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The Impact of the Comprehensive Peace Agreement and the New Government of National Unity on Southern Sudan

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Summary

The government of National Unity of Sudan, sworn in on September 22, 2005, was the result of the January 9, 2005, Comprehensive Peace Agreement (CPA) that brought to an end the bitter and brutal twenty-one-year war between the Sudanese government dominated by the National Congress Party (NCP), and the southern-based rebels, the Sudan People's Liberation Movement/Army (SPLM/A).

The CPA's exclusion of other parties made it much less than its "comprehensive" title promised. Many critics of the CPA charge that the failure to include other parties and armed groups, and the fact that the government would only negotiate with the SPLM/A after two decades of armed rebellion, caused marginalized people elsewhere in Sudan to take up arms as a means towards power sharing otherwise denied them by what, under the NCP, has been effectively a one-party state.

It has now been almost six months since the National Unity government, in which the SPLM shares, was installed in Sudan. It would seem that, so far, the National Unity government has not yet provided the hoped-for changes to Sudan's political life or its people. Certainly, the transformation that was supposed to take place at the national level through power sharing and reform of legislation has yet to occur.

As yet, this new government is still run by a single authoritarian narrowly-based Islamist party, the NCP, and has not become a new hybrid government in which marginalized Sudanese meaningfully participate and where equality among the country's 35 million people prevails (entailing, among other things, an end to the "ethnic cleansing" war policy in Darfur). Unless the situation is drastically improved by NCP actions, it appears doubtful that all Sudanese will have their human rights upheld in this new political arrangement, which includes a provision for countrywide internationally-monitored elections after three years.

The will of the NCP to make good on its promises in the CPA is particularly important since this peace agreement has been promoted by Sudanese government officials and international diplomats as the boilerplate solution for Darfur and all other Sudanese marginalized areas. Southerners obtained in the negotiations, however, a concession other parts of Sudan, Africa's largest country, have not yet sought: a referendum to be held in 2011 on southern self-determination whereby the region might become an independent country.

NCP power sharing with the SPLM has not resulted in a true partnership in national government between the former adversaries; the NCP is withholding crucial resources and revenues from the Southern Sudan regional government, and the only important ministry where a southerner has the top position, foreign affairs, has not shown any change of direction. The SPLM appears too tied down by managing the south's new autonomy to challenge for its full share of the national government partnership. The death in July 2005 of the SPLM's long-time leader Dr. John Garang left a large gap in the weight of the SPLM at the national level. Consequently, the envisaged legal reforms of the political system—reform of the political parties law, overhaul of the security agencies—have not taken place. As a result, human rights monitors and political opponents still are not able to operate freely, and the heavy hand of the security apparatus continues to impede free speech, free assembly, and free association.

The most successfully executed CPA provision involves the handing over of the southern government to the SPLM and other political parties. It is possible that Southern Sudan will develop at least a partially democratic regional government. Changes in the SPLM leadership following the death of Dr. John Garang led to a regional parliament and southern state assemblies that ordinary people in many southern states participated in selecting, although through mass gatherings rather than formal elections.

The southern regional government faces very difficult challenges, however, first of all financially. Under the CPA, Southern Sudan is supposed to receive half the oil revenue derived from southern oil fields. Most of the producing oilfields are in the south, yet it is receiving much less oil revenue than anticipated.

A second related problem facing the fledgling Southern Sudan government is paying for a large civil service. The southern bureaucracy is composed of the former NCP-named administrators of the garrison towns and the SPLM civil servants who ran the rebel-held areas, and it must be pared down for financial and efficiency reasons, as well as to bring in people trained in the systems the new government wants to erect. But any layoffs may inflame the chronic ethnic divisions that plague the south. Already there are complaints that the Southern Sudan government is not ethnically representative of the whole south, and that the largest ethnic group, the Dinka, dominates the new bureaucracies and ministries in Juba (the Southern Sudan regional capital), as well as the southern presence in government bodies in Khartoum.

A third factor is the impact the agreement has not had on NCP support of ethnic militias in Southern Sudan. Some southern anti-SPLA ethnic militias on the government

payroll have elected to join the national, not the SPLA-controlled southern regional army, where they remain potential tools of NCP-agitated ethnic violence. Attacks by the northern Ugandan rebel group, the Lord's Resistance Army (LRA), continue to destabilize the region around Juba. Although the NCP claims it does not support the LRA, it is apparent that some elements in its military and security apparatuses still do—and under the CPA these government forces do not have to be withdrawn from Juba until mid-2007.

Finally, a huge human rights challenge to southern government and society remains the status and rights of women. Although many constitutional and legislative provisions bar discrimination, there is a legacy of customary law in many parts of the south that denies women such rights as choice of their marriage partner and control of property. An edifice of culture has been erected over the centuries that assumes unequal treatment of women. Unraveling this so that women can become full participants will require great skill, sensitivity and cooperation.

Aside from these thorny regional questions, it is too early to determine whether the CPA will be successful in transforming Sudan's political landscape nationally into a level playing field where even marginalized people such as in Darfur can participate. The government's performance under the CPA, however, does not bode well for making it a template or model for the resolution of the conflict in Darfur—not that the template is inherently faulty, but the NCP has already proven its will and skill at defying and circumventing the CPA. The intention of the NCP government to truly and once and for all end its armed conflicts with its own citizens and live in a shared peace has not yet been demonstrated.

Background

Southern Sudan is an area comprised of the country's ten southernmost states, a region bordering Ethiopia, Kenya, Uganda, the Democratic Republic of Congo, and the Central African Republic. Southern Sudan's population is almost all African and non-Muslim. The south fought for independence from the northern-dominated central government from the time that Sudan gained independence in 1956, until it was granted regional autonomy in 1972. When that autonomy was revoked in 1983, war was re-ignited in the south.

The twenty-one-year war waged by the SPLM/A against the Sudanese government from 1983 was settled, after almost three years of peace negotiations, by the signing of the Comprehensive Peace Agreement on January 9, 2005.

For the past sixteen years Sudan has been ruled as a one-party state by the National Congress Party, the party of the military-Islamist junta that seized power from an elected government in a 1989 coup.¹ It banned all political parties, trade unions, independent press and other democratic institutions immediately, and in the early 1990s it steadily purged the bureaucracies and the judiciary of “secularists” and people loyal to other political parties.

Sudan also struggles with a legacy of slavery and related racism. Although the majority of the ethnically diverse country is African, and only 40 percent of the total population of Sudan identifies itself as Arab, the dominant culture of Sudan has traditionally been Arab, its official language Arabic, and Arabs have had political control. Islam has spread slowly among Africans in Sudan, and its adherents are 70 percent of Sudan’s total population.² The fabled Sudanese tolerance of other religions—perhaps 5 to 10 percent of Sudanese are Christian and the remaining 20 to 25 percent follow traditional African religions—was replaced by a proselytizing form of Islamism at the political level when Islamists captured the government in 1989.³

The CPA aims to make citizenship, not religion or ethnic origin, the basis for rights in Sudan, responding in part to SPLM demands for an end to marginalization and discrimination. Nevertheless, the CPA’s exclusion of other parties, most prominently the southern-based political parties and southern ethnic militias backed by Khartoum, the Darfur rebels, the eastern Beja Congress and Rashaida dissidents, as well as the multiplicity of other political parties at home and in exile, made it much less than its “comprehensive” title promised.

The CPA introduced a six-year interim constitution for Sudan, which was prepared and ratified by the national legislature and entered into force in mid-2005. Power sharing between the NCP and the SPLM was elaborately negotiated. The NCP kept the presidency, pending elections to national, regional, state, and local bodies which were initially set by the CPA for three years hence (incumbent President Omar El Bashir consequently remained in office). The NCP was assigned majority representation—52

¹ What is now known as the National Congress Party was introduced to Sudan from Egypt after World War II, when it was known as the Muslim Brothers. In successive name changes it was known as the Islamic Charter Front and the National Islamist Front before adopting the present name.

² The last census containing this information was in 1983; a new census is now underway, pursuant to the CPA. Under the 1983 census, half the Africans in Sudan are Muslims. The Sudanese Muslim population is 57 percent Arab and 43 percent African. In Darfur, Africans as well as Arabs are Muslims. It is in the south where the largest non-Muslim population resides, where perhaps only 5 percent of the population is Muslim.

³ One of the issues in Darfur is Arabism, because the conflict there has been fomented in part by a desire of some “Arab” landless nomads to capture land from the settled non-Arab (African) population, though both are Muslims.

percent—in the legislative and executive branches at the national level, and 90 percent representation in those branches at the level of the sixteen non-southern states. The CPA gave the SPLM 28 percent representation in the national assembly and southerners 20 percent representation in the executive branch, including the office of the First Vice President and several positions of ministers and state ministers. It confers substantial powers on the First Vice President to veto or be consulted on an array of issues.

The initial power sharing between the NCP and SPLM is tempered by a minority role for other political parties, but representatives of other parties in the National Assembly noted immediately the implications of the NCP-SPLM “super majority,” particularly in any parliamentary vote requiring two-thirds support: the minor parties would never be able to overcome a solid block vote by the NCP and SPLM, who together control 80 percent of the assembly. Furthermore, the NCP and SPLM have already agreed that the nationwide elections at all levels will take place in four rather than three years from signing of the CPA, in 2009.

In July 2005 Dr. John Garang, the leader of the SPLM/A since 1983, became the first person to hold the office of First Vice President in the National Unity government, and was seen by many as a likely candidate for president of Sudan in the elections of 2009. However, Garang died in a helicopter crash on July 30, 2005, and was succeeded by his number two in the SPLM/A, Salva Kiir Mayardit, on August 7.

The CPA gave autonomy to Southern Sudan, under its own six-year interim constitution prepared and ratified by a new regional assembly. The power-sharing arrangement established an autonomous southern regional government in which the SPLM would have 70 percent representation in the regional assembly (and therefore control) and in executive offices; the NCP would have 10 percent. Other southern political forces occupy the balance of seats in the regional assembly.

There is to be a referendum for southern self-determination six-and-a-half years from the signing of the CPA, in July 2011, at which time southerners may elect to become an independent state or remain united with Sudan (although the date for southern legislative and executive elections was changed by the parties from three years to four years after the CPA signing, the date for the southern self-determination referendum remains 2011). The trade-off in the negotiations for the right to southern self-determination was the retention of *shari’a* (Islamic law) as the law of the land outside Southern Sudan. Many in the NCP remain unhappy with that compromise, however, as do some other northern political parties.

The purpose of a six-and-a-half year waiting period between the CPA and the self-determination referendum is to allow time for the central government to “make unity attractive” to southern voters through power-sharing, wealth-sharing and other measures. The southern grievance that it has been economically marginalized was addressed in the CPA by wealth sharing, whereby half of the oil revenue produced from southern oilfields is to go to the regional autonomous Southern Sudanese government, among other initiatives. That sharing of billions of dollars in oil revenue, plus an increase in development aid to Southern Sudan, was intended to illustrate the benefits of remaining one nation.

Compliance of the National Congress Party with CPA Articles on Power and Wealth Sharing

Overall, key commissions agreed to in the CPA have not been established: the National Human Rights Commission, the Civil Service Commission, and the National Electoral Commission, among others. The Commission for the Rights of non-Muslims in the National Capitol has been announced, but not set up.⁴

The SPLM and Power Sharing at the National Level

At the national level, the CPA designated three clusters of ministries (sovereignty, economic sector, and services sector). The SPLM was to share “equitably and qualitatively” in each cluster to ensure that southerners were not handed the least influential and least sought-after ministries, far from the center of power, as has happened in the past—characteristically, southerners in government were appointed to head ministries such as Wildlife and Tourism, Animal Resources, and Transportation.

The SPLM was to receive 28 percent of executive branch positions, but the parties had an unwritten understanding that the SPLM would receive either the finance or energy ministry, the two most important ministries in the economic cluster. It received neither. Nor did it receive the top ministries, such as defense, interior and justice, in other clusters. The most important ministry in all three clusters the SPLM received was the foreign ministry, but although a former southern rebel heads this ministry,⁵ neither he nor the SPLM controls it: the former bureaucracy is almost entirely still in place.

⁴ “Human Development: The CPA Monitor (1),” *Sudan Vision Daily*, February 20, 2006, [online] <http://www.sudanvisiondaily.com/modules.php?name=News&file=article&sid=10906>.

⁵ Dr. Lam Akol Ajawin, appointed foreign minister in the National Unity government in 2005, left the SPLM as a leader of the 1991 split in the movement, and returned to the SPLM only in 2004. In the interim he held various Sudanese government positions. He has authored two books on these events.

Southerners were keen on controlling the energy ministry because it is the key to their revenue, but the NCP refused to relinquish it. First Vice President Salva Kiir claims that he sought to convince President El Bashir that permitting the SPLM to appoint the energy minister would greatly help “make unity attractive” and make it less likely that southerners would vote for separation in the referendum. Salva Kiir claims that Bashir replied, however, that the southerners were going to vote for separation whether or not they had the energy ministry.⁶

This allegation, if true, is a worrying indication of the thinking in the NCP, and flies in the face of the main objective of the long period prior to the southern self-determination referendum. If the NCP is convinced that southerners will vote for separation regardless, then it is much less likely to provide resources to help develop the south or otherwise facilitate southern integration into the national government in the interim period. Others say that this statement, and the actions of the NCP in denying the south a large portion of the oil revenue (see below), suggest that the NCP party intends to use its majority in government to extract as much wealth as it can from the south prior to the referendum.⁷

Salva Kiir, who faced his first storm of protest from southerners over his decision not to fight for the energy ministry, defended the decision by referring to the majority southerners would hold in the National Petroleum Commission.⁸ He also maintained that the SPLM would be able to monitor the quantity of oil being produced in the south, which would prevent trickery with the sharing of the oil wealth.⁹ The National Petroleum Commission, which is to develop strategies and programs for the petroleum sector and negotiate and approve all oil exploration and development contracts, was not formed until the eve of Salva Kiir’s October visit to the United States—when it was already several months late because of NCP neglect (see below).¹⁰

At present a number of factors are hindering the SPLM’s ability to seek full participation as a partner in the national political agenda, with which it should be engaged as a partner in national government. These include factors that tie its attention overwhelmingly to Southern Sudan, such as the challenge of building a functioning administration in the face of unforeseen financial constraints and the need to balance various group interests, and ongoing security problems. These are explored in succeeding sections of this report.

⁶ Speech, Salva Kiir, Woodrow Wilson International Center, Washington, D.C., November 4, 2005.

⁷ Confidential comments, Sudan expert, Washington, D.C., November 6, 2005.

⁸ Speech, Salva Kiir, American University, Washington, D.C., November 6, 2005.

⁹ Ibid.

¹⁰ Joint Statement, November 1, 2005.

Also outlined below are some of the negative consequences of the SPLM's lack of engagement or traction within a national government agenda evidently affected by NCP recalcitrance, notably the failure to enact security service reform, and to bring modified government positions to the negotiations with the rebels in Darfur.

One provision in the CPA for greater participation in government in Sudan—which applies to Darfur as well as the south and the rest of the country—is for national, regional, state, and local elections, following the first national census since 1983. Although, as noted above, the election date has been postponed from 2008 to 2009 by agreement of the NCP and SPLM, these nevertheless are to be the first internationally-monitored elections ever to take place in Sudan. Hopes are high that the elections will be an important step on the road to democracy in Sudan. One well-placed international observer claims that the NCP will not win the elections and neither will the SPLM.¹¹ If these parties are also of that opinion, then considerable international pressure will have to be sustained to make sure that the elections occur and are indeed free and fair.

The Autonomous Regional Government in Southern Sudan

One of the most successfully executed aspects of the CPA appears to be putting the regional government of the south into southern ex-rebel hands and having NCP-appointed personnel in the south recognize the superior authority of the SPLM civilian authorities. Former rebels and their supporters from the diaspora have established residence in Juba and taken up work in government offices there: they are clearly in charge. Not only the SPLM is present: several other southern political parties are represented in the Southern Sudan Parliament pursuant to the CPA.¹²

According to residents, since the SPLM's official appearance in Juba in May 2005, the previous climate of repression of southern culture, religion and everyday life in Juba has loosened. A curfew was lifted and people could move more freely about the town. Security and military intelligence are invisible for the time being, and gatherings of citizens, spontaneous or planned, take place without restrictions.¹³ The transition of power away from the NCP military is not complete, however: not until mid-2007 must all the northern troops be withdrawn from the entire south. A major garrison remains in Juba, for instance, and although it is low profile it can readily be reactivated from Khartoum.

¹¹ Human Rights Watch interview, identity withheld, Washington, D.C., January 2006.

¹² Human Rights Watch interviews with parliamentarians in Southern Sudan regional assembly, Juba, Sudan, October 2005.

¹³ Human Rights Watch interviews, Juba, October 1-4, 2005.

Under the power-sharing agreement, the NCP has the right to one of the ten governorships of the southern states. It chose the state of Upper Nile (capital Malakal), where there is great oil potential (blocks 3 and 7) and where Chinese companies have been building a second pipeline to export oil from the south. Insecurity and a lack of civilian protection prevails in that state because many government-sponsored ethnic militias of southern origin are still in place and claiming control over their areas, to the exclusion of the SPLM. The largest of them, the militia headed by Brig. Gen. Gordon Kong, chose in January 2006 to be incorporated into the Khartoum government forces, rejecting the agreement reached by Brig. Gen. Paulino Matiep of Western Upper Nile for the entire militia (South Sudan Defence Forces, SSDF) to be incorporated into the Southern Sudan army, the successor under the CPA of the SPLM's armed wing, the SPLA.¹⁴

In Southern Sudan the regional government is forging ahead of the northern states and region in participatory democratic practices. As Southern Sudan's President (and national First Vice President) Salva Kiir directed shortly after his August 11, 2005 inauguration in Juba, the representatives for the southern regional and state assemblies (and even the national assembly) were to be chosen by means of local consultations. The intention was to draw in hundreds of people in each location to participate in choosing their representatives from the candidates—local men (and a few women)—who put themselves forward to their communities. On short notice and with little formality, this experiment went well, although it was limited in scope. It reflected the customary participation of men in southern community decision-making that even the war could not entirely destroy.¹⁵ Anthropologists have long noted that some southern ethnic groups, particularly the Dinka and Nuer (who together are probably the majority in Southern Sudan), are in practice democratic to an extreme, resisting political hierarchies and insisting that one man is equal to another (issues of women's equality and women's rights in Southern Sudan are discussed in a separate section of this report, below).¹⁶

This has not been a perfect process of selection, however—even if women had been appropriately represented, as they were not. Citizens in the Bentiu area of Western Upper Nile claim that the person appointed governor, Taban Deng Gai (a relative of Southern Sudan's Vice President Riek Machar Teny Dhurgon—see below—and former governor of Western Upper Nile in 1999) was not the person actually selected by those

¹⁴ See UNMIS, "CPA Monitor," Khartoum, January 2006, [online] <http://www.unmis.org/common/documents/cpa-monitor/New%20CPA%20Monitor%20Report%20Feb%202006.pdf>.

¹⁵ Human Rights Watch interviews, Nairobi, Kenya, October 2005.

¹⁶ See generally Evans-Pritchard, E.E., *The Nuer: A description of the modes of livelihood and political institutions of a Nilotic people* (Oxford: Oxford University Press, 1969).

who participated in the gatherings, and that Brig. Gen. Paulino Matiep was influential in the appointment of his followers to government positions.¹⁷

If this was the case, this influence by Paulino Matiep foreshadowed his finalization of the agreement, mentioned above, whereby his rather important militia was incorporated into the new Southern Sudan Army in January 2006. Because of the political importance of persuading militia leaders to join the nascent southern regional government, and thus bring real peace to the area, this kind of deal may well have overridden the vote of those present and voting. Part of the deal, according to its opponents, was to have Governor Taban Deng appoint Paulino Matiep's relatives to public office. Several of these appointees, however, are members of the NCP, potentially giving the NCP more people in this state government than was agreed upon under the CPA.¹⁸

On the whole, however, the broadened participation in selection of officials was an encouraging indication to southerners of the intentions of the new southern government to encourage popular participation in government.

The Southern Sudan Government and Wealth Sharing

Wealth sharing is an important aspect of the CPA for Southern Sudan: without income, no government can function or succeed. Southern Sudan will be dependent on its natural resources, particularly the oil revenue that is already on-line, for the foreseeable future to finance its governmental functions. Yet it is not receiving its full share of its oil revenue from the NCP-controlled ministry of energy. The south badly needs the promised oil revenue to build the rule of law, including a new police force, judiciary, and an honest and efficient bureaucracy. Depriving the southern government of anticipated revenues will gravely restrict that government's ability to deliver on its promises, and will seriously hurt its viability as a government.

The Joint Assessment Mission in March 2005 estimated, based on the government budget, that half of the oil revenue derived from Southern Sudan to be allocated under the CPA to the regional Southern Sudan government would amount to U.S.\$1.2 billion for the year 2005 (more than U.S.\$2 billion total revenue)—with other reports suggesting that 2005 oil revenue to Southern Sudan might come in at the lower amount of U.S.\$700,000.¹⁹ The \$1.2 billion was budgeted for accordingly, but the NCP-

¹⁷ For background on these individuals and issues see Human Rights Watch, *Sudan, Oil, and Human Right* (Human Rights Watch: New York, 2003).

¹⁸ Confidential source, November 2005.

¹⁹ UNMIS, "CPA Monitor," January 2006. The Joint Assessment Mission included representatives of the NCP and SPLM and its objective was to project needs and revenue for the first year of the CPA.

appointed finance minister reported at the beginning of February 2006 that total oil revenue was \$744.8 million²⁰—of which less than half was due to the Southern Sudan government. The shortfall on the amount initially projected is especially notable since oil prices rose in 2005.²¹ Although the total amount transferred by the central government to the Southern Sudan government was not disclosed, reports indicate that the oil revenue transfer to that government will not exceed U.S.\$ 400,000—one-third of what was expected.²²

The discrepancy arises mainly from the NCP's claim that the valuable Heglig oilfield lies outside the south, while the southern government claims otherwise.²³ Resolution of this issue has been held back by delays in establishing the Border and National Petroleum Commissions, which should determine where the boundaries of the south are located and what share of oil is produced in Southern Sudan. The parties agreed that the boundary is to be that drawn by the British prior to decolonization in 1956, but they have never agreed on where that 1956 boundary is or on which side of it Heglig falls. Heglig is part of concession blocks 1, 2 and 4 that the Canadian company Talisman Energy, Inc. controversially developed from 1998 until 2003, when it sold its consortium interest to the Indian state oil company, Oil and Natural Gas Corporation (ONGC). The Chinese National Petroleum Company, Petronas (the Malaysian state oil company) and Sudapet (the Sudanese government's oil company) remain partners in this consortium.²⁴

These two commissions, and the equally vital Assessment and Evaluation Commission,²⁵ were not even nominally established until the eve of the visits of U.S. Deputy Secretary of State Robert Zoellick to Khartoum followed by that of First Vice President Salva Kiir to the United States (both in October 2005). The delay in getting these commissions up and running has been crippling for the south—without them, there has been no mechanism to adjudicate the status of the oil revenue sharing.

²⁰ "GOSS Receives (\$7024) in Oil Revenues up to Last December,"

Sudan Vision Online (Khartoum), quoting Ministry of Finance, February 2, 2006, [online] <http://www.sudanvisiondaily.com/modules.php?name=News&file=article&sid=10514>.

²¹ Speech, Salva Kiir, Woodrow Wilson International Center, Washington, D.C., November 4, 2005

²² UNMIS, "CPA Monitor," January 2006.

²³ This translates into the NCP claiming that only 74 percent of the oil revenue for the entire country is traceable to the south, whereas southerners maintain that 98 percent of the oil revenue comes from the south. Human Rights Watch interview with financial expert (identity withheld), Nairobi, October 8, 2005.

²⁴ See Human Rights Watch, *Sudan, Oil, and Human Rights*. This disagreement over the border between north and south predates the NCP government. As soon as oil was discovered in the south, in 1978 during the autonomy period, southerners witnessed several attempts to redraw the border by the central government. Ibid.

²⁵ See "Joint Statement of the Deputy Secretary of State Robert B. Zoellick With the First Vice President of the Government of National Unity of Sudan Salva Kiir After Their Meeting," Office of the Spokesman of the U.S. Department of State, Washington, D.C., November 1, 2005. The all-important Assessment and Evaluation Commission, intended to monitor the implementation of the CPA, was also created on October 30 but its head, Amb. Tom Vraalsen of Norway, was not appointed until November 14.

The timing of the establishment of the commissions illustrates the tremendous influence the United States continues to wield, and demonstrates the need for continued U.S. pressure for full and timely implementation of the CPA throughout the six-and-a-half year interim period.²⁶ It is by no means certain that Khartoum will accept what the commissions determine, without further pressure. The example of the work of another commission is revealing. The Abyei Boundaries Commission (ABC) was the first of the commissions agreed in the CPA (a special protocol was signed on Abyei, an area in Kordofan where the SPLA had a military presence) to complete its work. The ABC's July 2005 decision recognizing substantial land rights of the Ngok Dinka in the Abyei area was rejected by the Khartoum government, although under the protocol the decision of the ABC was to have been "final and binding" on the parties.²⁷ This solution was arrived at when the entire negotiations were about to stalemate over Abyei. The protocol postponed the day of reckoning.

The Abyei issue is emotive on both sides: Abyei was "ethnically cleansed" of Ngok Dinka (southerners) preceding the 1983 outbreak of the second southern war, and many of its inhabitants dispersed to Khartoum and Bahr El Ghazal.²⁸ Many Misseriya, Arab cattle nomads of western Kordofan, now regard Abyei as a "Misseriya town,"²⁹ although they do not actually live there. Their grazing rights but not their primacy now are recognized and protected by the ABC.

Pro-Khartoum militias have built up in Abyei, and formerly displaced Ngok Dinka have not successfully returned in any numbers to reestablish their homes; armed forces from both sides are present. Even before protests arose from the Misseriya, Khartoum announced that the ABC had "exceeded its mandate."³⁰ President El Bashir asked the SPLM to "reconsider" the decision of the ABC—in effect, to renegotiate this most difficult issue. Salva Kiir refused, insisting on keeping to the letter of what the parties had already agreed to. This NCP attempt to renegotiate findings not to its liking is not an encouraging precedent for the Border Commission or for any other commission whose determination is to be "final and binding" on the parties.

²⁶ Ibid. See also "Sudan establishes petroleum and evaluation commissions," *Al-Ayyam* (Khartoum) and *Al-Hayat* (London), October 31, 2005; and Office of U.N. Resident and Humanitarian Co-ordinator for the Sudan, Daily Press Review, October 31, 2005.

²⁷ The report of the Abyei Boundary Commission (ABC) was presented to the government and the SPLM on July 15, 2005. Human Rights Watch interviews with members of the ABC, Washington, D.C., August and November 2005; See also USIP Briefing Paper, "Resolving the Boundary Dispute in Sudan's Abyei Region," *USIP*, Washington DC, October 2005, [online] http://www.usip.org/newsmedia/releases/2005/1026_sudan.html.

²⁸ Human Rights Watch interview with displaced person from Abyei (identity withheld), Wunrok, Bahr El Ghazal, Sudan, May 1998.

²⁹ Human Rights Watch interview with Mubarak El Fadl El Mahdi, Kampala, Uganda, July 1999.

³⁰ Human Rights Watch interview with researcher (identity withheld), August, 2005.

The NCP's refusal of the energy ministry to the SPLM and its perceived withholding of and lack of transparency on the oil money from Southern Sudan are major acts of bad faith on its part. The southern government has no other readily available income: pledges from donors are not always readily forthcoming and other sources of revenue, such as taxes and customs, will need money and time to set up and administer. Moreover, donors may be hesitant to pour money into an oil-rich region without seeing some of the oil revenue assigned to building the government and social services.

Among many other pressing needs that are impacted by Southern Sudan's financial problems are those related to human rights: Southern Sudan has to hire and train a police force almost entirely from scratch, reestablish the courts, improve the judicial administration, and create an honest and efficient bureaucracy to assure that the rule of law, including a plethora of new statutes enacted by its new assembly, is respected.

The CPA and Implications for Human Rights Throughout Sudan

In the CPA, the NCP and SPLM committed all levels of government to respect Sudan's human rights obligations.³¹ A key requirement for enjoyment of human rights is the thorough reform of the various security services and ensuring that they operate within the rule of law as set out in the CPA, which provides for the creation of a new National Security Act and a National Security Council.³² These vital steps, however, have not been taken.³³

The continuing repressive role of the security services and military has been especially evident in Darfur, where attacks on villages resulting in civilian casualties, sexual abuse of women and girls, arrests of members of the "suspected" ethnic groups, and "ethnic cleansing" continue to occur, as amply documented by the ceasefire monitors of the African Union Ceasefire Monitoring Commission and many others.³⁴

³¹ The CPA states in Chapter 11 on Power Sharing that "The Republic of the Sudan, including all levels of Government throughout the country, shall comply fully with its obligations under the international human rights treaties to which it is or becomes a party. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Slavery Convention of 1926, as amended, and the related Supplementary Convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention Against Apartheid in Sports, the Convention Relating to the Status of Refugees and the Related Protocol, and the African Charter on Human and People's Rights. The Republic of the Sudan should endeavor to ratify other human rights treaties which it has signed." [online] <http://www.iss.co.za/AF/profiles/Sudan/Darfur/compax>, Chapter II (power sharing).

³² Confidential document, "Implementation Report," October 22, 2005.

³³ UNMIS, "CPA Monitor," Khartoum, January 2006.

³⁴ See Human Rights Watch, "Entrenching Impunity: Government Responsibility for International Crimes in Darfur," *A Human Rights Watch Report*, Vol. 17, No. 17 (A), December 2005, [online] <http://hrw.org/reports/2005/darfur1205/>.

Civil and Political Rights

Political parties are beginning to test the limits of the commitments in the CPA for respect for human rights, and the SPLM has opened political party offices in certain northern cities. However, the political climate is nowhere near the open atmosphere that is needed for a genuine multiparty political system with respect for human rights. No progress has been made in drafting or passing the CPA-promised Political Parties Act or the National Security Act.³⁵

During the year since the CPA was signed, security agencies continue to play the lead role in preventing opposition to the NCP from developing. They persist in attacking and dispersing demonstrators and political gatherings, monitoring and arbitrarily arresting opposition suspects, conducting searches and seizures of opposition property, intimidating journalists and editors, and a range of other activities. The political class in Sudan—which ranges from Islamists critical of the government (Ansar al-Sunna and the Popular Congress Party of Dr. Hassan al Turabi) to secular democrats (including many southern parties) to sect-based parties (the largest political parties have been the Umma and Democratic Unionist Parties) to regional parties (Union of Southern African Parties and Sudan National Party) and many others (including the Sudan Communist Party)—is capable of a high level of activity if it is not hemmed in by fear of the torture and repression used by the NCP-controlled security services since 1989 up to the present day.

Security (Internal and External Security) and military services (particularly military intelligence) have continued to play a role in suppressing other civil and political rights and perpetrating abuses. Among other places, this has been seen in Port Sudan, eastern Sudan, where they were responsible for killing more than twenty people, injuring scores and arresting more in demonstrations on January 29, 2005.³⁶ In northern Sudan they attempted to replace locally-elected representatives through arrests, and called out the armed forces against local farmers who opposed the wholesale confiscation of land and wells for the (Chinese) construction of the Hamadab/Meroe dam in November-December 2005.³⁷

³⁵ UNMIS, "CPA Monitor," Khartoum, January 2006.

³⁶ Amnesty International, "Sudan: Those responsible for indiscriminate Port Sudan killings must be brought to justice," AFR 54/014/2005, London, January 31, 2005.

³⁷ See International Rivers Network, "Urgent Call for a Negotiated Agreement to End the Violence in the Merowe/Hamadab Dam-Affected Areas," November 30, 2005, [online] <http://www.irn.org/programs/merowe/index.php?id=051130appeal.html>.

Ending Impunity

The thorough reform of the military and security services should be underlined by prosecutions of the worst offenders—which the CPA does not specifically require. Although the CPA does not provide for a truth commission or establish a special mechanism to prosecute abuses committed during the southern war or elsewhere in Sudan, it does not prevent the government from establishing these institutions. Nor does it bar prosecutions of individuals by the existing criminal courts. The authorities should proceed with prosecutions not only of army and security forces abuses in the south during the war, but also of torture throughout the country committed by security agencies.

The National Security Act has not been drafted and the National Judicial Service Commission Act is inconsistent with the provisions of the interim national and southern constitutions in that it incorrectly provides that the president will name all the members of the judiciary, even in Southern Sudan.³⁸

Human Rights in Southern Sudan

Rule of Law

Implementation of the CPA is occurring in a difficult human rights context in Southern Sudan. As noted above, the CPA does not provide accountability for the gross abuses and war crimes that were committed during the more than two decades of war, in which an estimated two million died and four million were forcibly displaced.³⁹

The SPLM did not advocate any accountability provisions, perhaps in part because other southern rebel factions accused not just government forces but the SPLA of committing abuses against southerners. CPA mediators have said that during the negotiations the Sudanese government and the SPLM wanted to grant themselves and each other amnesty, but were persuaded against it.⁴⁰

Southern Sudan faces a difficult task in establishing the rule of law, after more than two decades of war and with no tradition of respect for fundamental rights as articulated in international human rights and humanitarian law. The SPLM/A leader, Dr. John Garang, consistently downplayed the need for human rights respect by his troops, while

³⁸ UNMIS, “CPA Monitor,” Khartoum, January 2006.

³⁹ A commission was to be set up to look into the issue of compensation for lost property, but no guidelines were provided.

⁴⁰ Human Rights Watch interview with U.S. State Department sources, Washington, D.C., September 2003.

claiming that southerners were victims of genocide at government hands. The establishment of proper modern institutions in Southern Sudan will be a long and complicated process.

The interim national and Southern Sudan constitutions both enshrine a number of internationally recognized human rights norms. But there is significant lack of capable Sudanese judges and lawyers, particularly in the southern system, to ensure that these constitutional and international rights are respected. Encouraging trained lawyers from the diaspora to return is essential, but many are hesitant to return to Southern Sudan, an area with few functioning institutions and a scarcity of social services, especially educational services. Access to education for their children is very important to educated southerners currently in the diaspora and in Khartoum.⁴¹

In addition, there is a paucity of jurisprudence from which to work, and many southern communities still rely on traditional forms of justice, administered by tribal chiefs. Elements of customary law, such as the Nilotic system of dowry, often clash with modern legal norms regarding women's and children's rights. The southern educated elite is willing to contemplate changes for the most part, but the task of overhauling a dowry system in which all Nilotic families, especially men, have strong economic interests will take more than willingness on the part of the educated elite, as this will require significant political, community educational and other action.

Equally challenging will be ensuring timely and effective justice through the courts, because of the lack of police and the absence of training for the new cadres. The capacity of the Southern Sudanese government for conducting investigations, handling suspected criminals, and providing public security is extremely limited. Human Rights Watch gathered information on several cases that are indicative of how the rule of law functions in Rumbek and nearby areas in Bahr El Ghazal (Rumbek was the capital of the SPLM for several years and was for a time the place where international and other agencies had their southern headquarters).

Problems arise typically in the context of cattle clashes, traffic deaths, and dowry in the Rumbek area; in these respects, there is no "typical" southern practice although Nilotic-speakers usually share similar practices and customs regarding cattle and marriage. When there have been ethnic clashes between two sections or clans of Dinka arising from an argument over cattle in the Rumbek area, the risk of violence escalates. At times, the police may be able to contain the situation when the first incident or two occurs. If not,

⁴¹ Salva Kiir acknowledged the importance of schools to returnees at a gathering of mostly Southern Sudanese in Washington, D.C., November 6, 2005.

the revenge clashes may escalate to the point where they cannot be controlled by the police because large numbers of armed civilians (not in the SPLA) may join in and the police lack the capacity and numbers to respond effectively. According to the police commissioner in Rumbek, regarding a then on-going dispute over cattle between the Agar Dinka of Rumbek and the Atwot Dinka of east Rumbek in 2005:

These people are well armed, so no arrests could be made. The police have to join [with] the army [SPLA] to make arrests and one of the army majors was killed when they tried to separate them [Agar and Atwot Dinka]. The police cannot be police unless they have facilities, uniforms, arms, communications and training. Accountability can be difficult without these.⁴²

It took Dr. John Garang and the SPLA to intervene to settle this dispute. While several killings occurred during the clashes, those responsible were apparently not held to account.⁴³

Another case involved a Ugandan driver who accidentally killed a pedestrian in a car accident in Rumbek: death by mob violence in Rumbek is the too-frequent punishment for drivers in such accidents, and this was no exception. The driver was arrested and brought to police headquarters (for his safety), but at night the family of the dead man went to the police station, overpowered the police on duty, and killed the driver immediately. A police official told Human Rights Watch:

A lot of people came at night to the police headquarters with guns. Only a few police were on night duty. The police told them that [the driver] was in the main prison, but the crowd rushed in, took the driver and shot him. Police were also injured and some looting took place.⁴⁴

The leader of the revenge killing was apparently arrested, tried and convicted, but he was released after having served very little time in jail for his crime. According to the police official, his release was secured because he “said something for the soul of the driver” and paid the driver’s widow thirty-one head of cattle—compensation being a customary form of accountability for murder.

⁴² Human Rights Watch interview with police official, Rumbek police headquarters, October 3, 2005.

⁴³ Ibid.

⁴⁴ Ibid.

Finally, the extent of coordination between the institutions involved in maintaining law and order (judiciary, police, prisons) is sometimes lacking. Proper procedures are not universally known, nor applied. It is often unclear whether proper procedures for incarcerating an individual have been followed, as illustrated below in the section on women's rights.

Ethnicity, Discrimination, and Civil Service Appointments in Southern Sudan

The new Southern Sudan government faces a potentially staggering burden that would consume the best-case oil income: a "civil service" inherited from Khartoum's occupation of a few garrison towns in the south—149,000 persons in all are on its civil service rolls in the south, Khartoum claims. The SPLM has its own civil service to provide for: those 55,000 people who had been working in the "liberated" areas under its control in Southern Sudan.⁴⁵

While these more than 200,000 employees will be "harmonized" (and, in the terms used by southern politicians, "ghosts" and "time-servers" weeded out), this poses problems for the new regional government. The issue is which ethnic groups of the more than 200 in Southern Sudan will be perceived as being short-changed.⁴⁶ As the government is traditionally seen throughout Sudan as the premier and most prestigious employer, and the private economy is grossly underdeveloped, cutting the government employment rolls will be a political minefield.

Tribal or ethnic origin continues to be a major issue in the south, as it does elsewhere in Sudan. The Southern Sudan government is already being criticized from many quarters as engaging in ethnic discrimination. A petition from the Nuer members of the Southern Sudan assembly was sent to President Salva Kiir on October 26, 2005. It lists the numbers of Dinka and others in the new southern government appointed by President Salva Kiir, and declares that the Nuer have been underrepresented.⁴⁷ Salva Kiir has said that qualifications matter greatly. He also said that each region was represented in the cabinet, and that the membership of the cabinet was not fixed but could be changed in six months or a year.

⁴⁵ Human Rights Watch interview, Nairobi, October 8, 2005. Neither number has yet been verified.

⁴⁶ The Sudanese are divided among 19 major ethnic groups and about 597 subgroups and speak more than 100 languages and dialects. "Sudan, The," *Encyclopædia Britannica*, (2005), November 10, 2005, [online] <http://www.britannica.com/eb/article-24338>. Paul Mayong Akec said in Washington, D.C. on November 6, 2005, that there were more than 200 tribes to take into account in Southern Sudan.

⁴⁷ Open Letter to H.E. General Salva Kiir Mayardit, "The Grievances of the SPLM Caucus Nuer in Southern Sudan Legislative Assembly," Juba, October 26, 2005; Union of Nuer Community in North America (UNCONA), "The Nuer Politicians Should Withdraw From GONU," Sudbury, Canada, September 24, 2005.

During the two-decades' long civil war, the government-supported militias in the south were mostly Nuer,⁴⁸ and were excluded by the government and the SPLM from the Naivasha peace talks that led to the CPA.⁴⁹ It is in the interest of future southern stability (including the holding of elections and the referendum on time) that the SPLM has been urged to make agreements with these militias. To leave them under Khartoum's supervision and funding would be to leave a historically powerful destabilization weapon in the hands of Khartoum.

When he became president of Southern Sudan, Salva Kiir appointed as his vice-president the highest-profile Nuer leader, Riek Machar, a separatist and the commander, at least in name, of these Nuer militias before he defected from the government in 2000 and re-joined the SPLM in 2001. After Garang's death, Salva Kiir pursued talks with government-backed Nuer militia leaders. He entered into an agreement with one of the most important, Brig. Gen. Paulino Matiep of Western Upper Nile (see above), to give Matiep some military and political positions in the southern government. This situation has led, however, to a great deal of dissatisfaction in the areas Matiep influences, from Bentiu to Mankien and Leer, as his appointees tend to be his close relatives and associates and his human rights record leaves many concerns.⁵⁰

Several Equatorian groups also have complained about their lack of participation. One Equatorian writer even castigates another Equatorian group, the Bari, for holding a disproportionate number of jobs in the new administration.⁵¹

The most frequently-blamed group is the Dinka, the most numerous group in Southern Sudan with perhaps three million members; the Dinka may be the most numerous ethnic group in all of Sudan, but by no means close to even 10 percent of the total population. Within the Dinka, the Bor Dinka most often are the objects of antagonism and even hatred. Many of the south's leaders including John Garang have been Bor Dinka.⁵² The Dinka, with some exceptions, were strong SPLM/A supporters and Dinka volunteers

⁴⁸ According to a U.N. source, there were in 2003 twenty-six Nuer militias out of thirty-two in Southern Sudan.

⁴⁹ The militias were asked to attend the talks on occasion by the government, but they had no role at the negotiating table. On one occasion when they were summoned to the talks in Kenya, they made their views known through a statement, "The Position Of The South Sudan Defence Force (SSDF): Presentation To The IGAD Peace Process On Security Arrangements," signed by Cmdr. Martin Kenyi, SSDF High Command, Nairobi, April 9, 2003. Cmdr. Martin Kenyi and most of his Equatorian forces re-joined the SPLA in 2004.

⁵⁰ Confidential source, November 2005. See also Human Rights Watch, *Sudan, Oil, and Human Rights*.

⁵¹ Unpublished article, "Who will rule South Sudan? And how to rule it has not been answered yet," London, November 2005, on file with Human Rights Watch.

⁵² Ibid. The Bor Dinka from Upper Nile region (where the Nuer are in the majority) have always had an edge on appointments in part because they benefited during colonial times from a head start in education in Anglican missionary schools. Bor is located on the main transport artery, the Nile, north of Juba. (Dinka from Bahr El Ghazal sometimes resent this head start as well.)

provided the bulk of the SPLA officer corps and large numbers of soldiers. Their representation in Southern Sudan's government is traceable in part to their long-term participation in the SPLM/A.⁵³

Women's Rights in Southern Sudan

The CPA contains few provisions that promote and protect women's rights.⁵⁴ There is in the Southern Sudan constitution, however, an affirmative action clause guaranteeing women 25 percent of public offices.

Many violations of women's human rights in Southern Sudan result from the application of traditional practices that limit the choices available to women in their personal lives, particularly involving underage marriage and marriage at any age without the bride's consent. Most women and girls found in jail in Rumbek were there for "crimes" related to the dowry system, which denies basic rights to choose a marriage partner.

Progressive Measures

Notwithstanding the Southern Sudan constitutional provision for 25 percent representation by women in public offices, some qualified women in Southern Sudan have been hesitant to fill these posts, which consequently have been filled by men.⁵⁵ Much more remains to be done to achieve this progressive goal.

Lack of education is one but not the only reason why women are not filling these positions. According to one worker with a nongovernmental organization (NGO), husbands often will not give wives permission to attend training or take a job away from home, as they fear the women will neglect their heavy household tasks.⁵⁶

⁵³ Thus, although President Salva Kiir says that all three southern regions have been represented, such assurances do not assuage the fears of non-Dinkas. The Bor Dinka are part of Upper Nile region, where the Nuer are numerically superior. The Bahr El Ghazal Dinka (five counties of different sections) are in Bahr El Ghazal region. Only the third region, Equatoria, does not have the presence of an entire Dinka section.

⁵⁴ The CPA, Chapter II, states, "The equal right of men and women to the enjoyment of all civil and political rights set forth in the International Covenant on Civil and Political Rights and all economic, social, and cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights shall be ensured."

⁵⁵ Human Rights Watch interview with relief worker (identity withheld), Rumbek, October 1, 2005.

⁵⁶ Human Rights Watch interview with development worker (identity withheld), Rumbek, October 3, 2005. One implement frequently available in other parts of Africa, but much less in Southern Sudan, is a grinding mill for sorghum or other grains. As a result women spend hours daily standing and pounding the sorghum, millet or maize into flour with a pestle. This is in addition to the hours women spend daily searching for firewood or carrying water (on their heads) from the source to their homes for washing and cooking.

Illegal Arrests and Jailing of Women

Often, women are jailed as a means to bring pressure in a dowry dispute, where the women and girls are used as bargaining tools by one family against another. In other cases, women linger in jail for “adultery” when their male partners are freed by payment of fines, because women do not have the right to own property and thus lack the means to pay the fines. The cases discussed below involve discrimination against women, failure to enforce laws against assault by husbands, lack of fair trial rights, and underage forced marriage.

The payment of dowry or bride wealth in the form of cattle by the groom’s family to the family of the bride (for distribution to her father and his male relatives) is common among the Dinka and Nuer. Sometimes the cost of dowry can be very high: according to one aid worker in Rumbek, a dowry can reach up to 400 head of cattle, but high prices are mostly in the 80 to 150 head range. Often, rival families bid up the price of the bride wealth if the woman is particularly beautiful or comes from a rich family.⁵⁷

Should a woman later wish to divorce a man (when the man mistreats the woman or neglects her and her children, for example), in some cases the woman’s family resorts to pressuring her by having her put in jail until she changes her mind. This is done so that the woman’s family will not have to repay the dowry (cattle) to the husband’s family. If the marriage has lasted a few years, these cattle may already have been “spent” to buy wives for the woman’s father or brothers, thus making the family even more reluctant to repay the bride price.

Human Rights Watch interviewed a fourteen-year-old girl who was pregnant by her fiancé; she gave birth in jail where her father (a traditional judge with several daughters) caused her to be placed for “illegal pregnancy.” He was angry that she had had relations with her fiancé while the fathers were still negotiating over the bride price; her pregnancy would lower the ultimate price. According to the girl, her family was paid only eleven cows and her father was insisting that a further nine cows be paid. She told us, “From the beginning they did not talk about cows. When I got pregnant, my fiancé paid eleven cows until the baby is born, then the marriage will take place. Then they went back and discussed the issue of twenty cows.”⁵⁸ She did not know whether her fiancé’s family would pay the remaining cows.

⁵⁷ Human Rights Watch interview with relief worker (identity withheld), Rumbek, October 1, 2005.

⁵⁸ Human Rights Watch interview with prisoner (identity withheld), Rumbek prison, October 4, 2005.

This case also contradicts an assurance Human Rights Watch was given that all women in Rumbek prison are there legally. Matthew Jit Abol, a former prison officer who left the government and joined the SPLA in 1986 and who has been director of Rumbek prison since 1992, said, “We don’t receive anyone [into the prison] unless it is from the judiciary. Charges are brought to the police, then the police submit them to the judge, and then the judge sends people to jail.”⁵⁹ But the fourteen-year-old had not been charged with any crime by the police and no court had passed sentence on her.

One married woman interviewed by Human Rights Watch in Rumbek Prison had been sentenced to four months in prison for committing adultery. She and her husband had four children, but two, both girls, fell sick and died at ages three and five. She blamed her husband for not taking care of the children and not trying to find work to buy medicine when they were sick. They argued and the husband beat her regularly: “He hit me eleven times with sticks on my head, and here on my side. I could only wait for people to come and stop him, but after a while, it would start again.”⁶⁰ He took a second, younger wife.

She went with another man whom she hoped to marry after her divorce. Her family is not opposed to her divorce (they were only paid a dowry of five cows), but she cannot pay the 40,000 Sudanese pounds (U.S.\$150) fine for committing adultery and therefore remains in prison, despite giving birth, while incarcerated, to a baby girl. The baby is in prison with the mother.

Spousal physical abuse, as experienced by this woman, is not a crime that is punished or condemned in most parts of Sudan, north or south.

Women in many aspects of traditional life are considered inferior, and as a result suffer tremendous denial of basic rights. Some traditional practices such as bridewealth have institutionalized the denial of rights. It is difficult to undo the complicated web of relationships they consolidate in order to bring women into a position of equality—particularly because the economic self-interest of families would be harmed if the practice were stopped.

Efforts to reduce the influence of customary law on the rights of women have had limited effect. Michael Makuei, now Minister of Justice of the government of Southern Sudan and formerly attorney general of the SPLM, in 2005 wrote a letter to tribal leaders

⁵⁹ Human Rights Watch interview with Rumbek Prison director Michael Jit Abol, Rumbek, October 4, 2005.

⁶⁰ Human Rights Watch interview with prisoner, Rumbek prison, October 4, 2005.

in charge of customary courts in Bahr el Ghazal province, requesting them to refrain from the practice of incarcerating women seeking divorce. He suggested that the formation of mediation committees to settle disputes or negotiate divorces between families would eliminate the need to put women in jail. While the initial request was well received, it did not get applied outside of Rumbek county, and it is unclear that it is consistently applied even there.

There were also attempts by SPLA commanders to limit the size of the dowry in some locations in Southern Sudan during the war, with mixed results. In Bor, where the average dowry is lower than in Rumbek, the initiative did not take hold. Bor suffered on account of the SPLA split and ethnic raiding it unleashed in 1991, when hundreds of thousands of heads of cattle were looted and perhaps as many as 2,000 people killed, mostly Bor Dinka killed by Nuer raiders.⁶¹ Several years later, Bor elders reported that they had been able to recoup their losses and replenish their herds—through marrying off their daughters for cattle.

One judicial officer in Rumbek told Human Rights Watch:

We must leave the customary law for the time being; you cannot impose something from outside. You cannot expect this to happen overnight. But alternatives to cattle should be explored and some states may experiment with dowry limits. Even some are using pigs and goats.⁶²

There are a number of local women's NGOs that have been active in promoting the rights of women. The Bahr El Ghazal Women and Development Program has been running a legal aid clinic to assist women with legal troubles related to adultery and divorce. It opposes incarceration for adultery, and conducts workshops to raise awareness among women of their rights.⁶³ The Equatoria Women's Association based in Yei provides adult literacy training and promotes the rights of victims of HIV/AIDS.

⁶¹ See Human Rights Watch, *Civilian Devastation: Abuses of the Rules of War by All the Parties to the War in Southern Sudan* (Human Rights Watch, New York, 1994).

⁶² Ibid.

⁶³ Human Rights Watch interview with representatives of Bahr El Ghazal Women and Development Program, Rumbek, October 1, 2005. This group also visits jails where women are being held, as well as the courts and police stations where the cases were processed, to ensure that the women are lawfully detained and that they get a timely and fair court hearing.

The CPA and Security in Southern Sudan

Another problem facing the implementation of the CPA is the security situation in Southern Sudan which is being destabilized by the northern Ugandan rebel group, the Lord's Resistance Army. This group draws its soldiers mostly from Ugandan Acholi children who have been abducted and forced to commit atrocities by the LRA's leaders. The precarious security environment wrought by the LRA in the south long pre-dates the signing of the CPA. Between 1994 and 2002 the LRA had been supported by the Khartoum government and essentially functioned, alongside homegrown ethnic militias, as a proxy force for the government of Sudan. The LRA established bases in Sudan and joined the Sudanese army and pro-government southern ethnic militias in attacks on the SPLA in regions to the south and east of Juba.⁶⁴

While Khartoum claims that it never supported the LRA, after the September 11, 2001, attacks it signaled that it was no longer supporting the rebel group. Yet the LRA reportedly continues to receive support through the continued presence of the government (NCP) military garrison and intelligence agents in Juba, and has continued to attack many southerners in raids for food and recruits, even after the 2005 CPA.⁶⁵ As documented by the United Nations High Commissioner for Refugees, the frequent LRA attacks in the south have forced thousands of southerners to flee across the border to northwestern Uganda as refugees, including in the past year. The presence of the LRA in Southern Sudan has also increased the security risks for humanitarian personnel and relief work in the region.⁶⁶

Human Rights Watch interviewed victims and witnesses of LRA attacks in two towns, Gumbo and Rajaf, near Juba. Among the victims were Sudanese Acholi, who apparently provide no support for the LRA (unlike some of their Ugandan co-ethnics). These two towns were attacked on several occasions from the end of 2004 through 2005, resulting in a number of deaths and injuries, as well as extensive looting.

⁶⁴ See Human Rights Watch, "Abducted and Abused: Renewed Conflict in Northern Uganda," *A Human Rights Watch Report*, Vol. 15, No. 12 (A), July 2003, [online] <http://www.hrw.org/reports/2003/uganda0703/uganda0703.pdf>.

⁶⁵ Human Rights Watch interview, SPLA Cmdr. Obuto Mamur, Rumbek, Southern Sudan, July 16, 2005.

⁶⁶ Human Rights Watch, "Abducted and Abused: Renewed Conflict in Northern Uganda." Following a November 2005 attack on a relief vehicle on the road between the southern towns of Yei and Kaya in which at least one civilian was killed, U.N. officials responsible for security of relief workers in Southern Sudan raised the level of security and issued a map describing the "LRA-affected areas" of Southern Sudan. E-mail communication from U.N. Operation Lifeline Sudan (U.N./ OLS), "Phase IV - Emergency Operations Only - in the LRA affected area," received by Human Rights Watch November 7, 2005.

The Southern government, through both President of Southern Sudan Salva Kiir and Vice President of Southern Sudan Riek Machar, has publicly delivered several ultimatums to the LRA to leave Southern Sudan.⁶⁷ While the SPLA may talk of wanting to “take out” the LRA, the SPLA (or its successor under the CPA, the Southern Sudan Army) is not ready to launch a major operation. It is still coping with the establishment of the Joint Integrated Units (JIUs) under the CPA,⁶⁸ and it has not finalized working arrangements with the Khartoum army that still (pending withdrawal by mid-2007 under the CPA) has thousands of troops in Juba barracks and elsewhere in the south. This awkward security situation delays measures effectively to counter LRA attacks and stabilize post-CPA Southern Sudan.

Since 2002 the Ugandan army (UPDF) has pursued the LRA rebels into certain areas of the south, with Khartoum’s permission but without success, in a campaign it calls “Operation Iron Fist.”⁶⁹ Since the CPA was signed, SPLA commanders have sought to coordinate military efforts against the LRA with the UPDF, Khartoum army, and even the forces of the United Nations Mission in Sudan (UNMIS—to be a 10,000-strong force mandated to support the north-south peace process), also without success.⁷⁰ Separately, the SPLM has coupled its ultimatums to the LRA with an offer to mediate between the LRA and the Ugandan government.⁷¹

The CPA as a Model for Settlement of Darfur?

Some diplomats at the ongoing rounds of talks in Abuja, Nigeria, between the Sudanese government and the Darfur rebels, and even representatives of the parties to the conflict, have suggested that the CPA might serve as a framework for ending the war in Darfur.

⁶⁷ See “Make Peace or Leave Sudan,” *News 24*, South Africa, August 24, 2005, [online] http://www.news24.com/News24/Africa/News/0,6119,2-11-1447_1759008,00.html.

⁶⁸ The core of a new national army is to be the Joint Integrated Units, composed of equal numbers of Sudanese government and SPLA troops (up to 36,000 total) to be deployed throughout the country. Both the former government army and the SPLA will continue their separate existences; the SPLA will become the army for Southern Sudan. SPLM negotiators saw it as the ultimate guarantee that a referendum would be held in six-and-a-half years.

⁶⁹ In October 2005 the Sudanese government said it would permit the UPDF to pursue the LRA anywhere in Sudan, see “Sudan gives Uganda free rein to chase LRA,” *Sudan Tribune*, Khartoum, October 11, 2005; see also Human Rights Watch, “Abducted and Abused.”

⁷⁰ Human Rights Watch, “Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda,” *A Human Rights Watch Report*, Vol. 17, No. 12 (A), September 2005, [online] <http://hrw.org/reports/2005/uganda0905/>.

⁷¹ Speech, Salva Kiir, Woodrow Wilson International Center, Washington DC, November 4, 2005. While a group claiming to speak for the LRA sent an acceptance of the offer made on another occasion by Dr. Riek Machar, it is always difficult to establish whether any such electronic communication ever really represents the LRA as its leader, Joseph Kony, rarely uses such methods, to avoid being located. E-mail communication “LRA Statement,” signed by “LRA/M Information Bureau,” November 11, 2005, and press release by same, November 15, 2005, received by Human Rights Watch.

The CPA, as noted, had no provisions for human rights accountability, and in this respect it certainly cannot serve as a model for a solution to Darfur, which requires accountability for the massive crimes against humanity and war crimes committed there. The Darfur rebels, however, have been much more enthusiastic about accountability for war crimes than the SPLM negotiators were. The fifth round of Darfur negotiations at Abuja, held in June-July 2005, concluded with a Declaration of Principles that referred generally to respect for human rights, but the details must be hammered out in future negotiations.

The most relevant aspects of the CPA to the Darfur peace talks are power and wealth sharing. The SPLM's tentative view was that the Darfur rebels should receive a 70 percent share of the legislative and executive positions in the three Darfur states, which is what the SPLM has in the Southern region and states.⁷² This position, if adopted by the National Unity government, would have marked a serious change in the government delegation's approach to the Abuja talks. In his visit to the United States in late 2005, Sudan's First Vice President Salva Kiir mentioned that the SPLM had a proposal for a joint bargaining position between the SPLM and NCP for the National Unity government, although he refused to disclose the details. He even said that the SPLM would not attend the talks unless it could bring a different approach.⁷³

The seventh round of peace talks opened in Abuja on November 28, 2005, and continues to the writing of this report, without a discernible change in the Sudanese government's approach to the issues or the Darfur rebels.⁷⁴ SPLM representatives are present at the negotiations, however, as part of the Sudanese government delegation, and as members of committees, including on power-sharing, wealth-sharing and security arrangements. But the SPLM efforts to effect a change in the negotiating posture of the government has been apparently without success.

One knowledgeable U.N. official observed that the Darfur rebels were "on their own" at the talks, without the backing they expected from the SPLM. He credited this to the SPLM's weakness vis-à-vis the NCP, and the SPLM's continuing primary need to secure NCP compliance with the CPA for the benefit of southerners.

⁷² "Sudan's ex-rebels draft plan to resolve Darfur crisis," *Al-Ayyam* (Khartoum), October 12, 2005, in Arabic, BBC ME1 MEEau, October 12, 2005.

⁷³ Speech, Salva Kiir, American University, Washington, D.C., November 6, 2005.

⁷⁴ See AMIS Information Office, "Daily Press Report, December 6, 2005," Khartoum, December 6, 2005.

Moreover, the evidence that the NCP has not complied with many basic provisions of the CPA, as outlined above in respect of, for example, security service reform, and hindrance or non-compliance with the work of commissions set up under the CPA, provides a profound reason for the Darfur rebels to be wary of the NCP's good faith.