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PEACE AND SECURITY COUNCIL
339TH MEETING

ADDIS ABABA, ETHIOPIA
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PSC/PR/2(CCCXXXIX)

**INTERIM REPORT OF THE AFRICAN UNION HIGH-LEVEL IMPLEMENTATION PANEL
ON THE MATTERS DETAILED IN THE 24 APRIL 2012 COMMUNIQUÉ OF THE PEACE AND
SECURITY COUNCIL**

**INTRODUCTORY REMARKS BY THE CHAIRPERSON OF THE COMMISSION TO THE INTERIM
REPORT OF THE AUHIP**

1. At its 319th meeting held on 24 April 2012, at ministerial level, Council adopted a communiqué and Roadmap which required the Parties to implement a series of measures, within a clearly defined timetable, to halt hostilities, reduce tension, build confidence between the two States and complete negotiations on the outstanding issues under the facilitation of the AU High-Level Implementation Panel (AUHIP) within three months. The United Nations Security Council endorsed the Roadmap on 2 May 2012, through the adoption of resolution 2046 (2012). The date of 2 August 2012 was set as the deadline for the completion of these obligations.
2. The AUHIP convened the Parties in negotiations from May to August 2012, focusing on the implementation of all aspects of the communiqué and the Roadmap, and achieved progress on most of the issues under discussion. On 3 August 2012, the Parties reached a groundbreaking Agreement on the terms of payment under which South Sudan would resume the export of oil through Port Sudan. At its 329th meeting held on 3 August 2012, Council adopted a communiqué welcoming the Agreement. Council also extended the deadline for the submission of the report on the implementation of the Roadmap by the AUHIP to 22 September 2012.
3. Negotiations continued throughout September 2012, under the auspices of the AUHIP. Supported by Ethiopia in its capacity as Chair of Inter-Governmental Authority on Development (IGAD), the AUHIP convened a Summit meeting bringing together President Omar al Bashir of Sudan and President Salva Kiir Mayardit of South Sudan, in Addis Ababa, from 23 to 27 September 2012. On 27 September, the two Presidents signed a series of Agreements covering security arrangements, oil and transitional financial arrangements, the status nationals of one country resident in the other, post-service benefits, trade, banking, border issues and other certain economic matters, as well as an overall Cooperation Agreement. All Agreements are herewith attached.
4. There remain three outstanding matters relating to: the determination of the final status of Abyei; the resolution of the status of the disputed and claimed border areas; and the resolution of the conflict in the Southern Kordofan and Blue Nile States of Sudan. In its report, the Panel has provided a narrative of the negotiation process and provided recommendations to Council on the resolution of these outstanding matters. It is my hope that Council will seriously consider and endorse all the proposals made by the AUHIP.
5. Clearly, the Parties have taken difficult and courageous decisions in order to reach the Agreements signed on 27 September, and have been steadfast in enlightening their citizens on their benefits. Both Parliaments have ratified the Agreements and the implementation process has begun. I would like to commend the leaders of the two States for their courage, and pledge the Commission's continued support to them as they continue to build two viable States.

6. The AUHIP has spared no efforts in assisting the Parties. I recommend that the mandate of the AUHIP be extended to help the Parties to address the remaining challenges and support them, as may be required, in the implementation of the commitments they have entered into, as well as undertake other related tasks. On its part, the Commission will continue to extend all the necessary support to the AUHIP and to the Parties.

7. I would like, also, to express my profound gratitude, as well as that of the entire African continent, to the AUHIP, and its three eminent members, former Presidents Thabo Mbeki, Abdulsalami Abubakar and Pierre Buyoya, for their tireless efforts to assist Sudan and South Sudan to resolve their outstanding issues and to build two viable states living side-by-side in peace. It is a testament to the tenacity, commitment and skills of these three illustrious members of the AUHIP that we can point to the major success that the signing of the Agreements of 27 September 2012 represents. I also extend my thanks to the staff of the Panel who have shown tremendous dedication and commitment over the last three years.

8. I wish to pay a special tribute to Ethiopia, for the support of the late Prime Minister Meles Zenawi and current Prime Minister Hailemariam Desalegn. I also wish to express the AU's deep appreciation to the United Nations, notably the Security Council, the Secretary-General and his Special Envoy for Sudan and South Sudan, Haile Menkerios, for their support. I also thank the other international partners, for their invaluable political, logistical and financial assistance. Throughout the process, the international community has demonstrated an exemplary commitment in support to AU's efforts.

**INTERIM REPORT OF THE AFRICAN UNION HIGH-LEVEL IMPLEMENTATION PANEL
ON THE MATTERS DETAILED IN THE 24 APRIL 2012 COMMUNIQUÉ OF THE PEACE AND
SECURITY COUNCIL**

At its 24 April, 2012 319th Meeting, which discussed the negotiations between Sudan and South Sudan, the AU PSC took a number of decisions as indicated below.

1. It resolved that there should be an ‘immediate cessation of all hostilities, including aerial bombardments, with the Parties formally conveying their commitment in this respect to the Chairperson of the Commission, within 48 hours.’

1.1. We are happy that this objective has essentially been realised.

2. It resolved that there should be an ‘unconditional withdrawal of all of their armed forces to their side of the border, in accordance with previously adopted Agreements, including the Agreement on the Border Monitoring Support Mission of 30 July 2011.’

2.1. We are happy to report that the necessary decisions have been taken to give effect to this requirement.

3. It resolved that the two States should activate, ‘within a week from the adoption of its decision, the necessary border security mechanisms, namely the Joint Border Verification and Monitoring Mission (JBVMM) and the agreed Secure Demilitarized Border Zone (SDBZ).’

3.1. We are happy to report that the Parties have agreed immediately to implement this decision.

4. It directed that the two States should take measures to cease the ‘harbouring of, or support to, rebel groups against the other state’.

4.1. We are happy to report that the Parties have agreed to this and have agreed on the measures to monitor the implementation of this agreement.

5. The PSC urged the ‘activation of the ad hoc Committee, under the Joint Political and Security Mechanism (JPSM), to receive and investigate complaints and allegations made by one party against the other.’

5.1. The Parties have accepted this and have agreed to convene the JPSM immediately, to give effect to this agreement.

6. The PSC called for the ‘immediate cessation of hostile propaganda and inflammatory statements in the media, as well as of any attacks against the property, religious and cultural symbols belonging to the nationals of the other State. To this end, the two governments must take full responsibility for the protection of each other’s nationals in line with international

principles, as agreed in the Framework Agreement initialed in March 2012. In this regard, Council requests the Commission, in close collaboration with the United Nations and relevant agencies, to design a monitoring mechanism to verify compliance by both Parties.'

6.1. The Parties have accepted this and sought to implement it, and are ready to cooperate with the relevant AU mechanisms.

7. The PSC called for the 'implementation of pending aspects of the 20 June 2011 Agreement on Temporary Security and Administrative Arrangements for the Abyei Area, in particular the redeployment, within two weeks, of all Sudanese and South Sudanese forces out of the Abyei Area.'

7.1. We are happy to report that this redeployment did take place. However, below, we report on the matter of the implementation of other issues provided for in the 20 June 2011 Agreement.

8. The PSC decided that the Parties should agree on 'arrangements concerning oil and associated payments.'

8.1. We are pleased to report that this objective has been agreed.

9. The PSC resolved that the Parties should agree on 'the status of nationals of one country resident in the other, in accordance with the Framework Agreement initialed in March 2012.'

9.1. We are pleased to report that this matter has been concluded and the process has been agreed to give effect to the relevant agreements.

10. The PSC directed that the Parties should 'resolve the status of the disputed and claimed border areas and the demarcation of the border.'

10.1. This matter has not been resolved. Our suggestions in this regard are reflected below.

11. The PSC decided that the Parties should determine 'the final status of Abyei.'

11.1. This matter has not been resolved. Our suggestions in this regard are reflected below.

12. The PSC resolved that the 'Government of Sudan and the SPLM-North should reach a negotiated settlement on the basis of the June 28, 2011 Framework Agreement on Political Partnership between NCP and SPLM-N and Political and Security Arrangements in Blue Nile and Southern Kordofan States.'

12.1. This matter has not been resolved. Our suggestions in this regard are reflected below.

13. The PSC 'strongly urged Sudan and the SPLM-N to accept the tripartite proposal submitted by the African Union, the United Nations and the League of Arab States, to permit humanitarian access to the affected population in the two areas, ensuring in accordance with applicable international law, including applicable international humanitarian law, and guiding principles of emergency humanitarian assistance, the safe, unhindered and immediate access of United Nations and other humanitarian personnel, as well as the delivery of supplies and equipment, in order to allow such personnel to efficiently perform their task of assisting the conflict-affected civilian population.'

13.1. This matter has not been resolved. Our suggestions in this regard are reflected below, integrated within the matter of ending of the conflict in the South Kordofan and Blue Nile States.

14. Consistent with the directive contained in the 24 April 2012 Communiqué of the PSC, we attach immediately below our reports and proposals concerning the outstanding matters on which the PSC must reflect.

15. REPORT OF THE AUHIP TO THE AU PSC ON THE OUTSTANDING MATTER OF THE RESOLUTION OF THE FINAL STATUS OF ABYEI.

Preamble

- (i) The issue of the political location of Abyei on the Sudan map has been a bone of contention between the people of North and South Sudan for over half-a-century.
- (ii) This matter of the administrative location of the area was put to the Ngok Dinka in 1951, with the result that allegedly at the insistence of then Paramount Chief Deng Majok, it was decided that Abyei should remain part of Kordofan Province, Northern Sudan.
- (iii) In this regard, this famous Ngok Dinka traditional leader, who was keen to maintain the unity of Sudan and therefore the friendly relations between the Ngok Dinka and the Misseriya, is reported to have said:
- (iv) *"I am now the thread of the Arabs and the South. I am a thread like the thread with which clothes are mended. If I pull away, the country will break apart..."*
- (v) The 1972 Addis Ababa Agreement ended the first Sudan Civil War which had begun in 1955.
- (vi) Article 3 (iii) of this Agreement provided for the holding of a referendum according to which those parts of Sudan, including Abyei, which were historically *"culturally and geographically a part of the Southern complex"*, in our present context effectively meaning the area of the 9 Ngok Dinka chiefdoms of Abyei, would decide whether to

remain part of northern Sudan or become part of the autonomous region of Southern Sudan.

- (vii) However, this commitment was not honoured.
- (viii) Thus the same matter became one of the issues that served on the agenda of the negotiations to end the second Sudan Civil War.
- (ix) Accordingly, the Comprehensive Peace Agreement (CPA) signed in 2005 includes an Abyei Protocol which, once more, prescribes that the Ngok Dinka and other Sudanese residing in Abyei should hold a referendum to resolve exactly the same issue that was provided for in the 1972 Agreement.
- (x) The CPA stated that the Abyei referendum should take place at the same time as the holding of the self-determination referendum among the people of Southern Sudan to determine whether the latter wanted to remain part of Sudan or form their own independent State.
- (xi) Interestingly, and of importance, the CPA Abyei Protocol echoed the sentiment that had been expressed by Paramount Chief Deng Majok almost 50 years earlier, that *“Abyei is a bridge between the north and the south, linking the people of Sudan.”*
- (xii) At the same time, both the Sudan and South Sudan Governments agree that the 2005 Abyei Protocol, which defined who should vote in the Abyei Area Referendum, and the 2009 ruling of the Permanent Court of Arbitration which delimits *‘the area of the 9 Ngok Dinka chiefdoms transferred to Kordofan in 1905’*, should serve as the basis for the determination of the Final Status of Abyei.
- (xiii) The foregoing, including other historical facts we cannot table in this short presentation, point to a number of hard realities relating to the issue of the determination of this Final Status.
- (xiv) These are that:
 - (a) both the Ngok Dinka and the Misseriya believe that they have an historical right to claim Abyei as their territory;
 - (b) as all of us as Africans know, land claims based on ethnicity, as are the claims over Abyei, cannot be resolved except on the basis of the principle of ‘winner-take-all’;
 - (c) in reality and frankly, and especially in the context of the secession of South Sudan, the Governments of South Sudan and Sudan negotiate the matter of the determination of the Final Status of Abyei by referendum informed by the considerations:

- whether there would exist an eligible Ngok Dinka voter majority which, as expected, would elect that Abyei should become part of South Sudan; or,
 - whether there would exist an eligible Misseriya voter majority which, as expected, would elect that Abyei should remain part of Sudan.
- (xx) Inevitably this means that one country or Government and the tribal community it represents would emerge as *'the winner'*, and the other/s as *'the loser'*.
- (xxi) Accordingly, the implementation of the Abyei Protocol, especially the holding of the Abyei Area Referendum (AAR), has been held up by the unresolved dispute about who would be identified by the Abyei Area Referendum Commission (AARC) as eligible voters.
- (xxii) This has also affected the implementation of the 2011 Agreement on Temporary Arrangements for the Administration and Security of the Abyei Area ("The Agreement on Temporary Arrangements"), particularly as it relates to the election of the Speaker of the Abyei Area (Legislative) Council.
- (xxiii) Both Governments have insisted that the AUHIP should fully understand that the failure correctly to resolve the matter of the Final Status of Abyei can easily lead to the disastrous consequence of the outbreak of war between the two Republics, thus to put paid to all the other agreements which visualise friendly cooperation between the two Republics of South Sudan and Sudan intended to ensure that they both develop as viable States.**
- (xxiv) All the foregoing strongly suggests that any peremptory and 'quick-fix' decision to resolve the matter of the Final Status of Abyei may very well prove to be counter-productive, especially in the context of the strategic and fundamental goals which the AU has pursued for many years, these being namely:
- (a) working to help achieve peace and reconciliation among the people of Sudan, both as one country and as two independent States;
 - (b) working to help build Sudan, both as one country and as two independent States, as a democratic entity, founded on the objective unreservedly to honour the principle and practice of unity in diversity;
 - (c) working to ensure that Sudan, either as one country or two independent States, acts as a factor of stability in the region of the Horn of Africa; and,
 - (d) working to encourage and help position Sudan, either as one country or two independent States, to serve as a vibrant and unifying bridge between Africa north of the Sahara and Africa south of the Sahara.

The Negotiations

15.1. The 24 April 2012 Communiqué of the AU PSC prescribes that the Governments of Sudan and South Sudan should decide the final status of Abyei by 24 July, 2012, with this concluding date later adjusted in line with United Nations Security Council Resolution 2046 of 2 May 2012, as 2 August 2012, and then set by the Communiqué of 3 August, 2012 as 22 September 2012.

15.2. Accordingly, acting within the context of the latter timeframe, the AUHIP submitted to the Governments of South Sudan and Sudan a Proposal on the Final Status of Abyei.

15.2.1. This was to fulfil an agreement that had earlier been entered into by the Presidents of the two Republics that the AUHIP should assist them by presenting to them a Proposal on the Final Status of Abyei.

[15.2.2. Please find attached this Proposal].

15.3. At a meeting between the two Presidents and the AUHIP on 24 September 2012:

15.3.1. South Sudan President Salva Kiir Mayardit accepted the Proposal without amendment and called for its implementation; and

15.3.2. Sudan President Omar al-Bashir rejected the Proposal, and focused this rejection especially on the suggestion contained in the AUHIP Proposal that the *'other Sudanese residing in Abyei'* mentioned in the Abyei Protocol should qualify to vote on the basis of having a *'permanent abode'* in the Abyei Area, which qualification is not mentioned in the Abyei Protocol.

[15.3.3. Please find attached the relevant written communications.]

15.4. Determined that the Presidents should reach a base framework agreement to take the Abyei matter forward, the AUHIP presented to the Presidents a Brief Proposal.

15.4.1. Both Presidents suggested various amendments to this Brief Proposal.

15.4.2. Accordingly, the AUHIP submitted a new amended Brief Proposal which sought to take on board the comments that had been made by the two Presidents.

15.4.3. However, and after extensive discussion, the Presidents failed to agree on this amended Brief Proposal.

15.4.4. As a result of this deadlock, South Sudan President Salva Kiir Mayardit stated that, given the experience over many years, it was obvious that it was impossible for him and his counterpart to reach any agreement on the issue of the Final Status of Abyei. He therefore

suggested that the AUHIP should refer this matter to the AU PSC and request that it should decide on a final and binding determination, as stipulated in the 24 April 2012 Communiqué in the event that the Parties had not reached agreement on any of the outstanding matters by the end of the prescribed period.

15.5.1. Sudan President Omar al-Bashir opposed the AUHIP proposal that the AARC should be chaired by a person nominated by the chairperson of the AU Commission, and approved by the Presidents of Sudan and South Sudan, on the basis that the AARC should be constituted exclusively of nationals of the two States;

15.5.1.1. South Sudan President Salva Kiir Mayardit supported the AUHIP proposal;

15.5.2. Sudan President Omar al-Bashir opposed the suggestion that the 2009 Abyei Referendum Act (ARA) should be excluded as one of the base documents that would be used to determine the Final Status of Abyei;

15.5.2.1. South Sudan President Salva Kiir Mayardit insisted that this Act had lost its validity once South Sudan became an independent State;

15.5.3. the Presidents agreed that a joint committee of both States should be established to study the ARA and propose such amendments as might be necessary, which would take into account the fact of the independence of South Sudan;

15.5.3.1. subsequently the Sudan Parliament would take into account these suggested amendments to alter the ARA; and

15.5.3.2. the South Sudan Parliament would adopt legislation relating to the Abyei Area Referendum which would effectively be consistent with the amended ARA as it would be approved by the Sudan Parliament.

15.4.5. Sudan President Omar al-Bashir confirmed his willingness to engage his counterpart in further negotiations, perhaps during the six weeks suggested by the AUHIP for the establishment of the Abyei Area Referendum Commission (AARC), after which the AUHIP could refer the matter to the AU PSC.

15.4.6. This particular meeting ended on the note that the AUHIP would refer the matter of the Final Status of Abyei to the AU PSC.

[15.4.7. Please find attached a copy of the amended Brief Proposal.]

15.5. In the end the negotiations on the amended Brief Proposal failed because:

15.6. However, this agreement, like the rest of the amended Brief Proposal, fell by the wayside when the Presidents terminated their negotiations having failed to agree on the matter of how the AARC should be constituted.

15.7. During these negotiations, both Presidents acknowledged the fact that the heart of the problem relating to the long-standing failure to settle all matters relating to the conduct of the AAR was the contest about how the matter of voter eligibility would be decided.

15.7.1. This centres on the questions:

15.7.1.1. whether the Abyei Protocol statement that the '*residents of Abyei*' and therefore the prospective referendum voters are the Ngok Dinka as a whole, or those Ngok Dinka actually residing in Abyei at the moment of the compilation of the voters' roll;

15.7.1.2. the criteria which could be used to identify the voters among the pastoralist Misseriya who pass through the Abyei Area annually in search of pasture and water for their animals, including whether there exist any provisions in international law to inform this process of identification, consistent with the specification in the Abyei Protocol that '*other Sudanese residing in Abyei*' would also be allowed to vote.

[15.7.1.3. NB: during October/November 2010, the then US Special Envoy for Sudan, Gen Scott Gration, convened a protracted meeting of the Sudanese Parties to help resolve the challenge mentioned under 7.1.2. above. Perhaps the most important suggestion he made in this regard was that any pastoralist who would have stayed for 185 days in the Abyei Area during the immediate preceding period of 12 months should qualify to be characterised as '*residing in Abyei*' and should therefore be entitled to vote in the referendum. No agreement was reached on this matter, and the meeting failed to agree on any criteria in terms of which the nomadic Misseriya could be identified as '*residing*' in Abyei and therefore entitled to vote in the AAR.]

Proposal

15.8. In our attached Proposal, we suggested, *inter alia*, that action should be taken immediately to implement the outstanding elements of the 2011 Agreement on Temporary Arrangements.

15.8.1. We propose that at its meeting to consider this and other reports of the AUHIP on the outstanding matters, the AU PSC should decide and immediately communicate the message to the Governments of South Sudan and Sudan that they should, no later than two (2) weeks after the AU PSC meeting, implement the

entirety of the Agreement on Temporary Arrangements, especially the establishment of the Abyei Area Administration and the Abyei Area Council.

15.9. In the same attached Proposal, we suggested, *inter alia*, that the AARC should be established six (6) weeks after the signing of the Agreement on the Final Status of Abyei.

15.9.1. We propose that at the meeting referred to above (Paragraph 8.1.), the AU PSC should decide and communicate this immediately to the Governments of Sudan and South Sudan that they should engage each other to resolve all outstanding matters relating to the determination of the Final Status of Abyei, and report the outcomes of this engagement to the AU PSC, through the AUHIP, not later than six (6) weeks after the meeting of the AU PSC.

15.10. At the same meeting, the AU PSC should take the decision to inform the Governments of South Sudan and Sudan, and communicate this message immediately to both governments, that in the event of the failure of the Governments to finalise the matter of the Final Status of Abyei, and after consultation with the AUHIP, it will take the necessary decisions consistent with its previous Communiqués, which both Governments would be obliged to implement.

15.11. Accordingly, the AU PSC would also decide to remain seized of the matter of the Final Status of Abyei.

16. REPORT OF THE AUHIP TO THE AU PSC ON THE OUTSTANDING MATTER OF THE RESOLUTION OF THE STATUS OF THE DISPUTED AND CLAIMED BORDER AREAS.

Background

- (i) In its decision of 24 April 2012, the AU PSC identified the Claimed and Disputed Areas as one of the priority areas for settlement in the negotiations between Sudan and South Sudan.
- (ii) During the negotiation of the Comprehensive Peace Agreement (CPA), the Parties had agreed that the boundary between South and North Sudan would be the administrative boundary that existed on 1 January 1956, the date of the independence of the Sudan, with the exception as provided for in the Abyei Protocol of the CPA, which allowed recognition of a new boundary of South Sudan should the Abyei Area become part of South Sudan.
- (iii) The Parties established an Ad Hoc Technical Boundary Committee, drawing representation from the two CPA Parties, which was charged with the delimitation and demarcation of the 1/1/1956 boundary, a task it was to complete during the Interim Period of the CPA.

- (iv) Although the ATC applied itself to the task at hand, it failed, despite the political interventions, including of the then Presidency of Sudan, to complete its mandate prior to the end of the Interim Period.
- (v) The ATC identified Four Disputed Areas in which there was disagreement on where the 1/1/1956 line should be drawn. A Fifth Area was added to the list following the intervention of the Joint Political Committee which had oversight over the work of the ATC.
- (vi) The Parties agreed on the delimitation of an estimated eighty (80) percent of the boundary. Twenty (20) percent of the boundary remained contested.
- (vii) During the post-secession negotiations, the Republic of South Sudan still asserted Claims on other territory, which Claims it considered had not received due recognition during the ATC process.
- (viii) For its part, the Republic of the Sudan maintained that the process by which the Five Disputed Areas had been identified derived from the CPA, and that it was therefore not legitimate to raise new Claims within the same process, although it accepted that either State was at liberty, in the future, and in a separate process, to bring other territorial claims.
- (ix) However, both Parties accepted to address the Disputed as well as the Claimed Border Areas and they also agree that priority should be given to the settlement of the Disputed Areas, although they still differ in the actual sequencing and modalities for dealing with Claimed Areas.
- (x) The reality of the existence of territorial claims was brought to the fore in relation to Heglig/Panthou, when hostilities broke out between the two States in April 2012, leading directly to the intervention of the AU PSC as well as the UN Security Council.
- (xi) In addition to the Five Disputed Areas therefore, the existence of territorial claims has already manifested itself as a threat to peace and security between the two States.
- (xii) Accordingly, there is now a political and security imperative for the two States to address not only the Five Disputed Areas they have already identified, but also any outstanding Territorial Claim either State might have.

The Negotiations

16.1. During the negotiations between the Parties, the AUHIP initially focused its attention on the resolution of the Five Disputed Areas, justifying this approach on the basis that the two States had already identified, through a protracted technical and political process, the Five Disputed Areas.

16.2. However, the Sudan People's Liberation Movement, and later, the Republic of South Sudan, has maintained that the list of disputed areas should not be regarded as closed, and that each State should have the possibility of adding Claims to the list of five.

16.3. Following the decision of the AU PSC, as endorsed by Security Council Resolution 2046, the language of "Claimed Border Areas" was introduced into the lexicon of the negotiations, and, accordingly, the AUHIP framed the territorial issues as: (a) the Five Disputed Border Areas; (b) the Claimed Border Areas; and, (c) any disagreements that might arise in the process of demarcation of the agreed boundary.

16.4. This reflects the AUHIP's understanding that the AU PSC must have intended that the two States should address all territorial claims, especially as events had demonstrated that other Claims, not included in the Five, were a potential source of conflict between the two States and thus required to be addressed.

16.5. Accordingly, during the negotiations, the AUHIP made, and refined, several proposals which reflected the position that while priority should be accorded to the settlement of the Five Disputed Areas, provision should also be made for the "Claimed Border Areas" to be addressed with finality, as part of the current negotiations.

The Kaka issue

16.6. However, the negotiations on the process for the settlement of the disputed (as distinct from the "claimed") border areas stalled on a single issue – how to designate the dispute in relation to Kaka.

16.7. While the Republic of the Sudan wanted to refer to "Kaka Area", the Republic of South Sudan insisted that the dispute related only to "Kaka Town". The latter contended that characterising the dispute as covering Kaka Area would expand the geographic ambit of the original dispute beyond that which the Parties had jointly agreed.

16.8. The Parties have not been able to resolve the question of Kaka by reference to the historical documents or the negotiating history.

Team of Experts

16.9. Accepting a suggestion from South Sudan, the AUHIP proposed that the AU should establish a Team of Experts to provide a non-binding opinion on the Five Disputed Areas, which the Parties would consider and either accept the Experts' opinion or continue with their negotiations on another basis.

16.10. However, because the Parties were unable to reach consensus on the designation of Kaka, they were not able to approve the terms of reference (ToRs) for the work of the Team of Experts, which were otherwise complete in all other respects.

16.11. As the negotiations came to an end, the Parties agreed that the Team of Experts, which, as noted by the PSC in its decision of 3 August 2012, is already constituted, should be allowed to commence its work and should receive the cooperation of each State.

16.12. Insofar as the Claimed Areas were concerned, the Panel proposed to the Parties that each Party should be at liberty to present, through the AUHIP, any claims it might have, and that the formal consideration of these claims should only commence after the (Joint) Lead Negotiation Panel (which will be responsible for the negotiations) had completed its consideration of the Experts' opinion.

16.13. According to the Panel's proposal, within 12 months from an Agreement on the process for resolution of the Disputed and Claimed areas, the negotiations would be completed, and either a substantive conclusion would have been reached, or the Parties would have agreed upon a final settlement process.

16. 14. Thus, until the very end of the last round of negotiations on 27 September, 2012, the Parties sought to settle the issue of Kaka as well as the treatment of the Claimed Border Areas.

16.15. Although they were unable to settle the issues, the negotiators agreed that they would re-convene, within one month, to continue their negotiations, and expressed the hope that at the reconvened negotiations, with the facilitation of the AUHIP, they would be able to overcome their differences on these two discrete issues of Kaka Town/Kaka Area and the treatment of the Claimed Border Areas, these being the only outstanding process matters on the agenda of the Borders Cluster.

The Proposal

16.16. The AUHIP is confident, in the light of all the above circumstances, that the two States are able successfully to reach agreement on the question of Kaka as well as the process for the Claimed Areas, as their differences are not insurmountable. The Panel is equally confident that, thereafter, through the processes they will adopt, the Parties will be able to reach a lasting, substantive settlement of the Disputed and Claimed Border Areas.

16.17. We therefore propose that at its meeting to consider the Report of the AUHIP, which includes the outstanding matters, the AU PSC should decide that the Governments of South Sudan and the Sudan should, no later than two (2) weeks after the AU PSC meeting, if they have not already done so, complete their negotiations on the Disputed and Claimed Areas.

16.18. We also propose that if at the time of the PSC meeting the Team of Experts has not yet commenced its work, owing to non-completion of its Terms of Reference, the AU PSC should direct that the Experts commence their work on the basis of the draft ToRs, leaving aside only the question of Kaka, and that the two States should extend full cooperation to the Experts with regard to the other matters, while the issue of Kaka is being negotiated.

16.19. At the PSC meeting, the Council should communicate to the Governments of the Sudan and South Sudan that if at the end of two weeks the Parties have not agreed on a process for dealing with the Claimed Border Areas or addressing the question of Kaka, after consulting with the AUHIP, the PSC will take the necessary decisions on the process for dealing with the Claimed Areas and the designation of Kaka, as are consistent with its previous Communiqués, and which both Governments would be obliged to implement.

17. REPORT OF THE AUHIP TO THE AU PSC ON THE OUTSTANDING MATTER OF THE RESOLUTION OF THE CONFLICT IN THE SOUTHERN KORDOFAN AND BLUE NILE STATES.

Context

17.1. Armed conflict arose in the “Two Areas” of Blue Nile and Southern Kordofan during the second Sudanese civil war (1983-2005), with some of the residents of those two areas joining the SPLM, in support of its agenda of creating a united, secular, “New Sudan.” Agreement was reached between the Government of Sudan and the SPLM on the resolution of this aspect of the war in Chapter V of the CPA. However, as the CPA Interim Period drew to a close, and particularly after the vote for separation in southern Sudan, it became evident that there were important outstanding unresolved issues in the “Two Areas,” requiring additional discussions between the Parties.

17.2. On 5 June 2011, armed conflict erupted in Southern Kordofan. One week later, the AUHIP convened representatives of the Government of Sudan and National Congress Party, and the Sudan People’s Liberation Movement-North (SPLMN) in Addis Ababa, in an attempt to resolve this conflict. These efforts resulted in the signing of the *Framework Agreement on Political Partnership between NCP and SPLMN and Political and Security Arrangements in Blue Nile and Southern Kordofan States*, on 28 June 2011. Unfortunately, the Government of Sudan subsequently repudiated the Framework Agreement.

18. Paragraph 16 of the AU PSC Communiqué of 24 April 2012 “reiterates AU’s conviction that there can be no military solution to the conflict in Southern Kordofan and Blue Nile, and stresses therefore the urgent need for a political and negotiated solution, based on respect for diversity in unity. Council requests the Government of Sudan and the SPLM-North to extend full cooperation to the AUHIP and the Chair of IGAD, to reach a negotiated settlement on the basis of the Framework Agreement [of June 2011].” Neither the PSC Communiqué nor UNSC resolution 2046 specified a deadline for the initiation or completion of these negotiations.

The Negotiations

18.1. Immediately following the Communiqué, the AUHIP communicated with the Government of Sudan and the SPLMN on this matter, and both expressed their readiness to enter into political negotiations in line with the PSC Communiqué. The AUHIP engaged both Parties in bilateral discussions.

18.2. As a result of this engagement, the Panel provided the Parties with a draft Principles and Agenda for the proposed bilateral talks. The Parties responded with their own proposals for agenda items, and also specified their preconditions for direct talks, including the identities of the parties to the talks and immediate actions and confidence-building measures.

18.3. The Government of Sudan insisted on the military and political disengagement of the SPLMN from the Government of South Sudan, including from the SPLM as a political party and the SPLA as the Armed Forces of the Republic of South Sudan, as a precondition for talks. Such disengagement, it insisted, would entail also a change of name, since the name "SPLM" is indelibly linked with the ruling party in South Sudan. The Government argued that it cannot negotiate with a political entity that is part of an entity in another sovereign State, over the future of the Sudan.

18.4. At the time of the September Summit Meeting, the Secretary General of the SPLM (South Sudan), also the Chief Negotiator of South Sudan, submitted a letter to the AUHIP declaring that the SPLM had disengaged from SPLMN. The Government of Sudan delegation rejected this as insufficient. However, the AUHIP believes that, given the agreement on security matters between South Sudan and Sudan signed on 27 September 2012, military disengagement can now be monitored and verified by a joint mechanism. Additionally, the proposal submitted to the Parties by the Panel includes mechanisms for verifiable political and military disengagement.

18.5. Additionally, the Government of Sudan insisted that, if the SPLMN is to be recognized as a political party in Sudan, it must accord with the law governing political parties, which stipulates that no party may possess an armed wing.

18.6. The Government of Sudan also opposed the notion of returning to the Framework Agreement of 28 June 2012, as stipulated in the PSC communiqué. It argued that negotiations with (a newly-renamed) SPLMN should be limited to issues related to the situation in Blue Nile and Southern Kordofan States and should not be extended to the whole of Sudan, which is a matter for all Sudanese parties and only Sudanese parties.

18.7. The SPLMN insisted that it had disengaged from South Sudan politically and militarily at the time of the independence of South Sudan, and that it should be regarded as a legal political party in Sudan. It insisted on recognition of its status as a precondition for engaging in talks with the GoS, which should entail releasing its members who are detained for political reasons and reinstating its elected officials, who were dismissed. Additionally, the SPLMN

demanded that the negotiations should be conducted according to the letter of the Roadmap, which explicitly mentions the 28 June Framework Agreement as the basis.

18.8. After extensive engagement with the Parties, it was clear that, while they agreed on the need for direct negotiations which would address the main substantive issues in contention, there were sharply divergent views on key issues. Consequently, the AUHIP revised its proposed Principles and Agenda and engaged the Parties again in bilateral discussions. These discussions provided further clarifications but, as yet, no agreement to talk face-to-face. Nonetheless, we believe that the issues are sufficiently clear that the foundation for future agreement can be laid down.

18.9. On 16 September, the Panel provided the Parties with a draft Agreement. This document captures the spirit and intent of the 28 June 2011 Framework Agreement, updated to reflect changed circumstances and current realities, and taking full account of the substantive points raised in our extensive interactions with the two Parties. In our opinion, the 16 September draft Agreement provides a basis for direct talks to resolve the conflict in the “Two Areas” of Blue Nile and Southern Kordofan.

Proposal on the Political Conflict

19. Nothing that has occurred during the last six months provides any reason for altering the substantive provisions of Paragraph 16 of the 24 April 2012 Communiqué and Roadmap. While the Government of Sudan and the SPLMN have both raised legitimate concerns, these are matters to be resolved through direct negotiation between them. All the elements are in place for direct negotiations between the two.

19.1. We therefore propose that at the forthcoming meeting to consider the outstanding matters, the PSC should call upon the Government of Sudan and the SPLMN to engage in direct negotiations, based upon the Draft Agreement submitted to the Parties on 16 September 2012. Furthermore, the Panel stands ready to continue to facilitate such negotiations and will cooperate with the Chair of IGAD in doing so. The Panel will also be ready to explore new ideas for the resolution of this conflict.

19.2. Recognizing that the mandate of the AUHIP extended to supporting the democratisation of Sudan, which entails promoting inclusive government based on the principle of respect for diversity in unity, we also propose that Council recommends that a successful resolution of the conflict in Blue Nile and Southern Kordofan should be closely linked to a national process of consultation and constitutional reform.

Humanitarian Access to War-Affected Populations in the Two Areas

20. Regarding humanitarian access to the affected populations in Southern Kordofan and Blue Nile states, the PSC Communiqué and Roadmap of 24 April (Paragraph 16) called upon the Government of Sudan to accept the Joint Proposal submitted by the African Union, the

United Nations and the League of Arab States (the “Tripartite”), to permit humanitarian access to the affected population in the two areas. No timeline was specified but Council clearly indicated the urgency of the matter. The *Joint Proposal for Access to Provide and Deliver Humanitarian Assistance to War-Affected Civilians in Blue Nile and Southern Kordofan States* was submitted to the Government of Sudan on 7 February 2012. The SPLMN accepted the Proposal without preconditions on 17 February 2012 and also offered a cessation of hostilities for the purpose of humanitarian access.

20.1. The Panel invited humanitarian representatives from the Government of Sudan and the SPLMN to Addis Ababa and discussed these issues with them separately. The Panel agreed with the Tripartite and the Parties that responsibility for the fulfilment of humanitarian obligations and implementation of the 7 February proposal rested with the Parties and the Tripartite, and that the issue would be taken forward by the designated representatives of the Tripartite, namely the Head of the AU Liaison Office in Sudan, the Representative of the League of Arab States to Sudan, and the United Nations Special Envoy to Sudan and South Sudan.

20.2. The Government of Sudan accepted the Joint Proposal on 27 June 2012; however that acceptance did not include detail on the proposed implementation modalities. While the Tripartite had originally proposed that the three organisations would work with civilian representatives of the Government of Sudan and SPLMN, the Government of Sudan insisted that it would engage only with representatives of the affected communities. The Tripartite put forward a second proposal under which it would work directly in the areas under the control of the SPLMN. On 4 and 5 August 2012, the SPLMN and the Government of Sudan respectively signed separate memoranda of understanding with the Tripartite Organizations on humanitarian assistance for war-affected civilians in Southern Kordofan and Blue Nile states.

20.3. The memoranda lay out the basic requirements for the establishment of a humanitarian assistance operation in Southern Kordofan and Blue Nile states. The memoranda call for the creation of a Tripartite Team and stipulate a cessation of hostilities to allow the assessment, delivery and monitoring of this assistance.

20.4. However, at the time of finalization of this report, no significant progress had been achieved in implementing the agreement and providing humanitarian assistance to affected populations, in particular those living in areas under SPLMN control.

Proposal on Humanitarian Access

21. We fear that there has been a general failure by all concerned parties to recognize the magnitude of the humanitarian emergency facing affected populations. We consider that the Government of Sudan should now act with the urgency commensurate with the needs of its own citizens to resolve this matter. We are disappointed that bureaucratic obstacles have

been used by various parties to delay further the delivery of essential humanitarian assistance.

21.1. We propose that Council should reiterate its call on the Parties to permit and facilitate immediate humanitarian access to the war-affected population of Blue Nile and Southern Kordofan, in accordance with the 7 February 2012 Tripartite Proposal and the 4 and 5 August 2012 Memoranda of Understanding.

22. CONCLUSION

22.1. This present Interim Report responds to the AU PSC decisions taken at its 319th Meeting on 24 April, 2012.

22.2. The AUHIP continues to be engaged with the Parties as normal, consistent with the agreement with the Parties to finalise the process of negotiations, and further to support the Parties to establish and maintain the necessary joint mechanisms and modalities for implementing the Agreements into which they have entered.

22.3. As the Panel, we are ready to interact with the AU PSC on all relevant matters contained in our mandate, including helping to implement such decisions as might emanate from this Interim Report.

22.4. We request the advice of the AU PSC about when it requires that we present our Final Report to the Council, which will reflect our activities to implement the mandate given to us by the 29 October, 2009 207th Summit Meeting of the PSC.

ATTACHMENTS:**AFRICAN UNION HIGH-LEVEL IMPLEMENTATION PANEL FOR SUDAN**

September 21, 2012.

**Proposal on
the Final Status of the Abyei Area.****General Principles**

1. The Parties reaffirm their commitment to the following:
 - a. The Abyei Protocol, Chapter IV of the Comprehensive Peace Agreement of 9 January 2005;
 - b. The ruling of the Permanent Court of Arbitration on delimiting the Abyei Area of 22 July 2009;
 - c. The Agreement on Temporary Administrative and Security Arrangements for the Abyei Area of 20 June 2011.
2. The following general principles shall inform the Final Status of the Abyei Area:
 - a. Abyei is a bridge between Sudan and South Sudan, linking the people of both countries;
 - b. The territory is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, as defined by the ruling of the Permanent Court of Arbitration on 22 July 2009;
 - c. The Misseriya and other nomadic peoples retain their traditional rights to graze cattle and move across the territory of Abyei.

Immediate Steps

3. The Parties shall implement the remaining provisions of the Agreement on Temporary Arrangements.
 - a. The Parties shall establish all institutions, as stipulated in the Temporary Agreement; and,

- b. The Abyei Joint Oversight Commission shall establish a police service, including a special unit to deal with issues arising from pastoralist migration and a special unit suitably trained for the protection of the Diffra oil installations.

Special Status of Abyei

4. Consistent with the principle that Abyei is a bridge between Sudan and South Sudan, Abyei shall be established as a State with special status. In the event that the Referendum determines that Abyei is part of Sudan, it shall be accorded a special status in the governance system of the Republic of Sudan. In the event that the Referendum determines that Abyei is part of South Sudan, it shall also be accorded a special status in the governance system the Republic of South Sudan.

5. This special status shall have the purpose especially to ensure peaceful coexistence and friendly cooperation between the Ngok Dinka and Misseriya communities of the Abyei Area.

6. Depending on the outcome of the Referendum:

- a. the Republic of Sudan shall recognise the definition of Abyei Areas as the historic land of the Ngok Dinka, and the predominant role of the Ngok Dinka in Abyei Area, their right to civic and political participation in Abyei State and the protection of the individual rights guaranteed to all persons; and,
- b. the Republic of South Sudan shall recognise the historic role of the Misseriya in the Abyei Area, including the right of Misseriya residing in the Area to civic and political participation in Abyei State and the protection of the individual rights guaranteed to all persons.

Soft Borders

7. Consistent with the general principle of a soft border between Sudan and South Sudan, there shall be a soft border between Abyei and the adjacent localities of Southern Kordofan, and between Abyei and the adjacent states of South Sudan, enabling free movement of people, livestock and goods in both directions, according to established migration and travel routes, and subject to the laws of both countries concerning the carrying of arms.

Pastoralist Rights

8. Consistent with the general principle of soft border, the customary rights of pastoralists to migrate, utilize pasture and water, and carry out related social and economic activities, will be protected by law. South Sudan shall also guarantee by law the customary

rights of all pastoralists to migrate, and utilize pasture and water, within South Sudan, in accordance with their traditional seasonal migratory routes.

9. Sudan and South Sudan shall jointly establish, under the Joint Border Commission, a committee on cross-border migratory populations to promote peaceful interaction between the migratory and settled communities along the entire border between the two States and to protect the rights of both communities. The committee shall include equal representation from the relevant migratory and settled communities along the border between the two countries.

10. The Republic of South Sudan shall ensure the security of migratory pastoralists from Sudan, while they are present in the territory of South Sudan on a seasonal basis, providing them with police protection. Pastoralists may be permitted to carry personal weapons solely for the purposes of self-protection and guarding their livestock, in accordance with the modalities determined by the committee referred to in paragraph 9 of this Agreement.

11. The Committee shall define the specific rights and responsibilities of migratory populations that cross the border, as well as those of the host communities. It shall, in consultation with the other organs of government, establish a schedule and map of agreed migration routes.

12. The Committee shall also establish and maintain a Border Communities Indemnity Fund. In the event that any person from the relevant communities along the border between Sudan and South Sudan feels that the rights herein protected have been violated resulting in loss of livelihood or income, the injured party may seek compensation from the Indemnity Fund, in accordance with the standards and procedures established by the Committee. The Committee will adjudicate claims and issue payments, pursuant to judgements, from the indemnity fund. The residents of Abyei and members of adjacent communities, including pastoralists, shall be entitled to make claims to the Indemnity Fund.

Revenue Sharing and Economic Development

13. The governments of Sudan and South Sudan shall jointly submit a request to international donors to assist in drawing up a plan for the social and economic development of Abyei and the adjacent localities both in Southern Kordofan and the adjoining states of South Sudan. This plan shall be based upon (a) the return and rehabilitation of all persons displaced by conflict, and (b) a Common Economic Development Zone (CEDZ) encompassing these areas.

14. The Abyei Administration shall host a development conference to draw up the plan for the CEDZ.

15. The objectives of this plan for the CEDZ shall include:

- a. accelerated social and economic development of all parts of Abyei on an equitable and sustainable basis; and
 - b. accelerated economic development of the adjoining areas of Southern Kordofan, focusing on the development of permanent water provision for livestock, improved pasture, and sustainable agriculture, with the objective of reducing the reliance of migratory pastoralists on seasonal migration to Abyei and the adjoining states of South Sudan.
16. A Common Economic Development Corporation (CEDC) shall be created to implement these objectives.
17. Until the Referendum, the CEDC will be financed by 50% of the revenue from the oil resources of Abyei, budgetary allocations from Sudan and South Sudan, and international donor support.
18. After the Referendum, the following provisions relating to sharing the revenue from oil extracted from Abyei will be applied:
- 30% to Abyei State;
 - 20% to adjoining localities of Southern Kordofan State (for the CEDC or other agreed activities);
 - 50% to the national Government.

The allocations for the adjoining localities of Southern Kordofan State will remain in place for 5 years after which the national Government may make other arrangements.

Abyei Joint Oversight Committee

19. The Abyei Joint Oversight Committee (AJOC) shall continue in its current form, until the implementation of the Referendum decision.
20. The AJOC shall assume the following additional responsibilities:
- a. facilitating and assisting the work of the Abyei Area Referendum Commission;
 - b. in coordination with the AARC, overseeing the declaration of the result of the Referendum; and,
 - c. overseeing the implementation of the result of the Referendum.
21. After the Referendum the AJOC will continue to exist for three years with the following responsibilities:

- a. advising the President of the country in which Abyei is located on all matters relating to Abyei; and,
- b. promoting the guarantees associated with the special status of Abyei;.

Referendum

22. There shall be held a Referendum to determine whether the Abyei Area should be part of Sudan or South Sudan.
23. The Referendum shall be held during the month of October 2013. Voting shall be conducted over a period of three days.
24. All eligible voters shall be entitled to register and vote in the Referendum.
25. The African Union and other international partners will monitor all stages of the Referendum process.

Eligibility to vote in the Referendum

26. The residents of the Abyei Area shall be eligible to vote in the Referendum. The residents of the Abyei Area are:
 - a. members of the Ngok Dinka community; and,
 - b. other Sudanese residing in the Abyei Area.
27. The criterion for qualifying under Paragraph 26(b) shall be permanent abode within the Abyei Area.
28. The Abyei Area Referendum Commission (AARC) shall compile the voters roll based on the criterion identified.

The Referendum Commission

29. The President of Sudan and the President of South Sudan shall jointly establish the Abyei Area Referendum Commission.
30. The AARC shall consist of five members. The President of Sudan shall appoint two Commissioners and the President of South Sudan shall appoint two Commissioners. The African Union shall, in consultation with the Presidents of the two States, appoint the chairperson of the AARC, being a person of international stature. All shall be individuals of integrity.

31. The AARC shall be responsible for all aspects of the conduct of the Referendum, including ascertaining voter eligibility and compiling the voters roll. The AARC shall work with AJOC in performing its functions. The Parties will request UNISFA to facilitate the work of the AARC by providing security and logistical support.

32. The AARC shall adopt regulations to provide for appeals relating to voter eligibility decisions, and for the determination of those cases on the basis of the criteria in Paragraph 26 and 27. The AARC may consult the Abyei Referendum Facilitation Panel for an advisory opinion on any proposed regulations. The opinion of the ARFP will be advisory.

The Abyei Referendum Facilitation Panel

33. The African Union, in cooperation with other international partners, shall establish an Abyei Referendum Facilitation Panel (ARFP).

- a. The ARFP shall be composed of three individuals of international stature, chosen by the Chairperson of the AU Commission, in consultation with the Presidents of the two States.
- b. The AFRP is mandated to facilitate and assist the AARC and its Chairperson to resolve any differences of opinion that may arise with respect to the planning and conduct of the Referendum.
- c. In the event that the necessary preparations and conducive environment for the Referendum to be held in a free, fair and peaceable manner, do not exist, the ARFP may recommend to the AU Commission any ways to resolve the situation.

34. The AFRP will coordinate with the AJOC.

Implementation of the Outcome of the Referendum

35. The AARC shall declare the final result of the Referendum one month after the completion of the vote.

36. The outcome of the Referendum shall be implemented one month after the declaration of the result.

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[Amended Brief Proposal]

**Agreement
between
the Government of the Republic of Sudan
and
the Government of the Republic of South Sudan
on
the Resolution of the Final Status of Abyei**

Addis Ababa, Ethiopia.
26 September 2012.

The Government of the Republic of Sudan and the Government of the Republic of South Sudan, hereinafter referred to as “the Parties;”

Reaffirming the Abyei Protocol, Chapter IV of the Comprehensive Peace Agreement of 9 January 2005, the ruling of the Permanent Court of Arbitration on delimiting the northern boundary of Abyei Area of 22 July 2009, and the Agreement on Temporary Administrative and Security Arrangements for Abyei Area of 20 June 2011; and,

Committed to resolve the important matter of the Final Status of the Abyei Area:

Hereby agree that:

- (i) the Abyei Area Administration and the Abyei Area Council provided for in the Agreement on Temporary Administrative and Security Arrangements for Abyei Area of 20 June 2011 shall be constituted within two (2) weeks of the signing of this Agreement;
- (ii) as soon as this has been done, the Presidents of the Republics of Sudan and South Sudan shall direct the Abyei Joint Oversight Committee (AJOC) to ensure that both institutions are activated as quickly as possible;
- (iii) the Abyei Area Referendum provided for in the Abyei Protocol will be held not later than October 31, 2013, but this period may be extended by the Presidents of the Republics of Sudan and South Sudan on the recommendation of the AARC;
- (iv) for this purpose, the Abyei Area Referendum Commission (AARC) provided for in the Abyei Protocol shall be established not later than six (6) weeks from the signing of this Agreement;
- (v) the AARC shall be chaired by a person appointed by the Chairperson of the African Union Commission, who shall also be approved by the Parties;

(vi) the two States shall ensure that they each enact the necessary legislation equivalent to the legislation of the other State to facilitate the conduct of the Abyei Area Referendum in accordance with the Abyei Protocol and the terms of this Agreement; and,

(vii) they will continue to engage each other in negotiations to agree on all other additional matters relevant to the issue of the Final Status of Abyei.

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AFRICAN UNION HIGH-LEVEL IMPLEMENTATION PANEL FOR SUDAN**AUHIP PROPOSALS TOWARDS A RESOLUTION OF THE ISSUE OF ABYEI:**

November 27, 2010.

In particular every citizen shall abhor violence, promote harmony, fraternity and tolerance among all people of the Sudan in order to transcend religious, regional, linguistic, and sectarian divisions. (*The Interim National Constitution of the Republic of Sudan, 2005: Chapter III, Article 23, 2b.*)

PREFACE

I. The AUHIP is honoured to present the proposals below to facilitate the process towards the resolution of the issue of Abyei. In this context, we have, over some time, done the best we could to study and understand the respective positions of the Parties. Twice during the last five months we have also met the leaders of the Ngok Dinka and the Misseriya communities the better to understand their views and aspirations.

II. This interaction has convinced us of the commitment of the Parties to resolve the Abyei issue as a matter of urgency and exposed us to the reality of the considerable effort that has been made in this regard.

III. It has also sensitised us to the intense concern of both the Ngok Dinka and the Misseriya that the Parties would do their best to find the required solution, at all times informed by the need to respect the interests and aspirations of the communities.

IV. We are also conscious of the fact that many in the international community have come to see the resolution of the Abyei matter as a touchstone in terms of the implementation of the CPA as a whole, with the possibility that its solution would also have an important bearing on the approach of the Parties to various matters relating to the Post Referendum Arrangements.

V. We have been inspired by the confidence of both the Parties and the communities that the Presidency of the Republic was best placed to resolve the important Abyei matter and would indeed do so. We are therefore privileged to present this document to H.E. President Omar Hassan al-Bashir and H.E. 1st Vice President Salva Kiir Mayardit, conscious of their shared commitment to live up to the expectations of the people.

INTRODUCTION

1. The resolution of the issue of Abyei is the only major outstanding matter in the context of the decisions that the NCP and the SPLM (the Parties) have to take to address the implementation of the CPA.
2. The Parties have spent a considerable period of time making a good faith effort to reach an agreement on this matter. In this context, they have considered a whole variety of proposals but failed to arrive at a commonly agreed position.
3. Of particular note in this regard is that the Parties have failed to reach agreement by referring merely to the Abyei Protocol and the PCA Ruling.
4. On the face of it, the dispute is about whether the area of Abyei, as defined by the PCA, should belong to Southern or Northern Sudan.
 - 4.1. This matter would be of minimal consequence if Sudan were to remain one country after the South Sudan Referendum.
 - 4.2. However it assumes a greater significance when considered in the context of Sudan dividing into two States.
 - 4.3. This is because at the more fundamental level, the dispute is about the deeply held aspirations of the Ngok Dinka and the Misseriya, respectively.
 - 4.4. At **the political level**, these two communities believe that ethnically they belong to two distinct and separate political communities these being:
 - 4.4.1. for the Ngok Dinka, Southern Sudan as defined by the ethnic communities which constitute this area of Sudan, which includes the overwhelming majority of the Dinka population; and
 - 4.4.2. for the Misseriya, Northern Sudan as defined by the ethnic communities which constitute this area of Sudan, which includes the overwhelming majority of the Misseriya population.
 - 4.5. The dispute between the two communities also relates to various contending **socio-economic claims**:
 - 4.5.1. for the Ngok Dinka, this is a land claim relating to the area defined as the territory which encompasses the “9 Ngok Dinka chiefdoms which were transferred to Kordofan in 1905”, the Abyei defined by the PCA;

4.5.1.1. the Ngok Dinka expect that their integration in the South Sudan political community means the transfer of this territory from Northern to Southern Sudan, regardless of the outcome of the South Sudan Referendum;

4.5.2. for the Misseriya, this consists in the claim that they have shared entitlement with the Ngok Dinka to the land defined as Abyei;

4.5.2.1. the Misseriya assert that this entitlement gives them an original and unqualified right of access to all parts of Abyei especially for purposes of unfettered access to its pastures and water resources as a fundamental guarantee of their livelihoods as pastoralists, which should be treated as an inalienable right rather than a privilege to be granted by any authority.

5. *The AUHIP proposes that the Principals should recognise and respect the reality that the **fundamental objective** of the Abyei Protocol is to address the aspirations and interests of the Ngok Dinka and the Misseriya in a balanced and mutually beneficial manner, as reflected, for instance, in the administrative and other arrangements during the CPA Interim Period.*

5.1. *Accordingly, they should recognise and accept the legitimacy of the respective Ngok Dinka and Misseriya **political** and **socio-economic aspirations** we have mentioned. Accordingly, the central challenge facing the Principals is to negotiate an outcome which would represent **the best possible balance** among these different and contending aspirations. In this context they will have to pay the necessary attention to the reality that these aspirations contain, within them, a complex of matters which relate to the three interconnected issues of **land, resources** and **people's sentiments**.*

5.2. Inherently, and therefore inevitably, this means that the Principals will engage each other fully conscious of the reality that they seek to enter into a Political Accord which will constitute **an honourable compromise**. This compromise would represent a convergence of views, away from an approach inimical to the immediate and longer-term interests of the Sudanese people, of seeking an outcome based on the destructive objective to create a situation of winners and losers.

5.3. This means that while they respect the intentions and spirit of both the Abyei Protocol and the PCA Ruling, they should agree on the **means** to give effect to these intentions, outside those stated or implied in the Protocol and Ruling, and thus seek to find a solution by “thinking outside the box”.

6. *In this regard, the AUHIP recommends that the Parties should endorse the conclusion arrived at during the negotiations which took place in Addis Ababa during October 2010 that **the Abyei issue should be resolved within the context of a comprehensive framework for the resolution of the other challenges facing Sudan.***

- 6.1. Of particular relevance in this regard, the Parties should **endorse and base themselves on the following propositions:**
- 6.1.1. as agreed in the Machakos Protocol, “the people of the Sudan share a common heritage and aspirations”;
 - 6.1.2. as agreed in the Abyei Protocol, Abyei should serve as “a bridge between the north and the south, linking the people of Sudan”;
 - 6.1.3. again as agreed in the Abyei Protocol, steps should be taken to put in place a “peace and reconciliation process for Abyei that shall work for harmony and peaceful co-existence in the Area”;
 - 6.1.4. as agreed in the “Framework for Resolving Outstanding Issues Relating to the Implementation of the Comprehensive Peace Agreement and the Future Relations of Northern and Southern Sudan” of 12 November 2010 (hereinafter, the “Framework Agreement”), the Parties will do everything necessary to establish and sustain “a constructive and peaceful relationship between northern and southern Sudan, which will promote the viability of both the south and the north”; and,
 - 6.1.5. again as agreed in the “Framework Agreement”, the Parties will “work for a future in which northern and southern Sudan maintain political, social, economic and cultural relations; and are stable, democratic, fair and prosperous societies, secure within their borders, and at peace with each other and their neighbours.”
7. Accordingly, to resolve the Abyei issue, the Parties should:
- 7.1. elaborate a settlement which addresses the specific aspirations of both the Ngok Dinka and Misseriya communities in the balanced manner referred to in Paragraph 5 above; and,
 - 7.2. ensure that the settlement they reach is consistent with the principles detailed under Section 6 above.
8. Below the AUHIP presents **Six Possible Options** for the resolution of the Abyei question whose viability should be considered in the context of the observations in Section 7 above.

SIX OPTIONS

- 8.1. **Determine the status of Abyei according to the Abyei Protocol and the PCA Ruling:**

AUHIP Observation: the difficulty that has been identified in this regard is that it has proved impossible to agree on the principles which would guide the identification of eligible voters for the purpose of conducting a Referendum.

- (a) It is commonly accepted that the Ngok Dinka will not accept the inclusion of the Misseriya as voters on the grounds that:
- (i) only they have the right to determine their destiny;
 - (ii) it would be impossible to identify the Misseriya “resident” in Abyei because of the nomadic migration of many among the Misseriya; and,
 - (iii) this could result in such inflation of the numbers of Misseriya voters as would nullify the right of the Ngok Dinka to self determination.
- (b) It is equally commonly accepted that the Misseriya would not accept that they should be excluded from the list of eligible voters, given their claim to “co-ownership” of Abyei.
- (c) This Option therefore creates the possibility of inciting conflict between the two communities in question, which would inevitably draw in both the SAF and the SPLA.
- (d) *It would therefore seem that this Option is at variance with the principles contained in Section 7 above.*

8.2. Transfer Abyei to Southern Sudan by Presidential Decree.

This would:

- (a) avoid the divisive issue of a Referendum; and
- (b) compensate the Misseriya by ensuring that the Government of South Sudan as well as the international community **provide resources to develop the Misseriya areas north of Abyei** radically to improve their lives and create the conditions for them to maintain their herds with no need to migrate to and through Abyei for purposes of access to pasture and water.
- (c) The Ngok Dinka would accept this Option.
- (d) However, it is clear that the Misseriya would oppose this and almost inevitably resort to force to pursue their objectives, leading to a generalised violent conflict in the area.
- (e) *It would therefore seem that this Option is also at variance with the principles contained in Section 7.*

8.3. Retain Abyei within Northern Sudan - Status Quo Plus:

- (a) This option would involve a continuation of the special administrative status of Abyei, including continuation of the current system of governance, within the Abyei Area defined by the PCA.
- (b) It would also provide that the Ngok Dinka and other persons in Abyei who are ethnically related to the communities of Southern Sudan would continue to enjoy the rights in South Kordofan and Warrap which they currently enjoy: this would give them dual citizenship in the event of the secession of Southern Sudan.
- (c) The border between Abyei and Southern Sudan would be maintained as a soft border in the event of the secession of Southern Sudan.
- (d) Provision would also be made for them to elect representatives to the legislatures of Warrap and Southern Sudan in the event that the latter secedes.
- (e) Abyei would continue to receive dedicated funds, with these funds distributed between the Ngok Dinka and the Misseriya according to a formula which would favour the Ngok Dinka.
- (f) A Land Commission would be established by law to ensure that further developments in land ownership do not result in the displacement of the Ngok Dinka community.
- (g) An inter-communal Language, Religious and Cultural Commission would be established by law, mandated to promote the relevant rights of the Abyei communities, particularly those of the Ngok Dinka. The Commission would have the power to review the impact of national legislation on these rights as they relate to Abyei to ensure their protection.
- (g) It is possible that the Ngok Dinka may not accept this Option if they believe that it does not sufficiently respond to their aspiration to belong to the South Sudan political community.
- (h) It is possible that the Misseriya may accept this Option as it would not imply their alienation from the Abyei Area.
- (i) *It may be that this Option would not be deemed to be fully consistent with Section 7 as it would not meet the requirement of a balanced solution given that it would seem to disappoint the expectation of the Ngok Dinka for the transfer of Abyei to Southern Sudan, while fully addressing the aspiration of the Misseriya to retain Abyei in Northern Sudan.*

8.4. Put Abyei under temporary AU or AU-UN Supervisory Administration:

- (a) This Option could be adopted in the event that the Parties fail to reach an agreement during the period prior to the South Sudan Referendum, to reassure the Abyei communities that the issue would be attended to.
- (b) The current governance and other arrangements would remain in force, with Abyei remaining in the North.
- (c) An AU or AU-UN Supervisory Authority would be put in place with trusteeship responsibilities informed by UN practices in this regard.
- (d) The first responsibility of this Authority would be to work with the Parties to ensure that the Abyei issue is resolved before the end of the CPA Interim Period.
- (e) In the event that this objective is not achieved by the end of this Period, the Supervisory Authority would have the power to make a Ruling to resolve the Abyei issue, with the Parties having agreed to respect and abide by this Ruling.
- (f) Of course there is no certainty that either the AU or the UN would accept to play the role visualized in this Option. Accordingly, if the Parties opted for this Option, they would have to present the organizations with the necessary proposed Terms of Reference or Mandate of the Supervisory Authority to facilitate their decision making processes.
- (g) *Obviously this Option would not resolve the Abyei issue, thus contributing to continued uncertainty among the Abyei communities. The Authority, assisted by the Parties, would therefore have to take such measures as may be necessary to calm the population and reassure them of a continuing commitment urgently to resolve the Abyei matter.*

8.5. Transfer Abyei to Southern Sudan by Presidential Decree and provide for the Misseriya to enjoy various rights within this area:

This option is based on the preference of the Ngok Dinka to reverse the 1905 administrative transfer from southern Sudan to northern Sudan. It provides for the transfer of Abyei Area, its boundaries as determined by the PCA, to southern Sudan, while providing for the rights of the Misseriya within Abyei.

- (a) Abyei Area is defined by the PCA ruling of July 2009.
- (b) Abyei Area is immediately transferred to southern Sudan by Presidential Decree.
- (c) For the remainder of the CPA Interim Period, the current administration of the Abyei Area will remain in place.

(d) On the conclusion of the CPA Interim Period, Abyei would become a state within southern Sudan, administered in accordance with the following formula that provides for the political rights, customary rights and security of both the Ngok Dinka and the Misseriya.

Special political and administrative provisions of Abyei State, located within southern Sudan, would provide that:

(e) The administration of Abyei State would include one third representation of the Misseriya in the legislature and the executive, as will be provided by law.

(f) Subsequent to the establishment of Abyei as a state, the northern part of Abyei Area (approximately, the land to the north of the Ragab al Zurga) would be constituted as a county/locality, with two thirds majority administration by the Misseriya community.

(g) The customary rights of Misseriya pastoralists to migrate, utilize pasture and water, and carry out related social and economic activities, would be protected by law. Southern Sudan would also guarantee by law the customary rights of all pastoralists to migrate, and utilize pasture and water, within southern Sudan in accordance with their traditional seasonal migratory routes.

(h) All residents of Abyei would be guaranteed rights of residence and livelihood in their habitual place of residence. Those displaced since the outbreak of the war would have right of return to former places of residence.

(i) A joint Community Council of Ngok Dinka and Misseriya would be established to promote cooperation and to prevent and resolve disputes.

The following Security Arrangements would apply to Abyei:

(k) Abyei State would establish a state police force, which would include Misseriya personnel representing not less than one third of the total, who would be deployed in the northern part of the State and on the pastoralist migratory routes.

(l) The GoSS would ensure the security of migratory pastoralists from northern Sudan, providing them with police protection. Pastoralists would be permitted to carry personal weapons for the purposes of self-protection and guarding their livestock.

(m) During the CPA Interim Period, neither SAF nor SPLA troops would be permitted to enter the Abyei Area.

(n) Subsequent to the CPA Interim Period, Abyei State would remain demilitarized. Security would be provided by the state police force.

Various Provisions would be agreed relating to Revenue Sharing and Economic Development as follows:

(o) Revenues from oil extracted from Abyei would be divided according to the following formula:

- 30% to Abyei State, with provision for equitable allocation to the various localities or counties of the State;
- 30% to Messiriya localities in South Kordofan State;
- 40% to GoSS.

(p) The Parties would jointly submit a proposal to international donors for the comprehensive social and economic development of Abyei State and its environs.

(q) Demarcation of the boundaries of Abyei would proceed as follows:

- Demarcation would begin immediately;
- Demarcation of the eastern, western, and northern boundaries of the Abyei Area, would be undertaken by Abyei boundary demarcation committee as appointed by the Presidency; and,
- Demarcation of the southern boundary of the Abyei Area would be undertaken by the Ad Hoc North-South Border Technical Committee.

(r) This Option goes some way towards satisfying the principles contained in Section 7.

(s) However it is possible that the Ngok Dinka may not accept it on the grounds that it limits or compromises their right to self-determination as it includes important elements providing that they should continue to co-govern Abyei with the Misseriya.

(t) On the other hand, it is possible that the Misseriya would also not accept it as they might see it as:

(i) the transfer of Abyei to Southern Sudan without them having been consulted and without their agreement; and,

(ii) giving them tenuous rights, including those in the county they would administer, which might be revoked in the future within the competence of the South Sudan State.

The AUHIP proposes that the Parties should compare this Option to Option 8.6 below before making any determination about its viability.

8.6. Partition Abyei by Presidential Decree and create a Soft Border between Northern and Southern Sudan:

This option is based on accommodating the interests of both sides through administrative partition of Abyei, providing for the northern part of Abyei to be administered by northern Sudan while the southern part is transferred to southern Sudan.

(a) The Abyei Area, as defined by the PCA ruling of July 2009, would be partitioned by Presidential Decree with effect from not later than the end of the CPA Interim Period, regardless of the outcome of the South Sudan Referendum.

(b) The administrative border between the northern and southern parts of Abyei would be drawn in such a manner that one third of the territory of Abyei, as defined by the PCA, amounting to 3,487 square kilometers, is allocated to the northern part. This area would correspond approximately to the territory adjacent to and north of the Ragab al Zurga.

(c) A Presidential Decree would be issued to transfer the area south of this border to Southern Sudan, while allowing for the area to its north to be administered as part of South Kordofan.

(d) The provisions of the “Framework Agreement,” Part Two, Section B, entitled “Specific Commitments on Border Issues”, would be applied in full. Specifically, this establishes a “soft border” between northern and southern Sudan, including the necessary laws and policies and a framework of cooperation, that will facilitate the peaceful and free movement of people, goods and services across the north-south border. The border will not become a barrier between the people of northern and southern Sudan. There will be no visa requirements for citizens of Sudan or Southern Sudan wishing to enter the other state for a limited period of time, the Parties would promote trade between the north and the south, and would work together to prevent illicit movements of people, goods and arms across the common border. Additionally, the Parties will respect and facilitate the rights of people to graze cattle and move across borders, consulting nomadic communities and taking into their consideration their views in developing and implementing agreements.

(e) All residents of Abyei would be guaranteed rights of residence and livelihood in their habitual place of residence. Those displaced during the war would have the right to return to their former places of residence.

(f) The African Union would be requested to establish a committee, consisting of experts from the AU Border Programme, in consultation with elders from the Ngok Dinka and Misseriya, to delineate the boundary, taking into account local patterns of settlement and resource utilisation.

(g) The northern and southern parts of Abyei would both be designated as part of the special security area along the common border between northern and southern Sudan, as specified

in the “Framework Agreement,” Part Two, Section A, Paragraph 14. This provides that the Parties shall establish a special security area along the common border in which there will be a limited presence of armed forces from either side; and that the Parties shall negotiate before the end of the CPA Interim Period the modalities of such a security area, including mutually agreed levels of security forces.

(h) The GoSS would ensure the security of migratory pastoralists from northern Sudan, providing them with police protection. Pastoralists would be permitted to carry personal weapons for the purposes of self-protection and guarding their livestock.

(i) Revenues from oil extracted from the Abyei Area (as defined by the PCA, i.e. including those northern areas administered as part of South Kordofan State) should be divided according to the following formula:

- 30% to the administration of that part of Abyei which has been transferred to southern Sudan;
- 30% to Misseriya localities in South Kordofan State including that part of Abyei which is administered as part of South Kordofan State;
- 40% to GoSS.

(j) The Parties would jointly submit a proposal to international donors for the comprehensive social and economic development of Abyei and its environs.

(k) The Parties may want also to consider a land-swap arrangement, whereby specified territories, for example the land along the boundary between South Darfur State and Northern Bahr al Ghazal State, lying between the Bahr al Arab/Kiir River and the current boundary 14 miles to the south, would be transferred to southern Sudan as a component of an overall package.

(l) It is likely that the Ngok Dinka would not be entirely satisfied with this Option as it would deprive them of part of the land identified by the PCA as belonging to the historic area of the 9 Ngok Dinka Chiefdoms. However it addresses their desire to join the South Sudan political community without losing any major part of the land they actually occupy as well as giving them a fair share of the mineral resources in the PCA defined Abyei Area.

(m) It is also likely that the Misseriya would not be entirely satisfied with this Option as it would permanently alienate the greater part of land they consider as part of a heritage they share with the Ngok Dinka. It would however give them access to pastures and water resources they would control as a matter of right and not a privilege which can as easily be granted as it would be taken away

(n) It also opens the way for the two communities to be engaged in a dialogue to accept this outcome, with a reasonable prospect of succeeding to persuade them to accept the Option, bearing in mind that it brings the benefit of going a long way towards addressing their

respective aspirations while creating a strong basis for avoiding the cost of a violent conflict to advance these aspirations.

(o) The Panel anticipates that this Option comes closest to achieving the balanced response to the respective aspirations of the Ngok Dinka and Misseriya communities mentioned under Paragraph 5.1. above, as well as the principles contained in Section 7. Accordingly it may be that the Parties should settle on this Option.

Nevertheless the AUHIP suggests that the Parties should compare it with Option 8.5.

CONCLUSION

9. The AUHIP accepts that the Parties may have Options other than those mentioned in this document and is therefore willing to promote these if they are agreed by the Parties.

10. The AUHIP would like to reaffirm the conviction it shares with the Parties that it is necessary speedily to resolve the Abyei issue both in the interests of the people of Abyei and to advance the larger interest of constructing relations of peace, friendship and mutually beneficial relations between the communities of northern and southern Sudan.

11. Given that this matter is now being addressed by the most senior leadership of the people of Sudan, and mindful of the expectations of the people of Abyei and Sudan about this interaction, it will be critically important that the Abyei matter is resolved during the current dialogue between the Principals.

12. And as the Principals have affirmed in the past, we are faced with the reality that failure in this regard is not an option, given, on one hand, the immensely negative consequences that would derive from the absence of an agreement, and, on the other, the inestimable benefit of such agreement as the Principals would arrive at.

13. The issue of Abyei being of profound significance for Sudan, and consequently more broadly for Africa, we present these options in a spirit of Africa's solidarity with the people of Sudan at this critical hour, recognizing the difficult decisions that must be made in pursuit of enduring peace, and the high expectations across the country and the entire continent, that you will indeed resolve the Abyei issue as a matter of urgency.

14. To reassure especially the people of Abyei that such agreement as the Principals arrive at is honoured fully, the AUHIP proposes that the African Union, the United Nations and the Government of the United States of America should serve as *Witnesses* and *Guarantors* of the agreement.

ends



Republic of South Sudan

Ref: RSS/OP/MO/J/1.A.1

Date: 25th September 201

H. E. President Thabo Mbeki
Chairman
African Union High Implementation Panel
Addis Ababa, Ethiopia

Your Excellency,

REF: The Final Status of Abyei

After our meeting with the panel yesterday, 24th September 2012, I wish to submit to the panel the official reaction of the Republic of South Sudan to the proposal that you presented to President Bashir and myself. I have studied the proposal carefully and have taken into consideration the Panel's observations and views on Abyei as communicated in your letter to me of 17th September 2012.

Your Excellency, I take this opportunity to inform the Panel that we have considered all the observations and the proposal in details. Even if there are issues that would have required comments, but in the interest of peace and stability of our region, ***we accept the proposal as presented by the Panel and await the implementation of the same.***

Mr. President, I believe that President Bashir wants peace and development for Sudan and also he believes in the viability of the two States. We should therefore see the importance of accepting this proposal so that the people of Abyei can start building their livelihood.

Please accept, Your Excellency, the assurances of my highest consideration.

Gen. Salva Kiir Mayardit
President
Republic of South Sudan

The President

Government of Sudan
Response to
The AUHIP
Possible Options of the Final Status of the Abyei Area
and
Proposal on the Referendum
Presented to the Addis Ababa Summit
23rd-25th September 2012

Introduction

1. On Saturday 22 September 2012, the President of the Republic of Sudan received the letter of H.E. Thabo Mbeki, the Chairperson on the AUHIP, dated 21 September 2012.
2. Two documents were enclosed with the letter:
 - a. A document entitled 'Proposal on the Final Status of the Abyei Area', dated September 21, 2012. The letter says that the Proposal contained in that document is made upon the request of President Omar Hassan al-Bashir and President Salva Kiir Mayardit.
 - b. A document entitled 'AUHIP Proposals towards a Resolution of the Issue of Abyei', which was initially presented to the Parties on November 27, 2010. The covering letter refers to this document as follows:

Your Excellency will also recall that in November 2010, we presented to the then Presidency a document containing various possible options for the resolution of the Abyei question. We also enclose this document in case Your Excellencies might find any of its contents useful as you consider the important matter of the final status.

3. In the first part of this response of the Government of Sudan we present our comments on the first document. Moreover, as we find some of the contents of the second document useful, we will also make our comments as to what it contains in the second part. In addition, because we believe that the non-implementation of the Agreement on Temporary Arrangements of 20 June 2011 is having its negative implications on adopting and implementing the agreed final status solution, we will make our concern about this matter known in the third part of this response.

First Part

Comments on the Document entitled 'Proposal on the Final Status of the Abyei Area', dated September 21, 2012

The Proposal Contradicts the Abyei Protocol, the Abyei Referendum Act and Negates the Cumulative Nature of this Process:

1. The Referendum of Abyei is agreed in the Abyei Protocol. Furthermore, the Abyei Referendum Act 2010 detailed all the technicalities of conducting the Abyei Referendum. Although, it is natural that any Proposal on the Abyei referendum is expected to adhere to those agreed terms of reference, the Proposal had contradicted the Abyei Protocol and the Abyei Referendum in so many aspects as this Part details.
2. Whereas everything that concerns the Abyei referendum is agreed, the only obstacle that prevented conducting the Abyei referendum, as contemplated in the Abyei Protocol and the Abyei Referendum Act, is the failure to decide the issue of eligibility of voters. The two Parties agreed that the Ngok Dinka who reside in the area, and all other Sudanese residing in the area are eligible to vote. However, the two

Parties failed to agree the criteria required for the participation of the Messirya nomads who customarily reside in the area.

3. Consequently, the eligibility of the Messirya nomads to vote is the heart of the disagreement that should be addressed by any proposal on conducting the referendum with the positions of the two parties in mind.
4. The US Envoy had presented in 2011 a reconciliatory proposal that gave the Messirya who reside in the area for a minimum of 185 days the right to vote in the Abyei referendum. Even as the Government of Sudan accepted that proposal, the SPLM did not; leading to the failure of conducting the Abyei referendum simultaneously with the referendum of Southern Sudan on 9th January 2011.
5. Consequently, a Proposal on the referendum should abide by the Abyei Protocol, the Abyei Referendum Act, start from where former proposals left and focus at resolving the only pending issue of the criteria of the eligibility to vote.

The Proposal Adopted the Position of One Party as to the Eligibility Criteria and Disregarded the Other Position:

6. Rather than breaking new grounds or building on former proposals of the mediators, the AUHIP Proposal endorses the position of one Party about the eligibility criteria and ignores entirely the position of the other party. By stating that '*the criteria for qualifying under Paragraph 26(b) shall be permanent abode within the Abyei Area*' the AUHIP adopts the very position of the SPLM. Mediation is all about agreement on middle ground. Hence it is atypical and rather out of the ordinary in a mediation process to endorse one Party's position on the main

contentious issue as this Proposal does. Consequently, it was only expected that South Sudan will accept the Proposal *in toto* as it did. The instantaneous acceptance of the Proposal by H.E. Salva Kiir Mayardit at the opening session of the Summit and his repetition of the same stand in the evening session asking only for its immediate implementation without the need for further negotiations is a testimony to this.

7. Conversely, the Government of Sudan, whose position on this matter is ignored altogether, has no alternative but to categorically reject the Proposal in its entirety. We formulate as follows our reasons for this decided rejection:

- a. This Proposal contradicts the Abyei Protocol which does not provide for 'permanent' abode or residence as a condition for voting in the referendum. It also contradicts the Abyei Protocol by not observing the parity between the Messirya and Dinka Ngok in power sharing and resource sharing.
- b. The proposed formulation of how to qualify for voting serves no purpose other than singling out the Messirya nomads whose lifestyle is inimical to the concept of 'permanent abode'. It is futile to think of any referendum on Abyei that excludes one of its two communities. Far from advancing a win-win formula, such exclusion, if agreed, is a likely recipe for instability and strife in the Abyei Area.
- c. The Proposal contradicts international law and particularly the obligations undertaken by the two States under the ILO Convention on the Indigenous and Tribal Communities 1989. Rather than being free to ignore the Messirya rights the two States are obliged to take measures 'to safeguard the right of the

approach and talks of shares for oil revenue to be allocated for the Ngok Dinka within Abyei Area, as opposed to shares to be allocated outside the area to keep the Messirya away. The economic development of the Messirya country outside of Abyei Area is welcome; yet, this does not mean that such development is to be associated with denying the Messirya their basic land rights and citizenship in Abyei Area.

Second Part

Comments on the Document Entitled 'AUHIP Proposals towards a Resolution of the Issue of Abyei' Dated November 27, 2010

1. Because the Proposal presented by the AUHIP adopts the position of one Party and ignores the Sudan's position, the Government of Sudan finds it appropriate and useful to draw on the captioned document.
2. The Government of Sudan hails the professional and sincere effort exerted in preparing the document of November 27, 2010. The said document had reflected the positions of the Parties in a balanced and fair manner and after tabulating all options possible recommended the narrowing of the choice of the Parties to two options, namely the fifth and the sixth.
3. The Government of Sudan reiterates its former position of accepting in principle the sixth option of partitioning Abyei Area by a Presidential Decree.

4. The Government of Sudan agrees with the document that 'this option is based on accommodating the interests of both sides through administrative partition of Abyei, providing for northern part of Abyei to be administered by (northern) Sudan while the southern part is transferred to (southern) Sudan.'
5. In the event that the Southern Sudan accepts the sixth option, the Government of Sudan is ready to immediately start negotiating how to effect the partitioning. This process is to be done with the full participation of the joint administration that shall be formed to assist in the process and with representatives of the two communities.

Third Part

Implications of the Failure to Implement the Agreement on Temporary Administrative and Security Arrangements for the Abyei Area of 20 June 2011 on the Final Status

1. The Agreement on Temporary Administrative and Security Arrangements for the Abyei Area of 20 June 2011 is conceived by the Parties as the stop-gap measure to guarantee peace and stability in the Abyei Area until the final status is agreed and implemented. Additionally, the Agreement also sets the administration required to assist in preparing the ground for and implementing the final status solution.
2. Consequently, it goes without saying that this Agreement is to be implemented in full before any final status arrangement is to be agreed. The current polarity in the Abyei Area that results from the absence of a joint administration does not assist in creating the

conducive atmosphere required for promoting a win-win solution; particularly after the recent violations of the SPLM *de facto* illegitimate administration that were condemned by the UN Secretary General on 9 September 2012 and the UNIFSA.

3. The Government of Sudan draws the attention of the AUHIP to the fact that failure of the SPLM to select from the list of the NCP nominees is the reason behind the failure to form the joint administration. The SPLM is insisting that terms other than what the Agreement say had been inserted into it overnight and that those covert terms were to be respected even though they contradict the spirit and letter of the Agreement. The Agreement does not provide that the nominees of the Parties shall be of a particular ethnicity, as the SPLM claimed last year, or residents of the area as Minister Deng Alor contended in the evening session. A testimony to this is the fact that both of the current Co-chairs of the AJOC are not residing in the Abyei Area. Additionally, the appointment of any person to the administration is having nothing to do with his/her eligibility to vote.

4. The Proposal that the AJOC can replace the joint administration and take over the job assigned to the latter in the Abyei Referendum Act encourages tolerating partial implementation of the Agreement. This risky attitude serves no purpose other than perpetuating the *de facto* illegitimate administration of the SPLM in the Abyei Area. Moreover, allocation of the tasks of the joint administration to AJOC contravenes the Abyei Referendum Act and does not take into account the incapacities that are inherent in the supervisory nature and set up of the AJOC.

5. The other institutions that the Parties agreed upon in the Abyei Referendum Act need to be formed before the referendum is conducted. In addition to the fact that those entities are the bodies legally mandated to undertake this critical job, they are also the fora where the two communities of the area assume ownership of the referendum process and take part in determining their destiny. UN and AU roles, which are welcome, are nonetheless of supportive and monitoring nature and cannot be a substitute to the national organs.

Conclusions

1. While the AUHIP is authorized by the Parties to advance proposals alternative to the referendum, to make it possible to agree on a win-win solution, it is counterproductive to push the Parties to a new stalemate by advancing a Proposal on the referendum that endorses the position of one Party on the main contested issue.
2. The Government of the Sudan still finds the Sixth Proposal contained in the 'AUHIP Proposals towards a Resolution of the Issue of Abyei', dated November 27, 2010, relevant and is ready to start negotiating its implementation.
3. Formation of the temporary administration in accordance with the Agreement on Temporary Arrangements 2011 is top priority. In particular, it would not be possible to conceive of an agreement on a final status in Abyei in the absence of a joint civil administration to assist in promoting it, security of the area and the implementation of the agreed solution.

Addis Ababa, 25 September 2012.