

Chapter V: The Resolution of the Conflict in Southern Kordofan and Blue Nile States

signed at Naivasha, Kenya on 26th May 2004

Preamble:-

RECOGNIZING that the conclusion of the comprehensive peace settlement that the Sudanese people are longing for requires solving the problems in Southern Kordofan/Nuba Mountains^[1] and Blue Nile States as a model for solving problems throughout the country; and

REAFFIRMING that citizenship shall be the basis for equal rights and duties for all Sudanese citizens regardless of their ethnicity or religion; and

UNDERLINING the importance of recognizing the cultural and social diversity of the Sudan as a source of strength and unity; and

EMPHASIZING equality, fairness, economic development, social welfare and stability as overarching goals of the Sudanese people in general and the population of the conflict affected areas in particular;

NOW THEREFORE, the Parties hereby agree as follows:-

1. General Principles

The Parties agree on the following, as the basis for political, administrative, economic and social solution to the conflict in Southern Kordofan/Nuba Mountains and Blue Nile:

- 1.1. Human rights and fundamental freedoms shall be guaranteed to all individuals in the State as prescribed in the Interim National Constitution;
- 1.2. The diverse cultural heritage and local languages of the population of the State shall be developed and protected;
- 1.3. Development of human resources and infrastructure shall be the main goal of the State. It shall be conducted to meet human needs in accordance with the best-known practices of sustainable development within a transparent and accountable framework.

2. Definition of the Two Areas

- 2.1. The boundaries of Southern Kordofan/Nuba Mountains State shall be the same boundaries of former Southern Kordofan Province when Greater Kordofan was sub-divided into two provinces.
- 2.2. For the purpose of this Protocol, Blue Nile State shall be understood as referring to the presently existing Blue Nile State.

3. Popular Consultation

The Government of Sudan and the Sudan People's Liberation Movement (the Parties), committed to reaching a just, fair and Comprehensive Peace Agreement to end the war in Southern Kordofan/Nuba Mountains and Blue Nile States, agree on the following:-

- 3.1. Popular consultation is a democratic right and mechanism to ascertain the views of the people of Southern Kordofan/Nuba Mountains and Blue Nile States on the comprehensive agreement reached by the Government of Sudan and the Sudan People's Liberation Movement.
- 3.2. That this comprehensive agreement shall be subjected to the will of the people of the two States through their respective democratically elected legislatures.

3.3. That the legislatures of the two States shall each establish a Parliamentary Assessment and Evaluation Commission to assess and evaluate the implementation of the agreement in each State. The two Commissions shall submit their reports to the legislatures of the two States by the fourth year of the signing of the Comprehensive Peace Agreement.

3.4. An independent Commission shall be established by the Presidency to assess and evaluate the implementation of the Comprehensive Peace Agreement in each of the two States. The Commission shall submit its reports to the National Government and the Governments of the two States who shall use the reports to rectify any procedure that needs to be rectified to ensure faithful implementation of the Agreement.

3.5. Once this Agreement is endorsed by the people through the legislature of any of the two States as meeting their aspirations, then the agreement becomes the final settlement of the political conflict in that State.

3.6. Should any of the legislatures of the two States, after reviewing the Agreement, decide to rectify, within the framework of the Agreement, any shortcomings in the constitutional, political and administrative arrangements of the Agreement, then such legislature shall engage in negotiations with the National Government with the view of rectifying these shortcomings.

4. Structure of the State Government

4.1. The State shall have the following structure:-

4.2 The State Executive, which shall comprise of:-

4.2.1 The State Governor;

4.2.2 The State Council of Ministers; and

4.2.3 Local Governments.

4.3 The State Legislature (SL).

4.4 The State Judiciary.

5. The State Executive

5.1. The Governor of the State shall be directly elected by the registered voters of the State in a public adult suffrage.

5.2. The Governor shall appoint the ministers and the commissioners of the state in accordance with the State Interim Constitution. The State Council of Ministers shall be representative.

5.3. The Governor shall, together with the State Council of Ministers, exercise the Executive Powers of the State which shall be in respect of the functional areas listed in Schedules A and B, read together with Schedule C, attached hereto, and in accordance with the State Interim Constitution.

5.4. The State Council of Ministers shall be accountable to the Governor and the State Legislature in the performance of their duties.

5.5. The State shall have commissioners and elected local councils. The organization and proper functioning of the Local Governments shall be the responsibility of the Government of the State.

5.6 There shall be State Security Committee to be chaired by the Governor of the State. The Committee shall include, among others, the Military Commander of the area, his Deputy, the Director of the State Police and Director of the State National Security Branch.

5.7 Without prejudice to the provisions of paragraph 5.6 above, the Governor of the State may demand the transfer of the Director of the National Security Branch from the State.

5.8 The State Police Service shall adhere to the National standards and regulations as set forth by National Police Service.

5.9 Police, Prisons, Wildlife and Fire Brigade Officers shall be recruited by the State Service according to the National standards, trained and commissioned nationally and returned to the State for service. The other ranks shall be locally recruited to serve within the State. Recruitment and training regulations shall be designed and standardized by the National Police Service.

5.10 Without prejudice to the provisions of paragraph 5.9 above, the National Authority may agree with the State Authority to transfer any number of police officers from the State police to the National Police Service whenever necessary.

5.11 The State Authority may request the National Authority to transfer to the State any number of police officers to fill any vacancies in the State.

6. The State Legislature

6.1. Members of the State Legislature (SL) shall be elected by the registered voters of the State in accordance with the State Law and in conformity with the general guidelines as set forth by electoral provisions as set forth by the National Electoral Commission.

6.2. The State Legislature shall prepare and adopt the State Constitution, provided that it shall conform to the Interim National Constitution.

6.3. The Governor of the State shall sign any law duly approved by the State Legislature, failing which, after thirty (30) days it shall be deemed to have been signed into law, unless the Governor has submitted the law to the Constitutional Court for a ruling on its constitutionality. If the Constitutional Court finds the law constitutional, the Governor shall immediately sign such law.

6.4. The State Legislature shall legislate for the state within its legislative powers as stipulated in schedule (A) attached herewith.

6.5. State laws currently applicable in the State shall continue until new legislation is duly enacted by the SL within its competence.

6.6. The State Legislature shall decide its own rules, procedures, and committees, and elect its Speaker and other officers.

6.7. The State Legislature may relieve the Governor of the State of his/her functions by a motion supported by two-thirds of its membership.

6.8. Members of the State Legislature and the State Executive shall have such immunities as are provided by law.

7. The State Courts

7.1. The structures and powers of the courts of the States shall be subject to the Interim National Constitution.

7.2. The State Constitution shall provide for the establishment of such state courts as are necessary.

7.3. The State Legislature shall provide for the appointment and dismissal of state appointed judges, subject to the State Constitution and the approval of the National Judicial Service Commission.

7.4. The State legislations shall provide for guarantees for the independence and impartiality of the State judiciary and ensures that state judges shall not be subject to political or other interference.

7.5. The state courts shall have civil and criminal jurisdiction in respect of State and National Laws, save that a right of appeal shall lie to the National Courts in respect of matters brought before or heard under National laws.

7.6. The National Legislature shall determine the civil and criminal procedures to be followed in respect of litigation or prosecution under National laws in accordance with the Interim National Constitution.

8. The State Share in the National Wealth

8.1. The National wealth shall be shared equitably between different levels of Government so as to allow enough resources for each level of Government to exercise its constitutional competencies.

8.2. The States shall raise and collect taxes and revenues as listed in Schedule (D), annexed herewith.

8.3. Oil producing state is entitled to two percent (2%) of the oil produced in that state, as specified in the Wealth Sharing Agreement.

8.4. The state shall be represented in the Fiscal and Financial Allocation and Monitoring Commission, which shall ensure transparency and fairness in regard to allocation of the share due to the state from the Nationally collected revenues and ensure that allocations due to the state are not withheld.

8.5. The general objective of the National Reconstruction and Development Fund (NRDF) is to develop the war affected areas and least developed areas in the Sudan with the aim of bringing these areas to the national average standards and level of development.

8.6. In allocating the funds to the war-affected areas and least developed areas, NRDF shall use the effects of war and level of development as the main criteria. The Parties agree to allocate seventy-five percent (75%) of the total fund to the war-affected areas, particularly to Southern Kordofan/Nuba Mountains and Blue Nile States, while the remaining balance shall be earmarked to the least developed areas.

8.7. The allocation of funds among the areas affected shall be determined during the Pre-Interim Period by the Joint National Transition Team (JNTT) that shall be established as agreed to in the Wealth Sharing Agreement, within the agreed percentages as in the above paragraph, taking into consideration the actual needs based on the results of Joint Assessment Mission.

8.8. The Fiscal and Financial Allocation and Monitoring Commission (FFAMC), as agreed to in the Wealth Sharing Agreement, shall allocate current transfers to Southern Kordofan/Nuba Mountains, Blue Nile and other war-affected areas and least developed areas according to the following criteria:-

8.8.1. Population;

8.8.2. Minimum expenditure responsibilities;

8.8.3. Human Development Index / Social Indicators (social development factor);

8.8.4. Geographical area (cost disability factor);

8.8.5. Fiscal effort (internal revenue effort); and

8.8.6. the effect of war factor.

8.9. In addition to the budgetary allocations and the two states' share in the NRDF, the President shall allocate an amount of money to each of the two states.

8.10 The Parties agree to appeal to the donor community to provide technical assistance to the FFAMC to develop comprehensive equalization criteria.

8.11. The states shall hold all income and revenue received in audited public accounts and shall comply with the regulations and auditing standards set by the Chamber of the Auditor General, who may audit the state's accounts.

8.12. There shall be no impediment to interstate commerce or the flow of goods and services, capital, or labour to and from the state.

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

8.14 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.

8.15 There shall be at the State's level accounting standards, procedures and fiscal accountability institutions operating in accordance with generally accepted accounting standards and procedures to ensure that funds are distributed according to the agreed Government budget and properly expended having regard to value for money.

9. State Land Commission

9.1. The regulation of the land tenure, usage and exercise of rights in land shall be a concurrent competency exercised by the National and State Governments.

9.2. Rights in land owned by the National Government within the State shall be exercised through the appropriate or designated level of government.

9.3. There shall be established a State Land Commission in the State of Southern Kordofan/Nuba Mountains and Blue Nile, respectively.

9.4. The State Land Commission shall be composed of persons from the State concerned.

9.5. The State Land Commission shall exercise all the powers of the National Land Commission at the State level.

9.6. The State Land Commission shall be competent to review existing land leases and contracts and examine the criteria for the present land allocations and recommend to the State authority the introduction of such necessary changes, including restitution of land rights or compensation.

9.7. The National Land Commission and the State Land Commission shall cooperate and coordinate their activities so as to use their resources efficiently. Without limiting the matters of coordination, the National Land Commission and the State Land Commission may agree as follows:-

9.7.1. To exchange information and decisions of each Commission;

9.7.2. That certain functions of the National Land Commission, including collection of data and research, may be carried out through the State Land Commission; and

9.7.3. On the way in which any conflict between the findings or recommendations of each Commission may be resolved.

9.8. In case of conflict between the findings and recommendations of the National Land Commission and the State 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 for adjudication.

10. Security Arrangements

10.1 Without prejudice to the Agreement on the Security Arrangements and the right of Sudan Armed Forces (SAF) Command to deploy forces all over North Sudan as it deems fit, SAF troop levels in Southern Kordofan/Nuba Mountains and Blue Nile during the Interim Period shall be determined by the Presidency.

11. Pre-Election Arrangements

11.1. As part of pre-election arrangements, the Parties agree on the following:-

11.1.1. The Executive and Legislature in the two states shall be allocated as follows:-

(a) Fifty-five Percent (55%) to the National Congress Party;

(b) Forty-five Percent (45%) to the SPLM.

11.1.2. There shall be rotational governorship in the two states with each Party holding the Office of Governor for half of the pre-election period in each of the two states.

11.1.3. No one Party is to hold the Governorship in both states at the same time.

11.1.4. The office of Deputy Governor is to be allocated to the Party that is not presently occupying the Office of Governor.

11.1.5. The Parties are to decide upon the signature of the Comprehensive Peace Agreement the time and order in which each party assumes the Governorship in each state.

11.2 Pending general elections, and as part of affirmative action, the Parties agree that Southern Kordofan/Nuba Mountains and Blue Nile States shall be adequately represented in National Institutions targeting a percentage not less than the ratio of their population size.

Schedules

Schedule A: The Exclusive Executive and Legislative Competencies of the Two States:-

1. The drafting, adoption and amendment of the Constitution of the state, subject to conformity with the Interim National Constitution;

2. State Police;

3. State Prisons;

4. Local Governments;

5. State information, state publications and state media;
6. Social Welfare, including state pensions;
7. The Civil Service at the state level;
8. The state judiciary and administration of justice at the state level, including maintenance and organization of state courts, subject to national norms and standards of civil and criminal procedure;
9. Cultural matters within the state;
10. Religious matters, subject to the Interim National Constitution;
11. Internal and external borrowing of money on the sole credit of the state within the national macro-economic framework, as set by the Ministry of Finance;
12. The establishment, tenure, appointment, and payment of state civil service officers;
13. The management, lease and utilization of lands belonging to the state;
14. The establishment, maintenance and management of reformatory institutions;
15. The establishment, regulation, and provision of health care, including hospitals and other health institutions;
16. Regulation of businesses, trade licenses, working conditions, hours, and holidays within the state;
17. Local works and undertakings;
18. Registration of marriage, divorce, inheritance, births, deaths, adoption and affiliations;
19. Enforcement of state laws;
20. Statutes enacted under the penal law power, save for the penalization for the breach of National laws relating to the National competencies;
21. The development, conservation and management of state natural resources and state forestry resources;
22. Primary and secondary school and education administration in regard thereto;
23. Laws in relation to agriculture within the state;
24. Airstrips other than international and national airports within civil aviation regulations;
25. Intrastate public transport and roads;
26. Population policy and family planning;
27. Pollution control;
28. State statistics, and state surveys;
29. State referenda, in matters within the state's competencies;
30. State charities and endowment;
31. Town and rural planning;

32. State cultural and heritage sites, state libraries, state museums, and other historical sites;
33. Traditional and customary law;
34. Recreation and sport within the state;
35. Firearms Licenses;
36. State finances;
37. State irrigation and embankments;
38. State budget;
39. State archives, antiquities, and monuments;
40. Direct and indirect taxation within the state in order to raise revenue for the state;
41. State public utilities;
42. Vehicle licensing;
43. Fire fighting and ambulance services;
44. Flag and Emblem; and
45. Community empowerment.

Schedule B: Concurrent Powers

The National and State Governments shall have concurrent Legislative and Executive competencies on any of the matters listed below:-

1. Economic and social development within the state;
2. Legal and other professions and their associations;
3. Tertiary education, educational policy and scientific research;
4. Health policy;
5. Urban development, planning and housing;
6. Trade, commerce, industry and industrial development;
7. Delivery of public services;
8. Banking and insurance;
9. Bankruptcy and insolvency;
10. Manufacturing licenses;
11. Disaster preparedness, management and relief and epidemics;
12. Traffic regulations;
13. Electricity generation and water and waste management;

14. Broadcasting and telecommunications utilities;
15. Environmental management, conservation and protection;
16. Relief, repatriation, resettlement, rehabilitation and reconstruction;
17. The initiation and negotiation of international and regional agreements on culture, trade, investment, credit, loans, grants and technical assistance with foreign governments and foreign non-governmental organizations;
18. Financial and economic policies and planning;
19. Gender policy;
20. Women's empowerment;
21. Animal and livestock control, animal diseases, pastures and veterinary services;
22. Consumer safety and protection;
23. Women welfare and child protection and care;
24. State courts responsible for enforcing or applying national laws; and
25. Rehabilitation and care for disabled war veterans, orphans, widows and their dependants.

Schedule C: Residual Powers

The residual powers shall be exercised in accordance with its nature and as to whether the power pertains to a national matter, requires a national standard or is a matter that cannot be regulated by a single state, in which case it shall be exercised by the National Government. If the power pertains to a state matter, it shall be exercised by the state.

Schedule D: State Revenue Sources

The state shall be entitled to raise and collect the taxes and revenues from the sources listed hereunder:-

1. State land and property tax and royalties;
2. Service charges for state services;
3. Licenses;
4. State personal income tax;
5. Tourism levies;
6. Share of natural resource revenues;
7. State Government projects;
8. Stamp duties;
9. State agricultural taxes;
10. Loans and borrowing in accordance with the national macro-economic policy framework;
11. Excise taxes;

12. Border trade charges or levies in accordance with National legislation;
13. Other state taxes which do not encroach on National taxes; and
14. Grants in Aid and Foreign Aid through the National Government.