

ENVISIONING THE FUTURE

OPTIONS FOR POLITICAL ACCOMMODATION BETWEEN NORTH AND SOUTH SUDAN FOLLOWING THE REFERENDUM

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Executive Summary

Political accommodation encompasses the objectives, processes, or outcome of mutual conciliation around competing political interests and perspectives.

Confirmation of the unity of the Sudan or secession: that is the binary choice to be presented to voters in the referendum on self-determination of the people of Southern Sudan. While voters will have a ‘black or white’ choice, the NCP and SPLM (“the CPA Partners”) will have the challenging task of molding the shape of unity or secession.

This dichotomy – reconciling the ‘black or white’ choice of the voters with the need to shape the form of unity or secession – has been reflected in recent political discourse within the Sudan concerning the post-Referendum arrangements; debate has largely focused on two distinct scenarios of full, CPA-shaped unity or complete separation. However, for political and economic interactions following the Referendum, there are many options that can potentially better accommodate the political interests and perspectives of the people of North and South Sudan and their political representatives.

The purpose of this Briefing Paper is to present technical options for political accommodation between North and South Sudan that can enhance political stability through effective conciliation of political interests and perspectives.

A structured approach to political accommodation

Political accommodation is a powerful construct, the essence of which is mutual conciliation in situations where there is absence of comprehensive consensus but not a complete lack of consensus. The technical options for political accommodation presented here were developed using a structured approach to considering how best to accommodate political interests and perspectives. The methodology includes a typology for political accommodation; a matrix of political and economic interactions; and indicators for political accommodation.

The typology for political accommodation consists of five focal areas: (1) Political structure and decentralization; (2) Electoral system(s); (3) Executive; (4) Legislative branch; and (5) Public participation.

Options for Political Accommodation

The range of technical options for political accommodation between North and South Sudan following the Referendum have been developed through a process of brainstorming and testing of possible configurations for the context of the Sudan, drawing on a structured analysis of international contexts of interest.

Options in event of UNITY outcome

Three categories of options for political accommodation have been developed for the scenario in which the outcome of the Referendum is a vote confirming unity:

Option A – Status Quo

Option B – Equitable Partnership

Option C – Highly-decentralized (HD) Federal System

Option A: Status Quo

This option envisages a continuation of the system of government as per the CPA with similar institutions, modalities of representation and decision-making rules and procedures to those in place during the Interim Period. Changes to the system of government as specified in the CPA are considered as part of the review of the Interim National Constitution coordinated by the National Constitution Review Commission (NCRC).

Option B: Equitable Partnership

This option category for political accommodation continues the system of government established under the CPA, but includes changes to provide for greater equity in decision making, particularly at the national level of government. Characteristics of the *Equitable Partnership* option category include: expansion of the range of (central) Executive decisions that require the explicit consent of the First Vice President; and institution of a “parallel consent” decision-making procedure (requirement for concurrent majorities across communities/blocs) within the National Assembly.

Option C: Highly-Decentralized (HD) Federal System

A highly-decentralized (HD) federal system includes two regional Governments – a Government of Southern Sudan (GoSS) and a Government of Northern Sudan (GoNS) – in a federal arrangement with a central Federal Assembly and Federal Council. The Federal Executive consists of a two-member Presidency and a Federal Council consisting of eight Counselors. The two members of the Presidency are the elected Presidents of North and South Sudan who each hold the position of Federal President for half of the fixed period between elections. The eight members of the Federal Council also hold key Ministerial portfolios, with four Counselors representing each of North and South Sudan. Decision making in the Federal Executive is by unanimity, and if that is not possible then issues can be referred to the Federal Council. The Federal Assembly is composed of 60 representatives, 36 from North Sudan and 24 from South Sudan. Decisions on legislative bills in the Federal Assembly are taken by “parallel consent”.

Options in event of SECESSION outcome

Four categories of options for political accommodation have been developed for the scenario in which the outcome of the Referendum is a vote for secession. These option categories are presented here in order of increasing political interaction between two independent, sovereign entities with international personality:

Option G – Mutual Isolation

Option F – Reciprocity between Independent States

Option E – Economic Community of Independent States

Option D – Structured Union of Independent States

Option G: Mutual Isolation

This option category manifests extremely limited political and economic interactions between two separate and independent, sovereign States.

Option F: Reciprocity between Independent States

The option category of *Reciprocity between Independent States* features arrangements whereby North and South Sudan recognize that they each need something from the other and agree to interact politically and economically on a reciprocal basis. Two sub-categories in this group are: (a) *Issue-Based Reciprocity between Independent States*; and (b) *Structured Reciprocity between Independent States*.

Issue-based Reciprocity options involve North and South Sudan interacting politically and economically in an *ad hoc* manner on an issue-by-issue basis. Interactions are guided by- or result in international treaties or other agreements between North Sudan and South Sudan, but on specific issues. The relevant government Ministry in each State is responsible for managing interactions with the counterpart. A more structured form of reciprocal interaction involves coordination of political and economic interactions within North Sudan and within South Sudan through the establishment of a single institutional interface within each State.

Option E: Economic Community of Independent States

This option reflects a moderately high degree of economic and political interaction between sovereign, independent States of North and South Sudan. In the *Economic Community of Independent States* option category, North and South Sudan agree on the scope and parameters for primarily economic, but also political, interactions through an international treaty or other bilateral agreement. This option category includes arrangements for meeting and interaction of the Heads of State at Summit level, and some of the variants in this category include arrangements for meeting of a Council of Ministers. In addition, this option category includes arrangements for interaction between the legislatures of the two States to incorporate common provisions of legislation into the respective domestic laws.

Option D: Structured Union of Independent States

This option category exhibits a structured Union of two independent, sovereign States. The standing, common institutional structures and their competencies are agreed between the two States through an international treaty or other form of agreement.

The types of interaction at the Executive level include meetings in Summit configuration for the Heads of State as well as meeting of Ministers in a Council of Ministers to discuss specific issue areas. The form of the Inter-State Body

envisaged is a decision-making body comprised of elected representatives from North and South Sudan which considers and takes decisions on issues identified jointly between North and South Sudan as being of high mutual interest. The decision-making procedures used in the Executive interactions are based on unanimity, while those in the Inter-State Body are based on “parallel consent” or other form of qualified majority.

Assessing options for political accommodation

In event of UNITY outcome

The system of government established by the CPA has not resulted in a high degree of equity in the representation of political constituencies in the institutions of Government, especially in the National Assembly (but also in the State Legislative Assemblies). This is not necessarily a result of the CPA-designed structure of the institutions themselves but rather a result primarily of certain technical attributes of the electoral systems specified in the National Elections Act of 2008. These technical features make it more difficult for non-mainstream political parties to secure seats in the National Assembly.

As a result of the types of decision-making procedures used in the National Assembly, implementation of the system of government specified in the CPA has not achieved a high degree of equity in political decision-making influence.

The inequality in political decision making inherent in the CPA-installed institutions of government (with the exception of the Council of States) can be addressed by some of the arrangements in Option B, *Equitable Partnership*. The specification of a broader range of decisions that require the explicit consent of the First Vice President in the Executive Branch and the use of “parallel consent”-type of decision-making procedures in the National and State Legislative Assemblies could contribute significantly to more effective political accommodation. However, the relationship between the National- and Southern Sudan levels of government would remain unequal, as certain core competencies would remain at the national/central level.

The *Highly-Decentralized (HD) Federal System* option category (Option C) can address both the equity of political decision-making influence and the national-regional imbalance in competencies inherent in the system of government established under the CPA. The representatives of the Federal Assembly are initially elected indirectly by members of the Southern Sudan Legislative Assembly and the Northern representatives in the (current) National Assembly. It is envisaged that the members of the Federal Assembly would later be elected directly. Decision making on predefined “key” decisions is by “parallel consent”. This combination of strong representation for blocs of assemblypersons from North and South Sudan in the Federal Assembly; parity of representation in the Federal Council and Presidency; and qualified-majority decision making can ensure a high degree of political accommodation in both Executive and Legislative Branches. The *HD Federal System* option also affords the opportunity to re-align the competencies of the federal- and regional levels of government.

In event of SECESSION outcome

Option G, *Mutual Isolation*, provides no tangible prospects for achieving direct accommodation of political interests as the option is based on extremely limited political and economic interactions. Indirect accommodation of political interests and perspectives is possible if the two entities – North and South Sudan – participate in a third entity (such as a non-Sudan specific community or other configuration of States).

Within the *Reciprocity between Independent States* option category (Option F), the sub category of *Issue-based Reciprocity* provides opportunities for accommodation of political interests and perspectives but these can only be realized through agreements reached on specific issues. The lack of standing institutions or parameters for more structured interactions limits the extent of accommodation possible between the two entities. Since agreement on specific key issues requires the concurrence of North and South Sudan this model does provide a high degree of equity in decision-making influence.

The sub category of *Structured Reciprocity* provides opportunities for more effective accommodation within North Sudan, within South Sudan, and between the two entities than *Issue-based Reciprocity*.

Several features of option variants identified under the category of *Economic Community of Independent States* (Option E) offer the potential to achieve a moderately high degree of political accommodation. With regard to equity of political representation, the Summit arrangement for Executive-level interaction exhibits parity of political representation. Since decisions in the Summit meetings require unanimity, there also exists a high degree of equitability in decision-making

influence. Similarly, interactions between the legislatures of North and South Sudan reflect a high degree of equity in political decision-making influence as agreements require concurrence of both member States. The ability of this option category to achieve consensus on economic issues, where there may be high congruence of interests, assists in nurturing a higher degree of accommodation on political issues.

The *Structured Union of Independent States* option category (Option D) provides significant opportunities for political accommodation in the shared institutions (especially the Inter-State Body) and through the Summit configuration for meetings of the Heads of State. Representation in the Inter-State body is either through equal numbers of representatives from each of North and South Sudan (Option variants D-1, D-1a and D-4), or through proportional representation. The type of decision-making procedure in the Inter-State Body – one of “parallel consent” – ensures a high degree of political accommodation. The competencies of the Inter-State Body and the nature of its resolutions are based on formal agreements between the two sovereign States. North and South Sudan decide their own internal arrangements to realize effective political accommodation at the ‘within North’ and ‘within South’ level. The unique attribute of the *Structured Union* option category is that it is the only category which provides opportunities to accommodate specific regions/constituencies at the inter-State level.

Helping to address practical needs following the Referendum

In the event of a vote for unity, one practical need that will exist is the need to moderate political interactions concerning the constitutional review process. The option categories of *Equitable Partnership* or *HD Federal System* can contribute to an atmosphere more conducive to this process; constituencies will see that their political interests are accommodated, and hence there will be more incentives to participate actively in political discourse.

The options developed pertaining to implementation of a vote for secession can assist in addressing practical needs that will exist following the Referendum, including: (a) the need to facilitate political, economic and other forms of interaction between and within the communities living on either side of the border between North and South Sudan; (b) the need for a forum and parameters for political interaction to facilitate continued negotiations on- and implementation of post-Referendum arrangements; and (c) the need to accommodate those of Southern origin, ancestry or affiliation living in North Sudan and those of Northern origin, ancestry or affiliation living in South Sudan.

Sequencing and evolution of options for political accommodation

The options presented here can be sequenced to move gradually towards more effective political accommodation. In the event of unity one possible trajectory is to move initially from *Status Quo* to *Equitable Partnership*. Following this initial step, other options for a more highly-decentralized federal system could be considered as part of the CPA-mandated constitutional review process. In the event of secession, one possible trajectory involves a move from *Issue Based-* to *Structured Reciprocity between Independent States*, as a precursor to exploring the feasibility of moving to arrangements based on *Economic Community of Independent States* or *Structured Union of Independent States* options.

Conclusion

In the event of a vote for unity options of *Equitable Partnership* (Option B) and *Highly-Decentralized (HD) Federal System* (Option C) offer the potential for achieving a higher degree of political accommodation than the CPA-established system of government, as currently implemented, is capable of achieving.

In the event of a vote for secession, options of *Structured Reciprocity between Independent States* (sub-category of Option F), *Economic Community of Independent States* (Option E), and *Structured Union of Independent States* (Option D) all offer significant advantages over the *Issue-based Reciprocity* model. However, Options D and E offer the highest potential for achieving effective political accommodation between two independent, sovereign entities.

By ensuring more effective political accommodation these options can significantly enhance prospects for stability and afford practical mechanisms for preventing and resolving disputes between North and South Sudan through the Referendum, the remaining Interim Period, and beyond. In this way, options for political accommodation are essential elements for envisioning the future of the Sudan.

One possible vehicle to incorporate modalities for political and economic interactions in the negotiations on post-Referendum arrangements is a *chapeau* agreement, which would need to be negotiated between the CPA Partners before the end of the Interim Period. This *chapeau* agreement could also provide the much-needed ‘glue’ to hold together the various strands of negotiation on technical issues.

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1 Introduction and objectives

Confirmation of the unity of the Sudan or secession: that is the binary choice to be presented to voters in the referendum on self-determination of the people of Southern Sudan (“the Referendum”).¹ According to the terms of the 2005 Comprehensive Peace Agreement (CPA) – signed between the National Congress Party (NCP) and the Sudan People’s Liberation Movement (SPLM) – the Referendum is to take place six months before the end of the Interim Period.² As of early September 2010 it was envisaged that the Referendum would take place in January 2011.

One of the agreed principles of the CPA is that the people of Southern Sudan have the right to self-determination, *including through* the Referendum.³ The principle of self-determination of peoples goes beyond sovereign territory; it extends to determination of the system of governance which can be exercised through participation in political affairs. Rather than representing, therefore, the end objective of self-determination, the Referendum marks the starting point for the people of North(ern) and South(ern) Sudan to determine their future(s).⁴

*The Referendum
is the starting
point for self-
determination*

While those who vote in the Referendum will have a ‘black or white’ choice – confirmation of unity or secession – the NCP and SPLM (“the CPA Partners”) will have the more difficult task of molding the shape of unity or secession in their negotiations on post-Referendum arrangements. That is because the CPA, the Interim National Constitution (INC), the Interim Constitution of Southern Sudan, the Southern Sudan Referendum Act (2009), and other legal texts/agreements are mute on the form which secession could take and similarly provide little illumination on the potential future form of unity.⁵

So voters will choose unity or secession, while the CPA Partners – with potential public participation, especially in the event of a vote confirming unity – will decide the form of unity or secession.

The dichotomy identified here – reconciling the ‘black or white’ choice of the voters with the need to shape the form of unity or secession outcomes – has been reflected in recent political discourse within the Sudan concerning the post-Referendum arrangements. Debate has largely focused on two distinct scenarios: full, CPA-shaped unity or complete separation.

However, for political and economic interactions following the Referendum, there are many options and arrangements – extending beyond CPA-shaped unity or complete separation – that could potentially better accommodate the political interests and perspectives of the people of North and South Sudan and their political representatives for what in any event will be a new, *New Sudan*.

¹ According to Article 6 of the Southern Sudan Referendum Act 2009 (article titled “The Two Referendum Options”) the people of Southern Sudan shall, “either vote for: i. Confirmation of the unity of the Sudan by sustaining the system of governance established by the [CPA] and the Constitution, or ii. Secession.” This citation is based on the English-language version of the Act made available by the Ministry of Justice of the Government of the Sudan.

² In its agreed implementation modalities, the CPA stipulates that voting in Referendum will take place six months before the end of the Interim Period. See: The Government of the Republic of the Sudan and The Sudan People’s Liberation Movement, “Implementation Modalities and Global Implementation Matrix and Appendices,” Annexure II to, *Comprehensive Peace Agreement*, Nairobi, 9 January 2005.

³ The CPA states that, “... the people of South Sudan have the right to self-determination, inter alia, through a referendum to determine their future status.” *Comprehensive Peace Agreement (CPA)*, Chapter I (The Machakos Protocol), Part A, Article 1.3

⁴ North/Northern Sudan and South/Southern Sudan will be referred to as “North Sudan” and “South Sudan”, respectively, throughout this document, to pertain to the respective regions irrespective of the outcome of the Referendum.

⁵ The CPA does provide for a constitutional review process to be undertaken by the National Constitutional Review Commission (NCRC) during the course of the Interim Period. *Comprehensive Peace Agreement (CPA)*, Chapter II (Power Sharing), Part II, Article 2.12

Some of these options for accommodation of political interests, including frameworks for political interaction, can also provide solutions to very practical needs that will arise during implementation of either outcome of the Referendum. These practical requirements include the need for fora and parameters for political interaction to implement detailed agreements which may be concluded on post-Referendum arrangements. There also exists the need for a forum and arrangements for political interaction between and among the communities and their political representatives in the States along the shared border of North and South Sudan.

Shaping the form of a unity or secession outcome of the Referendum is a necessary, but as yet under-emphasized, component of the negotiations between the NCP and SPLM on post-Referendum arrangements which commenced in mid-2010. These negotiations have been set up to focus on clusters of technical issues which were specified in Article 67 of the Southern Sudan Referendum Act.⁶ During a meeting in Mekelle, Ethiopia in June 2010 the CPA Partners agreed to aggregate the technical issues into four cluster working groups: Citizenship; Security; International Treaties and Agreements and other Legal Issues; and Financial, Economic Issues and Natural Resources.⁷ As the negotiations on post-Referendum arrangements have been structured, there is no 'chapeau' or overall framework to provide the glue to hold together and ensure maximum complementarity across the various clusters of negotiations (see Figure 1).

In this context there exists a need to explore and consider options for political accommodation, including frameworks for political interaction, as part of the negotiations on post-Referendum arrangements. This Briefing Paper aims to address the need for exploration of options.

The overall purpose of this Briefing Paper is to present ongoing research and technical options for political accommodation between North and South Sudan that can enhance political stability through effective conciliation of the political interests and perspectives of the people of North and South Sudan and their political representatives.

In light of this overarching purpose, the specific objectives of this Briefing Paper are:

1. To highlight the need for frameworks for political accommodation between North and South Sudan following the Referendum
2. To present options for political accommodation between North and South Sudan following the Referendum
3. To highlight practical needs which arrangements for political accommodation could address

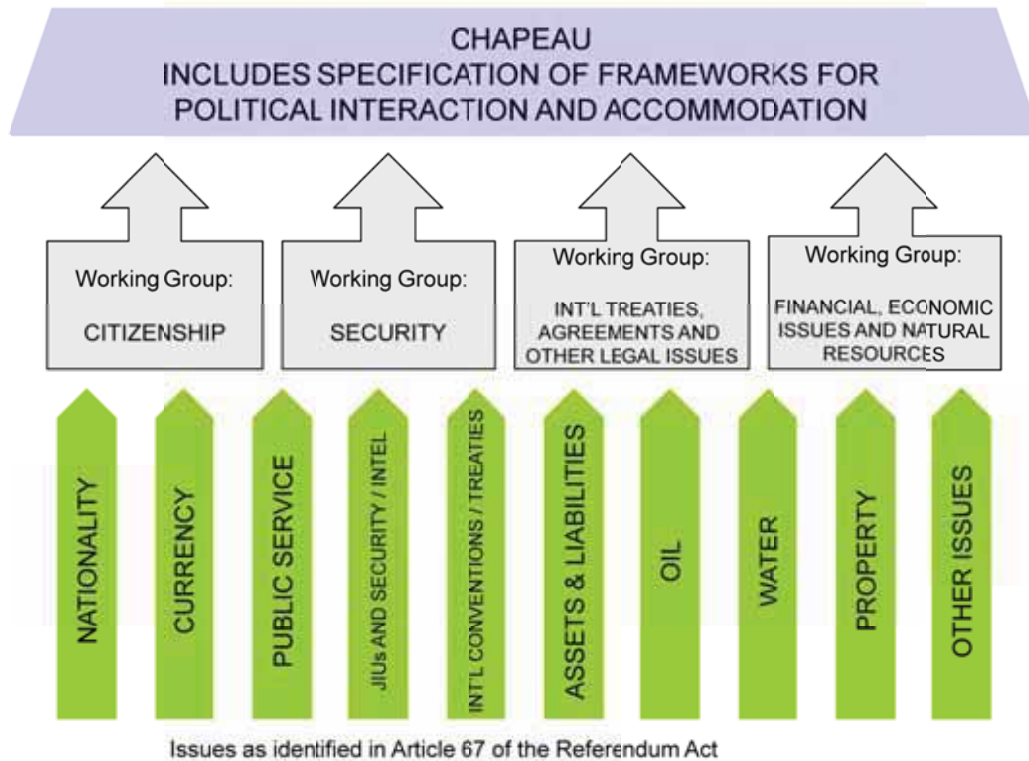
This paper is organized in four sections. Section 2 presents a typology and criteria for political accommodation in the Sudan, and presents the structured approach used to develop and assess options for political accommodation. Section 3 presents options for political accommodation for unity and secession outcomes of the Referendum. Section 4 provides an assessment of the effectiveness of the various options in achieving political accommodation, while Section 5 presents some concluding remarks.

⁶ Article 67 of the Southern Sudan Referendum Act 2009 identified the following substantive issues pertaining to post-Referendum arrangements for negotiation between the Parties to the CPA: a) nationality; b) currency; c) public service; d) position of Joint Integrated Units, National Security and Intelligence; e) International Agreements and Conventions; f) assets and Debts; g) oil fields, production, transport and export of oil; h) contracts and Environment in the oil fields; i) water; j) property; and k) any other issues to be agreed upon by the two parties.

⁷ See, *Mekelle Memorandum of Understanding between the NCP and SPLM on post-Referendum issues and arrangements*. Mekelle, Ethiopia, June 2010.

It is important to note that the technical options presented in this paper and indeed Conflict Dynamics' broader work on political accommodation in the Sudan do not presuppose any one outcome of the Referendum.

Figure 1 – Relationship between the discrete issues identified in the Referendum Act, the clusters of issues, and a potential 'chapeau' for the negotiations on post-Referendum arrangements



The methodology used in conducting policy-oriented research underpinning the assessment and observations in this paper includes the following components: (A) extensive literature and data review; (B) consultations with key interlocutors; (C) typology generation and refinement; (D) analysis and 'audit' of political accommodation; (E) comparative case study analyses; and (F) exploration of options for political accommodation.

The content of this paper focuses primarily on political accommodation between North and South Sudan following the Referendum. It does not present four other strands of Conflict Dynamics' ongoing work which focus on: options for political accommodation within North Sudan following the Referendum; options for political accommodation within South Sudan following the Referendum; political accommodation and the Darfur Political Process; and political accommodation in the context of the CPA-mandated Popular Consultations for Southern Kordofan and Blue Nile States.

Moreover, the options for political accommodation presented here are intended as a starting point for the CPA Partners, agreed facilitators and mediators, and other actors to develop options that can help in achieving conciliation of political interests. For practical implementation, the options presented here will need to be developed in further detail.

2 A structured approach to political accommodation

2.1 Overview

The technical options for political accommodation between North and South Sudan following the Referendum presented in this paper were developed using a structured approach to considering how to best accommodate political interests and perspectives. This structured approach includes a typology of five focal areas for political accommodation; a matrix of political and economic interactions; indicators for political accommodation; and other conceptual tools.

The methodology is presented briefly here as it is used in subsequent sections of this paper, and also the methodology itself can be used separately (from the options) as a tool for exploring models or arrangements beyond those contained in this paper. The methodology has evolved from a previous version developed by Conflict Dynamics and used for assessing the prospects for political accommodation in the context of national elections in the Sudan.⁸

2.2 The meaning of political accommodation

Political accommodation is a powerful construct which can provide more opportunities to reconcile different and potentially competing political interests than a singular or disjointed focus on “power sharing”, electoral system design, legislative decision making procedures, or other areas can achieve.

The term *political accommodation* encompasses the objectives, processes, or outcome of mutual conciliation around competing political interests and perspectives.⁹

The essence of political accommodation is mutual conciliation in situations where there is absence of comprehensive consensus but not a complete lack of consensus.

The essence of political accommodation is mutual conciliation

One of the main differences between political accommodation and power sharing is that political accommodation does not limit itself to mutual conciliation only of the political elites, as is generally the case in discourse and negotiations on power sharing. Political accommodation provides a construct with which to consider additional modalities of mutual conciliation; for example, through public participation in political affairs or through systems and structures of traditional authority.

2.3 A typology for political accommodation

A typology of focal areas for political accommodation – which can be thought of as avenues by which to accommodate political interests – has been developed and used by Conflict Dynamics in exploring options for political accommodation in the Sudan.

The typology consists of five focal areas for political accommodation:

- 1) Political structure and decentralization
- 2) Electoral system(s)

⁸ An earlier version of the typology for political accommodation, as well as indicators and statistical/visualization tools for political accommodation, were presented in detail in a previous Briefing Paper published by Conflict Dynamics. See, Gerard Mc Hugh, *National Elections and Political Accommodation in the Sudan* (Cambridge, USA: Conflict Dynamics International, June 2009) : pp 5 – 9. Available at: www.cdint.org

⁹ The definition of political accommodation provided here is adapted from that presented in: Brian Barry, “Political Accommodation and Consociational Democracy,” *British Journal of Political Science* Vol. 5 Issue 4 (Oct. 1975) : 477 – 505.

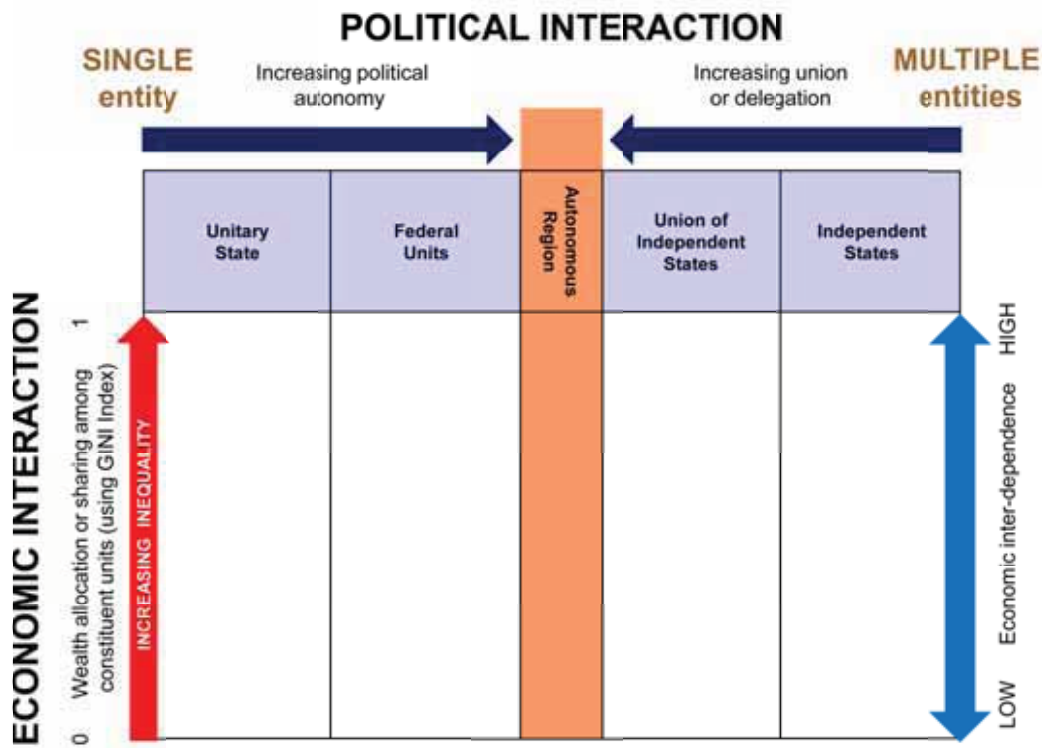
- 3) Executive
- 4) Legislative branch
- 5) Public participation

Other focal areas are used to complement these five streams, including traditional administration, dispute resolution mechanisms, etc. Traditional and customary administration is a particularly important focal area for political accommodation in situations where customary processes and structures have evolved to moderate interactions or to achieve accommodation of political interests.

This typology for political accommodation is equally applicable to political interactions within single entities with international personality (e.g. States) and to political interactions between the constituent units in multiple-entity configurations (e.g. formations of independent States interacting politically, economically and in other ways). The typology is used later in this paper to identify and organize attributes of interest from case studies and to provide a template for generating options for political accommodation.

In addition to this typology, the process of exploring options for political accommodation employs a matrix of political and economic interactions. This matrix provides an ability to map both international case study examples and options for the Sudan along a spectrum of political and economic interactions (see Figure 2).

Figure 2 – Matrix of political and economic interactions within single- or multiple-entity configurations



The scope for political interaction in the matrix spans the spectrum from single entities with international personality to multiple entities with international personality. Single entities include

Unitary States and Federal Systems. Multiple entities include Independent States (interacting, for example, through Conventions, meetings etc.) and Unions of Independent States (e.g. the East African Community). Within each of these classifications there can be many forms of political interaction.¹⁰ Between the single entity and multiple entity classifications are Autonomous Regions that are not yet a single entity with international personality, but that also are not sovereign units within a Multiple Entity configuration.¹¹ An example of an entity which may be located in the Autonomous Region category is present-day Somaliland.

In addition to the spectrum of political interaction, the matrix encompasses a range of economic interactions. This is not to suggest that other forms of interaction (social, cultural etc.) are not equally important, but rather this focus on political and economic interactions is useful in generating options for political accommodation that can take account of the nature of economic- and resource-related interactions.

For Single Entity configurations, economic interactions can be gauged by the level of wealth allocation or sharing within the entity. This can be measured by a number of indicators including the level of inequality in distribution or allocation of wealth and economic/natural resources across various population/ethnic/other groups within the entity. For Multiple Entity configurations, economic interactions are identified along a scale with qualitative categories of high, medium and low economic interdependence.

This matrix is used later in this paper to locate and analyze case studies, to assist in exploring options for political accommodation, and to facilitate consideration of possible sequencing of options and arrangements.

2.4 Indicators for measuring effectiveness of political accommodation

In addition to the typology and matrix of political and economic interactions that are used for exploring options for political accommodation, indicators of political accommodation have been developed to assist in evaluating the effectiveness of particular arrangements. The two main types of indicators for political accommodation are: (1) equity of political representation and (2) equity of political decision-making influence, although other indicators are used also.

A number of statistical tools have been employed to quantify and assess the degree of equality/inequality in wealth sharing, resource allocation, political representation and political decision-making influence, both for international case studies and for new options generated for the specific context of the Sudan. These tools include distribution and equality curves (including the Lorenz Curve, described in the following section) and indices of equality/inequality in distributions of political representation/resources/decision making.¹²

¹⁰ There is a large body of literature on different types of State structures and federal systems, some of which are included in the Bibliography at the end of this paper. Some sample resources that may be particularly relevant to the Sudan include: Markus Boeckenfoerde et al. *Max Planck Manual on Different Forms of Decentralization, Second Edition* (Heidelberg: Max Planck Institute for Comparative Public Law and International Law, 2007); Paul R. Williams et al. *Peace Agreement Drafting Guide: Darfur* (Washington, DC: Public International Law Policy Group (PILPG), 2007); and Swisspeace, *Federalism and Peace Mediation*, Peace Mediation Essentials Series (Bern: Swisspeace, January 2009).

¹¹ The *Autonomous Region* category as used in this paper does not relate to a sub-national region (within a State) which may have a high degree of autonomy; Rather, it relates to regions not part of an existing State and not having international personality.

¹² The indices of equality/inequality used include the GINI Index, which provides a quantitative representation of the level of equality/inequality in a system and has been used by Conflict Dynamics to assess the degree of political accommodation in various configurations.

3 Options for Political Accommodation

3.1 Overview

This section presents a range of technical options for political accommodation covering either outcome of the Referendum, and therefore represents the nucleus of this paper. The options are presented using the typology for political accommodation and matrix of political and economic interactions described in Section 2.

This section presents the options ‘as is’, identifying some of the technical advantages and disadvantages of each option category. This provides the foundation for comparing and assessing the options using common indicators of political accommodation in Section 4.

3.2 Technical building blocks for political accommodation

The options for political accommodation were developed through a rigorous process of brainstorming and testing of possible configurations for the context of the Sudan, drawing on a structured analysis of international contexts of interest. This structured analysis used attributes of interest corresponding to the five focal areas for political accommodation that constitute the typology.

It is important to note that the case studies analyzed were not considered as being directly analogous cases to the situation in the Sudan, but rather as a source of technical building blocks which could then be used to formulate Sudan-specific options. While the methodology to develop and assess options for political accommodation is technical by design, it also reflects careful consideration of the history, political dynamics, and other unique characteristics of the Sudan. In order to ensure their relevance, the technical options presented here have been developed to reflect perspectives gathered through ongoing consultations with the CPA Partners and other key interlocutors in the Sudan.¹³

3.2.1 Key attributes of interest

For case study analysis and option generation the five focal areas for political accommodation that constitute the typology (Section 2.3) also provide the main attributes of interest. The five main attributes are:¹⁴

PA1 – Political structure and decentralization

PA2 – Electoral system(s)

PA3 – Executive

PA4 – Legislative branch

PA5 – Public participation

Additional attributes for consideration include: traditional administration; central- and peripheral competencies, etc.

¹³ The technical options for political accommodation have been presented to key interlocutors in North and South Sudan since January 2010.

¹⁴ “PAX” serves to indicate Political Accommodation attribute.

3.2.2 Extracting technical building blocks from case studies

A range of case studies was identified to provide a pool from which to extract technical building blocks that could be useful in generating Sudan-specific options for political accommodation. The range of case studies spans the spectrum of single- and multiple entity configurations and includes:

SINGLE ENTITIES: United Arab Emirates (UAE); State Union of Serbia and Montenegro (2003 – 2006); Kenya (Harmonized Draft Constitution of November 2009, and Constitution of 2010); Switzerland; Lebanon; Burundi; Northern Ireland.

MULTIPLE ENTITIES: European Union; Benelux Union; East African Community (EAC); Gulf Cooperation Council (GCC); Common Market for Eastern and Southern Africa (COMESA).

The technical attributes extracted from several of these case studies are summarized Table 2.

Of the additional attributes analyzed, over and above the five core attributes of interest, central-level decision-making procedures used in the legislatures of international cases were of particular interest in informing consideration of decision-making models for the legislative branch in some of the proposed configurations. The range of decision-making procedures extracted from the case studies is presented in Table 1.

Table 1 – Types of decision-making procedures used in various case studies

Type of decision-making procedure	Case example / context
<i>Decision making in central Executive</i>	
Supermajority with concurrence of select members	United Arab Emirates (UAE)
Unanimity	BENELUX Union
Consensus	East African Community (EAC)
Unanimity on substantive matters; simple majority on procedural issues	Gulf Cooperation Council (GCC)
Consensus on substantive matters or two-thirds majority [Council of Ministers]; Consensus [The Authority]	Common Market for Eastern and Southern Africa (COMESA)
<i>Decision making in central Legislature</i>	
“Parallel consent” ¹⁵	Northern Ireland; Serbia and Montenegro (2003 – 2006)
Two-thirds majority of votes, 1 per region, on select issues [Upper Chamber]	Kenya (Harmonized Draft Constitution of November 2009)
“Double qualification”	European Union (EU): 55 % of members representing at least 65 % of population

The case study analyses provided a useful pool of technical building blocks; however, additional attribute options were generated through a process of brainstorming and modification to existing features of case study contexts.

¹⁵ The term “parallel consent” is used throughout this paper to encompass types of decision-making procedures that require concurrent simple- or super-majorities within two or more communities in order for certain types of decisions to be adopted. This form of decision making has been used in the legislative assemblies of Northern Ireland and the State Union of Serbia and Montenegro (2003 – 2006), among other contexts.

Table 2 – Summary of technical attributes for select single- and multiple entity case studies

POLITICAL STRUCTURE AND DECENTRALIZATION	ELECTORAL SYSTEM(S) (CENTRAL)	EXECUTIVE (CENTRAL)	LEGISLATIVE BRANCH (CENTRAL)	PUBLIC PARTICIPATION
<p>Federal system (UAE, Kenya)</p> <p>Federation, but referred to as “Union of States” (Serbia & Montenegro)</p> <p>Supranational Union, with federal and confederal characteristics (EU)</p> <p>Union of Independent States (Benelux Union)</p> <p>Community of States (EAC)</p> <p>Cooperation Council (GCC)</p> <p>Common Market (COMESA)</p>	<p>Central executive indirect – central legislature nominated / appointed (UAE)</p> <p>Central executive indirect – central legislature indirect during transition (Serbia & Montenegro)</p> <p>Central executive direct – bicameral central legislature (i) single-seat geo constituency, (ii) indirect (Kenya)</p> <p>Central executive combined: indirect and representative of members – central legislature direct (EU)</p> <p>Central executive representative of members – central legislature indirect (Benelux, EAC)</p> <p>Central executive representation of members (GCC, COMESA)</p>	<p>President + Supreme Council + Council of Ministers (UAE)</p> <p>President + Council of Ministers (Serbia & Montenegro, Kenya (Constitution, 2010))</p> <p>President + Prime Minister (Kenya, Harmonized Draft Constitution, Nov. 2009)</p> <p>President + (Exec) Council + Council of Ministers (EU)</p> <p>Council + Committee of Ministers (Benelux)</p> <p>Summit + Council (EAC, GCC, COMESA)</p>	<p>Unicameral legislature: assembly / parliament (UAE, Serbia & Montenegro, EU, Benelux, EAC, GCC)</p> <p>Bicameral legislature: Senate and National Assembly (Kenya)</p> <p>None (GCC, COMESA)</p>	<p>Explanatory memoranda outlining public participation during the preparation of Legislative Bills (Kenya, Nov 2009)</p> <p>Referenda: constitutionally mandated or citizen initiated, veto or otherwise (Switzerland)</p> <p>Statement and fulfillment of rights of citizens to bring an issue to a supranational court or arbitrator (EU, EAC)</p> <p>Town halls or open councils (UAE)</p> <p>Citizen consultative groups/boards (GCC, COMESA)</p>

3.3 Considerations to guide development of options

In order to facilitate generation of options for political accommodation in the Sudan, a number of considerations were identified to guide how best to combine the technical building blocks into option variants in the event of unity or secession outcome.

In event of UNITY outcome

Considerations for option generation include:

- Arrangements for political accommodation should seek to achieve greater equity in political decision-making influence in the Presidency, the National Assembly, and the State Legislative Assemblies than that manifested during the Interim Period;¹⁶
- Arrangements for political accommodation should provide for significant decentralization of authority from the federal level of government to Southern Sudan;
- Arrangements for political accommodation should try to accommodate not only South Sudan but other regions including: Darfur, Eastern Sudan, and the States along the border between North and South Sudan;
- There may be models of political accommodation that would reflect more equal status to Southern Sudan rather than the current 'parent – child' relationship between the national- and South Sudan levels of government.

In event of SECESSION outcome

Considerations for option generation include:

- Arrangements for political accommodation should not result in- or infer, in any way, compromise on the political independence of South Sudan;
- Arrangements for political accommodation should strive to implement the principle and CPA-expressed right of self-determination of the people of South Sudan, while respecting the equal right to self-determination of other people in the Sudan;
- Arrangements for political accommodation should not in any way subordinate or supersede Executive-level authority in North or South Sudan;
- It may be useful when exploring options for political accommodation and the associated frameworks for political interaction to reflect, to the extent possible, proximity to some of the relevant provisions agreed in the CPA (while not being bound by the CPA);
- Arrangements for political accommodation must provide an ability to accommodate Southern Kordofan, Abyei, Blue Nile, and other areas;
- In any shared/common central institutions there must be equity of representation and effective checks and balances to ensure parity (for North and Sudan) in political decision making.

¹⁶ For an analysis of the ability of extant decision-making rules and procedures to achieve effective political accommodation in the Presidency, the National Assembly, the Council of States, and the State Legislative Assemblies, see: Mc Hugh, *National Elections and Political Accommodation in the Sudan*, pp. 14 – 27.

3.4 Seven categories of options for political accommodation

Options for political accommodation between North and South Sudan following the Referendum are presented here for each of the two possible outcomes of the Referendum. For each option category the five key attributes of the option variant(s) are presented as are the technical advantages and disadvantages associated with each option category. Because they can be common across many option categories, options for the Public Participation attribute are presented separately (see Section 3.4.3).

3.4.1 In event of UNITY outcome

Based on the considerations identified above, and drawing on the pool of technical building blocks extracted from case studies (see Section 3.2.2), three categories of options for political accommodation have been developed for the scenario in which the outcome of the Referendum is a vote for unity:

Option A – *Status Quo*

Option B – *Equitable Partnership*

Option C – *Highly-decentralized (HD) Federal System*

Presented in this order, successive option categories exhibit increasing political autonomy within the single entity: a unified Sudan.

Option A: Status Quo

In the event of a unity outcome of the Referendum Option A, *Status Quo*, envisages a continuation of the system of government as per the CPA with similar institutions, modalities of representation, and decision-making rules and procedures to those which have evolved during the Interim Period. Changes to the system of government as specified in the CPA are considered as part of the mandated review of the Interim National Constitution coordinated by the National Constitution Review Commission (NCRC).

The arrangements for political accommodation for this option category, which mirror arrangements during the Interim Period, are summarized in Table 3.

Advantages

- Only minimal changes are required to the political structures and institutions that have been established and functioning during the Interim Period.
- The institutions of government established by the CPA have been operational for some time and therefore, at least from a procedural standpoint, continuation of the system of government established under the CPA would assist in providing a degree of political (institutional) stability.
- There already exists a CPA-mandated process to facilitate review of the Interim National Constitution and that could provide a mechanism to make changes to the system of government established under the CPA.

Disadvantages

- The system of government established under the CPA has significant constraints that limit its ability to deliver effective political accommodation in the Sudan, including *de facto* non-consensus decision making procedures.¹⁷

Table 3 – Key attributes for political accommodation, Option A¹⁸

Attribute	Option A – Status Quo
POLITICAL STRUCTURE & DECENTRALIZATION	→ Federal system with 4 levels of Government: (1) National level; (2) Southern Sudan level; (3) State level; and (4) local level. [INC Art. 24] → "...a democratic, decentralized ... country ..." [Art. 1]
ELECTORAL SYSTEM	→ Executive (center and periphery): Direct → Legislature: Council of States, indirect; National Assembly, direct (mixed PR and majoritarian)
EXECUTIVE (CENTER AND PERIPHERY)	→ Presidency: President and 2 Vice Presidents → Govt. of National Unity; Sharing of national ministerial portfolios [Art. 80]
LEGISLATIVE BRANCH (CENTER AND PERIPHERY)	→ Bicameral National Legislature: National Assembly and Council of States. [Art. 83] → National Assembly composed of directly-elected members elected; Council of States: Two representative from each State; two Observers from Abyei. [Art. 85]
→ CENTRAL COMPETENCIES	→ [As set out in INC Sched. A] Includes: national defense; foreign affairs; nationality; immigration; currency; national policy; civil aviation; etc.
→ PERIPHERAL COMPETENCIES	→ [As set out in INC Sched. B for S. Sudan] Includes: Planning for GOSS services including health; development of GOSS financial resources; reconstruction and development for South Sudan etc.
→ CENTRAL-LEVEL DECISION MAKING	→ Executive: Certain decisions taken with consent of First VP [Art. 58(2)] → Legislature: Resolutions of either Chamber taken by unanimous vote or consensus, when possible, or alternatively by simple majority [Part IV, Ch. 1, Para 99]
PUBLIC PARTICIPATION	→ Any resolution which has achieved the consent of the people by referendum shall have authority above any other legislation. [Art. 217]

Option B: Equitable Partnership

This option category for political accommodation continues the system of government established under the CPA, but includes changes to provide for greater equity in decision-making influence, both at the National- and State levels of government.¹⁹

Characteristics of the *Equitable Partnership* option category include: expansion of the range of (central) Executive decisions that require the explicit consent of the First Vice President and institution of a “parallel consent” decision-making procedure within the National Assembly which requires a simple majority of representatives from the ‘Northern’ bloc of representatives and a simple majority of representatives from the ‘Southern’ bloc of representatives in the National Assembly for passage of select pre-identified categories of decisions.²⁰ The attributes of this option are summarized in Table 4.

¹⁷ For an assessment of the extent to which the system of government established under the CPA can achieve effective political accommodation, see: Mc Hugh, *National Elections and Political Accommodation in the Sudan*, pp 14 – 27.

¹⁸ Article references in this table relate to the relevant provisions of the Interim National Constitution (INC) of the Government of the Republic of the Sudan (2005).

¹⁹ Option B includes consideration of decision-making in National- and State Legislative Assemblies; However, for the purposes of this paper the option focuses on decision making in the National Assembly.

²⁰ The four issues on which the President of the Republic shall take decisions with the explicit consent of the First Vice President are: (i) declaration and termination of a state of emergency; (ii) declaration of war; (iii) appointments that the President is required to make according to the CPA; and (iv) summoning, adjourning or proroguing the National Legislature. *Comprehensive Peace Agreement* (2005), Part II, Art. 2.3.6.

Table 4 – Key attributes for political accommodation, Option B

Attribute	Option B – Equitable Partnership
POLITICAL STRUCTURE & DECENTRALIZATION	→ Federal system with 4 levels of Government: (1) National level; (2) Southern Sudan level; (3) State level; and (4) local level
ELECTORAL SYSTEM	→ Executive (center and periphery): Direct → Legislature: Council of States, indirect; National Assembly, direct (mixed PR and majoritarian)
EXECUTIVE (CENTER AND PERIPHERY)	→ Presidency: President and 2 Vice Presidents → Govt. of National Unity; Sharing of national ministerial portfolios
LEGISLATIVE BRANCH (CENTER AND PERIPHERY)	→ Bicameral National Legislature: National Assembly and Council of States → National Assembly composed of directly-elected members elected; Council of States: Two representative from each State; two Observers from Abyei
→ CENTRAL COMPETENCIES	→ [As set out in INC Sched. A] Includes: national defense; foreign affairs; nationality; immigration; currency; national policy; civil aviation; etc.
→ PERIPHERAL COMPETENCIES	→ [As set out in INC Sched. B for S. Sudan] Includes: Planning for GOSS services including health; development of GOSS financial resources; reconstruction and development for S. Sudan etc.
→ CENTRAL-LEVEL DECISION MAKING	→ Executive: Decisions on an expanded range of matters beyond those identified in INC taken unanimously → Legislature: Resolutions of either Chamber taken by “parallel consent”
PUBLIC PARTICIPATION	[See Section 3.4.3]

Advantages

- The changes in decision making in the (central) Executive and the National Assembly significantly enhance the prospects for political accommodation by ensuring more equitable decision-making influence (at least for NCP and SPLM, but not necessarily for other political parties).
- The decision-making procedures do not require an amendment to the existing Interim National Constitution (for those types of decisions that do not otherwise have a constitutionally-specified decision-making procedure, the latter including: Amendment of the Constitution, and Impeachment of the President), and are congruent with the Model State Constitutions also.²¹

Disadvantages

- This option retains the division of competencies between the federal- and South Sudan level of government specified in the CPA (see Annex I) and hence would maintain the

²¹ Provisions of the INC – Article 96, "Regulations of the National Legislature", and Article 99, "Passing Legislative Resolutions" – appear to provide sufficient scope for adopting non (simple)-majoritarian decision-making procedures without an amendment to the Constitution. There is nothing to preclude (for those decisions that do not otherwise have a threshold specified in the INC) the "National Legislature ... [making] internal regulations" (Art. 96(2)) to achieve the preferred ("wherever possible") "consensus" (Art. 99) type of decision making.

dominant role of the national level of government over the South Sudan level of government in key decision areas, such as the national budget, economic planning etc.

Option C: Highly-Decentralized (HD) Federal System

The third option category in the event of a unity outcome of the Referendum is one which features a more highly-decentralized federal system in a unified Sudan. The current federal system of government established by the CPA constitutes very much a ‘parent and child’ relationship between the national/federal level of government and the South Sudan level of government; there exists a Government of Southern Sudan (GOSS), but no corresponding Government of North Sudan; South Sudan has significant autonomy on some issues however many critical issues are dealt with primarily at the national level of government (see Annex I).

A more highly-decentralized (HD) federal system includes two regional Governments – a Government of South Sudan (GoSS) and a Government of North Sudan (GoNS) – in a federal arrangement with a central Federal Assembly and Federal Council.

The Federal Executive consists of a two-member Presidency and a Federal Council with eight Counselors. The two members of the Presidency are the elected Presidents of North and South Sudan who each hold the position of Federal President for half of the fixed time period between elections for the Federal Executive. The eight members of the Federal Council also hold key Ministerial portfolios, with four Counselors representing each of North and South Sudan. Decision making in the Federal Executive is by unanimity, and if that is not possible then issues can be referred to the Federal Council.

The Federal Assembly is composed of 60 representatives, 36 from North Sudan and 24 from South Sudan. Decisions on legislative bills in the Federal Assembly are taken by “parallel consent” which requires a concurrent majority of representatives from South Sudan and of representatives from North Sudan for approval.

The attributes of this option category are summarized in Table 5, and an example of one possible variant within this category is provided in schematic form in Figure 3.

Table 5 – Key attributes for political accommodation, Option C

Attribute	Option C
POLITICAL STRUCTURE & DECENTRALIZATION	→ Highly-decentralized federal system with 4 levels of Government: (1) National level; (2) North- and South Sudan level; (3) State level; and (4) local level
ELECTORAL SYSTEM	→ [Central] Initially representatives elected indirectly by Legislative Assembly of Southern Sudan and Northern representations in National Assembly; Later by direct election → [Periphery] Electoral system to be defined for each Regional Legislative Assembly (North, South) by law passed at regional level
EXECUTIVE (CENTER)	→ 2-member Presidency comprising the elected Presidents of North and South Sudan; Rotating seats of President and First Vice President on cycle to be approximately half the interval for Executive-level elections → Federal Council: composed of 8 Counselors (4 each from North and South Sudan)
LEGISLATIVE BRANCH (CENTER)	→ Federal Assembly comprised of 60 representatives from North (36) and South Sudan (24)
→ CENTRAL COMPETENCIES	→ Budget planning and allocation of funds to constituent Regions; national security; civil aviation; national currency; management of natural resources (including oil, water); intellectual property; citizenship; immigration; customs and border control

→ PERIPHERAL COMPETENCIES	→ [all else]
→ CENTRAL-LEVEL DECISION MAKING	→ [Central Executive] By Unanimity (if not possible, then issue referred to Federal Council) → [Legislature] Decisions in Federal Assembly by parallel consent, i.e. majority within each of 'North' and 'South' representative blocs
PUBLIC PARTICIPATION	[See Section 3.4.3]

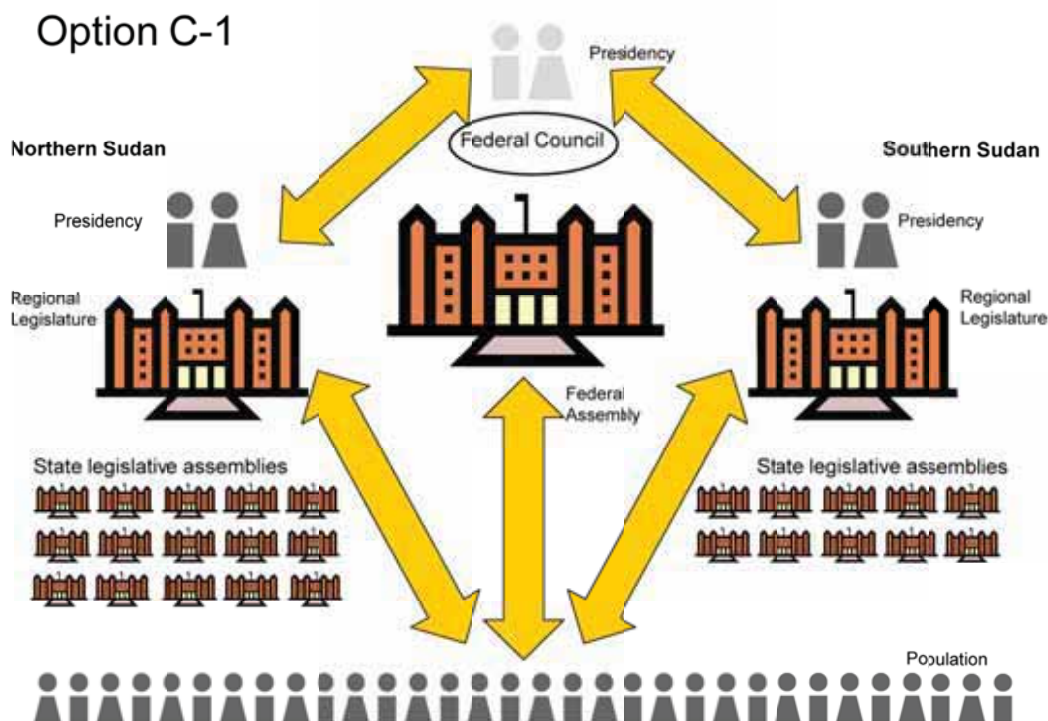
Advantages

- Provides a more equal (peer-to-peer) type of relationship for South Sudan's participation at the national/federal level of government than the system established under the CPA.
- Provides opportunity for direct election of representatives at federal and regional (North Sudan Legislative Assembly and South Sudan Legislative Assembly) levels.
- Dual-member, rotating Presidency with fixed term provides for more effective accommodation of political interests in central Executive.

Disadvantages

- Retains complexity in electoral system as elections required for Government of North Sudan, Government of South Sudan, and Federal level of government.

Figure 3 – Schematic representation of one variant of option category C, HD Federal System²²



²² In this and other schematic figures in this paper used to illustrate political interaction, arrows are used to indicate lines of political interaction OR political representation.

3.4.2 In event of SECESSION outcome

Four categories of options for political accommodation have been developed for the scenario in which the outcome of the Referendum is a vote for secession. These option categories are presented here in order of increasing political interaction between two independent, sovereign entities with international personality:²³

Option G – *Mutual Isolation*

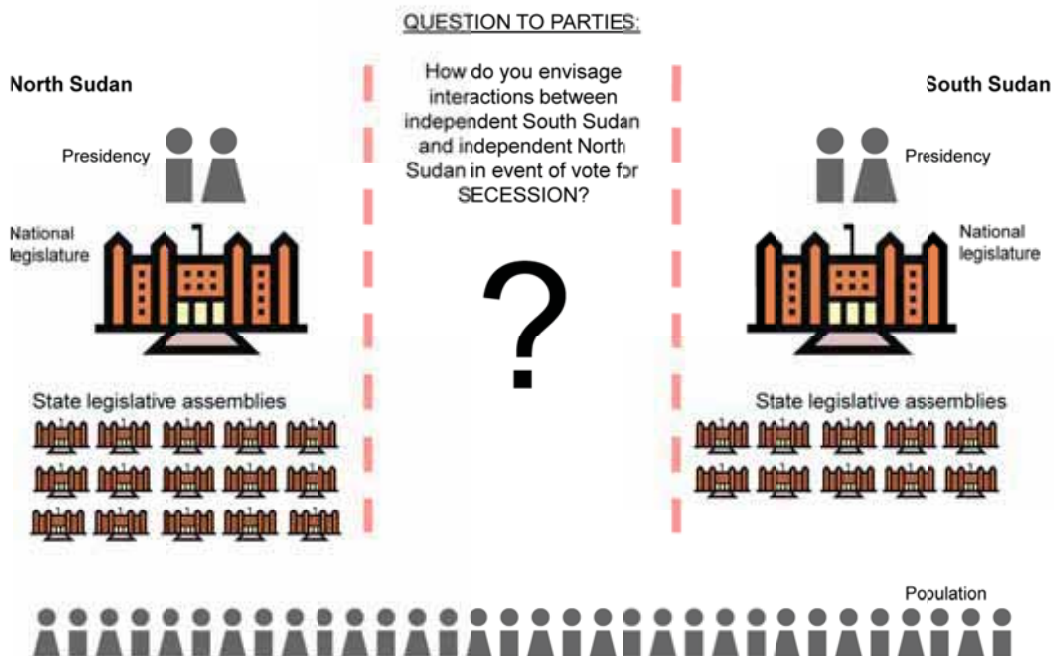
Option F – *Reciprocity between Independent States*

Option E – *Economic Community of Independent States*

Option D – *Structured Union of Independent States*

It can be envisaged that, in the event of secession, at least for some period following the Referendum, North and South Sudan will retain their respective institutions including a Presidency, Legislature, and State Legislative Assemblies. The options that follow are designed to inform consideration of the question (directed primarily to the CPA Partners) of how North and South Sudan will interact politically and economically following the Referendum (illustrated in Figure 4).

Figure 4 – The question which the technical options for political accommodation seek to inform (in event of secession)



²³ Each of Option categories D, E, and F contain the words "...Independent States" in the title as a means of reaffirming that none of the options proposed in any way detracts from the independent, sovereign status of South Sudan if the outcome of the Referendum is a vote for secession.

Option G: Mutual Isolation

The first option category for political accommodation in the event of secession is one which manifests extremely limited political and economic interactions between two separate and independent, sovereign States. Each of the two entities, North and South Sudan, isolate themselves from the other to the greatest degree possible, and may interact primarily through intermediaries.

In this option category, there exists no political structure directly linking the two entities, no central Executive or Legislature, and no central (shared) decision making between the two entities.

Advantages

- Obviates need for CPA Partners to agree on any particular forum or arrangements for political and economic interactions during their negotiations on post-Referendum arrangements.

Disadvantages

- Does not provide an ability to manage/undertake political and economic interactions on a range of issues for which it will be essential for North and South Sudan to interact, including natural resource management and agreements (especially oil and water resources).
- May interrupt sustainment of revenue derived from oil resources, which constitutes an existential resource for the Government of the Sudan and the Government of Southern Sudan.
- Precludes opportunities for arrangements to ensure common provisions in respective legislation of North and South Sudan; for example, to enact into law the provisions of agreements on post-Referendum arrangements between North and South Sudan.
- Does not provide a forum or opportunities for interaction between communities living along- or close to the border between North and South Sudan; Limits opportunities for structured political interaction or linkages between people residing in the territory of the other State.
- Does not provide a mechanism to facilitate resolution of disputes arising from implementation (unilaterally or jointly) of post-Referendum arrangements.

Option F: Reciprocity between Independent States

The option category of *Reciprocity between Independent States* responds to the situation whereby North and South Sudan recognize that they each need something from the other and agree to interact politically and economically on a reciprocal basis. There are two sub-categories within this grouping: (a) *Issue-Based Reciprocity between Independent States*; and (b) *Structured Reciprocity between Independent States*.

Issue-based reciprocity options involve North and South Sudan interacting politically and economically in an *ad hoc* manner on an issue-by-issue basis. Interactions are guided by or result in international treaties or other agreements between North Sudan and South Sudan, but on specific issues. For example, North and South Sudan may conclude an agreement or treaty specifically on oil resource management, pipeline and refinery facilities. The relevant government Ministry in each State is primarily responsible for managing interactions, on individual issues, with the counterpart in the other State.

A more structured form of reciprocal interaction involves coordination of political and economic interactions within North Sudan and within South Sudan through the establishment of a single institutional interface within each State. The composition of the respective institutional interfaces is decided by each State, however it is envisaged that representatives would be appointed, nominated and confirmed, or elected to serve on this body. Moreover, this institutional interface could be serviced by personnel from the relevant government agencies/departments within each State.

Advantages

- [Issue-based Reciprocity] Obviates need for CPA Partners to agree on any particular fora or coordinated arrangements for political and economic interactions; CPA Partners rely on *ad hoc* approach.
- [Structured Reciprocity] Provides institutional ability to streamline and coordinate interactions with the partner State, and hence can improve complementarity across interactions on a range of technical issue areas.
- [Structured Reciprocity] A standing institutional interface within each State provides an entry point for their respective National Legislatures and state and local governments.
- [Structured Reciprocity] A standing institutional interface within each State provides a single entry point to the other State for political and economic interactions.
- [Structured Reciprocity] A standing institutional interface provides opportunities for better sharing of information and use of available technical expertise within each State.
- [Structured Reciprocity] A standing institutional interface also provides an interface for public participation and consultation on issues of particular public interest.

Disadvantages

- [Issue-based Reciprocity] Does not provide an ability to coordinate and ensure maximum complementarity across interactions on the broad range of technical issues.
- [Structured Reciprocity] While the single institutional interface within each State will help in streamlining and coordinating interactions, the lack of a co-located forum for interaction will likely constrain interactions (as they will still be 'remote' interactions).
- [Both] Does not provide a mechanism to facilitate resolution of disputes arising from implementation (unilaterally or jointly) of post-Referendum arrangements.

Figure 5 – Schematic representation of *Issue-based (IBR)* and *Structured (SR) Reciprocity between Independent States*

IBR

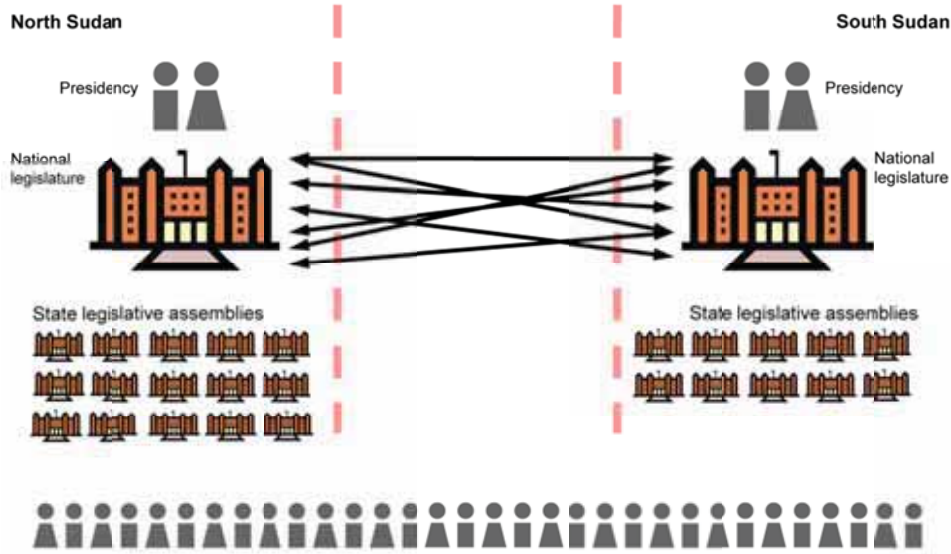
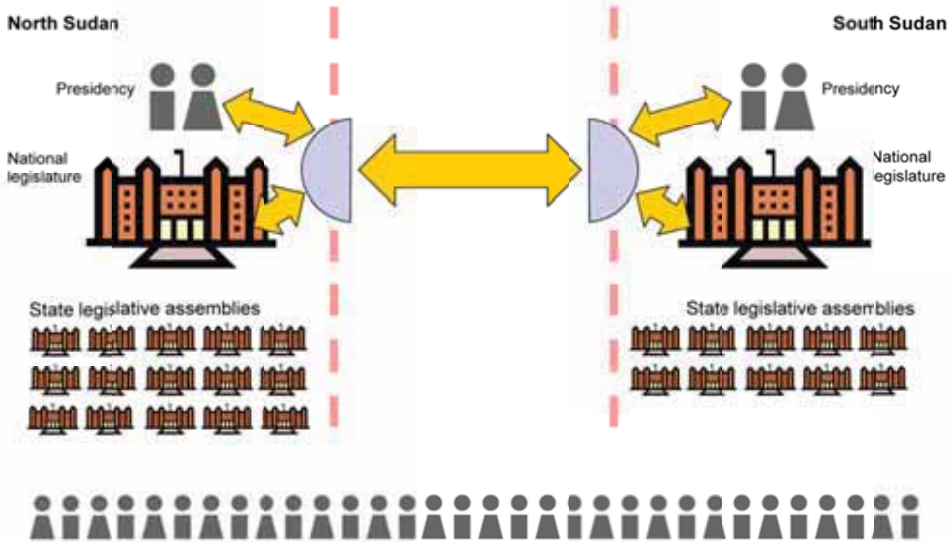


Figure 5 (continued)

SR



Option E: Economic Community of Independent States

This option reflects a higher degree of economic and political interaction between sovereign, independent States of North and South Sudan. In the *Economic Community of Independent States* option category, North and South Sudan agree the scope and parameters for primarily economic, but also political, interactions through an international treaty or other form of bilateral agreement. This option category includes arrangements for meeting and interaction of the Heads of State at Summit level, and some of the variants in this category include also arrangements for meeting of a Council of Ministers, whether to coincide with the Summit meetings or according to a separate meeting schedule.

In addition to interaction at the level of Head of State, this option category includes arrangements for interaction between the legislatures of the two States for the purpose of incorporating common provisions of legislation relating to implementation of agreements between the two States into the respective domestic laws.

Three variants of this option are presented in Table 6, the distinguishing characteristics being reflected in the nature of interactions at the Executive level and the nature of interactions between the Legislatures in each member State.

Table 6 – Summary of three variants in option category E, *Economic Community of Independent States*

Attribute	E-1	E-2	E-3
POLITICAL STRUCTURE & DECENTRALIZATION	ECONOMIC COMMUNITY OF TWO INDEPENDENT STATES	ECONOMIC COMMUNITY OF TWO INDEPENDENT STATES	ECONOMIC COMMUNITY OF TWO INDEPENDENT STATES
ELECTORAL SYSTEM (CENTER)	→ COUNCIL OF MINISTERS APPOINTED	→ COUNCIL OF MINISTERS APPOINTED	N/A
EXECUTIVE (CENTER)	→ HEADS OF STATE MEET IN SUMMIT → COUNCIL OF MINISTERS APPOINTED BY PRESIDENTS OF BOTH STATES	→ HEADS OF STATE MEET IN SUMMIT → COUNCIL OF MINISTERS APPOINTED BY PRESIDENTS OF BOTH STATES	→ NO STRUCTURED EXECUTIVE; HEADS OF MEMBER STATES MEET IN AD HOC SUMMITS
LEGISLATIVE BRANCH (CENTER)	→ BILATERAL INTERACTIONS BETWEEN NATIONAL ASSEMBLIES TO REFLECT DESIRED COMMON PROVISIONS OF LEGISLATION IN RESPECTIVE BILLS	N/A	N/A
→ CENTRAL-LEVEL DECISION MAKING	→ EXECUTIVE: UNANIMITY	→ EXECUTIVE: UNANIMITY	→ BY AGREEMENT BETWEEN TWO HEADS OF STATE
PUBLIC PARTICIPATION	[See Section 3.4.3]		

Advantages

- Facilitates strong interaction between North and South Sudan on economic and resource-related issues, for which the mutual interests of the States may be more closely aligned.
- Could be designed to reflect some of the already agreed upon scope of economic interaction under other community- or common market arrangements, such as the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA).
- Structured arrangements for economic interactions will reduce the potential for disputes on economic issues and will therefore contribute to economic and (indirectly) political stability following the Referendum.

Disadvantages

- Does not focus prominently on arrangements for political interaction and therefore is limited in its ability to achieve effective political accommodation.

Option D: Structured Union of Independent States

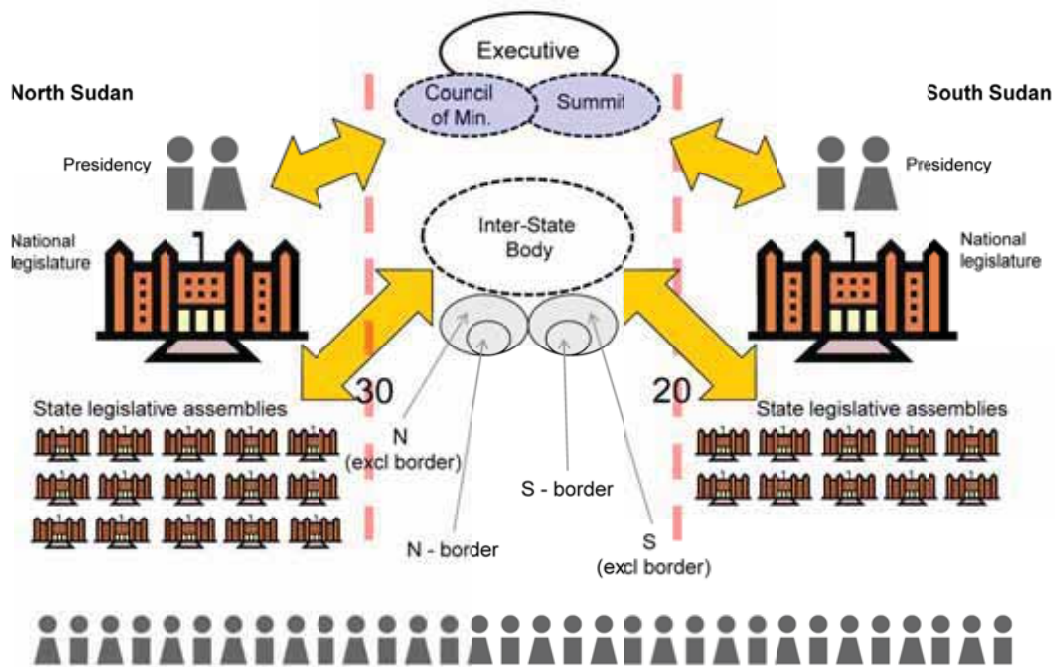
This option category exhibits a structured Union of two independent, sovereign States. The “structured” Union refers to standing, common institutional structures which North Sudan and South Sudan establish, and the competencies of which are agreed between the two States by international treaty or other form of agreement. There are many possible variants within this option category; however, the unique feature of Option D variants is the presence of standing institutions between North Sudan and South Sudan – referred to here as an Inter-State Body. Six option variants in this category are presented in Table 7. The variations depend primarily on: (i) the type of interaction at the Executive level; and (ii) the form and the system of representation used for the Inter-State Body.

The types of interaction at the Executive level include meetings in Summit configuration for the Heads of State as well as meeting of Ministers in a Council of Ministers to discuss specific issue areas. The form of the Inter-State Body envisaged is a decision-making body comprised of elected representatives from North and South Sudan which considers and takes decisions on issues identified jointly by the Member States as being of high mutual interest and necessitating a high degree of ongoing interaction.

The decision-making procedures used in Executive interactions are based on unanimity, while those in the Inter-State Body are based on “parallel consent” within the blocs of representatives from North Sudan and South Sudan. The main type of decision of the Inter-State Body is legally-binding resolutions or directives which are required to be enacted or reflected in legislation of the two constituent States for them to enter into force.

One of the option variants identified in Table 7, Option D-2a, is represented schematically in Figure 6. This and other option variants offer possibilities for accommodation not only of North- and South Sudan constituencies, but also of constituencies within North Sudan and within South Sudan. For example, if the representatives are elected to the Inter-State Body by the State Legislative Assemblies, the States along the border between North and South Sudan (five States on either side) would also have a forum for political interactions in the Inter-State Body.

Figure 6 – Schematic representation of *Structured Union of Independent States, Option D-2a*



Advantages

- Provides highly structured arrangements to facilitate and manage interactions between North and South Sudan which could moderate and enhance these interactions.
- Provides joint forum for political interaction between North and South Sudan which (as of September 2010) is not being adequately considered in the event of a vote for secession in the Referendum.
- Provides forum for interaction and decision-making between political representatives from States along the border between North and South Sudan.
- Provides potential for representation at inter-State level which is not based solely on place of residence. In this way, people from South Sudan who may wish to remain in North Sudan and who may wish to have political connection with South Sudan can be accommodated in the Inter-State Body. The converse applies equally for people from North Sudan who wish to remain living in South Sudan.
- Decision making by unanimity in Summit meetings ensures parity of representation and influence at the Executive level.
- “Parallel consent” decision making in the Inter-State Body ensures effective accommodation of political interests of North and South Sudan.

Disadvantages

- Requires an additional dimension to negotiations underway on post-Referendum arrangements to agree structure and parameters for interaction, including, for example, Summit arrangements and structure, competencies of Inter-State Body.

3.4.3 Options for public participation

Public participation in political affairs (and not only during peacemaking or constitution drafting processes) is an important component of the typology for political accommodation. The presence of mechanisms for the public to engage with structures for interaction between North and South Sudan (in the event of unity or secession) can provide more inclusive arrangements for political accommodation that extend beyond the parties to the CPA and other political parties.

Several arrangements for public participation have been developed and can be considered as attributes common to many of the option categories presented above. Such arrangements for public participation can be considered in three categories: (i) public participation through the legislative branch; (ii) public participation through the Executive; and (iii) other modalities.

Legislative Branch

Options for public participation include:

- Explanatory memoranda outlining public participation during preparation of Legislative Bills (as used in Kenya harmonized draft constitution of Nov 2009)
- Required publication of agendas, proposed laws with a comment period
- Consultative/advisory groups or boards
- Freedom of Information legislation

Table 7 – Summary of six variants in option category D, Structured Union of Independent States

Attribute	D-1	D-1a	D-2	D-2a	D-3	D-4
POLITICAL STRUCTURE & DECENTRALIZATION	STRUCTURED UNION OF TWO INDEPENDENT STATES	STRUCTURED UNION OF TWO INDEPENDENT STATES	STRUCTURED UNION OF TWO INDEPENDENT STATES	STRUCTURED UNION OF TWO INDEPENDENT STATES	STRUCTURED UNION OF TWO INDEPENDENT STATES	STRUCTURED UNION OF TWO INDEPENDENT STATES
ELECTORAL SYSTEM (CENTER)	→ INTER-STATE BODY: INDIRECT ELECTION	→ INTER-STATE BODY: INDIRECT ELECTION	→ INTER-STATE BODY: INDIRECT ELECTION	→ INTER-STATE BODY: INDIRECT ELECTION	→ INTER-STATE BODY: DIRECT ELECTION	→ INTER-STATE BODY: INDIRECT ELECTION
EXECUTIVE (CENTER AND PERIPHERY)	→ HEADS OF STATE CONSTITUTE ROTATING 2-PERSON PRESIDENCY → COUNCIL OF MINISTERS APPOINTED BY PRESIDENTS OF BOTH STATES	→ HEADS OF STATE AND DEPUTIES CONSTITUTE 4-PERSON SUMMIT → COUNCIL OF MINISTERS APPOINTED BY PRESIDENTS OF BOTH STATES	→ HEADS OF STATE CONSTITUTE ROTATING 2-PERSON PRESIDENCY → COUNCIL OF MINISTERS APPOINTED BY PRESIDENTS OF BOTH STATES	→ HEADS OF STATE MEET IN SUMMIT → COUNCIL OF MINISTERS APPOINTED BY PRESIDENTS OF BOTH STATES	→ HEADS OF STATE MEET IN SUMMIT → COUNCIL OF MINISTERS APPOINTED BY PRESIDENTS OF BOTH STATES	→ 2-PERSON PRESIDENCY ELECTED FROM INTER-STATE BODY → COUNCIL OF MINISTERS NOMINATED BY PRESIDENTY, ENDORSED BY INTER-STATE BODY
LEGISLATIVE BRANCH (CENTER AND PERIPHERY)	→ INTER-STATE BODY ELECTED BY REPS OF NATIONAL ASSEMBLIES IN EACH MEMBER STATE OF THE UNION; 48 MEMBERS – NORTH 24; SOUTH 24	→ INTER-STATE BODY ELECTED BY REPS OF NATIONAL ASSEMBLIES IN EACH MEMBER STATE OF THE UNION; 48 MEMBERS – NORTH 24; SOUTH 24	→ INTER-STATE BODY ELECTED BY REPS. OF STATE LEGISLATIVE ASSEMBLIES IN EACH MEMBER STATE; 50 MEMBERS: NORTH 30; SOUTH 20	→ INTER-STATE BODY ELECTED BY REPS. OF STATE LEGISLATIVE ASSEMBLIES IN EACH MEMBER STATE; 50 MEMBERS: NORTH 30; SOUTH 20	→ INTER-STATE BODY DIRECTLY ELECTED → 50 MEMBERS: NORTH 30; SOUTH 20	→ INTER-STATE BODY ELECTED BY REPS. OF NATIONAL ASSEMBLIES IN EACH MEMBER STATE; 48 MEMBERS – NORTH, 24; SOUTH, 24
→ CENTRAL-LEVEL DECISION MAKING	→ EXECUTIVE: CONSENSUS → LEGISLATURE: “PARALLEL” CONSENT	→ EXECUTIVE: UNANIMITY → LEGISLATURE: “PARALLEL” CONSENT	→ PRESIDENCY: CONSENSUS → LEGISLATURE: 2/3 MAJORITY OR “PARALLEL” CONSENT	→ EXECUTIVE: UNANIMITY → LEGISLATURE: 2/3 MAJORITY OR “PARALLEL” CONSENT	→ EXECUTIVE: UNANIMITY → LEGISLATURE: 2/3 MAJORITY OR “PARALLEL” CONSENT	→ EXECUTIVE: UNANIMITY → LEGISLATURE: “PARALLEL” CONSENT
PUBLIC PARTIC.	[See Section 3.4.3]					

Executive Branch

Options for public participation include:

- Requests pertaining to Executive authority and decisions under Freedom of Information laws
- Town halls or open councils (as in UAE)
- Ensuring representation in the civil service (as in the case of Nigeria)

Other: Judiciary, Referenda

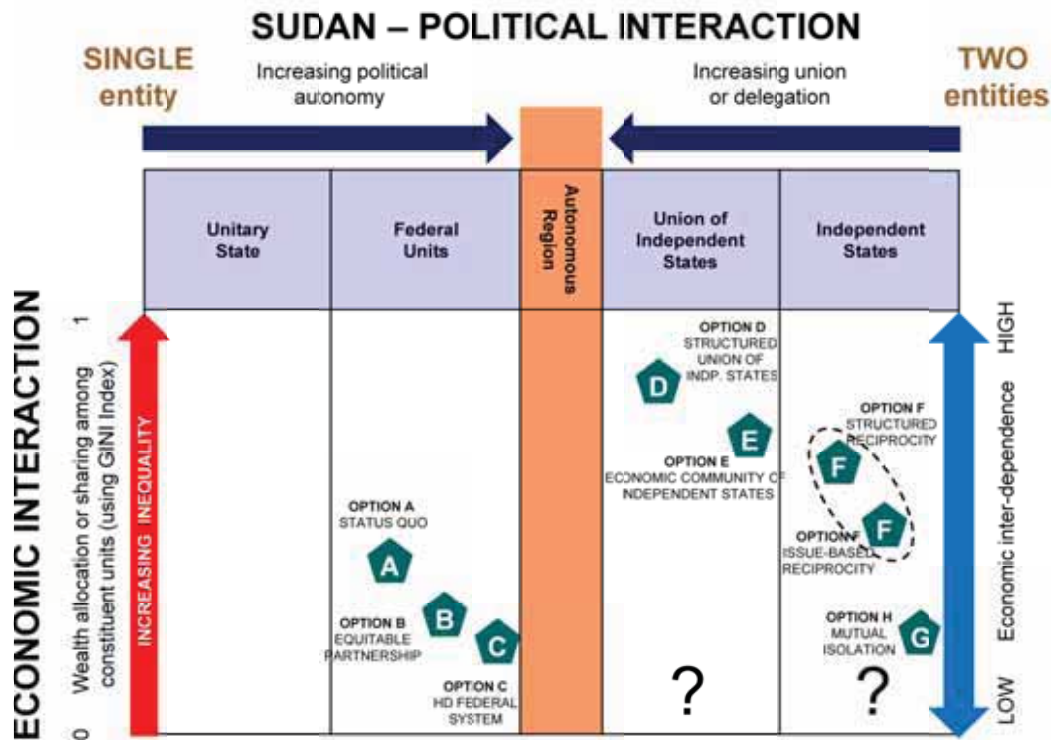
Options for public participation include:

- Statement and fulfillment of rights of citizens to bring an issue to a supranational court or arbitrator (as in the case of EU, EAC)
- Referenda: constitutionally mandated or citizen initiated (veto or otherwise)

3.4.4 Mapping categories of options

The seven option categories presented in this section have been inserted on the matrix of political and economic interactions presented in Section 2 (see Figure 7). The resulting map of technical option categories provides a means of considering opportunities for sequencing of option implementation and for identifying the required level of political and economic interactions.

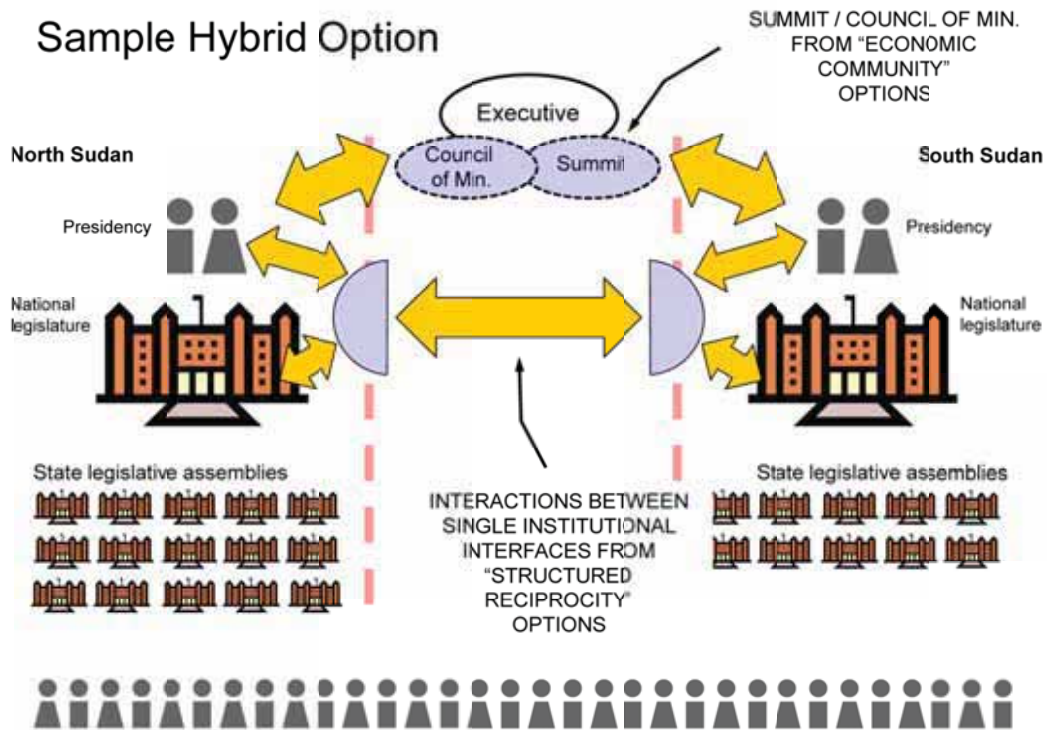
Figure 7 – Seven categories of options for political accommodation



3.5 Other hybrid technical options

The seven option categories have been described as discrete clusters, however, they constitute a repository of ideas and arrangements for political accommodation that is not limited to the categories presented here. Hybrid options that include features from different option categories can be developed. For example, aspects of the standing institutional interface from the *Structured Reciprocity between Independent States* option category can be combined with the Summit-meeting feature of the *Economic Community of Independent States* to generate a new option (represented schematically in Figure 8.)

Figure 8 – Sample hybrid option exhibiting features of Options E and F



4 Assessing options for political accommodation

4.1 Overview

The technical options for political accommodation presented in the preceding section span the spectrum of arrangements marked by the poles of a Unitary State at one end and separate independent States with limited political and economic interactions at the other. The options for political accommodation represent the shades of grey which the CPA Partners will have to choose from their palate, to give form to the 'black or white' choice of voters in the Referendum.

This section presents an assessment of the likely effectiveness of the various options in their ability to achieve effective political accommodation. The assessment includes consideration of how these options can assist in addressing very practical needs in the realm of political and economic interaction following the Referendum.

The assessment uses some of the qualitative and quantitative indicators identified in Section 2 to evaluate variants across the seven option categories (Options A – G). Specifically, equity of political representation and equity of political decision-making influence are two of the indicators which are used as a means of assessing the effectiveness of political accommodation.

4.2 Assessing options for political accommodation in event of UNITY outcome

4.2.1 Potential for achieving effective political accommodation

Three option categories have been generated for the scenario in which the outcome of the Referendum is a vote confirming unity: *Status Quo* (Option A); *Equitable Partnership* (Option B); and *Highly-Decentralized (HD) Federal System* (Option C). This section assesses the effectiveness of political accommodation for each option category. As part of the findings, two indicators of political accommodation for these options are summarized in Table 10.

Option A – Status Quo

The system of government established by the CPA has not resulted in a high degree of equity in the representation of political constituencies in the institutions of Government, especially in the National Assembly. This is not necessarily a result of the CPA-designed structure of the institutions themselves but rather a result primarily of certain technical attributes of the electoral systems specified in the National Elections Act of 2008. More specifically, the dominant majoritarian electoral system; the use of single- rather than multi-seat geographical constituencies; the requirement for presentation of Political Parties' and Women's lists at State (rather than National-) level; the specified thresholds for Political Parties' and Women's lists; etc. all make it more difficult for non-mainstream political parties to secure seats in the National Assembly or in the State Legislative Assemblies.²⁴

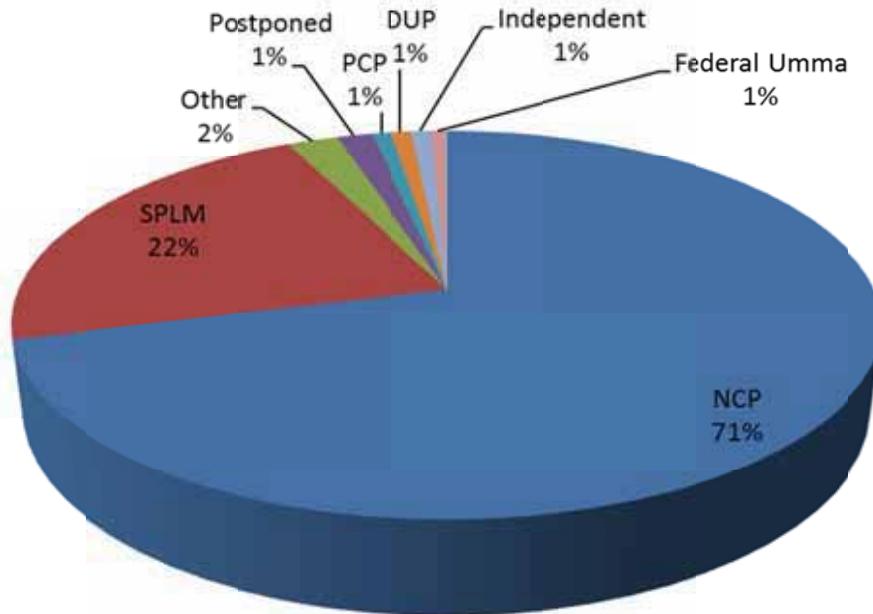
In national elections held in April 2010 the NCP and SPLM secured approximately 71 and 22 percent of seats in the National Assembly, respectively. A complete breakdown of the elections results, based on data from the National Elections Commission (NEC), is provided in Table 8 and Figure 9.

²⁴ For a detailed analysis of the prospects for political accommodation following the elections, see: Mc Hugh, *National Elections and Political Accommodation in the Sudan* (June 2009).

Table 8 – Breakdown of election results for National Assembly seats (2010) by Geographical Constituency, Political Party List and Women’s List components (Source: NEC)²⁵

Party / Status	Geographical Constituency	Political Party List	Women List	Total
National Congress Party (NCP)	187	50	82	319
Sudan People’s Liberation Movement (SPLM)	56	17	26	99
Postponed	7			7
Popular Congress Party (PCP)		1	3	4
Democratic Unionist Party (DUP)	4			4
Independent	4			4
Federal Umma	2		1	3
Umma Reform and Development	2			2
Democratic Unionist Party – Original (DUP/O)	2			2
Sudan People’s Liberation Movement – Democratic Change (SPLM/DC)	2			2
Muslim Brothers	1			1
Not Released	1			1
Umma Collective Leadership	1			1
Umma	1			1
Total	270	68	112	450

Figure 9 – Breakdown of seats in National Assembly, by party or status, following elections of 2010 (Source: NEC)²⁶



²⁵ Data Source: National Elections Commission (NEC). Representatives' party affiliations taken from the Arabic version of the NEC website which reflected a difference from the English version in two seats in North Darfur and Red Sea. All translations of party names reflect the translations used by the NEC. Data available at: <http://nec.org.sd/> [accessed 15 September 2010]

²⁶ Data Source: National Elections Commission (NEC). See preceding footnote for qualifications regarding political party names.

However, the ultimate representation through National Assembly seats secured only provides a superficial view of the equity of political representation. A more accurate picture can be obtained by comparing the votes cast for the participating political parties and candidates with the ultimate representation (in the National Assembly) of those parties/candidates. This provides an image of the effectiveness of the electoral system in translating voter preferences into political representation.

Table 9 provides a comparison of percentage votes cast nationwide for geographical constituency (GC) seats and percentage of total geographical constituency seats (numbering 270) secured in the National Assembly, by party. The data required to undertake a similar analysis for the Political Party- and Women’s Lists was not publicly available at the time of writing. The comparison is reflected graphically in Figure 10 (with important qualifications in the accompanying footnotes).

Table 9 – Comparison of votes by party and ultimate representation in National Assembly, for geographical constituency (GC) seats (Source: NEC)²⁷

Party	National Assembly GC Seats	% Total National Assembly GC seats (270)	Votes	% Total
NCP	187	69.26%	4,327,273	51.47%
SPLM	56	20.74%	1,922,232	22.86%
Independent	4	1.48%	582,377	6.93%
DUP	4	1.48%	197,368	2.35%
PCP		0.00%	217,122	2.58%
Federal Umma	2	0.74%	153,824	1.83%
DUP/O	2	0.74%	383,419	4.56%
Umma Reform & Development	2	0.74%	72,837	0.87%
SPLM/DC	2	0.74%	53,898	0.64%
Muslim Brothers	1	0.37%	18,638	0.22%
Umma	1	0.37%	27,883	0.33%
Umma Collective Leadership	1	0.37%	20,318	0.24%
Other	0	0.00%	430,311	5.12%
Grand Total	262²⁸	97.03%	8,407,500	100.00%

These data indicate that for the SPLM the elections translated votes cast for the geographical constituency seats into a near-equal percentage of seats in the National Assembly (22.86 % of the votes translated into 20.74 % of the GC seats). The NCP secured a greater percentage of seats than the percentage of votes secured for the geographical constituency seats (51.47 % of the votes translated into 69.26 % of the GC seats). These results are reflective of the majoritarian, single-seat geographical constituencies that are used as one component of the electoral system. These findings mirror other

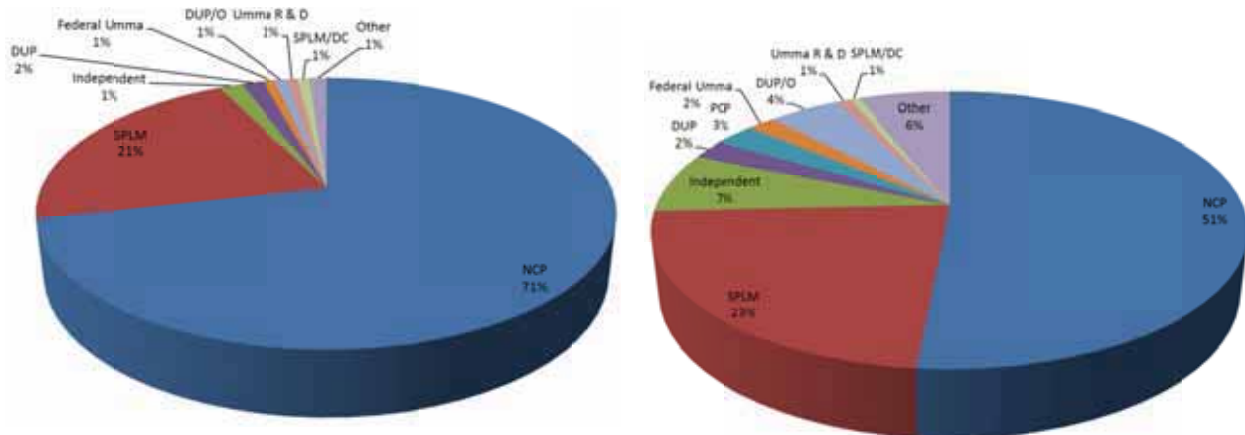
²⁷ Data Source: National Elections Commission (NEC). Vote counts represent the votes from 239 geographical constituencies (from a total of 270) available on the NEC website. Representatives' party affiliations taken from the Arabic version of the NEC website which reflected a difference from the English version in two seats in North Darfur and Red Sea. All translations of party names reflect the translations used by the NEC. Data available at: <http://nec.org.sd/> [accessed 15 September 2010]

²⁸ The number of geographical constituency seats in the National Assembly is 270; this table and the accompanying figure exclude the 8 seats that were listed as Postponed (7 seats) and Not Released (1 seat) on the NEC website.

international experiences with representation through majoritarian electoral systems and therefore are not unique to the Sudan.

Based on this analysis, therefore, it is evident that the parts of the electoral system pertaining to election of members of the National Assembly do not guarantee a high degree of equity of political representation in the relevant institutions.

Figure 10 – National Assembly Geographical Constituencies (GC) seats election results 2010: GC seats secured by party (left) and votes for GC seats by party (right); (Source: NEC)²⁹



With regard to equity of political decision-making influence: based on the default simple majority decision-making procedure (except for those types of decisions for which the Constitution specifies other, higher-threshold decision-making procedures), any party or alliance of parties which secures more than 50 percent of the seats will be in a position (assuming limited deviation from party voting preferences) to dominate decision making in the lower house of the National Legislature.³⁰

The equity of decision-making influence in the National Assembly can be visualized using a graph to illustrate the distribution of decision-making influence among blocs of representatives in the Assembly. The resulting distribution curve – called a Lorenz Curve – is generated by plotting the cumulative percentage of representation blocs (NCP, SPLM, OTHER) on the horizontal axis against the cumulative decision-making influence on the vertical axis. A diagonal line from the origin to the top right corner of the graph represents statistically exact proportional distribution of decision-making influence (e.g. 60 % of the representatives in the National Assembly have 60 % of decision-making influence). The desired goal is to achieve the most equitable level of decision-making influence while still providing guarantees for minority blocs of representatives (in this case, SPLM and ‘OTHER’ representatives).

Generated in this way, Figure 11 illustrates the Lorenz Curve for decision-making influence in the National Assembly following the elections for those decisions for which the default decision-making rule is simple majority (referred to here as “general” decisions). The area between the actual curve and the

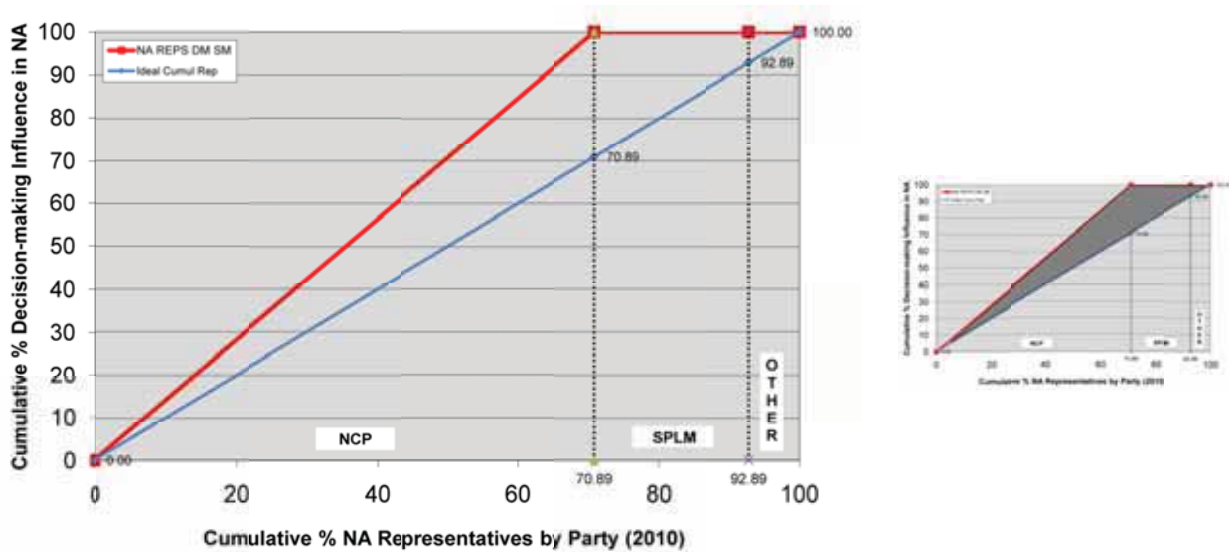
²⁹ Data Source: National Elections Commission (NEC). Representatives' party affiliations taken from the Arabic version of the NEC website which reflected a difference from the English version in two seats in North Darfur and Red Sea. Vote counts represent the votes from 239 geographical constituencies (from a total of 270) available on the NEC website. All translations of party names reflect the translations used by the NEC. Data available at: <http://nec.org.sd/> [accessed 15 September 2010]

³⁰ Two types of decision that have qualified-majority decision making procedures under the Interim National Constitution are: (i) decisions regarding amendments to the Constitution; and (ii) decision regarding impeachment of the President.

line of exact proportional distribution (the diagonal line) is related to the level of inequality: the greater this area (shaded in Figure 11, inset), the higher the degree of inequality in decision-making influence.³¹

Because the party or parties holding a simple majority of seats in the National Assembly can dominate general decision making in the Assembly, implementation of the system of government specified in the CPA has limitations in its ability to achieve a high degree of equity in political decision-making influence in that chamber.

Figure 11 – Lorenz Curve representing distribution of decision-making influence among main, other parties in National Assembly, for decisions taken by simple majority; The area between the curve and the line of exact proportional distribution (representing the level of inequality) is shown in inset



Option B – Equitable Partnership

The inequality in political decision making inherent in the CPA-installed arrangements can be addressed by some of the arrangements in Option B, *Equitable Partnership*. The specification of a broader range of decisions (including, potentially, all decisions) that require the explicit consent of the First Vice President in the Executive Branch and the use of “parallel consent”-type of decision-making procedures in the National Assembly can contribute significantly to more effective political accommodation.

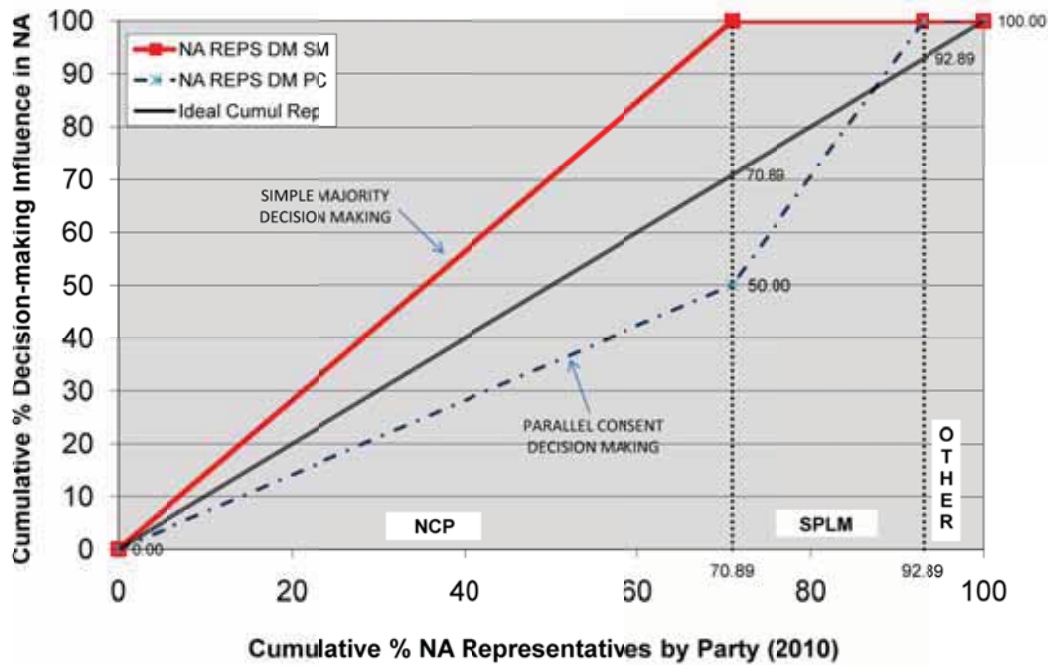
Using a “parallel consent” decision making procedure in the National Assembly ensures more equitable decision-making between the NCP and SPLM, and does not significantly alter the role of the other parties represented in the Assembly. The Lorenz Curve in Figure 12 illustrates the distribution of decision-making influence in the National Assembly based on decision making by “parallel consent.” This distribution comes significantly closer (than the distribution for simple majority decision making) to the line of exact proportional influence while still preserving the role of the dominant minority (i.e. the SPLM).³²

³¹ This area is used to calculate the GINI Index, which provides a single numeric value to convey the level of equality/inequality in a particular distribution. A distribution which reflects the exact proportional distribution has a GINI Index of 0.0, while maximum level of inequality is 1.0.

³² The calculated GINI Indices for the distributions of decision making in the National Assembly by simple majority and parallel consent are 0.29 and 0.18, respectively, confirming the more equitable nature of consensus types of decision making.

However, in this option category, the relationship between the national- and South Sudan levels of government remains unequal, as certain core competencies remain with the national/central level of government and are not devolved to the South Sudan level of government.

Figure 12 – Lorenz Curve representing distribution of decision-making influence among main, other parties in National Assembly, for decisions taken by parallel consent



Option C – Highly-Decentralized (HD) Federal System

This option category can address both the equity of political decision-making influence and the national-regional imbalance in competencies inherent in the system of government established under the CPA.

The representatives of the Federal Assembly are initially elected indirectly by members of the Southern Sudan Legislative Assembly and the Northern representatives in the (current) National Assembly. It is envisaged that the members of the Federal Assembly are later elected directly. Decision making on predefined key decisions is by “parallel consent”. This combination of strong representation for blocs of assemblypersons from North and South Sudan in the Federal Assembly; parity of representation in the Federal Council and Presidency; and qualified-majority decision making in the Federal Assembly can ensure a high degree of political accommodation in both Executive and Legislative Branches.

The *Highly-Decentralized Federal System* option also affords the opportunity to re-align the competencies of the federal- and regional levels of government to better reflect the parity of the Northern and Southern Regions in the federal system.

4.2.2 Helping to address practical needs following the Referendum

In addition to improving the prospects for more effective political accommodation, the new options presented here (excluding *Status Quo*) can also assist in a very practical way in meeting critical needs following the Referendum, and particularly following the end of the Interim Period.

In the event of a vote for unity in the Referendum, one practical need that will exist is the need to moderate political interactions concerning the constitutional review process.

The option categories of *Equitable Partnership* or *Highly-decentralized Federal System* can provide an environment more open to political cooperation following the Referendum. This is because these options will result in enhanced accommodation through more equitable decision-making procedures and through parity arrangements for representation of North and South Sudan in the Executive and Federal Legislature (*HD Federal System*), and therefore provide a safeguard against domination of political decision making by any one party or constituency.

This higher degree of political accommodation will contribute to an atmosphere more conducive to the constitutional review process; constituencies will see that their political interests are accommodated, and hence there will be more incentives to participate actively in political discourse.

4.3 Assessing options for political accommodation in event of SECESSION outcome

Four option categories have been generated for the scenario in which the outcome of the Referendum is a vote for secession: *Mutual Isolation* (Option G); *Reciprocity between Independent States* (Option F); *Economic Community of Independent States* (Option E); and *Structured Union of Independent States* (Option D). This section assesses the effectiveness of political accommodation for each option. As part of the findings, two indicators of political accommodation for these options are summarized in Table 10.

Table 10 – Summary of select indicators for political accommodation (“LOW”, “MEDIUM”, AND “HIGH”) across 7 option categories

	OPTION CATEGORY						
	UNITY OUTCOME			SECESSION OUTCOME			
	A	B	C	D	E	F	G
EQUITY OF POLITICAL REPRESENTATION	MEDIUM	MEDIUM	HIGH	HIGH	HIGH	N/A	N/A
EQUITY OF DECISION-MAKING INFLUENCE	LOW	MEDIUM	HIGH	HIGH	MEDIUM	MEDIUM	N/A

4.3.1 Potential for achieving effective political accommodation

Option G – Mutual Isolation

This option category provides no tangible prospects for achieving direct accommodation of political interests as the option is based on mutual isolation and therefore extremely limited political and economic interactions.

Indirect accommodation of political interests and perspectives may be possible were the two entities – North and South Sudan – to participate in a third entity (such as a non-Sudan specific community or other configuration of States; for example, through the African Union or the Common Market for Eastern and Southern Africa (COMESA)).

Option F – Reciprocity between Independent States

The sub category of *Issue-based Reciprocity between Independent States* provides opportunities for accommodation of political interests and perspectives, but these can only be realized through agreements reached on specific technical issues. As of early September 2010, the process of

negotiations on post-Referendum arrangements appeared to be setting up future interactions following the Referendum to be undertaken according to this approach of *Issue-based Reciprocity*.

The lack of standing institutions or parameters for more structured interactions limits the extent of accommodation possible between the two entities, and specifically limits the potential for achieving equity of political representation (between North and South Sudan).

Since agreement on specific issues would require the concurrence of North and South Sudan this model does provide for a high degree of equity in decision-making influence, but again only on specific issues. Furthermore, because this model exhibits uncoordinated interactions by respective Ministries in each of North and South Sudan, this model does not offer potential for accommodation of political interests concerning specific issues neither within North Sudan nor within South Sudan.

The sub category of *Structured Reciprocity between Independent States* provides opportunities for more effective accommodation within North Sudan, within South Sudan, and between the two entities then *Issue-based Reciprocity* as there is: (i) an institutional configuration within each of North and South Sudan to moderate and achieve accommodation of political interests and perspectives; and (ii) there exists a set of parameters (if not a standing institution) for coordination of interactions between North and South Sudan on a range of issues. It is important to note, however, that the scope of accommodation of political interests which can be achieved through coordinating institutions within each of North and South Sudan would most likely be limited to accommodation around technical issues.

Option E – Economic Community of Independent States

Several features of variants identified under this option category result in these options being able to achieve a moderately high degree of political accommodation. With regard to equity of political representation, the Summit arrangement for Executive-level interactions, in addition to the meetings of the Council of Ministers, exhibits parity of political representation. Since decisions in the Summit meetings require unanimity there also exists a high degree of equitability in decision-making influence.

Similarly for interactions between the legislatures of North Sudan and South Sudan, these interactions reflect a high degree of equity in political decision-making influence as agreements would require concurrence of both North and South Sudan.

The ability of this option category to achieve consensus on economic issues, where there may be high congruence of interests, may assist in nurturing a higher degree of accommodation on political issues.

Option D – Structured Union of Independent States

This option category provides significant opportunities for political accommodation through the Inter-State Body and through the Summit configuration for meetings of the Heads of State.

Representation in the Inter-State body is either through equal numbers of representatives from each of North and South Sudan (Option variants D-1, D-1a and D-4), or through proportional representation (for example, representation proportional to population or to the current number of States). In either case, the type of decision-making procedure in the Inter-State Body – one of “parallel consent” – ensures a high degree of political accommodation. The competencies of the Inter-State Body and the nature of its resolutions (whether binding directives, advisory resolutions or other) is based on formal agreements between the two sovereign States. North and South Sudan decide their own internal arrangements to realize effective political accommodation at the ‘within North’ and ‘within South’ level.³³

³³ Arrangements and possible technical options for political accommodation within North Sudan and within South Sudan are the subject of other strands of Conflict Dynamics’ initiative on political accommodation in the Sudan and so are not described in detail in this paper.

The unique attribute of the Structured Union option category is that it is the only group of variants which provides the potential to accommodate specific regions or constituencies at the inter-State level. This is a significant advantage of this option category (described in more detail in Section 4.3.2 below).

4.3.2 Helping to address practical needs following the Referendum

The options developed pertaining to implementation of a vote for secession can assist in addressing practical needs that will exist following the Referendum, including:

1. The need to facilitate political, economic, and other forms of interaction between and within the communities living on either side of the shared border of North and South Sudan;
2. The need for a forum and parameters for political interaction to facilitate continued negotiations on- and implementation of post-Referendum arrangements;
3. The need to accommodate those of Southern origin, ancestry or affiliation living in North Sudan and those of Northern origin, ancestry or affiliation living in South Sudan;

Interaction between border communities and representatives

Interactions between and within the communities of the five States adjoining the border on each side are widely seen as an important dimension of political and economic interactions following the Referendum. According to the Fifth Population Census of 2008, the combined population of all ten border States makes up one third of the population of the Sudan, and therefore constitutes an important constituency, particularly in light of the shared interests of those communities living along or migrating across the border.

However, discourse on potential arrangements to facilitate interaction of communities around the border has focused largely on local level models, not involving the role of the possible future national Governments of North and South Sudan (in event of secession). There had not been adequate consideration (by the CPA Partners or others) of the fora and arrangements that may facilitate political and economic interactions between political representatives in the border States, apart from the occasional, *ad hoc* meetings of the Governors of the ten border States.

The option category of *Structured Union of Independent States*, and Option D-2a (see Figure 6) in particular, provides a forum for interaction of the political representatives of the ten border States in the form of the envisioned Inter-State Body. With representatives returned to the Inter-State Body through indirect election by the State Legislative Assemblies, the Inter-State Body has fifty members, two from each State. Certain key decisions and issues before the Inter-State Body that may impact directly on the Border States could require the concurrence of a majority of representatives from each of the blocs of Northern Border States' representatives and Southern Border States' representatives, as well as an overall majority. Such qualified-majority decision making procedures would provide a strong incentive for representatives from the Border States to participate actively in the Inter-State Body.

Forum and parameters for political interaction

Following the end of the Interim Period many of the parameters which have been guiding the political interactions of the NCP and SPLM since the signing of the CPA will begin to evaporate. In this context, and in light of the number and complexity of issues to be negotiated and implemented by the CPA Partners, it will be essential to have a structured forum and clear parameters to manage interactions between the NCP and SPLM in a stable manner.

Participation in political affairs of 'other' State

The option category of *Structured Union of Independent States* affords the possibility of providing a

forum for participation of Southerners residing in North Sudan and Northerners residing in South Sudan in political affairs at the Inter-State level. This can accommodate those constituencies that may find it difficult to secure representation in the national (within North Sudan and within South Sudan) institutions, by virtue of the electoral system, as discussed above.

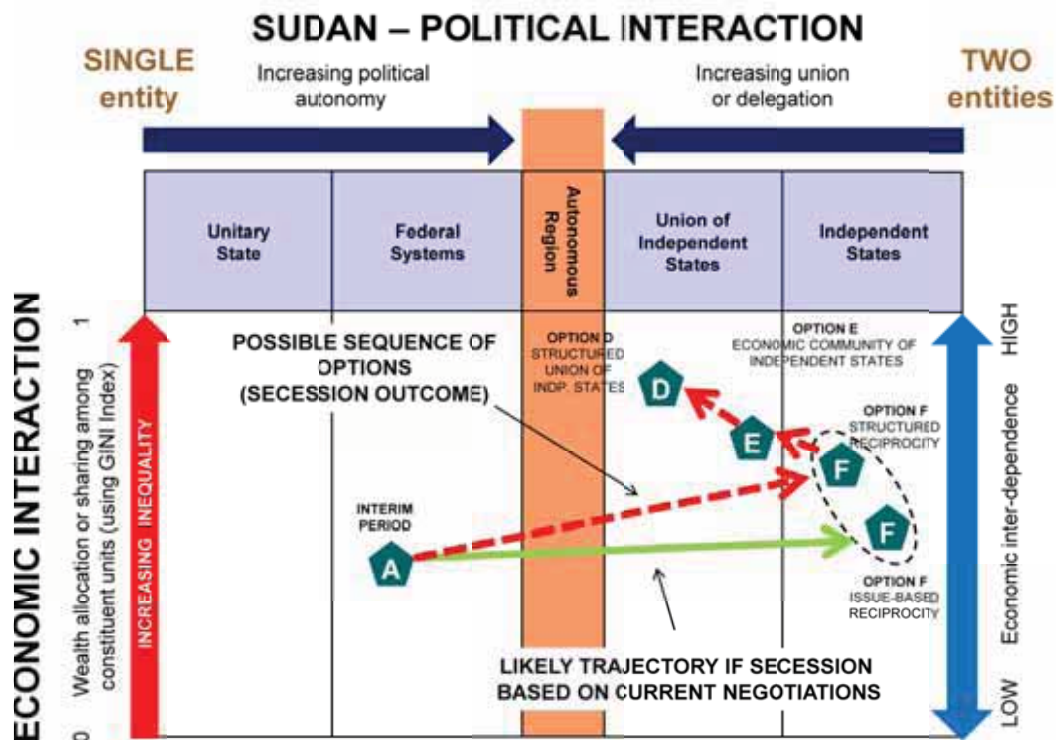
4.4 Sequencing and evolution of options for political interaction

In considering options for political accommodation it can be helpful to view effective political accommodation as an end goal to be achieved; several steps can be taken which will bring the CPA Partners and other political representatives closer to that end goal. In this regard, the options presented here can be implemented in sequence to move gradually, over time, towards more effective political accommodation. Several possible trajectories for evolution of the options present themselves.

In the event of confirmation of unity one possible trajectory features movement from *Status Quo* to *Equitable Partnership*-type of arrangements. This would be a relatively low political cost model as changes to consociational decision-making procedures in the Executive and Legislative Branches (for general decisions based on simple majority) would not require a constitutional amendment. Following this initial step, other options for a more *Highly-Decentralized Federal System* could be considered as part of the CPA-mandated constitutional review process.

In the event of secession, one possible trajectory exhibits movement from *Issue-Based Reciprocity* to *Structured Reciprocity between Independent States*. Once the interface institutions have been established and become operational, at that point it may be easier to consider opportunities for merging the two interface institutions into a single joint institution (such as the Inter-State Body). This notional trajectory is illustrated on Figure 13.

Figure 13 – Notional trajectory for sequencing of options for political accommodation (secession)



5 Conclusion

5.1 Envisioning the future

Following the Referendum, irrespective of the outcome, a *new, New Sudan* will be born. The future of the Sudan is in the hands of those who will vote in the Referendum, for theirs is the choice between unity or secession, *and* in the hands of the NCP and SPLM, for success in realizing either outcome will rest in the shape of unity or the nature of interactions following secession.

This paper has presented seven categories of technical options for political accommodation covering both possible outcomes of the Referendum, several of which have been demonstrated to be capable of achieving more effective political accommodation than would likely be possible in their absence.

In the event of a vote for unity: options of *Equitable Partnership* (Option B) and *Highly-Decentralized (HD) Federal System* (Option C) offer the potential for achieving a higher degree of political accommodation than the CPA-established system of government, as currently implemented, is capable of achieving. Between these two option categories, *HD Federal System* offers the highest potential for achieving effective political accommodation as it not only ensures equitability in decision-making influence at the ‘central’ level (as do Option B variants also) but it also ensure a better balance between levels of government and ensures an even devolution of competencies within the federal system (which is currently not the case).

In the event of a vote for secession: options of *Structured Reciprocity between Independent States* (sub-category of Option F), *Economic Community of Independent States* (Option E), and *Structured Union of Independent States* (Option D) all offer significant advantages over the *Issue-based Reciprocity* model. However, Option D and E variants offer the highest potential for achieving effective political accommodation between two independent, sovereign entities by nature of the institutional fora and arrangements for political and economic interactions envisaged under each option category. It is clear, however, that Option D, *Structured Union of Independent States*, not only offers the greatest potential for political accommodation and efficiency of political- and economic interactions, but also offers significant potential to address very practical needs that will exist following the end of the Interim Period.

By ensuring more effective political accommodation these options can significantly enhance prospects for stability and afford practical mechanisms for preventing and resolving disputes between North and South Sudan through the Referendum, the remaining Interim Period and beyond. In this way, options for political accommodation are essential elements for envisioning the future of the Sudan.

5.2 A ‘chapeau’ to frame the negotiations on post-Referendum arrangements

Options to facilitate political and economic interactions following the Referendum have not featured prominently in the negotiations on post-Referendum arrangements, yet effective political accommodation in the future demands that they do.

One possible vehicle to incorporate modalities for political and economic interactions in the negotiations on post-Referendum arrangements is a *chapeau* agreement (see Figure 1), which would need to be negotiated between the CPA Partners before the end of the Interim Period. This *chapeau* agreement could also provide the ‘glue’ to hold together the various strands of negotiation on technical issues, which is essential in light of the depth and complexity of issues to be negotiated and the inter-

connections between them. Lastly, a *chapeau* agreement can also provide the general parameters for continued interaction following the end of the Interim Period. That will be essential because at that time, in the event of secession, the existing parameters (as per the CPA) will cease to prevail or at least their continued application will be ambiguous and subject to interpretation.

In the event of secession, an institutional body or interface will be required – in addition to a *chapeau*-type agreement – to effectively manage implementation of agreements on post-Referendum arrangements. This could take the form of an institutional interface such as that identified in *Structured Reciprocity between Independent States* option or the Inter-State Body in the *Structured Union of Independent States* option.

5.3 Areas for further research

Through the process of exploring options for political accommodation between North and South Sudan several other areas have been identified that warrant further research, including:

- Further exploration of the details of institutional arrangements that could facilitate political and economic interactions following the Referendum;
- Refinement of the linkages to connect options for political accommodation between North and South Sudan with options for political accommodation within North Sudan and options for political accommodation within South Sudan;
- More in-depth analysis of regional case studies of interest; and
- Further research to assess the effectiveness of some of the technical attributes proposed in the options, as they have been employed in other contexts.

“If you only look at what is, you might never attain what could be.”

ANONYMOUS

Annex I – Competencies at National and Regional levels

Schedules A and B of the Interim Constitution of the Republic of the Sudan (2005) specify the “powers” at the national and Southern Sudan levels of Government, summarized below:

NATIONAL GOVERNMENT	GOVERNMENT OF SOUTHERN SUDAN (GOSS)
Weights, measures, and standards	Adoption/amendment of GOSS Constitution
Dates and standards of time	Police, prisons, wildlife services
Meteorology	Interim period military and security
National prisons	GOSS services legislation
Institutions set out in Constitution/Peace agreement	Borrowing on GOSS credit within national macro-economic policy
Customs, excise and export duties	Planning GOSS services
National flag, emblem, anthem	GOSS civil servant compensation
National debt, borrowing, credit	GOSS financial resource development
National census, surveys and stats	Any power a state or the National Government requests it to exercise
States of emergency	Referenda
International and inter-state transport	GOSS taxation and revenue-raising
National public utilities	GOSS budget
National museums and heritage sites	GOSS public utilities
National economic policy and planning	GOSS flag and emblem
Nile waters commission, responsibilities, disputes	GOSS info, publications, media, telecommunications
Information, publications, telecommunications	Veterans, orphans, widows, dependents services and rehab
National taxation and revenue raising	Any item in Sched. D which is most effectively handled by GOSS
National budget	Responsibilities as per Agreement on Wealth Sharing
National elections legislation and supervision	GOSS census and statistics
Issuance of National Identity Card	GOSS identity cards, driving licenses, etc.

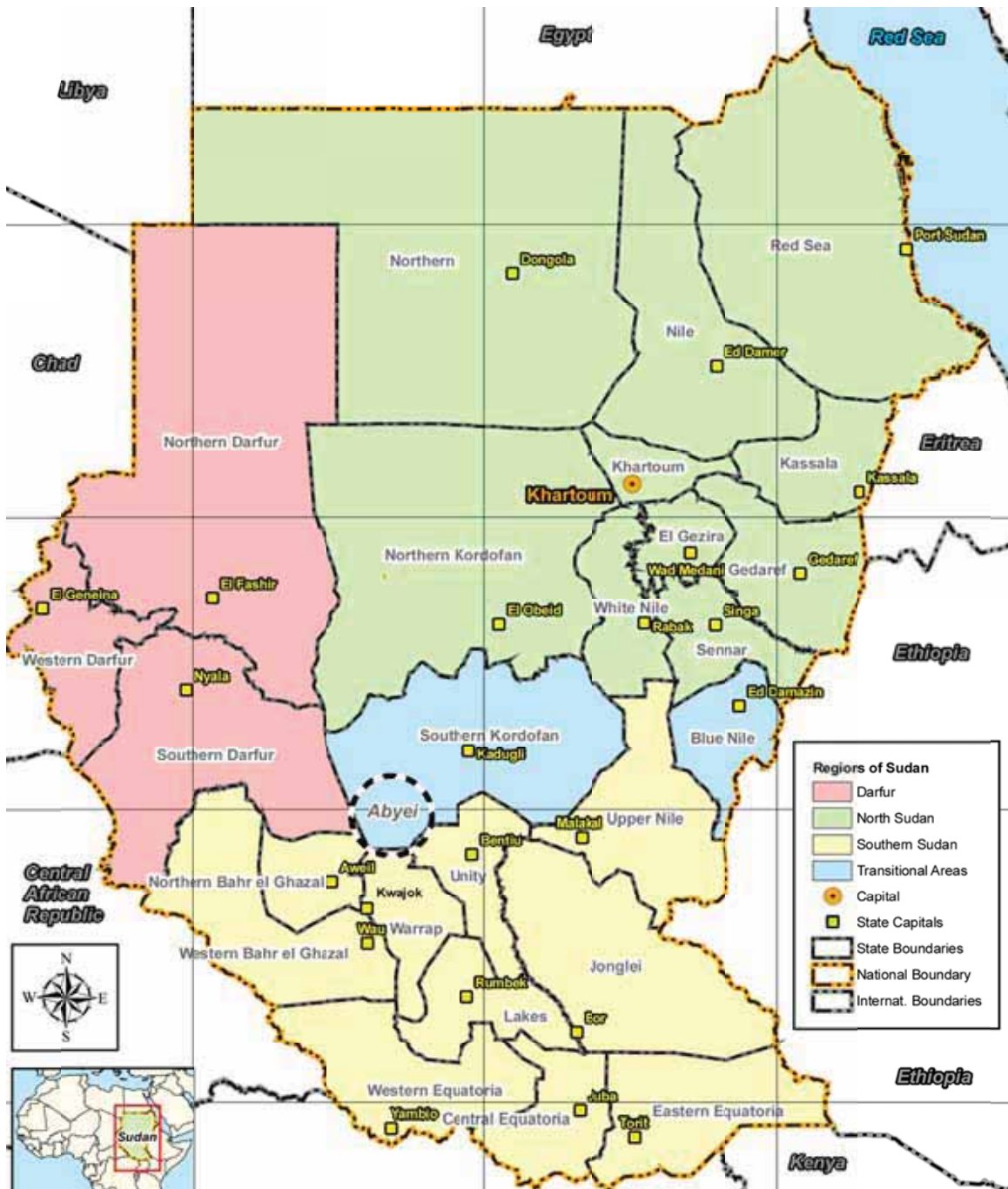
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Figure 14 – Map of the Sudan³⁴



³⁴ Source: Generated by the United Nations based on following data sources: Data Sources: National, State and County Boundaries based on Anglo-Egyptian Sudan Map Series, 250k, 1936-1951, United Kingdom Directorate of Overseas Survey; Payam Boundaries Source unknown. The U.N. indicates that "The information shown on this map does not imply official recognition or endorsement of any physical, political boundaries or feature names by the United Nations or other collaborative organizations."