

CHAPTER I

THE MACHAKOS PROTOCOL

SIGNED AT MACHAKOS, KENYA ON 20TH JULY, 2002
THE PREAMBLE, PRINCIPLES, AND THE TRANSITION PROCESS

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

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

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

PART A: AGREED PRINCIPLES

- 1.1 That the unity of the Sudan, based on the free will of its people democratic governance, accountability, equality, respect, and justice for all citizens of the Sudan is and shall be the priority of the Parties and that it is possible to redress the grievances of the people of South Sudan and to meet their aspirations within such a framework.
- 1.2 That the people of South Sudan have the right to control and govern affairs in their region and participate equitably in the National Government.
- 1.3 That the people of South Sudan have the right to self-determination, *inter alia*, through a referendum to determine their future status.
- 1.4 That religion, customs and traditions are a source of moral strength and inspiration for the Sudanese people.
- 1.5 That the people of the Sudan share a common heritage and aspirations and accordingly agree to work together to:
 - 1.5.1 Establish a democratic system of governance taking account of the cultural, ethnic, racial, religious and linguistic diversity and gender equality of the people of the Sudan.
 - 1.5.2 Find a comprehensive solution that addresses the economic and social deterioration of the Sudan and replaces war not just with peace, but also with social, political and economic justice which respects the fundamental human and political rights of all the Sudanese people.
 - 1.5.3 Negotiate and implement a comprehensive ceasefire to end the suffering and killing of the Sudanese people.
 - 1.5.4 Formulate a repatriation, resettlement, rehabilitation, reconstruction and development plan to address the needs of those areas affected by the war and redress the historical imbalances of development and resources allocation.
 - 1.5.5 Design and implement the Peace Agreement so as to make the unity of the Sudan an attractive option especially to the people of South Sudan.
 - 1.5.6 Undertake the challenge by finding a framework by which these common objectives can be best realized and expressed for the benefit of all the Sudanese.

PART B: THE TRANSITION PROCESS

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

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

2.1 During the Pre-Interim Period:

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

2.2 The Interim Period will commence at the end of the Pre-Interim Period and shall last for six (6) years.

2.3 Throughout the Interim Period:

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

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

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

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

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

2.4.1.3 Any other countries or regional or international bodies to be agreed upon by the Parties.

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

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

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

STATE AND RELIGION

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

- 6.1 Religions, customs and beliefs are a source of moral strength and inspiration for the Sudanese people.
- 6.2 There shall be freedom of belief, worship and conscience for followers of all religions or beliefs or customs and no one shall be discriminated against on such grounds.
- 6.3 Eligibility for public office, including the presidency, public service and the enjoyment of all rights and duties shall be based on citizenship and not on religion, beliefs or customs.
- 6.4 All personal and family matters including marriage, divorce, inheritance, succession and affiliation may be governed by the personal laws (including Sharia or other religious laws, customs or traditions) of those concerned.
- 6.5 The Parties agree to respect the following Rights:
 - 6.5.1 To worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes;
 - 6.5.2 To establish and maintain appropriate charitable or humanitarian institutions;
 - 6.5.3 To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
 - 6.5.4 To write, issue and disseminate relevant publications in these areas;
 - 6.5.5 To teach religion or belief in places suitable for these purposes;
 - 6.5.6 To solicit and receive voluntary financial and other contributions from individuals and institutions;
 - 6.5.7 To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
 - 6.5.8 To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religious beliefs;
 - 6.5.9 To establish and maintain communications with individuals and communities in matters of religion and belief and at the national and international levels;
 - 6.5.10 For avoidance of doubt, no one shall be subject to discrimination by the National Government, state, institutions, group of persons or person on grounds of religion or other beliefs.
- 6.6 The Principles enumerated in Section 6.1 through 6.5 shall be reflected in the Constitution.

PART C: STRUCTURES OF GOVERNMENT

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

3.1 Supreme Law

- 3.1.1 The National Constitution of the Sudan shall be the Supreme Law of the land All laws must comply with the National Constitution. This Constitution shall regulate the relations and allocate the powers and functions between the different levels of government as well as prescribe the wealth sharing arrangements between the same. The National Constitution shall guarantee freedom of belief, worship and religious practice in full to all Sudanese citizens.
- 3.1.2 A representative National Constitutional Review Commission (NCRC) shall be established during the Pre-Transition Period which shall have as its first task the drafting of a Legal and Constitutional Framework to govern the Interim Period and which incorporates the Peace Agreement.
- 3.1.3 The Framework mentioned above shall be adopted as shall be agreed upon by the Parties.
- 3.1.4 During the Interim Period an inclusive Constitutional Review Process shall be undertaken.
- 3.1.5 The Constitution shall not be amended or repealed except by way of special procedures and qualified majorities in order that the provisions of the Peace Agreement are protected.

3.2 National Government

- 3.2.1 There shall be a National Government which shall exercise such functions and pass such laws as must necessarily be exercised by a sovereign state at national level. The National Government in all its laws shall take into account the religious and cultural diversity of the Sudanese people.
- 3.2.2 Nationally enacted legislation having effect only in respect of the states outside Southern Sudan shall have as its source of legislation Sharia and the consensus of the people.
- 3.2.3 Nationally enacted legislation applicable to the Southern States and/or the Southern Region shall have as its source of legislation popular consensus, the

values and the customs of the people of Sudan (including their traditions and religious beliefs, having regard to Sudan's diversity).

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

- (i) Either introduce legislation so as to allow or provide for institutions or practices in that region consistent with their religion or customs, or
- (ii) Refer the law to the Council of States for it to approve by two-thirds ($\frac{2}{3}$) majority or initiate national legislation which will provide for such necessary alternative institutions as is appropriate.

THE RIGHT TO SELF-DETERMINATION FOR THE PEOPLE OF SOUTH SUDAN

- 1.3 That the people of South Sudan have the right to self-determination, *inter alia*, through a referendum to determine their future status.
- 2.4 An independent Assessment and Evaluation Commission shall be established during the Pre-Transition Period to monitor the implementation of the Peace Agreement during the Interim Period. This Commission shall conduct a mid-term evaluation of the unity arrangements established under the Peace Agreement.
 - 2.4.1 The composition of the Assessment and Evaluation Commission shall consist of equal representation from the GOS and the SPLM/A, and not more than two (2) representatives, respectively, from each of the following categories:
 - 2.4.1.1 Member states of the IGAD Sub-Committee on Sudan (Djibouti, Eritrea, Ethiopia, Kenya and Uganda);
 - 2.4.1.2 Observer States (Italy, Norway, UK and US); and
 - 2.4.1.3 Any other countries or regional or international bodies to be agreed upon by the Parties.
 - 2.4.2 The Parties shall work with the Commission during the Interim Period with a view to improving the institutions and arrangements created under the Agreement and making the unity of Sudan attractive to the people of South Sudan.
- 2.5 At the end of the six (6) year Interim Period there shall be an internationally monitored referendum, organized jointly by the GOS and the SPLM/A, for the people of South Sudan to: confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or to vote for secession.
- 2.6 The Parties shall refrain from any form of unilateral revocation or abrogation of the Peace Agreement.