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ADDIS ABABA, ETHIOPIA, P.O. BOX: 3243 TEL.: (251-11) 5513 822 FAX: (251-11) 5519 321  
Email: [situationroom@africa-union.org](mailto:situationroom@africa-union.org)

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301<sup>ST</sup> MEETING OF THE PEACE AND SECURITY COUNCIL  
30 NOVEMBER 2011  
ADDIS ABABA, ETHIOPIA

PSC/PR/ (CCCI)

**REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE EFFORTS AND ACTIVITIES OF  
THE AFRICAN UNION HIGH-LEVEL IMPLEMENTATION PANEL ON SUDAN**

## INTRODUCTORY REMARKS

1. I hereby submit to members of Council the report of the African Union High-Level Implementation Panel on Sudan (AUHIP). As Council will recall, at its 297<sup>th</sup> meeting, held on 20 October 2011, the mandate of the AUHIP was renewed for a further period of one year.
2. The report consists in two parts: the first provides an overall assessment of the work of the Panel, including the progress made to promote peace, democracy and mutual viability in the Republic of Sudan and the newly-independent Republic of South Sudan. The second part consists in an activity report of the AUHIP in the period since its last report to Council, submitted in November 2010.
3. Since its establishment, the AUHIP has worked tirelessly and has expended tremendous time and effort to address the Sudanese crisis. I would like to take this opportunity once again to reaffirm my continued support for the members of the Panel and their staff, and to commend them for their dedication and commitment.
4. I would like to urge the Parties, namely the Governments of Sudan and South Sudan, to reaffirm their commitment to peace and prosperity by redoubling their efforts to conclude negotiations on the outstanding issues in the Comprehensive Peace Agreement (CPA) and their post-secession relations. I also urge the Government of Sudan to renew its efforts to bring lasting peace to Darfur and to the Two Areas. Finally, a stable future in both countries would require that they address the many governance challenges facing them, by promoting democracy, tolerance and the management of the rich diversity in both countries.

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301<sup>ST</sup> MEETING OF THE PEACE AND SECURITY COUNCIL  
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PSC/PR/ (CCCI)

**REPORT OF THE AFRICAN UNION HIGH-LEVEL IMPLEMENTATION PANEL FOR  
SUDAN ON ITS ACTIVITIES (2010-2011)**

**REPORT OF THE AFRICAN UNION HIGH-LEVEL IMPLEMENTATION PANEL FOR  
SUDAN TO THE PEACE AND SECURITY COUNCIL FOR 2010-2011**

**I. INTRODUCTION**

1. Two years ago, when Council mandated this Panel as the African Union High-Level Implementation Panel (AUHIP), you provided us with a mandate that covered all aspects of Sudanese affairs. We identified four priority activities, namely (i) the implementation of the recommendations of the African Union High-Level Panel on Darfur (AUPD) Report; (ii) the democratisation of Sudan, including and especially through the conduct of the general elections; (iii) the completion of the implementation of the Comprehensive Peace Agreement (CPA); and (iv) the negotiation of post-referendum arrangements between the Sudanese Parties.

2. Our view was, and remains, that each of these four activities is an essential and equal component for the resolution of the Sudanese conflicts and enabling the peoples of Sudan and South Sudan to address their challenges of establishing democratic states that provide security and development.

**II. DARFUR**

3. Our position on Darfur, as presented to this Council two years ago and adopted, concerned how the issues of peace, justice, reconciliation and Darfur's position in Sudan could best be addressed. Noting that the conflict in Darfur was deep-rooted and complex, and drawing upon the evidence and opinions we obtained from our extensive consultations among all groups in Darfur, we recommended that the issues be treated in a holistic manner by an inclusive process of negotiation that included all Darfur stakeholders, both the belligerents and the non-belligerents.

4. We also recommended that the Darfur conflict be defined correctly as "the Sudanese conflict in Darfur," noting that it originated in long-standing problems of governance in Sudan, and especially the challenge of governing a diverse country in an equitable manner. Our Report identified a legacy, inherited from the colonial period, which resulted in unequal access to power and resources across Sudan. Since independence in 1956, successive governments had not succeeded to overcome this legacy, with the consequence of recurrent civil wars in different parts of the country, including Southern Sudan and Darfur. Resolving the Sudanese conflict in Darfur requires not only an inclusive and holistic settlement of those issues that have divided the people of Darfur, but in addition a resolution of the position of Darfur within Sudan. In turn, that implies an inclusive national political settlement.

5. Earlier this year, in July, the Government of Sudan and one of the Darfur opposition movements, the Liberation and Justice Movement, signed the Doha Document for Peace in Darfur (DDPD) in Doha, Qatar, intended to end hostilities between them and lay the basis for peace. We welcome this agreement and we press the Parties to implement it faithfully. We call on the opposition movements that have not signed the agreement to do so without delay.

6. Our position on Darfur remains unchanged. Our proposal to initiate a Darfur Political Process (DPP), primarily as a domestic exercise to involve all Darfurians in negotiating the future of Darfur within Sudan, remains valid. However, in the light of the adoption of the DDPD, which is currently being implemented, we believe that the immediate tasks are to popularise the DDPD, to ensure its acceptance by the population of Darfur as a whole, and to persuade the remaining armed groups to sign the Document. Hopefully, these measures will bring peace to Darfur. In the new context that has emerged following the secession of South Sudan, the Darfur peace process will, of necessity, be linked to a national constitutional reform process that involves all citizens of the Republic of Sudan in forging a new national political settlement. Indeed, a durable resolution of the Sudanese conflict in Darfur requires that a holistic agreement among Darfurians be an integral part of a national process. In turn, it will be evident that, arising from our analysis of the conflict in Darfur, such a national political settlement will need to address the challenges of governance in conditions of diversity and the democratisation of Sudan as a whole.

### III. DEMOCRATISATION

7. On the issue of democracy, our Panel considered that all Sudanese, whether united within a single country or in two separate nations, were not only entitled to democratic rights, but that democratic government was a *sine qua non* for stability and equitable governance, bearing in mind the diversity that characterises Sudan, both north and south. We strongly felt that democratisation should be considered as a priority alongside the referendum on self-determination for the people of Southern Sudan.

8. Our concern with democratisation remains. The fact that the people of southern Sudan voted overwhelmingly to establish a separate state was in part a reflection of a democratic deficit in the governance of a united Sudan. The separation of the South does not, in any way, reduce the imperative for democratic rule in both Sudan and South Sudan.

9. On the eve of the referendum on self-determination in southern Sudan, in January 2011, we addressed an audience of southern Sudanese in Juba, and stressed that the referendum constituted just one stage in the exercise in self-determination by the people of southern Sudan. We emphasized that self-determination also entailed establishing a system of government that reflected the rights and aspirations of all the people of southern Sudan.

10. For the governance of northern Sudan, democratisation is no less important. The separation of the South does not lessen the governance challenges facing Sudan: it remains a state that has failed to surmount a historical legacy of inequitable distribution of wealth and power, and to meet the aspirations of all of its diverse citizens for a common sense of nationhood. Also on the eve of the referendum, we addressed an audience in Khartoum, and emphasised that Sudan has a long and rich history as an African nation, characterised by diversity, and that in the event of the secession of southern Sudan, the northern part of Sudan would remain an African nation with an African heritage, faced with the challenge of establishing a democratic system of governance which would respect the diversity of the population. We stressed that, even with the separation of the south, Sudan should define its future as an African country.

11. The Government of Sudan has decided to conduct an inclusive Constitutional Review and Reform Process which would address the issues of the democratisation of the Republic of Sudan and governance in conditions of diversity. Our Panel has initiated consultations with the Government of Sudan to see how it can support this Process.

#### **IV. IMPLEMENTATION OF THE COMPREHENSIVE PEACE AGREEMENT**

12. The CPA and the Interim National Constitution (INC), which was derived from it, have provided the essential framework for guiding Sudan through the period from the signing of the CPA, in January 2005, up until 9 July 2011. The centrepiece of the CPA was the referendum in southern Sudan, which was successfully conducted, and its outcome accepted by the Government of Sudan, in January this year. Our Panel maintained contact with all the stakeholders involved in the southern Sudan referendum and intervened where necessary to help ensure the success of the referendum.

13. The referendum, its conduct and the respect for its outcome represent an outstanding success for the people of south and north Sudan, their Governments, and the African continent. The Republic of South Sudan has been warmly received into the African community of nations, including the African Union. Membership comes with both the privileges that accrue to a sovereign nation, and the responsibilities that follow, to the citizens of the nation, to the neighbouring countries, and to the continent as a whole. We are confident that, even as they justly and correctly value their independence, the South Sudanese have recognised the imperative of joining the African Union in its quest for the economic and political integration of Africa.

14. While congratulating the people and Government of South Sudan, we also extend our sincere appreciation to the people and Government of the Republic of Sudan, for their extraordinarily gracious acceptance of the decision of the southern Sudanese to secede. For Sudan, the separation of South Sudan carries very serious political and economic implications.

15. Other elements of the CPA are also of great importance. Although the central provision of the CPA, which provided for the special position of southern Sudan within a united Sudan, has lapsed with the sovereign independence of the Republic of South Sudan in July, substantial provisions of the INC remain in place, at least until such time as Sudan and South Sudan adopt new constitutions. Inter alia, these provisions include federal systems of government with devolution of powers to states, respect for human rights, and respect for the diversity of languages and cultures.

16. Moreover, there remains unfinished business from the CPA, specifically with regard to: (i) the Protocol on Abyei, (ii) the North-South border, and (iii) the Protocol on Blue Nile and Southern Kordofan. The completion of these obligations is not only of importance for relations between Sudan and South Sudan, but also for internal governance within the two countries.

17. The population of Abyei contains both Ngok Dinka and Misseriya Arabs, and so as long as the area remains as part of northern Sudan, Sudan contains within its borders a population that is ethnically Dinka. Similarly, should Abyei be transferred to South Sudan, it will contain within its borders a population, both permanent and seasonal, that is ethnically Arab. Similar considerations will apply to the five disputed border areas, which contain diverse populations with ethnic and political ties both north and south of the border.

18. Our Panel is working with all relevant parties to ensure the implementation of the June 2011 Abyei Transitional Agreement, after which we will present proposals to the Presidents of Sudan and South Sudan regarding the final status of Abyei.

19. In the case of Blue Nile and Southern Kordofan, the question of diversity is equally clear. Reflecting the special history and identity of the two areas, the CPA provided for special arrangements for their governance, and a provision for a process of Popular Consultations to ascertain whether the CPA had indeed addressed the aspirations of the people.

20. Our Panel has been particularly concerned with the situation in the two areas, including both its political and security dimensions. We exerted particular efforts to try to ensure that the Parties found means of resolving their differences on these issues. During June 2011, we facilitated meetings that resulted in a Framework Agreement between the Government of Sudan/National Congress Party (NCP) and the Sudan People's Liberation Movement (North) that provided for political partnership and measures to resolve the problem of governance in Southern Kordofan State, end the fighting and provide security. Unfortunately, the Parties have not followed up on the Framework Agreement. We believe that the fundamental political challenges of Blue Nile and Southern Kordofan have not changed, and that they are organically linked to the issues of the governance of diversity and democratization, and that the Parties will return to the negotiating table and reach a settlement. We note that the Framework Agreement includes a commitment by the Parties to initiate an inclusive national political process.

21. Our Panel stands ready to facilitate continuing negotiations between the Parties on the issue of the two areas. Reflecting a provision in the 28 June Framework Agreement, the Panel also stands ready to act as third party, both for the facilitation of political and security negotiations, and also to oversee the implementation of any agreement reached. With regard to the obligations to overseeing implementation, the Panel may call on the African Union and its member states to provide necessary support, whether that be financial, personnel, or political support through this Council.

22. A recent development which will further complicate the situation is the establishment of a “Sudan Revolutionary Front” (SRF), which says it is “resolved to overthrow the NCP regime using all available means, above all, the convergence of civil political action and armed struggle.” The SRF is composed of three Darfur armed groups and the SPLM-North, which is involved in the conflicts in the Southern Kordofan and Blue Nile states.

#### **V. POST-REFERENDUM ARRANGEMENTS**

23. In June 2010, our Panel was requested by the Parties to facilitate the negotiations on post-referendum arrangements. In those negotiations, the Sudanese Parties converged on an overriding principle, namely that they “are committed to establishing and sustaining a constructive and peaceful relationship between northern and southern Sudan, which will promote the viability of both the south and the north.” We contend that a common commitment to “two viable states” is by necessity the only principle on which Sudan and South Sudan can achieve their respective national goals.

24. There is a host of matters on which agreement between Sudan and South Sudan is essential. Among these are the matters of: (i) access by the South to the oil pipeline that runs through the North; (ii) financial transitional arrangements to cushion the economic shock to the Sudanese economy from the loss of revenue that accompanied the secession of the South; (iii) the division of assets and liabilities; (iv) trade relations; (v) border security; (vi) the management of pastoralist migration across the common border; (vii) the management of water resources, including the Nile waters; and (viii) the residency status of South Sudanese in Sudan and Sudanese in South Sudan. Our Panel is continuing to facilitate negotiations between Sudan and South Sudan on these issues.

25. The principle of “two viable states” applies also to the relations between the two countries and their respective aid donors and creditors. The financial viability of Sudan should be of concern not only to the Sudanese people, but also to the neighbouring countries, including South Sudan, and to the international community. It is deeply unfortunate that, at the time when Sudan is suffering a severe economic shock, it is unable to rely on the institutions and mechanisms for international financial support that would normally be available to a country in such circumstances. As a matter of both principle and good practice, international financial restrictions imposed on Sudan should be lifted without delay, and expedited debt relief should be provided.



## VI. CONCLUSION

26. As mandated by this Council, during the last two years, the AUHIP has been actively engaged in all aspects of Sudanese political affairs. We have witnessed the establishment of a new African sovereign nation, the Republic of South Sudan. However, the objectives of the Panel, which are in turn the goals of the African Union and indeed the continent as a whole, have yet to be fulfilled. The Sudanese conflict in Darfur cannot be fully resolved until there is an inclusive political process addressing the issues in a holistic manner, and until the issue of Darfur's position within Sudan is addressed as part of a national constitutional process. The process of democratisation, in Sudan and South Sudan, has yet to be completed. Critical issues remain outstanding from the implementation of the CPA, notably Abyei, the two areas of Blue Nile and Southern Kordofan, and the border. Important issues on the agenda of the post-referendum negotiations remain to be resolved, in such a way that the Parties can achieve their agreed goal of establishing two viable states.

27. We are encouraged that the President of Sudan and the President of South Sudan have recently reiterated their joint determination never to return to war. However, we also note with concern the substantial list of issues that remain on the negotiating table, the ongoing active armed hostilities in Blue Nile and Southern Kordofan, the slow and difficult progress in implementing the 20 June Agreement on Interim Arrangements for Abyei, and the economic hardships affecting citizens in Sudan and South Sudan.

28. There is no alternative but to reach agreement, in a comprehensive and expedited manner, on all of the outstanding issues. The alternative is not merely the continuation of the existing armed conflict in the two areas, but the escalation of conflict elsewhere in both countries and between the two countries. Such a conflict would make it impossible for either Sudan or South Sudan to be governed in a manner that meets even the most basic requirements of their citizens for security, development and democratic representation. The neighbouring countries and the continent as a whole would surely be directly affected.

29. Sudan and South Sudan have resolved to pursue their respective futures as two separate sovereign nations. In this context, the agreed overriding principle of establishing and sustaining a constructive and peaceful relationship between Sudan and South Sudan, which will promote the viability of both countries, is essential for each one. We urge the leaders of both nations to act in the spirit of this commitment.

30. Equally essential is for all to recognise that Sudan and South Sudan are equally African nations, characterised by challenges of governance and development common to countries across our continent. Each must govern a diverse nation that has experienced recurrent conflict over more

than half a century, and each must undertake its own national process of democratisation accordingly.

31. Lastly, although the challenges facing Sudan and South Sudan are not unfamiliar, in important respects they are exceptional. There are few countries on this continent that have such bitter histories of division and conflict. Newly-independent South Sudan has very modest institutions and extremely low human development indicators. Sudan faces an extremely severe economic shock at a time when it is debarred from the sources of international financial assistance that would normally be available to cushion such adversity. The exceptional nature of these challenges, in turn, makes it incumbent upon the African continent, and international donors and creditors, to exert commensurate efforts to ensure that the two nations emerge from the current difficult period as full and valued members of the African community of nations and the international community as a whole.

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**ANNEX ON THE ACTIVITIES UNDERTAKEN BY THE AFRICAN UNION HIGH-LEVEL  
IMPLEMENTATION PANEL ON SUDAN – AUHIP (NOVEMBER 2010-OCTOBER 2011)**

## **I. INTRODUCTION**

1. The African Union High-Level Implementation Panel (AUHIP) was constituted in October 2009 by the AU Peace and Security Council (PSC), meeting in Abuja, Nigeria, at the level of Heads of State and Government. It was mandated to facilitate the implementation of the recommendations of the AU High-Level Panel on Darfur (AUPD) and the completion of the Comprehensive Peace Agreement (CPA), as well as to promote democratization in Sudan. Subsequently, in June 2010, the CPA Parties (Government of Sudan – GoS and Sudan People’s Liberation Movement – SPLM) mandated the AUHIP with the task of facilitating negotiations on post-referendum arrangements. On behalf of the AU, the Panel has also sought to coordinate international engagement in Sudan. Its mandate was renewed for a further year in October 2010. In October 2011, the mandate was once again renewed for another year.

## **II. IMPLEMENTATION OF THE AUPD RECOMMENDATIONS ON DARFUR**

2. The AUPD was constituted in March 2009, and submitted its report in September of that year. The report was adopted by the PSC, meeting in Abuja, on 29 October 2009. The UN Security Council took note of the report in December 2009.

### ***i. Darfur Political Process***

3. The Panel has continued to make efforts for the launching of the Darfur Political Process (DPP) as complementary to the Darfur peace talks between the GoS and the Darfur armed movements. The DPP is conceived as a process that allows Darfurians to reach consensus on core elements of a political settlement for Darfur, starting by uniting Darfurians on an agreement and then finalising this agreement in negotiations with the GoS. The GoS expressed support for the DPP and agreed with the Panel on the importance of an ‘enabling environment’—a setting conducive to an open, participatory and meaningful political process.

4. However, the DPP has not yet been launched. For political and practical reasons, it proved not feasible to launch the DPP so long as the Doha Peace Process was ongoing. The Panel repeatedly postponed the launch of the DPP in order not to interfere with the Doha Peace Process, the completion of which was repeatedly delayed.

5. On 14 July 2011, the Panel’s Chair attended the ceremony in Doha during which the GoS and the Liberation and Justice Movement (LJM) adopted the Doha Document for Peace in Darfur (DDPD). The Panel welcomed the Document as a possible basis for the subsequent DPP which could, in turn, secure broader support for any final outcome document. The Panel viewed the Document as a point of departure for the envisaged political process, and not as a pre-determined outcome that the DPP would merely be expected to endorse.

6. Following the conclusion of the Doha process, a second factor delaying the launch of the DPP became dominant: namely international disagreement about the meaning and role of the “enabling environment.” The Panel has always insisted on an enabling environment as a condition for a meaningful and credible DPP. Other international actors, however, have insisted on an enabling environment as a precondition for the launch of the DPP, and have imbued it with demands not directly related to the DPP. These disagreements have prevented the DPP from being launched.

### *ii. Justice and Reconciliation*

7. The AUPD report made detailed recommendations for a Justice and Reconciliation Strategy for Darfur, within the context of the advancement of peace and reconciliation in that region. The AUPD proposed the adoption of several measures for strengthening the national criminal justice system, including the judiciary; the establishment of a Hybrid Criminal Court to address crimes in Darfur; and the establishment of a Truth, Justice and Reconciliation Commission. In line with the recommendations of the AUPD report, the Panel has continued to engage the Government and the actors in the justice sector to promote unilateral action to strengthen the criminal justice system in Sudan and in Darfur, in particular.

8. Progress in implementing the recommendations of the AUPD report has been slow and uneven. The justice infrastructure in Darfur remains inadequately resourced. Uncertainty about the security situation in Darfur continues to hamper the administration of justice in all respects. Police stations and formal institutions of justice also remain out of the reach of most ordinary Darfurians. Frequent changes in personnel in the office of the Special Prosecutor, including the resignation of two Special Prosecutors to date, have interrupted continuity.

9. Clearly, there is need to build greater public confidence in the courts in Darfur and to pursue more actively cases arising from violations committed at the height of the conflict. Furthermore, unilateral measures, particularly within the criminal justice system, remain essential, and in this regard the office of the Prosecutor, as the key initiator of criminal justice process, has an important role to play.

### **III. NEGOTIATING THE OUTSTANDING ISSUES IN THE IMPLEMENTATION OF THE CPA: 2011**

10. The outstanding issues in the implementation of the CPA consisted of the South Sudan referendum, the situation in Abyei, including that region’s referendum, the elections in South Kordofan which had been delayed from 2010, the popular consultations in the Two Areas of South Kordofan and Blue Nile states, demarcation of the north-south border and security along the north-south border, in particular the future of the Joint Integrated Units (JIUs) and the question of the Sudan Peoples liberation Army (SPLA) in the Two Areas.

***i. Southern Sudan Referendum***

11. The Panel closely monitored preparations and conduct, in January 2011, of the referendum on self-determination in southern Sudan. In light of the risks of postponement and derailment of the process altogether, the Panel engaged President Omar al Bashir and then First Vice-President Salva Kiir Mayardit in a sustained and public shuttle diplomacy.

12. Recognizing the need for civic behavior in the referendum campaign, the Panel prepared a Code of Conduct for the referenda and popular consultations, to serve as a guide for all parties, organizations, individuals and groups in all aspects and phases of the referendum process. The Code was subscribed to by all 21 political parties that participated in the “All Southern Sudan Political Parties Conference,” held in October 2010 in Juba, including the National Congress Party (NCP).

***ii. Completion of CPA in the Two Areas, Blue Nile and Southern Kordofan***

13. The Panel was concerned both with the need to complete the implementation of the provisions of the CPA in the “Two Areas” of Blue Nile and Southern Kordofan, and also with the intrinsic shortcomings of the CPA with respect to those areas, especially with regard to security arrangements. In this regard, the Panel followed the popular consultation process in Blue Nile state, monitored the state elections in Southern Kordofan and their aftermath, raising the issue of security arrangements for the SPLA forces originating from the Two Areas. Following the outbreak of conflict in Southern Kordofan, on 6 June 2011, the Panel took the lead in seeking a negotiated end to the conflict.

14. The process of popular consultation in Blue Nile began in September 2010, following the creation of the state government after the April 2010 elections. The Panel was concerned that the popular consultation should be pursued not only in a technically proficient, free and fair manner, but also within a safe and stable political and security environment.

15. Two Panel missions to Blue Nile state, in December 2010 and February 2011, brought to light the fundamental grievances that endangered the exercise. The delayed establishment of the State Commission on Popular Consultation created complications in the Commission, which was unable to meet the 17 December deadline that should have marked the start of the citizen hearing process. Arising from this delay were apprehensions among some people in the Blue Nile state that the process would be forestalled and paralyzed in order to create a pretext to perpetuate the marginalization that the CPA was intended to address. The SPLM leadership in the state repeatedly raised fears that the NCP was seeking to derail the popular consultation process. The Panel met with the leadership of the NCP and SPLM, with the aim of addressing complaints and ensuring that the popular consultation remained on track.

16. Because of a dispute over the voter registration process and the preceding population census, state-level elections were not held in Southern Kordofan at the time of the April 2010 general elections. Following a new census and electoral register, and the demarcation of new

state legislature constituencies, the state elections were finally scheduled for early May 2011. The Panel was concerned that this date, occurring after the southern Sudanese had voted for secession but before the SPLM had formally split into two parties, one for each successor state, could pose dangers to the process. Consequently, the Panel followed closely the preparations for the election and other political developments in the state, and also initiated talks on future security arrangements for the Two Areas. The two gubernatorial candidates, Ahmed Haroun (NCP) and Abdel Aziz al Hilu (SPLM), had been close political partners during the previous three years. However, a meeting between the two in January 2011 failed to maintain the political partnership, and they then enter into a fiercely competitive election.

17. An AUHIP delegation traveled to Southern Kordofan to observe the voting process. It witnessed a process marked by a high and enthusiastic turnout and a peaceful atmosphere. Only minor complaints were raised by party officials. However, residents expressed fears that the outcome was likely to be both close and contested, and that the situation warranted close attention.

18. AUHIP staff made a final visit to Southern Kordofan at the end of May 2011, as a result of which the Panel raised the alarm over heightened prospects for conflict in Southern Kordofan. The Panel intervened directly with President Bashir and Vice-President Ali Osman Taha on this question.

### ***iii. Security Negotiations for the Two Areas***

19. The security cluster of the post-referendum arrangements negotiations met seven times, between July and December 2010, on a bilateral basis without external facilitators. The two cluster co-chairs reached agreement on a host of issues, contained in a joint memorandum signed in December 2010 in the presence of the AUHIP. They set up architecture for north-south cooperation (the Joint Political and Security Mechanism - JPSM) and agreed on the dissolution of the Joint Integrated Units (JIUs) three months following the anticipated vote for separation in the south. They did not discuss the issue of the SPLA forces from Southern Kordofan and Blue Nile, other than to include them in the schedule for dissolving the JIUs and to make an outline plan for the SPLA JIU components to be relocated to Kurmuk (Blue Nile) and Lake Abyad (Southern Kordofan/ southern Sudan border), respectively.

20. Consequently, at the time when the southern Sudanese voted for separation, the only agreements on the future status of the SPLA troops from the Two Areas were a single (disputed) provision in the CPA, for the Joint Defense Board (JDB) and the JIUs to continue until January 2012, with the provision that, in the event of separation, SPLA forces in the JIUs should return to their mother units and become part of the army of South Sudan, and a joint position paper that included the timings and locations for the redeployment southwards of those SPLA contingents.

21. Concerned over the neglect of the SPLA forces from the Two Areas, which numbered an estimated 30,000-40,000, Panel staff led a mission to the Headquarters of the SPLA 9<sup>th</sup> and 10<sup>th</sup>

Divisions, in locations in southern Sudan adjacent to Southern Kordofan and Blue Nile states, respectively, in February 2011. Remarkably, this was the first international visit to the 10<sup>th</sup> Division Headquarters at Guffa, since the signing of the CPA, and one of very few to the 9<sup>th</sup> Division Headquarters at Lake Abyad.

22. The AUHIP scheduled a meeting with the Minister of Defense and Minister of SPLA Affairs immediately thereafter, and put the issue of the SPLA troops from the Two Areas on the agenda. The meeting took place in Juba, in March 2011. The outcome included a decision to convene a special meeting of the security cluster, convened by the Panel, in Ethiopia, in the first week of April.

23. At the meeting, held from 3 to 6 April 2011, the AUHIP proposed the establishment of a “Joint Command Mechanism” that would take over from the Joint Defense Board and the JIUs, enabling the SPLA forces in the Two Areas to remain in their home areas, with their distinct identities and command structure for a limited period, until they were integrated into the northern security apparatus, with the assistance of a third-party military advisory team. The SAF and SPLA delegations came very close to agreement, but left Ethiopia without a signed agreement.

24. Armed conflict broke out in Southern Kordofan on 6 June, giving added urgency to the Panel’s plans to convene a high-level meeting of the Parties in Addis Ababa to discuss the Two Areas. On the margins of the special summit on Abyei, the Panel facilitated a meeting between Assistant President Nafie Ali Nafie and the Governor of Blue Nile, Malik Agar Eyre of the SPLM, on 13 June. Over the following two weeks, the Panel engaged in intensive mediation efforts aimed at bringing an end to the armed conflict and reaching agreement on a path to an overall political settlement of the dispute.

25. The Panel’s initial agenda included facilitating a cessation of hostilities and a framework for the political resolution of the conflict, including a formula for the security arrangements for the Two Areas. However, neither side was ready to prioritize the cessation of hostilities, and the talks floundered on the issue of whether to recognize the *de facto status quo* (in which the SPLA had overrun more than 50 positions previously occupied by the SAF) or to insist on a return to the military positions as they had existed prior to 5 June 2011. Both Parties argued that the political framework was paramount, and if agreement could be reached on that, all other issues would follow. The Panel also traveled to Southern Kordofan to meet with Abdel Aziz al Hilu and his senior military and political leadership on 16 June. All issues were discussed.

26. Between 17 and 28 June, the Panel conducted intensive negotiations that resulted in the signing of the Framework Agreement on Political Partnership between the NCP and SPLM and Arrangements for the Political Future and Security of the Two Areas. The Framework Agreement for the Two Areas was a major achievement and a testament to the willingness of the leaders on both sides to make significant compromises in pursuit of a solution. Unfortunately, the Agreement was not implemented. Subsequently, the armed conflict



escalated significantly with the outbreak of fighting in Blue Nile, the dismissal of Malik Agar from his position as Governor of the state by the President, and the banning of the SPLM-North.

27. The Panel still believes that the Framework Agreement represents a fair and workable way forward and that, if implemented, it would resolve the conflict. The Panel expects that, in due course, the Parties will return to the Framework Agreement or to a similar formula for this issue.

#### ***iv. Borders: Demarcation, Disputed Areas, and Institutional Rationalization***

28. During the reporting period, the Panel maintained focus on the north-south border issue. It continued to follow up with the Chairperson and Deputy Chairperson of the *ad hoc* Technical Committee for the Demarcation of the North-South Border, as well as with the Borders negotiation cluster and the bilateral Political Committee.

29. The Panel acknowledged the deadlock within the *ad hoc* Technical Committee and called for a higher level of engagement to jumpstart the work of the Committee in its meetings with the Presidents. The Panel also requested the African Union Border Programme (AUBP) to provide technical support to the Parties. The AUBP has undertaken three missions to Sudan and has met with the *ad hoc* Technical Border Committee, the Political Committee, and the Panel, in order to familiarize itself with technical issues.

30. During the month-long Super Group negotiations convened by the Panel in Addis Ababa in June 2011, the aim was to conclude an agreement on all border-related issues. These were: (i) the completion of the delimitation and demarcation of the border; (ii) the settlement of disputed areas; and (iii) the adoption of principles and institutions for managing a soft border between the two States, including the security arrangements along the common border.

31. The June negotiations managed to narrow the differences between the Parties in a draft agreement on 'Provisions on Border Issues,' the last version of which was presented to the Parties on 24 June 2011. This text is currently awaiting final approval and adoption by the two States. At issue now for the Panel is the format of future negotiations on this matter, given the pressing need for joint demarcation of the borders of Abyei and the clarification of the administrative boundaries in the disputed areas. Both these exercises are necessary in order to facilitate the security arrangements along the border area, including the deployment of the border monitoring force protection to be provided by the UN Interim Security Force for Abyei (UNISFA).

#### ***v. Abyei and efforts to resolve the impasse***

32. The Abyei question remains a crucial political and security issue that will have a significant impact on future relations between Sudan and South Sudan. Following the failure of United States-brokered efforts to find a solution to the Abyei dispute in successive rounds of

negotiation during September and October 2010, the issue was referred to the AUHIP. Presidents Bashir and Kiir insisted that the matter be addressed at their level.

33. With the failure to hold the Abyei Area Referendum in January 2011, a solution to the Abyei question became more elusive. On 1 May, a major security incident in Abyei set in motion a series of events, culminating in fighting between SAF and SPLA forces in the area, and sparking a security, political and humanitarian crisis that consumed the attention of both leaderships and the international community for the next month, and which necessitated the formulation of an interim solution to address the immediate security challenges.

34. Realizing the implications of the fighting on already fragile north-south relations, the Panel proposed a summit meeting of the two Presidents, the Panel and the Chairperson of IGAD, in Addis Ababa, on 12 and 13 June 2011. The summit resulted in an agreement that SAF would withdraw their forces from Abyei, Ethiopian forces would deploy inside Abyei to provide for an interim security arrangement, and a temporary administration would be established. This arrangement did not address, nor prejudge, a final resolution of the Abyei issue.

35. On 20 June, the negotiations produced the “Agreement on Temporary Arrangements for the Administration and Security of Abyei Area,” which called for the demilitarization of the Abyei Area and the deployment of a peacekeeping force, UNISFA, under a Chapter VII mandate. UNISFA began deploying immediately following the adoption of UN Security Council resolution 1990 (2011) on 27 June 2011. The Government of the Federal Democratic Republic of Ethiopia provided the troops. The key mandate of the Force is to establish the humanitarian conditions necessary to allow the IDPs to return. It is also expected to create the conditions that would allow for the political and security processes that had stalled to resume.

36. In order to operationalize the other mechanisms provided for in the Temporary Agreement on Abyei, the Panel convened the Parties in Addis Ababa on 8 September 2011, where the Abyei Joint Oversight Committee (AJOC) was inaugurated. In addition to the two Parties, the AJOC includes a representative of the AU and the Force Commander of UNISFA as non-voting members.

37. The AJOC is tasked with: (i) supervising and promoting security and stability in the Abyei Area; (ii) exercising political and administrative oversight of the Executive Council of the Abyei Area Administration (AAA); (iii) determining and advising on the size of the Abyei Police Service; and (iv) supporting UNISFA in the discharge of its mandate, including the creation of the necessary safe conditions for the return of IDPs and demining of the Area to guarantee their safe resettlement.

38. The inaugural meeting of AJOC adopted a number of working documents, including its terms of reference and the plan and timeline for the redeployment of forces of both sides out of Abyei. The Parties committed themselves to commence the withdrawal of forces from Abyei on 11 September, starting with the withdrawal of SAF forces from Abyei town, and completing the withdrawal of all forces by 30 September. It was agreed that the AJOC would meet on a

monthly basis, and that its next meeting would be convened in Abyei town, on 15 September. That meeting would review progress in the redeployment of forces out of Abyei.

39. In calling for the immediate redeployment of all forces from Abyei, the AUHIP was mindful of the impact of the crisis on livelihoods of both the Ngok Dinka IDPs and the Misseriya pastoralists. The AUHIP stressed the importance of withdrawal of all SAF and SPLA-North forces from Abyei as a matter of urgency, to enable the return of the IDPs in time for the second planting season of the year, which starts in mid-September. The AUHIP also reminded the Parties that the pastoralist migration season was also due to start shortly, and it was imperative that they withdraw their forces from the area to enable the migration of Misseriya pastoralists to continue with minimum disruptions.

40. Despite the signing of the redeployment plan and the establishment of the AJOC on 8 September, at the time of finalization of this report, there had been no redeployment of those forces remaining in Abyei, and the AJOC had failed to meet. The Panel has been engaged in intensive discussions with the Parties to try to get the Abyei process back on track.

#### ***vi. Negotiating the Post-Referendum Arrangements Economic***

41. The Panel's approach to the negotiations on economic arrangements has been based on the principles of the creation of two viable states and mutually beneficial economic cooperation, as agreed in the 'Framework for Resolving Outstanding Issues Relating to the Implementation of the Comprehensive Peace Agreement and the Future Relations of North and South', of 13 November 2010.

42. By December 2010, it became clear that the Cluster negotiating on Economics, Finance and Natural Resources, which had set up five Sub-Clusters, looking at Assets & Liabilities, Oil, Currency, Water and Transport & Communications, was having difficulty convening at all, and had made limited progress, including on technical issues. The Panel, therefore, opened discussions with the African Development Bank (AfDB) to provide African expertise on economic issues to assist the Parties. This provision of experts was agreed in January 2011. At the same time, the Norwegian Government technical facilitation provided to the Oil Sub-Cluster was integrated more closely into the overall mediation by the Panel.

43. On 1 March, the Panel invited the Parties' Lead Negotiators and core economic teams to a one-day exposure event, in Ethiopia. The experts provided by the AfDB and the Norwegian Government made presentations on the overall economic context of two viable states, external debt, currency and the management of the oil sector. These presentations laid the groundwork for three days of intensive negotiations, which resulted in agreed minutes and substantial progress on a number of technical issues related to currency, oil and debt.

44. To follow up on this progress, the Panel convened a second round of talks in Ethiopia, from 9 to 11 April. Further progress was made on the debt issue, and there was discussion on how to handle assets. The Panel invited an IMF specialist to provide additional expertise on the

currency issue, which was proving controversial. However, there was progress with a bipartisan committee on Trade and Related Payments, supported by an AfDB expert. The co-Chairs and Secretaries of the Water and Transport & Communications Sub-Clusters were also invited, to address the impasses they appeared to have reached.

45. From 15 to 18 April, the Panel attended the World Bank/IMF Spring Meetings in Washington DC, to press for debt relief for Sudan as part of international support for the concept of two viable states. The Panel briefed both the Sudan Debt Technical Working Group and the Policy-Level Sudan Roundtable on the status of negotiations on post-referendum arrangements, including the steps required to support two viable states after July 2011. The Panel also met senior representatives of major creditors, including the US, UK, China, Saudi Arabia, Denmark, the IMF and the World Bank, to discuss this issue.

46. The Panel reported back on these meetings to the Parties at the third round of economic negotiations in Ethiopia, from 19 to 21 May. Although the Parties came close to agreement on a “zero option”, by which the successor state of Sudan would retain all external assets and liabilities, progress on other issues was complicated by the deteriorating political atmosphere, linked to developments in Abyei. The Parties remained very far apart on the question of Transitional Financial Arrangements (TFAs), including the provision of transfers by South Sudan to ease the economic shock faced by Sudan because of the loss of substantial revenues from oil following secession of the south.

47. The Panel, therefore, decided that the economic issues had been matured as far as was possible in isolation. They invited the Parties to fresh talks across the full range of post-referendum issues in Addis Ababa, which lasted for much of the month of June. During these meetings, negotiators agreed on a draft text on the issues of Transport & Communications and Assets & Liabilities, which were passed on to the Legal Cluster for finalization. An agreement on water was also close to conclusion. However, substantial differences remained on the issues of TFAs, oil, and currency redemption. The Parties, therefore, failed to agree on a full package before the independence of South Sudan forced a hiatus in the negotiations.

48. Following the independence of the Republic of South Sudan, and given the risk that there was now no basis for the continued flow of Southern oil through the North, the Panel moved urgently to convene another meeting in Addis Ababa, in late July 2011, to discuss an interim arrangement to maintain the status quo. There was a wide gap between the Parties on what would constitute appropriate monthly payments by South Sudan to Sudan. Nevertheless, Sudan did eventually announce that it would allow continued passage of Southern oil through the pipeline ‘on credit,’ until the Panel could convene the next round of talks on a final agreement.

49. Since then, the Panel has engaged in intensive shuttle diplomacy to bring the Parties’ positions closer together prior to convening another round of negotiations. The principle of two viable states remains the foundation of these efforts.

***vii. Security: Joint Political and Security Mechanism***

50. In December 2010, the Security Cluster of the post-referendum arrangements negotiations agreed in principle to the establishment of a Joint Political and Security Mechanism (JPSM), which would have overall responsibility for managing security along the common border between Sudan and South Sudan, as well as any other security issues that might arise between the two states. The JPSM is the first inter-state mechanism between the two states.

51. At the Panel-facilitated meeting of the Minister of Defense and the Minister of SPLA Affairs held in Juba in March, the two Parties agreed that, upon independence of South Sudan on 9 July, the JPSM should become operational, taking over from the Joint Defence Board and all other security mechanisms established by the CPA.

52. The Panel convened negotiations on the management of security in the border zone, the JPSM and related issues, in Ethiopia, in April 2011. A subsequent workshop on border security and third party role was held in Ethiopia, also in April, followed by a third meeting in Ethiopia, between 28 and 30 May. These meetings fleshed out elements on the operationalization of border security mechanisms, though many of the details, including the role of a potential third party, were left for future negotiations. At those meetings, agreement was also reached on the question of southerners employed by SAF, according to which they were to be discharged, paid their full end of service and pension entitlements, and their files transferred to the GoSS for employment in the southern Sudanese security services as appropriate.

53. During the June 2011 negotiations in Addis Ababa, the Panel devoted much attention to finalizing the details of the JPSM and what became known as the Safe Demilitarized Border Zone (SDBZ). Notably, it was agreed that UNISFA would provide force protection and logistical support for an international border monitoring mission. The Parties signed an agreement on these issues on 29 June, with subsequent agreements on the details of the third party deployment following soon thereafter.

54. The first meeting of the JPSM was held in Khartoum on 18 September 2011, convened jointly by Sudanese Defense Minister, Lt. Gen Abdulrahim Mohammed Hussein, and his South Sudanese counterpart, Gen John Kong Nyuon, Minister for Defence and Veteran's Affairs, and facilitated by the Panel. The JPSM deliberated and agreed on the composition of committees that are established in the Agreement on Border Monitoring Support Mission signed on 30 July 2011. They also agreed on the mission headquarters in Tharjak, in South Sudan, and the ten corridors across the border.

***viii. Soft borders***

55. Guided by the underlying principles in the 'Framework for Resolving Outstanding Issues Relating to the Implementation of the Comprehensive Peace Agreement and the Future Relations of North and South Sudan' developed in November 2010, the Panel developed a draft

'Agreement on Cross-Border Issues', which reflects commitments between the two Parties to continue and enhance political, economic and social relations between them, while ensuring each other's security. The Framework also requires that the border be a bridge, facilitating free movement, as well as economic and social activity for the benefit of the nationals of the two States, whose livelihoods require them to move across the border regularly.

#### ***ix. Citizenship, Nationality and Freedoms***

56. Following the work on the Framework Agreement of November 2010, the Panel continued to engage the Parties on the issue of citizenship and related matters. The Panel's primary objective was to assist the Parties in ensuring that South Sudan's secession would not result in statelessness and to avoid other possible individual hardship.

57. After several meetings of the Citizenship Cluster, it appeared that both Parties subscribed to the principle of avoiding statelessness as a result of the secession, but could not reach agreement on how this principle should be upheld. The Panel then engaged each Party separately on their draft legislation, stressing that any new or amended law should be generous in granting or upholding nationality. The Nationality Act of the Republic of South Sudan, signed into law on 7 July 2011, grants South Sudanese nationality on the basis of any of a wide range of ties to South Sudan.

58. Committed to avoiding other personal hardship, the Parties agreed that Sudanese people, whether in Sudan or South Sudan, should be able to continue residing, working and enjoying other freedoms in the territory in which they lived prior to South Sudan's independence. To that end, they agreed that the nationals of the other state will enjoy certain "freedoms", in particular the freedom to move in and out of the state, the freedom to own property, the freedom to conduct economic activities and the freedom to reside, which encompasses freedoms such as the enjoyment of social services. During the June 2011 Addis round of the negotiations, the Parties committed themselves to reaching a specific agreement on these freedoms soon after South Sudan's independence. The Panel has offered its assistance in completing this important task.

59. The Parties have agreed that people whose status is affected by the secession have at least nine months to reconcile their status. The Panel has discussed with the Parties that, for this transitional period to be meaningful, each State should as soon as possible instruct their officials and conduct public information campaigns on how people can obtain the required documents. Access to documentation will also require technical cooperation between the two States, requiring the establishment of a bilateral mechanism composed of representatives of the relevant Ministries.

#### ***x. Legal issues and international treaties***

60. Whilst several aspects of the substance of the Panel's work have legal elements, the negotiations presented specific legal requirements, which the Legal and Treaties Cluster was

established to address. The Legal Cluster was responsible for dealing with the question of the treaties under which South Sudan would continue to have obligations and, more generally, with legal aspects of the negotiations, including the drafting of final agreements and the development of the legal and institutional modalities for implementing the agreements reached in the context of the negotiations.

61. At the request of the Panel, the Cluster convened in June 2011 to participate in the “super” negotiations where, among other things, it provided advice to the various Clusters on questions of law and drafting. During the negotiations, the Panel led the Legal and Treaties Cluster in a number of sessions to review the various draft agreements and consider proposals on structures for future cooperation between the two States. The discussions with the Cluster found expression in the draft agreements the Panel presented to the Parties for consideration.

#### ***xi. Promoting Democratic Governance***

62. Pursuant to article 226 (9) and (10), the Interim National constitution of the Republic of Sudan continues to govern Sudan after the end of the Interim Period until a permanent constitution is adopted; only the provisions related to South Sudan are deemed to have been duly repealed. Various political parties and civil society organizations have shared ideas with the Panel for a new Sudanese constitution, but to date there is no clarity on how the process of drafting a new constitution will be organized.

63. In Southern Sudan, the formation of the technical committee for the review of the 2005 Southern Sudan Interim Constitution drew the Panel’s attention. On 28 April, President Buyoya held consultations in Juba with President Salva Kiir, Minister John Luk of the Justice Ministry, leading members of the SPLM negotiating team on north-south issues, and members of civil society, to explore solutions to the issues related to the development of the constitution.