

United States Institute of Peace
Association for Diplomatic Studies and Training
Sudan Experience Project

Interview # 56 –Executive Summary

*Interviewed by: W. Haven North
Initial interview date: November 17, 2006
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The interviewee pointed out the difficult task of negotiation, as the nature of human beings is not to surrender power. The art of negotiation is a profession by itself. Those accustomed to fighting rather than talking had some difficulty at the beginning, but learned from the experience of negotiating such as the art of constructing sentences and interpreting terminology. Some of this is evident in the Machakos Protocol, where some provisions are contradictory, a flaw which did not appear in other documents.

The power sharing protocol involved the authorities of the executive, legislative and judiciary. There was no problem with establishing the Government of Southern Sudan, but Khartoum did not want Southern Sudan to have an independent judiciary. The negotiators resolved this, with the result that the Southern Sudan judiciary is independent from the national judiciary. Sudan has many constitutions: the interim national constitution, the Southern Sudan constitution, and 25 state constitutions. They are all compatible with the CPA.

The interviewee says that the international observers had an instrumental role; they were seeing to it that we harmonized between our varying positions or called for a break when we were not able to.

Implementation of the CPA is proceeding but not fully; there are difficulties because implementation depends on the will of the two parties. There is no mechanism for sanctioning or punishing violations of the CPA. The first test resulted in failure, with the report of the Abyei Commission being rejected by our partner, who claimed it had exceeded its mandate. We believe it did what it was supposed to do. Other issues are so many: on security, armed groups, supported by the Sudan Armed Forces (SAF) still operate in southern Sudan; we have three armies, only limited numbers in joint integrated units. The wealth sharing arrangement is associated with the boundary commission; there are disputed areas being taken by the national government, which has moved the boundaries southward. We only receive in revenues what is given us, but we do not know how much oil has been produced. The Constitutional Review Commission is supposed to make a midterm evaluation and recommend the review or amendment of some parts of the constitution.

The Assessment and Evaluation Commission is working and trying its level best, but it only monitors and reports to the partners on implementation violations; it has no teeth. It is responsible for a midterm report on progress in implementing the CPA.

The census is supposed to take place next year; however, the repatriation of the Displaced Persons is a problem for the census. The electoral law will be presented to the National Assembly soon. There is only a limited effort underway to inform the population about their rights and duties.

On the parties left out of the two party CPA negotiation, all those that have accepted the CPA have been incorporated into the government. There are efforts to make certain groups in Darfur sign the Darfur Peace Agreement; there is an assistant president representing the armed groups in Darfur, and another will be appointed for eastern Sudan. The South has the First Vice-President; so almost all of Sudan will be represented. Meanwhile, the South is progressing on building up its capacity such as completing a number of laws.

The international community should not abandon us; they should pressure us, particularly the National Congress, to implement the CPA.

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Q: What was your association with the negotiations and the planning for the Comprehensive Peace agreement (CPA)?

A: When the process was started, I was not in the negotiating team, even though I was behind all the processes. I came in full swing after the signing of the Machakos Protocol. From the signing of the Machakos Protocol up to the signing of the Comprehensive Peace Agreement to the interim national constitution to the Southern Sudan constitution and up to now, I am there.

Q: What is your view of the strengths and weaknesses of the CPA negotiation process?

A: The negotiation process ultimately is a difficult task. It is difficult because it is the nature of human beings not to surrender all that power which they possess alone or exercise alone. To give it up to others just like that is not a simple task. Now for them, as well as for me, it was a tedious job.

Q: And the process, despite that, did it work well or were there major issues that impeded its progress?

A: My role was mainly in the power sharing protocol.

Q: On the power sharing, what was the substance of that which you negotiated?

A: The power sharing, of course, was about the sharing of power, that is, the authority, and that included the executive, the legislative and the judiciary. These are the three organs of government. We had to take them and if we agreed on three to four points we initialed them. Then we agreed that whatever is initialed should not be revisited. So we kept on accumulating all these points until we had at the end of the day compiled them into what we called the power sharing protocol.

Q: And were there difficult problems to overcome as you went forward?

A: There was no problem with the establishment of the Government of Southern Sudan, but we had a difficulty with the judiciary. Khartoum did not want Southern Sudan to have an independent judiciary and that was a difficult task actually. They said that if we were

to have a separate judiciary then ultimately that would be the third pillar of a government, and for them that would be a state by itself.

Q: Did you resolve that question?

A: We resolved it, of course. On the judiciary, we have the Southern Sudan judiciary, which is independent from the national judiciary.

Q: And that was agreed to?

A: Yes, that was agreed to in the power sharing protocol.

Q: But looking at the process, as opposed to the substance, were there any special experiences that made it effective or less effective in the negotiation process?

A: Of course, the art of negotiation is a profession by itself and for that matter, at the beginning of the process we, being people who have been proud of fighting rather than talking, we had some difficulty at the beginning of the road with the negotiations. As time went on, we began to acquire experience, and before the signing of all the protocols, we actually met with a volume of experience. With that experience now, we are trying to help others. So it was a difficult task at the beginning, but we actually came up with a very good volume of experience.

Q: What was the difficulty at the beginning?

A: The difficulty at the beginning was even the art of constructing of sentences and the interpretation of the provisions, because at times you can use terminology, which can be misleading. The intention is not the same. This is why if you have a look at what we call the Machakos Protocol, which was the first document we signed, you will find that there are even some provisions that are rather unclear and contradictory in themselves within the same protocol, a situation which did not appear in the other documents.

Q: Were any of the international observers having a role in any of this process and working with you?

A: Of course, we had a lot of them. We had the Americans, the South Africans, the Norwegians, the Italians and what we called the Friends of Inter-Governmental Authority on Development (IGAD), in other words, we called it the IGAD Forum. This is a group that has been with us and has given us real support in terms of directing the process, the situation whereby they sometimes almost became victims of that situation, because both parties can be on the negative side. With the wise leadership of General Lazaro Sumebeiywo of Kenya, we really managed to make it until we came up with the CPA.

Q: What were the specific contributions of the international observers?

A: The international observers were actually seeing to it that we harmonized between our varying positions. They asked us to come up with our own drafts and then sit down and work out an acceptable draft to all the parties. It was presented to them; we discussed it and after agreeing then we put it aside. So they had a very instrumental role. At the same time, you sometimes find that any of the parties can decide not to proceed. Then, they would give us time and persuade us in one way or the other or persuade the other party in one way or the other so that they would come back to the table. This is why it took us so long, because at times we could not negotiate and had reached a stalemate. Then they would make a break for about a month to, at least, allow our nerves to cool and then we came back with an energetic spirit.

Q: Is there anything else on the negotiating process that you want to touch on about the lesson of this experience?

A: Yes, in terms of experience, after the signing of the CPA, Sudan now manages to be a country with so many constitutions. We have the interim national constitution, the Southern Sudan constitution and 25 constitutions of the 25 states.

Q: Are they compatible?

A: Yes and all these constitutions are compatible with the Comprehensive Peace Agreement. It was a really difficult task, and now our task is to oversee and ensure the proper implementation of the CPA. That is also a difficult task, because you have to record and keep on monitoring, through other institutions, so that you ensure the proper implementation of the CPA.

Q: And how is the implementation process working? Is it proceeding forward properly or is it a problem?

A: It is proceeding but not fully, not properly as expected, but we are moving along. Ultimately there are some difficulties here and there, some problems here and there, because the implementation depends also on the will of the two parties. There is no mechanism set for sanctions or punishing whoever violates the provisions of the CPA. It is only a question of pointing out or pointing an accusing finger to the other party that x or y has violated the agreement. And because of the implementation we have some difficulties; in fact we had the first test case where, in my opinion, we have failed.

And that was the Abyei Boundaries Commission, the ABC, whose decision or report was supposed to be final and binding. Now the ABC, when it rendered its report, the other party, our partner in the CPA, rejected the report on the ground that the ABC “exceeded its mandate.” On our side, we strongly believe that the ABC did not exceed its mandate, but it actually did what it’s supposed to do: that is, to demarcate the boundaries of Abyei and this is what it did. So up to now the decision of the ABC is not implemented, the administration of Abyei is not instituted, the chief administrator of Abyei is not appointed and so many other issues, that is the situation in which we are now.

The other issues, which have not yet found their way to implementation, are so many. One of them is the other armed groups, who are still actually operating in southern Sudan and still hostile, causing a lot of insecurity in the area. These are groups which are sponsored by the SAF, the Sudan Armed Forces.

And another is the North-South Boundary Commission.

Q: What about the wealth sharing arrangement?

A: The wealth sharing arrangement is actually associated with the boundary commission, because there are some disputed areas, contested areas whose oil is now being taken by the national government, one hundred per cent. We strongly believe that three quarters of the oil, if not 95 per cent of the oil produced in the Sudan, is actually produced in southern Sudan. Instead they have been moving the border southwards and, for that matter, for most of the areas, which are producing oil, the borders have all gone to the north. We are waiting for the outcome of the North-South Boundary Commission, after which these issues will be determined.

However, in terms of wealth sharing, we do not have nice roads, because we have no control over the resources or over the revenue or over the mile factor. We only receive what is given to us, but we do not know how much is produced and from which wells, from production up to market. We do not have a say there.

Q: There was also supposed to be a constitutional review plan, is that right?

A: Yes, the Constitutional Review Commission is a commission, which worked on the interim national constitution. It is now working on reviewing the laws, which are not in conformity with the Comprehensive Peace Agreement and the interim national constitution. So this commission is now working on it. It is also supposed to make a midterm evaluation whereby it may recommend the review or amendment to some parts of the constitution, if necessity requires.

Q: On the monitoring side, there is something called the Assessment and Evaluation Commission. Are they functioning?

A: The AEC, the Assessment and Evaluation Commission, is working. It is only monitoring and no more, because it has no teeth and, for that matter, it will only be monitoring and reporting to the parties on the implementation or violations. That is number one. Number two: its real role is now the preparation of the midterm report. It is in a position then to come up with a very clear report on the progress made in the implementation of the Comprehensive Peace Agreement. Anyway, the AEC is working and it is trying its level best; and, at times, it is being obstructed by the government in one way or the other. So they are sometimes constrained in visiting some of the areas.

Q: Now down the road there's supposed to be national elections. Is preparation being made for those?

A: The elections are not yet ready. Of course, the electoral law has been prepared and it seems to have already been passed by the National Constitutional Review Commission. It will be presented soon to the National Assembly for enactment.

Q: It was supposed to be based on a census. Is the census being taken?

A: The population census is supposed to take place next year, in probably November. But, of course, the repatriation of the Internally Displaced Persons IDPs and the refugees is another problem; I do not know how it will be addressed. But it would have been very good if the population census were to be carried out after the repatriation of all the IDPs and the refugees, so that people know what is the actual population of the area, because the population census will have inaccuracies..

Q: And that would be the basis for the election program, as well?

A: Yes, sure, that will be the basis for so many things: the distribution of wealth and the making of allocations. It will also be a basis for the determination of the constituencies.

Q: Then after that there is supposed to be a referendum. Is that in process or is that likely to take place?

A: The elections will actually take place in 2009. That will be the time for elections and the census and the referendum will actually be in 2011.

Q: And to what extent is the general population being informed about all these plans, so that they can be active participants? Do you know what is being done about that?

A: A very limited effort is underway. After all, when we inherited southern Sudan, we did not have good media, we did not have a good press. There is nothing, actually. There is no TV all over. They are in very limited areas. We are informing the population through visits and through public rallies. We are actually trying to sensitize the people, so that they know what their functions and duties are, what are their rights and duties are, and what is expected of them. We are trying to educate them on the population census and how important it is. And after the population census, we will also be talking to them about elections and what they mean. After the elections, we will be talking to them about the referendum and the right of self-determination. So it will be a continuous process that will not stop soon.

Q: One of the questions that some people have raised in terms of the CPA is that it was a negotiation between just two parties, but there are a number of other Sudanese parties that were not included. Is that something that should have been done or not?

A: Yes, I quite agree with you. It is a negotiated agreement between the National Congress and the SPLM. The National Congress was a ruling party and the SPLM was a fighting partner. Experience has shown us in the Sudan here that all the political parties

that have ever ruled the Sudan since independence have never been genuine in solving the southern Sudan problem. All those people whom we left out were not actually part of the Government of Sudan. They were in the opposition, and they did not join us in opposition. They decided to stand alone.

So we negotiated our agreement with the National Congress Party, which was then the ruling party, and we reached that agreement. The two parties are under duty to oversee the proper implementation and the protection of the CPA, up to the end of the interim period. Some of these political parties that claim to have been left out today were not ready to solve those problems at a time when they were in power, because all of them have been in power, the Umma, the DUP, the Wafq. All these political parties never ruled the Sudan and none of them thought of the southern Sudan problem one day. And for that matter we believe that, yes, it is the National Congress alone and the SPLM but nevertheless, all those who accepted, those who accepted the Comprehensive Peace Agreement, have been incorporated into the government. Most of them have actually joined the government now.

There are only very few who clearly think that if they come to power they will not abide by the CPA. This is a group, of course, whom we do not want and we are not ready to cooperate with them. Either they accept the CPA so that they join the political arena, or else they wait for the six years to come.

Q: What about the groups in Darfur and the eastern area? Are they being brought in or not?

A: There are some groups in Darfur that have not signed the Darfur Peace Agreement (DPA), but efforts are underway to make them sign the DPA so that western Sudan enjoys peace and stability. As for eastern Sudan, an agreement has already been signed; and there is no problem about that. It is now in the process of implementation.

Q: And they will be brought under the CPA umbrella?

A: Yes, and as a result of the DPA, there is already an assistant president appointed, representing the armed groups in Darfur. And now, after the signing of the eastern agreement, another assistant president will be appointed for eastern Sudan. Meanwhile, the South has the First Vice President. Ali Osman and Omar Bashir are from the far North, also. So almost the whole Sudan will be represented.

Q: Of course you are working specifically on building up the Government of South Sudan. How is that progressing?

A: We are progressing. We are trying our level best and especially with me now, in the ministry I am in charge of, we are actually doing the legislative work. We are drafting laws for Southern Sudan because this is a new area. For that matter, we have a lot of work to do and we are working all the time together with the assembly. There are some bills which have been passed by the assembly and signed into law; and there are others in

the pipeline, being processed. I hope that before the end of this year we will have in completion a number of laws. By next year, of course, we will have more laws.

Q: Is there anything more that the international community should be doing to move the CPA process forward?

A: Yes, of course, the international community actually should not abandon us there and leave us, after all these efforts to have the Comprehensive Peace Agreement signed. I expect the international community to move in and act as a pressure group so that the two parties and, especially the National Congress, actually implement the provisions of the CPA in good faith.

Q: Is there some specific action that they might take?

A: I said that the National Congress ultimately should be forced to implement the Comprehensive Peace Agreement in good faith, because up to now, as their partner, we are not satisfied of their genuineness.

Q: Looking back over this process of the CPA, are there any important lessons that stand out to you about what worked well and what did not work well?

A: Of course, the Comprehensive Peace Agreement is a new challenge altogether, for Southern Sudan and for Sudan as a whole. We have talked about a decentralized system, which is a new experience in Sudan because Sudan has been on a centralized system since independence. Now, when we come up with a decentralized system the continuity is lost altogether. We are facing some difficulties in the implementation of the CPA in terms of the centralization. That is another new duty. The CPA has its own advantages. We have actually participated in the groundswell of the right of self-determination. The principle of the right of self-determination does not amount to secession. And that is a contribution. It is a development in the principle itself.

In addition to that, we in the Sudan have three armies and that is a new thing altogether. You have the SPLA, you have the Sudan Armed Forces (SAF) and the joint integrated units. These are three armies in the Sudan and that is a new thing altogether. At the time when we were negotiating, some of our friends would tell us, "You want to do the impossible. You cannot have two armies in one country." We told them that we will have them. In fact, we came up with this system because of the lack of confidence -- a confidence that we lost for a very long time -- that made us go in to having our own army so that this army can protect the peace.

Q: And are steps being taken to strengthen the integration of the armed forces?

A: No, they are not being integrated. We have the joint integrated units, the JRU's. These are very limited numbers that will be comprised of both parties. The SPLA and the SAF will be and then the other forces will remain alone. The SPLA will remain in the

South alone and the SAF forces will move to the North. So in the South we will have only the joint integrated units plus the SPLA.

Q: Any other lessons that you have observed from the process of the CPA negotiations that suggest what worked well or what did not work well? I am talking about process, now.

A: Most of the things went on well. In some areas, in terms of security things did not go very well. We agreed to have only one national security and for that matter that did not go well with us, because if you are a government you should have your own security apparatus. But, of course, these are problems of negotiations. It is a question of give-and-take and for that matter we gave up some of these things in consideration for other issues.

Q: Do you feel that Southern Sudan came out well in negotiation of the CPA?

A: Yes, I think so. The problem is now not the negotiations but the problem is the proper implementation of whatever is agreed. If we are going to implement all that we have agreed in good faith then ultimately we will emerge with a very big achievement.

Q: Is there some other aspect that we have not touched on that you would like to comment on, particularly, that would be helpful to this process?

A: Yes, I don't have much more to say, but only to call upon the international community to continue pressing for the proper implementation of the Comprehensive Peace Agreement. That is one. Number two, for the international community, especially the donor community which has actually committed itself and made pledges for supporting the Government of Southern Sudan and the people of Southern Sudan, I appeal to that donor community to live up to their pledges and pay, so that we can repatriate the people of Southern Sudan, wherever they are, to Southern Sudan.

Q: Are you optimistic about the CPA and its outcomes?

A: I am optimistic about the future, if the parties implement the Comprehensive Peace Agreement in good faith.

Q: Is there anything else that we have not touched on? This has been a most valuable conversation.

A: There is not much more to say, but it has been a good conversation and I hope we touched all the points. If you have any question in mind which you need to have clarified, then, please, you can do that.