

Comments on Wealth-Sharing Agreement signed at Naivasha by Government of Sudan and Sudan People's Liberation Movement/Army on January 7, 2004

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The Agreement on Wealth-Sharing During the Pre-Interim and Interim Period for Sudan, negotiated after decades of civil war, is a sobering document, holding the potential to allocate well or allocate poorly hundreds of millions of dollars in a place where every single dollar can mean the difference between life and death for someone. It is important that wealth-sharing be gotten right the first time, as the terms of the final comprehensive agreement will set the stage for the interim period preceding a referendum in southern Sudan. If the terms are unfavorable to the nascent southern government, an unfair advantage of the northern government (euphemistically called the National Government in the document) will simply reinforce the position of dominance that the northern elite that controls Khartoum already enjoys. If the terms are overly ambiguous, this permits insiders and cronies, from both north and south, to siphon off wealth at the expense of the people of Sudan, the true owners of the common wealth.

I can find nine (9) substantive areas where the document appears unfavorable in content and tone to the people of southern Sudan. I read through the document with considerable and growing surprise unease: the people of Sudan and perhaps especially of southern Sudan seem to be the losers in the sharing of wealth, after almost a half-century of fighting for economic justice.

1) A proposed National Land Commission, whose chairperson, budget and accountability are to the National Presidency, appears to be superior to its 'little brother', the Southern Sudan Land Commission. The most-likely northern dominated national commission has a kind of quasi-veto power over land decisions taken by southern commission, by

being able to disagree with decisions by the latter, and lengthening the process by having. The division and exercise of powers within the Presidency consisting of President and Vice-President has not been agreed upon yet, so there is room for cautious optimism. But why not two parallel commissions, one for the north and one for the south? Moreover, the most important regions in terms of land issues are precisely Abyei and Blue Nile where mechanized farming has expropriated land and transformed landscapes. Under what complex land commission arrangements will these valuable areas reside?

2) The proposed National Petroleum Commission is fundamentally ambiguous in its composition, and will likely not be able to function without lengthy constitutional wrangling. In any decision, the balanced commission (four from the National Government, four from the Southern government, and right there we see how the National Government is really a euphemism for northern government; the northern elite knows that any southern representation in a National Government will never be allowed to enjoy effective power) is supplemented by "not more than (3) representatives from an oil producing state/region in which petroleum development is being considered". These representatives must "collectively disagree" to block a decision of the National Petroleum Commission. The agreement does not specify how the number of state representatives is to be determined, nor at what level of government that determination will be made, nor how the actual representatives should be selected. Nor does the agreement specify what "collectively disagree" means. Nor does the agreement specify what is to happen when more than one state is involved (as will be inevitable). While these ambiguities are cleared up over the years, oil reserves will be sold and contracts signed, and one can be pretty sure that decisions will be made favoring the present military regime or cronies of both sides.

3) Existing contracts, meaning all contracts signed up to the signing of the comprehensive Peace Agreement will not be renegotiated. (Exclamation point! Perhaps that is why the peace talks keep dragging on? Rumors are circulating of agreements and deals being reached even now.) Without knowing the content of these previous agreements, and given that only one side to the conflict (a military regime that came into power by a coup d'etat) has been signing contracts (what happens if SPLM decides to sign a whole bunch of contracts before the signing of the Peace Agreement?), and realizing that the international oil sector is unlikely to "punish" a new Sudan for contract renegotiation based on fair and transparent arbitration, this clause seems patently self-serving to northern elites.

4) An Oil Revenue Stabilization Account is set up to receive export revenues above those determined by an agreed benchmark price. If the benchmark price is set low, then all of the export revenue will go into the Stabilization account, and none will be available for the 50:50 division between south and north. The agreement contains no mention at all as to how this benchmark price is to be determined and the wording is quite ambiguous. In fact, the Stabilization Account is never mentioned again. Who controls it and how is left undetermined, and there is no mention of whether these funds will be split 50:50. A clause specifying that 2% of revenues are to go to producing states is not clear when referring to "oil revenue" (what it actually says) or "net oil revenue" (what would make sense). This mistake, at least, favors the south.

5) Of all taxes raised by the National Government in southern Sudan, the agreement prescribes that only 50% go back to the government of southern Sudan. 100% of the tax revenue raised in northern Sudan can be spent in northern Sudan. The incentive for the National Government is to devote very much less attention to developing the tax base of southern Sudan- of every dollar raised through taxes, the National Government loses half. Consider further that all of the import tariffs- and African countries like Sudan depend a lot on import tariffs- collected in Port Sudan will accrue to the northern government, while only 50% of import tariffs collected in southern border towns will stay in the south. There is a vague promise to review this unfair arrangement. Why not have all national non-oil revenue be allocated 70:30 regardless of where raised?

6) There is no provision for international and NGO monitoring of and participation in the proposed Fiscal and Financial Allocation and Monitoring Commission. The negotiating parties are ready to go back to business as usual, with an unaccountable state dividing up the pie of taxation and oil with minimal citizen and international mediation. Instead, the parties will trot out tired refrain of 'national dignity and sovereignty' to enable their continued plunder of national and private wealth. The lessons of the Chad oil pipeline accountability effort have not been incorporated and improved upon, they have just been completely ignored. The parties act as if it were not the case that every single African country except Botswana has completely mismanaged its natural resource wealth. One can only hope that in the final comprehensive agreement the agreed-upon principles of effective outside monitoring are strengthened and given teeth.

7) The clause on government liabilities does not specify how the people of southern Sudan are to be exempted from payment of the enormous debt incurred by successive dictators of the northern government. The issue of debt forgiveness needs to be resolved now, before the parties agree to a comprehensive agreement. The United States should be leading the effort here to find a creative and equitable solution. Former President Nimeiri is back in Khartoum. Why are his assets and those of the senior members of his government not being confiscated in the agreement as part of a debt repayment plan?

8) The leadership of the reorganized Central Bank of Sudan is entirely chosen by the National Presidency. The Presidency is supposed to be guided by the power-sharing protocol, but this has yet to be agreed upon. What voice will the south have in shaping monetary policy? Let us hope that the President and Vice-President be required to operate by consensus.

9) The National Government is under no obligation to contribute any funds for the installation of the Southern Government during the pre-interim and interim period. Instead, it is exhorted to assist "to the extent that it is able". It does not have to contribute to the proposed Southern Sudan Reconstruction and Development Fund.

There is a giddiness in the air about the profits and careers to be made from a peace agreement in Sudan. This giddiness is leading to mass willful blindness: never mind what the various agreements actually say, just sign the damn things. The people of Southern Sudan, and other Sudanese suffering from war and repression, deserve better. I hope that the United States and other parties will use their considerable leverage to bring the parties to an agreement with justice, not just peace. I hope that my pessimism is rendered unwarranted. But I am afraid that unless we see some serious changes in top leadership positions, with current leaders retiring gracefully to their country farms, with modest pensions and dedication to writing honest and best-selling memoirs (which, I remind them, can be so much more rewarding than corruption, see Gorbachev), the hope of a new Sudan will turn into the long night and open sore of so many other African and Arab countries.