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**REPORT OF THE CHAIRPERSON OF THE COMMISSION ON THE STATUS OF THE
NEGOTIATIONS BETWEEN THE REPUBLIC OF SUDAN AND THE REPUBLIC OF SOUTH SUDAN
ON THE OUTSTANDING ISSUES IN THEIR POST-SECESSION ARRANGEMENTS**

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I. INTRODUCTION

1. As Council would recall, in May 2010, the African Union High-Level Implementation Panel (AUHIP), which already had a mandate to assist the Sudanese Parties to implement all outstanding aspects of the Comprehensive Peace Agreement (CPA), was mandated by the Parties to facilitate their negotiations on post-referendum issues. The Parties agreed to negotiate on the basis of “nothing is agreed until everything is agreed”. The AUHIP has convened numerous rounds of negotiations in which the negotiating teams mandated by the Government of Sudan and the Government of the Republic of South Sudan have brought a number of issues to conclusion or maturity. Others, however, remain blocked, and in some cases require a presidential decision to move forward.

2. The present report is a follow up to the report I submitted to Council at its 301st meeting held on 30 November 2011 [PSC/PR/2.(CCCI)], during which it adopted a communique addressing, among others, the relations between Sudan and South Sudan. It covers the various aspects of the on-going negotiations between the two countries and concludes with observations on the way forward.

II. ECONOMIC AND OTHER RELATED ISSUES

(i) Oil, Transitional Financial Arrangements and Arrears

3. The Parties have had extensive discussions on oil issues. Before the secession of South Sudan on 9 July 2011, they agreed to the territorial ownership of assets, division of EPSAs (Exploration and Production Sharing Agreements) and separate marketing. However, they failed to reach agreement on a broader Transitional Financial Arrangements (TFAs) package, including pipeline access and security of supply.

4. Since then, the Panel has focused negotiations on this issue, which has come to be linked to the question of arrears (especially oil arrears) owed by either side. The Panel put forward a TFA package, in October 2011. This proposal was based on the principle that the fiscal gap experienced by Sudan in the aftermath of the secession of the South should be divided into three parts: one third would be covered by South Sudan through a TFA, another third would be addressed by austerity measures to be adopted by the Sudanese Government, and the AU would seek international support to cover the last third of the gap. The Government of Sudan objected to the Panel’s proposal. The Panel therefore suggested that possible interim arrangements be reached to secure the flow of oil, a proposal which was not accepted by the Government of South Sudan. The Panel also encouraged the avoidance of any unilateral action—this was refused by the Government of Sudan, which took action in December 2011 to seize oil it claimed it was owed in lieu of fees. The Government of South Sudan responded by shutting down oil operations in South Sudan in

January, a technically complex undertaking, given the properties of the oil blends found in South Sudan.

5. In January 2012, the Panel put forward a new proposal to avert a complete shut-down of Southern oil fields, including provisions for an immediate de-escalation of the situation and a draft final agreement as a basis for negotiation. These proposals were submitted to Presidents Omar Hassan Al-Bashir and Salva Kiir Mayardit, at a summit of Heads of State that was convened in Addis Ababa, on 27 January 2012. The proposals were accepted by the Government of Sudan, despite reservations relating to certain provisions. However, they did not enjoy the support of the Government of South Sudan.

6. The shutdown of South Sudan's oil fields is now complete, but both sides have agreed to continue talking. To date, all indications suggest that the shutdown was conducted safely, with no apparent damage to the environment. The process of identifying and assessing arrears claims is also ongoing. At the time of finalization of this report, discussions were under way in Addis Ababa to find a compromise on the issue of oil.

(ii) Currency, Banking and Trade

7. The Parties agreed in early 2011 that the Government of South Sudan, as an independent country, would launch its own currency. This was done soon after secession. There were also agreements to facilitate cross-border trade and payments. These have not yet moved forward, with trade sharply down from pre-secession levels, owing in part to the lack of correspondent banking arrangements (which are also affecting the payment of pensions to Southerners by the Government of Sudan). The Parties still need to settle a number of claims relating to their Central Bank balancesheet; and to put in place security, customs and banking mechanisms to allow the revival of cross-border trade. A first step was taken in January 2012, when the negotiation teams decided to set up a joint committee to deal with cross-border trade issues, and laid out membership and terms of reference.

(iii) Assets and Liabilities

8. Prior to 9 July, the Parties provisionally agreed a zero-option arrangement, whereby Sudan, as the predecessor state, would retain all external debts and assets. Territorial assets would go to the country in whose territory they fell. This has largely been implemented, although there are some outstanding claims and points of dispute, notably whether Sudapet shares are financial or territorial assets.

(iv) Water

9. The Parties have agreed to the principle of cooperation on water issues, and came quite close to a consensus on a draft framework agreement prior to 9 July 2011. The Panel recommends that they should use that text as a basis for further discussions at a technical level, possibly in the context of broader regional initiatives. No presidential action is required.

(v) *Transport and Communications*

10. The Parties agreed principles for the separation of, and cooperation regarding, civil aviation; road, rail and river transport; telephone and internet systems; and the post office. These have largely been implemented over a six-month transition period. No further action is required at present.

III. SECURITY ISSUES

11. On 29 June 2011, the Parties agreed to establish the Joint Political and Security Mechanism (JPSM), the first inter-state mechanism between Sudan and South Sudan, in which the two Parties are represented at the ministerial level. The JPSM provides oversight in the Safe Demilitarised Border Zone (SDBZ) along their common border, with an international support mission, utilizing the UN Interim Security Force for Abyei (UNISFA) for force protection and logistical support. UN Security Council resolution 2032 (2011), adopted on 22 December 2011, endorsed this arrangement.

12. The JPSM held its first meeting in Khartoum, on 18 September 2011. Thereafter, its operations ran into an impasse, the principal obstacle being the two Parties' failure to agree an administrative/security map for the border, which is needed as the basis for defining the deployment/ area of operations for the border-monitoring mission included in the UNISFA mandate. At the request of the Parties, the AUHIP produced a map with an administrative border-line for their consideration, which could be used by UNISFA for the deployment of the border-monitoring mission. It was made clear to both Parties that the map used for the deployment of the border monitoring mission would in no way prejudice the outcome of the final demarcation of the border and the resolution of the disputed areas. The inability of the JPSM to meet and the absence of a functional SDBZ created space for reciprocal allegations of destabilization or territorial violation, which could easily escalate.

13. The JPSM met in an extraordinary session in Addis Ababa, on 10 February 2012. On that occasion, and under the facilitation of the AUHIP, both Parties signed a Memorandum of Understanding (MoU) on Non-Aggression and Cooperation. The MoU includes a commitment by the two states to respect each other's sovereignty and territorial integrity, a commitment to non-interference in the internal affairs of the other state and the rejection of the use of force, as well as a commitment to equality and mutual benefit, and peaceful coexistence. In addition to the MoU, the two states also adopted a number of decisions on steps to reduce tension along their common border. They agreed to the immediate activation of the Joint Border Verification and Monitoring Mission (JBVMM), which would have the task of monitoring the Secure Demilitarized Border Zone (SDBZ) between the two countries and investigate any allegations of violation by the two states. The two states also agreed to the establishment of mechanisms and procedures to investigate allegations and counter-allegations against either state in areas beyond the border. Furthermore, they agreed that the next meeting of the JPSM would be held in Juba on 8 March 2012.

IV. POLITICAL ISSUES

(i) *Abyei*

14. In June 2011, the Parties agreed on an Interim Arrangement for Abyei, including the deployment of UNIFSA, the full withdrawal of Sudan Armed Forces (SAF) and Sudan People's Liberation Army (SPLA), the return of IDPs, and the establishment of a new Abyei Area Administration (AAA). Implementation of this Arrangement, including the full redeployment of SAF and SPLA forces and the establishment of the AAA, needs to be completed urgently. The deployment of UNISFA is almost complete, and the Force has established control over the security situation. The Abyei Joint Oversight Committee (AJOC), which has responsibility for security matters in Abyei, has met three times, once in Addis Ababa, on 18 September 2011, and twice in Abyei, on 13 December 2011 and on 18 and 19 January 2012. While the immediate threat of escalation in Abyei has abated, the dispute remains unresolved, and the humanitarian situation is also serious, as the displaced population was unable to return in time for the planting season. The Panel is ready to put forward its proposed Final Status Agreement on Abyei at the request of the Principals.

(ii) *Borders*

15. The Parties resumed negotiations on border issues in Addis Ababa in November 2011. The elements of the draft they are negotiating include: principles and institutions for managing the border, including the principles of a "soft border"; integrated border management approach; demarcation of the boundary; and a dispute resolution framework. During the November 2010 round, the Parties engaged in intensive discussions of a draft text, which includes these issues. Some differences remain, but none of these are insurmountable.

(iii) *Nationality*

16. Prior to 9 July 2011, the Parties agreed in principle that they would avoid statelessness, and guarantee freedoms to each other's citizens. At the time of finalizing this report, the AUHIP was facilitating negotiations between the two Parties on practical cooperation to help citizens to regularise their status and obtain relevant documentation before the end of the 9-month transition period, including through public information campaigns. The Parties have agreed to establish a permanent ministerial committee that would have responsibility and oversight over matters relating to the protection of their nationals in the other country. The Parties will continue their discussions on the Four Freedoms in this committee.

V. LEGAL ISSUES

17. The Parties agreed before 9 July on a number of issues related to treaty accession. They also agreed on the overall shape of a final agreement between Sudan and South Sudan, and how it would be ratified. There are some agreed texts that still await finalisation by the Legal Cluster. However, much of the Cluster's remaining work awaits agreements in

other areas, so that it can move forward with drafting, as well as agreeing on overall implementation and dispute resolution mechanisms.

VI. OBSERVATIONS

18. Clearly, the negotiation process between Sudan and South Sudan on their post-secession arrangements continues to experience very serious difficulties. At the same time, it is important not to lose sight of the progress made. Suffice to mention here the establishment of the JPSM, the June 2011 Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area and the MoU on Non-Aggression and Cooperation of 10 February 2012.

19. The challenge for the Parties is to build on this progress to overcome the remaining challenges. While the AU, through the AUHIP, will continue to assist the negotiation process, the primary responsibility of ensuring that the outstanding issues are swiftly resolved falls nevertheless on the leadership of Sudan and South Sudan. I would like to echo the call made by the Assembly of the Union at its 18th Ordinary Session, held in Addis Ababa, from 29 to 30 January 2012, on the two countries to immediately halt and reverse the unilateral actions they have taken regarding the issue of oil, which can only threaten their economic prospects and relations, and to extend full cooperation to the AUHIP in order to speedily reach agreement on all outstanding issues, in line with the agreed principle of two viable States, mutually supportive and in peace with one another.

20. Once again, I commend the AUHIP, including its support team, for its tireless work and outstanding commitment in helping Sudan and South Sudan overcome the challenges facing them. I express appreciation to IGAD and to its Chair, Ethiopia, for its sustained efforts and support to the AUHIP. I am also appreciative of the support that the AU multilateral and bilateral partners continue to extend to the AUHIP. I call on the international community at large to spare no efforts to assist in the successful completion of the negotiations and the peaceful resolution of all issues at hand, so as to contribute to the emergence of two viable States, mutually supportive and living side-by-side in peace.