

# Sharing Power – Enabling Peace?

## Evaluating Sudan's Comprehensive Peace Agreement 2005

Johan Brosché

This study sets out to examine what lessons can be learned from Sudan's Comprehensive Peace Agreement (CPA) 2005, with particular relevance to power-sharing. The author went on a field-trip to Khartoum, Juba and Nairobi in July 2009 to complement his previous knowledge of the Sudan conflict.

The report describes ten lessons learned, and these are divided into the three aspects of process, provisions and implementation. In terms of the process, the report suggests that negotiators should strive to involve both regional actors and actors from the international community, focus on the functioning of the agreement, and seek to enhance the capacity-building of the parties. In relation to the key provision, power-sharing, the report calls for mediators to be wary of including exit options in power-sharing deals. The effects of exclusion and inclusion of various actors should be scrutinized and it is important that the message of the agreement is conveyed to various constituencies. Also, it is important to bring peace dividends for the people to increase the legitimacy of the agreement. Regarding the implementation phase, three key lessons are learned. First, for a successful implementation it is essential to keep the momentum of the signing. Secondly, the signing of an agreement is the start, not the end, of building a durable peace. Finally, the research findings demonstrate the importance of maintaining the moment ripe for implementation after the agreement is signed. One way of facilitating this is by keeping the same parties involved during the implementation process as during the negotiations.

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**Johan Brosché**

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## Acronyms

ABC – Abyei Boundaries Commission  
 AEC – Assessment and Evaluation Committee  
 CPA – Comprehensive Peace Agreement  
 DPA – Darfur Peace Agreement  
 ESPA – Eastern Sudan Peace Agreement  
 GoNU – Government of National Unity  
 GoS – Government of Sudan  
 GoSS – Government of Southern Sudan  
 HRW – Human Rights Watch  
 ICG – International Crisis Group  
 IDP – Internally Displaced Person  
 IGAD – Inter-Governmental Authority  
 on Drought and Development  
 JEM – Justice and Equality Movement  
 JIU – Joint Integrated Unit (s)  
 LRA – Lord's Resistance Army  
 NCP – National Congress Party  
 NIF – National Islamic Front  
 SAF – Sudan Armed Forces  
 SLM/A – Sudan Liberation Movement/Army  
 SPLA – Sudan People's Liberation Army  
 SPLM – Sudan People's Liberation Movement  
 UNMIS – United Nations Mission in Sudan  
 UCDP – Uppsala Conflict Data Program

## Executive Summary

The purpose of this paper is to evaluate Sudan's Comprehensive Peace Agreement (CPA), focusing on power-sharing aspects of the accord. Also, the paper seeks to answer what lessons can be learned from the CPA, with regards to sharing power to enable peace. In the paper a broad approach is applied which includes all four different types of power sharing: political, economic, territorial and military. The methodology used for this paper mainly comprises interviews with politicians, academics, policy-makers, diplomats and observers involved in the negotiation process leading up to the signing of the CPA on January 9, 2005, as well as people engaged in the implementation phase. The interviews were primarily carried out during a field-trip by the author to Khartoum, Juba and Nairobi in July 2009. But also preparatory interviews prior to the field-trip, as well as complementary interviews after the trip, have been conducted. In addition, a wide variety of academic and policy literature has been consulted so as to gain as broad and deep understanding of the situation as possible.

The key lessons to be learned from this report are as follows: The CPA process suggests that involving both regional actors and the broader international community can constitute a fruitful approach towards reaching an agreement. Also, the CPA shows the importance of not getting stuck with details and therefore a call is made to focus on the functioning of the agreement. In addition, the CPA is an example of how a lack of capability among the parties severely increases the problems at hand; capacity-building of the parties should thus be a focused area. Furthermore, one positive asset with power sharing is that it can build trust between former enemies, but if an exit option of this co-operation is included in the agreement, the potential for trust-building is reduced; power-sharing agreements should thus preferably not include such options. Moreover, power-sharing accords can have unintended effects for other regions, so such potential consequences have to be exam-

ined. Additionally, the constituencies that are represented at the negotiations influence the legitimacy and implementation of the agreement; consequently, issues of inclusion and exclusion have to be carefully scrutinized. Also, it is important to convey the message of an agreement to various constituencies, and to bring peace dividends to the people to increase the legitimacy of the agreement. Regarding the implementation phase, three key lessons are learned. First, for a successful implementation it is essential to keep up the momentum of the signing. Secondly, this paper wants to emphasize that the signing of an agreement is the start, and not the end, of building peace. Finally, this report emphasizes the importance of striving to keep the moment ripe during the implementation process.

## I. Introduction

The purpose of this paper is to evaluate Sudan's Comprehensive Peace Agreement (CPA) focusing on power-sharing aspects of the accord. Also, the paper seeks answer to what lessons can be learned from the CPA, relevant to sharing power to enable peace.

Power sharing is something that has become more common in the writing of peace accords during the last years. Out of 83 peace agreements signed between 1989 and 2004, 70 included power sharing.<sup>1</sup> Thus it is important to scrutinize this conflict-resolution approach, especially since there are not many available options to power sharing. So what does power sharing comprise? Different scholars use the concept differently, and some see power dividing as power sharing, whilst others do not. However, most of the literature agrees that there are four different types of power sharing: political, economic, territorial and military. Walter (2002) suggests that it is a mechanism that can be used to unravel commitment problems in a context of severe mistrust and liability. In her examination of power sharing, she finds that parties are 38% more likely to sign an accord if it includes a guarantee to be part of the future government.<sup>2</sup> Hartzell and Hoodie (2007) argue that settlements with power-sharing and power-dividing elements are more likely to generate enduring peace. Furthermore, they state that accords including all four types of power-sharing dimensions are the most effective. They also argue that power-sharing institutions are crucial as they engage former rivals not just to stop fighting but in more peace-enhancing activities of co-operating that can create a sense of security and sometimes even trust.<sup>3</sup>

<sup>1</sup> Anna K. Jarstad and Ralph Sundberg, "Peace by Pact," in *Globalization and Challenges to Building Peace*, ed. Ashok Swain, Ramses Amer, and Joakim Öjendal (London: Anthem Press, 2008).

<sup>2</sup> Barbara F. Walter, *Committing to Peace: The Successful Settlement of Civil Wars* (Princeton: Princeton: University Press, 2002).

<sup>3</sup> Caroline A. Hartzell and Matthew Hoddie, *Crafting Peace Power-Sharing Institutions and the Negotiated Settlement of Civil Wars* (University park, Pennsylvania: Pennsylvania State University Press, 2007).

However, the research community is divided as to the efficiency of power sharing. Rotchild and Roeder (2005) state that power sharing might work as a necessary compromise between the warring parties, reflecting military capabilities, and this can help to secure commitment to an accord and assure weaker parties security. However, to shift from this short-term perspective to a long-term consolidation is problematic, and democratic consolidation as well as sustainable peace might be harder to achieve after power-sharing agreements. The root cause for this is that promises given to the parties in the initial phase make the consolidation phase more problematic.<sup>4</sup> The dilemma of establishing democracy after a war is addressed by Jarstad and Sisk (2008) and one dimension of this dilemma is power sharing.<sup>5</sup> Jarstad argues that power sharing can have negative consequences for the transition from war to peace and emphasizes that there are important differences between power sharing from a peace-building and a democracy perspective and this causes potential quandaries. From a peace-enhancing perspective, power sharing is positive as it includes warring parties which is often a key for reaching a peace deal at all. Also, power sharing changes the intra-group contestation i.e. as power sharing fixes the ratio of government positions for the parties' part of the deal, the principal conflict is regulated or at least concealed. Furthermore, peace-agreements involving a power-sharing aspect often have an international dependence, through international actors being guarantors to the deal which can help in bringing in peace. Finally, from a peace-enhancing perspective, power sharing often leads to a leveling of power relations. An example of this is that a pre-arranged inclusion in government can contribute to conflict management as this reduces uncertainty as to the result of elections. However, from a democratization perspective this can be negative as it ex-

<sup>4</sup> Donald Rotchild and Philip G. Roeder, "Power Sharing as an Impediment to Peace and Democracy," in *Sustainable Peace: Power and Democracy after Civil War*, ed. Donald Rotchild and Philip G. Roeder (Ithaca: Cornell University Press, 2005).

<sup>5</sup> Anna K. Jarstad, "Power Sharing: Former Enemies in Joint Government," in *From War to Democracy Dilemmas of Peacebuilding*, ed. Anna K. Jarstad and Timothy D. Sisk (New York: Cambridge University Press, 2008).

cludes moderate elites, lacks popular support, and freezes ethnic partition by group representation.<sup>6</sup> Jarstad and Sundberg (2008) examine the implementation of political, territorial and military power sharing and find that it has become more common to include political pacts in peace agreements. Also, they suggest that contrary to what was previously believed, the power-sharing pacts are most often implemented and that military and territorial pacts took longer to implement than political ones.<sup>7</sup> In another recent study, Jarstad and Nilsson (2008) find that lasting peace is more likely if territorial or military provisions are implemented, whilst political provisions do not increase the prospect for peace.<sup>8</sup>

Although every peace agreement that includes power sharing has to be designed to reflect its particular circumstances, Jarstad (2008) believes there are some guidelines that can be useful. One important facet is to create room for moderate parties and new groups to join the deal i.e. inclusion rather than exclusion. In addition, she argues that legitimacy is more important than efficiency when it comes to elections and therefore essential that voters have a plurality of options at hand when it is time for elections. Another recommendation is that the international commitment has to be long-term as in some cases trustworthy international assurances are necessary and in others negotiations continue after the deal is signed and often require international mediation or facilitation. The balance between a flexible system and long-term guarantees given to some significant actor, is a factor that she deems case-dependent. Finally, security guarantees and monitoring from an external actor is often a fruitful help in the difficult transition from power sharing to more open ways of elections.<sup>9</sup>

<sup>6</sup> Ibid. p. 107

<sup>7</sup> Jarstad and Sundberg, "Peace by Pact."

<sup>8</sup> Anna K. Jarstad and Desirée Nilsson, "From Words to Deeds: The Implementation of Power-Sharing Pacts in Peace Accords," *Conflict Management and Peace Science* 25, no. 3 (2008).

<sup>9</sup> Jarstad, "Power Sharing: Former Enemies in Joint Government."

## 2. Conflict History

Sudan is located in one of the most conflict-torn regions of the world and all the neighbouring countries, (Chad and the Central African Republic in the west, Egypt and Libya in the north, Ethiopia and Eritrea in the east, and Kenya, Uganda, and the Democratic Republic of the Congo in the south) have seen interstate or intrastate conflict in the last 50 years.<sup>10</sup> When it comes to ethnicity, language, and religion, Sudan is one of the most heterogeneous countries in the world. However, this diversity is not reflected in the leadership of the country, as Sudan is characterised by a persistent domination of the centre over the marginalised peripheries. The centre is located in the capital Khartoum and power is held by different elites from the Nile Valley area located north of Khartoum. Even though this area comprises less than two percent of the Sudanese population, the elites from this region utterly dominate the politics and economic life of Sudan.<sup>11</sup> Sudan became independent in 1956 from Egypt and the United Kingdom, who had ruled Sudan jointly. The northern part of the country was under Egypt, whilst the southern area was controlled by the United Kingdom. Since the end of colonial rule, Sudan has been characterised by war, with the first Sudanese civil war beginning in 1962. This first conflict was initiated by a southern-based rebel group called Anya Nya, which fought for the independence of the south. This conflict ended in 1972 through the Addis Ababa agreement.<sup>12</sup>

In 1983, the second north-south war broke out when the Sudan People's Liberation Movement/Army (SPLM/A) initiated a rebellion. Some factions of the southern based SPLM/A had a secessionist agenda whilst their leader John Garang stated that "The

<sup>10</sup> UCDP, "Ucdp Database," (Uppsala University, Department of Peace and Conflict Research, 2009c).

<sup>11</sup> Kamal el-Din, "Islam and Islamism in Darfur," in *War in Darfur and the Search for Peace*, ed. Alex De Waal (Global Equity Initiative, Harvard University 2007).

<sup>12</sup> John Prendergast and Roger Winter, "Abyei Sudan's Kashmir," Enough Project, <http://www.enoughproject.org/files/reports/aneyi%2029-1.pdf>

*SPLM/A is fighting to establish a united socialist Sudan*”. Throughout the 1980s, the SPLM/A received much support from the Ethiopian President Mengistu, and his fall in 1991 dealt an almost fatal blow to the movement.<sup>13</sup> During the time of Mengistu’s support, Garang held a tight grip over the movement. However, with the fall of the Ethiopian President, Garang was confronted with increased opposition which culminated in an attempt to overthrow him on 28 August 1991. This revolt was led by the two SPLM/A commanders Riek Machar and Lam Akol but the effort to remove Garang failed and instead resulted in a split within the SPLM/A. The splinter faction’s name became SPLM/A (Nasir) whilst the mainstream movement retained the name SPLM/A. The Nasir faction, in addition to demanding the overthrow of the ‘dictator’ Garang, called for independence for the south. In an attempt to ‘divide and rule’, the Government of Sudan (GoS) supported the Nasir faction militarily as well as economically, and during some years in the first half of the 1990s more people were killed in fighting between these factions than between SPLM/A and the government.<sup>14</sup> The largest ethnic group in the south is Dinka and SPLM/A has often been seen as a Dinka-movement by other ethnic groups in the south. In contrast, Machar is from the second largest group in the south, Nuer, and Akol is from the Shiluk. This led to the fighting between the factions acquiring an ethnic nature, and Dinka-Nuer fighting was especially extensive.<sup>15</sup> This period also included human-rights violations by SPLM/A, most often with an ethnic dimension.<sup>16</sup>

The lost support from Mengistu to SPLM/A in combination with internal fighting led to governmental military advances in the early 1990s. However, in the mid-1990s the internal fighting within SPLM/A was less intensive, and in 2002 Riek Machar reunited

<sup>13</sup> UCDP, “Ucdp Database.”

<sup>14</sup> Douglas H. Johnson, *The Root Causes of Sudan’s Civil War*, African Issues (Bloomington Indiana University Press, 2006).

<sup>15</sup> Madut Jok, *Sudan: Race, Religion, and Violence* (Oxford: Oneworld, 2007).

<sup>16</sup> UCDP, “One-Sided Violence Splm/a-Civilians,” [http://www.pcr.uu.se/gpdatabase/gpcountry.php?id=145&regionSelect=1-Northern\\_Africa#](http://www.pcr.uu.se/gpdatabase/gpcountry.php?id=145&regionSelect=1-Northern_Africa#)

with Garang. During the second half of the 1990s, the rebels retook some of the initiative in the fighting and for a few years had the momentum. However, at the end of the 1990s the government started to receive oil revenues and this changed the tide to the advantage of the government again.<sup>17</sup> Apart from the strict military aspects, the war was filled with gross human-rights violations committed foremost by the government. One example was attempts by the government to cleanse the oilfield-areas by killing people, burning villages and raping women.<sup>18</sup> Fighting continued throughout the 1990s and until 2002 the fighting was still intensive between GoS and SPLM/A. However, in February 2003 SPLM/A and GoS agreed on a ceasefire that in the year to come led to a sharp decrease in the fighting, and apart from a few exceptions this ceasefire held during 2003 and 2004. On 9 January 2005 the Comprehensive Peace Agreement (CPA) was signed, bringing to an end 22 years of conflict. In total an estimated two million people had been killed as a result of violence, famine and diseases.<sup>19</sup>

<sup>17</sup> UCDP, “Ucdp Database.”

<sup>18</sup> HRW, “Sudan, Oil, and Human Rights,” (New York: Human Rights Watch, 2003).

<sup>19</sup> UCDP, “Ucdp Database.”

### 3. The Comprehensive Peace Agreement

#### 3.1 Process of Getting to the Agreement

On 30 June 1989 the National Islamic Front (NIF) took over the leadership in Khartoum through a military coup, Colonel Omar el Bashir became president of Sudan and the new government announced a one-month-long unilateral ceasefire in the war against SPLM/A. Following from this, the GoS met with the SPLM/A in Addis Ababa in August 1989 and in December the same year Jimmy Carter led unofficial mediations in Nairobi. However, when the SPLM/A demanded the repeal of Sharia law the negotiations collapsed. Efforts to launch a proper peace process were also made in 1990, in Zaire, under the auspices of the US State Department, and in 1992 in Nigeria led by the Nigerian President Ibrahim Babangida. These attempts, however, did not lead to any breakthroughs.<sup>20</sup> In 1994 the Inter-Governmental Authority on Drought and Development (IGAD), a regional organisation comprising Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda initiated a negotiation effort to stop the war.<sup>21</sup> The negotiations led to the parties signing an agreement for humanitarian assistance, and later that year a declaration of principles followed. Yet again, not much came out of this and the negotiations broke down later that same year. Three years later, in 1997, with the help of Nelson Mandela, negotiations were resumed and from 1997-2001 IGAD-led negotiations took place at some point every year. The negotiations led to some progress on issues such as humanitarian ceasefires but no real progress on substantial concerns such as self-determination for the south, defining a border, or a comprehensive ceasefire.<sup>22</sup> In January 2002 the GoS and SPLM/A met for a week of talks in Switzerland brokered by the Governments of the United States and Switzerland. These talks led to a

<sup>20</sup> Ibid.

<sup>21</sup> IGAD, "Profile: Intergovernmental Authority on Development (Igad)," (Djibouti2002).

<sup>22</sup> UCDD, "Ucdd Database."

breakthrough in the form of a ceasefire for the Nuba Mountains, one of the contested areas on the border between northern and southern Sudan.<sup>23</sup> In June the same year, the parties met in the Kenyan town Machakos for peace talks sponsored by IGAD. This was the start of the so-called Machakos peace process which included the signing of six partial peace agreements before they were all put together with the signing of the CPA 9 January 2005.<sup>24</sup>

The negotiations were led by IGAD through the chief mediator the Kenyan General Lazaro Sumbeiywo. Also, a Troika consisting of the United States, the United Kingdom and Norway were highly involved in the negotiation process. The GoS team were led by First Vice President Ali Osman Mohammed Taha whilst the SPLM/A were led by its leader John Garang.<sup>25</sup> Signatories to the CPA were John Garang, Mamhod Taha and the countries of Kenya, Uganda, Egypt, Italy, the Netherlands, Norway, the UK, the US, as well as the organisations of IGAD, Arab League, UN, AU and the EU.<sup>26</sup>

#### 3.2 Character and Content of the Agreement

CPA is a 241-page-long agreement comprising six previous partial agreements collected into one accord. The accord is also often called the Naivasha Agreement as much of the negotiations took place in the Kenyan town of Naivasha. The first agreement, the *Machakos Protocol* from 22 July 2002 is a peace-process agreement pointing out procedures for future negotiations. It also includes a specific agreement that was annexed to the protocol stipulating the need for a pre-transition period of six months, a six-year transition

<sup>23</sup> IRINnews, "Sudan: Nuba Ceasefire Experience Suggests Points to Ponder," 2009.

<sup>24</sup> UCDD, "Ucdd Database."

<sup>25</sup> Waithaka Waihenya, *The Mediator* (Nairobi: Kenway Publications, 2006).

<sup>26</sup> CPA, "Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/ Sudan People's Liberation Army" <http://www.pcr.uu.se/gpdatabase/peace/Sud%2020050109.pdf>.

period, followed by an internationally supervised referendum for the south, where secession should be one of the options.<sup>27</sup> The six-year-long interim period was a compromise between the two years that SPLM/A wanted and the ten years that was the length preferred by the government.<sup>28</sup> Throughout the interim period, a broad-based government was to rule in Khartoum and some autonomy would be given to the south.<sup>29</sup> The next agreement to be signed was the *Agreement on Security Arrangements* from 25 September 2003. This was a partial peace agreement that called for a cease-fire to take place once the CPA was signed and for the Sudanese Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA) to be the only legal armed groups in the country. The armies should remain separate, but some Joint Integrated Units (JIUs) consisting of troops from both SAF and SPLA should be created and be placed in southern Sudan, Khartoum, the Nuba mountains and the Blue Nile during the interim period. Also, the government should withdraw 91,000 troops from the South within two and a half years, and the SPLA should withdraw its troops from the North within eight months. The next accord was the *Agreement on Wealth Sharing* from 7 January 2004. This is a partial peace agreement stipulating that the oil-revenues from southern Sudan should be shared 50-50 between the GoS and GoSS during the interim period.<sup>30</sup>

On 26 May, 2004, three different protocols were signed by the parties. The *Protocol on Power Sharing* included three key provisions: the establishment of an interim constitution, the creation of a Government of Southern Sudan (GoSS) and the launching of power sharing at the central government level. More specifically, in the legislature of Southern Sudan the SPLM would have 70% of the seats, (the former NIF but now renamed) National Congress

Party (NCP) 15%, and other southern parties 15%. Also, GoSS is given the right to have control over police and security forces in the south. At the national level it was decided that SPLM/A leader John Garang should be appointed First Vice-President and at the National Assembly SPLM should be given 28% of the seats in comparison to the 52% reserved for NCP. *The Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States* was the second agreement signed 26 May, 2004. This agreement stipulates how these contested areas on the border between north and south Sudan would be administrated. They are seen as federal states within the Sudan and during the interim period NCP would have 55% and SPLM 45% of the executive legislature seats within these regions.

Finally, the *Protocol on the Resolution of the Conflict in Abyei Area*, also a partial peace agreement, was signed the same day. The Abyei area, located on the border of the north and south Sudan, is a much-contested region due to oil-wells, ethnic diversity and migration routes. The agreement states that a joint battalion from SPLM/A and the GoS would be stationed in the region during the interim period and that an Abyei Area Security Committee will be created to ensure law and order. Simultaneously with the referendum of the future of southern Sudan the people of Abyei will cast a separate ballot to decide if they want to keep its special administrative status within the north or become part of the southern Sudanese state of Bahr el Ghazal. Furthermore, the boundaries of the Abyei area are contested and an Abyei Border Commission (ABC) will define and demarcate where the exact border is. In addition, the Abyei agreement includes economic power sharing in the form of division of oil revenues from the Abyei area, 50 % to the National Government, and 42 % to the GoSS and the rest shared locally. This agreement gives the Abyei area a special status that was not given to Southern Kordofan and Blue Nile States.

<sup>27</sup> Ibid.

<sup>28</sup> Interview with Observer present during CPA-negotiations, July 7, 2009, Khartoum

<sup>29</sup> CPA, "Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/ Sudan People's Liberation Army".

<sup>30</sup> Ibid.

In addition to these six partial agreements, the CPA has some additional points. Sharia law is to be applied only in the north and only to Muslims; furthermore the north and the south shall have separate banking systems. The above mentioned points deal with north-south relations. Finally, the CPA calls for nationwide elections to take place by July 2009 at the latest.<sup>31</sup>

### 3.3 Key Provisions

The CPA includes all four aspects of power sharing identified by the literature: *Political* in the formation of Government of National Unity (GoNU) and GoSS, *economic* in the form of division of the oil revenues, *territorial* in the form of a south/north boundary and upcoming referendum on secession as well as the special status approved to Abyei and *military* with the formation of the JIUs, Disarmament, Demobilization and Reintegration (DDR) of other forces and redeployment of SAF and SPLA.<sup>32</sup>

One problematic issue of political power sharing was the number of representatives at the assembly that should be given to the south as no reliable data on the population of Sudan was available. Another difficult issue was how the power within the presidency should be divided, President, 1<sup>st</sup> vice president, and 2<sup>nd</sup> vice president.<sup>33</sup> In reference to the presidency, Dr. Luka Biong Deng, Minister of Presidential Affairs in the Government of Southern Sudan, deems that too much power was given to the presidency which was not a good place for fruitful discussions. As NCP has two and SPLM one representing them in the presidency, the SPLM is most often overruled and one solution to this would be to also include the GoSS vice-president within the presidency. Also, he believes that more focus should have been put on how the presidency was sup-

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Interview with international observer, July 5, 2009, Khartoum

posed to function. During the negotiations emphasis was put on the structure of the Presidency with little attention to mechanisms of processes for exercising the functions of the presidency. Hence, how this would work in reality was omitted.<sup>34</sup>

The territorial power sharing was highly complicated both during the negotiations and during the implementation period which has meant that only one third of the border has yet been demarcated.<sup>35</sup> During the negotiations, the status of the Southern Kordofan, Blue Nile and Abyei (jointly called the Three Border Areas) was a much contested issue as much of the fighting had taken place in these areas, and the areas were economically important due to oil-wells. The agreement's provisions covering the three special areas were far less far-reaching than the SPLM had originally desired. This was viewed as a trade-off in favor of higher goals within the CPA, such as the referendum and the SPLM/A chairman becoming First Vice President. This caused enormous internal problems within the SPLM and the movement almost split into a southern and a Three Border Areas faction.<sup>36</sup> Also, related to territorial power sharing, the Abyei Border Commission (ABC) was the first crisis of the implementation of the CPA, according to a senior international official working in Juba. He states that as the ABC decision was not accepted by the GoS, it poisoned the relationship between the parties from the beginning. The international official suggests that the Abyei protocol holds the seeds of its own destruction and therefore it should have been written differently. He elaborates and states that as the ABC consisted of five international experts, three of them appointed by IGAD and one each from United States and United Kingdom, the NCP ceded its only major source of oil to a board nominated by countries that are not seen as pro-NCP, which

<sup>34</sup> Interview with Dr. Luka Biong Deng, Minister of Presidential Affairs Government of Southern Sudan, July 13, 2009, Juba

<sup>35</sup> Interview with Roberto Cantone, Italian Ambassador to Sudan and chairman of the power-sharing working group within the AEC, July 16, 2009, Khartoum

<sup>36</sup> Interview with observer present during CPA-negotiations, July 7, 2009, Khartoum

<sup>37</sup> Interview with Senior international Official, July 14, 2009, Juba

created a major problem. He further believes that it is a weakness of the Abyei Protocol to leave the border demarcation to a board as it was likely that their decision would be contested. Preferably the issue should have been solved in Naivasha, as circumstances and trust between the parties were probably better suited for solving the issue in Naivasha, than later. If this was not possible, the Abyei issue should have been put later during the implementation period so that it did not take all focus from other important issues of the CPA.<sup>37</sup>

One of the things making the power-sharing aspect of the CPA so complicated, is that it includes several different forms of power sharing as well as power sharing at different levels, including a referendum for secession. The referendum has put the implementation process in a bind where the NCP are hesitant to implement the agreement, in part because they believe that independent of any such steps, the south will inevitably vote for secession. At the same time, the south will probably become more likely to vote for secession, since the agreement is not being fully implemented.<sup>38</sup> However, to not include the referendum was never an option. A senior international official who was part of a team providing help for the parties, states that the referendum was of critical importance for the SPLM/A, and sine qua non for their signing of the agreement. The importance of this was seen already in the first national conference of the SPLM/A in 1984.<sup>39</sup> From the NCP point of view, secession for the south was not an option, due to ideological reasons. The way out of this stalemate was that both parties assured that they should work in a way that made unity attractive. This part of the CPA was essential in getting the parties to sign the accord and the essential premise was that both parties would work towards making unity attractive during the interim period, in order to make staying in a united Sudan the preferable option in the referendum. From a regional perspective, several

<sup>38</sup> ICG, "Sudan's Comprehensive Peace Agreement: The Long Road Ahead" (2006).

<sup>39</sup> Phone interview with senior international observer, April 22, 2009

countries in the region do not want to have an independent south Sudan. Egypt adopts this position as they do not want to share the water from the Nile with another independent country. Other neighbouring countries do not want an independent South Sudan due to security concerns, foremost because they do not believe that south Sudan will be able to control its territory.<sup>40</sup>

A peace-keeping mission was not part of the CPA but to secure its implementation, and to monitor its territorial and military power-sharing aspects, the United Nations Security Council, on March 24, 2005, through its resolution 1590, established a United Nations Mission in Sudan (UNMIS).<sup>41</sup> The Council reasoned that the situation in Sudan was still a threat to international peace and security.<sup>42</sup> The strength of UNMIS as of June 30 2009 is 9,643 uniformed personnel.<sup>43</sup>

### 3.4 Current Status of the Agreement

It is difficult to judge the current status of the CPA because many aspects of the implementation and assessments by the parties changes on a regular basis. One example of this is that Salva Kiir, President of Southern Sudan, in June 2009 said (in relevance to him accusing NCP being behind increase in intra-ethnic violence in the South) that the spirit of CPA had been assassinated. Less than a month later, however, said that Abyei can be a role model for creating peace in Sudan.<sup>44</sup> This last statement came after both SPLM/A and GoS stated that they accepted a decision by the International Court on the borders of Abyei.<sup>45</sup> Nevertheless, the over-

<sup>40</sup> Phone interview with senior Sudan expert, September 28, 2009

<sup>41</sup> United Nations Security Council, "Resolution 1590 (2005)," (2005).

<sup>42</sup> UNMIS, "Sudan -Unmis - Mandate," <http://www.un.org/depts/dpko/missions/unmis/mandate.html>.

<sup>43</sup> ———, "Sudan - Unmis - Facts and Figures," <http://www.un.org/depts/dpko/missions/unmis/facts.html>.

<sup>44</sup> ICG, "Sudan: Justice, Peace and the Icc," (2009); Sudan Tribune, "Abyei Can Be Model for Peace in Sudan – Ncp and Splm Say," 2009-07-23 2009.

<sup>45</sup> Tribune, "Abyei Can Be Model for Peace in Sudan – Ncp and Splm Say."

all trend of implementation of the CPA has been characterized by unmet deadlines and it is far behind schedule in many areas of the agreement. Although positive examples exist such as the formation of the Government of National Unity and the appointment of the leader of SPLM as First Vice President, the general picture is negative.<sup>46</sup> One of the principal factors that has impeded the implementation of the CPA was that six months after the signing of the CPA Dr. John Garang died in a helicopter crash. Garang had been a pivotal part of the negotiation and he was probably the most central person for the agreement.<sup>47</sup> Delays in the implementation include for example the census – a prerequisite for elections – which according to the CPA should have taken place before 9 July, 2007, but was not finalised until the summer of 2009.<sup>48</sup> Also, the elections, stipulated to take place before July, 2009, are severely delayed and are now rescheduled for April 2010.<sup>49</sup> But the census is still contested and many doubt that the elections really will take place on schedule.<sup>50</sup> The first major deadline stipulated in the CPA was for the Sudan Armed Forces to have left the south by 9 July, 2007, but this deadline was passed without any international reaction.<sup>51</sup> However, by July, 2009, the redeployment of SAF and SPLA had been almost completed, although some problematic cases remain unsolved.<sup>52</sup> Another crucial factor that is severely delayed is the demarcation of the border between the south and the north.<sup>53</sup>

<sup>46</sup> UNMIS, "United Nations Mission in Sudan (2006) the Cpa Monitor- Monthly Report on the Implementation of the Cpa November 2006," (2006).

<sup>47</sup> ICG, "Garang's Death: Implications for Peace in Sudan," (2005).

<sup>48</sup> HRW, "No One to Intervene - Gaps in Civilian Protection in Southern Sudan," (New York: Human Rights Watch, 2009).

<sup>49</sup> ———, "The Way Forward Ending Human Rights Abuses and Repression across Sudan," (New York City 2009).

<sup>50</sup> UNMIS, "The Cpa Monitor- Monthly Report on the Implementation of the Cpa September 2007," (2006); EthiopianReview, "South Sudan Government Rejects Census Result," 2009-07-15 2009.

<sup>51</sup> ICG, "A Strategy for Comprehensive Peace in Sudan Africa Report No 130 26 July 2007 P. 5," (2007).

<sup>52</sup> Interview with Hans Selg, Senior Staff Officer Forces Joint Monitoring Coordination Office UNMIS, July 11, 2009, Juba

<sup>53</sup> ICG, "Sudan: Justice, Peace and the Icc."

That there has not been a return to war between the signatories, is widely seen as the greatest achievement of the CPA. However, since the signing three major clashes have taken place between the parties. The first occurred in November 2006, when a battle between Sudan Armed Forces and Sudan's People Liberation Army soldiers in Malakal killed approximately 150 people, including civilians. After this incident it was encouraging that the parties immediately agreed to a new cease-fire, a joint investigation on what happened and a withdrawal of forces. However, this event shows how fragile the situation is on the ground.<sup>54</sup> In May, 2008, a second major fight between SAF and SPLA took place in the contested area of Abyei. The fighting caused around 90 casualties as well as destroying a large part of the town.<sup>55</sup> The conflict was solved by an Abyei Roadmap that called for the return of IDPs and security arrangements.<sup>56</sup> In any case, the implementation of the Roadmap has been slow and an international observer based in Abyei states that the pressure in Abyei has increased during 2009 with a huge build-up of arms and more travel restrictions for the UN.<sup>57</sup> On 23 February, 2009, the third major clash took place, once again in Malakal. The fighting was between Khartoum-affiliated militia and SPLA and at least 50 people were killed.<sup>58</sup> In addition to these clashes between the parties, 2009 has witnessed a sharp increase in conflicts between different ethnic groups. According to the UN, more people were killed in fighting in the south than in Darfur during the first six months of 2009.<sup>59</sup> SPLM blames this upsurge on the NCP and the General-Secretary of SPLM has stated that the spirit of CPA had been "assassinated" resulting in the trust between the parties in the beginning of the summer of 2009 sinking to its lowest level since the end of the war.<sup>60</sup> However, it has not been independently

<sup>54</sup> UNMIS, "The Cpa Monitor- Monthly Report on the Implementation of the Cpa September 2007."

<sup>55</sup> HRW, "Abandoning Abyei Destruction and Displacement," (2008).

<sup>56</sup> AbyeiRoadmapAgreement, (2009).

<sup>57</sup> Interview with international observer, July 5, 2009, Khartoum

<sup>58</sup> ICG, "Sudan: Justice, Peace and the Icc."

<sup>59</sup> Reuters, "Un: South Sudan Violence More Deadly Than Darfur", 2009-06-01 2009.

<sup>60</sup> ICG, "Sudan: Justice, Peace and the Icc."

confirmed that the NCP is behind this upsurge in violence.<sup>61</sup> One Sudanese Academic noted that it is currently much more difficult for, though not impossible, for the north to influence things in the south due to GoSS controls and international presence.<sup>62</sup>

A more positive aspect of the current status of the CPA is the hundreds of thousands of refugees and IDPs that have been able to return to the south.<sup>63</sup> Also, it should be noted that the NCP and SPLM made significant achievements in 2008, such as the Abyei roadmap and national electoral commissions.<sup>64</sup> Furthermore, in relation to implementation of the Darfur Peace Agreement (DPA) and Eastern Sudan Peace Agreement (ESPA) the implementation status of the CPA is much better. In addition it is notable that the CPA framework was able to withstand and resolve the situation of the Abyei clashes.<sup>65</sup>

<sup>61</sup> HRW, "The Way Forward Ending Human Rights Abuses and Repression across Sudan."

<sup>62</sup> Interview with Dr. Eltayeb Hag Ateya, Director Peace Research Institute University of Khartoum July 8, 2009, Khartoum

<sup>63</sup> UNMIS, "The Cpa Monitor- Monthly Report on the Implementation of the Cpa September 2007," (2007).

<sup>64</sup> Interview with senior diplomat, July 5, 2009, Khartoum

<sup>65</sup> Interview with Sir Derek Plumbly, Chairman Assessment & Evaluation Commission, July 6, 2009, Khartoum

#### 4. Challenges and Options

According to an international observer present during the CPA-negotiations, many of the problems concerning the CPA, stem from the fact that the agreement was supposed to be a working document. Hence, the parties should be engaged in partnership but the parties' faith in each other has eroded. He states that the spirit of the CPA is that it should create a partnership, and that three years of almost daily contact at the Naivasha negotiations did build significant trust between the party's representatives. This appeared to dissipate, however, when the delegations returned to Sudan.. The observer added that important persons at the negotiations are now marginalized, which severely harms the implementation process. On the NCP side, Taha is still present but many of the others are replaced, and on the SPLM side, Garang is gone and many people close to him have been replaced.<sup>66</sup> Similarly, a senior Sudan expert states that the agreement is built on the idea that there is a willingness to implement, but when Garang died this willingness disappeared. The blow was particular hard on the issue of working towards making unity attractive, as Garang was the prime unionist in the SPLM/A. From the negotiation-team perspective, a senior international observer believes that they made a mistake in focusing too much on Garang and not involving more individuals from the SPLM/A side. In his words "we put all the eggs in the same basket". Personal trust between two individuals can be fruitful for the negotiations and sometimes even a prerequisite. However, it is also important to try to let the trust and the knowledge of what really has been achieved, to filter down into the system so that the negative effects decrease if the position of any of the individuals in the negotiation process changes, for whatever reason.<sup>67</sup> The negotiations in Naivasha could be seen as an example of power mediation rather than a locally-driven process as much was facilitated from the outside, and many different outside actors played an active role

<sup>66</sup> Interview with observer present during CPA-negotiations, July 7, 2009, Khartoum

<sup>67</sup> Phone interview with senior international observer, May 6, 2009

in the negotiations. It is an intricate task to combine the local force and outside power in a negotiation process and one drawback with to markedly strong power-mediation is that external actors can sometimes disengage during the agreement implementation, and the process can lose its impetus. Locally-driven processes tend to have more focus on implementation as their engagement often is more long-term than that of processes driven from the outside.<sup>68</sup>

Dr. Matthew LeRiche, researcher and Sudan expert, believes that the international community mistakenly perceives the nature of the post-signing of the CPA period as being a conventional post-conflict situation. Dr. LeRiche suggests that it is something different as the status of southern Sudan (governance wise) remains in limbo and one cannot have a post-conflict situation until the status of southern Sudan is decided in the referendum.<sup>69</sup> The general conviction between scholars and other persons with insight into the current situation in Sudan, is that the outcome of the referendum will be that the south votes for secession.<sup>70</sup> However, there are some in the SPLM/A leadership that believe that staying within a united Sudan is the preferable option. Reasons for this are that currently 97% of the GoSS budget comes from oil-revenues and to receive this revenue it is necessary to ship the oil from Port Sudan, which probably cannot be done if they become independent. Another problem is the territorial integrity of an independent southern Sudan, it would have six neighbouring countries and it would be almost impossible for a country that almost totally lacks infrastructure to control its territory under these circumstances.<sup>71</sup>

Although the CPA is comprehensive in several aspects, it can also be seen as exclusive from other points of view. Despite the agreement having some national elements and seeds for transformation of the entire Sudan, through for example the elections, the agree-

<sup>68</sup> Phone interview with senior Sudan expert, September 28, 2009

<sup>69</sup> Interview with Dr. Matthew LeRiche, Sudan expert, July 11, 2009, Juba

<sup>70</sup> EnoughProject, "Sudan: The Countdown," ed. Gerard Prunier and Maggie Fick (2009); Senior UN Official, 2009-05-06 2009.

<sup>71</sup> Phone interview with senior international observer, May 6, 2009

ment in many aspects excludes other regions of Sudan. The exclusion of other regions is a pervading feature of the CPA as the focus clearly is on southern Sudan and its relation to the north. Also, the room for political parties other than the NCP and SPLM/A both in the south and in the north is limited, which can be seen in that the SPLM/A and NCP together are granted 80% of the seats in the GoNu, and 85% of the GoSS.<sup>72</sup> Moreover, the CPA (like other peace-agreements in Sudan such as the Darfur Peace Agreement and Eastern Sudan Peace Agreement) is exclusionary in the sense that only armed groups have been given power. This implies not just a severe democracy problem but also a significant risk for new violence by other groups, as it signals that the only way to power is through military means. This relates both to excluded regions and excluded parties within the regions. In relation to this, a UN security expert warned in 2007 that the rebellion in the eastern Sudan would restart if they saw a weakening of the power in the centre, as they also wanted to share power, and the only viable option to do this was through an uprising.<sup>73</sup> According to a senior international official present at the CPA negotiations, the issue of Darfur was deliberately left aside during the Naivasha process. In his view, however, the issue should have been addressed in some way. Despite the problems of including another region, he deems that at least some principle should have been formed for Darfur and also eastern Sudan.<sup>74</sup> Another international official, also present at the talks, states that prior to signing the CPA the mediation team reflected upon the situation in Darfur. They judged the negotiation situation to be such that if they used all the leverage they had, they might just squeeze the parties to sign the CPA and therefore other regions had to be left for later. Also both the GoS and SPLM consisted of a myriad of groups and subgroups so it was not feasible to have even more people at the negotiation table.<sup>75</sup>

<sup>72</sup> CPA, "Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/ Sudan People's Liberation Army".

<sup>73</sup> Interview with international security expert, December 2, 2007, Khartoum

<sup>74</sup> Phone interview with senior international observer, May 6, 2009

<sup>75</sup> Phone Interview with senior diplomat, July 22, 2009

In 2003, armed rebellion against the Sudanese government started in the westernmost region of Sudan, Darfur, the active parties being Sudan Liberation Movement/ Army (SLM/A) and Justice and Equality Movement (JEM). As this took place at the same time that the GoS and SPLM/A were conducting negotiations in Naivasha, some observers have argued that there were connections between the events taking place in the two regions, and that the CPA-process played a role in the resurgence in Darfur.<sup>76</sup> The connections between the CPA-negotiations and the start of the conflict in Darfur are emphasized by some members of the Darfurian armed movements. Mokhtar A. Adam from the SLM/A-mainstream says that the issue of self-determination for the south at the CPA negotiating table, along with the general perspective of the negotiations north vs. south, was crucial to the declaration of the SLM/A in Darfur at that particular time. He elaborates that people from marginalized areas in northern Sudan, especially the people of Darfur, realized that according to the ongoing CPA-negotiations southern Sudanese have the right to choose either unity or secession, and if they choose the latter, the marginalized areas of the north would be left alone to fight the Government. Because of this, people in Darfur wanted to be prepared and organized, and hence launched their own movements.<sup>77</sup> The connections between CPA and the fighting in Darfur is also emphasized by the Darfurian rebel Abdallah Nouri who states with respect to the Darfur Peace Agreement (DPA) from May 5, 2006, that it falls short of their demands and in comparison with the CPA it is not even close. He continues to state that if it takes 22 years of fighting, then let it take 22 years of fighting, that is better than to agree on the terms offered in the DPA.<sup>78</sup>

<sup>76</sup> For a chapter discussing Darfur and the CPA see Adam Mohamed, Azzain, "The Comprehensive Peace Agreement and Darfur," in *War in Darfur and the Search for Peace*, ed. Alex De Waal (Global Equity Initiative, Harvard University 2007).

<sup>77</sup> E-mail correspondence with Mokhtar A. Adam SLM/A-Mainstream September 10 2009

<sup>78</sup> Interview with Abdalla Nouri, SLM/A-Abdelshaafie, November 28, 2007, Juba

Although the exclusion of other regions and parties is to cease after the interim period, as elections should dissolve the power-sharing structure and create a democratic system, it can cause severe problems. Jarstad (2008) states that power sharing can lead to effective blocking of other parties that were not signatories to a power-sharing agreement. Also, the parties that are part of the accord have an advantageous position when it comes to economic resources and ability to mobilize, causing problems for the transition to multi-party democracy.<sup>79</sup> In the CPA-context, one can see transformation problems concerning political power-sharing deals, as both NCP and SPLM/A are reluctant about the upcoming elections as they are afraid of losing some, or all, of the power that is accorded to them through the political power-sharing aspects of CPA. Also, many southerners, including parts of SPLM/A, see the election as a distraction from the referendum.<sup>80</sup> Moreover, the international community wanted a democratization process to take place during the interim-period, but the situation today indicates that maybe it was not a realistic expectation. Dr. Mudawi Ibrahim Adam, Chairman of the Sudan Social Development Organization, claims that it was a wrong assumption of the CPA that it should be able to transform NCP into a democratic party that could give away power in elections. Elaborating upon this, he states that to get NCP to transform itself, it is necessary to force them to do so and since their main interest is power, they will transform themselves if that is required to stay in power.<sup>81</sup> An additional challenge with political power-sharing pacts is that they can muzzle the opposition during the power-sharing period. For example, currently in Kenya there is no viable opposition and no one challenges the government as the leading politicians all are part of a coalition government which resulted from a power-sharing deal signed after the violence that followed the latest elections in the end of 2007.<sup>82</sup>

<sup>79</sup> Jarstad, "Power Sharing: Former Enemies in Joint Government."

<sup>80</sup> EnoughProject, "Sudan's Election Paradox" (2009).

<sup>81</sup> Interview with Dr. Mudawi Ibrahim Adam, Chairman Sudan Social Development Organization, July 9, 2009, Khartoum

<sup>82</sup> Interview with Kenyan political analyst, July 17, 2009, Nairobi

A precondition for the successful implementation of the CPA and sustainable peace in southern Sudan is that the SPLM/A succeeds in its transition from a rebel movement to a political actor.<sup>83</sup> This is crucial for all the different aspects of power sharing, as the CPA has built in a very important role for the SPLM/A. The problems in transforming from a guerrilla movement into the principal political party in the GoSS and the second largest party in the GoNU are something that is emphasized by most people connected to the CPA.<sup>84</sup> International Crisis Group (ICG) states that the lack of money, structures, qualified individuals etc make this process very problematic and that salaries for both civilian and military staff must be a top priority. Especially as unpaid SPLA troops could turn into security threats themselves, or allow others a free reign. The CPA has created immense expectations in the south, both among the persons that stayed throughout the war, and among the returnees. To live up to these expectations, is a major challenge for the SPLM.<sup>85</sup> Dr. Luka Biong, minister in GoSS, admits these problems and says that the SPLM/A greatly underestimated the difficulties of transforming a rebel moment into a government and emphasizes that far too little focus was put on how the GoSS should function.<sup>86</sup> Dr. Eltayeb Hag Ateya, director of the Peace Research Institute at the University of Khartoum, states that the SPLM was too confident and did not want to have help from the outside.<sup>87</sup> Another Sudan expert claims that the SPLM/A does not care about things relating to northern Sudan but only focuses on the south, thus several problems are not just the result of a lack of resources but also of will. The lack of focus on northern Sudan is shown by the fact that the secessionist part of SPLM/A has

<sup>83</sup> For a thorough analysis of this problem see, Mimmi Söderberg Kovacs, *From Rebellion to Politics the Transformation of Rebel Groups to Political Parties in Civil War* (Uppsala: Uppsala University, 2007).

<sup>84</sup> Phone interview with senior international observer, April 22, 2009, Interview with senior official, July 14, 2009, Juba, Interview with senior Western diplomat, July 6, 2009, Khartoum

<sup>85</sup> ICG, "Sudan's Comprehensive Peace Agreement: The Long Road Ahead".

<sup>86</sup> Interview with Dr. Luka Biong Deng, Minister of Presidential Affairs Government of Southern Sudan, July 13, 2009, Juba

<sup>87</sup> Interview with Dr. Eltayeb Hag Ateya, Director Peace Research Institute University of Khartoum July 8, 2009, Khartoum

become stronger after the death of John Garang.<sup>88</sup> A senior international observer illustrates the capacity problems of the GoSS by saying that in the first years after the creation of GoSS most of the time was spent on fixing offices and other practicalities.<sup>89</sup>

<sup>88</sup> Interview with senior Sudan Expert, July 8, 2009, Khartoum

<sup>89</sup> Interview with senior international observer, July 13, 2009, Juba

## 5. Lessons Learned

This section deals with lessons learned from the case of Sudan's Comprehensive Peace Agreement from 2005. Although every situation is unique and it is important to be case sensitive, there are examples and experiences from previous negotiation processes that can be fruitful for future negotiators. Hence, these lessons learned from the CPA process should be seen as reflective recommendations rather than prescriptive rules. The lessons learned are divided into process, provision and implementation sections.

### 5.1 Process

- Strive to involve both regional actors and actors from the international community.

One lesson learned from the process leading up to the signing of the CPA, is that it can be fruitful to combine the knowledge of the area from neighbouring countries, with external engagement in the negotiations. The adjacent countries should have a high level of dedication in providing peace as they suffer from the war in the form of refugees and the destabilizing of the region. In addition they are in a useful position as they know the circumstances well, and this can be a way of securing long-term commitment as it is not possible for them to withdraw their engagement as easily as other actors. Furthermore, neighbouring countries sometimes constitute a risk of being spoilers, a risk that could be decreased if the neighbours are involved in a positive manner. In the region where Sudan is located, support to rebel groups in neighbouring countries has been widespread, for instance GoS has supported the Ugandan rebel group Lord's Resistance Army (LRA), and the Ugandan Government has supported SPLM/A.<sup>90</sup> Hence, to steer neighbouring countries into a more peace-enhancing direction is a

<sup>90</sup> UCDP (2009) Database [www.ucdp.uu.se/database](http://www.ucdp.uu.se/database)

pre-requisite for peace. However, other skills, both in the form of 'carrots', for instance increased aid, and 'sticks', perhaps enhanced pressure on the parties, are probably better provided by extra-regional actors such as the European Union and/or the United States. For the CPA process, combined commitment by the region (especially Kenya) and other actors from the international community such as the Troika (US, UK and Norway) was crucial throughout the negotiations period. Hence, a combination of 'sticks' and 'carrots' from strong western powers together with local knowledge that can be provided by neighbouring countries is something that should be considered.

- Focus on the functioning of the agreement

Several actors involved in the CPA negotiations emphasize that in the process leading up to the signing, too much focus was put on the agreement and too little focus was given to how the agreement would work in practice. Hence, here it is suggested that the matter of how an agreement will function is often not given the important position in the negotiation process that it deserves. The negotiations often deal with figures and details, such as percentage of a particular aspect, and although these are necessary elements, it is important not to lose sight of the bigger picture of how these aspects will work in reality. For instance, details about the presidency were included in the CPA, but the broader question of how it would operate was disregarded. Another example of when the functioning of an agreement was given low priority, is the Darfur Peace Agreement (DPA). In this case the international community severely misread the political strength of Mini Minawi, the only rebel signatory to the agreement. The expectation was that with Minawi signing the agreement, this would lead to peace but instead it led to fragmentation of the rebels and a step away from peace in Darfur.<sup>91</sup> Hence, to focus on the operative aspects of an agreement

<sup>91</sup> Johan Brosché, *Darfur - Dimensions and Dilemmas of a Complex Situation*, Ucdp Paper No. 2 (Uppsala: Uppsala University, 2008).

is an integral part in achieving durable peace with regard to both the daily activities and expected political dynamics.

- **Strive to enhance the capacity-building of the parties**

Many actors involved in the CPA-process, including spokespersons for the SPLM/A itself, seem to be in agreement that lack of capacity within the SPLM/A causes extensive problems in many different areas. Hence, capacity-building for former rebels, especially when they are forming a government as is the case with SPLM/A, is of highest importance. Capacity-building is a broad concept that can take many different forms, but as educated capable individuals are a pre-requisite for dealing with the vast problems and challenges facing a rebel group in transition, here a call is made to focus on education (for example focus could be put on strengthening the University of Juba). If the parties lack competent people, the prospect for a proper peace process is bleak. Therefore, capacity-building of the parties should be a top priority.

## 5.2 Provisions

- **Be hesitant to include exit options in power-sharing deals**

Scholars doing research on power sharing claim that one positive aspect is that it can build trust between former enemies, an argument that is based on the fact that the belligerents need to work together.<sup>92</sup> However, if the agreement includes exit options, the incentive for trust-building is clearly reduced, especially when it is widely believed that the 'leaving' alternative will be used. One major legitimacy problem for the CPA, is the duality of having a national united Sudan focus, for example when it comes to elections, but at the same time including a referendum on secession.<sup>93</sup>

<sup>92</sup> Jarstad, "Power Sharing: Former Enemies in Joint Government."

<sup>93</sup> Phone interview with senior international observer, May 6, 2009

This problem was handled by an assurance of the parties to work in a direction of making "unity attractive". Nevertheless, GoS has not shown any dedication to make unity attractive, partly because they are convinced that the south will vote for independence. As the keenness of GoS to make unity attractive has decreased, the chances of the south voting for unity have also decreased.<sup>94</sup> For the implementation of the CPA this has had severe effects, as the referendum and the widespread feeling that the south will vote for secession, have decreased the commitment for proper implementation of the accord. Although it was not an option in Naivasha to exclude the referendum, the CPA process suggests that negotiators should be wary of including options of leaving the co-operation in power-sharing agreements.

- **Scrutinize the effects of exclusion and inclusion of various actors**

Power-sharing deals are an intricate matter in several senses. At the negotiation table, most focus is usually put on how the power should be divided between the parties sitting at the table, but an equally important issue is *who* should be able to sit at the table. This question relates both to regions not actively involved in the negotiation process, and different stake-holders within the region. In the CPA context this is exemplified by it having been argued that the upsurge in Darfur was partly caused by the CPA-negotiations. In addition, the dilemma of including or excluding the 'worst' military actors in a negotiation process is a known problem. Often it is argued that the inclusion of non-military actors is a pre-condition for durable peace, and, at the same time, a solution without the men holding the guns means no peace will prevail at all.<sup>95</sup> These issues are extremely complicated and the options available often limited. Hence, no straightforward advice can be given. However, as a power-sharing agreement in one part of a country can result in

<sup>94</sup> ICG, "Sudan's Comprehensive Peace Agreement: The Long Road Ahead".

<sup>95</sup> Interview with international observer present during CPA-negotiations, July 7, 2009, Khartoum

severe unintended effects on other places, potential effects have to be carefully examined. Furthermore, as exclusion of stake-holders can create severe long-term effects, the issue of inclusion and exclusion has to be carefully scrutinized also when it comes to representation of different constituencies.<sup>96</sup>

- **Convey the message of the agreement to various constituencies**

Even though the CPA was an agreement between two parties, representing two different areas of a country, a senior official thinks that one mistake of the mediation team was that it did not 'sell' the CPA through a much larger outreach. To increase the legitimacy of the CPA it should have been 'sold' to other regions explaining that this was not an agreement for just southern Sudan but for all the regions. There should have been more focus on explaining that the CPA actually included issues that dealt not just with the north-south relation. One such issue was an element of power sharing from the centre in Khartoum into state-level which should have been given more emphasis, as lack of decentralization is a problem named by several different constituencies, including for instance the rebels in Darfur. This ambition to convey the message of the agreement should have come from the parties but also from the mediation team.<sup>97</sup> Hence, to accentuate communication to various constituencies is crucial in increasing the legitimacy of an agreement.

- **Emphasize peace dividends for the people to increase the legitimacy of the agreement**

One problem concerning power sharing and making unity attractive, is that the power sharing stipulated in the CPA is not as real

<sup>96</sup> Interview with Dr. Musa Adam Abdul Jalil Associate Professor Dept. of Sociology & Social Anthropology University of Khartoum, July 7, 2009, Khartoum

<sup>97</sup> Phone Interview with senior diplomat, July 22, 2009

as it should be. One reason for this is that the SPLM ministers are not as powerful, nor do they have the same amount of control as their NCP counterparts.<sup>98</sup> Also, Sudan is a very centralized country, meaning little resources are left for the regions, resulting in only small changes for people living in marginalized areas. As the CPA does not include any meaningful federalism the agreement has not transformed Sudan in this respect. However, after the CPA, Sudan has two power-centres, Khartoum and Juba, instead of one as was the case before the agreement. Nevertheless, the power is still very centralized and one example of the high level of centralization in the south is that the President of Southern Sudan, Salva Kiir, and not the people living in the regions, appoints their commissioners.<sup>99</sup>

One way of giving more power-sharing dividends to the people is to decrease this centralization.<sup>100</sup> Moreover, for power sharing to take away the root causes for war it cannot just be about mandates in the assembly and some top-level positions, it has to affect the people on the ground. This is further exemplified by corruption being seen as a major problem as the resources are not reaching the population, causing frustration among civilians, as well as soldiers. An example of this, is that when salaries are not paid there is an increase in conflicts.<sup>101</sup> Furthermore, the power sharing in the CPA is just at top level and there are no peace-dividends benefiting the people which decreases the legitimacy of the agreement.<sup>102</sup> Moreover, local people often have a different view of what power sharing means, than the international community and the leaders signing an accord. For instance, sometimes locals tend to see power sharing as something that guarantees that someone from their eth-

<sup>98</sup> Interview with senior Western diplomat, July 6, 2009, Khartoum

<sup>99</sup> Interview with Dr. Mudawi Ibrahim Adam, Chairman Sudan Social Development Organization, July 9, 2009, Khartoum

<sup>100</sup> Alex De Waal, "The Darfur Peace Agreement: Part 13 Rebuilding Darfur Alex De Waal," ed. Justice Africa (2006).

<sup>101</sup> Interview with international officers based in Juba, July 7, 2009, Khartoum

<sup>102</sup> Interview with Dr. Mudawi Ibrahim Adam, Chairman Sudan Social Development Organization, July 9, 2009, Khartoum

nic group should be included in a decision-making position.<sup>103</sup> For these reasons, if power sharing is used, it is essential to explain to local communities what is meant with power sharing within the agreement. Also, alternatives to power sharing as well as different ways of adopting power sharing should be scrutinized in order to bring as much legitimacy to an agreement as possible. Furthermore, it is important to bring some peace-dividends as quickly as possible to the people. If they do not see any clear result from the peace-agreement, the accord risks losing legitimacy. Hence, power sharing cannot just stay at an elite level but has to create real changes for people on the ground.

### 5.3 Implementation

- **Keep the momentum of the signing**

The signing of an agreement means that a negotiation process has reached a positive step and it is important to keep this momentum when entering the implementation process. During the CPA negotiations it was assumed that the two parties would work closely with each other also after the signing of the agreement and it was widely believed that a real confidence had been established between the parties. Hence it was supposed that GoS should help GoSS in building institutions and with other issues. However, the partnership was faced with problems from the very beginning and it could be argued that the prevailing optimistic view was rather naïve, taking into account that south and north Sudan had fought for 33 of the 43 years preceding the signing of the CPA. Yet, when the parties and negotiators have been talking to each other for a long time this has most likely built up some trust between the different actors. This trust is sometimes lost after the accord is finalized, which suggests that timing is crucial: it is often

<sup>103</sup> Interview with Dr. Musa Adam Abdul Jalil Associate Professor Dept. of Sociology & Social Anthropology University of Khartoum, July 7, 2009, Khartoum

better to solve an issue during the negotiations than afterwards. Hence, to postpone harder issues until later might worsen rather than lessen the problems at hand. In the CPA process, actors heavily involved during the negotiations (such as the IGAD and the Troika) were replaced after the agreement was signed, which led to crucial time in the implementation phase being lost when trust had to be built up between new actors.<sup>104</sup> Dr. Luka Biong, minister in GoSS, thinks that the role played by the AU and the Troika (US, UK and Norway) should also have been much clearer and that IGAD should have had a much stronger position within the agreement.<sup>105</sup> A senior international observer agrees with this and states that IGAD had built good relationships at all levels and this should have been used in the implementation process.<sup>106</sup> Hence, the outside actors involved in the negotiation process should still be involved during the implementation phase. Also, when it comes to the parties themselves, a lot of replacement of representatives has taken place. Some of these were necessary while others were not. However, when possible it is crucial to try to build on the personal relationships established during negotiations also when entering an implementation period. Therefore, the parties should try to involve the same persons in the negotiations as during the implementation. From a concerned-outsider perspective the continuation of these relationships can be eased by organizing workshops and regular meetings where these individuals can discuss the problems at hand. Consequently, it is a guideline to when possible use the same internal and external actors during the negotiations and the implementation phase, in order to keep the momentum of the signing.

<sup>104</sup> Interview with senior inter-governmental official familiar with the process, July 17, 2009, Nairobi

<sup>105</sup> Interview with Dr. Luka Biong Deng, Minister of Presidential Affairs Government of Southern Sudan, July 13, 2009, Juba

<sup>106</sup> Interview with senior international observer, July 13, 2009, Juba

- Emphasize that the signing of an agreement is the start, and not the end, of building peace

A senior international observer, who worked for the IGAD during the Naivasha negotiations and is now involved in the implementation process of the CPA, states “It was easier to negotiate than to implement.”<sup>107</sup> This view seems to be shared by most people involved in the implementation process. The Assessment and Evaluation Committee (AEC) was intended to be the international community’s way into the implementation process and Sir Derek Plumbly, chairman of the AEC, states that if he could have influenced the outcome of the Naivasha negotiations he would have liked to have given the AEC greater power and greater freedom to facilitate the implementation process.<sup>108</sup> However, according to a senior Sudan expert, the international community had their legal right to play a strong role in the AEC, but did not take it, and this was the first and foremost failure of the implementation process. Elaborating on this, he says that in the first meeting of the AEC it should have been decided which role the international community was to play, but according to him the international community was not interested in being involved in the implementation process.<sup>109</sup> Another senior Sudan expert states that one of the first problems of the implementation of the CPA was that the original strong mandate of the AEC was weakened as the directive of the AEC was changed by the parties, as the AEC’s role became to report to the presidency.<sup>110</sup> Moreover, an observer present in Naivasha believes that the current efficiency of AEC is limited as they are lacking an instrument to sanction non-compliance.<sup>111</sup> Furthermore, a senior Sudan expert states that without implementation it is no agreement and that one reason for the lack of international

<sup>107</sup> Interview with senior international observer, July 13, 2009, Juba

<sup>108</sup> Interview with Sir Derek Plumbly, Chairman Assessment & Evaluation Commission, July 6, 2009, Khartoum

<sup>109</sup> Interview with senior inter-governmental official familiar with the process, July 17, 2009, Nairobi

<sup>110</sup> Phone interview with Senior Sudan Expert, September 28, 2009

<sup>111</sup> Interview with observer present during CPA-negotiations, July 7, 2009, Khartoum

community engagement is that they often want quick-fix solutions and take external factors into account instead of factors from the process itself.<sup>112</sup> However, it should be noted that from a donor perspective the international community showed a strong concern for Sudan exemplified by a donor conference in Oslo April 11-12, 2005 with representatives from more than 60 countries and organizations that pledged more than USD 4.1 billion for the 2005-2007 period.<sup>113</sup> However, there was a lack of top-level engagement by politicians, and one important reason for this was that the focus was shifted to Darfur. This exemplifies potential risks when leading actors see the signing of an agreement as an end-point for their engagement, instead of seeing it as a starting point for a new process with extensive problems but also possibilities for the actors to get involved in. After several years of negotiations, third parties are sometimes affected by fatigue. However, for durable peace it is essential that peace-enhancing efforts increase, rather than decrease, after an agreement is signed.

- Strive to keep the moment ripe during the implementation

William Zartman, one of the leading peace-agreement researchers, argues that settlements are achieved when the *moment is ripe* and belligerents reach a *mutual hurting stalemate*.<sup>114</sup> When CPA was signed, the moment was ripe and GoS and SPLM/A had indeed reached a mutual hurting stalemate, largely due to external pressure, especially as the United States had given priority to the issue. However, when the external pressure eased, the mutual hurting stalemate disappeared and the moment for implementation was not ripe any more. For example, when the first major deadline in the CPA (SAF troops to have left the south by 9 July 2007) was

<sup>112</sup> Interview with senior inter-governmental official familiar with the process, July 17, 2009, Nairobi

<sup>113</sup> Donor conference Chairman, “Oslo Donors’ Conference on Sudan 2005 - Chair’s Conclusions 12 April 2005,” (2005).

<sup>114</sup> William Zartman, I., “The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments,” *The Global Review of Ethnopolitics* 1, no. 1 (2001).

missed, this did not lead to any international reaction.<sup>115</sup> International actors often tend to focus so much on reaching to an agreement that they do not have any commitment left for the implementation, which can have tragic results since non-implemented agreements can make things worse instead of better. In an implementation process, hopefully the trust between the parties is sufficient to keep the moment ripe but when this is not the case, outside help can be needed. This can be done through external pressure, but as the goal is not to keep parties in a mutual hurting stalemate, but rather to have them in a more positive ripe moment, positive inducements should also be used. Hence, from an external point of view the ripeness of an implementation process can be maintained by punishing parties for non-implementation and rewarding parties for fulfilled implementation. Whatever the approach, (or combination of approaches) used it should be categorized by a striving to keep the moment ripe during the implementation.

<sup>115</sup> ICG, "A Strategy for Comprehensive Peace in Sudan Africa Report No 130 26 July 2007 P. 5."

## 6. Challenges Today: Outlook for Tomorrow

The near future of CPA is very hazardous with the next tough challenge being the elections scheduled for April, 2010, followed by the referendum in 2011 which will be preceded by a demarcation of the border, as well as electoral constituency boundaries.<sup>116</sup> This means that we now enter the most critical phase of the interim-period. To examine the future during these circumstances is complex, but the history of Sudan suggests that all these crucial political events constitute risks for a violent outburst.<sup>117</sup>

The International Crisis Group (ICG) says that the upcoming elections provide an opportunity for the NCP to legitimize power and by that further challenge the International Criminal Court arrest warrants against President Omar el-Bashir. Furthermore, they say that elections at a state level would be used to weaken SPLM's ability to resist NCP manipulation and increase internal splits among the SPLM and that there is a high risk that these elections already are rigged by census-manipulation and keeping Darfur in chaos.<sup>118</sup> From a military point of view, a UN security expert warns that the near future might see a large upsurge in violence in Darfur as GoS want to win the war there, before a potential war with the south breaks out. He does not believe that SAF can manage to have a large two-front battle in the south and in the west, so they will amplify their offensives in Darfur as long as the peace is still kept with the SPLM/A.<sup>119</sup>

The challenges facing the international community are many and complicated. This far the international community has shown a clear lack of ability to deal with different regions of Sudan simultaneously. However, for finding a long-lasting solution to Sudan's

<sup>116</sup> HRW, "The Way Forward Ending Human Rights Abuses and Repression across Sudan."

<sup>117</sup> ———, "There Is No Protection" Insecurity and Human Rights in Southern Sudan," (New York City: Human Rights Watch, 2009).

<sup>118</sup> ICG, "Sudan: Justice, Peace and the Icc."

<sup>119</sup> Interview with international security expert, July 15, 2009, Khartoum

problem it is a necessity to have a comprehensive approach to Sudan and deal with the south and Darfur in tandem, but also to take the problems of other marginalized areas into account. The earlier lack of a comprehensive approach has led to those problems not having been dealt with appropriately. As the conflicts in Sudan take place at many levels simultaneously, the peace efforts should also try to adopt a multilevel, coordinated, approach. The signing of the CPA was enabled by a strong combined commitment from regional as well as international actors. Consequently, a stronger commitment from, and co-ordination by, the international community is needed to deal with the multifaceted challenges of the current situation in Sudan.

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