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The Juba Agreement for Peace in Sudan

Summary and Analysis

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1. Executive summary

On 3 October 2020, Sudan's Transitional Government and representatives of several armed groups signed the 'Juba Agreement for Peace in Sudan' (hereinafter 'Juba Agreement'). This Summary and Analysis paper discusses the Agreement's main elements, with a particular focus on the main ways in which it impacts the current and future system of government. The main points that are made in this paper can be summarized as follows:

1. The Juba Agreement amends the 2019 Constitutional Charter in a number of important ways and also predetermines much of the yet-to-be drafted permanent constitution. One of the challenges during the negotiation and drafting of the permanent constitution will be to reinforce its democratic legitimacy given that so much of its contents have already been decided by peace negotiators who do not themselves enjoy electoral legitimacy.
2. Sudan is to be established as an asymmetric federation. The future Darfur region will exercise a different set of powers to Blue Nile and Kordofan, and it is unclear what powers will be exercised by the rest of the federal regions. The Agreement contains a large amount of detail on the powers that specific regions will exercise, but is close to silent on a range of issues including but not limited to the national government's structure, the internal structure of federal regions and the composition of revenue sharing commissions. The Agreement provides that significant additional agreements on the federal system will have to be reached in the coming few months, which will be a major challenge.
3. The Agreement includes a significant amount of detail on how the constitutional process will be organized. The Agreement provides that a conference on the system of government should take place; a timeframe, an agenda and some indication on the participants have also been determined. However, it is still unclear what the conference's purpose will be.
4. The Agreement establishes a complex web of transitional justice mechanisms, including truth and reconciliation mechanisms, investigations and the possibility of pardons. In some cases, the Agreement appears to prioritize judicial mechanisms over reconciliation, although that is not stated explicitly.
5. The Agreement also provides for extensive transitional security arrangements, which are also not organized centrally. Each part of the country will have its own mechanisms and institutions. The Agreement provides that individual members of armed groups should be integrated into the national security forces. The interaction between these different mechanisms will be difficult to manage.

Because of the manner in which the negotiations have taken place, there is good reason to believe that the parties will reach agreement on these outstanding issues. The challenge, howeve, will be to negotiate a permanent constitution that delivers real benefits to the general population and that enjoys some form of democratic legitimacy while continuing to make progress on interim governance issues, all within a reasonable timeline.

2. Context

a. This paper

Substantive focus. This paper is mainly focused on the Agreement's constitution-building elements (meaning its impact on Sudan's constitution-building process and on the future constitution's substantive content). The paper also includes some discussion of the general context in which the Agreement was entered into, and summarizes some the Agreement's other elements as well (including security arrangements, transitional justice and others). The paper is not a comprehensive analysis of all of the Juba Agreement's elements.

Six versions. This version of the Summary and Analysis paper is the sixth version to have been produced. Earlier versions were prepared and circulated between August and November 2020 in draft form. Each new version built on earlier versions by incorporating comments and corrections that were offered by a range of commentators, and also included new sections of analysis as the full text of the Juba Agreement became available in October 2020. This version is the final version of the Summary and Analysis paper. No further updates are currently planned.

b. The Agreement

The negotiations. The negotiations that led to the adoption of the Juba Agreement were mediated by the Republic of South Sudan. According to individuals who were involved in the negotiations, the mediators 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 Agreement(s). The Juba Agreement includes 10 different chapters. The first is an agreement on national issues. Six chapters consist of bilateral agreement between the Government of Sudan and different armed groups. These different chapters (see Table 1) cover a wide range of issues, including power sharing, revenue sharing, transitional justice and transitional security arrangements. The Agreement also includes an implementation matrix that sets out implementation deadlines for a very large number of issues.

Table 1. List and summary of the Juba Agreement's Chapters

Title	Geographic scope	Scope
Chapter 1 The Agreement on National Issues (hereinafter 'ANI')	National	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.)
Chapter 2 Darfur Peace Agreement (hereinafter 'Darfur Agreement')	National North Darfur, South Darfur, West Darfur, East Darfur, Central Darfur	Power sharing, revenue sharing, permanent ceasefire, transitional security arrangements, transitional justice, compensation, etc.
Chapter 3 Two Areas Peace Agreement (hereinafter the 'Blue Nile and Kordofan Agreement')	National Blue Nile, South Kordofan, West Kordofan	Allocation of responsibilities, financial resources, civil service reform, reconstruction and development, environment, etc.
Chapter 4 Eastern Path Peace Agreement	National Eastern region (Red Sea, Gedaref and Kassala states)	General principles Basic rights and transitional justice Power sharing Social, health and economic issues
Chapter 5 Northern Path Peace Agreement	National Northern region (Northern state and River Nile state)	General principles System of government Disputed territories Cultural, economic and health issues
Chapter 6 Central Path Peace Agreement	National Central region (Khartoum, Jazeera, White Nile and Sinar states)	Agriculture and economic issues National fund for development
Chapter 7 Agreement on security arrangements between Sudan's transitional government and the third front — Tamazeg (the 'Third Front Security Agreement')	National 'All parts of the country where the Tamazeg are located'	Permanent ceasefire Command and control Reintegration Police reform Intelligence service Demilitarization
Chapter 8 Final provisions	National	Status of the parties and of the agreements; binding nature of the agreement; status of new parties; dispute resolution

Complexity. The Juba Agreement is highly complex mainly because of the way in which the different chapters 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:

1. On revenue sharing, section 2 of the Darfur Agreement provides for key arrangements that will impact the country as a whole, including those parts of the country that did not sign on to these particular bilateral arrangements.
2. On the composition and functioning of national level institutions, readers will have to read hundreds of provisions that are set out in individual bilateral agreements in order to develop a full understanding of how these institutions will function. This applies to a range of institutions, including governance, security and transitional justice institutions.
3. 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 goodwill between the parties to overcome these problems as they occur.

Legal status. Virtually all of the agreements refer 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:

1. 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'.

2. 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'.
3. 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 Constitutional Charter was formally amended on 2 November 2020 to incorporate some of the Juba Agreement's main provisions. The amendments were fairly limited relative to the length and detail of the Juba Agreement. Ten amendments were entered into altogether, some of which consisted of terminological changes.[1]

Dispute resolution. Chapter 8 (Final provisions) provides that in the event of a dispute between the parties on the interpretation or implementation of the Agreement, the matter should be referred to the following dispute resolution mechanisms and in the following order:

1. The highest mechanism for the implementation of the specific agreement.
2. The peace commission.
3. The relevant oversight and evaluation committee for the peace agreement.
4. The relevant court.

Referring disputes of this nature to the court as a matter of last resort is unusual. Courts are not usually considered to be adequately equipped to resolve disputes of this type.

Addis Ababa Agreement. 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).

Legitimacy. The Agreement is the result of a negotiation between a transitional government (which itself was formed pursuant to a negotiation between the Forces for Freedom and Change and the security forces) and a number of armed groups. The Agreement makes a number of determinations on the future system of government, including that Sudan will be a federation. The fact that these major governance issues are being resolved without any democratic input from the general population, whether directly or indirectly,

1 International IDEA will prepare a detailed analysis of the Constitutional Charter and of these amendments.

has already caused significant consternation in many circles. The remainder of the transition will have to make a concerted effort to bridge the democratic deficit in order to ensure that the final constitutional arrangement is in line with the popular mainstream.

c. The parties

Signatories. The Juba Agreement consists in part of a number of bilateral agreements between the Transitional Government of Sudan and different rebel groups. The full list is in Table 2.

Table 2. List and summary of signatories to the Juba Agreement

Name of signatory	Description
The Transitional Government of Sudan	Formed pursuant to the 2019 Constitutional Charter and includes elements from the Forces for Freedom and Change and from the Sudan Armed Forces.
The Armed Struggle Movements–Darfur Path (حركات الكفاح المسلح - مسار دارفور)	Coalition of the main armed movements in the Darfur region. Mainly includes the Justice and Equality Movement, the Sudan Liberation Movement (Minni Minawi), the Sudan Liberation Movement-Transitional Council, the Sudanese Alliance Movement, the Sudan Liberation Forces Alliance, and the Sudan Liberation Movement.
Sudan Liberation Movement – North– SRF (الحركة الشعبية لتحرير السودان - شمال\ الجبهة الثورية)	Connected to the South Sudanese Sudan People's Liberation Movement (SPLM) and remained active in Sudan after South Sudan seceded in 2011. In 2017, the movement split into two main factions: the Malik Agar faction which signed the Juba Agreement and the Abdelaziz al-Hilu faction which has still not signed into the Agreement (see below). Both factions are located in the South Kordofan and Blue Nile area.
Masar al-Sharq (Eastern Path)	Headed by Osama Saeed, the leader of the Beja Congress, which is a political group comprising serval ethnic groups. The group has splintered, which contributed to a lack of consensus within Masar al-Sharq on the Juba Agreement. Osama Saeed signed the Eastern Sudan Track on behalf of two Beja Congress splinter groups (United People's Front for Liberation and Justice and the Beja Congress in opposition).
Masar al-Shamal (Northern Path)	Consists of the Kush Liberation Movement and the North Entity (حركة تحرير كوش وكيان الشمال). The Masar's objectives include development, and displaced persons in north Sudan, Merowe and Wadi Halfa who were displaced because of dam construction.
Masar al-Wasat (Central Path)	Coalition of political parties and Sufi groups. Headed by the Revolutionary Democratic Front Party. Masar al-Wasat is concentrated in al-Jazira state, the White Nile, Sennar and the state of Khartoum.
Al-Jabaha al-Thalitha-Tamazaj (Third Front)	Faction/wing of the SPLM.

Equal responsibility. Article 4 of Chapter 8 (Final provisions) provides that regardless of which agreement they have signed, all parties are bound by the Agreement's preamble, the final provisions and to the national issues. It also provides that the parties are 'equally responsible' to this Agreement. At the same time, article 7 of Chapter 8 suggests that individual parties are only bound by the individual chapters that they negotiated and signed. However, given that many of these individual agreements have national implications, individual parties will inevitably be impacted by specific arrangements in agreements that they have not agreed to. Depending on circumstances, this could easily cause difficulties during the implementation of the Agreement.

Holdouts. Two of the main rebel groups did not sign on to the Juba Agreement. In particular:

1. The Sudan People's Liberation Movement – North (SPLM-N) (led by Abdalaziz Adam Alhilu) agreed to join the negotiations in Juba but insisted on having its own separate peace track and on signing its own agreement. The SPLM-N also insisted on the establishment of a secular state as a precondition for peace, which caused for the negotiations to stall. The SPLM-N 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). Following the signature of the Juba Agreement, a Track II process was launched between members of the SPLM-N and representatives of the Transitional Government but as of December 2020 that process was not successful in building consensus between the two sides.
2. The Sudan Liberation Movement (SLM) (led by Abdel Wahed Mohamed Nour) has said that it does not recognize the transitional government as legitimate because it contains a military component, and so therefore did not participate in the negotiations at all. After the Juba Agreement entered into force, representatives of the SLM have since declared their willingness to negotiate a peace agreement with Sudan's transitional authorities.

Article 8 of Chapter 8 allows for the possibility that new parties can sign on to the Juba Agreement on the condition that the 'concerned sides' agree. Article 9 provides that in the event a new party signs on to the Agreement, it will be bound by all the responsibilities that the original parties were bound by.

3. Content of the future constitution

a. Federalism

Final outcome. The Juba Agreement provides that Sudan will be constructed as a federation.[2] 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 organized as a federation, which if true would mean that there is very little else to negotiate in the constitutional negotiations that have yet to take place.[3] The Constitutional Charter was amended to reflect this shift in favour of federalism.[4]

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:

1. Article 25.4 of the Darfur Agreement provides that in the event the conference on the system of government is not organized, Darfur region will be 're-established […] 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 organized, 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'.
2. 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'.

2 Note that the earlier version of the Agreement that was signed in August 2020 was not consistent in its use of terminology on this point. For example, article 2, Chapter 5 provided that Sudan is a 'decentralized state'. Much of this terminology has been standardized in the final version of the Agreement that was signed on 3 October 2020. For example, article 2, Chapter 5 now provides that Sudan is a 'federal state'.

3 Note that the Juba Agreement is not consistent on this point. Article 1, Chapter 4 provides that the system of government will be federal and will have three levels of government 'or will be structured in accordance with what will be decided in the Conference on the System of Government'.

4 In accordance with the amendments that were entered into on 2 November 2020, article 4(1) of the Constitutional Charter now reads that the Republic of Sudan is a 'federal' state (whereas previously article 4(1) provided that the Republic was a 'decentralized' state).

The main differences between these two arrangements is that:

1. Blue Nile and Kordofan acquire expansive autonomy immediately, whereas Darfur region must wait until April 2021 to come into existence.
2. 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 is be established).

Just as importantly, while the agreements make it clear that the entire country is to re-establish 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 asymmetrism in the country, which is certainly possible of course but will bring added levels of complications to an already complicated situation. This could be 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:

1. Sudan can simply fall back on the arrangements that had been established under the 2005 Interim Constitution.
2. 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.
3. Sudan can allow for each region to decide on its own how it would prefer to be organized 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 re-establish 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.

1. 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 re-establish the federal system in a period not exceeding (60) sixty days' from the day on which the agreement was signed.
2. 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 re-establish 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 61 separate powers, while the Darfur region is granted 28 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:

1. 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.

2. 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.[5]
3. 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.
4. 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' are also to be a shared power, but does not give any indication on what these might be.
5. The list of exclusive central powers includes 41 separate subsections. There are all the usual powers that central governments usually exercise including national defence (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).
6. 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

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

will they be selected? How many residents? Does this really count as a 'provincial power'?). It's unclear how this can be properly implemented.

7. 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.

National level power sharing. The agreements provide 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 other agreements including the Blue Nile and Kordofan Agreement and the Darfur Agreement.[6] The principle is very well understood in Sudan, so there will not be much controversy here. The following provisions are worth noting:

1. 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.[7] 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.
2. 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 five ministers (which is to say 25 per cent of the Council).
3. Article 6.1 of the ANI provides that the 'sides of the peaceful process' should be granted 25 per cent of the seats in the Transitional Legislative Council (which is to say 75 seats).
4. 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).

6 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 Juba Agreement and so therefore should be considered separately.

7 Article 5, Chapter 8 provides that the term 'sides of the peaceful process' is designed to refer to the signatories to the Juba Agreement.

5. Article 15 of the Eastern Front Agreement provides that the government should work towards ensuring that the 'sons and daughters' of eastern Sudan should represent 14 per cent of the civil service.

Provincial power sharing. The Blue Nile and Kordofan Agreement and the Eastern Front Agreement include some indication on how local government will function in those two areas. On the Blue Nile and Kordofan Agreement:

1. The provinces have governors, councils of ministers, parliaments and a judicial sector (article 26, Blue Nile and Kordofan Agreement).
2. The agreement is that the SPLM-N will appoint the governor of Blue Nile, and the deputy governor position in both South Kordofan and West Kordofan and will also appoint 30 per cent of the executive and parliament Blue Nile and South Kordofan (article 30, Blue Nile and Kordofan Agreement).
3. Article 13 of the Eastern Front Agreement provides that the Beja Congress and other opposition groups should be allocated 30 per cent of seats in the executive and the legislature of Sudan's three eastern provinces.
4. The Blue Nile and Kordofan Agreement includes an entire section on civil service reform according to which residents of the provinces should be included 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 per cent of all positions in the civil service (article 72.1).

The Darfur Agreement is comparatively silent on how the regional authorities should be composed.

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 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.

b. 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 should be adopted (Article 23.2).[8] 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. Section 2 of the Darfur Agreement provides for the establishment of a National Commission to Divide, Allocate and Oversee Resources and Financial Revenues (article 14). In particular, it provides that:

1. 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, section 2).
2. 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 centres of national authority (e.g. the ministry of finance, the national treasury), the Commission's allocations of revenue will be more likely to favour 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'

8 These arrangements were also provided under the 2005 Comprehensive Peace Agreement (CPA). 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'.

(article 14.1, section 2). 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 has not yet been reached.[9]

3. 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, section 2), and to establish criteria according to which the allocation will be made (article 15.3, section 2).

Specific allocations. The Juba Agreement predetermines some of the allocations that will be made in the coming years.

1. The Blue Nile and Kordofan Agreement provides that the two provinces will be given 40 per cent of any revenue that is generated through the sale of the two provinces' natural resources and through taxation (article 16.1, section 3). 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 specifically mention that the rule extends to revenues that are generated through the sale of 'mineral and oil resources' (article 25.1, section 2).
2. 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, section 2).
3. The Darfur Agreement also provides for an automatic transfer of USD 750 million yearly from the Sudanese Government to the peace and development support fund in Darfur for the following 10 years (article 29.6, section 2) and an immediate transfer of USD 100 million within one month from the signature of the Agreement (article 29.8, section 2).
4. Article 58 of the Eastern Front Agreement provides that 30 per cent of the government's net revenue raised from the sale of natural resources that were extracted from eastern Sudan must be granted to the relevant provinces or region for a seven-year period.
5. Article 75 of the Eastern Front Agreement also provides that the government should transfer USD 348 million to the Reconstruction and Development Fund for Eastern Sudan (and specifically states that that amount should be considered to be a form of 'positive discrimination' and that it should not be deducted from whatever other transfers might have been made).

9 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.

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), and the right to enter into investment agreements within the confines of foreign policy (article 9.57). Similar arrangements are made under the Darfur Agreement. 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).

c. Individual and the state

Religion and state. The relationship between religion and state was a principal 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:

1. 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.
2. 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.
3. 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 most of the parties.

4. The Addis Ababa Agreement goes further still.[10] 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 in 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:

1. 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'.
2. Various provisions in many of the agreements provide for greater gender equality. Article 1.20 of the ANI provides that the signatories recognize

10 As noted above, the Addis Ababa Agreement does not have the same status as the Juba Agreement. It is discussed here for the sake of comparison only.

the 'importance of women's representation in all levels of authority and decision making centres in a just and effective way and no less than 40% of representation'. Article 5 of the Blue Nile and Kordofan Agreement provides that there should be a 40 per cent female participation rate at the national level.[11] 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 per cent of the parliament. Article 3 of the Eastern Path Agreement provides that the participation rate should be 'at least 40 per cent'. On the other hand, the Darfur Agreement does not include any reference to female 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.

3. Some provisions call for action to resolve unequal access to basic services. Article 17 of the Eastern Front Agreement provides that the 'federal government' should work to improve education while giving 'great importance to girls' education'.
4. The drafting throughout 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.

11 The 40 per cent requirement is repeated in other agreements as well; see for example article 1.20 of the ANI.

4. Transitional issues

a. 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 position of chair should pass to a civilian member on 17 May 2021 (article 11(3)).

b. Constitutional process

The Blue Nile and Kordofan Agreement and the ANI impact the national constitutional process in a number of respects. Among 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:

1. 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 commence its work within six months from the Agreement's entry into force.
    e. The Implementation Matrix provides that the constitutional conference should take place 'sufficiently in advance of the end of the transitional period' (see point 14, page 187).
    f. Article 9.5 of the ANI sets out the agenda of the national constitutional conference, including the following:

- identifying 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;
- foreign policy;
- adopting the final constitution; and
- other issues determined by the commission.

2. 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 re-establish 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.

3. 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 paper, 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 organized (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.

c. Elections

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

1. The adoption of an electoral law.
2. Forming the Electoral Commission.
3. Passing the Political Parties Law.
4. Holding the National Constitutional Convention.
5. The return of internally displaced people and refugees.
6. 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 2024.

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.

d. Transitional justice

General. As with all other issues, transitional justice is discussed throughout the Juba Agreement. A national mechanism is established, and different chapters make their own arrangements on how transitional justice issues should

be managed, which means that there will not be a single national mechanism on transitional justice for the whole of Sudan. As a general matter, this is not particularly worrying given that each area has its own particular history which would be best served by mechanisms that are specifically designed for that purpose. The complication here will be how to resolve different levels of mechanisms with each other, including international, national and local. The Darfur Agreement in particular contains several sections that directly address transitional justice issues. Section 3 is entitled 'justice, accountability and reconciliation' and establishes a number of mechanisms that will only exist in Darfur. These different arrangements are set out here in a different order, starting with international and judicial mechanisms, and continuing thereafter with reconciliation mechanisms. The Agreement appears to establish a clear order of jurisdiction with international jurisdiction at the top of the pyramid. On the other side of the spectrum, the Blue Nile and Kordofan Agreement does not appear to establish any specific transitional justice mechanism and appears to defer to national institutions while at the same time allocating responsibility for transitional justice to local authorities (see below).

International Criminal Court (ICC). The Darfur Agreement confirms that both parties confirm their 'full and unlimited cooperation with the International Criminal Court' (article 24.1, section 3). The obvious question here will be to what extent the parties will cooperate if the ICC makes accusations against leading political or military figures. This commitment is confirmed through the Juba Agreement. Article 6 of the Eastern Front Agreement confirms the two sides' 'full and unlimited cooperation' with the ICC. It is unclear how this will be reconciled with the immunity provisions that are included in the Constitutional Charter, and also with the possibility that a general amnesty may be declared (see below).

Special Court for Darfur. The Darfur Agreement also provides that a special court should be established within 90 days of the Agreement's entry into force (article 25, section 3). The court should consist of national judges who will be chosen with the chief justice's good offices, and prosecutors who will be chosen with the public prosecutor's good offices. The court will have jurisdiction over a wide range of issues, including acts of 'genocide, crimes against humanity, war crimes, grave violations of international human rights law since 2002'. The African Union will exercise oversight over the court. The court will apply Sudanese criminal law and international criminal law. The Agreement does not specifically deal with how the ICC's and the Special Court's respective jurisdictions will be delimitated, but the suggestion appears to be that the parties will defer to the ICC in the event it brings any claims against specific actors.

Investigations. The Juba Agreement also provides that the government should be responsible for carrying out investigations in relation to specific events. For example, article 9 of the Eastern Front Agreement provides that the government should investigate events that have taken place in the region since 1989 and 'in particular the events of 29 January 2005 and the events of 27-28 Ramadhan 2019'.

Traditional justice. The Darfur Agreement also provides that some transitional justice issues may also be resolved through 'traditional justice' (article 23, section 3). This will include disputes within or between tribes, on the condition that they do not fall under the jurisdiction of the ICC, the Special Court for Darfur, national courts or the Truth and Reconciliation Committee. What this means is that traditional justice is likely to be used in marginal numbers of cases, possibly only land disputes that are related to the campaigns that were led in Darfur in past decades. The Agreement provides that diverse and appropriate means of redress may be applied, that parties should have the right to negotiate, and that means should be established to protect witnesses.

Regular courts. The Darfur Agreement specifically states that national courts should continue to exercise their ordinary functions with the exception of matters that fall under the jurisdiction of special international and national mechanisms (article 20.1, section 3). The Agreement provides that the courts must refer all criminal matters that 'fall outside of their jurisdiction to the relevant justice mechanisms' including but not limited to the Special Court on Darfur's Crimes (article 20.2).

Commissions, committees and funds. The Juba Agreement establishes a large number of bodies that are mandated to work on transitional justice or on issues that are connected to transitional justice. The Agreement is entirely silent on how these bodies will coordinate their work, which will have to be clarified through legislation (which itself will probably not be adopted until after the transitional legislative authority has been expanded).

1. Article 19 of the ANI provides for the establishment of a Transitional Justice Commission. It provides that the commission should 'include [تشمل] all of Sudan's transitional justice mechanisms, especially conflict areas'. It is unclear what that means or how this would be organized. Does this mean that the national commission should have oversight powers over region-based mechanisms such as the Darfur mechanisms? Or does it merely mean the national commission will coordinate all other mechanisms? This is left unexplained at this stage.
2. Article 22, section 3 of the Darfur Agreement provides that a Truth and Reconciliation Committee should be established within 60 days of the Agreement's entry into force (article 22.1, section 3) and that it should commence work within 60 days of its establishment (article 22.2, section

3). The committee's mandate includes 'establishing and evaluating the real causes for the conflict in Darfur' and determining whether the crimes that were committed were the result of state policy, or were organized by any specific party. The committee will have the power to carry out investigations, meet with victims and witnesses, allow victims to share experiences and arrive at a common understanding of the past, organize hearings, collect, maintain and record evidence, and take measures to prevent additional psychological damage (article 22.5, section 3). The committee can only grant pardons if the victims provide their consent. The committee will consist of 11 members altogether (article 22.4, section 3). Five will be appointed by each of the signatories, and the chair will be appointed jointly by the two signatories. Both sides are required to appoint at least one woman each.

3. The Blue Nile and Kordofan Agreement provides that a branch of the national transitional justice commission should be established (article 85). It is does not establish specific local mechanisms, although it does provide for the establishment of a joint committee to compensate for the confiscation of property belonging to the SPLM-N and others (article 64).
4. The Eastern Front Agreement establishes an Eastern Sudan Lands Commission (article 60) and a committee to review the construction of the upstream dams on the Atbara River and Sateet (article 64).
5. Article 8 of the Central Path Peace Agreement establishes the Construction Fund for Development and Peace.

Amnesty. The Darfur Agreement also provides that the government is committed to 'issuing a general amnesty in relation to all the decisions that have been issued against political leaders and members of the armed movements because of the membership after having carried out the necessary legal analysis' (article 26, section 3). The suggestion here is that political leaders who are involved in the transition and who have been accused of grave crimes could benefit from pardons. The relevant provision does not discuss the conditions that would have to be satisfied in order for a pardon to be issued, but there is some suggestion elsewhere in the Agreement that victims would have to be involved in the process. It should be noted, however, that precedent appears to indicate that the International Criminal Court could still act against specific individuals who have benefited from a general amnesty.

General powers. Confusingly, and in total contrast with the Darfur Agreement, the Blue Nile and Kordofan Agreement does not make any specific arrangements for transitional justice. Instead it defers to the national commission while simultaneously allocating general responsibilities on

transitional justice to different levels of government. For example, transitional justice is listed as both a shared power (article 10.8) and an exclusive provincial power (article 9.6) in the Blue Nile and Kordofan Agreement. This presumably means that the regional authorities will likely establish mechanisms of their own, but it is not immediately obvious how this will be organized in practice and could potentially create difficulties if both levels of government decide to exercise this authority without coordinating with the other.

5. Security arrangements

The Juba Agreement establishes a complex array of security arrangements. Security arrangements are set out in the following sections of the Juba Agreement:

1. Section 8, Chapter 2 (Darfur Agreement): The Agreement includes an entire section that is dedicated to security arrangements, which itself consists of 35 detailed provisions. These cover a wide range of issues, including but not limited to the means through which the permanent ceasefire will operate, reintegration of forces, disarmament, and military and security reform. Each of these issues will be discussed here but special attention will be given to the issues that are likely to impact the future constitutional process.
2. Section 2, Chapter 3 (Blue Nile and Kordofan Agreement): Chapter 3 of the Juba Agreement consists of four separate sections, the second of which is a Framework Agreement which entered into force well before sections 3 and 4 were finally negotiated. The Framework Agreement covers a range of issues, including security arrangements. It sets out a large number of general principles, including that the army should be united and professional (article 15), bound by the Constitutional Charter (article 20), and reflective of Sudan's diversity (article 25.4).
3. Section 4, Chapter 3 (Blue Nile and Kordofan Agreement): Section 4 of the Blue Nile and Kordofan Agreement is entirely dedicated to security arrangements. It includes a large number of general principles, a list of prohibited and permissible acts by the signatories (articles 29 and 30), and measures that are designed to guarantee the delivery of humanitarian assistance (article 38).
4. Chapter 7 (Third Front Security Agreement): This Agreement establishes a number of arrangements to manage the ceasefire, including lists of permissible and prohibited acts, a series of bodies that will be responsible for managing the ceasefire, and arrangements for training, integration and demobilization.

Each of these sections discusses many of the detailed issues that must be resolved here, including ceasefire arrangements, reintegration of fighters, disarmament, and military and security reforms, among other things. This section of the Summary and Analysis paper will describe all these issues briefly but will discuss some of the institutional arrangements in more detail given that they will have bearing on the future constitutional process.

a. Ceasefire

Introduction. The three different sections include their own ceasefire arrangements, probably as a result of the fact that the rebel groups do not coordinate their military activities. For example, the ceasefires did not come into effect at the same time. Both the Darfur Agreement and the Third Front

Security Agreement provide that the permanent ceasefire and all related arrangements entered into force 72 hours after the Agreement was signed on 3 October 2020 (articles 12 and 15.1 respectively). The Blue Nile and Kordofan Agreement's ceasefire entered into force upon signature of the Agreement (article 26). The ceasefire mechanisms themselves are comparable to arrangements that exist in ceasefire agreements that were entered into in other countries. Aside from what is set out below, they also include mechanisms to allow for the delivery of humanitarian assistance during the ceasefire, and other elements as well.

Permissible and prohibited acts. All three sections contain their own lists of permissible and prohibited acts.[12] The negotiators clearly worked off the 2005 Comprehensive Peace Agreement, which includes lists of its own which are very similar to the lists that are included in the Juba Agreement.[13] The lists that are included in the Juba Agreement are broadly similar to each other. For example, all three include the following:

1. The lists of permissible acts include demining, assisting freedom of movement, the movement of unarmed fighters, and the distribution of non-combat related goods such as food and water.
2. The lists of prohibited acts include forcible recruitment, military training (apart from those that are permissible by the permanent ceasefire committee), land and air military operations between the signatories, planting mines, etc.

Aside from these common provisions, there are a number of minor differences in the wording between some of the items on the lists, but these are generally not particularly consequential. The main difference between them is that the list of prohibited acts in the Third Front Security Agreement does not include eight of the items that are included in the other two agreements. The items that are omitted from the Third Front Security Agreement include a prohibition against obstructing observers and acts of violence against international officials. There are probably very good reasons for the differences between the lists of permissible acts, but the disadvantage to not having a unified list is that the additional complexity increases the chances that misinformation will spread and that mistakes will be made.

Violations. Each of the three sections appears to adopt a bottom-up approach to reporting of violations. As noted below, the Juba Agreement establishes in

12 The lists of permissible and prohibited acts are set out in: articles 17 and 18, section 8, Chapter 2; articles 29 and section 2, Chapter 3; and articles 19 and 20, Chapter 7.

13 See for example article 9 of Annexure 1 Permanent Ceasefire and Security Arrangements Implementation Modalities and Appendices of the Comprehensive Peace Agreement between the Government of Sudan and the SPLM/SPLA. The full agreement is available at https://www.languageofpeace.org/#/search.

each of the three parts of the country a series of bodies that are responsible for managing security arrangements during the transitional period. The mechanism broadly provides that joint field missions are responsible for carrying out inspections and investigations and reporting any violations to the local area joint ceasefire committee, which itself is responsible for making recommendations on what actions should be taken to the highest decision-making body. The list of actions to be taken in case of violations includes naming the violating party, and also launching prosecutions.

b. Command and control

Introduction. The Juba Agreement contains a very large number of provisions on how command and control over the security forces should be organized. As for all other areas, these provisions are scattered throughout the Agreement, often introduce the same concepts but are not always reconcilable. The overall framework of which institutions have been created and their relationship to each other is not specifically stated in the Agreement. Some of the institutions that the Agreement establishes appear to be the same, although that is never clearly stated.

The military's mandate. The Juba Agreement defines the role of the army expansively, and in ways that can be interpreted in very different ways. Article 26.2, section 8 of the Darfur Agreement provides that the army's role is to 'protect citizens, the homeland, and the constitution'. Modern democratic constitutions tend to specifically limit the role to specific tasks, such as protecting countries from external threats, and limit the situations in which they can operate internally.

Joint Military High Committee for Security Arrangements. The committee is the highest level of decision-making on security issues under the Juba Agreement. Its mandate, composition and functions are discussed in at least two different chapters. The different provisions are broadly similar but do not entirely coincide with each other. It is not clear how this will be resolved in practice, given that the different wording clearly reflects different conceptions of how the committee is supposed to function in practice.

1. Composition. The Joint Military High Committee's composition is discussed in article 53, section 4 of the Blue Nile and Kordofan Agreement and in section 25.5.3, section 8 of the Darfur Agreement. There are significant discrepancies between the two provisions, to the extent that the reader is left wondering if the two agreements actually refer to the same body. Table 3 summarizes this problem:

Table 3. Joint Military High Committee's composition under Chapters 2 and 3

Darfur Agreement	Blue Nile and Kordofan Agreement
One high ranking military leader from each side	One high ranking military leader from each side, chiefs of staff or their delegates and assistants
Five senior officers from each side	High ranking officer from the other organized forces
Legal adviser	Legal adviser
Disarmament, demobilization and reintegration representative	Disarmament, demobilization and reintegration representative
Humanitarian affairs representative	Humanitarian assistance representative
Representative of the state-mediator	Representative of the state-mediator third party
Representative from Chad	
Representative from the African Union	
Representative from the United Nations	

2. Mandate. The Joint Military High Committee's mandate is discussed in article 52.1 of section 4 of the Blue Nile and Kordofan Agreement and in article 25.5.2 of section 8 of the Darfur Agreement. The contents of these two articles depart from each other in important respects. The Blue Nile and Kordofan Agreement provides that the Joint Military High Committee has seven responsibilities only. It provides that the High Committee is the highest body for decision-making and for dispute resolution, is responsible for overseeing the agreement's implementation, coordinates with national and international institutions, receives complaints from the third party, builds confidence between the two sides, etc. The Darfur Agreement sets out a list of 13 responsibilities that the Joint Military High Committee should exercise.[14] Article 25.5 includes all seven of the responsibilities that are set out in the Blue Nile and Kordofan Agreement but also includes another six responsibilities. Most of these are relatively obvious and would probably have been exercised by the Joint Military High Committee even if they had not been included.[15] However, article 25.5.2.13 provides that the Joint Military High Committee is responsible

14 The full list contains 15 subparagraphs, but 1 of the 15 sets out the Joint Military High Committee's decision-making mechanism, and another indicates that the committee should be headquartered in Khartoum.

15 For example, article 25.5.2.10 provides that the High Committee should review all reports that are presented to it and to act pursuant to their contents.

for exercising command and control over the all security mechanisms and committees, which adds a different dimension to what is contemplated under the Blue Nile and Kordofan Agreement.

Specific arrangements in Darfur. Although this is not specifically stated in the Juba Agreement, it appears that the Joint Military High Committee which will sit in Khartoum will oversee other institutions that will be responsible for specific responsibilities in both Darfur and Blue Nile and Kordofan. This passage summarizes the institutions that are established in Darfur.

1. Permanent Ceasefire Committee (article 25.6). The committee is responsible for planning, coordinating, administering, overseeing, investigating and monitoring the permanent ceasefire and the implementation of its decisions; establishing a reliable means of communication with the parties; establishing assembly points for the armed groups in accordance with a timeframe; coordinating and overseeing permissible military actions; receiving and investigating complaints of violations; making information about this Agreement publicly available, etc. The committee's members include one representative from the United Nations who is to be the chair, five officers from each of the parties, one representative from Chad and one from South Sudan. The committee is headquartered in al-Fasher (article 25.6.3).
2. Subcommittee (article 25.7). The subcommittee is responsible for monitoring and investigating complaints of violations and dispute resolution; reporting to the Permanent Ceasefire Committee; and exchanging information with the Darfur region's security committee. The Committee's members include one representative from the United Nations who is to be the chair, five officers from each of the parties, one representative from Chad and one from South Sudan.
3. Field teams (article 25.8). The field teams are responsible for carrying out patrols and visits and all relevant positions to oversee the ceasefire; making complaints to the subcommittee; and submitting reports. The committee's members include one representative from the United Nations who is to be the chair, and five officers from each of the parties.

Specific arrangements in Blue Nile and Kordofan. This Agreement also establishes three levels of institutions that will exercise command and control functions in Blue Nile and Kordofan. These include the following:

1. Joint Military Committee for the Ceasefire (article 54 of section 4). The committee is responsible for collecting information, developing a comprehensive plan to assemble the armed group's forces, determining whether both forces are respecting their responsibilities under the

Agreement, investigating violations and acting upon them, demining, circulating information on the Agreement, coordinating the work of the various committees, etc. The committee's composition is very confusing. According to the Agreement, it is composed of a representative of South Sudan, three officers from each of the two sides, and 'one officer from each of the other security forces'. The 'other security forces' are not defined and could conceivably be defined to include more than a dozen individual security forces, which could mean that the committee's composition will be heavily lopsided in favour of the state's security services. The committee is to be headquartered in Khartoum.

2. Subcommittees. The Agreement establishes two subcommittees, one for each of the two areas. Awkwardly, the two subcommittees are both given the same name, which is also the same name as the Joint Military Committee for the Ceasefire. The subcommittees are responsible for overseeing the assembly of forces, coordinating and exchanging information, overseeing and inspecting complaints and violations, submitting reports, etc. The subcommittees' composition suffers from the same problem. They would be composed by one representative from South Sudan, three members from each of the sides to the Agreement, and 'one representative from each of the other security forces'.
3. Field teams. The field teams will be responsible for carrying out visits, carrying out inspections, reporting violations, submitting reports to the subcommittees, etc. The field teams will be composed of one representative from South Sudan, three officers from each of the two sides, and 'one officer from each of the other security forces'.

Specific arrangements in the Third Front. The Third Front Security Agreement does not appear to recognize the Joint Military High Committee for Security Arrangements that is established under the Darfur and Blue Nile and Kordofan Agreements. Instead it establishes the following:

1. The Joint High Committee. The committee is composed of 4 representatives from each of the parties and is to be headed by a representative of the Transitional Government of Sudan (article 22.2). It is headquartered in Khartoum. Its role is to oversee the work of the subcommittee and to make recommendations to the leadership of the armed forces. This suggests without explicitly stating so that the High Committee is in fact not the ultimate decision-making authority in relation to security arrangements under the Joint High Committee.
2. The subcommittee. The subcommittee consists of six representatives from each of the parties (article 22.4). The Agreement does not state which side will lead the subcommittee. There may be a good reason for

this, but it is worth noting that this is not in keeping with the rest of the Agreement. The subcommittee is to be headquartered in Babanusa. The Agreement provides that the subcommittee is responsible for exercising command and control over 'these forces', but confusingly does not indicate what these forces are (article 22.5.1).

Oversight. The Darfur Agreement also sets out significant detail on what type of oversight should be exercised on its implementation. The following mechanisms are provided for:

1. The Security and Defence Council is responsible for establishing a general plan for reform of national security institutions.
2. The Sovereignty Council and the Council of Ministers are responsible for overseeing implementation of the security arrangements.
3. The transitional parliament's security and defence committee will also be responsible for the implementation of the security arrangements and the general reform plan.

Integration. The Juba Agreement also provides that the armed groups will be integrated into the military and other armed forces. For example, article 26.6 of the Darfur Agreement provides that individual members of specific armed groups will be integrated as unified military units in accordance with the armed forces regulations. The Agreement establishes a joint high council to oversee this process (article 26.7). The Agreement also establishes criteria that must be satisfied in order for individuals to be eligible for integration (article 26.15). All of the other chapters that provide for integration of forces provide for similar arrangements.

c. Police

General. The police are discussed in detail in all three different chapters. The relevant sections do not refer to each other, but generally use the same terms and concepts and prescribe the same type of solutions. There are, however, many important differences between the different chapters that deal with the police. For example, some of the provisions that establish what the police's mandate should be are very brief, whereas others are far more detailed. On occasion these discrepancies can be reconciled simply by considering all of the provisions together and considering that they are all equally binding. That is how the Juba Agreement is intended to be constructed. At the same time, however, it is also likely that some of the negotiators considered and rejected the additional detail that other chapters include. The Agreement now binds all of the signatories to all of the wording, but the significant differences in the wording of the different chapters is an indication of the types of discussions

that are likely to take place during the drafting of the final constitution. Indeed, the Juba Agreement provides some indication that constitutional negotiators and drafters are likely to disagree on two different issues: first on the amount of detail that should be included in the constitution, and second on how widely defined the police and other security institutions should be.

Mandate. The police's mandate is defined in at least three different places in the Juba Agreement. The same wording is adopted in all three places with only minor differences. The police's mandate is defined as being to apply the law; its composition is to be national, its operational leadership should be regional, and it should have a national administration that should be responsible for implementing its federal responsibilities (see article 27.4, section 8, Chapter 2; article 89.3, section 4, Chapter 3; article 25, Chapter 7).

Integration. Several chapters of the Juba Agreement refer to a Joint Technical Committee for the Police. The different chapters use almost identical wording to define these committees' mandates, strongly suggesting that they are the same institution, but these are in fact different bodies. The mandate is defined in both the Darfur Agreement and the Blue Nile and Kordofan Agreement as being to carry out the integration of forces into the police (respectively article 27.6, section 8, Chapter 2; article 89.5, section 4, Chapter 3). The two committees are not composed in the same manner (each will contain representatives from the relevant chapter's own respective signatories). Both of the committees have almost identical powers. Confusingly, in addition to their overall responsibility to integrate members of the armed groups into the police, the two committees are also responsible for fighting crime including organized crime (respectively article 27.10, section 8, Chapter 2; article 91, section 4, Chapter 3).

d. Intelligence service

Mandate. The general intelligence service is also discussed in all three chapters. As with the remainder of the security arrangements, the negotiators clearly appeared to have worked off the same template, and have adopted broadly similar arrangements and wording with some important differences. The relevant sections establish an expansive vision of what the intelligence service should be doing. They set out a long list of powers that the service should exercise. Some of these are extremely expansive and can be subject to wildly divergent interpretations including the following:[16]

1. Maintaining Sudan's national security, to protect its constitution and its social fabric, and the security of its citizens from any danger in cooperation with other security forces.

16 The relevant sections are: article 28, section 8, Chapter 2; article 93, section 4, Chapter 3; and article 26, Chapter 7.

2. Collecting, analysing and assessing information that is related to Sudan's security, and making recommendations on the necessary measures that should be taken.
3. Carrying out any necessary investigations.

The Blue Nile and Kordofan Agreement allocates some authorities to the intelligence service that are not provided for by the other two chapters. For example, it provides that the service should analyse and assess public opinion within and without Sudan and present its findings to the relevant bodies (article 94.6). As with other sections, the relevant authorities will probably resolve this discrepancy by adding this one addition to the service's general responsibilities even if it is not provided for by the other two agreements.

Integration. All three chapters state that individuals from the relevant signatories should be integrated into the intelligence service. This will obviously introduce a number of practical challenges. Efforts will need to be made to ensure that the service will not expand past what is necessary (assuming that hasn't already happened), and to mitigate against the likely negative impact of former enemies operating within the same institution.

e. Darfur security forces

The Agreement also provides that a new Darfur Security Force should be established within 90 days (article 29), which should consist of 12,000 members. Of these, 6,000 should be drawn from the military, the rapid response forces, police, etc. and another 6,000 should be drawn from the armed groups. The Agreement adopts unusual wording to define the force's mandate. It provides that the force is responsible for 'undertaking the constitutional, moral, and political responsibility of the Government of Sudan in protecting civilians' (article 29.5.1). The use of the word 'moral' in particular could cause significant confusion.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

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In October 2020, the Juba Agreement for Peace in Sudan was signed by Sudan's transitional government and by many of the country's main warring factions. The Agreement is highly complex and covers a wide range of areas, including governance, security and transitional justice and is intended to inform the future constitutional negotiation process.

This Summary and Analysis Paper focuses mainly on the Agreement's impact on the future constitutional process. It summarises and analyses the Agreement's power sharing elements, the federal arrangements that it establishes, and a range of other issues. This Summary and Analysis Paper will be a key resource for negotiators, advisers and observers.

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