
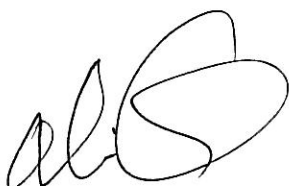


NO. GOS-SPLM 53.004

Received:

11 JUL 2008

**Arbitration Agreement
between
The Government of Sudan
and
The Sudan People's Liberation Movement/ Army
on
Delimiting Abyei Area**



Whereas the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), hereinafter referred to as the **Parties**, had signed on 9th January, 2005 the Comprehensive Peace Agreement (CPA) that was later enshrined in the Interim National Constitution of the Republic of Sudan, 2005 and became the law of the land,

Whereas the Protocol on the Resolution of Abyei Conflict (The Abyei Protocol) which constitutes part of the CPA, provides that the Abyei territory is defined as *"the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905"*,

Whereas the **Parties** agreed in the Appendix to the Abyei Protocol (The Abyei Appendix) ,which also forms part of the CPA, that *"there shall be established by the Parties Abyei Boundaries Commission (ABC) to define and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, referred to hereinafter as the Abyei Area"*,

Whereas the ABC Terms of Reference and Rules of Procedure had, stated as rule 1.1 that the mandate of the ABC shall be to *"define and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905"*,

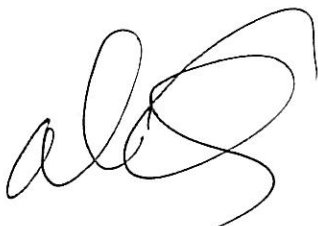
Whereas it was further agreed in the Abyei Appendix that *"the ABC shall present its final report to the Presidency before the end of the Pre-Interim Period. The report of the experts, arrived at as prescribed in the ABC Rules of Procedure, shall be final and binding on the Parties"*,

Whereas the ABC experts presented their report to the Presidency on the 14th July, 2005.

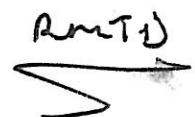
Whereas the **Parties** differed over whether or not the ABC Experts exceeded their mandate as per the provisions of the CPA, the Abyei Protocol, the Abyei Appendix, and the ABC Terms of Reference and Rules of Procedure.

Whereas on 8th June 2008, the **Parties** agreed to refer their dispute to final and binding arbitration,

The **Parties** hereby covenant and agree as follows:



2



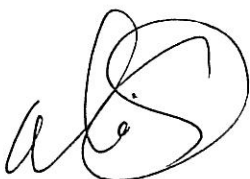
Article 1
Rules, Tribunal, Registry, and
Appointing Authority

1. The **Parties** agree to refer their dispute to final and binding arbitration under this Arbitration Agreement (Agreement) and the Permanent Court of Arbitration (PCA) Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is a State (PCA Rules), subject to such modifications as the **Parties** agreed herein or may agree in writing.
2. The **Parties** shall form an arbitration tribunal (**Tribunal**) to arbitrate their dispute in accordance with this Agreement and the PCA Rules; provided that the PCA Rules shall not apply when excluded or modified by this Agreement.
3. The **Parties** agree on the International Bureau of the (PCA) to act as the registry and provide administrative support in accordance with this Agreement and the PCA Rules.
4. The **Parties** designate the Secretary General of the PCA as the appointing authority to act in accordance with this Agreement and the PCA Rules.

Article 2
Scope of Dispute

The issues that shall be determined by the **Tribunal** are the following:

- a. Whether or not the ABC experts had, on the basis of the agreement of the Parties as per the CPA, exceeded their mandate which is "to define (i.e. delimit) and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905" as stated in the Abyei Protocol, and reiterated in the Abyei Appendix and the ABC Terms of Reference and Rules of Procedure.
- b. If the **Tribunal** determines, pursuant to Sub-article (a) herein, that the ABC experts did not exceed their mandate, it shall



make a declaration to that effect and issue an award for the full and immediate implementation of the ABC Report.

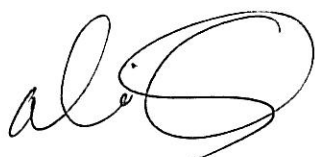
- c. If the **Tribunal** determines, pursuant to Sub-article (a) herein, that the ABC experts exceeded their mandate, it shall make a declaration to that effect, and shall proceed to define (i.e. delimit) on map the boundaries of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, based on the submissions of the **Parties**.

Article 3 **Applicable Law**

1. The **Tribunal** shall apply and resolve the disputes before it in accordance with the provisions of the CPA, particularly the Abyei Protocol and the Abyei Appendix, the Interim National Constitution of the Republic of Sudan, 2005, and general principles of law and practices as the **Tribunal** may determine to be relevant.
2. This Agreement, which consolidates the Abyei Road Map signed on June 8th 2008 and Memorandum of Understandings signed on June 21st 2008 by the **Parties** with the view of referring their dispute to arbitration, shall also be applied by the Tribunal as binding on the Parties.

Article 4 **Commencement of Arbitration Process and** **Period of the Arbitration Proceedings**


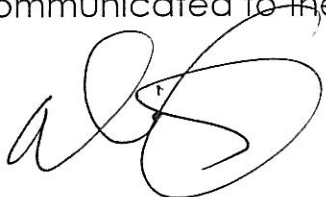
1. Arbitration process shall be deemed to have commenced between the Government of the Sudan, of one part and the SPLM/A of the other, on 8th June 2008.
2. The arbitration proceedings shall commence on the date of the formation of the **Tribunal** which shall start its work as soon as it is constituted.
3. The **Tribunal** shall endeavour to complete the arbitration proceedings including the issuance of the final award within a period of six months from the date of the



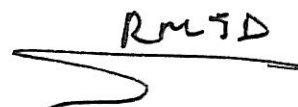
commencement of arbitration proceedings subject to three months extension.

Article 5
Number and Appointment of Arbitrators

1. The **Parties** agree that the **Tribunal** shall be composed of five arbitrators. Each **Party** shall appoint two arbitrators, and the four Party-appointed arbitrators shall appoint the fifth.
2. The **Parties** shall not designate as Party-appointed arbitrators persons other than current or former members of the PCA or members of tribunals for which the PCA acted as registry who shall be independent, impartial, highly qualified and experienced in similar disputes.
3. The Secretary General of the PCA shall provide the two **Parties**, within five days of depositing this Agreement with him, with a full list of members and arbitrators (PCA Arbitrators List) as stated in section 2 herein. The PCA Arbitrators List shall also include information on qualifications and experience.
4. Each **Party** shall appoint, within thirty days of receiving the PCA arbitrators list, two arbitrators from the list by written notice to the Secretary General of the PCA.
5. In the event that a **Party** fails to name one or both Party-appointed arbitrators within the specified time, the Secretary General of the PCA shall make, within ten days, such appointment from the PCA arbitrators list.
6. Each of the four Party-appointed arbitrators shall sign, within seven days of notification of appointment by the Secretary General of the PCA, a declaration of impartiality, independence and commitment that shall be presented to them by the Secretary General of the PCA. The declaration shall include an affirmation that there exist no circumstances likely to give rise to justifiable doubts to the arbitrator's independence, impartiality or readiness to avail himself/herself throughout the arbitration proceedings. Copies of the signed declarations shall be immediately communicated to the **Parties**.



7. The four arbitrators shall meet, within thirty days of their appointment, in The Hague, The Netherlands to consider candidates for the fifth arbitrator.
8. The fifth arbitrator, who shall be appointed in accordance with this Agreement to chair the tribunal, might be selected from or outside the PCA arbitrators list. However, he/she shall be a renowned lawyer of high professional qualifications, personal integrity and moral reputation. He or she shall have experience in similar disputes.
9. The four arbitrators shall communicate, within twenty days of their first meeting, to the two **Parties**, through the Secretary General of the PCA, an identical list of at least three candidates for the fifth arbitrator to be prioritized in order of preference if possible. Full curricula vitae of the candidates shall be attached.
10. Each **Party** may return, within fifteen days of the communication referred to in section (9) herein, the candidates list through the Secretary General of the PCA, after having deleted the name or names to which they object and numbered the remaining candidates in order of preference.
11. The four arbitrators shall appoint, within fifteen days of receiving the returned lists from the two **Parties**, or of the expiry of the period mentioned in section (10) herein, the fifth arbitrator from the names to which no objection was indicated and, as far as practicable, in compliance with the preference shown by the **Parties**.
12. If the four arbitrators fail to communicate a candidate list during the time specified in section (9) herein or if all candidates are objected to by either **Party** or by the two **Parties**, the Secretary General of the PCA, shall appoint, in consultation with the four arbitrators, within fifteen days of the expiry of the specified time or of receiving the objections, the fifth arbitrator from outside the candidates list having due regard to section (8) herein.




13. The fifth arbitrator shall sign, within seven days of notification of appointment by the Secretary General of the PCA, a declaration of independence, impartiality and commitment that shall be presented to him/her by the Secretary General of the PCA. The declaration shall include an affirmation that there exist no circumstances likely to give rise to justifiable doubts to the arbitrator's independence, impartiality or readiness to avail himself/herself throughout the arbitration proceedings. Copies of the signed declaration shall be immediately communicated to the **Parties**.
14. If one or two arbitrators fail to participate in the arbitration, the other arbitrators shall in lieu of timely appointment of substitute pursuant to section (4) or (5) herein and unless the **Parties** agree otherwise, have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding such non-participation. In determining whether to continue with the arbitration or render any decision, ruling or award without the participation of such arbitrator(s), the other arbitrators shall take into account the stage of the arbitration, the reasons, if any, expressed for non-participation and such other matters as they consider appropriate in the circumstances of the case. In the event that the other arbitrators determine not to continue the arbitration without the non-participating arbitrator(s), the **Tribunal** shall declare the office (s) vacant and substitute(s) shall be appointed pursuant to the sections (4) and (5) herein, unless the **Parties** otherwise agree on a different method of appointment.
15. Any award or other decision of the **Tribunal** shall be made unanimously or by a majority of the arbitrators.

Article 6
Seat of Arbitration

The seat of arbitration shall be The Hague, The Netherlands.



v



Article 7
Language

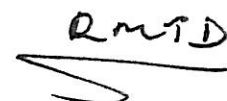
The language of the arbitration proceedings shall be English.

Article 8
Arbitration Proceedings

1. The arbitration proceedings shall be adversarial.
2. The arbitration proceedings shall consist of two phases, one for written pleadings, and the other for oral pleadings. The Parties intend the issues, articulated in Article 2, to be considered and pleaded consecutively.
3. The written pleadings shall consist of:
 - (i) Memorials covering all issues of dispute in form and content which shall be simultaneously submitted by each **Party** to the **Tribunal** and to the other **Party** in a date to be fixed by the **Tribunal** during the sixth week of signing the declaration by the fifth arbitrator. The Memorials may be accompanied by documentary evidence or any other evidence.
 - (ii) Counter-memorials that shall be submitted simultaneously by each **Party** to the **Tribunal** and to the other **Party** in a date to be fixed by the **Tribunal** during the sixth week of receiving the memorials.
 - (iii) Rejoinders that may be presented by both **Parties** to the **Tribunal** within fifteen days of submitting the counter-memorials.
 - (iv) Other written pleadings that the **Tribunal** deems necessary, which shall be requested not later than thirty days of submitting the counter-memorials and shall be submitted within thirty days of the request.



^



4. The oral pleadings, which shall consist of oral submissions and presentation of evidence by witnesses and experts, shall follow the written pleadings, and shall be held at the seat of the **Tribunal** at the dates determined by the **Tribunal** after consultation with the Agents of the **Parties**, but not later than thirty days of submitting the counter-memorials. Each Party shall notify, not later than twenty days prior to the oral pleadings, the **Tribunal** and the other **Party** of those experts and witnesses intended to be presented.
5. Each **Party** shall be represented at the oral pleading by their Agent, Co-Agent and Counsel as they may designate. **Party** representatives might also be assisted by other advisers.
6. The oral pleading(s) of the **Tribunal** shall be open to the media. A portion of a hearing may only be closed at the discretion of the **Tribunal** for security reasons. The Parties authorize the PCA to issue periodic press releases regarding the progress of the arbitration proceedings and to make publicly available on its website the final award, as well as **Party** submissions.
7. Notwithstanding Article 4 (3) of this Agreement, the **Tribunal** shall be empowered to extend for good cause the periods established for the arbitration proceedings on its own motion or at the request of either **Party**. The total cumulative extension of the periods granted by the **Tribunal** at the request of either **Party** might not exceed thirty days for each **Party**.
8. If within the period fixed by this Agreement or by the **Tribunal**, either Party fails to file a written pleading or attend all or part of the oral pleadings, the **Tribunal** shall continue the proceedings nonetheless and shall render an award based upon the pleadings and oral representations before it.
9. At the conclusion of the oral pleadings, the **Tribunal** shall declare closure of submissions. Notwithstanding such declaration, the **Tribunal** may request from the **Parties** written statements on any issues necessary for the elucidation of any aspect of the matters before the **Tribunal**



until the award is rendered. The **Parties** shall submit such statements within fifteen days of the request.

Article 9 **Award**

1. Subject to Article 8 (7) of this Agreement, the final award shall be rendered by the **Tribunal** within a maximum of ninety days from the closure of submissions.
2. The **Parties** agree that the arbitration award delimiting the "Abyei Area" through determining the issues of the dispute as stated in Article 2 of this Agreement shall be final and binding. The **Tribunal** shall comprehensively state the reasons upon which the award is based.
3. The **Tribunal** shall communicate the final award to the Agents of the **Parties** on the day of its rendering. The **Tribunal** and the **Parties** shall make public the award as of the same day. The PCA International Bureau shall ensure that the award any subsequent interpretations, corrections or additional awards are also made available shortly after rendering in authentic Arabic translation.
4. The final award and any subsequent interpretations, corrections or additional awards shall also be transmitted by the International Bureau of PCA to all those who witnessed the signing of the CPA and the Chairman of the Assessment and Evaluation Commission (AEC).
5. The **Parties** agree to waive any right of immunity from execution of the arbitration award that either **Party** might be entitled to. However, the Presidency of the Republic of Sudan shall ensure the immediate execution of the final arbitration award.

Article 10 **Notification of Agents and Counsel**

1. Each **Party** shall designate, within ten days of the signing this Agreement, an Agent and if applicable, a co-Agent, who will represent them and act on their behalf for the purposes of this Arbitration Agreement, and shall communicate name



1.



(s) and address(es) of the Agent(s) to the PCA Secretary General and the other **Party**.

2. Each **Party** may designate its Counsel and shall communicate the name of the Counsel to the PCA Secretary General and the other **Party**.

Article 11
Cost of Arbitration

1. The Presidency of the Republic of Sudan shall direct for the payment of the cost of the arbitration from the Unity Fund regardless of the outcome of arbitration.
2. The Government of the Sudan shall apply to the PCA Financial Assistance Fund and the **Parties** may solicit additional assistance from the international community.

Article 12
Entry into Force

1. This Arbitration Agreement shall enter into force on the day of signing by the two **Parties** and shall be deposited with the Secretary General of the PCA within seven days of signature.
2. A copy of this Arbitration Agreement shall be transmitted by the **Parties** to all those who witnessed the signing of the CPA and the Chairman of AEC.

Done in Khartoum, Sudan, on this day the 7th of July, 2008.



**Ustaz Ali Osman Mohamed
Taha**
Vice President of the
Republic of the Sudan.

For/ the Government of the
Sudan.

Signed by:



Dr. Riek Machar Teny
Deputy Chairman of the
Sudan People's Liberation
Movement.

For/ the Sudan People's
Liberation Movement/ Army.

7/7/2008