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to the National Defense University
Conference on Sudan's Peace Settlement: Progress and Perils

September 11th 2006

Implementation of the Wealth Sharing Accords: Oil, Energy and Political Implications

I. Summary

Implementation of the wealth sharing components of the Comprehensive Peace Agreement (CPA) has been slow, and in some cases, nonexistent. Disputes remain over which fields are subject to wealth sharing, how the new institutions are to function, and who determines the status of existing and new contracts. Teams that are tasked with auditing existing production and reviewing existing contracts have not been staffed.

While both the National Congress Party (NCP) and the Sudanese Peoples Liberation Movement (SPLM) express dissatisfaction with the way the accords are being implemented, neither side is acting with speed or diligence to change this. The Government of Southern Sudan (GoSS) has declined to take advantage of multiple and long standing offers of technical assistance to help them implement the accords and recruit the expertise they need to staff the new institutions. The NCP has interpreted the accords, and the results of dispute resolution commissions, in a way that undermines the role of the GoSS in energy policy. The GoSS has signed contracts which flout the plain language of the accords and signal their mixed regard for a unity government.

The reasons for these actions are rooted in the disputes that were finessed in order to conclude the CPA and the uncertain commitment of both sides to implement the accords. With respect to issues finessed in the accords, the border is not settled, especially with respect to where the Heglig field lies. The power of new institutions, like the National Petroleum Commission to advise or actually determine policy remains disputed. With respect to the CPA, it may be that the NCP believes the GoSS does not want unity and is protecting its position for potential secession. The GoSS is divided on unity, is perhaps overwhelmed by the challenges at hand, and some factions may want to delay oil development until they can obtain 100% of potential revenues.

In any event, all is not well. Outside leadership, and pressure on both the NCP and the GoSS, will be required to achieve a chance at unity. Let me detail for you now what the accords were meant to do, where they are now, and steps the United States and other donors can take to change the status quo.

II. The Wealth Sharing Components of the CPA.

Key Provisions.

The CPA called for establishment of a National Petroleum Commission (NPC) to formulate public policies, approve new oil contracts and monitor implementation of existing ones. The CPA granted the GoSS 50% of revenue from all oil produced in

Southern Sudan, net of 2% to the producing state and a deduction for an Oil Stabilization Fund, if revenues go above a certain, and as yet undetermined, level. Other revenues are subject to distribution through National Revenue Fund through the equalization provision to be implemented by the Financial Allocation and Monitoring Commission. The CPA allowed the SPLM to have access to existing contracts and provided that contracts signed before the CPA was signed are not subject to renegotiation. It called for all income and revenue at all levels of government to be held in public accounts and be subject to public scrutiny and accountability and for the establishment of National and GoSS Audit Chambers.

A Scorecard.

NPC. The National Petroleum Commission has been established, but it has not established rules of procedure for operating, subcommittees to perform real work, or a secretariat. There are disputes over whether the NPC is policymaking or advisory, if it is independent or part of the Ministry. A reported oral commitment to give the GoSS the Energy or Finance ministry was not honored and the GoSS is by all accounts marginalized in the Ministry itself. Needless to say, the NPC is not setting or even deliberating over national energy policy.

Wealth Sharing. The NCP and GoSS dispute whether the Heglig field, which produces 37% of Sudan's oil production, is in the North or South. The GoSS is not receiving 50% of these revenues. Measures to resolve this are not fruitful. The border is not established and disputes remain over other fields in the Melut Basin. The 1956 boundary has not been demarcated. The North-South Border Commission was established but is not functioning. The Technical Ad Hoc Border Committee, whose operation was reportedly delayed due to the rains, held its 6th meeting on July 20th, 2006. The results of the Abyei Border Commission were rejected by the NCP as exceeding its mandate.

GoSS Capacity Building. The GoSS has not hired technical advisors to assist them with the development and management of their oil sector. They do not lack for funds. The south was granted permission to read all oil contracts and to get advice on them, but never did. The Technical Team empowered to review contracts within 30 days of the signing of the CPA was not established.

Respect for Contracts. The GoSS and NCP disagree over the rights to sign oil contracts and the status of existing oil contracts. The GoSS is a minority owner of the White Nile Petroleum Corporation with whom it signed an agreement to develop an oil block already subject to a contract. This action appears to flout the plain terms of the CPA. White Nile itself is a shell of a company with no apparent capacity to exploit the block in question.

Transparency. There is very little transparency at any level in Sudan. The arrangement between the Sudanese government and its investors for production rights, contracts, refineries or pipelines is not public. The country's production is not verified. The accounting for the funds received by the GoSS from oil revenue, or donor aid for that matter, is not public. The Joint National Transition Team that was established in March

2005 announced in June 2005 that a new national accounting system had been developed and that the auditors' chambers were being set up. No progress has been made on this since. Vice President Kiir nominated 4 appointees to the Southern Sudan Audit Chamber, but it is still without legislative basis and not functioning.

III. Impact

The impacts of this lack of implementation are several. First, there is no effective Government of National Unity functional in the energy sector. There are competing and oppositional factions. Second, the flow of revenue to the GoSS is diminished by the dispute over the Heglig and Abyei fields, undermining a core element of the peace dividend for the south in the CPA itself. Third, interest by credible companies in development of the south's oil resources is minimal due to uncertainty over GoSS respect for contracts, uncertainty over the laws which would apply or what contracts would be respected if a secession were voted, and also by sanctions. Fourth, the GoSS appears to be undermining a GNU by its own actions, particularly the transaction concerning White Nile. Fifth, there is little transparency in the accounting production, contracts, or for the volume of oil or the accounting for oil revenues in the south. This creates enormous potential for mismanagement, waste and corruption and indeed risks that the GoSS will become yet another example of a resource rich entity whose governance is blighted by the resource curse.

IV. Motivation of the Parties

The motivations for the NCP for delay are perhaps easiest to interpret. They have an obvious interest in maintaining control of the sector through the Ministry and no interest in defining a border which leaves substantial assets to the south as long as secession remains a possibility. Inaction leaves them with control of the export infrastructure, a share of current production from Heglig and the potential to explore and tap reserves in the Melut Basin which may lie on both sides of future border. With strong investment support from China, India and Malaysia, they suffer no investment loss from current sanctions. At current oil prices they can well afford to withstand international opprobrium. While by all accounts there are divisions in the north between those who favor a serious attempt to create a Government of National Unity now and those who are strategizing to defeat a referendum in five years, the status quo does not promote unity or the institutions created by the CPA. In addition, energy sector development in the north is robust: a contract has awarded to Petronas to build a new refinery in Port Sudan to refine Melut Basin crude. Malaysia's Peremba has begun construction of a new marine export terminal for the Melut Basin Development Project with a 2 million barrel per day capacity. Construction has begun on a new 870 mile pipeline linking the Melut Basin to the export terminal.

The motivations of the GoSS are harder to interpret. Without doubt there is very *weak capacity for administration* in the GoSS and the number of trusted people who can staff Ministries or an advisory commission is not great. A good deal of understanding is due the GoSS on this score. But this does not explain why the GoSS has neglected offers of

technical assistance and opportunities to understand the sector, read contracts, audit production, or why it has flouted the CPA with White Nile deal.

Another explanation for the GoSS delay on implementation of the CPA is that the *GoSS is deeply divided over support for a GNU*. If you are biding your time for secession, you need not bother to read existing contracts, you are in no rush to develop fields which you will take 50% rather 100% of the revenues from, and you do not prioritize mastery of GNU institutions. There are many in the GoSS leadership who hold this view. Still others may simply need more time to develop confidence in the CPA and its new structures and to trust that even external advisers will provide untainted advice.

Another explanation is that the *GoSS is overwhelmed* by the pressure it faces and is making short sighted decisions. It is hard to imagine that the GoSS does not see how damaging the White Nile deal is to perceptions of GoSS integrity, respect for contracts, and for investment of any kind in the GoSS. But it is very possible that the leadership does not see past a very short time horizon.

There are many explanations for the lack of transparency with respect to oil revenues. For the NCP, opacity covers the deals of the past and undermines the ability of the National Petroleum Commission to function. For the GoSS, it may be that there are divisions within the GoSS leadership and leadership factions making *competing demands on the leadership to get "their" share* of the oil wealth. Another possibility is that the GoSS does not want to reveal how much or how little of the enormous revenues they are taking are going for development versus armament.

V. What Should be Done?

If the United States and the donor community are serious about promoting a Government of National Unity, pressure and persuasion will need to be brought to bear on both sides to carry it out.

For the south, it is time for some tough love. The donor community should prioritize GoSS implementation of the CPA, such as staffing of its positions in the GNU institutions, push for retention of advisers on oil, and insist on transparency in the accounting for oil wealth. Nearly \$800 million in oil revenues and \$400 million donor aid flowed to the GoSS in the past year. There should be no more disbursements of cash. Any future aid flows should be conditioned on published and audited accounts.

For the US, it is time to take a leadership role in promoting unity in management of the energy sector. The US has to date understandably left energy sector issue to other countries, but the time has come for the US to play a facilitating role, both diplomatically and analytically. Energy sector integration is fundamental to national unity. One step the US can take is to support preparation of an analysis of the sector that illustrates the financial consequences of unity and of secession. No credible study has been undertaken which suggest how the returns of energy sector could be optimized for all parties. What are the consequences of development of the southern fields using the existing pipeline

infrastructure? What are the costs and returns of adding a Kenya-Uganda line? Is there enough oil for both? What is the net present value of integration versus disaggregation over a twenty year period? What are the returns, through revenue sharing, of the supply of refineries sited in the north to the GOSS? The US Congress should fund and commission an independent study that assesses these scenarios, and convene hold a conference in the Sudan which serves as a platform for discussing these fundamental issues. Such a study can also be a vehicle for helping the GoSS obtain copies of the relevant agreements for the existing concessions, pipelines and refineries and obtain an independent assessment of their value.

The US must also ratchet up its diplomacy on CPA issues. Congressional supporters of the GoSS must be very clear, that they support CPA implementation and unity so there is no misunderstanding about where the US will stand if the GoSS undermines the CPA.

For the north, the US and the international community must push for it to define the border, staff the auditing commission, and involve the GoSS deputies in Ministerial decisions. We should make clear to the NCP that our support for the CPA and for unity is only sustainable if they allow the CPA institutions, like the National Petroleum Commission to function.

Finally it is time for some creative engagement with China. To date most US diplomacy appears to have focused, understandably, on obtaining China's cooperation in the Security Council on Darfur. But the donor community and the US should engage China on Sudan's long term stability. China's own energy interests and the sustainability of its investments are at stake in the Sudan. A unified Sudan could vastly increase the value of their investments, while resumed war could destroy them. Surely this is a sufficient beginning of a conversation of how China can work to promote unity and implementation of the CPA.

With the war in Darfur spiraling downward, it is easy to shift attention away from the North-South accords. But these hard won gains must be nurtured if they are to be preserved. Today the NCP may believe that the GoSS does not want unity and many in the GoSS may doubt that unity is worthwhile. It will fall to external supporters to help both sides see their interests clearly. Sharing the oil wealth will be key to the survival of southern Sudan and to the long term future of the entire country. There are ample gains to be had from unity – greater exploration, long term earnings, the development gains which can flow from well managed oil resources and peace. Success will require consistent pressure on the NCP, but also quiet but frank talks with our friends in the south and forceful nurturing of their confidence in a Government of National Unity.

I am grateful to NDU and the Wilson Center for helping maintain this focus on the North-South accords.