

SUDAN'S COMPREHENSIVE PEACE AGREEMENT:

THE LONG ROAD AHEAD

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SUDAN'S COMPREHENSIVE PEACE AGREEMENT:

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

More than a year after it was signed, Sudan's Comprehensive Peace Agreement (CPA) is showing signs of strain. While the agreement ended one of Africa's longest and bloodiest civil wars, it was an agreement between only two parties, the Sudan People's Liberation Movement/Army (SPLM/A) and the ruling National Congress Party (NCP), and continues to lack broader support throughout the country, particularly in the North. The current equation for peace in Sudan is a worrying one: the NCP has the capacity to implement but lacks the political will, whereas the SPLM has the commitment but is weak and disorganised. There is a real risk of renewed conflict down the road unless the NCP begins to implement the CPA in good faith, and the SPLM becomes a stronger and more effective implementing partner. The international community, which has largely abandoned the political engagement and commitment that was so crucial to achieving the peace agreement in the first place, must forcefully reengage with the process to ensure the agreement's successful implementation.

The implementation process has been an uphill battle, with the NCP exploiting the gaps within the CPA and the weaknesses of its junior partner, the SPLM, to delay and frustrate the process. Following the death of SPLM Chairman Dr. John Garang in July 2005, the SPLM vision has blurred, and the NCP has abandoned its strategy for a political partnership with the SPLM. It is increasingly clear that if this does not change soon, then all peaceful paths forward in Sudan – full implementation of the CPA, comprehensive political solutions to the conflicts in Darfur and the East – will likely lead to eventual regime change and an ousting of the NCP either via free and fair elections, or by simply whittling away its control of the structures of government to a minority stake.

Under growing pressure, the NCP is attempting to manage all these challenges to ensure its own political survival. It has largely succeeded in keeping the international community at bay over Darfur by facilitating increased chaos on the ground and promoting divisions within the rebels. It is achieving a similar containment of the

international community on the CPA by selectively implementing elements of the agreement without allowing for any weakening of its grip on power or fundamental change in the way the country is governed. Yet these strategies are not sustainable, and will ultimately lead to renewed or increased conflict. The NCP must begin to implement the agreement in good faith to help assure its political future in a peaceful Sudan by making partnership an attractive option to the SPLM, and unity an attractive option to southern Sudanese.

The SPLM is facing enormous challenges which are severely undermining its ability to function as an effective partner in government. The SPLM faces two simultaneous tasks: as the lead party in the new autonomous Government of Southern Sudan (GoSS), and the minority partner in the new Government of National Unity (GNU).¹ Wracked by internal divisions and contradictions, and with no functional party structures or party decision-making mechanisms from mid-July 2005 through late February 2006, the SPLM has been completely overwhelmed thus far, unable to successfully or consistently challenge the NCP on most issues relating to implementation. This is most apparent in Khartoum, where the minority SPLM controls only a handful of Ministerial or State Ministerial positions, as well as the 1st Vice-President position, but does not yet have any members integrated into the national civil service or other national institutions. As a result, it has been losing an uphill battle to implement the CPA and

¹ According to the CPA, the SPLM controls 70 per cent of the appointed positions in the GoSS until elections, the NCP 10 per cent, and other southern parties the remaining 20 per cent. At the level of the GNU, the NCP maintains 52 per cent of the appointed positions, the SPLM 28 per cent, other northern parties 14 per cent, and other southern parties 6 per cent. The SPLM must also establish 10 new state governments in the South (where it will maintain its 70 per cent control, with 20 per cent going to the NCP and 10 per cent to other parties), and fill 45 per cent of the positions in the state governments of Blue Nile and Southern Kordofan, and 20 per cent in all other northern state governments.

begin to change the policies of a government that still faces active civil wars in the East and West.

The SPLM is faring better in the South, as the GoSS slowly inches forward in the face of enormous physical and structural challenges. The 8 January Juba Declaration to integrate the bulk of the government-aligned southern armed groups operating within the umbrella South Sudan Defence Forces (SSDF) into the SPLA will help consolidate peace in the South, though implementation of the agreement will be difficult. Yet the GoSS is also facing some acute threats, most noticeably from the lack of progress on reorganising the SPLA into a professional army, and the extended delays in paying its troops and civil servants. These delays are creating an environment exploited by the Ugandan rebel Lord's Resistance Army (LRA), which is allegedly still receiving support from the Sudan Armed Forces and has significantly expanded its activities in Western Equatoria, threatening to become a home-grown Sudanese problem.

However, there are early signs that the SPLM is beginning to overcome some of its internal challenges and refocus its efforts on implementation of the CPA. Without a functioning and effective SPLM, there is little chance that the CPA will hold.

In the face of all of this, the international community has remained largely silent. Heavy on monitoring but weak on follow-through, the international community – particularly the key countries involved in the negotiation of the CPA – has not yet embraced its role as a guarantor of the CPA, and continues to lack a consistent, coordinated approach to dealing with the parties, particularly the NCP, let alone holding them to their respective commitments. More consistent, proactive and forceful engagement by the international community is another required ingredient to see this agreement peacefully through the pitfalls that lie ahead.

RECOMMENDATIONS:

ON THE DELAYS IN IMPLEMENTATION

To the National Congress Party and the Sudan People's Liberation Movement:

1. Immediately reconstitute the National Constitutional Review Commission with the proper mandate to retroactively review all new bodies and legal acts related to the implementation of the CPA and ensure that they comply with the CPA and the Interim National Constitution.

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

2. Work to improve international coordination and strategies around the implementation process by forming a Technical Secretariat attached to the Assessment and Evaluation Commission, preferably headed by General Sumbeiywo, to track implementation and act as a central information clearinghouse for the international community on information relating to the CPA.
3. Link donor funding, both bilateral and through the Multi-Donor Trust Fund, to the implementation records of the parties, as determined by the Assessment and Evaluation Commission, and develop clear benchmarks tied to future funding for the parties to achieve in Khartoum and Juba.
4. Channel financial support and technical expertise in the short-term to combat the greatest immediate threats to the CPA, by funding and helping to operationalise key commissions such as the Ad Hoc North-South Boundary Commission, the National Petroleum Commission, and the National Civil Service Commission; and neutralise potential spoilers by supporting the implementation of the Juba Declaration.

ON ABYEI

To the National Congress Party:

5. Immediately cease all inflammatory rhetoric designed to mobilise the Misseriya people against the Ngok Dinka and the Abyei Boundary Commission Report, and cease efforts to unconstitutionally administer Abyei from Southern Kordofan State.
6. President Bashir should immediately appoint the Local Executive Council for Abyei, in consultation with 1st Vice-President Kiir and Vice-President Taha, in accordance with the CPA.

To the UN Mission in Sudan:

7. If the stalemate on Abyei continues and the formation of an administration is not forthcoming, UNMIS should seek to set up a temporary administration in Abyei, while facilitating discussions between the SPLM and NCP, and between the Ngok Dink and Misseriya peoples, on the following:
 - (a) definition of citizenship and residency in Abyei, based on the CPA, the Abyei Boundary Commission Report, and the situation on the ground;

- (b) implementation of the Abyei Boundary Commission report in light of demographic changes on the ground;
- (c) developing guarantees for nomadic grazing rights in and through Abyei; and
- (d) scenario planning should Abyei vote to join an independent South, including:
 - i. discussions on provisions for dual citizenship for residents of the area;
 - ii. protection of traditional grazing rights for non-residents of Abyei; and
 - iii. discussions between the SPLM and NCP on the longer-term sharing of oil revenue from Abyei between North and South.

ON PROBLEMS IN THE OIL SECTOR

To the NCP:

- 8. Immediately provide the SPLM with access to existing oil contracts and full oil production and revenue information, as required by the CPA.
- 9. Cease blocking the establishment of an effective National Petroleum Commission with the mandate agreed upon in the CPA.

To the SPLM and Government of Southern Sudan:

- 10. Immediately cancel all oil agreements in the South signed in violation of the CPA.
- 11. Take steps to ensure that the rights of citizens in oil producing areas are being protected.

To the International Community:

- 12. Provide the SPLM with the technical expertise and information, as required, to help it attain its fair share of oil revenue, and develop the capacity to manage the oil sector in the South.

TO ADDRESS SPLM AND SPLA CONSTRAINTS

To the SPLM:

- 13. Work to resolve internal divisions and contradictions, and immediately move to begin rebuilding party structures, working towards an SPLM national convention, in order to be a more effective partner in the implementation process.

To the SPLA:

- 14. Take immediate steps to develop a common internal approach on the reorganisation of the SPLA. Prioritise the reorganisation of the army, together with a transparent and accountable salary structure, in order to help improve security in the South and combat the growing threat posed by the LRA.

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

- 15. Provide the SPLM with financial and technical support, as needed, for it to help re-establish functioning party structures and be a positive force for peace in Sudan.
- 16. Provide the SPLA with technical and financial support to help it reorganise its forces, integrate the SSDF troops who have joined the SPLA, and develop a professional standing army, capable of combating security threats in the South such as the LRA. In the case of the U.S., consider legislative exemption for the GoSS from anti-terrorist sanctions, on a year-by-year basis.
- 17. Support the implementation of the Juba Declaration by providing food aid and transport, as necessary, to help counter the efforts by the NCP's military intelligence to rebuild its southern militias as spoilers in the South.

ON THE LRA

To the SPLM/A:

- 18. Urgently reorganise the SPLA and develop a targeted military strategy to counter the LRA's growing presence in Ekuatoria, including through necessary support from the international community.
- 19. Cease to pursue its own mediation efforts, and instead coordinate with and support the existing initiative led by Ugandan mediator Betty Bigombe.

To the NCP and the Sudan Armed Forces:

- 20. Cease all support to the LRA in southern Sudan.

To the UN Security Council:

- 21. Without prejudice to the responsibilities of the Sudanese authorities, direct UNMIS to use all necessary means to fulfil its mandate to protect civilians under imminent threat of physical violence and require UNMIS to act proactively and robustly

against the LRA, including in a preemptive manner.

22. Appoint a panel of independent experts to investigate the membership, funding of, and support for the LRA. The panel should consult with relevant governments, UN missions, and other UN-appointed expert bodies. It should advise the Security Council on further measures to be taken by the Council in relation to the LRA.

To the UN Mission in Sudan:

23. Establish a verification unit, to be negotiated directly with the SPLA and the Sudan Armed Forces, to verify continued SPLA claims of Sudan Armed Forces' support to the LRA.

Nairobi/Brussels, 31 March 2006

SUDAN'S COMPREHENSIVE PEACE AGREEMENT: THE LONG ROAD AHEAD

I. INTRODUCTION

The 9 January 2005 Comprehensive Peace Agreement (CPA) was the culmination of more than two and a half years of negotiation between the insurgent Sudan People's Liberation Movement/Army (SPLM/A)² and the ruling National Congress Party (NCP).³ It provides for a six year interim period with democratic elections by 2009, and an autonomous southern government, followed by a self-determination referendum for the South. In the interim, it mandates power and wealth sharing arrangements aimed at ending decades of political and economic marginalisation of the South and guaranteeing its representation in Sudan federal government's branches proportional to its population.

However, 15 months in there is little reason for optimism, as the NCP systematically delays and undermines the implementation process. The NCP's obstruction should

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

³ Crisis Group has published considerable reporting and analysis on the CPA and the peace process that led to it. See Africa Report N°102, *Sudan: Saving Peace in the East*, 5 January 2006; Africa Briefing N°30, *Garang's Death: Implications for Peace in Sudan*, 9 August 2005; Africa Report N°96, *The Khartoum-SPLM Agreement: Sudan's Uncertain Peace*, 25 July 2005; Africa Briefing N°24, *A New Sudan Action Plan*, 26 April 2005; Africa Briefing N°19, *Sudan's Dual Crises: Refocusing on IGAD*, 5 October 2004; Africa Report N°73, *Sudan: Towards an Incomplete Peace*, 11 December 2003; Africa Report N°65, *Sudan Endgame*, 7 July 2003; Africa Briefing N°14, *Sudan's Other Wars*, 25 June 2003; Africa Briefing N°13, *Sudan's Oilfields Burn Again: Brinkmanship Endangers the Peace Process*, 10 February 2003; Africa Report N°55, *Power and Wealth Sharing: Make or Break Time in Sudan's Peace Process*, 18 December 2002; Africa Report N°54, *Ending Starvation as a Weapon of War in Sudan*, 14 November 2002; Africa Report N°51, *Sudan's Best Chance for Peace: How Not to Lose It*, 17 September 2002; Africa Report N°48, *Dialogue or Destruction? Organising for Peace as the War in Sudan Escalates*, 27 June 2002; and Africa Report N°42, *Capturing the Moment: Sudan's Peace Process in the Balance*, 3 April 2002.

not come as a surprise. Though the peace agreement catered for the NCP's continued political dominance in northern Sudan until elections, it also provided for a significant opening of political space, and the sharing of previously NCP-controlled state power and wealth. Many within the NCP have been openly critical of the CPA for giving away too much to the SPLM, viewing these changes as a threat to the regime's survival. The threat of democratic elections to the broadly unpopular NCP, and the expected southern vote for independence, appear to leave the NCP with little hope of a peaceful political survival unless it changes its political strategy.

These barriers were foreseen during the negotiation process in Naivasha, Kenya, and different strategies were developed to try to overcome them. The strategy of the IGAD⁴ mediation team and its international partners was to balance the NCP's expected reluctance to implement by having a strong SPLM minority partner in the national government, and by using the continued engagement of the international community to guarantee the agreement. Whereas the strategy pushed by the NCP aimed at establishing a strong political partnership with the more popular SPLM by drawing it away from its historic allies in the opposition, so as to allow the NCP a peaceful path to continued power and completion of its rebirth from a pariah state to an accepted member of the international community.

Neither strategy is working. The SPLM is in disarray, still coping with its transition from a rebel movement to a government and from the untimely death of its late Chairman Dr. John Garang on 30 July 2005, just three weeks after he had been sworn in as the 1st Vice-President. It currently lacks the strategic vision to consolidate its place in the national scene as the natural umbrella for all the marginalised and the oppressed and as the guardian of the democratisation project that the CPA envisions. Former SPLM security chief Edward Lino painted a grim picture of the situation in a recent interview, noting "one year after the signing of the CPA, the NCP continues to

⁴ The Intergovernmental Authority on Development, a seven country regional body for the Horn of Africa, composed of Kenya, Sudan, Uganda, Ethiopia, Eritrea, Somalia and Djibouti.

have a firm grip on all the details of the state, institutions are impregnated with it, a ihadist army, a security apparatus that believes it is the NCP; and full 20 per cent of the executive branch throughout Sudan is allocated to us, but we haven't filled these positions yet because of technical and political reasons and due to the opposition of some of our partners; we have signed an agreement, but the implementation schedule is tight; we admit there are shortcomings, in some ministries there is a Cold War environment, such as the Ministry of Energy...".⁵

The international community has an enormous physical presence in Sudan today, led by a 10,000-strong UN mission (UNMIS) devoted to monitoring the CPA, but it has failed to live up to its envisioned role as a guarantor, and seems unwilling to seriously engage with the parties politically on their numerous unmet commitments or the direction of the CPA.

The ongoing conflict in Darfur has played into this dynamic, distracting international attention and the parties from the CPA. Though international efforts have been depressingly ineffective at improving the situation in Darfur, the international outcry has been noted by the NCP, much of whose senior leadership is being investigated by the International Criminal Court (ICC) for the atrocity crimes carried out by the government forces in Darfur since 2003.⁶ Put off after Garang's death, and perhaps by suspicions of the SPLM's intentions or its lack of capacity, the NCP's actions around implementation have damaged the envisioned partnership.

II. THE STATUS OF IMPLEMENTATION: A PATTERN EMERGES

The CPA is a long and complex agreement, and hence difficult to monitor effectively. With more than 50 national bodies and commissions to be formed, multiple systems and levels of governments (with the GoSS and southern state governments to be formed almost from scratch), the parties, partners and observers are understandably overwhelmed. Without universally accepted criteria for assessing implementation, there is an active debate amongst both the parties and observers on the interpretation of the implementation process – for while much has happened little has changed. Though the President has issued dozens of new Presidential decrees forming new commissions and committees, only a handful are operational, and only the Ceasefire Joint Military Committee (CJMC) and the Assessment and Evaluation Committee (AEC) have met regularly.⁷ Most exist only on paper, or remain paralysed as the parties' battle over the terms of reference or functions for the commissions. Though optimists point to the progress made, the pessimists appear to be closer to the truth, for the picture that emerges is of a pattern of NCP attempts to systematically undermine, delay or simply ignore the elements called for in the CPA that would fundamentally alter the status quo and its grip on power.

With the exception of Abyei,⁸ where the NCP is in blatant violation of the terms of the CPA, its tactics are technical and nuanced, taking advantage of either gaps in the agreement, or the weakness and disorganisation of the SPLM. The bulk of the agreement was directly negotiated by then 1st Vice-President Ali Osman Taha and SPLM Chairman Dr. John Garang, aided by a small group of trusted aides, and the two leaders counted on their positive personal relationship to overcome areas of disagreement during the implementation process. An enormous amount of the power and decision making responsibility within the CPA lies with the institution of the Presidency.⁹ While this seemed an effective way at the time of moving the negotiations forward, it left a large number of gaps to be resolved over the course of the interim period. The success of this approach was dependent on Garang's personal relationship with Taha, and their joint commitment as an executive to find a way to implement the agreement.

⁵ "Southern leader: Sudanese Military Intelligence is behind all the disasters. Edward Lino tells al-Sharq al-Awsat the Sudanese army still supports the LRA", *al-Sharq al-Awsat*, 15 March 2006 (in Arabic).

⁶ Crisis Group uses the term "atrocity crimes" advisedly. The extensive debate over whether genocide has occurred or "only" crimes against humanity or war crimes is misplaced. Whether or not any party to the conflict acted with the intent "to destroy, in whole or in part, a national ethnic or religious group, as such" can only be properly determined through a credible investigative and judicial process. What matters now is that terrible crimes are continuing and will continue until the international community acts forcefully. The perpetrators of atrocity crimes must be brought to justice as a matter of principle and as a step towards ending impunity in the region. The court can determine into which legal category the crimes fall. See, Gareth Evans, "Genocide or crime? Actions speak louder than words in Darfur", *European Voice*, 18 February 2005; also David Scheffer, "How to bring atrocity criminals to justice", *Financial Times*, 2 February 2005.

⁷ "Report of the Secretary-General on Sudan", 14 March 2006, S/2006/160, p. 1.

⁸ Discussed further below in II.A.1.

⁹ The Presidency includes the President (President Bashir), the 1st Vice-President (Salva Kiir Mayardit), and the Vice-President (Ali Osman Taha).

Garang's death last July has damaged, if not killed, this partnership and the requisite commitment from the NCP leadership. Garang's successor, Salva Kiir Mayardit, has not yet found willing partners in the Presidency to implement the agreement in accordance with the terms and spirit of the Naivasha process. The result is that the President, rather than the Presidency, has controlled the implementation schedule and agenda.

A. CHALLENGES OF IMPLEMENTATION AT THE NATIONAL LEVEL: LOSING THE MOMENTUM OF NAIVASHA

Nearly 15 months after the peace agreement was signed, implementation in Khartoum in national government institutions is slow and uneven. The GNU, originally expected to be formed on 9 August 2005, was officially announced on 20 September, and sworn in two days later. Initial delays were due to Garang's unforeseen death, but subsequent extended delays in establishing key bodies and commissions under the CPA illustrates the fragile state of the agreement. The key to peace holding will be the consolidation of the agreement, through consistent implementation by both parties, to the point where the momentum for peace becomes difficult to reverse and undo. This is not yet the case.

As discussed below, the strategy of the NCP appears to have shifted following Garang's death, and now seems more intent on delaying or undermining implementation than proceeding in good faith. The distribution of ministries in the GNU and the subsequent failure to integrate the broader civil service provide several good examples. The parties had categorised the various ministries in Naivasha, and divided them between sovereignty, economic and service ministry clusters. The distribution of ministerial and state ministerial¹⁰ positions was to follow the power sharing ratio set out in the peace agreement. The parties agreed to pair ministries in each cluster. When the distribution finally took place, the procedure should have been straightforward – within the identified paired ministries, the NCP would choose one and the SPLM would take the other.

The most controversial was the debate over the Ministry of Energy. The Ministry of Energy had been paired with the Ministry of Finance, but when the parties first began discussions in the Joint National Transition Team (JNTT)¹¹

last spring, the NCP insisted on taking both.¹² The discussion was put on hold, to be revisited by Garang and Taha ahead of the formation of the GNU. But Garang died before it could be resolved, leaving Salva in the unenviable position of dealing with something that had apparently been partially negotiated already through private discussions between Taha and Garang. When Salva and the SPLM began to push for the Energy Ministry, Taha reportedly said that Garang had agreed in private that the NCP could keep the ministry.¹³ The SPLM did not pursue the Finance Ministry because, as with the defence arrangements, finance is effectively split between North (at the level of the GNU, by default) and South (at the level of the GoSS), thus making SPLM control of GNU level ministry somewhat redundant.¹⁴ Energy, however, would be key to monitoring and engaging in the petroleum sector – one of the core pillars upon which the entire CPA rests – and ensuring compliance. When Salva made a final plea to Bashir for the Energy Ministry, arguing that it would be an important step towards making unity attractive, Bashir reportedly replied that southerners were going to vote for separation irrespective of whether they had the Energy Ministry.¹⁵

While not a violation of the text of the CPA, this certainly went against the spirit of Naivasha and failed to show either good faith or goodwill on the part of the NCP. Salva and the SPLM ultimately backed down from their demand for the Energy Ministry, anticipating that the National Petroleum Commission would still provide the SPLM with a direct role in overseeing the petroleum sector. However, the decision caused disappointment amongst southerners, many of whom blamed Salva for giving up where Garang would have succeeded. Hence NCP tactics not only assured continued control of the Energy Ministry, but also dealt a sharp blow to the support and confidence of the SPLM leader, less than two months into his new job. Surprisingly, UNMIS and the broader international community remained quiet during this

¹² Crisis Group interview, Khartoum, 14 October 2005.

¹³ Crisis Group interviews, 25 October 2005 and 7 March 2006.

¹⁴ According to the CPA, southern Sudan is to have its own conventional banking system, in parallel to the Islamic banking system operating in the North. The Central Bank of Sudan will have two equal sub-systems, one for the North and one for the South. Because the GoSS Ministry of Finance will serve as the de facto Ministry of Finance for the conventional banking system in the South, the national Ministry of Finance is likely to become the de facto Ministry for the North. Crisis Group interview, 7 March 2006.

¹⁵ Crisis Group interview, Khartoum, 14 October 2005. Salva also stated this publicly in a speech at the Woodrow Wilson International Center in Washington DC, on 4 November 2005, as reported in "The Impact of the Comprehensive Peace Agreement and the New Government of National Unity on Southern Sudan", Human Rights Watch, March 2006, fn.6.

¹⁰ The state minister is the same as a deputy minister. Each ministry has one minister and one or two state ministers.

¹¹ The JNTT is a 14 person SPLM/NCP body formed last spring to help implement the World Bank-led Joint Assessment Mission. Once formed, the JNTT gave itself the mandate to oversee the implementation of the CPA.

episode, watching in silence as the NCP openly undermined the spirit of the CPA, with potentially dire consequences.

The SPLM also alleges that prior to its taking over the leadership of agreed upon ministries in October, the NCP deliberately weakened some of the core functions of those ministries. Some SPLM members have complained that International Cooperation was sliced out of the Ministry of Foreign Affairs and made into a separate ministry prior to SPLM appointee Lam Akol taking over as Minister. However, the NCP has been subdividing ministries for years to accommodate breakaway factions from opposition groups, southern clients, and other Islamist factions while still retaining key ministries. The creation of the Ministry of International Cooperation was one such move, and it was allocated to the Umma Party-Reform and Renovation of Mubarak al-Fadl. The arrival of the SPLM complicated matters further as the NCP had to share power with a principal partner, while keeping its earlier allies happy with their piece of the cake. The NCP strategy was to give the SPLM ministries that were voided of their essential powers through earlier structural reshaping of the ministries.¹⁶

After the eventual formation of the GNU, progress became bogged down in the establishment of the various commissions, committees, and other bodies relating to the implementation of the CPA. While many of these bodies have been created by presidential decree, the legality of many of them is questionable, as discussed below. Several key commissions have not yet been established, including the Human Rights Commission, the Land Commission, the National Electoral Commission, the Commission on the Rights of non-Muslims in the National Capital,¹⁷ and the National Civil Service Commission.¹⁸ The delays in establishing the Civil Service Commission means that there has not yet been any SPLM integration into the national institutions or civil service, beyond those appointed to Ministerial or State Ministerial positions. Hence more than 15 months after the signing of the CPA,

the SPLM's presence in the GNU, including in the commissions and other bodies, likely amounts to no more 40 people.¹⁹

Of the bodies that have been legally established, most are not yet functioning. Either the parties have not yet agreed upon the rules of procedure, or they have yet to meet. The NCP and members of the international community correctly blame some of the delays on the SPLM's lack of capacity and disorganisation. However, there is also a more sinister pattern discernible, whereby the NCP, via the Presidency, is delaying and manipulating the legal establishment of some key commissions and other institutions²⁰ called for in the CPA. This is discussed in greater detail below.

1. Abyei: A direct threat to peace

While most of the obstruction by the NCP has been quite nuanced, the NCP's actions regarding Abyei are a blatant violation of the CPA, creating perhaps the most volatile element of the entire agreement right now.²¹ The CPA includes a separate agreement on Abyei, allowing the disputed territory to hold special administrative status under the Presidency, to be followed by a referendum simultaneous with the southern referendum, with the option of remaining in the North or joining the South (including an independent South, pending the outcome of the southern referendum.) Abyei is the traditional home of the Ngok Dinka, a tribe of the populous Dinka to the South, and is also dear to the neighbouring Misseriya, Arab pastoralists who pass through Abyei every year to graze at the river Kiir (Bahr el-Arab), and further southwards. The Ngok Dinka have been massively

¹⁶ Crisis Group interview, 22 February 2006.

¹⁷ Problems remain across the board in setting up the new administration for Khartoum. The SPLM delegation in the Khartoum state Legislative Council recently withdrew from the committee drafting the constitution for the national capital citing contradictions with the Interim National Constitution. "Sudan's SPLM pull out of team drafting Khartoum Constitution", Khartoum Monitor/Sudan Tribune, 23 March 2006. Available at http://www.sudantribune.com/article.php3?id_article=14685.

¹⁸ The most comprehensive overview of the detailed status of implementation available is in the CPA Monitor, a monthly report put out by UNMIS and available at <http://www.unmis.org/english/cpaMonitor.htm>. See also: "Report of the Secretary-General on Sudan", 14 March 2006, S/2006/160.

¹⁹ The CPA stipulated that the National Civil Service Commission would be tasked with forming policies to train and recruit southern Sudanese, to fill between 20-30 per cent of the civil service, including at least 20 per cent of the middle and upper-level positions. These figures would be reviewed pending the outcome of the national census. This was one area in the negotiations where the SPLM chose to negotiate on behalf of the South rather than the party. This assumes that the bulk of the southerners integrated into the civil service, including many of those already operating in the national civil service, are supporters of the SPLM. See: Section 2.6.2 in the Power Sharing Protocol of the CPA, signed 9 January 2006.

²⁰ This includes the commissions listed above. It also explains the long and unnecessary delays in establishing the Joint Defence Board and the Ceasefire Political Commission.

²¹ For more on the background to the Abyei conflict and its role in the negotiation process, see see Crisis Group Briefing, *Garang's Death: Implications for Peace in Sudan*, op. cit. See also Crisis Group Report, *The Khartoum-SPLM Agreement*, op. cit.; Crisis Group Briefing, *Sudan's Other Wars*, 23 op. cit.; Crisis Group Report, *Sudan Endgame*, op. cit.; and Crisis Group Report, *Sudan: Towards an Incomplete Peace*, op. cit.

displaced over the course of the second civil war, and a main intention of the agreement was to allow them to return to their homes and villages, some of which have since been settled by the Misseriya. The CPA defined Abyei as the traditional nine Ngok Dinka Chiefdoms that were transferred from Bahr el-Ghazal to Kordofan by the British in 1905, and established a special boundary commission made up equally of the SPLM, the NCP, and international experts appointed by the U.S., UK and IGAD, to determine these boundaries as of 1905. When the SPLM and NCP delegations failed to reach an agreement, the final decision was put in the hands of the international experts. Irrespective of the territorial definition, the agreement guaranteed the traditional grazing rights and rights of passage through Abyei for the Misseriya and other nomads. It was agreed that the decision of the Abyei Boundary Commission (ABC) would be final and binding, and the CPA sets out a number of subsequent steps to be taken by the Presidency, such as the appointment of a local Executive Council until local elections can be held.

The ABC delivered its report to the Presidency on 14 July, but there has been no progress since that time. The report defined the territory as a broad area stretching from the borders of Bahr el-Ghazal, east to the border with Upper Nile, and north to the villages of Umm Sakina, Turda and Edd Dibekir – including large oil producing areas that the NCP had counted on remaining in the North.²²

President Bashir and Vice-President Taha have been vocal in their rejection of the ABC report, but the NCP has also been working to politicise the issue and mobilise the Misseriya against the ABC. While refusing to implement the terms of the agreement to establish an administration in Abyei, the NCP deputy governor Southern Kordofan,²³

Mr. Eisa Bashari, recently travelled to Abyei town carrying the message that “Abyei shall remain part of Southern Kordofan until the end of time”.²⁴ This type of incendiary behaviour from NCP cadres and its security services has been reported regularly over the past nine months, and appears to be aimed at inciting populations against each other and undermining implementation.

The danger of Abyei is that both sides continue to see the referendum as a zero-sum game. For the Ngok Dinka and the SPLM, anything short of a referendum, and a likely vote to return to the South, is an unacceptable outcome. For the Misseriya, their fears that their traditional grazing rights will be sacrificed or compromised are understandable, but these are in fact protected in the agreement. However, the NCP's politicisation of the issue and its misinformation campaign appear to be exacerbating these fears. For the NCP, its primary motivation appears to be economic, driven by a fear of losing the huge reserves of oil in Abyei should it vote to join an independent South. Having built up the issue, the NCP will now also suffer political fallout with the Misseriya and others if it backs down. Since all groups see the referendum as the key target, each step along the way is being contested. For example, the NCP have suggested setting up an interim administration made up of Ngok Dinka and Misseriya, ahead of the Executive Council. The SPLM have rejected this, demanding that the Executive Council be formed instead, as per the agreement.²⁵ The NCP are seeking Misseriya participation because participation in the administration implies residency, and residency implies a right to vote in the referendum. Thus the first step is seen by the parties as influencing the outcome of the last step.²⁶

The SPLM leadership has been pushing Bashir to allow the experts who participated on the ABC to come back and defend their findings in order to help break the

²² The NCP was adamantly against granting Abyei a referendum during the negotiation process. At one point, Energy Minister Awad al-Gaz was reported to have told the NCP delegation in Naivasha that 80 per cent of the oil in the North lay in Abyei. Interestingly, the SPLM reported that in private discussions between Taha and Garant in 2003, Taha suggested two options on Abyei: either a referendum, or a presidential decree that would shift Abyei directly to Bahr el-Ghazal. However, this was never raised again by the NCP in any of its subsequent proposals on Abyei. Crisis Group Africa Report, *Sudan: Towards an Incomplete Peace*, op. cit. Crisis Group interview, Naivasha, 13 January 2004.

²³ The CPA also took away the Misseriya-dominated state of Western Kordofan. The agreement on Southern Kordofan and Blue Nile states dissolved Western Kordofan and merged it with Southern Kordofan, a demand put forward at the last minute by the NCP to dilute the strength of the Nuba peoples – traditional supporters of the SPLM – in the new state. As a result, many Misseriya have expressed outrage and feelings of abandonment by the NCP, as evidenced by Misseriya involvement alongside

the rebels in Darfur and the emergence of the anti-government armed movement Al-Shahamah (though this group has reportedly since reached an agreement with the NCP).

²⁴ See: Njahari Gathara, “Trouble in Abyei”, *Sudan Mirror*, 27 February 2006. Reprinted at <http://www.southsudannation.com/featurearticle3.htm>.

²⁵ Crisis Group interview, 8 March 2006.

²⁶ A referendum for Abyei was originally included in the 1972 Addis Ababa Peace Agreement, which defined southern Sudan according to the North-South borders at the time of independence, “and any other areas that were culturally and geographically a part of the Southern Complex as may be decided by a referendum.” The criteria covered the Ngok Dinka of Abyei, but obviously not the Misseriya. The referendum was never implemented. See: Article 3.iii, The Addis Ababa Agreement on the Problem of South Sudan, March 1972. Reprinted in: Abel Alier, *Too Many Agreements Dishonoured: Southern Sudan*, Second Reprint, Khartoum, 2003, p. 348.

impasse. Bashir reportedly agreed to this in early March, but this alone may not be enough.²⁷ The establishment of an administration in Abyei is crucial to begin to stabilise the situation and provide some much needed development to the area. The international community should continue to pressure the NCP to implement its commitments under the CPA and form the Executive Council immediately. Given the key role of the personnel appointed to the Executive, one option would be to have the UN oversee a temporary administration in the area while the parties, including both the SPLM-NCP and the Ngok Dinka-Misseriya, open discussions on the range of issues facing them. One such issue is the definition of residency and citizenship in Abyei, as per the agreement in the CPA, the ABC report, and taking into account the situation on the ground. A second discussion should focus on the implementation of the ABC report, taking into account the dramatic demographic changes on the ground since 1905. A third discussion should centre around potential scenarios should Abyei vote to join an independent South.

All efforts must be undertaken to avoid an outbreak of conflict in this case, and much can be done towards that end. For example, the feasibility of providing dual citizenship to Dinka and Misseriya in the area could be investigated, and there could be preliminary discussions between the Misseriya and Ngok Dinka on the types of guarantees the Misseriya would require with regard to grazing rights. Such a discussion could provide a useful model for other pastoralist communities living elsewhere along the North-South border, such as the Rizeigat, Selim Baggar, Rufa'a and Fellata, should the South vote for independence.²⁸ Finally, the oil factor cannot be ignored as a driving motivation for the NCP. As proposed by Crisis Group during the negotiations, one way to lesson the "winner take all" approach to this issue would be to negotiate a separate oil sharing agreement for Abyei between North and South. Should Abyei vote to join an independent South, that would allow for continued oil and revenue sharing between Juba and Khartoum for at least eight or ten years, and provide substantial benefits to the "loser" of the referendum.²⁹

More focus is also needed on the other transitional areas of Southern Kordofan and Blue Nile states. Aligned to the SPLM since the mid-1980's, negotiations on these

two areas were paired together with Abyei during much of the negotiation process. However, the agreements on these areas in the CPA granted them less than Abyei, such as the right to a "popular consultation" rather than a self-determination referendum. Implementation is moving very slowly in both states, and frustration is growing quickly amongst the SPLM. "We fought for 20 years, and now have seven paid positions in the state government", complained a senior SPLM official from Blue Nile State. "Is that what we fought for? With no change and no peace dividends, people will go back to war." The international community must also focus greater attention on the implementation of the agreements in these areas.

2. A monopoly on legal processes

The safeguards built into the CPA to provide a check on the Presidency's power and actions have been curtailed by the NCP, with most key institutions related to the CPA being formed by presidential decree. The National Constitutional Review Commission (NCRC) was empowered in the CPA to do two things. The first was to draft the new Interim National Constitution, a task which it successfully carried out. The 60-person body³⁰ "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".³¹

Yet the NCRC, which is based on the power sharing percentages laid out in the CPA, ceased to function after the constitution was drafted. In its place, two NCP strategies emerged. The first was a series of six provisional orders issued by the President during the time of the NCP caretaker government, ahead of the formation of the GNU. These six decrees³² included some outrageous proposed changes to the law, such as strengthening the powers of

²⁷ Crisis Group interview, 8 March 2006.

²⁸ Crisis Group correspondence, 31 March 2006.

²⁹ The CPA stipulates that oil revenue from Abyei will be split as follows: 50 per cent to the national government, 42 per cent to the GoSS, and two per cent to each of the following: Bahr el-Ghazal region; Western Kordofan (though this no longer exists); the Ngok Dinka; and locally with the Misseriya people. See: Crisis Group Report, *Sudan: Towards an Incomplete Peace*, op. cit.

³⁰ The NCRC was expanded to 180 persons during the constitutional drafting process in order to provide greater representation for other political parties.

³¹ See section. 2.12.0 of the Power Sharing Protocol of the CPA, signed 9 January 2005. Section 2.10 of the CPA calls for the establishment of a National Electoral Commission, a Human Rights Commission, a National Judicial Service Commission, a National Civil Service Commission, an ad hoc Commission to monitor the southern self-determination referendum, and a Fiscal and Financial Allocation and Monitoring Commission.

³² The six decrees were the Criminal Procedure Amendment Act, the Armed Forces Amendment Act, the Red Cross Act, the Higher Education Amendment Act, the Wages and Salaries Amendment Act, and the Voluntary and Humanitarian Work Act.

the police and armed forces to shoot to kill while at the same time providing them with greater impunity from the legal system, and gave the NCP-dominated Humanitarian Aid Commission (HAC) near total power to monitor and control all foreign-funded humanitarian, voluntary and human rights-related operations. Provisional orders must go to the National Assembly, where they can be accepted or rejected, but not amended. If the next session of the Assembly does not act on an order before it goes to recess, the order lapses and is annulled. It can then be redrafted as a bill, where it will go through the regular process of debate and amendment.³³

The SPLM did not let these proposed laws pass without a fight, however, and scored a political victory. In a press conference in one of the SPLM's first public challenges of the NCP policies Yasir Arman, head of the SPLM in the national assembly, publicly criticised the provisional orders as "violating the constitution and the peace agreement" and threatened to take the matter to the constitutional court.³⁴ The Voluntary and Humanitarian Work Act (known as the NGO Act) also sparked a serious reaction from the humanitarian community and some of the international partners. Facing such resistance, the NCP withdrew the provisional orders. The NGO Act was then re-submitted as a bill and passed by 52 per cent, despite still containing some very worrisome clauses, such as requiring all NGOs seeking foreign funding for projects to be approved by the HAC.³⁵ Nonetheless, according to one high-ranking SPLM representative, "We are satisfied with the NGO Act. We managed to insert eighty per cent of the amendments. In politics you never get one hundred percent of what you want. The most important thing is the NCP did not use its bare majority to pass the original law. It is a significant procedural victory".³⁶

Following agreed-upon procedures when adopting new laws is an important step in the right direction in changing Sudan's old political system. Yet, the construction of new bills based on a consensus of the NCP and SPLM, as envisaged by the CPA, has broken down, leading to bill-making by Presidential Decree. With the cordial working relationship within the Presidency having faded after Garang's death, presidential decrees have been increasingly controlled by the President, rather than consensual decisions of the Presidency.³⁷ Several of the decrees forming institutions have been in direct

contradiction of the CPA. For example, the National Judicial Service Commission Act was allegedly drafted by the Ministry of Justice rather than the NCRC, and although it passed through the National Assembly, it contains provisions that are contradictory to both the CPA and the Interim National Constitution.³⁸ For example, the act provides for three additional positions for experts to be appointed directly by the President, though the CPA already provides for the exact membership of the Commission, with equal representation from North and South.³⁹ It also states that the President is responsible for the appointment of all the judges of Sudan, whereas the CPA states that the President of the GoSS shall appoint the judges in the South.⁴⁰

"Presidential Decrees were expected to end with the CPA" noted a leading southern legal expert. "They should all be drafted as laws by the NCRC, not the Ministry of Justice, then go to the Presidency".⁴¹ Questions have also been raised about the legality of the Constitutional Court Act, the Bank of Sudan Amendment Act, and the statutes establishing the National Petroleum Commission and the Assessment and Evaluation Commission.⁴² The NCRC was finally reestablished by Presidential Decree on 7 January 2006, but the new mandate of the Commission makes no reference to ensuring the independence of CPA Commissions and institutions and their compatibility with the CPA and the Interim National Constitution. Instead, it lists the function of the NCRC as being responsible for reviewing the Constitution during the interim period.⁴³

3. Oil problems persist

The oil sector continues to be a high-risk area for the implementation of the agreement. Under the terms of the CPA, the GoSS is to receive 50 per cent of all revenue from oil produced in southern Sudan, after 2 per cent is set aside for the relevant oil producing state government. However, the parties do not yet agree on the parameters for calculating the oil wealth, or which oil fields lie in the South. There has not yet been any progress on ascertaining the North-South borders which will determine the division of the oilfields, the SPLM does not yet have access to any of the information to which it is entitled relating to oil

³³ Crisis Group interviews, February and March 2006.

³⁴ Ophera McDoom, "Sudan's SPLM, NCP Clash over Security Laws", Reuters, 2 February 2006.

³⁵ See: "The CPA Monitor: Monthly report on the implementation of the CPA", February 2006, at: <http://www.unmis.org/english/cpaMonitor.htm>.

³⁶ Crisis Group interview, Khartoum, March 2006.

³⁷ Crisis Group interview, SPLM official, 15 March 2006.

³⁸ Crisis Group interview, 9 March 2006. "The CPA Monitor: Monthly report on the implementation of the CPA", February 2006.

³⁹ See Article 38.b, Implementation Modalities and Global Implementation Matrix, CPA, signed 9 January 2005.

⁴⁰ See Article 53, Implementation Modalities and Global Implementation Matrix, CPA, signed 9 January 2005.

⁴¹ Crisis Group interview, 9 March 2006.

⁴² Crisis Group interviews, February and March 2006.

⁴³ "The CPA Monitor: Monthly report on the implementation of the CPA", Article 34 and Annex 19, February 2006.

production figures and existing contracts, and the National Petroleum Commission – the executive body created in the CPA to help regulate the petroleum sector – remains stuck on procedural differences. Progress must be achieved on all three of these issues for smooth relations and implementation in the petroleum sector.

Though the CPA granted a small SPLM technical team the right to see and review existing oil contracts, this has not yet happened. The SPLM blames this on NCP intransigence – when senior SPLM official Pagan Amum pursued Energy Minister Awad al-Jaz over the summer to gain access to the contracts, he was told that he had to wait until the return of the Secretary-General of the Ministry. The Secretary-General only contacted the SPLM in December, and the contracts remain unavailable to this day.⁴⁴ The SPLM also shares some of the blame, as it lacks trained personnel, was slow to establish the technical committee, and has reportedly failed to follow up since Pagan's failed efforts over the summer.⁴⁵ Promises of technical support to the SPLM have been extremely slow in coming. Despite having a State Minister in the Ministry of Energy, the SPLM still does not have access to any of the key data regarding oil production, such as daily production figures.⁴⁶

The parties have not yet made any progress on defining the North-South boundaries, and the Ad Hoc North-South Boundary Commission tasked with this has yet to meet. Though the GoSS received nearly \$800 million in oil revenue from the GNU by the end of February 2006, and is having difficulty in absorbing and disbursing this amount, the GoSS has no way of knowing how much it is in fact entitled to. When the NCP refused to give the Energy Ministry to the SPLM, the decision was ultimately accepted by Salva because it was expected that the National Petroleum Commission would act as the new executive body for the petroleum sector, as per the terms laid out in the CPA - thereby giving the SPLM an opportunity to oversee and regulate all aspects of the sector. However, the National Petroleum Commission remains deadlocked and ineffective, as the NCP Energy Minister Awad al-Jaz seeks to maintain the ministry's total control of the oil sector, and pushes the Commission to be little more than a ceremonial body. Little has been achieved in the two National Petroleum Commission meetings to date, and al-Jaz has resisted requests from the SPLM to give the Commission a technical mandate to deal with the negotiation of new contracts, for example, as is provided for in the CPA. Combined with the fact that the SPLM State Minister in the Ministry, Angelina Teny,

remains shut out of the internal discussions and decision-making processes, the SPLM have little choice but to accept the word of the NCP.

Without having determined the borders, the NCP claims that the South is entitled to roughly 73 per cent of oil produced in Blocks 1, 2 and 4. The numbers that the NCP-dominated Ministry of Energy provides to the SPLM have little backing – hence the main revenue stream of the GoSS remains at the mercy of the NCP. For 2005, the NCP claim that the share for the South was \$798.4 million, of which Khartoum spent \$194.5 million on administrative costs for the now defunct South Sudan Coordinating Council from 9 January – 9 July 2005, and the GoSS received \$523.3 of the remaining \$603.9 million.⁴⁷ In late January, Salva Kiir publicly complained that the GoSS was not receiving its rightful share of the oil revenue.⁴⁸ In the days immediately following that press conference, SPLM claim that the Ministry of Finance transferred the remainder for 2005, as well as revenue for January 2006 and the GoSS share from the Oil Revenue Stabilisation Account, bringing the total paid to the GoSS by early February to \$773.15 million.⁴⁹ Following a meeting between the Presidency and the GNU and GoSS Ministers of Finance, both parties agreed that the amount transferred by the national Ministry of Finance equalled the amount received by the GoSS. This was the message the parties brought to the donor meeting in Paris in mid-March. However, this consensus should not be confused with a functioning petroleum sector.

Problems also exist in the petroleum sector in the South, where the GoSS continues to recognise oil agreements that a small group of SPLM officials signed after the CPA was completed. As pointed out in a previous Crisis Group report, these agreements, signed with White Nile (which is 50 per cent owned by the SPLM) for Block Ba in January 2005, and with the Moldovan company Ascom for Block 5b in June 2005, are a clear violation of the CPA and will likely cause problems for the GoSS in the longer-term.⁵⁰ Not only were both signed after the CPA had been signed – a right the GoSS did not have under the CPA, as all new agreements must go through the National Petroleum Commission – but both agreements were signed in concession areas already sold to other companies. Block

⁴⁴ Crisis Group interviews, 14 January 2006 and 8 March 2006.

⁴⁵ See "The CPA Monitor: Monthly report on the implementation of the CPA", Articles 79-82, February 2006.

⁴⁶ Crisis Group interviews, February and March 2006.

⁴⁷ Crisis Group interviews, 17 February and 8 March 2006.

⁴⁸ Opheera McDoom, "Sudan's Kiir slams slow peace deal process", Reuters, 28 January 2006.

⁴⁹ Crisis Group interviews, 17 February, 7 March and 8 March 2006. Confusion reigned immediately after the press conference, with the GNU ministry of finance alleging that the GoSS had received its proper share. See: "South Sudan received its proper share – official", *Sudan Tribune*, 1 February 2006.

⁵⁰ See Crisis Group Report, *The Khartoum-SPLM Agreement*, op. cit.

B (of which the White Nile concession is a sub-block) is leased to a Total-led consortium, and has been under lease to Total since 1980,⁵¹ and block 5b is leased to a consortium led by Petronas. The wealth sharing agreement in the CPA stated that all existing oil agreements would remain valid, thereby further undermining the right of the SPLM to have signed these agreements. Nonetheless, the GoSS has yet to take any action on this issue. To the contrary, both White Nile and Ascom have set up bases in Juba, and White Nile is operating around Bor and hopes to begin drilling before the end of the year.⁵²

Oil development also continues in Unity and Upper Nile State, with the civilian population continuing to be displaced as a result. In Unity State, development is displacing villages and villagers – through coercion and unmet promises rather than violence – and is allegedly being supported by SPLM Governor Taban Deng Gai. For example, villagers in Thar Jath were moved in February to a new village called Rier, where they were promised a clinic, school and clean water, in addition to financial compensation. The villagers reportedly refused when they realised the proposed site was swampy and the promised development was not forthcoming, only to be ordered to move by the Governor.⁵³ Similar displacement is reportedly also continuing in the Chinese run Ader Yel oilfield in Upper Nile.⁵⁴ Though the CPA promised that the views of citizens would be taken into consideration in planning oil development, this does not yet appear to be the case.

4. Obstacles in the security sector

The security sector provisions of the CPA are perhaps the most critical to the sustainability of the agreement. If they are not implemented and monitored carefully, a return to war is possible. The disengagement of forces, disarmament and demobilisation processes, redeployment of the Sudan Armed Forces (SAF) from the South and the SPLA from the North are far behind schedule. However, the UN-led Ceasefire Joint Military Committee (CJMC) is also the most effective CPA body formed to date, meeting regularly and developing credibility with the parties. The CJMC answers to another UN facilitated body, the Ceasefire Political Committee (CPC), which finally met in late February 2006 for the first time and is scheduled to

hold monthly meetings. The CPC is designed to deal with political issues that could have implications on the security situation and the ceasefire, such as Abyei or eastern Sudan, for example. Nonetheless, there is cause for concern.

The delays in withdrawals must be addressed carefully. Though SAF claims to be on target with the timeline established in the CPA for withdrawals – purporting to have already removed 13,334 of its 66,525 troops in the South (a 31 per cent reduction) – the SPLA argues that SAF is far behind schedule, and is in fact reinforcing its positions in Renk and Melut.⁵⁵ UNMIS is meant to verify these re-deployments from the South, but to date can only confirm that 1,891 SAF troops have been redeployed to the North.⁵⁶ “SAF is telling us they withdrew most of their troops from January-March 2005, before we were operational on the ground”, explained an UNMIS officer. “We have no choice but to take their word for it until we can inspect and confirm”.⁵⁷ A SAF withdrawal from the South is critical to consolidating the peace, given its continued policy of supporting South Sudan Defence Forces (SSDF) militias, and SPLM allegations that it continues to support the LRA.

The problems facing the SPLA are numerous, and are discussed in the following section in greater detail. One difficult issue relates to the SPLA withdrawal from eastern Sudan, which should have been completed by 9 January 2006. Fortunately the SPLA were behind schedule, for SAF invaded the SPLA and Eastern Front-held town of Hamashkoreb on 11 January, leading to limited fighting with the Eastern Front. The SPLA are now scheduled to withdraw from the East in May, but this is likely to lead to a new war in the East until and unless a credible negotiation process is established between the NCP and the Eastern Front.⁵⁸ The SPLA should delay its withdrawal from the East until negotiations have begun.

⁵¹ White Nile and some in the SPLM claim that Total's concession expired in 2000 and was renewed in December 2004, just prior to the signing of the CPA.

⁵² “White Nile says fully operational in Southern Sudan”, AFX, 29 March 2006; “White Nile to start Sudan drilling by last quarter of 2006”, Reuters, 14 March 2006; and Crisis Group interview, 23 February 2006.

⁵³ Crisis Group correspondence, 26 March 2006.

⁵⁴ Ibid.

⁵⁵ See “The CPA Monitor: Monthly report on the implementation of the CPA”, February 2006; and Crisis Group interview, 7 March 2006.

⁵⁶ “The CPA Monitor: Monthly report on the implementation of the CPA”, February 2006.

⁵⁷ Crisis Group interview, 22 February 2006.

⁵⁸ For more on the crisis in the East, see Crisis Group Report, *Sudan: Saving Peace in the East*, op. cit.. The potential for conflict in the East is tied into the NCP's antagonistic relationship with Eritrea, which supports the Eastern Front and the Darfur rebel groups, and historically supported the SPLM against the NCP. In February 2006, Salva led a joint SPLM/NCP delegation to Asmara to discuss the prospects for negotiations on the East. It achieved little progress, however, as Eritrean President Issaias Afewerki refused to meet with the NCP members of the delegation, including the head of national security, Salah Abdallah “Gosh”. Crisis Group interviews, March 2006.

B. THE GOVERNMENT OF SOUTHERN SUDAN: A NEW SET OF CHALLENGES

Establishing a functioning government in southern Sudan will be a long and difficult process. During the war there was a minimal level of administration in the government-controlled garrison towns, and even less in most of the SPLA-controlled South, leaving little in the way of structures upon which to build the new government. The SPLM-dominated GoSS was established on 22 October 2005, and is slowly inching forward: the South Sudan Assembly was inaugurated on 29 September 2005, the South Sudan Interim Constitution was adopted on 5 December 2005, and governments in the ten southern states have been established. However, the GoSS is literally starting from scratch. Juba, the capital of the South, is perhaps the most developed city in all of southern Sudan, but does not yet have electricity or running water. The ministries are housed in a handful of run-down buildings, but there is not yet a civil service to carry out the work of the ministries. The combination of the lack of infrastructure and the limited capacity of the SPLM and other southern parties are making for slow going in South.

Though the challenges are enormous and the slow pace of progress understandable, the GoSS is running up against increasing frustration and unmet expectations throughout the South, and is experiencing a rise in insecurity. The CPA brought a welcome end to the war in the South, but also raised expectations throughout the general population and within the SPLM of tangible "peace dividends" as a result of the agreement. These "peace dividends" in the form of health care services and education or infrastructure projects have not yet arrived, though the main road arteries throughout the South are in the process of being de-mined and renovated.

Little was achieved prior to the establishment of the GoSS because there was no mandated body in charge of governance in the South, and the SPLM was poorly organised and lacked the resources to begin any significant projects. Money has finally arrived – nearly \$800 million in oil revenues so far – but the GoSS does not yet have the capacity to spend most of it, still lacking the necessary banking, treasury and payroll structures.⁵⁹ This has led to delays in the payment of salaries to both the civil service and the SPLA. There is far too little accountability and transparency within the GoSS, and rumours of missing or misspent millions from the first transfers of oil revenue last spring have begun to circulate in both Juba and Khartoum. Combined with the

unexplained (though not inexplicable) delays in payments of salaries, despite sufficient money being received by the Bank of Southern Sudan and the GoSS approving payment for civil service and SPLA salaries in December 2005, donor confidence in the GoSS is beginning to waver.⁶⁰

Despite the delays and the difficult road ahead, the GoSS has several things working in its favour. First, the CPA is a very good agreement for the South, broadly accepted across the southern political spectrum, and the self-determination referendum is seen as an historic opportunity which should not be squandered. Second, the South is arguably more unified now than it was prior to Garang's death, following the 8 January signing of the Juba Declaration, pursuant to which the majority of government-aligned southern militias agreed to be integrated into the SPLA. However, the security situation in the South remains tenuous, and the lack of progress in reorganising the SPLA and delays in the payment of troops are creating an increasingly unstable environment in the South.

1. Fixing the SPLA: A top priority for the South

The SPLM's main strategy for ensuring the implementation of the CPA was to maintain a strong and credible military threat against an NCP abrogation of the agreement. This was cemented in the CPA by allowing the SPLA to remain a separate army alongside the SAF. The parties agreed to establish SPLA/SAF Joint Integrated Units (JIU's) in the South, the three areas of Abyei, Southern Kordofan and Blue Nile states, and Khartoum, with the understanding that the SAF would withdraw the remainder of its troops from the South, and the SPLA would withdraw its additional troops from the North.

Throughout the 21-year civil war, the SPLA functioned mostly as an unpaid army of volunteers and conscripts. Its size varied based on the time of year and the threat, with troops supported by the local population through voluntary donations and taxation. Transforming the SPLA into a professional army remains a top priority for the movement, but one that has seen limited progress, and this is causing a new set of problems in the South. Little was achieved on this front during the pre-interim period,⁶¹ due to a lack of resources and a lack of trust between Garang and then SPLA Chief of Staff Salva Kiir. Garang appointed a new SPLA command just prior to his death, selecting Salva to act as the Vice-President for the GoSS, headed by new Chief of Staff Oyai Deng Ajak. Though the revenue problem has since largely been solved, with the SPLM

⁵⁹ Crisis Group interview with UN official, Juba, 28 February 2006.

⁶⁰ Crisis Group interviews, February-March 2006.

⁶¹ The Peace Agreement established a six-month pre-interim period, followed by a six-year interim period leading to the southern referendum.

cum GoSS receiving a steady flow of oil revenue from the central government since May 2005, the army remains a mess.

The plan for the reorganisation was to assemble troops within the seven regional areas of operation for the SPLA, and conduct a headcount of all available troops.⁶² Garang proposed a number of more than 360,000 last spring to participate in the UN-led DDR (disarmament, demobilisation and reintegration) process, but the target for the standing professional army is between 80,000-120,000 troops.⁶³ The head counts would also provide an opportunity to assess the skill set of each soldier, and reassign them as necessary – to the army, the JIUs, the wildlife or prison services, the civil service, those to be demobilised and those to be retired. The strategy was then to form a national army, based on the mixed regional forces. The head count process has proven difficult because the SPLA, as a volunteer army, included many part-time fighters who have since gone back to civilian life. Assembling troops has been one major challenge. In some locations where troops have been assembled, the lack of food and delays in the payment of salaries has led to people leaving the assembly areas before the headcount was completed.⁶⁴ One area where the SPLA has made progress is in appointing its members to serve on the JIUs. It has also been supporting these JIU troops with housing and food, because although the GNU is to pay for the JIUs out of the national budget, the Joint Defence Board (the executive body for the JIUs) did not become operational until February 2006.⁶⁵

Though \$80 million was approved by the GoSS parliament for SPLA expenditure in the first quarter of 2006, there have been extensive delays in paying the soldiers due to the lack of progress on the reorganisation of the forces.⁶⁶ The continued delays, which went unexplained to the public, combined with the knowledge that sufficient resources had been received by the GoSS and approved for expenditure, created a dangerous situation in the South.

⁶² The seven areas are Upper Nile, Equatoria, Bahr el-Ghazal, the Nuba Mountains, Southern Blue Nile, the Joint Integrated Units, and the SPLA General Headquarters. Crisis Group interview with senior SPLA official, 26 February 2006.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Crisis Group interview, 27 February 2006. The Joint Defense Board (JDB) is the executive body established to oversee the formation and function of the JIUs. Staffed jointly by SPLA and SAF, the formation of the JDB was delayed until the Presidential decree of 29 December 2005. The JDB met twice in February, but faces logistical constraints and is not yet fully operational. Before the JIUs can be fully operational, the JDB must develop a new military doctrine, rules and procedures for operations, and organise six months of training for participating troops.

⁶⁶ Crisis Group interviews, February 2006.

Under pressure from its own troops, as well as the general population, the SPLA command finally began issuing payment in late February 2006 to some its soldiers.⁶⁷ However, the lack of reorganisation has forced the SPLA to pay troops using the old structure, in which commanders are given the funds and expected to pay salaries downwards to the members of their brigades.⁶⁸ Without having completed the head counts or the reassignments of troops, this system is both unaccountable and unsustainable, because the actual soldiers present in each brigade have not been assessed or reviewed prior to the payment of salaries.

The reorganisation of the army must be made an immediate priority for the GoSS. The delays have lowered morale, leading to banditry and poor discipline amongst the troops.⁶⁹ Poor performance by SPLA troops is allowing new security threats to flourish, such as the Lord's Resistance Army (LRA). The reorganisation process will also be complicated by the integration of a substantial number of militia members formerly aligned to the NCP, who agreed to join the SPLA through the Juba Declaration, as described below. Substantial financial and technical assistance to the SPLA promised by the U.S. government during the final stages of the negotiations has not transpired, and the \$20 million promised last April following U.S. Deputy Secretary of State Robert Zoellick's visit to the South for military training and equipment has also been slow in coming due in part to restrictions on the types of assistance the U.S. can provide under current sanctions laws.⁷⁰ One potential source of expertise was

⁶⁷ Crisis Group interviews, February and March 2006.

⁶⁸ Crisis Group interviews, 26 February and 27 March 2006.

⁶⁹ Crisis Group interviews, 16 February 2006.

⁷⁰ The U.S. government plans to take a holistic approach to security sector, police, and judicial reform in southern Sudan. The U.S. would like to work closely with the SPLA on rebuilding its command structures and force planning with the dual goal of reducing the army's size and professionalising the force. The U.S. also wants to provide training to SPLA units to enhance their capacity on the battlefield. Improving the standard of the SPLA will improve the morale of the force and assist in the creation of the JIUs. However, under current sanctions, U.S. assistance has been limited to providing civilian vehicles and communications equipment to the SPLA, as well as some training activities. Although \$17 million of prior year funds have been obligated to Dyncorp to carry out the assistance, actual execution of some of the equipment grants, including secure communications, and most of the training, has been held up pending waivers of specific provisions of the Arms Export Control Administration act or anti-terrorism statutes and executive orders which make no distinction between the Government of Sudan and the Government of Southern Sudan. A Presidential waiver is required in relation to most military aid and has not yet been issued. See also Carol Giacomo, "U.S. looking to help southern Sudan's ex-rebels", Reuters, 15 April 2005. Crisis Group interviews, February and March 2006.

the IMAT (International Military Assistance Team), a joint operation set up by the U.S., UK, Norwegian and Dutch governments, based out of Khartoum. However, Sudanese security services unceremoniously shut down the IMAT Khartoum offices in late February 2006, confiscating equipment and deporting staff, stating that the GNU had never granted it permission to operate in the country.⁷¹ Nonetheless, discussions between the parties and the member governments are continuing around the IMAT.

There are domestic options proposed by some senior SPLA to help with the reorganisation, including bringing retired southern officers back for short-term service to help with the reorganisation, and even asking for technical expertise from SAF, as was provided to the southern rebel Anya-Nya by the northern army following the end of the first civil war in 1972.⁷² There is also a need for international technical military expertise to help the new command. One factor that may be hampering progress is differing visions between Salva and the new Chief of Staff, Oyai Deng Ajak. Prior to the appointments to the GoSS last October, Salva requested Oyai to shift from Chief of Staff to the Minister of SPLA Affairs, with the intention of appointing Dominic Dim – a fellow Bahr el-Ghazal Dinka – to be the new Chief of Staff. Oyai refused, and there reportedly remains disagreement between the two over the future vision for the army.⁷³ As with the political divisions, these differences must be resolved urgently for the CPA to move forward, and the SPLM and SPLA to function as effective members of government at all levels.

2. The Juba Declaration: One Step Forward...

The signing of the Juba Declaration on 8 January 2006 by Salva and Gen. Paulino Matiep, Chairman of the South Sudan Defence Forces, the umbrella of government aligned southern armed groups, was the culmination of several years of negotiations, and represents a huge step forward for southern unity. A prime example of the NCP's counter insurgency tactics of divide and rule, the SSDF were supported, armed and directed by Khartoum to fight the war in the South and weaken the SPLM/A both politically and militarily.

The CPA stated that the SPLA and SAF would be the only armed forces legally allowed in the country, and that all other armed groups allied to either side must choose to integrate into either the SPLA or SAF within one year after the agreement was signed. Talks between the SPLA and the SSDF began in 2003 while the negotiations were ongoing, but were unsuccessful. Following the signing,

there was a very positive South-South dialogue in Nairobi in April 2005 between the southern SPLM and other southern political opposition parties, but this did not include the armed elements of the SSDF. Separate negotiations between the SSDF and SPLA were carried out in Nairobi in June 2005, but failed to make substantial progress, as hostility between the SSDF leadership and Garang stymied progress.⁷⁴ The SSDF delegation came with a number of core demands which Garang refused to accept, such as changing the name of the army from the SPLA to something more neutral, and demanding a set number of guaranteed positions in the SPLA's half of the JIUs. It was the fear of many Sudan watchers, including Crisis Group, that the NCP would continue to use its allied southern militias throughout the interim period as a tool to destabilise and divide the South, and undermine the implementation process. Though the NCP's military apparatus continues to pursue this policy in the South, the Juba Declaration, if implemented, greatly consolidates peace in the South and removes one of the main strategies from those seeking to undermine the CPA.

Relations between the two groups improved immediately after Garang's death, following the violence between northerners and southerners in Khartoum, in which the forces of SSDF Chairman Paulino Matiep played in a critical role in protecting southern civilians and deploying alongside SAF and SPLA forces to help control the situation. This confirmed to many aligned with the NCP that their future lay with the SPLM in the South.⁷⁵ The hostile relationship that senior SSDF leaders held towards Garang immediately softened after Salva's appointment as SPLM Chairman, and Riek Machar's⁷⁶ promotion to Vice-President of the GoSS.⁷⁷ Both men had historically been more open to South-South dialogue than Garang.

⁷⁴ For more on these negotiations, the April 2005 South-South dialogue, and broader context and analysis of the SSDF, see Crisis Group Africa Report N°96, *The Khartoum-SPLM Agreement*, op. cit.

⁷⁵ Crisis Group Africa Briefing N°30, *Garang's Death: Implications for Peace in Sudan*, 9 August 2005.

⁷⁶ Dr. Riek Machar was a leading member of the SPLA, but in 1991 helped lead a split within the movement, forming the SPLA-Nasir faction. In 1997 Riek signed the Khartoum Peace Agreement with the NCP, along with five smaller southern parties, and was appointed 2nd Vice-President. Though the agreement included a self-determination referendum for the South, it was never implemented, and Riek eventually returned to Nairobi. In early 2002 he reached an agreement with Garang to return to the SPLM, and was eventually elevated to the third position in the movement.

⁷⁷ Riek is a Nuer, the second largest tribe in the South after the Dinka, as are the bulk of the SSDF. A former ally of many in the SSDF after he signed the 1997 Khartoum Peace Agreement, Riek played a helpful role in bridging the gaps between the two parties in the June 2005 negotiations.

⁷¹ Crisis Group interview, March 2006.

⁷² Crisis Group interview, 5 March 2006.

⁷³ Crisis Group interviews, November 2005-March 2006.

Matiep welcomed Salva to Khartoum, and informal dialogue soon began between the two leaders. As a sign of good faith, Salva agreed in September to give a small number of SPLM positions in the GoSS and the relevant state governments to the SSDF.⁷⁸ With the SSDF now officially engaged in the political institutions of the CPA, and the bulk of the SSDF leadership keen on reaching an agreement with the SPLM that would ally them with the South against the NCP, an agreement seemed possible. However, the SSDF continued to demand guarantees from the SPLM leadership which were not granted, and the process dragged on, until resolved in the Juba Declaration.

The Declaration is a remarkable development in that the SSDF dropped all of its earlier demands for guarantees and agreed to a loose implementation process, reliant on the SPLM/A leadership keeping their word – exactly the type of agreement that Garang had been promoting and which had been rejected in earlier discussions. The agreement established a High Political Committee to be appointed by Salva and Matiep to oversee implementation, and a joint Military Technical Committee to deal with the details of the integration of forces, including head counts of SSDF troops, issues of harmonisation of ranks, and demobilisation.⁷⁹ Salva also helped cement the agreement by appointing Matiep as the Deputy Commander-in-Chief of the SPLA, and former Southern Sudan Coordinating Council Finance Minister Gabriel Changson Chang, a close ally of Matiep's, as the new Minister of Parliamentary Affairs in the GoSS. A member of the SSDF negotiating team explained the change in SSDF strategy and its decision to drop its demands prior to the 9 January 2006 deadline: "Circumstances changed after Garang's death and the CPA has come under threat. The South has to come together to save the CPA. Salva has also demonstrated a more open attitude than Garang and has prioritised the issue, calling for a resumption of dialogue between the SPLM and the other armed groups in his eulogy at Garang's funeral."⁸⁰ He also cited the SSDF participation in the GoSS political structures as an important step to build SSDF investment in the CPA, thereby sidelining some of the more extreme elements within the SSDF.⁸¹

The Juba Declaration also brought political benefits to Salva and the SPLM by bringing in large sections of the predominantly Nuer SSDF. There was growing

disappointment within the Nuer community at their poor representation in the GoSS cabinet (only three ministerial positions, two from the SPLM including Vice-President Riek Machar – who is also the Minister of Housing, Lands and Public Utilities – and one representative of the opposition United Democratic Salvation Front) and the GNU (only two state ministerial positions) at the time of the Juba Declaration.⁸² The agreement and subsequent appointments will help balance the tribal representation amongst SPLM appointees, and help defuse one potential area of disagreement within the GoSS.

Yet the implementation of the Juba Declaration is fraught with difficulties. The SSDF has never been a coherent organisation, but rather a conglomeration of independent government aligned militias. Khartoum worked hard to make sure that the allegiance of these groups was to the North, rather than allowing them to coalesce into a strong united southern armed movement. While the Juba Declaration seems to have brought the bulk of the SSDF commanders to the SPLA, several key commanders have chosen to remain allied to SAF, as is their prerogative under the CPA.⁸³ Those who remained with SAF include Generals Gordon Kuong, Tom el-Nur, Thomas Mabior, and Gabriel Tang Ginye, though elements of each of their forces have joined the SPLA.⁸⁴ Though the SSDF should have ceased to exist as of 9 January 2006, with all forces integrated into either the SPLA or SAF according to the CPA, Gordon Kuong was immediately granted access to the NCP-controlled state media outlets, deploring the Juba Declaration and declaring the continued existence of the SSDF.⁸⁵

At the same time, the SAF military intelligence has been actively working to undermine the Juba Declaration and draw factions and elements back to the North. Just prior to the signing of the Juba Declaration, SAF Military Intelligence brought Cdr. Peter Lorot to Khartoum from his base in Chukudum, Eastern Equatoria, via a local member of parliament, and convinced him to reject the Juba Declaration.⁸⁶ While the negotiations were going on

⁷⁸ Crisis Group interview in Khartoum, 14 October 2005.

⁷⁹ "The Juba Declaration on Unity and Integration", 8 January 2006. See: "The CPA Monitor: Monthly report on the implementation of the CPA", Annex 24, February 2006, at: <http://www.unmis.org/english/cpaMonitor.htm>.

⁸⁰ Crisis Group interview, 20 February 2006.

⁸¹ Ibid.

⁸² Following Salva's appointments to the GoSS and GNU, the Nuer members of the SPLM caucus in the southern assembly sent Salva an open letter on 26 October 2005, a copy of which was obtained by Crisis Group, complaining about the lack of Nuer representation in the various organs of government.

⁸³ The UN estimates that prior to the Juba Declaration there were 45,259 members of the other armed groups aligned to SAF, and 2,345 aligned to the SPLA. After the Juba Declaration, it estimates that there are 17,923 still aligned to SAF, 23,911 aligned to the SPLA, and 2,950 that have yet to declare their allegiance. See "The CPA Monitor", February 2006, op. cit.

⁸⁴ Crisis Group interview, 25 February 2006.

⁸⁵ See, for example, "Sudan SSDF militia denies merger with the SPLA – Kong", *Sudan Tribune*, 15 January 2006.

⁸⁶ Crisis Group interview, 26 February 2006.

in Juba, Military Intelligence reportedly travelled to Longochok, Upper Nile, and delivered ammunition and appointed a new head of the local militia while the former leader, Cdr. Cheyut, was in Juba for the negotiations.⁸⁷ SAF also reportedly provided military support to Gabriel Tang Ginye in Malakal, after he was forced out of Fangak following the decision by most of his forces to join the SPLA.⁸⁸ The Juba Declaration seems to have caught the NCP off guard, and they have been frantically trying to reverse its effects ever since.

Fighting did immediately break out in several areas of the South following the agreement, as forces were split in two, such as the case of Tang Ginye described above. More serious fighting occurred in Yuai, near Waat, when elements under the control of Gen. Simon Gatwich (who supported the Juba Declaration), sought to forcibly disarm the well-armed local population without explaining the elements of the new agreement or sensitising the population to their mission. The result was serious fighting with reports between 70 and 200 people killed.⁸⁹ The GoSS, with the support of UNMIS, was quick to respond to the Yuai violence, first flying Gatwich to the area to meet with the local combatants and defuse the situation, and then by organising a reconciliation workshop also attended by Riek Machar, to explain and consolidate the agreement in the area.⁹⁰ This type of rapid response support by UNMIS and political will by the GoSS is exactly what is needed to help consolidate the agreement. Another round of serious fighting occurred in early March 2006, when a group of former SSDF soldiers were ambushed by current SSDF troops just outside of Abyei town. The former were travelling from Khartoum to the South to join the SPLA.⁹¹

Yet even with goodwill, implementation will be difficult. The SPLA's lack of organisation and the delays in paying salaries are a major obstacle that could delay the formal integration of the forces. The salary issue is particularly difficult. The SSDF troops have become accustomed to receiving salaries and food aid from Khartoum, both of which were cut straight away to all who opted to be integrated into the SPLA. Though the Military Technical Committee immediately began its work conducting SSDF headcounts Unity and Upper Nile states, there were immediate difficulties in sustaining the thousands of assembled troops. Without rapid assistance and support from the GoSS and the international community in the form of food aid and transport, it is inevitable that many

of these troops will be lured back to SAF by material incentives. This will increase the likelihood that they will be used by the NCP to destabilise areas of the South and undermine security, under the NCP's favourite cover of "tribal fighting". There are also technical obstacles, such as the fact that the SSDF has many more high ranking officers than the SPLA – rapid and widespread promotions were another of SAF's tactics to obstruct integration with the SPLA – and integrating these officers at their current rank will cause difficulties for the traditional SPLA, demonstrating yet again the need to reorganise the army as soon as possible.

3. The LRA: Exploiting an opportunity in the South

The Ugandan rebel Lord's Resistance Army (LRA), has been operating out of the Eastern Equatoria region of southern Sudan since the mid-1990's, supported by the Government of Sudan in order to destabilise Northern Uganda and counter Kampala's support to the SPLA. The LRA's tactics are designed more to terrorise the local population and disrupt peace and stability than to achieve any identifiable political goals. The past several months have shown a regrouped, highly mobile LRA operating now in three countries: northern Uganda, southern Sudan, and eastern DRC. Efforts by the Ugandan People's Defence Forces (UPDF) – who have had an agreement with Khartoum since 2002 to operate in parts of the South - to destroy the LRA rear-bases in Sudan have been partially successful over the past several years, but allegations of continued LRA support from SAF have hampered the effectiveness of these operations. Attempts at mediation between the LRA and the Ugandan government have made some progress over the past two years, but have not ended the conflict.⁹²

It was hoped that the CPA would finally mean the end of the LRA in Sudan, as the link to SAF would be cut following its withdrawal from the South (to be completed by July 2007), and that without supplies the SPLA and UPDF would be able to neutralise or expel the remaining forces. The opposite has occurred. Rather than dwindling away, the LRA has expanded its activities westward, to

⁸⁷ Crisis Group interviews, 16 February and 26 February 2006.

⁸⁸ Crisis Group interview, 26 February 2006.

⁸⁹ "Sudan: Concerns over recent clashes in the South", IRIN, 9 February 2006. Crisis Group interviews with SSDF, SPLA and UN officials, February and March 2006.

⁹⁰ Crisis Group interviews in Juba, February 2006.

⁹¹ Crisis Group interviews, March 2006.

⁹² For more on the LRA's history, see Crisis Group Africa Report N°77, *Northern Uganda: Understanding and Solving the Conflict*, 14 April 2004. For more on the mediation efforts, see: Crisis Group Africa Briefing N°22, *Peace in Northern Uganda: Decisive Weeks Ahead*, 21 February 2005; Crisis Group Africa Briefing N°23, *Shock Therapy for Northern Uganda's Peace Process*, 11 April 2005; Crisis Group Africa Briefing N°27, *Building a Comprehensive Peace Strategy for Northern Uganda*, 23 June 2005; and Crisis Group Africa Briefing N°35, *A Strategy for Ending Northern Uganda's Crisis*, 11 January 2006.

DRC and the southern Sudanese states of Bahr-el Jebel and Western Equatoria, creating massive disturbances for the civilian population, disrupting relief, refugee repatriation and development activities in the most peaceful region of the South over the past ten years,⁹³ and limiting road access along the sole entry point in and out of Juba. Unlike previous operations in Eastern Equatoria, the LRA has begun operating in urban centres, carrying out attacks in and around Yei, Maridi and as far west as Yambio, near the border with the Central African Republic. The SPLM have openly accused SAF of continuing its support to the LRA in the South, but this alone does not explain the LRA's rebirth inside Sudan.⁹⁴ In addition, the delays in reorganising and paying the SPLA are leading to poor military performance in the field and unwillingness to engage the LRA militarily. The SPLM is also pursuing a confusing and contradictory policy on the LRA. Both of these elements must be sorted out for the security situation to improve in the South.

A main difficulty in dealing with the LRA at present is its highly mobile presence across a very wide area in three countries, each of which possesses varying military capabilities to deal with the group. Prior to September 2005, the predominantly Acholi LRA had never before crossed the Nile or moved into Western Equatoria, instead concentrating its operations in the areas from Juba and Torit southwards into northern Uganda, operating primarily in the Acholi areas on both sides of the border. Since September attacks attributed to the LRA have skyrocketed west of the Nile, with the UPDF reporting that there are four separate LRA groups operating within southern Sudan.⁹⁵ UN daily situation reports from South Sudan and Crisis Group interviews indicate that there have been more than 50 attacks and robberies attributed to the LRA since September, though the number of attacks is likely significantly higher than that. The majority of the attacks have been along the Yei-Maridi road and the Yei-Juba road. Following an ambush in late October in which two foreign de-miners were killed, the UN changed the security clearance for much of Eastern Equatoria and Bahr-el Jebel states to level IV, meaning that areas are only cleared for emergency activity and that armed escorts are required for automobiles or convoys to travel along

the roads. The LRA has moved steadily westward, weaving between the DRC and southern Sudan, as necessary. In early February 2006, there was an armed attack on the Unicef compound in Yambio – the most western target yet - which was later confirmed by UN security to have been carried out by the LRA.⁹⁶ Another attack near Yambio took place on 19 March, and included a second assault on a UN compound. Fighting reportedly lasted for nearly six hours, and UN troops killed three suspected LRA soldiers, sustaining casualties in the process.⁹⁷

The SPLM is convinced that the LRA is being supported and resupplied by SAF, as are many in the UN in Juba.⁹⁸ A senior SPLA official provided three examples of continued SAF support to the LRA. First, he stated that LRA soldiers are continuing to be housed and supported inside SAF barracks and outposts in and around Juba. Following LRA attacks, they flee to these barracks and outposts, effectively protecting them from SPLA or UPDF attacks. Second, he claims that the SPLA security in Juba arrested the key Ugandan interlocutor between SAF and the LRA several months ago, though he has since been freed. During interrogations, the accused admitted that he was acting as the intermediary and working with the LRA. Third, he said that the SPLA believed that SAF provided the LRA with motorised rubber boats to cross the Nile.⁹⁹ The GoSS Minister of Information, Dr. Samson Kwaje, commented that “The ruling party is using the LRA to discredit its partner-in-peace so that it does not deliver.” He cited fresh supplies to the LRA: “On March 3, after attacking the village of Wonduruba in Lanya, Yei district, villagers witnessed the LRA breaking open new boxes of ammunition with Arabic inscriptions.”¹⁰⁰ The commander of the SAF in Juba denied the charges, attributing them to old ammunition stores: “In the past, when we fought the SPLA, we were assisting the LRA. We stopped assisting them in 1998, after we reached an agreement with Uganda. The LRA hid some of the ammunition we had given to them, which they are digging up now.”¹⁰¹ All of this despite agreements from SAF dating back to 2002 to allow the UPDF to operate in the South to go after the LRA, the elimination of the “Red Line” in October 2005 allowing the UPDF to conduct operations north of the Juba-Torit road into LRA base areas, and an agreement

⁹³ UNHCR, for example, has halted the repatriation of all refugees to Central and Western Equatoria, following the recent LRA attacks on the UN and NGOs in Yambio and Yei. Many humanitarian organisations have decided to withdraw their staff from Yambio, Yei, Kajo Keji, and Tambura. UNHCR Press Release, 21 March 2006, available at www.unhcr.org.

⁹⁴ “Salva Kiir says Sudanese Army supports Ugandan LRA”, Sudan Tribune quoting an interview with BBC Arabic Service, 21 February 2006, available at http://www.sudantribune.com/article.php3?id_article=14169.

⁹⁵ “Report of the UN Secretary-General on the Sudan, S/2006/160”, Available at www.reliefweb.int.

⁹⁶ Crisis Group interview, 24 February 2006.

⁹⁷ See: “UN troops in South Sudan engage attackers, kill 3”, Reuters, 22 March 2006; and “Uganda's LRA attacks in Yambio, terrorising Equatorians”, *Sudan Tribune*, 20 March 2006.

⁹⁸ Crisis Group interviews, February and March 2006.

⁹⁹ Crisis Group interview, 7 March 2006.

¹⁰⁰ “Sudan: LRA terrorises Sudan”, New Vision (Kampala), 19 March 2006, Available at www.newvision.co.ug.

¹⁰¹ Ibid.

signed with the UPDF and SPLA in December 2005 to conduct joint operations against the LRA.¹⁰²

Interviews with former LRA combatants revealed that one way in which the LRA is sustaining itself is by raiding cattle in Sudan, then bartering them for weapons with Dinka and Toposa traders.¹⁰³ However, there is considerable suspicion and speculation in Juba about the identity of the attackers terrorising Bahr-el Jebel and Western Equatoria. Many people suspect that there are in fact other Sudanese groups operating under the shadow of the LRA, with their attacks and actions being attributed to the LRA because of a lack of information. "The Tong-Tong [the local name given to the LRA] operating in Western Equatoria are predominantly Sudanese", worried a senior SPLM security official. "There are now more Sudanese than Ugandans in the LRA. They're being paid and supplied by SAF. It's not possible for the Yambio attacks to have been carried out by the Ugandan LRA, it's too far from their homes."¹⁰⁴ The tactics of the LRA west of the Nile are also reportedly softer than the traditionally brutal LRA in Northern Uganda, killing fewer people, and often releasing their abductees unharmed after forcing them to help carry goods or equipment.¹⁰⁵ This is also used as evidence by some to support the theory that these attackers are predominantly Sudanese, and some allege that some of the attacks are in fact being carried out by disgruntled SPLA soldiers seeking money by other means. A senior UN official in Juba worried about the impact of the continued attacks in the South. "If it's not resolved soon it will become a major problem. If it has become a Sudanese movement, and it's allowed to continue, it will either be "talent spotted" by a backer seeking to undermine the CPA, or it will become a rallying point for dissident Sudanese."¹⁰⁶

What is most shocking about the LRA's resurgence west of the Nile is that it has happened in the SPLA's heartland, near the home of the army headquarters in Yei, yet the SPLA has completely failed to respond to the LRA threat. Many attribute this to the lack of progress in reorganising the SPLA and delays in payment of salaries, leading to low morale and poor performance. "They haven't been

paid in over a year, but they're told the money is there. They won't do anything", despaired a senior SPLM security official.¹⁰⁷ "The SPLA still don't have orders to fight the LRA, and they don't have the will to risk their lives now that peace has come", commented another senior SPLA officer. "Our troops say they were brought to fight SAF, not the LRA. There have been incidents where we just watch them but do nothing."¹⁰⁸ Reportedly even the UPDF have begun complaining to some SPLM officials about the poor performance of the SPLA.¹⁰⁹

Though the delays in reorganising and paying the SPLA are obviously a factor in its poor response to the LRA threat, blame can also be apportioned to the ambiguous and confusing policy the SPLM leadership holds on the matter. Since coming to power, Salva has repeated Garang's three layered approach to the LRA – first to seek a peaceful solution to the LRA problem, second for the LRA to leave southern Sudan, or finally to face forced eviction.¹¹⁰ In early November, GoSS Vice-President Riek Machar offered to mediate between the LRA and the Ugandan government, an offer that was accepted the following day by the LRA via press release.¹¹¹ Riek's offer was unplanned, and undermined the existing efforts of Ugandan negotiator Betty Bigombe to establish a credible negotiation process. Mediation efforts stalled over the next several months, while attacks continued in the South. However, a letter was reportedly recently delivered by an LRA emissary to Riek Machar, reconfirming the LRA's willingness to negotiate with the Ugandan government, and promising to send a full delegation to Juba in the near future.¹¹² By February, the SPLM message had shifted again to one of war, including Salva's public accusation of SAF's continued support of the LRA.¹¹³ During a mid-February visit to Juba, President Bashir instructed the GoSS to expel the LRA from the South within one month, and Salva reaffirmed this as a joint priority for the South.¹¹⁴ However, it appears that the

¹⁰² "Uganda to Step up Battle Against Rebels", Institute for War and Peace Reporting, 21 October 2005, available at http://iwpr.net/?p=acr&s=f&o=257705&apc_state=heniacr200510. See also, "Uganda, Sudan to carry out joint operations against rebels", Xinhua, 18 December 2005. Available at: http://english.people.com.cn/200512/18/eng20051218_228930.html.

¹⁰³ Crisis Group interviews, Gulu, Northern Uganda, January 2006.

¹⁰⁴ Crisis Group interview, Juba, 20 February 2006.

¹⁰⁵ Crisis Group interviews, February 2006.

¹⁰⁶ Crisis Group interview, Juba, 23 February 2006.

¹⁰⁷ Crisis Group interview, Juba, 20 February 2006.

¹⁰⁸ Crisis Group interview, Juba, 26 February 2006.

¹⁰⁹ Crisis Group interview, Juba, 26 February 2006.

¹¹⁰ "Sudan's FM stresses need to force out Uganda's anti-gov group from southern Sudan", *Sudan Tribune*, 25 August 2006. Available at http://www.sudantribune.com/article.php3?id_article=11272.

¹¹¹ "Uganda Rebel LRA welcomes Sudan's SPLM offer of mediation", Press Release, 15 November 2005. Available at http://www.sudantribune.com/article.php3?id_article=12583.

¹¹² Crisis Group interview, 7 March 2006.

¹¹³ "Salva Kiir says Sudanese Army supports Ugandan LRA", *Sudan Tribune* quoting an interview with BBC Arabic Service, 21 February 2006, available at http://www.sudantribune.com/article.php3?id_article=14169.

¹¹⁴ "LRA's expulsion is the task of Sudan's army and the SPLA – Salva Kiir", *Sudan Tribune*, 21 February 2006. Available at http://www.sudantribune.com/article.php3?id_article=14198.

SPLA has yet to receive orders to target the LRA. A senior SPLA official explained the dilemma: "They don't yet have orders to track down the LRA, because the LRA are staying in SAF camps. If we go after them, it will lead us to SAF and that will cause a major security incident. The only options are either to establish the JIUs in the South and direct them to jointly go after the LRA, or we have to wait until SAF withdraws from the South."¹¹⁵

The growing LRA activity is becoming a major source of instability in southern Sudan, disrupting humanitarian and development efforts, and threatening to deteriorate further if not addressed. Steps are needed by all sides. On the international side, the UN Security Council recently renewed the UNMIS mandate in Sudan, urging it to "make full use of its current mandate and capabilities" on the LRA and other armed groups who are responsible for attacks on civilians.¹¹⁶ The UNMIS mandate, however, is subject to different interpretations: high-level mission officials and commanders in the field can read it as either allowing for or restricting robust engagement. Therefore, the Security Council should clarify the UNMIS mandate, making it clear that the mission is to act proactively, including in a pre-emptive manner, and requiring it to use all necessary means to tackle the LRA problem.

A much better understanding is needed about the attacks in Western Equatoria, the identity of the perpetrators, and the LRA's alleged links with SAF. "We need dedicated intelligence on the LRA", declared a senior UNMIS official.¹¹⁷ The information gap on the LRA must be closed. The UN Security Council should appoint a Panel of Experts to investigate the membership, funding of, and support for the LRA. It should seek to develop comprehensive strategies to deal with the LRA more effectively, and should advise the Security Council on further measures to be taken. Given the regional dimension of the LRA, the Panel should coordinate and work closely with UNMIS, MONUC (the UN mission in the DRC), the SPLA, the UPDF, and other regional actors affected by the LRA. Additionally, after consultations with the SPLA and the SAF, UNMIS should establish a verification body mandated to freely and rapidly investigate allegations of SAF support to the LRA.

Political pressure should be applied on the SAF and the NCP to allow for unhindered operations for the newly-created body. The verification body should also track LRA movements, patterns, and support networks. Capable UN member states should provide necessary support, such as satellite imagery or communications technology. Across the border, MONUC should also up its intelligence gathering efforts on the LRA, sharing information and coordinating strategies with UNMIS.¹¹⁸

For the SPLM, the LRA is yet another reason for it to urgently prioritise the reorganisation of its army and the payment of its troops. SPLM leadership must also clarify its policy on the LRA. Instead of pursuing its own negotiating track, the SPLM should support the existing mediation process and coordinate more closely with lead negotiator Betty Bigombe. At the same time, the SPLA must begin to apply far greater military pressure on the LRA. For this to succeed, it would require first the rapid re-organisation of the SPLA, even within the existing Brigade model, provided that the Brigades are confirmed to be fully staffed, rather than the envisioned regional reorganisation.¹¹⁹ Second, the SPLA leadership must ensure the LRA's eviction to be a top priority, including by providing the necessary arms and logistics to carry out the mission. Third, the JIUs, once operational, should be tasked by the Joint Defence Board to focus on the LRA in the three states. Finally, SAF support must be cut off in order to defeat or expel the LRA. The SPLM must continue to press the NCP and SAF on this issue, with support from the international community.¹²⁰

¹¹⁵ Crisis Group interview, 7 March 2006.

¹¹⁶ "UN extends peacekeeping mission in S. Sudan", AFP, 24 March 2006. See UNSC Resolution 1663 (S/RES/1663 (2006)) of 24 March 2006. UNMIS currently has a Chapter VI mandate, with a provision under Chapter VII, "in the areas of deployment of its forces and as it deems within its capabilities," to protect UN personnel, equipment and operations, and "without prejudice to the responsibility of the Government of Sudan, to protect civilians under imminent threat of physical violence.", UNSC Resolution 1590 (S/RES/1590 (2005)), 24 March 2005, paragraph 16(i).

¹¹⁷ Crisis Group interview, 5 March 2006.

¹¹⁸ The regional implications of the LRA's expansion and an analysis of more effective cooperative regional approaches to the LRA will be the subject of an upcoming Crisis Group report.

¹¹⁹ Crisis Group interview, 26 February 2006.

¹²⁰ Crisis Group interview, 26 February 2006.

III. ASSESSING THE PARTIES: A ROUGH ROAD AHEAD

A. THE NCP: OUT OF OPTIONS?

Despite being the most powerful and best organised political force in the Sudan, the ruling NCP finds itself increasingly threatened by the direction the country is headed. The NCP signed the CPA in January 2005 in part to divert international attention from the crisis in Darfur, though its commitment to the implementation of the agreement was questionable even then. There was, however, reason to believe that the strong working partnership between Garang and Taha that developed over the course of the negotiations could help ensure implementation.

Aware of its own vulnerability and lack of popular support in the North, the NCP foresaw the dangers that full implementation of the CPA would bring to its political survival, namely a more open political system and free and fair elections after four years in which opposition parties could challenge its record since 1989. Yet pragmatic calculations kept it at the negotiation table, pressured by a strong regional and international consensus to reach an agreement, a desire to end its pariah status and normalise its relations with the West, and, initially, a fear of potential U.S. reprisals after September 11th due to its links to Islamic terrorism. After Garang and Taha began direct negotiations in August 2003 and signed the agreement on security arrangements a few weeks later, the talks took on a level of seriousness that had been lacking in previous rounds. The NCP soon developed a new strategy for its political survival by opening discussions with the SPLM in Naivasha on a potential political partnership between the two parties throughout the interim period. The discussions took place in secret with senior members of both parties, beginning in late 2003 and running through most of 2004.¹²¹ The NCP sought a firm commitment from the SPLM to maintain a political partnership throughout the six year interim period, including elections, over and above the CPA.¹²² "The SPLM can't be the government and the leader of the opposition at the same time" explained a senior NCP official to the negotiations. "A political partnership will help the implementation, and will help with unity. It's not a requirement for peace, but it's a priority for smooth implementation or there will be constant disagreement over interpretations."¹²³ While the SPLM accepted the

need for a de facto partnership with the NCP to facilitate implementation, it resisted a separate political partnership that would link the parties throughout the interim period irrespective of the CPA.¹²⁴

Calculating that the SPLM's popular support would help insure a joint NCP/SPLM electoral victory, the NCP counted on the partnership to secure its peaceful survival and its transformation to an internationally recognised and respected government. Supported by the strong working relationship that had developed between Taha and Garang, the NCP signed the CPA on 9 January 2005, obviously confident enough that it could either survive implementation,¹²⁵ or perhaps torpedo the agreement if necessary.

While Garang's overwhelming reception upon his arrival in Khartoum on 9 July 2005 likely surprised and scared the NCP, his unexpected death may have also signalled the end of the partnership and a change in strategy by the ruling party. According to one member of the NCP and participant in Naivasha, "We thought there would be political coordination, but the shocking death of Dr. John Garang changed the dynamics". After Garang's death, he described the SPLM in "a stage of free-fall" and incapable of maintaining a partnership with the NCP as it struggles to build institutions in the South and deliver services.¹²⁶

Prior to Garang's death, it was widely expected that the key architects of the Naivasha protocols in both the SPLM and the NCP would be rewarded with prominent positions in the new GNU. For the NCP, key negotiators and interlocutors in the partnership discussions like Dr. Mutrif Siddiq, Yahya Hussein Babiker, Idriss Mohamed Abdel Gadir, and Mohamed Ahmed Dirdirry were reportedly promised and were expecting promotions to prominent positions in the new national government, as ministers or state ministers.¹²⁷ Yet of this group, only Idriss – who was a state minister in the last government – was appointed to be a state minister in the ministry of the Presidency.¹²⁸ (A similar trend, discussed below, also

¹²¹ Crisis Group interviews in Naivasha, 2003 – 2004.

¹²² Crisis Group interview with a senior SPLM official, Naivasha, 27 February 2004

¹²³ Crisis Group interview, Nairobi, 6 April 2004.

¹²⁴ Ibid.

¹²⁵ A government strategist close to the NCP, but not involved in Naivasha, admitted the party was comfortable making major concessions in Kenya because it knew implementation would be difficult and could be manipulated. Crisis Group interview, Khartoum, February 2006.

¹²⁶ Crisis Group interview, Khartoum, 20 March 2006.

¹²⁷ Crisis Group interviews, February and March 2006.

¹²⁸ Idriss was also appointed to sit on the Assessment and Evaluation Commission (AEC) and the Ceasefire Political Commission (CPC); Dr. Mutrif remains under-secretary in the Ministry of Foreign Affairs; Yahya Hussein Babiker is a co-chair of the Joint National Transition Team (JNTT); Dirdirry is a member of parliament. However, this is not conclusive

occurred in the SPLM, with some of the key figures from Naivasha and participants in the partnership negotiations being pushed to marginal positions in the GoSS and GNU). President Bashir instead appointed several people who had been openly critical of the CPA, such as Defence Minister Abdel Rahim Mohamed Hussein.¹²⁹ People involved in the Naivasha talks from both parties were generally disappointed with appointments of both the SPLM and NCP to the new government. "Both parties could have come up with better lists", worried a senior NCP negotiator. "If there's a silver lining, it's that people who have always been opponents of the CPA on the NCP side are now sworn to uphold it".¹³⁰

While the partnership may have suffered a blow with Garang's death, the NCP's subsequent behaviour around the implementation of the CPA has further undermined a revival of the alliance. Instead, as described above, the NCP's program of systematically delaying or undermining implementation is likely to continue to push the SPLM farther away, and make a vote for independence a foregone conclusion in the southern referendum of 2011, provided the CPA holds until that point.

With the opportunity for a political partnership evaporating, the NCP has few viable options for its peaceful political survival. The full implementation of the CPA, with free and fair elections, would almost certainly sweep the NCP out of power if it is not allied with the SPLM.¹³¹ Peace agreements in Darfur and Eastern Sudan must inevitably include provisions for a greater share of representation for these regions in the central government, and must come at least in part out of the NCP's 52 per cent stake, eventually whittling it down to a minority party in government. The risk of losing political power means that

evidence of a power struggle or a shift in policy. The Islamist Movement in Sudan has been compared to Soviet-style Communist regimes in the sense that position does not necessarily correlate to one's actual power or decision-making weight within the movement. For example, two of the key NCP negotiators in Naivasha, Dr. Sayeed el-Khateeb and Amin Hassan Omer, were not members of the government at the time.¹²⁹ Those close to Taha had Abdel Rahim fired from the pre-CPA government over an incident involving the collapse of a new multistory building overseen by Abdel Rahim. Bashir's appointment of Abdel Rahim as Minister of Defence in the post-CPA government was seen as rewarding loyalists regardless of suspicions of corruption and inefficiency and a rebuff of Taha.

¹³⁰ Crisis Group interview, 18 October 2005.

¹³¹ Perhaps in an implicit acknowledgement of its vulnerability in a free and fair election in 2009, President Bashir has suggested that early elections be held. See "President al-Bashir: National Congress ready to contest any early elections", SUNA, 4 March 2006. Critics suggest the NCP prefers early elections before the holding of a proper census, establishment of independent electoral commission and passage of electoral laws.

NCP officials could lose their wealth, entitlement and impunity to which they have grown accustomed over the last seventeen years. A larger fear amongst the NCP leadership may be the looming investigation of the International Criminal Court (ICC) into atrocity crimes carried out in Darfur since 2003.¹³² The government has largely refused to cooperate with the ICC's investigations in Darfur, and President Bashir has repeatedly rejected the prospect of any Sudanese facing trial on foreign soil. But if there is a change in regime, it is probable that leading NCP figures will be arrested and tried by the ICC for their role in orchestrating the atrocity crimes in Darfur. This is yet another disincentive to implementation of the CPA by the NCP, in the absence of a political strategy to reduce the risk of prosecution.¹³³

At the moment, the NCP appears to be trying to manage its multiple crises, without allowing any one to spin too far out of its control. On the CPA, it is managing implementation without allowing for fundamental change, exploiting the SPLM's weakness and in the process damaging the movement's credentials as a national political party and the credibility of Salva Kiir as a national leader. On Darfur, it is again pursuing delaying tactics in Abuja while trying to topple Chadian President Idriss Deby in order to weaken and isolate the Darfur rebels. On Eastern Sudan, there is no credible negotiation process to speak of, though the NCP showed its intentions to re-capture Hamashkoreb if and when the SPLA withdraw from the East when it briefly invaded the town on 11 January 2006.

Exposing the agenda of the NCP and applying increased domestic and international pressure to implement the terms of the peace agreement may have some effect, as President Bashir in particular seems to want to be seen as publicly supportive of CPA implementation. Yet this alone will not be enough; the NCP will not willingly hang itself. The future of the Sudan may rest in the ability of the SPLM and other political parties to somehow assuage the fears of the NCP and provide them with a political exit strategy. At the same time, the NCP has to begin implementing the CPA in good faith in order to help revive its political partnership with the SPLM. Some in the SPLM leadership are aware of this dilemma, and are pursuing ways to revive the idea of a partnership with the NCP, if only as a means to safeguard the CPA.¹³⁴ However, many other leading

¹³² The regime's aggressive opposition to the transition from an Africa Union to a United Nations force in Darfur also is based on its fear that the handover to the UN will make it easier for the ICC to capture and try indicted war criminals.

¹³³ Of course the ICC has the jurisdiction to issue arrest warrants for, and try, NCP figures even if they are in government – but it will be difficult, though perhaps not impossible, for it to effect arrests of senior NCP leaders while they still hold power.

¹³⁴ Crisis Group interview, 15 March 2006.

SPLM figures increasingly see the NCP as the obstacle rather than the solution. "The NCP will lead to Sudan exploding, because elections will be their end, so they'll try to stop it. But you have to have democratic transformation or the country can't survive."¹³⁵

The NCP is not monolithic, however. Some observers suggest that there is a power struggle occurring inside the NCP between Taha and the architects of Naivasha, and Bashir and those around him who are more critical of the CPA. The struggle centres over control of political power and leadership of the country, including implementation of the CPA. Having personally negotiated the Naivasha deal with Dr. John Garang, Taha is seen as more vested in its implementation, as his political career is tied to the CPA. The critics feel Taha gave away too much for the sake of securing peace. Moreover, they view Taha as a "man of the West", who seeks to appease the Americans and Europeans at the expense of the party's northern Islamic constituency.¹³⁶ These criticisms escalated after Taha went to Brussels in early March to discuss with EU, U.S. and AU officials the transition to a UN force in Darfur and then travelled to Tripoli to meet the leaders of the Darfur rebel movements, Minni Minawi and Khalil Ibrahim. Critics attacked him for selling out the nationalist cause in Brussels while Sudanese rallied in the streets against the UN deployment, and for seeking to strike another Naivasha accord with the Darfurian rebels. Taha, upon his return to Khartoum, adopted a harsher line regarding the transition to a UN force in Darfur. Many others suggest that the differences between the two groups are overstated. NCP tactics have often been to portray fictitious internal divisions to help neutralise external pressures. According to one top SPLM official, "There is a difference within the NCP, but it is not qualitative. It is of style not of substance".¹³⁷

B. THE SPLM: A PARTY UNDER SIEGE

The SPLM is facing its toughest challenge ever in its transition from rebel movement to government, and its performance to date is cause for concern. An effective and functioning SPLM is a basic prerequisite for implementation of the CPA, but the party that was expected to provide a breath of fresh air to the Sudanese

political scene has imploded over the first year of the agreement, crippled by Garang's death, internal contradictions and divisions, and poor organisation. Many of the challenges facing the SPLM were predictable. A rebel movement for twenty-one years with overly-centralised decision making structures and weak administrative capacity, the shift to government would have been difficult under ideal circumstances. But the untimely death of John Garang on 30 July 2005, just three weeks after he had been sworn in as the 1st Vice-President, combined with the lack of support for the CPA from the ruling NCP, have dealt the movement a blow from which it has yet to fully recover.

1. Coping with the loss of Garang

The SPLM under Garang had its own set of strengths and weaknesses, which would have aided some elements of implementation and hampered others.¹³⁸ The unanimous appointment of Salva Kiir Mayardit by the SPLM Leadership Council as the new SPLM Chairman (and therefore President of the GoSS and 1st Vice-President of the GNU), brought a different set of qualities to the leadership. At the time of his death, Garang had massive support as a national political figure who transcended the North/South divide, as evidenced by the millions of people who greeted him in the streets upon his arrival in Khartoum last July. Garang also had credibility in northern Sudan as the champion of the New Sudan ideology, which envisioned a fundamental change in the governance of the country to allow for a united Sudan based on the equal rights of all citizens. Salva, by contrast, is a lifetime military man. He participated in earlier rounds of the IGAD negotiations, as well as Nigerian led negotiations in the early 1990s, but was not directly involved in the Naivasha talks which led to the CPA. This was one of many issues which drove a wedge between Salva and Garang in the last few years, culminating in an open split between the two in November-December 2004, just weeks before the peace agreement was finalised. The divisions between the leaders filtered throughout much of the movement, and continue to exist to this day.

Little was accomplished during the pre-interim period prior to Garang's death, beyond the drafting of the new interim national constitution, Garang's swearing in as 1st Vice-President on 9 July, and his appointment of an interim caretaker administration in the South. Though there are many reasons for these delays, such as the lack of organisation and funding, one critical factor was the

¹³⁵ Crisis Group interview, 17 February 2007. Said another senior SPLM official: "The SPLM from the beginning insisted that the partnership is based on the implementation of the CPA....The NCP's general tendency is to absorb the SPLM and preserve the old system....The struggle is on this issue: whether we are partners of old system or new system." Crisis Group interview, 30 March 2006.

¹³⁶ Crisis Group interviews, Khartoum, March 2006.

¹³⁷ Crisis Group interview, Khartoum, March 2006.

¹³⁸ For more on the challenges facing the SPLM prior to Garang's death, see Crisis Group Report, *The Khartoum-SPLM Agreement*, op. cit. For analysis of the impact of Garang's death on the SPLM and the CPA, see Crisis Group Briefing, *Garang's Death*, op. cit.

continuing divisions within the SPLM, including Garang's lack of trust in then SPLA Chief of Staff Salva Kiir. Leading SPLM figures from Naivasha, such as Nhial Deng Nhial and Pagan Amum, continued to play key leadership roles in the first stages of implementation during the pre-interim period, but on the whole there was an environment of uncertainty within the movement on how SPLM appointments to the GNU and GoSS would be made, and around what the future held.

After the passing of the interim national constitution by the SPLM National Liberation Council, the de facto parliament of the SPLM, Garang dissolved all SPLM political structures on 18 July 2005, appointing a 10-person interim caretaker government for the South, and choosing Salva to be the Vice-President of the GoSS.¹³⁹ The NCP also dissolved its cabinet, and President Bashir appointed a provisional caretaker government until the creation of the new GNU, which was to be formed by 9 August. Garang's plan had been to rebuild the SPLM as a national party from the bottom up, in conjunction with the establishment of the GoSS and the GNU.¹⁴⁰ Garang's death came less than two weeks later, leaving the SPLM without any functioning decision making bodies. Salva, Garang's successor in the SPLM hierarchy, immediately re-constituted the Leadership Council on an emergency basis and was unanimously elected the Chairman on 1 August.

The SPLM was facing a drastic and unprecedented challenge, though it initially seemed to be coping miraculously well. Within days, Riek Machar – the next behind Salva in the SPLM hierarchy – had been approved as the new Vice-President for the GoSS, and Garang's wife Rebecca emerged as a voice of strength and reason for the country and the movement, in the face of massive unrest in Khartoum and throughout the South, and uncertainty over what lay ahead. Salva was sworn in as the new 1st Vice-President of the GNU on 11 August. Within days, grassroots consultations were organised throughout the South to appoint the SPLM representatives to the national assembly, Council of States, southern assembly, and southern state assemblies. Salva had been critical of Garang's exclusive decision making and overly-centralised leadership style, and there was initially optimism that a more democratic movement would emerge under Salva's watch.

Cracks soon began to appear over the appointments to ministerial posts at the GNU and GoSS levels, and over

the division of ministries between the SPLM, NCP and other political parties at the national level. As discussed above, Bashir and the NCP refused to give the SPLM the Ministry of Energy, despite repeated pleas by Salva. The disagreement stalled the formation of the GNU, and when Salva finally relented he faced an unhappy southern public, including many who blamed him for failing where Garang would have succeeded.

Though relations between Salva and those close to Garang (and involved in the CPA) had been relatively smooth up to that point, the process of political appointments to the GNU, GOSS, and commissions re-opened the gap between the two sides. Instead of embracing those who negotiated the CPA and were closest to Garang, Salva appointed many new faces to prominent positions in government and on the various commissions. "Salva's a team player and listens to those around him", noted a senior SPLM official at the time. "The danger is the people advising him. That's why we need to institutionalise the SPLM leadership and the Presidency."¹⁴¹ Salva was reportedly heavily swayed in his appointments by a few individuals from his own area of northern Bahr el-Ghazal, including some non-SPLM members, who reportedly advised him to reward those who had backed him in the 2004 clash with Garang, and use this opportunity to marginalise those closest to Garang.¹⁴² Most key positions in the GNU and on some of the key commissions were given to individuals who had not been involved in Naivaha, though this was in part because some of the leading SPLM figures and Garang allies, such as Nhial Deng Nhial, opted to serve in the South rather than Khartoum after Garang's death.

2. Overcoming contradictions, divisions and capacity issues

The sudden death of Garang left the SPLM without a clear political strategy for implementation. SPLM membership is torn between conflicting priorities and visions for the CPA. This gap existed before Garang's death, and persists to this day. For many southerners, both inside and outside the SPLM, the CPA is ultimately about the southern self-determination referendum. For this group, the agreement clearly divided the country between North and South, with the NCP the northern partner that will deliver the referendum if it is not challenged too often or too directly on issues related to its governance and behaviour in the North. The strategic arena of this group is in Juba, at the level of the GoSS. A second group includes both northerners and southerners committed to the New Sudan ideology, who view the CPA as a vehicle to ultimately change the system of government in

¹³⁹ This included the National Liberation Council and the Leadership Council, a 16-person executive body. "Garang appoints southern states administrators, advisors", Sudan News Agency, 18 July 2005.

¹⁴⁰ Crisis Group interview, 17 February 2006.

¹⁴¹ Crisis Group interview, 8 September 2006.

¹⁴² Crisis Group interview, 18 September 2006.

Khartoum, spread national power and wealth more evenly throughout the country and ultimately remove the NCP from power. They believe sufficient change can be undertaken to convince the South to vote to remain united with the North. For this group the strategic arena is the GNU in Khartoum and the state governments throughout the North. Attached to this school are some southern secessionists who recognise the importance of engaging fully in the central government and challenging the NCP to implement every aspect of the CPA, as a strategy for ultimately safeguarding the referendum and the South.

In theory, these different outlooks are not incompatible and need not cripple the SPLM, as the referendum is guaranteed in the agreement and the logic of the six year interim period was for the North to make unity attractive to the South. However, the working assumption that the NCP is an unwilling partner that will scuttle the agreement if threatened – an assumption that the NCP is living up to – is pushing some secessionists to pursue a policy of appeasement to ensure the referendum takes place. Without functioning party structures and party policies on many of these issues, many people see Salva and the southern SPLM leadership focusing increasingly on the South, at the expense of the SPLM in the North, the New Sudan, and serious engagement in the GNU. This is not an entirely fair assessment, as the lack of progress is due in large part to NCP intransigence, in addition to SPLM failures.

Northern opposition and civil society groups that were at the receiving end of the NCPs oppression throughout the 1990s, and inhabitants of peripheral regions that continued to be economically and politically marginalised by the ruling Islamist elites view the SPLM as a natural ally. The SPLM made early inroads in the three northern regions of Abyei, Southern Kordofan, and Southern Blue Nile, establishing an active presence there that resulted in the three regions joining the war against the central government under the SPLM banner. Initially a southern movement, the SPLM quickly acquired a national dimension following the Islamist takeover. It joined northern opposition groups under the umbrella National Democratic Alliance (NDA). Through its presence in this alliance, the SPLM came in contact with representatives of other marginalised regions in northern Sudan and actively supported their armed struggle against the central government. The SPLM thus came to support Beja Congress and other groups in eastern Sudan, and the Darfuri insurgent groups in western Sudan.

Many northerners expect the SPLM to be a fierce defender of the democratisation agenda embedded in the CPA, and entire populations in marginalised regions in the North look to the SPLM to push for fair allocations of the national wealth and political power to all the marginalised regions of the country. While the millions that received

Garang in Khartoum were a testimony to the stature of Garang as a national leader who had transcended the South, it also demonstrated the national appeal of the SPLM and the depth of aspirations that northerners hinged on it. In the weeks that followed, the SPLM had to scramble to cope with an influx of thousands of people who flocked to offices throughout northern Sudan to register as SPLM members.

Nonetheless, the SPLM is in a delicate position at the moment in Khartoum. While it still enjoys tremendous popular support in the North, it seems to be rapidly losing credibility, due to its failure to challenge the NCP on national issues and its lack of organisation.¹⁴³ Though efforts to organise the SPLM throughout the northern states have gone remarkably well, to the point that the party in the North is far ahead of its counterparts in the southern states, frustration is starting to grow and the lustre of the SPLM may soon begin to fade. The decision of Abdel Aziz Adam al-Hilu, a senior SPLM leader who was responsible for building the SPLM as a party in northern Sudan, to remain indefinitely in the U.S. rather than return to Sudan is a sign of how desperate things have become within the party.¹⁴⁴

One example of the SPLM's political impotency has been its track record on Darfur since joining the GNU. More than six months in, it has yet to have any visible impact, or even a public position, on the crisis in Darfur. Numerous senior SPLM officials contacted by Crisis Group admitted that they support a stronger international mission in Darfur if it will provide greater civilian protection, and support a transition to the UN if it can provide better protection than the current AU mission.¹⁴⁵ Yet the lack of a clear party line on Darfur has left a policy vacuum that is being exploited by the NCP. SPLM-appointed Foreign Minister Lam Akol is one of several SPLM appointees in Khartoum who have been openly siding with the NCP on most issues relating to the North, irrespective of the reality on the ground or the SPLM position, leading many of their colleagues to accuse them of being bought off by the NCP.¹⁴⁶ On Darfur, for example, Akol has been a leading advocate of a continued AU role in Darfur rather than a transition to the UN, despite the AU's inability to effectively protect civilians in Darfur¹⁴⁷; and he is on record denying that there was a genocide in Darfur.¹⁴⁸

¹⁴³ Crisis Group interview, 7 March 2006.

¹⁴⁴ Crisis Group interviews, March 2006.

¹⁴⁵ Crisis Group interviews, February and March 2006.

¹⁴⁶ Crisis Group interviews, February and March 2006.

¹⁴⁷ See, for example, "As AU debates takeover in Darfur, Sudan FM calls to maintain African force", Associated Press, 10 March 2006.

¹⁴⁸ "Sudan rejects US claim of ongoing Darfur genocide", Reuters, 18 February 2006.

Exploiting the policy vacuum in the SPLM, Akol is pushing the NCP line on all these issues and indicating to the world that the SPLM is in fact fully supportive of the government policies in Darfur. This is not the case, as the former rebel movement has not only supported the Darfur rebels in the past, but claims to be supportive of the rights of the “marginalised” populations throughout Sudan. Yet the total absence of action on these issues has damaged that claim, and made little impact in the lives of the people the SPLM is claiming to support.

The Darfur crisis illustrates the difficulties that the SPLM has to confront daily in its partnership with the NCP, a party with a history and present record of involvement in mass atrocities and war crimes that has difficult relations with the international community. The NCP keenness on a partnership with the SPLM is also motivated by its desire to have the SPLM shield it from international criticism and censor. According to a former senior official of Sudan's security agency, retired General Hassab Allah Omer, “the SPLM as a partner in the GNU should have a role – proportionate to its representation – in confronting and dismantling the US lobbying groups that are using the Darfur crisis against the Sudan”.¹⁴⁹

The lack of party structures and strategy has crippled the SPLM, particularly in Khartoum. It has been less of a problem at the level of the GoSS, as the SPLM dominate the new government structures and control 70 per cent of the appointments, allowing the GoSS cabinet to partially fill the void and serve as a de facto decision making body for the party in the South. At the GNU, where the SPLM are a minority partner, the cabinet cannot serve this purpose. The lack of clear policies, decision making structures, internal coordination, or a common vision, combined with NCP intransigence, has severely challenged its ability to function effectively at the national level. The SPLM appointees who are in Ministerial and State Ministerial positions in the GNU continue to be islands within their respective ministries, without any integration of other SPLM cadres into the national civil service as yet. The SPLM in Khartoum only began to meet regularly in January 2006, in an effort to try to better coordinate their efforts and stay informed of developments.¹⁵⁰

After the emergency meeting of the SPLM Leadership Council to appoint Salva following Garang's death, there existed no functioning party structures until 20 February 2006, when Salva finally formed a number of new political bodies for the movement, including an Interim Political Bureau. Though these bodies are crucial to the SPLM's ability to operate and to the implementation of the CPA,

internal divisions delayed their formation for months. Following the appointments to the GNU and the GOSS, relations between Salva and those close to Garang worsened, and the discourse became increasingly combative. The NCP fed into this, allegedly warning Salva about the intentions of the “Garang boys”, and urging him not to appoint them to key positions in the GNU or on the key commissions.¹⁵¹ Before his death, Garang had appointed Pagan Amum to be in charge of building the SPLM party in the South, and Abdel Aziz Adam al-Hilu in the North. As internal relations soured, Pagan repeatedly presented Salva with draft lists for the new party structures, reportedly dominated by the “Garang crowd” and therefore viewed as a threat by Salva and those around him, dragging the process on for months.¹⁵² It finally took intervention by other members to develop a list of the Interim Political Bureau that both sides were happy with.¹⁵³

3. Rebuilding the party: A prerequisite for peace

Recent months have seen a warming of relations between the two groups within the SPLM, and an increased recognition of the need to work together for the sake of the peace agreement. The delays in establishing new political structures have hurt the SPLM over the past six months, but Salva's decision to appoint Pagan Amum, a close ally of Garang's and key negotiator in Naivasha, as the Secretary General of the SPLM and as the number two in the party structure, moving him ahead of Riek Machar, is a positive first step towards getting the party back on track and bridging the gap between the Garang/Naivasha crowd and Salva.¹⁵⁴ However, there remains a great deal of work to be done before the SPLM will be a fully-functioning minority partner in the GNU. The new bodies have yet to meet, let alone begin to establish party policies or the process of re-organising the movement ahead of elections. “The last 14 months were a process of burying the SPLM”, worried a senior party official. “We're now one month into resurrecting the SPLM... We must organise ourselves into institutions, with a clear vision and clear rules that will regulate out behaviour.... There's no guarantee for success, and the NCP is working hard to dismantle the SPLM and to ensure it doesn't achieve significant changes in the North.”¹⁵⁵

¹⁴⁹ www.sudaneseonline.com, 14 March 2006 (in Arabic).

¹⁵⁰ Crisis Group interview, 8 March 2006.

¹⁵¹ Crisis Group interview, 14 October 2005.

¹⁵² Crisis Group interview, 9 March 2006.

¹⁵³ Crisis Group interviews, February and March 2006

¹⁵⁴ The new Interim Political Bureau comprises 23-people and should act as the movement's highest decision making body. Salva also created a 57-person Interim Executive Committee, and technical secretariats for the national party, northern states, and southern states. Crisis Group interviews, February and March 2006.

¹⁵⁵ Crisis Group interview, 17 March 2006.

Since a two party agreement with only one functioning party cannot survive for long, the CPA will likely fail without a unified and functioning SPLM. The NCP will continue to undermine implementation, continue to work to divide the South, and either refuse or rig the national elections of 2009. "Our strategy was to make the cost of non-implementation higher to the NCP than the cost of implementation. This is not currently the case".¹⁵⁶ The SPLM is still at the beginning of the long process of transforming itself into both a government and a functioning political party. State congresses are planned to elect representatives to another national convention, at a date yet to be determined. This convention would be only the second in the history of the movement, and will help decide the future of the movement. Crucial to the SPLM's survival and transformation, the outcome of this national convention is far from scripted. The internal divisions and contradictions, as well as the increased representation of new SPLM members from throughout the North could lead the decisions in any number of directions.

The SPLM is facing financial restrictions in its ability to carry out effective party work, as the money that has been paid to the South under the CPA has gone to the GoSS rather than the SPLM as a party. Given the urgency, the international community should support the SPLM party work, as well as other democratic forces in the country. However, the SPLM must do a much better job to provide transparency and accountability for the oil revenue it has received to date. Increasing rumours of corruption in the South amongst SPLM officials are beginning to worry international partners, and requests for external support will be much more heavily scrutinised until and unless the SPLM and GoSS are able to establish better credibility as a financially responsible government and movement. Scrutiny is focused most directly on the initial advancement on oil revenue of \$60 million provided to the SPLM in May and June, ahead of the formation of the GoSS. To help ensure guaranteed financing for all political parties ahead of elections, the SPLM should introduce a political parties financing act in both the southern assembly and the national assembly.

C. THE NORTHERN OPPOSITION

Because of their exclusion from the Naivasha negotiations, most opposition parties and leaders feel little commitment to the provisions of the CPA regarding wealth-sharing and power-sharing between the NCP and SPLM. The parties to the CPA ignored calls by the main faction of the Umma Party and other opposition and civil society groups soon after the signature of the peace accord for an all inclusive

conference to be held in Sudan to endorse and build consensus around it.

A decade of severe repression in the 1990s, followed by aggressive NCP efforts aimed at discrediting party leadership through cooption left opposition parties ineffectual and highly factionalised. At least three smaller factions splintered away from the Umma Party, and the Democratic Unionist party witnessed similar splits. These divisions are both a result of the weakness of the opposition and a direct consequence of the NCP's active divide-and-rule politics. As a result, the GNU is based on a broad coalition that, in addition to the two CPA partners, includes eight NCP satellite political entities.

Shortly after the establishment of the GNU, three main opposition parties took the lead in assembling a "Loyal Opposition" to it, namely the Umma Party, Hassan al-Turabi's Popular Congress Party and the Communist Party of Sudan. Al-Turabi is adept at making controversial and sensational media statements that create serious trouble for his former followers in the NCP. For instance, shortly before the meeting of the Arab League Summit in Khartoum in late March 2006, Turabi reiterated his accusation of high level involvement by Sudan government officials in the failed 1995 assassination attempt of Egyptian Husni Mubarak. The recycled claim put the NCP on the defensive, and is believed to have been behind Mubarak's decision to skip the meeting.

With the many divisions that have undermined its various constituencies, the opposition is failing to serve as a credible political force or play a role in resolving impasses between the NCP and the SPLM. Moreover, the weakness of the opposition places more pressure on the SPLM as it means that the latter has little support in trying to reverse the onslaught of obstructive NCP policies. As a result, the SPLM often finds itself playing the role of opposition party, which increases the strain on its partnership with the NCP.

The opposition parties are particularly keen to see the opening of the political system and to ensure that free and fair elections will be held in 2009. They see this as their opportunity to gain a share of political power. They were quick to criticise Bashir's calls for early elections, especially when almost no progress has been made on conducting the census and instituting the electoral commission.

There have recently been increasing efforts to bring Sudan's many marginalised groups under one broader political umbrella to press for fairer allocation of wealth and power in the country. These attempts build on a long history of regional and ethnically-based political formations from Sudan's most disenfranchised regions,

¹⁵⁶ Ibid.

such as the Beja Congress, the General Union of the Nuba Mountain, and similar formations in the Southern Blue Nile and Darfur regions that have contested elections in the past and won seats in Parliament.

IV. THE INTERNATIONAL COMMUNITY: EYES WIDE SHUT

The CPA would not have been possible without the sustained high-level engagement of the international community – particularly IGAD and the quartet of the U.S., UK, Norway and Italy – during the Naivasha talks. Targeted international pressure on the parties helped thwart multiple attempts to derail the process, but the spoilers did not fade away on 9 January, 2005. The agreement foresaw a continued and critical role for the international community to keep the spoilers at bay during the interim period and maintain forward momentum for implementation.

Specifically, the CPA called for the deployment of a 10,000 strong UN Mission to support and monitor implementation of the agreement.¹⁵⁷ The agreement also created an Assessment and Evaluation Commission (AEC) consisting of representatives from the parties, IGAD, and the quartet.¹⁵⁸ In addition to rigorous monitoring of the parties' progress, donors were expected to open their check books and provide a "peace dividend." In Oslo, Norway on 11 and 12 April, 2005, donors met, and pledged \$4.5 billion to fund ongoing humanitarian and development needs, and to support the GNU and the nascent GoSS.¹⁵⁹

Rapid dispersal of the peace dividend is subject to its own set of challenges. The humanitarian catastrophe in Darfur is draining funding away that might have gone towards projects to support implementation of the CPA, and distracts political attention from the still fragile peace agreement.¹⁶⁰ Illustratively, the U.S. Agency for

¹⁵⁷ The United Nations Mission in Sudan, formally approved by the UN Security Council on 24 March 2005 in Resolution 1590. It includes a 10,000-strong military component, up to 715 civilian police, and a sizeable civilian component. Its primary task is to support and monitor implementation of the CPA.

¹⁵⁸ Paragraph 2.4 of the Comprehensive Peace Agreement. The parties also agreed that the UN and EU would act as observers to the AEC.

¹⁵⁹ At Oslo, the GNU-led Joint National Transitional Team (JNTT) presented a six-year development plan to correspond with the six-year interim period. The JNTT was established under the wealth sharing agreement to monitor distribution of government revenues throughout the interim period. For a full readout of the Oslo Donors Conference, see <http://www.dep.no/ud/norsk/tema/sudan/konferanse/alle/032041-990007/dok-bn.html>.

¹⁶⁰ Crisis Group interviews with U.S. government officials, Washington, 28-30 March 2006. For recent analysis of the conflict in Darfur, see Crisis Group Africa Report N°105, *To Save Darfur*, 17 March 2005. For an analysis of the crisis in

International Development, the largest donor to Sudan, provided more than \$855 million in fiscal year 2005, but 55 per cent of that funding was directed towards the humanitarian response in Darfur. Southern Sudan and opposition held areas in Eastern Sudan have significant humanitarian needs as well; more than half of the USAID's non-Darfur funding went towards emergency food and other humanitarian assistance.¹⁶¹

Funding challenges run much deeper than the difficulty of responding to rapidly changing humanitarian needs. As the driving force behind the peace agreement, the U.S. was expected to contribute the most money towards implementation. At Oslo, the U.S. pledged \$1.7 billion for fiscal years 2005 and 2006, but some U.S. officials told Crisis Group that the complexities of various bilateral sanctions against Sudan (for its sponsorship of terrorist activity and abysmal human rights record) have restricted the U.S. ability to support the CPA.¹⁶² The critical issue is how to apply sanctions against the "Government of Sudan" when there is now a Government of National Unity and a Government of Southern Sudan. While Congress is amending Congressionally-legislated sanctions such that they will only apply to the central government and not the GOSS,¹⁶³ the multiple layers of sanctions enacted by the executive branch are restricting the U.S. government's ability to support the GOSS and the SPLA.¹⁶⁴ A U.S. official told Crisis Group that the current sanctions are "highly restrictive" and the Bush administration is determined to do things "by the book."¹⁶⁵ U.S. officials

Eastern Sudan see Crisis Group Africa Report, *Sudan: Saving Peace in the East*, op. cit.

¹⁶¹ USAID Sudan Monthly Update, March 2006. Available online at http://www.usaid.gov/locations/sub-saharan_africa/countries/sudan/docs/sudan_monthly3_06.pdf. USAID is finalising a funding strategy for Sudan that will change USAID's focus from meeting sector-specific strategic objectives to objectives closely tied to CPA implementation. Crisis Group interviews with U.S. government officials, Washington, 28-30 March 2006.

¹⁶² For a list of U.S. sanctions visit <http://www.treasury.gov/offices/enforcement/ofac/legal/sudan.shtml>.

¹⁶³ The language of the Senate version of the Darfur Peace and Accountability Act (DPAA) reads: "The term 'Government of Sudan' means the National Congress Party, formerly known as the National Islamic Front, government in Khartoum, Sudan, or any successor government formed on or after the date of the enactment of this Act (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan), except that such term does not include the regional Government of Southern Sudan." Legislators have not yet passed the DPAA.

¹⁶⁴ The U.S. is also looking into providing direct assistance to SPLM-led ministries in the GNU, but this is illegal under current law. Crisis Group interviews with U.S. government officials, Washington, 22 March 2006.

¹⁶⁵ Crisis Group interview, U.S. State Department official,

told Crisis Group that they are able to accomplish their goals by using existing waivers, but that this bureaucratic process requires multiple lawyers from multiple government agencies to reach agreement.¹⁶⁶

U.S. sanctions are also slowing the dispersal of \$421.9 million pledged for 2006 and 2007 by donors to Multi Donor Trust Funds (MTDFs) managed by the World Bank.¹⁶⁷ The World Bank has approved projects worth approximately \$150 million, but project implementation has been slowed because the Bank needs a license from the U.S. Office of Foreign Assets Control to conduct some transactions related to MTDF projects.¹⁶⁸ State Department officials believe that the situation will be remedied, but ambiguities within U.S. regulations have created bureaucratic delays that further hinder the international community's ability to deliver on its promises.

On 9-10 March 2006, the World Bank hosted in Paris the first meeting of the Sudan Consortium, a group consisting of the GNU, the GOSS, and various international institutions and bilateral partners working to help implement the agreement. No new funding was announced formally at the meeting, and some attendees were shocked by the

Washington, 23 March 2006. Several U.S. officials told Crisis Group that the U.S. has "no intention" of lifting sanctions against the National Congress Party (NCP), and pending legislation on Capitol Hill would actually tighten existing congressional sanctions against human rights violators in Darfur. However, other U.S. sources indicated to Crisis Group that some within the administration are pushing for legislated sanctions to be lifted, leaving the executive branch with flexibility.

¹⁶⁶ Crisis Group interview, U.S. State Department official, Washington, 27 March 2006. Lawyers from the State Department, USAID, the Department of Commerce, and Treasury Department and the White House are wading through this legal morass to reach agreement on each waiver.

¹⁶⁷ The CPA established one MTDF for southern Sudan and another for the Government of National Unity.

¹⁶⁸ The U.S. Government maintains sanctions against several countries, with each country having its own set of regulations. For example, there is a difference between the regulations for sanctions against Sudan and those against Burma. The Burma regulations exempt the World Bank from sanctions that restrict certain transactions between the US and Burma, while the Sudan regulations do not exempt the World Bank. U.S. Government lawyers have interpreted this discrepancy to mean that the Bank needs a license for these types of transactions. Additionally, the Bank is not exempt from additional sets of sanctions and therefore requires additional licenses. To fix the situation, the U.S. is working to grant the Bank a general license. In the meantime, the Bank has established alternative mechanisms for some of these transactions (such as working through banks in a third country). Crisis Group interviews, U.S. government and World Bank officials in Washington, 20-23 March 2006

Sudanese delegation's lack of preparation.¹⁶⁹ Nonetheless, the meeting was significant in bringing all the key players together to begin to develop consensus on priorities and next steps for CPA implementation. Members of the Consortium shared many concerns, including the negative implications of the crisis in Darfur, limited progress in assisting the Three Areas and the failure of the GoSS to establish budgetary systems.¹⁷⁰ More broadly, they agreed that development assistance should not be conditional on a resolution of the crisis in Darfur, and that medium and long term development assistance should be channelled through the World Bank and the Multi-Donor Trust Funds.

The Paris meeting is a useful first step in enhancing coordination between the key players, but donors, UNMIS, the World Bank, the GNU, and the GOSS must work with a greater sense of urgency to establish mechanisms to monitor compliance with the terms of the agreement, punish violations, and create tangible benefits of peace for those communities most affected by the civil war.

Beyond the financial support the international community is trying to provide, the most worrying trend is the lack of political engagement around the implementation of the CPA. The international role was critical to the success of Naivasha, in the form strong working partnership between the IGAD mediation and the quartet, with the broader IGAD Partners Forum working behind the scenes to support the process as needed. This partnership monitored every aspect of the negotiations, and was there to help break deadlocks, hold the parties to their earlier commitments, and pressure and cajole the parties through some of the toughest areas of talks. That level of engagement and interest has completely disappeared since the signing of the CPA. But it is crucially needed given the current equation around the CPA: a strong NCP with the capacity but lacking the political will to implement, and a weak SPLM with the will but lacking the capacity.

The Assessment and Evaluation Commission (AEC) was formally established on 30 October 2005 and held its first meeting on 20 November, but early meetings saw little progress in establishing basic operational guidelines. One of the reasons for the delay in forming the AEC was a concerted effort by Pronk to convince the parties to appoint him to be the Chairman of the AEC, rather than Norwegian Ambassador Tom Vraalson, as had been agreed upon in Naivasha.¹⁷¹ The AEC finally got down to business in February 2006 and created working groups for each protocol of the agreement. However, the commission has so far failed to establish a clear plan for how to monitor compliance and hold the parties accountable to their obligations. Most pressing is the need to set up a reliable, up-to-the-minute source of consolidated updates on implementation.¹⁷² While some donors are establishing their own monitoring mechanism for internal purposes, information sharing among the key players is lacking, and political engagement on the CPA is dismal.¹⁷³

The disengagement of the international community can be explained by a number of factors. First, the world has understandably been distracted by the crisis in Darfur, and many seem to have mistakenly assumed that the agreement, once signed, was self-implementing. With only limited resources and manpower, the international community has focused most of its political efforts on improving the situation in Darfur, albeit ineffectively so far.

Second, Garang's death has had a negative impact on the interest and involvement of some Western and African countries, in following the implementation process. Garang was an expert at engaging with the international community, using his allies in the U.S., Europe and Africa as "force multipliers" to increase pressure on the NCP during the negotiation process. He had the contacts and ability to mobilise partners around an issue or a problem. Within the continent, Garang had strong allies within the AU and IGAD, as well as throughout the region. Support within IGAD for the SPLM from the mid-1990s until the signing of the CPA was in large part due to Garang's diplomacy. The relatively easy ride that Bashir received at the mid-March IGAD summit in Nairobi is seen by some as

¹⁶⁹ Crisis Group interviews with U.S. government officials, Washington, 28-30 March, 2006. Salva Kiir led the Sudanese delegation.

¹⁷⁰ The World Bank has released a presidential statement summarising the meeting, available online at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SUDANEXTN/0,,menuPK:375428~pagePK:141159~piPK:141110~theSitePK:375422,00.html>. Informal assessments indicated that the planned financing was likely to exceed initial pledges coming out of Oslo for Sudan as a whole for the first two years, with the 2005-2006 estimates showing some 76 per cent of pledges thus far met and some six countries including the Netherlands, EC, US, Canada, Japan and Finland exceeding 80% of their pledges.

¹⁷¹ Crisis Group interviews, Khartoum, October 2004.

¹⁷² According to USAID, a significant problem in establishing a public information body through the AEC is that the GNU would need to approve the release of these reports and attempt to edit out indications that implementation is not on track. However, this would presumably not be an issue if the information produced were exclusively for the use of AEC members and not for public consumption. Crisis Group interviews, U.S. government officials, Washington, 28-30 March 2006

¹⁷³ Crisis Group interviews, U.S. government officials, Washington, 28-30 March 2006.

testament to the drop-off in effective SPLM diplomacy.¹⁷⁴ The SPLM undoubtedly miss his leadership in this crucial area, and Salva has been slow to re-engage with the international community, lacking the networks and expertise. Without functioning party structures or strategies, as described above, the SPLM have not been able to sustain a diplomatic offensive to help raise international attention and support to the challenges facing them at home. The impact of Garang's death was also felt in international circles, where some appear to have concluded that the agreement had died with him. It is important that the SPLM maintain effective working relationships with the regional IGAD countries, and work to keep the regional body engaged and invested in the implementation process.

Third, there is no clear role for the international community within the CPA itself, beyond limited roles in the AEC and a handful of the commissions. Although the SPLM have flirted with a more intrusive international role in implementing the CPA, they have not yet publicly called for such a step to be taken.

Fourth, there has been infighting and a lack of coordination within the international community. SRSJ Jan Pronk has actively sought to position UNMIS as the lead international actor on Darfur and Eastern Sudan as well as the CPA, alienating and clashing with other bilateral or regional actors. He has done a poor job on all three fronts. Though UNMIS has the mandate to monitor the implementation of the CPA, Pronk has spent very little time in the South - no more than a few weeks - since the agreement was signed. "Pronk has messed it up. He was appointed for the South, but he believes he's the Secretary General of the Sudan," complained a member of the mediation team from Naivasha.¹⁷⁵ UNMIS has a submission in the South run out of Juba, but Pronk's perceived lack of interest has sent a negative signal to southerners and to many in the SPLM leadership, souring relations that may be necessary if the situation takes a turn for the worse. The problem is also institutional. In general, Khartoum is providing the institutional base for most bilateral missions and international organisations, as well as the UNMIS headquarters. Much of the leadership and personnel tend to get bogged down in Khartoum, and decisions regarding the South (and other areas of the country) are often made from Khartoum and based on a view from the capital, rather than a view from the field. A practical implication of this Khartoum-centric approach is that members of the GoSS have to spend additional time away from the South in order to have effective interaction with international decision making processes.¹⁷⁶

UNMIS' efforts on the CPA have been heavy on reporting, but light on follow-up. Though UNMIS is now producing the monthly CPA Monitor, an excellent publication which updates the status of implementation, and Pronk presents a quarterly report to the Security Council on the status of implementation, UNMIS is not yet backing these efforts with political muscle to push the parties to implement their commitments. UNMIS' establishment and Pronk's efforts to be the lead actor on all fronts have alienated some of the traditionally more active countries in Sudan, including those involved in supporting the Naivasha process, from maintaining a more central role.

Several things are required for more effective international support to the CPA. The first is better coordination amongst the international actors on monitoring key elements of the implementation process, and more directed pressure on the parties to counter violations. "The international community consistently underestimates the diplomatic savvy of the NCP" said a Western diplomat based in Khartoum. "They're running circles around us, and many of us don't see it. We're not working together because of divisions within the international community."¹⁷⁷ A central "clearinghouse" should be established to systematically monitor and track the implementation of the agreement. There is no body tasked with this purpose in the CPA, and though the parties empowered themselves to do this through the JNTT last spring, it has not been functioning. IGAD is ideally suited to play this role, particularly if Gen. Sumbeiywo, the leader of the Naivasha talks, can be convinced to return to play this role and the Kenyan government can be persuaded to allow him to resume his duties on Sudan. He is an ideal candidate: well versed on the terms of the CPA and well respected by both parties and the international community. The IGAD cell could be attached as a technical secretariat to either the AEC or the JNTT. Once operational, it could help coordinate the international community's actions, based on documented gaps in the implementation process, or by identifying areas where political pressure could be helpful, much as Gen. Sumbeiywo did successfully during the negotiation process. If IGAD does not prove to be politically possible, another umbrella should be sought for Gen. Sumbeiywo's involvement, perhaps by engaging the Moi Africa Institute, Gen. Sumbeiywo's current place of work, to help provide this technical capacity. "The parties don't trust each other, and they won't trust a third party unless they have a proven track record and the trust of the parties," said a long time regional Sudan watcher.¹⁷⁸ UNMIS is the other body that is meticulously tracking implementation, but it does not seem keen to take on the role of coordinator, and Pronk's strained relations with

¹⁷⁴ Crisis Group correspondence, 30 March 2006.

¹⁷⁵ Crisis Group interview, March 2006.

¹⁷⁶ Crisis Group correspondence, 30 March 2006.

¹⁷⁷ Crisis Group interview, 8 March 2006.

¹⁷⁸ Crisis Group interview, 28 March 2006.

many of the key bilateral actors and both lead parties will make this difficult.

Equally important, the quartet of the U.S., UK, Norway and Italy, together with the IGAD member states, need to urgently refocus their efforts on bolstering the implementation process and holding the parties accountable to the agreement they worked so hard to achieve, particularly the NCP. The lack of a clear political strategy guiding the financial support for implementation of the CPA is counter-productive. In the short term, donor funding should be directed at countering the main threats to the CPA. This can be done, for example, by supporting the implementation of the Juba Declaration, and by supporting the establishment, required technical expertise, and operations of key commissions such as the Ad Hoc North-South Boundary Commission, the AEC, and the National Petroleum Commission. At the same time, donors should begin to place conditionalities on their financial support to the CPA, and a formal link should be established between the MDTF and the AEC. Clear benchmarks for implementation should be established in Khartoum and Juba, and the donors must begin to flex their financial muscle and coordinate their actions to help push the parties towards those benchmarks and punish consistent obstruction or violation. The current approach is unlikely to yield much success given the obstacles to implementation.

V. CONCLUSION

Sudan's peace agreement remains on shaky ground. The unstable partnership between a strong but unwilling NCP and a weak but committed SPLM is making the implementation process highly volatile. With conflicts still raging in Darfur and simmering in the East, the CPA does not yet appear to be the comprehensive answer to Sudan's problems that many had hoped for. Steps can be taken to help reverse this trend. A strengthened and better organised SPLM and SPLA should help push implementation forward and hold the NCP to its core commitments. The international community must also play a much more supportive role if the CPA is to hold. Beyond financial support, which has been promised but not yet delivered, concerned world actors must begin to flex their collective political muscle to get the implementation process back on track. The CPA represents an historic opportunity to end Sudan's recurring conflicts. It cannot be allowed to fall apart during the implementation process, or the suffering that has plagued Sudan for 50 years will continue indefinitely.

Nairobi/Brussels, 31 March 2006

APPENDIX A

MAP OF SUDAN



APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with over 110 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by Lord Patten of Barnes, former European Commissioner for External Relations. President and Chief Executive since January 2000 is former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates fifteen field offices (in Amman, Belgrade, Bishkek, Bogotá, Cairo, Dakar, Dushanbe, Islamabad, Jakarta, Kabul, Nairobi, Pretoria, Pristina, Seoul and Tbilisi), with analysts working in over 50 crisis-affected countries and territories across four continents. In Africa, this includes Angola, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Liberia, Rwanda, the Sahel region, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Indonesia, Kashmir, Kazakhstan,

Kyrgyzstan, Myanmar/Burma, Nepal, North Korea, Pakistan, Tajikistan, Turkmenistan and Uzbekistan; in Europe, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Macedonia, Moldova, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia, the Andean region and Haiti.

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March 2006

APPENDIX C

CRISIS GROUP REPORTS AND BRIEFINGS ON AFRICA SINCE 2003

CENTRAL AFRICA

The Kivus: The Forgotten Crucible of the Congo Conflict, Africa Report N°56, 24 January 2003

A Framework for Responsible Aid to Burundi, Africa Report N°57, 21 February 2003

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