There shall be rotational governorship in the two states with each Party holding the Office of Governor for half of the pre-election period in each of the two states.

11.1.3. No one Party is to hold the Governorship in both states at the same time.

11.1.4. The office of Deputy Governor is to be allocated to the Party that is not presently occupying the Office of Governor.

- 11.1.5. The Parties are to decide upon the signature of the comprehensive Peace Agreement the time and order in which each party assumes the Governorship in each state.
- 11.2 Pending general elections, and as part of affirmative action, the Parties agree that Southern Kordofan/Nuba Mountains and Blue Nile States shall be adequately represented in National Institutions targeting a percentage not less than the ratio of their population size.

SCHEDULES:

Schedule (A)

The Exclusive Executive and Legislative Competencies of the Two States:-

1. The drafting, adoption and amendment of the Constitution of the state, subject to conformity with the Interim National Constitution;
2. State Police;
3. State Prisons;
4. Local Governments;
5. State information, state publications and state media;
6. Social Welfare, including state pensions;
7. The Civil Service at the state level;
8. The state judiciary and administration of justice at the state level, including maintenance and organization of state courts, subject to national norms and standards of civil and criminal procedure;
9. Cultural matters within the state;
10. Religious matters, subject to the Interim National Constitution;
11. Internal and external borrowing of money on the sole credit of the state within the national macro-economic framework, as set by the Ministry of Finance;
12. The establishment, tenure, appointment, and payment of state civil service officers;
13. The management, lease and utilization of lands belonging to the state;
14. The establishment, maintenance and management of reformatory institutions;
15. The establishment, regulation, and provision of health care, including hospitals and other health institutions;

16. Regulation of businesses, trade licenses, working conditions, hours, and holidays within the state;
17. Local works and undertakings;
18. Registration of marriage, divorce, inheritance, births, deaths, adoption and affiliations;
19. Enforcement of state laws;
20. Statutes enacted under the penal law power, save for the penalization for the breach of National laws relating to the National competencies;
21. The development, conservation and management of state natural resources and state forestry resources;
22. Primary and secondary school and education administration in regard thereto;
23. Laws in relation to agriculture within the state;
24. Airstrips other than international and national airports within civil aviation regulations;
25. Intrastate public transport and roads;
26. Population policy and family planning;
27. Pollution control;
28. State statistics, and state surveys;
29. State referenda, in matters within the state's competencies;
30. State charities and endowment;
31. Town and rural planning;
32. State cultural and heritage sites, state libraries, state museums, and other historical sites;
33. Traditional and customary law;
34. Recreation and sport within the state;
35. Firearms Licenses;
36. State finances;
37. State irrigation and embankments;

38. State budget;
39. State archives, antiquities, and monuments;
40. Direct and indirect taxation within the state in order to raise revenue for the state;
41. State public utilities;
42. Vehicle licensing;
43. Fire fighting and ambulance services;
44. Flag and Emblem; and
45. Community empowerment.

Schedule (B): Concurrent Powers

The National and State Governments shall have concurrent Legislative and Executive competencies on any of the matters listed below: -

1. Economic and social development within the state;
2. Legal and other professions and their associations;
3. Tertiary education, educational policy and scientific research;
4. Health policy;
5. Urban development, planning and housing;
6. Trade, commerce, industry and industrial development;
7. Delivery of public services;
8. Banking and insurance;
9. Bankruptcy and insolvency;
10. Manufacturing licenses;
11. Disaster preparedness, management and relief and epidemics;
12. Traffic regulations;
13. Electricity generation and water and waste management;
14. Broadcasting and telecommunications utilities;

15. Environmental management, conservation and protection;
16. Relief, repatriation, resettlement, rehabilitation and reconstruction;
17. The initiation and negotiation of international and regional agreements on culture, trade, investment, credit, loans, grants and technical assistance with foreign governments and foreign non-governmental organizations;
18. Financial and economic policies and planning;
19. Gender policy;
20. Women's empowerment;
21. Animal and livestock control, animal diseases, pastures and veterinary services;
22. Consumer safety and protection;
23. Women welfare and child protection and care;
24. State courts responsible for enforcing or applying national laws; and
25. Rehabilitation and care for disabled war veterans, orphans, widows and their dependants.

Schedule (C): Residual Powers

The residual powers shall be exercised in accordance with its nature and as to whether the power pertains to a national matter, requires a national standard or is a matter that cannot be regulated by a single state, in which case it shall be exercised by the National Government. If the power pertains to a state matter, it shall be exercised by the state.

Schedule (D): State Revenue Sources

The state shall be entitled to raise and collect the taxes and revenues from the sources listed hereunder:-

1. State land and property tax and royalties;
2. Service charges for state services;
3. Licenses;
4. State personal income tax;
5. Tourism levies;
6. Share of natural resource revenues;
7. State Government projects;
8. Stamp duties;
9. State agricultural taxes;
10. Loans and borrowing in accordance with the national macro-economic policy framework;
11. Excise taxes;
12. Border trade charges or levies in accordance with National legislation;
13. Other state taxes which do not encroach on National taxes; and
14. Grants in Aid and Foreign Aid through the National Government.

AGREEMENT ON SECURITY ARRANGEMENTS DURING THE INTERIM PERIOD

NAIVASHA: Thursday, September 25th, 2003

WHEREAS the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (the Parties) have been conducting negotiations in Naivasha, Kenya, since 2nd September, 2003 under the auspices of the IGAD Peace Process; and

WHEREAS the Parties reiterated their commitment to a negotiated, peaceful, comprehensive resolution to the Sudan Conflict within the Unity of Sudan as set forth in the Machakos Protocol of 20th July 2002; and

NOW RECORD THAT within the above context, the Parties have reached specific agreement on Security Arrangements during the Interim Period, the initialled text of which is annexed hereto and which will be subsequently incorporated into the final Peace Agreement; and

IT IS AGREED AND CONFIRMED THAT the Parties shall immediately resume negotiations on the remaining outstanding issues and subsequently negotiate a comprehensive ceasefire agreement in order to achieve a final, comprehensive Peace Agreement in the Sudan.

Signature: _____

Signature: _____

Hon. Idris Mohamed Abdelgadir
For: The Government of the Sudan
Movement/Army

Cdr. Pa'gan Amum Okiech
For: The Sudan People's Liberation

Signature: _____

WITNESSED BY: Lt. Gen. Lazaro K. Sumbeiywo (Rtd) Special Envoy IGAD
Sudan Peace Process and On behalf of the IGAD Envoys

**Framework Agreement on Security Arrangements During the Interim Period
Between The Government of the Sudan (GOS) and The Sudan People's
Liberation Movement / Sudan People's Liberation Army (SPLM/SPLA)**

1. Status Of The Two Armed Forces:

a. In the context of a united Sudan, and should the result of the referendum on self-determination confirm unity, the Parties (the Government of the Sudan and the Sudan People's liberation Movement and Army) agree to the formation of the future army of Sudan that shall be composed from the Sudanese Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA).

b. As part of a peace agreement and in order to end the war, the Parties agree that the two forces, the SAF and the SPLA shall remain separate during the Interim Period, and further agree that both forces shall be considered and treated equally as Sudan's National Armed Forces during the Interim Period taking into consideration 1(c) below.

c. The parties agree to the principles of proportional downsizing of the forces on both sides, at a suitable time, following the completion of the comprehensive ceasefire arrangements.

d. The national Armed Forces shall have no internal law and order mandate except in constitutionally specified emergencies.

2. Ceasefire:

The parties agree to an internationally monitored ceasefire which shall come into effect from the date of signature of a Comprehensive Peace Agreement. Details of the Ceasefire Agreement shall be worked out by the two parties together with the IGAD mediators and international experts.

3. Redeployment:

a. The two forces shall be disengaged, separated, encamped and redeployed as will be detailed in the Comprehensive Ceasefire Agreement.

b. Except for those deployed in the Joint/Integrated Units, the rest of the forces of SAF currently deployed in the south shall be redeployed North of the South/North border of 1/1/1956 under international monitoring and assistance within and up to two and one half years (2 1/2) from the beginning of the pre-Interim Period.

c. Except for those deployed in the Joint/Integrated Units, the rest of SPLA forces currently deployed in Nuba Mountains and Southern Blue Nile shall be redeployed South of the South/North border of 1/1/1956 as soon as the Joint/Integrated Units are formed and deployed under international monitoring and assistance.

d. The SPLM/A undertakes that the demobilized Southern Sudanese from those currently serving in SAF in Southern Sudan shall be absorbed into various institutions of the Government of Southern Sudan along with demobilized SPLA soldiers.

e. The parties agree to implement with the assistance of the international community DDR programmes for the benefit of all those who will be affected by the reduction, demobilization and downsizing of the forces as agreed in 1(c) , 3(d) and 7(B).

4. Joint/ Integrated Units:

There shall be formed Joint/ Integrated Units consisting of equal numbers from the Sudanese Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA) during the Interim Period. The Joint/ Integrated Units shall constitute a nucleus of a post referendum army of Sudan, should the result of the referendum confirm unity,

otherwise they would be dissolved and the component parts integrated into their respective forces.

4.1 Elaboration On Joint/Integrated Units:-

a. Their Character:-

They should have a new character based on a common doctrine.

b. Their Functions:-

- I. They will be a symbol of national unity during the Interim Period.
- II. They will be a symbol of sovereignty during the Interim Period.
- III. They will participate in the defence of the country together with the two forces.
- IV. They will provide a nucleus of a post Interim Period future army of the Sudan should the vote of referendum confirm unity.
- V. They shall be involved in the reconstruction of the country.

c. Size and Deployment:

The size and deployment of the Joint/Integrated Units throughout the Interim Period shall be as indicated below:-

- I. Southern Sudan: twenty four thousands (24.000)
- II. Nuba Mountains: six thousands (6.000).
- III. Southern Blue Nile: six thousands (6.000).
- IV. Khartoum: three thousands (3.000).
- V. Eastern Sudan:-

a. The redeployment of SPLA forces from Eastern Sudan to South of the South/North border of 1/1/1956 shall be completed within one (1) year from the beginning of the pre-Interim period.

b. The parties shall discuss the issue of establishing Joint/Integrated Units.

5. Command and Control of The Two Forces:-

1. The Parties agree to establish a Joint Defence Board (JDB) under the Presidency, and shall be comprised of the chiefs of staff of the two forces, their deputies and any number of senior officers to be agreed to by the parties. It shall take its decisions by consensus and it shall be chaired alternately by the respective Chiefs of Staff.

2. Functions of JDB:

The JDB shall perform the following functions:

- a. Co-ordination between the two forces.
- b. Command of the Joint/ Integrated Units.

6. Common Military Doctrine:-

The parties shall develop a common military doctrine as a basis for the Joint/Integrated Units, as well as a basis for a post Interim Period army of the Sudan, if the referendum vote is in favour of unity. The parties shall develop this common doctrine within one year from the beginning of the Interim Period. During the Interim Period, the training of the SPLA (in the South), the SAF (in the North) and the joint units (in both North and South) will be based on this common doctrine.

7. Status of Other Armed Groups In The Country:

- a. No armed group allied to either party shall be allowed to operate outside the two forces.
- b. The Parties agree that those mentioned in 7(a) who have the desire and qualify shall be incorporated into the organized forces of either Party (Army, Police, Prisons and Wildlife forces), while the rest shall be reintegrated into the civil service and civil society institutions.
- c. The parties agree to address the status of other armed groups in the country with the view of achieving comprehensive peace and stability in the country and to realize full inclusiveness in the transition process.

8. National Security Organs and Police forces:

Structures and arrangements affecting all law enforcement organs, especially the Police, and National Security Organs shall be dealt with as part of the power sharing arrangements, and tied where is necessary to the appropriate level of the executive.

Done at Lake Naivasha, Simba Lodge.

Date: Thursday, September 25th, 2003.