



# THE SUDD INSTITUTE

## Policy Brief no. 2

### Contextualizing the Cooperation Agreements Between the Two Sudans

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RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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## **POLICY BRIEF NO. 2 | DECEMBER 5, 2012**

### **Contextualizing the Cooperation Agreements between the Two Sudans**

**Jok Madut Jok**

The recent contradictory news about the resumption of oil production in South Sudan revealed the difficulties faced in the implementation of the cooperation agreements signed in Addis Ababa, Ethiopia, on September 27<sup>th</sup>, 2012 between Sudan and South Sudan. A total of nine agreements were presided over by the president of South Sudan, Salva Kiir Mayar, and his counterpart, president Omer Hassan al-Bashir of the rump state, the Republic of Sudan. On November 16<sup>th</sup>, the president of the Republic of South Sudan announced the readiness of his country to restart oil production after over months of shut down in protest of processing, transport, transit and export fees demanded by the northern neighbor, the Republic of Sudan. On November the 18<sup>th</sup>, it was announced that Juba had postponed the resumption of oil production due to Sudan's new demand to tie such resumption and export to a kind of security arrangement, suggesting that South Sudan must first cease its support to Sudan Peoples' Liberation Army – North (SPLA-N), an opposition movement fighting against Khartoum government within the territory of Sudan. The speaker of Sudan's parliament, the minister of petroleum, and a variety of other voices in Khartoum, including that of the deputy chairman of the ruling National Congress Party (NCP), Nafie Ali Nafie, had all announced that South Sudan would not be allowed to resume production and export of its oil through Sudan if Juba does not denounce SPLA-N and works towards their disarmament. But in yet another twist, Pagan Amum Okiech, the SPLM Secretary General and South Sudan's chief negotiator, went to Khartoum on December 2<sup>nd</sup> and after consultations with the government of Khartoum made announcements that his country will begin oil production at the end of December and the authorities in Khartoum started to make press statements to the effect that it has been South Sudan that has been holding back the implementation of the agreement all along.

This attitude from Khartoum was not surprising, as this was not the first time Sudan government had proved itself as a most unreliable partner on any agreement, with a penchant to reinterpret deals, ignore them, or totally abrogate them. On the side of South Sudan, many citizens had been puzzled by these Addis Ababa agreements

over why and how these agreements were even signed. However, for a country that has been on the verge of economic collapse and faced with threats of security crisis, rumored coup attempts, rampant crime and a weakened social fabric due to economic problems that were partly rooted in the separation-related squabbles with its northern neighbor, it was not surprising that the whole of South Sudan, people, and government supported the agreement in earnest. The whole affair of austerity, with the purchasing power of South Sudanese declining anew, and poverty increasing once again, only a year since the independence had promised so much to a people whose thirty-year history of struggle had brought unspeakable destruction upon them, all seem to have clouded South Sudan's negotiating position. They wanted an agreement with Sudan, something to relieve them of this dire situation. But they also expressed readiness to continue the new kind of confrontation with the Sudan, not to compromise too much as to ransom their hard-won freedom and their resources for cooperation with Khartoum. When the agreements were announced, there was rejoice, but only short-lived. The hope nearly dissipated as the content of the agreement was revealed.

These nine agreements, cumulatively referred to as cooperation agreements, were signed under the pressure from the world community, particularly the United Nations Security Council and the African Union. They tried to tackle the main issues upon which the whole Comprehensive Peace Agreement (CPA) that ended the war between north and south had been hinged. Generally referred to as post-CPA outstanding issues, they had proven most sticky to implement, especially in that environment of longstanding mistrust between former war foes. There had been many outstanding CPA implementation problems, but the questions most particularly daunting included wealth sharing, security of the border areas and contest over the line separating the two countries, citizenship and population movements, and the question of who takes responsibility for the national debt. The failure to agree on these issues had revealed the weaknesses that had been built into the peace agreement that ended the protracted war in 2005. But on this occasion, despite the obvious skepticism, the president of South Sudan had quickly instructed his senior colleagues to move around the country to explain the content of the agreement to the people, with the parliament quickly ratifying the deal.

These agreements seem to invoke the national sentiment prevailing at the time of the CPA, that any compromises made in it would be an acceptable price to pay for the sake of resultant stability. The Comprehensive Peace Agreement was heavily criticized that it did not live up to its name, that it was not comprehensive enough, neither in inclusivity of all parties to the conflict nor in addressing all the issues that had driven the conflict for close to 50 years. Nevertheless, despite its shortfalls, the CPA was applauded, particularly in South Sudan, for having reduced the state violence that was meted out from Khartoum against the civilian population in the name of counter-insurgency. Its inherent weaknesses notwithstanding, the CPA produced some of the most desirable results for South Sudan, namely the referendum on unity versus separation and the subsequent independence

immediately thereafter. It was as if to say that no matter what shortcomings the CPA had, the achievement of independent statehood was worth all the sacrifices South Sudan had made and may continue to make. Similarly, the Addis Ababa agreement could also be understood in the same fashion, that despite the skepticism that some citizens may currently have, they may buy stability, resumption of trade with Sudan, and time for South Sudan to explore alternative routes for its oil.

For a brief moment, the signing of the agreements sent waves of hope within the two Sudans and around the region, and has generated a consensus of sorts on the need for opening of a new page, away from war; that of cooperation, mutual understanding and a focus on improving the lives of their citizens after they were hard hit by austerity policies following South Sudan's shut down of oil production. The shut down had been in protest of Sudan's heavy-handed tactics that were aimed at forcing South Sudan to pay exorbitant fees for the processing and passage of its oil to Port Sudan oil terminals for export. The agreements came as a result of outside interventions and the offers of a helping hand to two governments that had locked heads to a point of near irreconcilable differences and a possible return to war.

The initial announcement of the agreements happened in a climate of heightened trepidation and fear about what prospects the negotiations bore. The public in South Sudan had little idea as what to expect; and when the announcement came, there was no clear understanding of what the agreements actually said on the number of issues mentioned above. The result of the ignorance that surrounded it was that the agreements triggered all manner of reactions, some from the point of view of ignorance about what the agreements contained and some latching onto single issues that concerned each region, especially the border communities. People seemed unwilling to look at the totality of the agreements. We think that these agreements should be analyzed both individually, to allow for a clear understanding of what they contain, as well as analyzing them together in order to see how weaknesses in some of them may be compensated for by the strengths in the rest.

Furthermore, the reality is that the agreements have been signed and it is the responsibility of the government and people of South Sudan to ensure that they are implemented to the best of their ability, to uphold their side of the bargain, to regain the country's international standing that prevailed before the oil shut down. Implementing such agreements also helps South Sudan clear its image from the brinkmanship on the border in April 2012 when the Sudan Peoples' Liberation Army (SPLA), South Sudan's defense forces, took control of a border town that South Sudan claims Sudan illegally occupies. South Sudan was almost globally condemned for these two incidents, and though it partially managed to convince some members of the international community about the justification for these actions, driving for a full implementation of the Addis Ababa agreements would go a long way in helping Juba to project itself as a more reasonable party in this struggle to achieve settlement between the two countries. But the trick to a successful effort to implement the cooperation agreement is a popular domestic support for it,

something that is currently lacking, especially among border communities, which would be more affected by any concessions that the government makes in favor of Khartoum or in favor of the border communities on the other side.

Furthermore, the political leadership of South Sudan should view any domestic criticism that has been labeled against these agreements in the context of the frustration that many South Sudanese feel about the conduct of the negotiations. This includes the composition of the negotiating teams, to the opacity of the process, to non-consultation with all stakeholders and the secrecy that surrounds the overall way with which top decision-making process is carried out, with major policy decisions being taken without coordination even within and between the institutions of government. It is not that people in civil society or affected communities feel that they should be represented on the negotiating teams or even attend the negotiations, but they ask why they are never consulted, even on such issues as border disputes and resource sharing, which local communities understand better than anyone else.

But what do these agreements actually say? There are nine of them in total, some are straightforward, hence the ease with which they were concluded, but some, especially security and oil, were far more nuanced and overly qualified in their language as to make them incomprehensible. As will be shown below, these two issues are linked, both in terms of the difficulty of negotiating them and in the implementation of any agreements reached on them. They are linked in two main ways. One is that the contest over border areas that has created security problems for both countries is linked to the assumption that the contested areas, such as Panthou/Heglig and Abyei, are oil rich. On the part of Khartoum, claiming and clinging to territories is more strongly related to prospects of wealth underneath them than a conviction about historical rights to the areas. The second way in which these two issues are intertwined is that implementation of an oil agreement hinges on assurance of security. For Sudan it is related to the claims that South Sudan supports SPLA-N and that without guarantees that such support will cease, Khartoum cannot be expected to honor its obligations to South Sudan. For South Sudan, though there seem to be some genuine interest in honoring the current agreement, if only due to economic pressures, a true commitment to an oil agreement is related to Khartoum's withdrawal of its forces from Abyei and other such places that Juba characterizes as "occupied" territories. So because of such conditionalities, some of which are asserted after the agreement has already been inked and not just during the negotiations, any agreements the two Sudans sign have in-built weaknesses because each party discovers other issues to which it pegs its commitment to implementing the signed deal.

The nine September 2012 Addis Ababa cooperation agreements can be grouped into three categories as follows:

(1) Agreements directly related to economic matters. These include the agreement on a “Framework for Cooperation on Central Banking Issues,” the “Agreement between the Republic of Sudan and the Republic of South Sudan on Certain Economic Matters, the “Framework Agreement to Facilitate Payment of Post Service Benefits, the “Agreement on Trade and Trade Related Issues,” and the “Agreement on Oil and Related Economic Matters.”

(2) Agreements directly dealing with security and border issues. These include the “Agreement between South Sudan and Sudan on Border Issue,” and the “Agreement on Security Arrangements.”

(3) Agreements on sovereignty, citizenship and population mobility. There have been some agreements in the past that related directly to this category such as the so-called “four freedoms,” not included here, which are freedoms of movement, property ownership, employment and residence, but the current Addis Ababa agreements focused on what is referred to as the “Framework Agreement on the Status of Nationals of the Other State and Related Matters.”

The thread that binds these deals together, the ninth of them, is the “Cooperation Agreement,” the operative word being cooperation, which means that both parties have interest in giving meaning to that old CPA phrase of “two viable states living side by side in peace and harmony with each other.” In this tense climate, no word is more important in the language of any agreement than “cooperation.”

However, due to the fact that these agreements were signed under duress, both in terms of international pressures and in terms of domestic economic and security challenges, it can be said with confidence that the deals were reached begrudgingly, with each side making concessions it did not want to make, fearing that there might be a backlash back home. One is damned if they did not sign an agreement that they knew does not give them everything and damned if they insisted on their position to a point of stalemate. The alternative, especially on Khartoum side, is to sign a deal that can easily be watered down should issues come up on the way to implementation. Granted that it is the nature of all negotiations and agreements between countries, that they involve a give and take attitude, but the history of north-south relations is replete with an attitude of win-lose negotiation outcome, especially with Khartoum always trying to tip the “win” part in its favor.

On the economic issues, it appears clearly that South Sudan got a really raw deal on all the three categories above. On economic matters, the clause about liabilities that calls for South Sudan’s role in a global campaign for debt relief on behalf of Sudan makes the agreement utterly unworkable. Why should South Sudan bear the responsibility for whether or not the creditors will forgive Sudan’s external debt? The fees that the agreement calls for South Sudan to pay, according to calculations made by local analysts, demonstrate that South Sudan ends up paying far more than

the initial 36 US\$/bbl that Khartoum was demanding before the shut down, with South Sudan getting a much lower share than it did during the interim period. On the security matters, if resumption of oil production hinges on the kind of security arrangement that Khartoum is demanding, there will clearly be no agreement to implement. As regards the borders, movement and boundaries, this is the sort of deal that will never be implemented in the course of one peace agreement, at least if history of border disputes in the rest of the world is any guide.

At a recent public event sponsored by the Sudd Institute aimed at highlighting what South Sudanese analysts teased out of these agreements, Lual Deng of the Ebony Center for Strategic Studies, provided his take on the numbers contained in the oil agreement, reaching a conclusion that the agreement actually gives South Sudan far less of its oil proceeds than what it was getting before the shut down of oil production, which was protesting Khartoum's demanded fees for production, passage and export. Dr. Deng's numbers suggest that after everything, from processing fees, transportation tariffs, transit fees, and Transitional Financial Arrangements (TFA) have been considered, the numbers come to 55.5 percent for Sudan and 44.5 percent for South Sudan over a period of 42 months, even with the fluctuating oil prices.

At the same event, Kimo Adiebo of Juba University also made an observation on article 5 of the agreement on "mutual forgiveness of claims of non-oil arrears and other assets," that this clause lacks the qualification and conditions that would make the Republic of South Sudan interested in its implementation. For example, at independence, he stated, the Republic of South Sudan owed nothing to the Republic of Sudan. On the contrary, Dr. Adiebo remarked, at the time of the agreement, it was Sudan that owed South Sudan, as Khartoum had refused to redeem about 1.8b of its own currency, the Sudanese Pounds, when South Sudan introduced its own currency at independence, leaving this as a liability on the new state. It is also Khartoum that is adamant on keeping all the state assets, including the oil facilities that were built during the war using South Sudan's oil, while insisting that South Sudan either takes a share of the international debts or assist in the campaign for debt relief. So "mutual forgiveness," a concept that normally means that the two negotiating parties owe each other, means South Sudan forgives billions of dollars in favor of Khartoum while the latter forgives zero.

This looks like a mere agreement in preparation for future agreement, "we agree now to agree later" kind of a deal, deferring the sticky issues for the next group of officials in charge or even the next generation to sort through. There are a number of issues agreed upon that appear really bizarre and will forever remain a thorn in the relationship between the two states. For example, on the question of external debts there is requirement that both parties have to campaign together to persuade external creditors to start a comprehensive relief of external debt currently held by the Republic of Sudan. The clause says that in the event of failure to secure debt forgiveness, the parties return to the drawing board. The question of transitional

financial arrangements (TFA) refers to the 3.028b US\$ to be paid by South Sudan to the Republic of Sudan to fill one third of the financial gap left behind by South Sudan's independence. This is unheard of in the history of secessions, that the poorest, the most war-ravaged and the least developed of the two countries is forced to pay the party that was entirely responsible for the extraction of resources, economic marginalization, destruction, and oppression. These are the issues that exasperated so many sectors of South Sudan's population, especially as the government endeavors to implement this deal, despite the peoples' misgivings, while Khartoum continues to make new conditions, despite what South Sudanese consider to be too many concessions already.

What is the way forward then? It is important for the government of South Sudan to forge ahead with the implementation of its part of the agreement, as genuine efforts to implement would leave Khartoum exposed as the only party sticking to its true nature of bending and dishonoring agreements. It is also important for South Sudan's negotiating team to keep in mind that wider consultations with all the stakeholders across the country should precede the development of negotiating positions, to give the citizens of this country a sense of engagement with their leaders on matters that concern them the most. It is such consultations that ensure popular support to any deals the team reaches. As for the current agreement, there is much to be explained to the various communities that are affected by it, to get the citizens to buy into the idea that any agreement is ultimately going to produce benefits as well as cost.

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#### **About Sudd Institute**

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

#### **About the Author**

Jok Madut Jok is the Executive Director and a co-founder of the Sudd Institute. He is the author of three books and numerous articles covering gender, sexuality and reproductive health, humanitarian aid, ethnography of political violence, gender-based violence, war and slavery, and the politics of identity in Sudan.