

AGREEMENT ON WEALTH SHARING DURING THE PRE-INTERIM AND INTERIM PERIOD

Naivasha, Kenya: Wednesday, January 7th, 2004

WHEREAS the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (the Parties) have been conducting negotiations in Naivasha, Kenya, since 6th December, 2003, under the auspices of the IGAD Peace mediated Process; and having taken up the division of wealth in pursuit of a comprehensive agreement, that will ensure a just and durable peace in the Sudan;

NOW RECORD THAT they have reached agreement on Wealth Sharing, covering the division of oil and non-oil revenues, the management of the oil sector, the monetary authority and the reconstruction of the South and other war-affected areas during the Pre-Interim and Interim Period;

THE PARTIES AGREE AND CONFIRM THAT they are determined to build on this important Agreement until a comprehensive peace Agreement is reached. It is within this context, that the Parties agree to continue negotiations on the remaining outstanding issues on the Conflict Areas and Power Sharing and subsequently negotiate a comprehensive ceasefire Agreement and Implementation Modalities in order to achieve a final comprehensive Peace Agreement in the Sudan.

Hon. Idris Mohamed Abdelgadir
For: The Government of the Sudan

Cdr. Nhial Deng Nhial
For: The Sudan People's Liberation
Movement/Army

WITNESSED BY: **Lt. Gen. Lazaro K. Sumbeiywo (Rtd)**
Special Envoy
IGAD Sudan Peace Process and
On behalf of the IGAD Envoys

- 3.4.4 Negotiate and approve all oil contracts for the exploration and development of oil in the Sudan, and ensure they are consistent with the NPC's principles, policies and guidelines.
- 3.4.5 Develop its internal regulations and procedures.
- 3.5 In performing the functions referred to in paragraph 3.4 above, the NPC shall take into account relevant considerations, including the following:
 - 3.5.1 The extent to which the contract provides benefits to local communities affected by the development.
 - 3.5.2 The extent to which the views of the state/region and the affected groups are incorporated in the proposed contracts.
 - 3.5.3 If the NPC decides to approve the contract, persons holding rights in land who are aggrieved by the decision shall seek relief through arbitration or in a court of law.
 - 3.5.4 If the non-permanent members of the NPC representing the oil producing State/Region collectively disagree with the decision of the NPC to approve the contract related to their State/Region, the National Minister of Petroleum shall not sign the contract and shall refer the matter to the Council of States/Regions. If the Council of States/Regions rejects the objection by two-thirds majority, the National Minister of Petroleum shall sign the contract. If the Council of States/Regions does not reject the objection by two-thirds majority within 24 sitting days of receiving it, the Council of States/Regions shall remit the objection within that period and by two-thirds majority to a mechanism established by the Council to arbitrate on the objection. The arbitration decision shall be made within six calendar months of referral to arbitration. The arbitration decision shall be binding.
 - 3.5.5. If the NPC approves the contract the National Minister of Petroleum shall sign the contract on behalf of the Government of the Sudan.
 - 3.5.6 In performing functions 3.4.1, 3.4.2, 3.4.3, and 3.4.5 of paragraph 3.4, the NPC shall include only its permanent members.
 - 3.5.7 In performing function 3.4.4 of paragraph 3.4, the NPC shall include its permanent members and representatives of oil producing State/Region in which contracts for the exploration and development of the petroleum are being negotiated and considered for approval.

4.0 EXISTING OIL CONTRACTS

- 4.1 The SPLM shall appoint a limited number of representatives to have access to all existing oil contracts. The representatives shall have the right to engage technical experts. All those who have access to the contracts will sign confidentiality agreements.
- 4.2 Contracts shall not be subject to re-negotiation.
- 4.3 If contracts are deemed to have fundamental social and environmental problems the Government of Sudan will implement necessary remedial measures.
- 4.4 The Parties agree that "existing oil contracts" mean contracts signed before the date of signature of the comprehensive Peace Agreement.
- 4.5 Persons whose rights have been violated by oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused.

5.0 GUIDING PRINCIPLES FOR SHARING OIL REVENUE

- 5.1 The Parties agree that the basis for an agreed and definitive framework for the sharing of the wealth emanating from oil resources of Southern Sudan shall include the following:
 - 5.1.1 The framework for sharing wealth from the extraction of natural resources should balance the needs for national development and reconstruction of Southern Sudan.
- 5.2 The Parties agree that a formula for sharing the revenue from oil resources shall be as set forth in this Agreement.
- 5.3 For the purposes of this Agreement 'Net revenue from oil' shall be the sum of the net revenue (i) from exports of government oil and (ii) from deliveries of government oil to the refineries. Exports shall be valued at the actual Free on Board (FOB) export prices less the charges to deliver the oil to any export destination including pipeline and management charges. Oil delivered to the refinery shall be valued at the average FOB export prices during the last calendar month in which there was an export sale less the charges that would have been incurred to deliver the oil to any export destination including pipeline and management charges.

- 5.4 An Oil Revenue Stabilization Account shall be established from government oil net revenue derived from actual export sales above an agreed benchmark price. The benchmark price will be established annually as part of the national budget reflecting changing economic circumstances.
- 5.5 The Parties agree that at least two percent (2%) of oil revenue shall be allocated to the oil producing states/regions in proportion to output produced in such states/regions.
- 5.6 After the payment to the Oil Revenue Stabilization Account and to the oil producing states/regions, fifty percent (50%) of net oil revenue derived from oil producing wells in Southern Sudan shall be allocated to the Government of Southern Sudan (GOSS) as of the beginning of the Pre-Interim Period and the remaining fifty percent (50%) to the National Government and States in Northern Sudan.
- 5.7 A Future Generation Fund shall be established once national oil production reaches two (2) million barrels per day. This production criterion may, as part of the National Government's normal budget process, be reduced down to one (1) million barrels per day.
- 5.8 The Parties agree that all funds/special accounts referred to in this Agreement and future accounts shall be on-budget operations.

6 SHARING OF NON-OIL REVENUE

- 6.1 The National Government shall be entitled to legislate, raise and collect the below-listed taxes and to collect revenue from these sources:
 - 6.1.1 National Personal Income Tax;
 - 6.1.2 Corporate or Business Profit Tax;
 - 6.1.3 Customs Duties and import taxes; and
 - 6.1.4 Sea-ports and Airports Revenue;
 - 6.1.5 Service charges;
 - 6.1.6 Oil revenues as set out herein;
 - 6.1.7 National Government Enterprises and projects;

- 6.1.8 VAT or GST or other retail taxes on goods and services;
 - 6.1.9 Excise Tax;
 - 6.1.10 Any other tax as agreed upon in these negotiations;
 - 6.1.11 Loans, including borrowing from the Central Bank and the public.
- 6.2 The Government of Southern Sudan shall be entitled to revenue from the following sources and to raise and collect the below-listed taxes:
- 6.2.1 The National revenue allocation to the Government of Southern Sudan and States/Regions from the National Revenue Fund as set forth in section 7.0 of this Agreement;
 - 6.2.2 Revenue from any of the sources listed as state/region revenue sources referred to in paragraph 6.3 herein;
 - 6.2.3 The Southern Sudan Reconstruction and Development Fund (SSRDF);
 - 6.2.4 Oil revenues as is set out in this Agreement;
 - 6.2.5 Southern Sudan Government Taxes, which do not encroach on the exclusive National Government taxing powers or which are contemplated in the Power Sharing Protocol;
 - 6.2.6 Service charges of the Government of Southern Sudan;
 - 6.2.7 Government of Southern Sudan enterprises and projects;
 - 6.2.8 Grants in Aid and Foreign Aid;
 - 6.2.9 Taxes and levies on small and medium business;
 - 6.2.10 Excise taxes on goods within the region deemed to be luxury consumables;
 - 6.2.11 Southern Sudan Personal Income Tax;
 - 6.2.12 Any other taxes as may be agreed to from time to time;
 - 6.2.13 Loans and Borrowing in accordance with the Monetary Policy, Banking, Currency and Borrowing sections of this Agreement.
- 6.3 The states/regions shall be entitled to raise and collect the below-listed taxes and revenue from the below listed sources:

- 6.3.1 State/Regional Land and property tax and royalties;
- 6.3.2 Service charges for state/regional services;
- 6.3.3 Licences;
- 6.3.4 State/Regional Personal Income Tax;
- 6.3.5 Levies on Tourism;
- 6.3.6 State/Regional share of oil Revenues as is set out in paragraphs 5.5 and 5.6 of this Agreement;
- 6.3.7 State/Regional Government projects and state/regional nature parks;
- 6.3.8 Stamp duties;
- 6.3.9 Agricultural Taxes;
- 6.3.10 Grants in Aid and Foreign Aid through the National Government and the GOSS;
- 6.3.11 Excise taxes;
- 6.3.12 Border Trade charges or levies in accordance with National Legislation;
- 6.3.13 Other state/region taxes which do not encroach on national or Southern Sudan Government taxes;
- 6.3.14 Any other tax as may be agreed to from time to time; and
- 6.3.15 Loans and borrowing in accordance with the Monetary Policy, Banking, Currency and Borrowing sections of this Agreement.

7 EQUALIZATION AND ALLOCATION TO THE NATIONAL, SOUTHERN SUDAN AND STATE/REGIONAL LEVELS OF GOVERNMENT IN RESPECT OF REVENUE COLLECTED NATIONALLY

- 7.1. All revenues collected nationally for or by the National Government shall be pooled in a National Revenue Fund (NRF) administered by the National Treasury. Such Fund shall embrace all accounts and sub-funds into which monies due to the Government are collected, reported or deposited.

- 7.2 All the revenues and expenditures of the Government will be on-budget operations and made public.
- 7.3 Notwithstanding the provisions of paragraphs 5.6, 7.1 and 13.1, the National Government shall allocate fifty percent (50%) of the national non-oil revenue collected in Southern Sudan, as provided for herein under paragraph 6.1 above, to the GOSS to partially meet the development cost and other activities during the Interim Period. The Parties agree to review this arrangement, at mid-term of the Interim Period, with the view of the National Government allocating additional resources to the Government of Southern Sudan.
- 7.4 As a result of the allocation arrangements in paragraph 7.3 above, the Parties agree to appeal to the international and donor community to help the Government of Southern Sudan by providing post-conflict reconstruction assistance especially at the beginning of the transition.
- 7.5 The states/regions and the Government of Southern Sudan shall retain and dispose of such other income raised and collected under their own taxing powers.

8. FISCAL AND FINANCIAL ALLOCATION AND MONITORING COMMISSION (FFAMC)

- 8.1 To ensure transparency and fairness both in regard to the allocation of nationally collected funds to the states/regions and the Government of Southern Sudan, a Fiscal and Financial Allocation and Monitoring Commission shall be established. This body shall be comprised of experts nominated by the various states/regions, the Government of Southern Sudan and the National Government. Decision making arrangements of the FFAMC shall be as agreed to by the Parties.
- 8.2 The FFAMC shall undertake the following duties and responsibilities:
- 8.2.1 Monitor and ensure that equalization grants from the National Revenue Fund are promptly transferred to respective levels of government;
- 8.2.2 Ensure appropriate utilization and sharing of financial resources;
- 8.2.3 Ensure that resources allocated to war affected areas are transferred in accordance with agreed upon formulae; and
- 8.2.4 Ensure transparency and fairness in the allocation of funds to the GOSS and states/regions according to established ratios or percentages stipulated in this Agreement.

8.3. The FFAMC shall be composed of representatives from the National Government and the Government of Southern Sudan and States/Regions as follows:

- a) Three Representatives of the National Government;
- b) Three Representatives of the Government of Southern Sudan (GOSS);
- c) All Finance Ministers in all States/Regions of Sudan

8.4 The Chairperson of the FFAMC shall be appointed by the Presidency.

8.5 The FFAMC shall work out its own rules and procedures, which shall be approved by the Presidency.

9.0 INTERSTATE COMMERCE

9.1 There shall be no legal impediment to interstate commerce or the flow of goods and services, capital, or labour between the states/regions.

10.0 GOVERNMENT LIABILITIES

10.1 Any debts/liabilities incurred by any level of government shall be the responsibility of that level of government.

11.0 DIVISION OF GOVERNMENT ASSETS

11.1 There shall be a fair and equitable division of government assets. An asset shall in the first instance be allocated to the level of government responsible for the function in respect of which the asset is related (e.g. school buildings to the level of government responsible for education). In the event of a dispute, the Parties agree that such dispute shall be referred to a committee comprising a representative of each of the Parties involved in the dispute and a mutually agreed expert.

12.0 ACCOUNTING STANDARDS AND PROCEDURES AND FISCAL ACCOUNTABILITY

12.1 All levels of government shall comply with generally accepted accounting standards and procedures. There shall be institutions at the state/region,

Government of Southern Sudan and National levels to ensure that funds are distributed according to the agreed government budget, and properly expended having regard to value for money.

- 12.2 To ensure the effective operation of such institutions, there shall be independent National and Southern Sudan Audit Chambers, which shall have responsibility for the functions referred to above. The National Audit Chamber shall set auditing standards. Appointments to the National Audit Chamber shall be made by the Presidency and confirmed by the National Assembly.
- 12.3 All levels of government shall hold all income and revenue received by it in public accounts and subject to public scrutiny and accountability.

13 FINANCING THE TRANSITION

- 13.1 The National Government shall assist, during the Pre-Interim Period to the extent that it is able, the SPLM/A in the establishment of the new transitional governments at the State/Regional level and the Government of Southern Sudan. The Government of Southern Sudan shall meet the direct costs of establishing these levels of government, with the assistance from the international community.
- 13.2. Upon signature of a comprehensive Peace Agreement, the Parties shall establish a Joint National Transition Team to undertake the following:
 - 13.2.1 Prepare budget estimates for the establishment of Governments at the National, Southern Sudan, and state/regional levels as provided for by the Peace Agreement;
 - 13.2.2 Organize and prepare relevant documents for the donor conference, including the agenda of the conference, letters of invitations and be a secretariat to the donors' conference;
 - 13.2.3 Develop fund raising strategies, and assist in the identification of potential sources of funds necessary for a smooth and timely commencement of the Interim Period.

14.0 MONETARY POLICY, BANKING, CURRENCY AND BORROWING

A. MONETARY POLICY, BANKING AND CURRENCY

- 14.1. The Parties agree, consistent with the Machakos Protocol of 20th July 2002, to have a dual banking system in Sudan during the Interim Period.

An Islamic banking system shall operate in Northern Sudan and conventional banking system shall operate in Southern Sudan.

- 14.2. The Parties agree that conventional banking facilities are urgently needed in Southern Sudan. The Parties therefore agree to establish, during the Pre-Interim period, the Bank of Southern Sudan (BOSS) as a branch of Central Bank of Sudan (CBOS) consistent with paragraph 14.1 above.
- 14.3. The Parties agree to restructure, during the Pre-Interim Period, the CBOS so as to reflect the duality of the banking system in Sudan. The CBOS shall therefore use and develop two sets of banking instruments, one Islamic and the other Conventional, to regulate and supervise the implementation of a single monetary policy through: (i) an Islamic financing window in Northern Sudan under a deputy governor of CBOS using Islamic financing instruments to implement the national monetary policy in Northern Sudan; and (ii) the Bank of Southern Sudan (BOSS), headed by a deputy governor of CBOS, to manage the conventional window using conventional financing instruments in implementing the same national monetary policy in Southern Sudan.
- 14.4. The CBOS shall be responsible for the conduct of monetary policy. All banking institutions shall be subject to the rules and regulations set by the CBOS.
- 14.5. The primary responsibility and mandate of the CBOS shall be ensuring price stability, maintaining stable exchange rate, sound banking system and issuance of currency. The monetary policy shall be carried out accordingly relying primarily on market-based instruments instead of administrative allocation of credit.
- 14.6. The CBOS shall be fully independent in its pursuit of monetary policy.
- 14.7. The Governor of CBOS and his/her two deputies shall be appointed by the Presidency. The Governor of CBOS shall appoint in consultation with his/her two deputies other senior officers within the Central Bank.
- 14.8. The Parties agree to establish, during the Pre-Interim Period, an independent Board of Directors (BOD). Decisions of BOD on matters that may affect adversely the interest of either Party to this Agreement shall be by consensus. The BOD shall be responsible to the Presidency on the accountability of the CBOS and shall consist of nine (9) members as follows:
 - a) Governor of CBOS (Chairperson) and his/her two deputies and;

- b) Six highly qualified Sudanese to be appointed by the Presidency taking into account the agreed formula in the Power Sharing Protocol for the institutions of the National Government.
- 14.9 The CBOS shall adopt a program to issue a new currency as soon as is practical during the Interim Period. The design of the new currency shall reflect the cultural diversity of Sudan. Until a new currency has been issued with the approval of the Parties on the recommendations of the CBOS, the circulating currencies in Southern Sudan shall be recognised.
- 14.10 The BOSS shall be responsible for chartering and supervising financial institutions in Southern Sudan.
- 14.11 All financial institutions shall be subject to internationally recognized regulatory and prudential standards for Islamic and conventional finance, as set by the CBOS.
- 14.12 All financial institutions shall be bound to implement monetary policies set by the CBOS.

B. BORROWING:

- 14.13. The Government of Southern Sudan and the states/regions may borrow money based on their respective credit worthiness. Neither the National Government nor the CBOS shall be required or expected to guarantee borrowing by sub-national governments.
- 14.14 The GOSS and all sub-national governments shall report financial and fiscal data to the relevant National Government bodies for statistical purposes.
- 14.15 The Government of Southern Sudan and the states/regions may borrow money from foreign sources based on their respective credit worthiness.
- 14.16 Foreign borrowing by all sub-national governments shall be done in a manner that does not undermine national macroeconomic policies and shall be consistent with the objective of maintaining external financial viability. All sub-national governments' foreign borrowing transactions shall conform to the CBOS specifications.

15 RECONSTRUCTION AND DEVELOPMENT FUNDS

A. Southern Sudan Reconstruction and Development Fund (SSRDF)

**Framework Agreement
on Wealth Sharing During the
Pre-Interim and Interim Period**

Between

The Government of the Sudan (GOS)

And

**The Sudan People's
Liberation Movement/Sudan People's Liberation
Army (SPLM/A)**

***Venue:** Lake Naivasha Simba Lodge, Naivasha, Kenya*

***Date:** 7th January, 2004*

- 15.1. There shall be established a Southern Sudan Reconstruction and Development Fund (SSRDF) to solicit, raise and collect funds from domestic and international donors and disburse such funds for the reconstruction and rehabilitation of the infrastructure of the South, for the resettlement and reintegration of internally and externally displaced persons, and to address past imbalances in regional development and infrastructure.
- 15.2. A monitoring and evaluation system shall be established to ensure accountability, transparency, efficiency, equity and fairness in the utilization of resources.
- 15.3. The Government of Southern Sudan shall be responsible for expenditure from the fund and shall be entitled to raise additional funds by way of donation from foreign States, multilateral organizations, or other bodies for the purposes of the reconstruction and development of the southern states/regions. The Fund shall be transparently administered and professionally managed subject to an oversight committee appointed by the Government of Southern Sudan but having on it a representative of the National Ministry of Finance and of the National Audit Chamber.

B. National Reconstruction and Development Fund (NRDF)

- 15.4. There shall be established by the Treasury, a National Reconstruction and Development Fund (NRDF) having the mission of developing the war affected areas and least developed areas outside Southern Sudan and a steering committee with appropriate representation from such areas. A member of the Southern Sudan Ministry of Finance shall be a member of the Steering Committee. A report on the income, expenditure and the projects supported by the fund shall be placed before the National Assembly and the Council of States/Regions, which shall exercise oversight over the Fund.

C. Multi-Donor Trust Funds

- 15.5. The Parties recognize the need to establish, during the Pre-Interim Period, two Multi-Donor Trust Funds (MDTFs), one for the National Government and one for the Government of Southern Sudan to support urgent recurrent and investment budget costs under clearly stated criteria of eligible financing components. The Trust Funds shall be operational for the Pre-Interim Period, and shall thereafter be transformed into (i) one MDTF dedicated to the Southern Sudan Reconstruction and Development Fund (the "SRRDF"); and (ii) one MDTF dedicated to the National Reconstruction and Development Fund (the "NRDF").

- 15.6. The MDTFs shall commence immediately to support, among other things, priority areas of capacity building and institutional strengthening and quick start/impact programs identified by the Parties.
- 15.7. Both funds shall support urgent recurrent and investment budget costs under clearly stated criteria of eligible financing components, and both shall have the right to solicit, raise and collect funds from foreign donors.
- 15.8. All trust funds shall report the flow of funds to the CBOS.
- 15.9. To ensure proper accountability for funds disbursed through the MDTFs the Parties shall cause audits to be performed on funds used within six (6) months of the close of the recipient's financial year.
- 15.10. During the Pre-Interim as well as the Interim Period, funds may be channeled directly to finance activities beneficial to the National Government or the GOSS as the case may be.
- 15.11. During the Pre-Interim Period, the flow of foreign funds shall be through special accounts established in the Bank of Sudan for areas outside Southern Sudan and for Southern Sudan in a commercial bank in Southern Sudan until the Bank of Southern Sudan is established and operational. For the Interim Period: (i) the flow of foreign funds for the National Fund will go through the CBOS; and (ii) for the Southern Fund, the foreign funds will be disbursed through a special account at the Bank of Southern Sudan designated for the Government of Southern Sudan; or through arrangements as specified in the MDTF.

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WEALTH SHARING

1.0 GUIDING PRINCIPLES IN RESPECT OF AN EQUITABLE SHARING OF COMMON WEALTH

- 1.1 The Parties agree that the guiding principles and provisions below shall be the basis for the comprehensive text on Wealth Sharing.
- 1.2 The wealth of Sudan shall be shared equitably so as to enable each level of government to discharge its legal and constitutional responsibilities and duties.
- 1.3 The National Government shall also fulfil its obligation to provide transfers to the Government of Southern Sudan.
- 1.4 The sharing and allocation of wealth emanating from the resources of the Sudan shall ensure that the quality of life, dignity and living conditions of all the citizens are promoted without discrimination on grounds of gender, race, religion, political affiliation, ethnicity, language, or region. The sharing and allocation of this wealth shall be based on the premise that all parts of Sudan are entitled to development.
- 1.5 The Parties agree that Southern Sudan faces serious needs to: (i) be able to perform basic government functions, (ii) build up the civil administration, and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan.
- 1.6 The Parties agree that Nuba Mountains, Southern Blue Nile, Abyei and other war affected areas face serious needs to: (i) be able to perform basic government functions, (ii) establish and build civil administration and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan.
- 1.7 That, without prejudice to the provisions of paragraph 1.3 herein, Southern Sudan, and those areas in need of construction/reconstruction, shall be brought up to the same average level of socio-economic and public services standard as the Northern states. To achieve these objectives will take time and effort to build up local institutional, human, and economic capacity. For this purpose, two special funds shall be established as provided herein.
- 1.8 That revenue sharing should reflect a commitment to devolution of power and decentralisation of decision-making in regard to development, service delivery and governance.
- 1.9 The development of infrastructure, human resources, sustainable economic development and the capacity to meet human needs shall be

conducted within a framework of transparent and accountable government.

- 1.10 That the best known practices in the sustainable utilization and control of natural resources shall be followed.
- 1.11 This Agreement sets out the respective types of income, revenue, taxes and other sources of wealth to which the various levels of government are entitled.
- 1.12 The Parties recognize that the National Government, during the Interim Period, will need to mobilize additional national resources.
- 1.13 There is a limit on how much additional national resources can be mobilized and part of the national needs in a post-conflict Sudan will have to be met by external assistance.
- 1.14 The National Government shall not withhold an allocation due to a state/region¹ or the Government of Southern Sudan. Any level of Government may initiate proceedings in the Constitutional Court should any other organ or level withhold monies due to it. The National Government shall make transfers to the Government of Southern Sudan based on the principles established.
- 1.15 In agreeing to these wealth sharing arrangements the Parties signal to the international community that it will have to play a strong and constructive role in providing post-conflict construction/reconstruction assistance to Sudan, especially to Southern Sudan and other war affected and least developed areas.
- 1.16 The National Government shall assist the Government of Southern Sudan, during the pre-Interim Period, in cooperation with international organizations, to develop and implement a program for capacity enhancement in the South. The highest priority should be public finance and intergovernmental relations, including expenditure management to ensure accountability.

2.0 OWNERSHIP OF LAND AND NATURAL RESOURCES

- 2.1 Without prejudice to the position of the Parties with respect to ownership of land and subterranean natural resources, including in Southern Sudan, this Agreement is not intended to address the ownership of those resources. The Parties agree to establish a process to resolve this issue.

¹ The issue of nomenclature will be resolved in the power sharing agreement.

- 2.2. The Parties agree that the regulation, management, and the process for the sharing of wealth from subterranean natural resources are addressed below.
- 2.3. The Parties record that the regulation of land tenure, usage and exercise of rights in land is to be a concurrent competency exercised at the appropriate levels of government.
- 2.4. Rights in land owned by the Government of Sudan shall be exercised through the appropriate or designated levels of Government.
- 2.5. The Parties agree that a process be instituted to progressively develop and amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices.
- 2.6. Without prejudice to the jurisdiction of courts, there shall be established a National Land Commission that shall have the following functions:
 - 2.6.1 Arbitrate between willing contending Parties on claims over land, and sort out such claims.
 - 2.6.2 The party or group making claims in respect of land may make a claim against the relevant government and/or other Parties interested in the land.
 - 2.6.3 The National Land Commission may at its discretion entertain such claims.
 - 2.6.4 The Parties to the arbitration shall be bound by the decision of the National Land Commission on mutual consent and upon registration of the award in a court of law.
 - 2.6.5 The National Land Commission shall apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agree, including principles of equity.
 - 2.6.6 Accept references on request from the relevant government, or in the process of resolving claims, and make recommendations to the appropriate levels of government concerning:
 - 2.6.6.1 Land reform policies;
 - 2.6.6.2 Recognition of customary land rights and/or law.
 - 2.6.7 Assess appropriate land compensation, which need not be limited

to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court.

- 2.6.8 Advise different levels of government on how to co-ordinate policies on national projects.
 - 2.6.9 Study and record land use practices in areas where natural resource exploitation occurs.
 - 2.6.10 The National Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the National Land Commission shall be set by the legislation constituting it. The Chairperson of the National Land Commission shall be appointed by the Presidency.
 - 2.6.11 The National Land Commission may conduct hearings and formulate its own rules of procedure.
 - 2.6.12 The National Land Commission will have its budget approved by the Presidency and will be accountable to the Presidency for the due performance of its functions.
- 2.7 In accordance with this Agreement and without prejudice to the jurisdiction of courts, there shall be established a Southern Sudan Land Commission which shall have the following functions:
- 2.7.1 Arbitrate between willing contending Parties on claims over land, and sort out such claims.
 - 2.7.2 The party or group making claims in respect of land may make a claim against the relevant government and/or other Parties interested in the land.
 - 2.7.3 The Southern Sudan Land Commission may entertain such claims at its discretion.
 - 2.7.4 The Parties to the arbitration shall be bound by the Southern Sudan Land Commission's decision on mutual consent and upon registration of the award in a court of law.
 - 2.7.5 The Southern Sudan Land Commission shall apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agree, including principles of equity.
 - 2.7.6 Accept references on request from the relevant government, or in

the process of resolving claims, and make recommendations to the appropriate levels of government concerning:

- 2.7.6.1 Land reform policies;
 - 2.7.6.2 Recognition of customary land rights and/or law.
 - 2.7.7 Assess appropriate land compensation, which need not be limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court.
 - 2.7.8 Advise different levels of government on how to co-ordinate policies on GOSS projects.
 - 2.7.9 Study and record land use practices in areas where natural resource exploitation occurs.
 - 2.7.10 The Southern Sudan Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the Southern Sudan Land Commission shall be set by the legislation constituting it. The Chairperson of the Southern Sudan Land Commission shall be appointed by the President of the Government of Southern Sudan.
 - 2.7.11 The Southern Sudan Land Commission may conduct hearings and formulate its own rules of procedure.
 - 2.7.12 The Southern Sudan Land Commission shall have its budget approved by the Government of Southern Sudan and shall be accountable to the President of the Government of Southern Sudan for the due performance of its functions.
- 2.8 The National Land Commission and the Southern Sudan Land Commission shall co-operate and co-ordinate their activities so as to use their resources efficiently. Without limiting the matters of coordination, the National Land Commission and the Southern Sudan Land Commission may agree:
- a) to exchange information and decisions of each Commission;
 - b) that certain functions of the National Land Commission, including collection of data and research, may be carried out through the Southern Sudan Land Commission;
 - c) on the way in which any conflict between the findings or recommendations of each Commission may be resolved.

2.9 In the case of conflict between the findings or recommendations of the National Land Commission and the Southern Sudan Land Commission, which cannot be resolved by agreement, the two Commissions shall reconcile their positions. Failure to reconcile, the matter shall be referred to the Constitutional Court.

3.0 OIL RESOURCES

A. Guiding Principles for the management and development of the petroleum sector

3.1 The Parties agree that the basis for an agreed and definitive framework for the management of the development of the petroleum sector during the Interim Period shall include the following:

3.1.1 Sustainable utilization of oil as a non-renewable natural resource consistent with:

- a) the national interest and the public good;
- b) the interest of the affected states/regions;
- c) the interests of the local population in affected areas;
- d) national environmental policies, biodiversity conservation guidelines, and cultural heritage protection principles.

3.1.2 Empowerment of the appropriate levels of government to develop and manage, in consultation with the relevant communities, the various stages of oil production within the overall framework for the management of petroleum development during the Interim Period.

3.1.3 Give due attention to enabling policy environment for the flow of foreign direct investment by reducing risks associated with uncertainties regarding the outcome of the referendum on self-determination at the end of the Interim Period.

3.1.4 A stable macroeconomic environment that emphasizes stability of the petroleum sector.

3.1.5 Persons enjoying rights in land shall be consulted and their views shall duly be taken into account in respect of decisions to develop subterranean natural resources from the area in which they have rights, and shall share in the benefits of that development.

- 3.1.6 Persons enjoying rights in land are entitled to compensation on just terms arising from acquisition or development of land for the extraction of subterranean natural resources from the area in respect of which they have rights.
- 3.1.7 The communities in whose areas development of subterranean natural resources occurs have the right to participate, through their respective states/regions, in the negotiation of contracts for the development of those resources.
- 3.1.8 Regardless of the contention over the ownership of land and associated natural resources, the Parties agree on a framework for the regulation and management of petroleum development in Sudan during the Interim Period.

B. National Petroleum Commission (NPC)

- 3.2 The Parties agree that an independent National Petroleum Commission (NPC) shall be established during the Pre-Interim Period and its decisions shall be by consensus.
- 3.3 Taking into account the provisions elsewhere in this Agreement, the NPC shall be constituted as follows:
 - a) The President of the Republic and President of the GOSS as Co-chairs and permanent members;
 - b) Four (4) permanent members representing the National Government;
 - c) Four (4) permanent members representing the GOSS; and
 - d) Not more than three (3) representatives of an oil producing State/Region in which petroleum development is being considered, non-permanent members.
- 3.4 The NPC shall have the following functions:
 - 3.4.1 Formulate public policies and guidelines in relation to the development and management of the petroleum sector consistent with paragraph 3.1.1.
 - 3.4.2 Monitor and assess the implementation of those policies to ensure that they work in the best interests of the people of Sudan.
 - 3.4.3 Develop strategies and programs for the petroleum sector.