

**International IDEA
Sudan’s August 2020 Peace Agreement¹
- Summary and Analysis -**

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¹ Comments, corrections or questions on the contents of this Summary and Analysis paper should be directed to Zaid Al-Ali (zalali@idea.int). The author is grateful for comments to earlier drafts of this document, including but not limited to Amel Mejri, George Anderson and Dame Marsden.

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Executive summary

At the end of August 2020, a number of agreements (referred to as 'protocols') were signed between Sudan's Transitional Government and representatives of a number of armed groups. It is anticipated that these protocols will form part of a final agreement that will be signed on 3 October 2020, which will include an implementation mechanism. This version of the Summary and Analysis therefore focuses entirely on the agreements that were signed in Juba at the end of the August 2020. An update will be prepared and circulated after the final agreement is signed in October 2020.

The agreements that were signed in Juba at the end of August 2020 are very comprehensive. They include long lists of agreed upon principles, arrangements on issues such as power sharing, revenue sharing, transitional justice, transitional security arrangements, and also establishes timetables for many of these areas. At the same time, the agreements do not resolve how many of the issues will be implemented in practice, and much is left to be resolved through legislation (including for example, the internal structure of federal regions and the composition of revenue sharing commissions). These will need to be resolved in the coming weeks and months. Because of the manner in which the negotiations have taken place, there is good reason to believe that the parties will likely reach agreement on these outstanding issues. The challenge however will be to make progress within a reasonable timeline, to do so in a manner that creates an effective system for the general population while maintaining peace, to ensure that the resulting system enjoys some form of democratic legitimacy while continuing to make progress on interim governance issues.

General

This paper's substantive focus. This paper provides a summary and analysis of the agreements that were signed in Juba in August 2020. The paper is mainly focused on the agreements constitution building elements (meaning their impact on Sudan's constitution building process and on the future constitution's substantive content). The paper will include some discussion of the context and of other elements as well.

Updates to this paper. The agreements that were entered into during the last few days of August 2020 are highly complex, and run into the hundreds of pages. The process of reading and rereading the various texts, and the implementation process will draw attention to provisions and arrangements whose importance are not immediately obvious today. As a result, this Summary and Analysis paper will remain live, meaning that it will be regularly updated to take into account subsequent developments.

The negotiations. The negotiations that led to the adoption of the agreements were mediated by the Republic of South Sudan. According to individuals who were involved in the negotiations, the mediators

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approached their mediation role with a relatively light touch. The substance of the agreement was largely negotiated between the Sudanese themselves, with some limited logistic and technical support from the international community. The negotiations were also partially defined by the fact that many of the negotiators from the two sides were previously comrades in opposition to the former ruling party, which made the act of reaching agreement much less challenging than in past rounds of negotiations. The main parties to the negotiations include but are not limited to:

- (i) Sudan’s transitional government;
- (ii) The Sudan Revolutionary Front (a broad alliance of armed movements from Darfur and the Two Areas and smaller unarmed groups from Eastern, Northern and Central Sudan);
- (iii) Sudan Liberation Movement/Minni Minawi (a Darfur armed movement).

The agreement(s). The agreements that were signed at the end of August 2020 include a large number of documents, each of which was signed by its own series of negotiating parties. For now, the parties have not yet agreed to a single umbrella agreement that brings all these individual agreements together or that groups together all the arrangements that impact specific subject matter areas (as noted above, this is currently expected to be signed in early October 2020). Instead the agreements consists of at least the following individual agreements:

| Title | Signatories | Scope |
|---|--|--|
| The Agreement on National Issues (hereinafter “ANI”) | Sudan transitional government 1 South Kordofan and Blue Nile Group 3 Darfurian groups 1 Nubian/north eastern group 1 Central Sudanese group 2 East Sudan groups 1 Northern group The ‘National Coalition’ (التحالف الوطني) | Substantive scope: Power sharing, administration of the national capital, national commissions, the constitutional conference, the conference on system of government, judicial reform, elections, other issues (environment, Christians and members of other faiths, anti-racism legislation, etc.) |
| The Final Peace Agreement on the case of Sudan in the two areas (hereinafter the “Blue Nile and Kordofan Agreement”). | Sudan transitional government The Popular Movement for the Liberation of Sudan – North / the Revolutionary Movement (الحركة الشعبية لتحرير السودان – شمال \ الجبهة الثورية) | Geographic scope: Blue Nile, South Kordofan, West Kordofan Substantive scope: Allocation of responsibilities, financial resources, civil service reform, reconstruction and development, environment, etc. |
| Agreement on the final security arrangements | Sudan transitional government The Popular Movement for the Liberation of Sudan – North / the Revolutionary Movement (الحركة الشعبية لتحرير السودان – شمال \ الجبهة الثورية) | Substantive scope: Permanent ceasefire, DDR |
| There are seven separate agreements that relate specifically to Darfur (hereinafter “Darfur Agreement”). | Sudan transitional government The Armed Struggle Movements – Darfur Path (حركات الكفاح المسلح – مسار دارفور) | Geographic scope: North Darfur, South Darfur, West Darfur, East Darfur, Central Darfur Substantive scope: Power sharing, revenue sharing, permanent |

| Title | Signatories | Scope |
|---|---|---|
| | | ceasefire, transitional security arrangements, etc. |
| Agreement between the transitional government of the Sudanese Republic and the Sudanese Revolutionary Front – Northern Path | Sudan transitional government Sudanese Revolutionary Front – Northern Path (الجبهة الثورية السودانية – مسار الشمال) | |

Implementation. Discussions are still ongoing in Juba to draft and agree a single implementation matrix consolidates all the deadlines and implementation arrangements into a single document, and that also determines which specific parties or institutions will be mainly responsible for overseeing the implementation of each specific topic. In the event such an agreement is signed, this paper will be updated.

Holdouts. Two of the main rebel groups did not sign on to the August 2020 agreements. In particular:

- (i) Sudan People’s Liberation Movement – North (led by Abdalaziz Adam Alhilu). The Sudan People’s Liberation Movement – North agreed to join the negotiations in Juba but insisted on having its own separate peace track and to sign its own agreement. The Sudan People’s Liberation Movement – North also insisted on the establishment of a secular state as a precondition for peace, which caused for the negotiations to stall. The Sudan People’s Liberation Movement – North did sign a very short agreement with the Prime Minister in Addis Ababa on 3 September 2020, but the agreement’s legal status is unclear (see below); and
- (ii) Sudan Liberation Movement (led by Abdel Wahed Mohamed Nour). The Sudan Liberation Movement has said that it does not recognise the transitional government as legitimate because it contains a military component, and so therefore did not participate in the negotiations at all.

It has been reported in the media that the signatories to the agreements have made arrangements that would allow for the holdouts to sign on to the peace agreement at a subsequent date. That account is not accepted by individuals who were involved in the negotiations, according to who none of the negotiators have any expectation that the holdouts will accept to adhere to the same terms as those that were agreed in August 2020.

Complexity. The agreements that were signed in late August 2020 are highly complex mainly because of the way in which the different agreements relate to each other. This is to be expected given their overall length and given the difficulty that necessarily arises when managing such a complicated negotiation process. However, there is an added level of complexity that stems from the fact that each of the bilateral agreements has national level implications. The drafters made an effort to consolidate provisions relating to some areas in the same sections in some of the individual agreements, but this was not done systematically, which makes the agreement more difficult to read and understand. For example:

- (i) On revenue sharing, the Blue Nile and Kordofan Agreement includes key provisions but one of the Darfur Agreement’s revenue sharing protocol provides for key arrangements that the

- national level that will impact the country as a whole, including those parts of the country that did not sign on to these particular bilateral agreements;
- (ii) On the composition and functioning of national level institutions, readers will have to read together hundreds of provisions that are set out in individual bilateral agreements;
 - (iii) On the constitutional process, relevant provisions are spread throughout the document rather than being concentrated in a single section.

What this means is that we may discover more and more about the agreement as we continue reading and rereading it. It may also be the case that the signatories may discover that some of the arrangements are not compatible with each other, or that they are not particularly happy with the arrangements that they did not sign on to. Where there is great distrust between the parties, this can be majorly problematic and can contribute to a breakdown of the entire peace process. In this case, time will tell whether the new revolutionary atmosphere has created enough good will between the parties to overcome these problems as they occur.

Legal status. Virtually all of the agreements make reference to the 2019 Constitutional Charter. Many reconfirm the relevant signatories' commitment to the Charter's section on rights and freedoms. At the same time, some of the individual documents go further and purport to substantially amend the Constitutional Charter's contents. In particular:

- (i) The Blue Nile and Kordofan Agreement provides that its provisions are part of the 2019 Constitutional Charter (Article 112). The wording on this point is actually very strong and significant and is worth quoting. It provides that "this agreement is an inseverable part of the Constitutional Charter and in the event of a contradiction the provisions of this agreement prevail".
- (ii) The Darfur Agreement provides that the signatories agreed to "include the signed peace agreements [sic] in the Constitutional Charter and in the event of a contradiction, the contradiction shall lead to an amendment of the Constitutional Charter [**CHECK**]".
- (iii) The Charter itself provides that it can only be amended through an agreement by two thirds of the Transitional Legislative Council but presumably that is just a formality. What this means is that the Charter is now dramatically changed, in ways that are not today entirely obvious.

The Addis Ababa Agreement stands apart from the other agreements. It was not negotiated or signed in Juba. It is a single page, and was signed by the prime minister as opposed to a member of the transitional government's negotiating team. The Agreement does not purport to be directly enforceable (as opposed to some of the other agreements). It is therefore of questionable legal value, even though its political importance cannot be disputed (see below).

Transitional period. The ANI extends the Transitional Period. It provides that the Transitional Period should last 39 months starting from the date of its signature (Article 2.1). Given that the agreement is incorporated into the Constitutional Charter by virtue of Article 112 (see above) this extension is basically now already decided. One of the questions that will probably arise, if it has not already, is whether the military leadership of the Sovereignty Council should extend past its original expiry date. If this is raised, it may be difficult to argue given that the Constitutional Charter specifically mentions that the chairmanship should pass to a civilian member on 17 May 2021 (Article 11(3)).

Federalism

Final outcome. The agreements that were signed in late August 2020 essentially assumes that Sudan will be constructed as a federation. There is a very significant amount of detail on how that federation will operate in the parts of the country that are covered by the Blue Nile and Kordofan Agreement and the Darfur Agreement. In addition, those two agreements assume that the arrangements that they provide for are essentially final, and also assume that the entire country will be organised as a federation, which if true would mean that there is very little else to negotiate in the constitutions negotiations that have yet to take place. At the same time, the agreements give additional importance to the constitutional process, mainly by setting out additional detail on how it will be organised. In particular, the agreements provide that a conference on the system of government should take place, which will no doubt provide more detail on how the federation will be structured in the future (for more on the conference see page 14).

Regions. The agreements set in motion a number of important changes to Sudan's federal system, some of which legally came into being upon signature of the agreement, and others which will come only after a specific time limit has expired. In particular:

- (i) Article 25.4 of the Darfur Agreement provides that in the event the conference on the system of government is not organised, Darfur region will be "reestablished [...] with all its powers and authorities **within 7 (seven months)** of the signature of this agreement". Article 25.5 of the Darfur Agreement provides that in the event the conference on the system of government is organised, it can only add to the powers that Darfur region has been allocated by the Darfur Agreement itself, and that whatever the agreement, Darfur region must be granted all these powers and authorities "**within 30 (thirty days)** after the conference on the system of government takes place".
- (ii) The Blue Nile and Kordofan Agreement provides for a different arrangement. It grants autonomy to the two provinces and does not specifically provide that either of the two provinces should become a region. It provides in full that "the two sides agree without prejudice to the unity of Sudan's people and territory, or to the exclusive or shared powers or residual power that are set out in this agreement, that the two areas have autonomy which they exercise through the powers that are set out in this agreement".

The main differences between these two arrangements is that:

- (i) Blue Nile and Kordofan acquire expansive autonomy immediately, whereas Darfur region must wait until April 2021 to come into existence;
- (ii) Blue Nile and Kordofan are not described as "regions" even though they appear to have been granted far more significant authority than the Darfur region (once it will be established).

Just as importantly, while the agreements make it clear that the entire country is to reestablish itself as a federation, no specific arrangements are made on the parts of the country that are not covered in the agreements. What that means is that all of the detailed arrangements that are described below will not necessarily apply to the parts of the country that are not covered in the agreements and that separate arrangements will have to be made. It is very likely that the end result of this effort will be that there will be several levels of asymetrisim in the country, which is certainly possible of course but will bring added levels of complications to an already complicated situation. This could the case for the regions' internal structures, each of which could have its own set of institutions. It will almost certainly apply to

the allocation of responsibilities, which is already different for Darfur and Blue Nile and Kordofan (see below).

Internal structures. The Blue Nile and Kordofan Agreement provides some indication how those areas will be structured internally. The Agreement provides that the areas that it covers shall have a governor, a council of ministries, a parliament, a judiciary, etc. Meanwhile, the Darfur Agreement does not provide any indication how the future Darfur Region will be structured internally. In addition, no indication is given whatsoever how the rest of the country (which is also to be governed under a federation) will be structured. This leaves open several questions, including how the governors in each of the future regions will be selected (directly or indirectly elected), the powers that governors will be able to exercise, the powers that municipalities will be able to exercise within each region, etc. Several possibilities exist, including but not limited to the following:

- (i) Sudan can simply fall back on the arrangements that had been established under the 2005 Interim Constitution;
- (ii) Sudan can establish a default arrangement for the regions and allow for specific regions to deviate from that arrangement if an agreement has been entered into for that purpose;
- (iii) Sudan can allow for each region to decide on its own how it would prefer to be organised internally.

It may be the case that the negotiators already have a clear idea of how the federal regions will be structured internally. Whatever option the relevant authorities adopt, they have very little time to resolve this issue, as set out below.

Implementation. The ANI and the Darfur Agreement impose on the transitional government of Sudan the obligation to adopt legislation that will reestablish Sudan as a federation. The Blue Nile and Kordofan Agreement is silent on this issue given that it does not specifically state that Blue Nile and Kordofan will be established as federal regions.

- (i) Article 10.2 of the ANI provides that the parties agreed to establish Sudan as a federal state and that the Transitional Government of Sudan should take “the necessary legislative measures to issue a legal decision to reestablish the federal system in a period not exceeding (60) sixty days” from the day on which the agreement was signed.
- (ii) Article 25.2 of the Darfur Agreement provides that “the two sides agree to the establishment of the federal and regional system of government in Sudan including the region of Darfur and the Transitional Government of Sudan must take the necessary legislative measures to issue an official legal decision to reestablish the federal system in a period not exceeding 60 (sixty days) from the date of the signature of the peace agreement”.

Considering everything that will need to be decided, this deadline is very short. This is particularly the case considering the very large number of other items that will need to be addressed during the same period (including the flooding disaster, and the very large number of other issues arising out of the agreement that must be implemented during the same period).

Allocation of responsibilities. There is a huge amount of detail in the Blue Nile and Kordofan Agreement and in the Darfur Agreement on the allocation of responsibilities. Much of it is very familiar but there are a number of unique features that are worth mentioning. Importantly, the two agreements do not allocate the same powers to the different areas. Blue Nile and Kordofan are granted sixty-one

separate powers, while the Darfur Region is granted twenty-eight powers only. A detailed comparison will have to be carried out to determine how exactly the two allocations differ from each other, but until then it is clear that even among the parts of the country that were involved in the peace negotiations, the system is asymmetric. To give an idea of how the allocation of responsibilities is constructed, the Blue Nile and Kordofan Agreement is structured as follows:

- (i) There are long lists of exclusive central powers, exclusive provincial powers, and shared powers. But importantly, the Blue Nile and Kordofan Agreement places the list of exclusive provincial powers first (Article 9) and ends with the list of exclusive central powers (Article 11). That sends an important message, even if only symbolic, of what the agreement is designed to achieve and where the priorities lie.
- (ii) The provision on residual powers is also worthy of mention (although residual powers are usually not very important where existing arrangements include comprehensive lists of powers). In comparative practice, residual powers are usually allocated either explicitly to the central government or to the provincial governments. The Blue Nile and Kordofan Agreement does things entirely differently: it states that each residual power will be allocated “in accordance with its nature” (Article 12). There will very likely be disagreements on specific rights. Perhaps the courts will play a role in resolving these disagreements. This is heavily inspired by the 2005 Comprehensive Peace Agreement (Schedule E), which means that there is some experience with this type of arrangement although information on how it was applied in practice is not readily available.³
- (iii) In terms of the actual allocation, there are not that many surprises. The provinces have legislative powers (Article 9.10), which means that they can pass legislation on any of the issues that are listed in Article 9. There is a very strong emphasis on culture and languages. Article 9.7 states that the provinces have exclusive authority to establish language institutes to teach local languages, and Article 9.9 allows for the provincial governments to promote local culture.
- (iv) The list of shared powers has 28 subsections, and includes a broad range of issues. This includes resolving land disputes (Article 10.7), police and prisons (Article 10.1), implementing the population census (Article 10.14), and water resources that cross internal boundaries (Article 10.17). Article 10.20 also provides that taxation powers that require a “joint decision” is also to be a shared power, but doesn’t give any indication on what these might be.
- (v) The list of exclusive central powers includes 41 separate subsections. There are all the usual powers that central governments usually exercise including national defense (Article 11.1), foreign affairs (Article 11.2), the power to grant nationality (Article 11.3), the central bank (Article 11.13), international agreements (Article 11.22), national taxes (Article 11.32).
- (vi) Some of the drafting is irregular, which will complicate implementation. For example, Article 9.8 provides that “the residents of the two areas have the right to participate in the rewriting of Sudanese history”. That provision comes right in the middle of the list of exclusive provincial powers, so it reads awkwardly and raises a lot of questions (which residents? How will they be selected? How many residents? Does this really count as a “provincial power”?). It’s unclear how this can be properly implemented.
- (vii) There is also some repetition. For example, Article 9.15 provides that provinces are exclusively competent to “raise taxes”, but Article 9.55 provides provinces with the power to “raise revenue”. This type of repetition is probably the result of a long and difficult negotiation process, and in this case it’s probably not a problem but it might lead to some confusion. It does raise the possibility that there are other drafting issues that may cause a problem in the future.

³ This type of arrangement is also in force in South Sudan.

National level power sharing. The agreements provides for power sharing at the national and provincial levels in ways that are quite familiar, although there are a number of particularities that should be highlighted. Most (but not all) of the national power sharing arrangements are included in the ANI, but significant elements are also included in the Blue Nile and Kordofan Agreement and in the Darfur Agreement.⁴ The principle is very well understood in Sudan, so there will not be much controversy here. The following provisions are worth noting:

- (i) Article 4.1 of the ANI provides that the “sides of the peaceful process” should be represented by three additional members of the Sovereignty Council.⁵ In the event additional “sides” were to sign on to the agreement, it is not clear if they would be granted additional seats on the Sovereignty Council or if the same number of additional seats would have to be shared between them.
- (ii) Article 5.1 of the ANI provides that the “sides of the peaceful process” should also be represented in the Council of Ministries in the form of 5 ministers (which is to say 25% of the Council).
- (iii) Article 6.1 of the ANI provides that the “sides of the peaceful process” should be granted 25% of the seats in the Transitional Legislative Council (which is to say 75 seats).
- (iv) The Blue Nile and Kordofan Agreement also provides that national institutions, including the national constitutional court and the high judicial council, should include members for the provinces as well, while specifying that they should be hired on the basis of their qualifications (Articles 51.2 and 51.4).

Provincial power sharing. The Blue Nile and Kordofan Agreement includes some indication on how local government will function in those two areas. The Darfur Agreement however is comparatively silent on how the regional authorities should be composed, which strongly suggests that the former Darfur region that was dissolved following the 2016 constitutional referendum. On the Blue Nile and Kordofan Agreement:

- (i) The provinces have governors, councils of ministers, parliaments and a judicial sector (Article 26, Blue Nile and Kordofan Agreement).
- (ii) The agreement is that the SPLM-N will appoint the governor of Blue Nile, while and the deputy governor position in both South Kordofan and West Kordofan and will also appoint 30% of the executive and parliament Blue Nile and South Kordofan (Article 30, Blue Nile and Kordofan Agreement).

Commissions. One question mark that immediately imposes itself is that the many commissions that are provided for under the agreement are listed as being part of the “executive branch” under the Blue Nile and Kordofan Agreement (Article 27.3). The obvious interpretation here is that the drafters intend for the commissions not to be independent. The ANI contains a section that is specifically dedicated to

⁴ In addition, the Addis Ababa Agreement provides that there should be “appropriate and fair sharing of power and wealth among the various people of the Sudan” through the constitution (Article 6). As noted above, the Addis Ababa agreement does not have the same status as the August 2020 agreements and so therefore should be considered separately.

⁵ The term “sides of the peaceful process” is not defined but is clearly designed to refer to the signatories. It is possible that this ambiguous term was used in order to allow for the possibility that additional members could be added to the Sovereignty Council, Council of Ministries and Parliament without formally having to sign the ANI.

establishing how the commissions should function (Article 8). The commissions are not described as being independent, and the section itself hardly provides any detail on composition, independence or mandate. The most that is said is that the commissions' membership should be representative of the signatories without any detail being provided.

Financial issues and revenue sharing

General. The agreements dedicate a very significant amount of attention to financial issues, taxation, revenue sharing etc. Clearly, the signatories have a deep sense of marginalization by Sudan's national authorities stretching over decades, and demanded during the negotiations that guarantees be provided that they will secure a greater share of investment for their areas. This was reflected in virtually all of the agreements, which include a large number of guarantees, but which also leave open a number of crucial issues that could yet derail the entire agreement.

National revenue commission. The ANI provides for the establishment of a National Revenue Fund (Article 22) and a National Revenue Commission (Article 23). It also provides that a law providing for the establishment of the National Revenue Commission (Article 23.2).⁶ Unusually, the Darfur Agreement contains a significant amount of additional detail, which raises the question as to whether the parties that are not included as signatories to the Darfur Agreement will accept these additional arrangements. The Darfur Agreement's revenue sharing protocol provides for the establishment of a National Commission to Divide, Allocation and Oversee Resources and Financial Revenues (Article 14). In particular, it provides that:

- (i) The Commission's mandate is to "guarantee transparency and to remedy the various ways in which revenues are distributed through [a new distribution that is] horizontally and vertically equitable [...] particularly in the regions / provinces that were damaged by war and historical injustices. The Commission also commits not to deny the federal government or any other side from obtaining its financial dues" (Article 14.2).
- (ii) The Commission's composition is a crucial issue. If sufficient numbers of members are drawn from specific backgrounds, the Commission's decisions and tendencies will essentially have been predetermined. In particular and in more detail, if a majority of the Commission's members are drawn from traditional centers of national authority (e.g. the ministry of finance, the national treasury, etc.), the Commission's allocations of revenue will be more likely to favor the federal government. Somewhat surprisingly therefore, the Agreement does not provide significant detail on the Commission's composition. It merely provides that the chair is to be appointed by the transitional prime minister and states that "the law guarantees equitable representation for the regions and provinces" (Article 14.1). The exact composition of equivalent bodies was the subject of heated debate and negotiations in both Iraq and Yemen. In both countries, a final agreement was not yet been reached.⁷

⁶ These arrangements were also provided under the 2005 Comprehensive Peace Agreement. Article 197 of the CPA provided for the establishment of a National Revenue Fund. Article 198 provided for the establishment of a "fiscal and financial allocation of monitoring commission".

⁷ Under the CPA, the "fiscal and financial allocation of monitoring commission" included three members from the national government, three from the South Sudan government, and all finance ministers from the states. At the time, northern Sudan was dominated by the ruling party, which meant that a single political force essentially dominated the commission.

- (iii) The Commission is granted extensive powers, including the power to oversee and control all funds that are deposited in the National Revenue Fund (Article 15.1), to allocate the shares of national revenue to the central government and to the regions (Article 15.2), and to establish criteria according to which the allocation will be made (Article 15.3).

Specific allocations. The Blue Nile and Kordofan Agreement agreement predetermines some of the allocations that will be made in the coming years.

- (i) The agreement is that the two provinces will be given 40% of any revenue that is generated through the sale of the two provinces' natural resources and through taxation (Article 16.1). That arrangement will last for a period of 10 years. After that period, the parties are supposed to negotiate a new formula. The Darfur Agreement makes the same provision, which makes sure to specific mention that the rule extends to revenues that are generated through the sale of "metal resources" [CHECK] (Article 25.1).
- (ii) The Darfur Agreement provides that the regions from which natural resources are extracted have special rights over the revenues that are generated from their sale, without providing any specifics (Article 22.1).
- (iii) The Darfur Agreement also provides for an automatic transfer of US\$750,000,000 yearly from the Sudanese government to the peace and development support fund in Darfur for the following ten years (Article 29.6) and an immediate transfer of US\$100,000,000 within one month from the signature of the agreement (Article 29.8).

Taxation. On taxation, revenue, the power to take out loans, and other financial issues, there are lots of provisions that are spread out throughout the agreements. Under the Blue Nile and Kordofan Agreement, the provinces have been allocated significant revenue raising powers, including a general taxation power (Article 9.15), the right to borrow from national banks (Article 9.11), the right to draw up its own budget (Article 9.16), the right to enter into investment agreements within the confines of foreign policy (Article 9.57). Similar arrangements are made under the Darfur Agreement. A more complete overview of the arrangements under both agreements will be included in this paper's next version. Given Sudan's economic situation, the taxation powers of the poorer regions may prove of secondary importance. Instead, they are likely to rely on transfers from Khartoum and on the international community (with the possible exception of taxes that are imposed on the extraction and sale of natural resources).

Individual and the state

Religion and state. The relationship between religion and state was a principle issue in the negotiations. As noted above, some of the most important groups refused to participate because they insisted that Sudan's transition government commit to secularism as a precondition for talks. That commitment was not made before the start of the discussions, but there is significant evidence from the text of the agreements that the negotiators clearly agonized over this issue. The word "secular" (which is often associated with atheism in Sudan) is not used in any of the agreements, but the wording that is used is clearly designed to satisfy the demands that some of the opposition groups have been making. For example:

- (i) The Blue Nile and Kordofan Agreement includes one main provision on the relationship between religion and state. Article 1 provides that the state should remain equidistant from all religions and culture without racial, religious and cultural bias”.
- (ii) Article 9.2 of the Blue Nile and Kordofan Agreement provides that both areas shall exercise the power and authorities that are set out under the 1973 constitution (as amended in 1974). Importantly, Sharia was only established in Sudan in 1983. What this means is that the two areas will be allowed to pass legislation that is not based on Sharia regardless of what happens in the rest of the country.
- (iii) The ANI’s wording goes further. Article 1.7 (which is included in the Section entitled “General Principles”) provides: “The complete separation between religious institutions and state institutions to guarantee that religion will not be exploited in politics, and that the state will remain equidistant from all religions and sacred beliefs, which should be guaranteed in the country’s constitution and in its laws”. The wording that is used here will obviously be subject to interpretation: if state and religious institutions are independent from each other, can the state nevertheless adopt an official religion? Also, could the wording be interpreted to mean that religious institutions (including for example the state mufti) should continue operating but should be granted full administrative and financial independence from state institutions? Clearly however, the wording does not prevent state officials from being inspired by religion when developing state policy, which would probably not be acceptable to make of the parties.
- (iv) The Addis Ababa Agreement goes further still.⁸ It states that the country’s future permanent constitution should be based on the principle of “separation of religion and state” (Article 3). The principle is not defined, and is likely understood differently by the different parties to the negotiations. At the very least however, most parties would probably understand it to mean that state policy should not be based on religious doctrine. One of the questions that is likely to emerge during the constitutional process is whether negotiators will simply reiterate the principle into the text of the final constitution or whether negotiators will demand that specific arrangements be incorporated as a form of guarantee. Article 3 of the Addis Ababa Agreement foreshadows this discussion somewhat: it states that in the event the new constitution does not include that principle, then the right to “self determination” must be respected, which is barely concealed code for independence.

Equality. The agreements place a great deal of emphasis on all types of equality, including gender, racial and religious equality. They set out principles of their own, confirm the principles that are established on the 2019 Constitutional Charter, and establish numerous mechanisms and arrangements that seek to redress injustices of the past. Notably not all of the arrangements are the same throughout the agreements. In particular:

- (i) The Blue Nile and Kordofan Agreement places a great deal of emphasis on equality. The first section (“General Principles”) includes six articles, three of which relate to non-discrimination and equality. Article 1 provides that the state should treat “all religions and cultures without bias”. Article 2 provides that “citizenship without discrimination is the basis for all civil, political, social, economic and cultural rights and obligations”.
- (ii) Various provisions in many of the agreements provide for greater gender equality. Article 1.20 of the ANI provides that the signatories recognize the “importance of women’s representation

⁸ As noted above, the Addis Ababa agreement does not have the same status as the August 2020 agreements. It is discussed here for the sake of comparison and should not be considered to be applicable as the August 2020 agreements.

in all levels of authority and decision making centers in a just and effective way and no less than 40% of representation”. Article 5 of the Blue Nile and Kordofan Agreement provides for there should be a 40% women participation rate at the national level.⁹ That principle is confirmed throughout the agreement. Article 34 of the Blue Nile and Kordofan Agreement provides that women should make up at least 40% of the parliament. On the other hand, the Darfur Agreement does not include any reference to women participation. The question is therefore whether the wording that is included in the ANI is sufficiently clear and directive to be applicable to Darfur and in particular to the region that will be established there in April 2021.

- (iii) The drafting throughout all of the agreements is gender sensitive, which is pretty unusual for an Arabic language text. For example, Article 51.1 of the Blue Nile and Kordofan Agreement provides that “sons and daughters” of the provinces should be hired to join the judicial sector. That type of wording is used throughout the agreement.

Constitutional process

The Blue Nile and Kordofan Agreement and the ANI impact the national constitutional process in a number of respects. Amongst other things, deadlines are now established for a number of actions to be taken. Within the next six months, the constitutional commission should be established, the constitutional conference should take place, and a conference to debate the system of government should be convened as well. In addition, a number of provincial transitional constitutions should also be adopted. In more detail:

- (i) **Permanent national constitution.** The Blue Nile and Kordofan Agreement and the ANI provide some additional detail on how the permanent constitution should be adopted.
- (a) Article 104 of the Blue Nile and Kordofan Agreement provides that there should be “small conferences” in the two areas to prepare for the national constitutional conference.
 - (b) Article 1.28 of the ANI provides that the constitutional process should start with the national constitutional conference.
 - (c) Article 9.4 of the ANI provides that the “sides of the peace process” should have a real role in drawing up the constitutional commission law and determine its composition.
 - (d) Article 9.2 of the ANI provides that the Constitutional Commission should organise the national constitutional conference **within six months** from the signature of the Blue Nile and Kordofan Agreement. Needless to say, this is a very short time frame that will reach its term very quickly. There will be a huge amount of work to do if the conference is to be successful.
 - (e) Article 9.5 of the ANI sets out the agenda of the national constitutional conference, including the following:

- Identify and managing diversity
- Citizenship
- Relationship between religion and state
- Reform and development of the security sector
- Governance and authority issues
- Resources, development, environment and economic issues

⁹ The 40% requirement is repeated in other agreements as well; see for example Article 1.20 of the ANI.

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- (ii) **Conference on system of government.** As noted above, the Blue Nile and Kordofan Agreement provides that a conference on the system of government should take place, but most of the detail is set out in the ANI. In addition, various parts of the Blue Nile and Kordofan Agreement, the ANI and other agreements seem to suggest that a decision has already been taken to reestablish Sudan as a federation. In that context, the conference on the system of government appears to have as its purpose to debate and possibly decide some of the key aspects of that federal arrangement. For example:
- (a) Article 10.1 of the ANI provides that the conference should “determine the vertical and horizontal powers and relationships of the federal system”.
 - (b) Article 10.3 of the ANI provides that the conference should “review the internal boundaries and administrative divisions of the regions, the various levels of government, the framework and powers of the regions in a manner that does not contradict the peace agreements that have been signed by the parties in Juba”. Given the amount of detail that is included in the Blue Nile and Kordofan Agreement (particularly on the allocation of responsibilities) this means either that Sudan will be established as an asymmetric federation or that there will be very little to discuss.
 - (c) Article 25.3 of the “power sharing” section from the Darfur Agreement incorporates a slightly different version of Article 10.3. It provides that the purpose of the conference is to “review the administrative divisions of the regions, the various levels of government, the framework and powers of government [sic]”. One of the important differences between this wording and Article 10.3 above is that Article 25.3 does not state that the outcomes of the conference cannot contradict the substance of the Blue Nile and Kordofan Agreement. This is an important distinction but it is unclear what its significance is in the circumstances.
 - (d) Finally, Article 10.3 of the ANI also states that the conference on the system of government should take place **within six months**.
- (iii) **Provincial transitional constitutions.** The Blue Nile and Kordofan Agreement provides that the provinces should adopt transitional constitutions while the country’s new permanent constitution is negotiated. As noted elsewhere in this note, there isn’t a very clear section anywhere that specifically and clearly indicates how the provinces’ transitional constitutions should be adopted, but some indication is provided:
- (a) There should be a conference on the system of government (Article 31, Blue Nile and Kordofan Agreement). The ANI provides some indication as to how the conference should be organised (see below).
 - (b) Following the conference on the system of government, a committee that is representative of “all sides” should be composed to draw up a transitional constitution for the two areas (Article 31)
 - (c) The final decision on the provinces’ transitional constitutions should be taken by the provinces’ legislative assemblies, which are exclusively competent over the area.

Elections

National elections. Article 13 of the ANI provides some indication on how national elections should be organised. It provides that certain conditions must be satisfied before elections can take place including:

- (i) The adoption of an electoral law;
- (ii) Forming the Electoral Commission;
- (iii) Passing the Political Parties Law;
- (iv) Holding the National Constitutional Convention;
- (v) The return of internally displaced people and refugees; and
- (vi) The completion of a population census.

Article 13 does not provide any indication when national elections should take place, but the general understanding appears to be that elections should only take place after a new permanent constitution has been adopted. If that is right, then it is possible that the next elections will take place in 2023.

Subnational elections. As noted above, the Darfur Region is to be reconstituted, and other parts of the country will likely be regionalized as well. It is not clear if any of the new regional or local authorities in any of these parts of the country will be elected, but it is certainly a possibility.

Transitional justice

Blue Nile and Kordofan Agreement. The agreements provide a very large amount of detail on transitional justice issues. Under the Blue Nile and Kordofan Agreement:

- (i) Transitional justice is listed as both a shared power (Article 10.8) and an exclusive provincial power (Article 9.6). I'm not sure how this will be resolved.
- (ii) A large number of commissions are provided for, including but not limited to a joint committee to compensate for the confiscation of property belonging to the SPLM-N and others (Article 64). A branch of the national transitional justice commission should be established (Article 85).
- (iii) There is an entire section on civil service reform according to which residents of the provinces should be include at all levels of the civil service, and includes a full list of all the types of positions that are covered (Article 69). Specific proportions are provided including that the "sons and daughters" of South Kordofan should make up 5% of all positions in the civil service (Article 72.1).

Darfur Agreement. In addition, the Darfur Agreement contains a number of protocols that directly address transitional justice issues. One of the protocols is entitled "justice, accountability and reconciliation", and establishes a truth and reconciliation commission (Article 22). The protocol also reaffirms the parties' commitment to collaborate with the International Criminal Court (Article 24) and to establish a special tribunal for crimes committed in Darfur (Article 25). Other protocols relate to land issues, and to compensation.

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