

Accepted manuscript (CC BY-NC-ND).

Published version: *African Conflict and Peacebuilding Review*, Volume 12, Issue 2 (2022): 23-48, <https://muse.jhu.edu/article/868104>, doi: 10.2979/africonfpeacrevi.12.2.03.

A LEGAL ANALYSIS OF THE JUBA AGREEMENT FOR PEACE IN SUDAN AND ITS DARFUR COMPONENT

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Abstract

The 2020 Juba Peace Agreement (JPA) is a complex instrument, consisting of a general agreement dealing with national issues and six additional agreements negotiated in parallel “tracks,” separately addressing the multiple regional conflicts that have beset Sudan in recent decades. The purpose of the article is to provide a legal analysis of the JPA and to assess its implications for both peacebuilding in Darfur and the democratization of Sudan. After situating the agreement in the context of Sudan’s comprehensive peace process, the article presents the structure of the document, sheds light on its legal nature, and introduces the core issues addressed therein. It then focuses on the Darfur Agreement, considering the importance of the Darfur conflict to both the recent history of Sudan and the success of the peace process. Based on this analysis, the article assesses the main achievements and potential challenges to an effective implementation of the JPA.

Keywords: Juba Peace Agreement, Sudan, Darfur, peace process, legal nature

Introduction

The Juba Agreement for Peace in Sudan (Juba Peace Agreement or JPA) is a comprehensive, multilevel, and multitrack peace deal, which seeks to end the multiple civil conflicts that have afflicted Sudan in recent decades. Signed in the capital of South Sudan on October 3, 2020, between the Transitional Government of Sudan and most of the country’s rebel movements, the agreement comprehensively addresses the root causes and consequences of conflict. It includes plans to reshape all levels of governance in Sudan and presents solutions that are tailored to the specific problems of the different regional tracks through which the deal was negotiated. As such, the Juba Peace Agreement lies at the heart of a wide reform agenda, set in motion by the 2018–2019 revolution that ousted former President Bashir and replaced him with a mixed civilian-military government tasked with leading the country to democracy at the end of a transitional period. In light of this, its complexity and potential can best be captured if the agreement is situated in the context of Sudan’s democratization and the peace process that culminated in its adoption.

The starting point of the peace process can be found in the Constitutional Charter for the Transitional Period (Transitional Constitutional Charter or TCC), which was adopted in August 2019

following the Political Agreement between the Transitional Military Council and the Forces of Freedom and Change (FFC), respectively the military and civilian components of the Sudanese revolution (Political Agreement). The TCC identified the peace process as the priority for the first six months of the transitional period (art 7.2) and distributed the task of “achieving a just and comprehensive peace” between the Sovereign Council and the Cabinet. Interestingly, no power to intervene in the peace process was reserved for the Transitional Legislative Council. Guidance on how to lead the process was provided in Chapter 15 of the TCC. Specifically, art. 68 required that a comprehensive agreement be “completed” within six months of the signing of the TCC, arguably an ambitious deadline. Art. 69 pointed to 13 “essential issues” to be discussed during the negotiations, all of which were eventually addressed in the final peace deal.

Based on the constitutional mandate, talks between Sudan Prime Minister Hamdok, military members of the Sovereign Council, and representatives of rebel movements began in Juba in September 2019, hosted by the President of South Sudan Salva Kiir. The major counterpart in the negotiations was the Sudan Revolutionary Front (SRF), a coalition of armed movements formed in 2011 by the Sudan People’s Liberation Movement-North (SPLM-N) from the Two Areas (the Blue Nile and South Kordofan States) and Darfur’s two main rebel groups, i.e., the Justice and Equality movement (JEM) and the Sudan Liberation Movement/Army (SLM/A). The parties decided to split the negotiations into five parallel tracks, each addressing the conflict and grievances of a different region of Sudan: Darfur, the Two Areas, Eastern Sudan, Northern Sudan, and Central Sudan (Musa 2020). Final peace deals from each regional track were concluded between December 2019 and August 2020. A comprehensive peace agreement was finally signed on August 31, 2020 and formalized in a public ceremony held in the capital of South Sudan on October 3, 2020.

Unfortunately, not all rebel movements that had joined the negotiations in Juba signed the final peace agreement. Indeed, a split gradually emerged in the SPLM-N between the two factions led by Malik Agar and Abdelaziz al-Hilu respectively, which expressed diverging priorities during the peace process. While the former advocated greater autonomy and self-government in the Two Areas, the latter called for a secular State and the disbandment of armed militias established under Bashir (Casola 2020). Eventually, the SPLM-N al-Hilu faction withdrew from the negotiations just days before the signing of the final peace deal. It nonetheless reached a preliminary agreement with Prime Minister Hamdok in Addis Ababa on September 3, 2020, which recognizes the separation of religion and State and allows the group to retain arms until this goal is achieved (Addis Ababa 2020).¹ Since then, a Track II peace process has been underway with the SPLM-N al-Hilu faction, but the group has yet to join the JPA. It should also be stressed that Darfur’s main rebel movement, the Sudan Liberation Movement/Army (SLM/A) faction led by Abdel Wahid al-Nur, has so far boycotted the peace process.

The Juba Peace Agreement is a historic achievement for peace and reconciliation in Sudan. Because of its complexity, ambition, and length, it needs careful unpacking to fully understand its potential and readily identify challenges to its successful implementation. Nonetheless, few scholarly

contributions on the JPA have been published to date. Valuable early analyses have appeared in the blogosphere, both on Sudanese (Musa 2020, Zaidan 2020) and international outlets (Gallopín 2020; Marsden 2020; Ostapchuk 2021). Several reports and working papers have been released in the meantime. Some of them present a broad perspective on the JPA (Al-Ali 2021; Gallopín et al. 2021; ICG 2021); others focus on selected issues, such as power-sharing (Bormann and Elbadawi 2021), security sector reform (Gebrehiwot Berhe and Detzner 2020), humanitarian assistance and development (CSF 2021), transitional justice (Schneider 2020), the relationship between religion and the State (Shaib 2020), and fiscal federalism (Logan et al. 2021). These contributions shall be read against the backdrop of a rich literature that has tried to streamline the features of recent peace negotiations in Africa. Several authors, starting from the experience of negotiations in Cote d'Ivoire (Bah 2010), Sierra Leone (Wicaksono and Ganna-Conteh 2021), and South Sudan (Nyadera and Bingol 2021) have stressed the importance of organizing peace processes in a way that intercepts the deep-rooted causes of conflict and at the same time focuses on human security, discarding state-centric approaches as well as any solution relying on traditional formulas proposed by external actors but lacking local ownership.

Building on this literature and primary sources, the present paper seeks to offer a legal analysis of the Juba Peace Agreement.² It first presents the structure and legal nature of the document. Then it introduces the salient features of the agreement and its ambitious reform agenda. Next, it zooms in on the Darfur Agreement, given the importance of the Darfur conflict in Sudan's recent history and the centrality of the Darfur Agreement to the peace process. Based on this analysis, the article assesses the main achievements and potential challenges of implementing the JPA, also considering the October 2021 military coup. In conclusion, it emphasizes the importance of effective implementation of the JPA as an indispensable component of Sudan's transition to democracy.

Structure and legal nature of the Juba Peace Agreement

The consolidated version of the Juba Peace Agreement consists of a Preamble, an Agreement on National Issues, six agreements concluded in the parallel negotiation tracks, and Final Provisions. A list of the Parties to the JPA appears in the Final Provisions: besides the Transitional Government of Sudan, the list mentions the rebel movements that signed the agreement, divided by track. South Sudan, Chad and the United Arab Emirates signed as Guarantors; Egypt, Qatar, the African Union, the United Nations, the European Union, and the Arab League served as Witnesses. In June 2021, the Intergovernmental Authority on Development (IGAD) and the so-called Troika (i.e., the United Kingdom, the United States, and Norway) also signed the JPA as Witnesses, in a signal of political support to the peace process (IGAD 2021; Troika 2021).

When reading the JPA, what immediately meets the eye is that the different track agreements are dissimilar in length and level of detail. While, indeed, the agreements negotiated in the Darfur and Two Areas tracks are longer, consider all the historical reasons for marginalization of the two regions,

and draw wide-ranging solutions, the others are much more concise. This structure should not surprise, as it reflects the different situation of the territories of Sudan. Darfur and the Two Areas have seen major insurgencies and suffered significantly high levels of violence for decades. Conversely, the other regions have experienced much lower conflict intensity or no violence at all. According to one commentator (Zaidan 2020), the decision to involve them in the peace process was driven by the intention to grant power gains to groups that have no real base on the ground. Contrary to this view, the choice was more likely dictated by the attempt, consistent with the constitutional mandate, to achieve an agreement that exhaustively addressed the drivers of conflict in the country and set the conditions for peace throughout its territory.

The multitrack nature of the JPA also raises the question of its differing scope of application to the signatories. The Final Provisions clarify that all Parties are equally bound by the Preamble, the Agreement on National Issues, and the Final Provisions, whereas the bilateral track agreements “maintain their independent legal status” and “create their own independent rights, duties, and obligations with regard to their respective signatory Parties” (Title 8, arts. 3 and 4). Despite its clarity, this solution might be difficult to apply in practice. Indeed, as Al-Ali (2021, 9) points out, provisions incorporated in regional agreements might have national level implications. This is particularly the case with those stipulations that regulate national processes and the participation of the Parties in them, but which are scattered across several agreements: for example, the rules on the composition and functioning of national institutions and those concerning the content of the future constitution. It could also be that clauses negotiated within a regional track have a country-wide impact, as in the case of wealth-sharing provisions and security sector reforms. Anticipating that this was, to some extent, inevitable, and that contradictions between provisions of different agreements might arise, the Transitional Constitutional Charter demanded that all peace agreements be reviewed to resolve imbalances and ensure a comprehensive deal (art. 77). Should inconsistencies emerge anyhow, they will have to be resolved trying to avoid negative consequences for the Parties’ cohesion and reminding that all signatories “abide by equal responsibilities towards th[e] Agreement” (JPA, Title 8, art. 4). Given the incredibly large number of institutions created by the JPA, some of which are mentioned in different agreements, coordination may be needed with respect to their functioning and mandate: for example, the Darfur and Two Areas agreements show substantial discrepancies in the way they regulate the composition and mandate of the Joint High Military Committee.

The Final Provisions also set forth the conditions for the accession of additional parties to the JPA, requiring unanimous approval by the original signatories. Upon accession, additional parties become fully bound by all the terms of the agreement; they may incorporate additional agreements, if they are not inconsistent with the original one (Title 8, arts. 8–10). The JPA can also be amended, provided there is consent from all the Parties (Title 8, art. 16). These provisions may soon become relevant if the negotiations with holdout rebel groups prove successful; however, the divergent demands of these groups and the possibility of further amendments to the JPA could also increase the

fragmentation of the agreement. Should this happen, disputes over its interpretation and implementation will have to be resolved amicably through consultations or, if consultations are unhelpful, through the dispute settlement mechanisms provided by the agreement (see de Guttery in this special issue).

Before examining the content of the JPA, it is crucial to clarify its legal nature as a source of international or domestic law, or both. The issue has significant implications for the interpretation and enforceability of the agreement, as it requires distinguishing between peace deals that are binding only in the domestic legal system and those that are binding under international law. Only the latter must be interpreted according to the criteria set out in the Vienna Convention on the Law of Treaties (VCLT 1969)³ and, if violated, may give rise to the international responsibility of the signatory State, for example towards States or international organizations acting as Guarantors or Witnesses. Because of the difference in enforceability, moreover, the question of the legal nature may affect the confidence of non-State parties in the agreement, since assuming obligations under international law is believed to add a layer of commitment for the State and to strengthen implementation: indeed, obligations owed to other States may be harder to circumvent than purely domestic undertakings, which can be abrogated or amended (UK FCO 2016). That being said, the guiding principle for determining the legal nature of peace agreements is the intention of the parties. Absent clear statements expressing such intention, the context in which the agreement was concluded is determinative (Kleffner 2011).

A first, unequivocal answer as to the legal nature of the JPA comes from the agreement itself. Indeed, the Agreement on National Issues and several of the track agreements included in the JPA provide for its incorporation into the Transitional Constitutional Charter.⁴ The same provisions proclaim the supremacy of the peace agreements over the TCC and demand amending the constitution in the event of conflict between the latter and the text of the JPA. Significantly, the incorporation of peace agreements into the TCC is provided for also in the TCC (art. 70). As a result, on October 18, 2020, nine amendments were entered into the Transitional Constitutional Charter to incorporate the JPA as an annex and harmonize the two documents (UNSG Report 2020, para. 5). A provision was inserted in the TCC to recognize the supremacy of the Juba Peace Agreement over the constitution: “in the event of any inconsistency between them, the text of the Juba Peace Agreement will prevail” (art. 79). Consequently, the JPA has been formalized into a legally binding document under domestic law. The supremacy clause places the peace agreement above the constitution in the hierarchy of sources, as acknowledged by Sudan Minister of Justice in his commentary on the amendments (Abdulbari 2020).⁵ This decision, which was highly contentious, is nonetheless important as it reinforces the binding character of the peace agreement and invites the confidence of the signatory armed groups. The supremacy clause will not, however, apply to the future permanent constitution of Sudan.

It remains to be seen whether the Juba Peace Agreement can, additionally, be considered binding under international law, i.e., whether it is at the same time an international agreement. Today, it is accepted that non-State armed groups possess functional legal personality to conclude international treaties, at least under international humanitarian law (IHL) (Bell 2006, 379–381; ILC 1982, 22), and

there is consensus that what discriminates between international and domestic peace agreements is the intention of the parties, assessed on a case-by case basis (Kleffner 2011). Yet, there is still lack of clarity on what contextual elements grant peace agreements an international legal status when there is no explicit statement to this effect. Sometimes, as for the 2016 Colombian Peace Accord, a multiplicity of factors concurs to prove the international legal status of the agreement (Betancur Restrepo 2016). In the case of the JPA, no formal element indicates a clear intention by its Parties to adopt it as a binding international instrument. Indeed, the agreement contains no express provision qualifying it as a treaty under international law, not even under IHL; nor is it required that the final text be deposited with an international organization. This last element is of crucial importance because it marks a departure from a precedent: the Comprehensive Peace Agreement (CPA) concluded between the Government of Sudan and the SPLM/A in 2005 required that the official text be lodged with the United Nations and other international organizations (para. 4). Significantly, despite the presence of such a contextual element that would normally point to the international legal nature of a peace agreement, the Permanent Court of Arbitration denied that the CPA was an international treaty in its Final Award on the Abyei border dispute.⁶ It is therefore even more difficult to recognize an international legal status for the JPA, which lacks a similar deposit clause.

Admittedly, the JPA presents two contextual elements that are considered by part of legal scholarship as indicators of the intention to give a peace agreement an international status: references to international norms as standards of conduct; and the involvement of third States or organizations in the agreement's monitoring, implementation, and dispute settlement (Bell 2006, 400–402). While the content of a peace agreement, including references to international norms such as those of IHL and human rights law, has no definitive bearing on its legal status, the second element is more compelling, as it has legal effects on the relationship between the signatory State and the third States concerned. In the JPA, the States that signed the agreement as Guarantors are involved in several implementation mechanisms, including the Mechanism for Monitoring and Evaluating the Peace Agreement, which is tasked with dispute settlement (Title 1, art. 21.1). Yet, this element alone seems insufficient to turn the JPA into an international agreement: extensive research (Ozcelik 2020, 194–218) suggests that international practice is generally reluctant to accord international status to peace agreements concluded with non-State parties, as ultimately confirmed by the Permanent Court of Arbitration's award on the CPA. Certainly, single provisions embedded in the agreement may be a source of international obligations between the parties and third States, such as those involved in monitoring and implementation; still, they do not change the nature of the agreement. It is equally possible that the JPA, while not being an international agreement, acquires relevance in international law-making: for example, UNSC Resolutions 2579 (2021, para. 3.ii) includes "support to the implementation of the Juba Peace Agreements" in the mandate of the United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS).

It can thus be concluded that the JPA is a domestic act, placed above the transitional constitution in the hierarchy of sources, but not an international treaty. This should not erode confidence in the enforceability of the agreement, which, as is the case with the JPA, can be strengthened through other means, such as international supervision and entrenchment of peace agreement commitments in domestic law (Ozcelik 2020, 193).

Salient features: A reform agenda for Sudan

Turning to the content of the JPA, an overview of its salient features confirms the significance and potential of the agreement. As mentioned, the JPA is a comprehensive deal, but its track agreements vary greatly in length and number of issues covered. While the Darfur, Two Areas and Eastern Sudan agreements are broader in scope, the Northern and Central Sudan agreements focus almost exclusively on wealth-sharing and development, while the Agreement with the Third Front – Tamazuj is limited to security arrangements. Matters of common interest are either addressed in the Agreement on National Issues (which applies to all Parties) or reiterated in several track agreements. What follows focuses on the major components of the JPA that cut across its several agreements and outline the institutional architecture of a new Sudan.

In many respects, the heart of the Juba Peace Agreement are those provisions that devise a new allocation of powers and responsibilities between the Parties. This objective is achieved both through provisional arrangements for the transitional period, and reforms that draw an institutional framework for the future. The clauses on the constitutional drafting process link these immediate and long-term goals.

To begin with, the Agreement on National Issues extends the transitional period until January 2024, by stipulating that the 39-month term established by the Transitional Constitutional Charter starts on the date of the signing of the JPA (Title 1, art. 2). Contextually, it makes changes to the transitional institutions, with the aim of bringing marginalized forces to the center of the political process (Marsden 2020). It grants the signatory armed movements the right to appoint three members of the Sovereign Council (art. 4), the 25 percent of the Council of Ministers (five ministers, art. 5) and of the Transitional Legislative Council (75 representatives, art. 6). While these quotas may seem disproportionate to the size of the signatory rebel groups and their residual military presence, they were negotiated as a guarantee of implementation of the agreement. These provisions have however been superseded by the state of emergency declared after the coup of October 2021.

The Darfur Agreement, the Two Areas Agreement, and the Eastern Sudan Agreement introduce representation quotas for former rebels also in regional institutions,⁷ the judiciary,⁸ and the civil service.⁹ In these cases, the quota system is meant to be maintained after the transitional period. Moreover, two provisions are instrumental in supporting power-sharing and political inclusion. The first allows the representatives of armed movements who are appointed to the Cabinet and Sovereign Council to run in

future elections, thereby derogating from the prohibition set out in art. 20 TCC (JPA, Title 1, art. 3). The second grants a general amnesty for passed rulings and standing warrants against political leaders and members of armed movements sentenced or wanted solely for their membership in the movement (Title 1, art. 17). This clause, which complies with a specific IHL rule,¹⁰ must be read in conjunction with the JPA's framework for transitional justice: indeed, the agreement excludes war crimes, crimes against humanity, genocide, sexual violence, the employment of child soldiers, and gross violations of human rights and IHL from the scope of the amnesty (Title 1, art. 1.31; Schneider 2020, 4).

While power-sharing arrangements are critical to ensuring the parties' commitment to the peace process and overcoming mistrust in the short term (Bormann and Elbadawi 2021, 7–8), the relevance of the Juba Peace Agreement goes beyond the transitional period and stems directly from its State-building provisions. This is first and foremost because the Agreement on National Issues complements the sparse indications of the Transitional Constitutional Charter on the constitution-making process, defining its procedures and agenda. It demands the establishment of a Commission tasked with preparing the Constitutional Conference. At the same time, the agreement identifies key issues to be placed on the agenda of the Constitutional Conference (Title 1, art. 9). It is important to remark that other provisions of the JPA, while not explicitly addressing the Constitutional Conference, will relevantly influence the constitution-making process. For example, several track agreements commit Sudan to abide by international and regional human rights conventions, as well as the Bill of Rights incorporated in the TCC.¹¹ Most of the agreements themselves begin with declarations of principles that have constitutional standing. As argued by Lattanzi and Martinico in this special issue, this creates a sort of “legal continuum” between the Transitional Constitutional Charter, the Juba Peace Agreement, and the future constitution, which enhances the significance of the JPA as the cornerstone of a State-building program.

Further evidence of the agreement's engagement in State-building comes from its provisions on the system of governance. On this aspect, the JPA leaves, if possible, even less room for future negotiations. It is true that the Agreement on National Issues defers to a future Conference on the System of Governance the definition of the levels of governance, the borders of the regions, and the vertical and horizontal distribution of powers and competencies (Title 1, art. 10). Yet, the same agreement already defines Sudan as a “federal” State (Title 1, art. 1.3). This choice was incorporated into the Transitional Constitutional Charter by amending art. 4.1, which previously described Sudan as a “decentralized” State (Al-Ali 2021, 15). The Darfur and Two Areas agreements confirm and build on that choice, by identifying three levels of governance (federal – State/regional – local) and providing detailed (although dissimilar) catalogs of exclusive regional powers, concurrent powers, and federal powers.¹² These determinations are phrased as conclusive: the Darfur Agreement, for example, allows the Conference on System of Governance only to add, but not to amend, competencies in its list of regional powers (Title 2, ch. 1, art. 25.5). The final choice will certainly undergo further political bargaining, and it remains to be seen what competencies will be delegated to other regions, whose track agreements do not deal with governance. The varying demands for autonomy and devolution of powers suggest that

forms of asymmetrical federalism will eventually be preferred. Meanwhile, in June 2021, the Prime Minister appointed the State governors (*Walis*) for North Darfur, West Darfur, and the Blue Nile (UNSG 2021c, para. 2). Such steps towards the restoration of a federal governance system should be viewed positively, consistent with the promise to respect and strengthen “the ethnic, religious, and cultural diversity of Sudanese peoples” (Title 1, art. 1.9) and to achieve more equitable power-sharing.

Differently from its stipulations on governance, the JPA’s provisions on security appear to follow a common script, with all the agreements adopting largely overlapping solutions. They depart from the fragmented array of military, paramilitary, and security forces that the previous regime had deftly pitted against each other and against peripheral armed groups to secure support and remain in power (Gebrehiwot and Detzner 2020, 2). Instead, the agreements devise security sector reforms aimed to create a unified and professional military,¹³ as well as unified police forces and intelligence services, which integrate former combatants after adequate training.¹⁴ Members of rebel movements who do not meet the criteria for joining security forces or otherwise willing to return to civilian life will be involved in disarmament, demobilization, and reintegration (DDR) programs.¹⁵ In the shorter term, the agreement will rely on ceasefire arrangements as well as joint monitoring mechanisms to sanction violations.

Finally, the JPA devotes significant attention to wealth-sharing, recognizing that the marginalization afflicting Sudan’s peripheral regions is both political and economic in nature. The Agreement on National Issues creates a National Revenue Fund (Title 1, art. 22), into which all revenues will be deposited, and a National Commission for Revenue Sharing and Allocation (Title 1, art. 23), whose composition and competencies are defined in the Darfur Agreement (Title 2, arts. 14–15). Both the Darfur and Two Areas agreements devolve substantial financial powers to regional governments, including the power to raise their own taxes, borrow money, and enter into investment agreements.¹⁶ As one author points out (Al-Ali 2021, 23), considering the persistent economic crisis of those regions, taxation is unlikely to ensure a reliable source of income. For that reason, several track agreements provide for direct transfers from the central government to the regions, according to predetermined shares of the revenue generated from each region’s natural resources.¹⁷

Viewed from a different perspective, the four institutional reforms presented in this section can be described as comprising all four forms of power-sharing that are typical of peace agreements, namely inclusive or political power-sharing, dispersive or territorial power-sharing, military power-sharing, and economic power-sharing (Bormann and Elbadawi 2021, 9), confirming the ambitious nature of the JPA.

Zooming in on the Darfur Agreement

The present analysis of the JPA could further benefit from a closer look at Darfur track agreement, whose examination promises to provide insights into key choices made in Juba, for two sets of reasons. First: the Darfur track originally also hosted the discussions on national issues (Musa 2020): this explains why some of the core stipulations of the JPA appear twice, both in the Darfur Agreement and

the Agreement on National Issues (such as those on amnesties and on levels of governance) or are included exclusively in the Darfur Agreement (such as those on the National Commission for Revenue Sharing and Allocation). Reading it is thus indispensable to get a broader picture of the JPA. Second: the complex and prolonged character of the Darfur conflict, the dire humanitarian crisis that it produced, and its impact on local, national, and transnational interests (Hassan, Yenigun and Albasoo 2021, 4823–4826) prompted negotiators in Juba to devote particular attention to this regional track. As a result, the Darfur Agreement is also the most comprehensive component of the JPA. It incorporates all the institutional reforms mentioned in the previous section but, compared to the other peace deals included in the JPA, covers them in greater detail and deals with issues not addressed in other agreements. Its analysis completes the survey of the main features of the JPA and paves the way to an informed assessment of its achievements and challenges.

To begin with, the Darfur Agreement (Title 2 of the JPA) is the last in a series of three peace deals that have sought to stop the conflict in Darfur over a period of fifteen years. It was preceded in 2006 by the Darfur Peace Agreement (DPA), signed in Abuja between the Government of Sudan and the SLM/A Minni Minawi faction; and in 2011 by the Doha Document for Peace in Darfur (DDPD), negotiated with a large group of rebel movements as a framework for a comprehensive peace process. Although (and partly because) the 2006 DPA and the 2011 DDPD failed to achieve their purpose, their content was taken into consideration during the Juba talks: in fact, the 2020 Darfur Agreement, which consists of eight protocols, largely follows the structure and objectives of its predecessors but, remarkably, departs from them where previous agreements proved unsuccessful. It was signed by the Transitional Government of Sudan and five Darfuri armed groups, the two main ones being the SLM/A Minni Minawi faction and the JEM. The SLM/A al-Nur faction, which retains a significant number of fighters and bases in Central Darfur, declined to join the peace process.

The determination of the administrative status of Darfur represents probably the most significant departure of the 2020 agreement from past peace deals. Indeed, both the 2006 and 2011 agreement created a transitional regional authority in Darfur, which comprised its (then) three States, but deferred the decision on the permanent status of the region to a referendum (DPA, arts. 55–60; DDPD, arts. 75–79). When the referendum eventually took place, in April 2016, the people of Darfur voted to retain the division into multiple States (which in the meantime had become five), amid international concerns over the credibility of the vote (Dabanga 2016). Contrary to previous agreements and the results of the referendum, the 2020 Darfur Agreement decided to permanently re-establish Darfur as a Region. It also required activating the regional government of Darfur within seven months of the signing of the final agreement in case the Conference on the System of Governance had not been convened according to the agreed schedule (ch. 1, art. 25.4). This fallback clause led to the appointment of Minni Minawi, leader of the eponymous SLM/A faction, as Governor of the Darfur region in April 2021 (UNSG 2021b, para. 2). Although the agreement does not regulate the organization of regional institutions, it does provide a detailed list of exclusive competencies devolved to the regional government and demands that 40 percent

of all regional offices be reserved for the signatory armed groups of the Darfur track (ch 1, arts 30 and 25.6).

Where the 2020 Darfur Agreement follows in the footsteps of previous peace deals, instead, is the issue of wealth-sharing. Here the agreement relies on two pillars: first, increasing Darfur's capacity to generate its own revenue; second, providing for direct transfers from the central State to the regional government, both on a permanent and exceptional basis. The first objective is pursued through a clear option for fiscal federalism: the Darfur region is granted the authority to generate its own revenue and to determine how to spend it (ch. 2, art. 16). The second aim is achieved with the establishment of the National Commission for Revenue Sharing and Allocation, charged with overseeing the equitable distribution of national revenues among regions (ch. 2, art. 14). Yet, to compensate for Darfur's economic marginalization and its current low levels of revenue mobilization (Logan et al. 2021, 39–42), the agreement commits the Government of Sudan to pay Darfur USD 750 million annually over a period of 10 years, for a total of USD 7.5 billion (ch. 2, art. 29). Moreover, 40 percent of the nation's net revenue from mineral and oil resources located in Darfur will be allocated to the region for a period of 10 years (ch. 2, art. 25). While the intention is laudable, the costly nature of this financial pledge casts doubt on the ability of the central government to meet its commitments and may lead to further grievances in case of failed implementation (Logan et al., 25).

Functional to wealth-sharing is a set of provisions on development and resource management, which rests upon three institutions (see in this special issue Branchesi and De Rosa; Antoniazzi). To begin with, a Darfur Reconstruction and Development Commission (DRDC) is established, which will inherit all assets belonging to the previous funds for development and reconstruction created by the 2006 DPA and 2011 DDPD (ch. 2, art. 17). A second Commission will separately deal with the development of the nomads and herders' sector. This choice testifies to the centrality of farmer-herder relations in the dynamics of conflict in Darfur (ch. 6, arts. 7–8). Its mandate must, in turn, be coordinated with the agreement's provisions on land tenure. A separate protocol governs this issue, based on two principles: the right to the restitution of land taken by force; and the recognition of *Hawakeer*, i.e., customary rights of ownership of tribal lands. A third institution, named Darfur Lands and *Hawakeer* Commission, is therefore mandated to adjudicate land disputes. Interestingly, the Darfur Agreement confirms the decision, already made by the 2006 DPA and 2011 DDPD, to recognize and incorporate *Hawakeer* into the national legal system: in case of normative conflicts, national laws will have to be amended to include *Hawakeer* rights.

The Darfur Agreement also devotes great efforts to promoting a comprehensive solution to the problem of displaced persons, both internally displaced and asylum seekers/refugees. That solution revolves around the right of displaced persons to make an informed decision between the voluntary return to their place of origin or habitual residence and resettlement to other places of their choice (ch. 5, art. 2.7). To make these possibilities concrete, the Parties commit to introducing a comprehensive resettlement and repatriation strategy (arts. 4 and 6) and awarding restoration or compensation for

property damaged or lost (art. 3). An Internally Displaced Persons and Refugees Commission is also created to implement these commitments (see Samah in this special issue).

The Darfur Agreement is moreover the most exhaustive in dealing with justice and accountability, devising a network of institutions with complementary mandates. Whereas the question remained unaddressed in the 2006 DPA, the 2020 agreement confirms and complements the transitional justice mechanism envisioned by the 2011 DDPD. One of the cornerstones of this mechanism is the Special Court for Darfur Crimes (SCDC), with jurisdiction to prosecute genocide, crimes against humanity, war crimes and gross violations of human rights and IHL occurred since 2002 (ch. 5, art. 25). A Truth and Reconciliation Committee (TRC) will work in parallel, to determine the causes, nature, and extent of conflict-related violations and promote reconciliation (art. 22). Both the SCDC and the TRC, however, have yet to be established. A novelty, compared to the 2011 peace deal, is that the 2020 agreement prescribes cooperation with the International Criminal Court (ICC) to facilitate the appearance before the ICC of persons wanted by the court (art. 24). While this is certainly a step forward in the engagement of Sudanese institutions with the Court, it must be pointed out that the possibility of handing over suspects to the ICC has been a major point of contention and ultimately one of the reasons for the attempted coup of September 2021 (Walsh 2021). All crimes and matters not reserved for the competence of the SCDC, the TRC, and the ICC will fall under the jurisdiction of ordinary courts. Moreover, and this is a further development from 2011, traditional justice mechanisms are allowed to operate as a residual option to sanction offenses related to the Darfur conflict or to intra-tribal and inter-tribal conflicts. A Compensation and Reparations Fund is created to implement decisions issued by relevant bodies (ch. 4, art. 12).

Finally, the last protocol of the Darfur Agreement provides for security arrangements to be implemented in four phases (ch. 8, art. 10): cessation of hostilities; permanent ceasefire and integration into the military, police and intelligence forces of former combatants who are eligible for military service; DDR for those not eligible for military service or in any case willing to return to civilian life; security sector reform, aimed at its unification and modernization (see Elzarov in this special issue). What is unique to the Darfur Agreement is that it envisions the creation of a Security Keeping Force in Darfur, whose main task will be the protection of civilians after withdrawal of the United Nations – African Union Hybrid Operation in Darfur (UNAMID). The force will operate for a renewable period of 24 months and will be composed in equal parts of Sudanese armed and police forces personnel and former members of armed movements. Its planned size has been increased from 12.000 to 20.000 personnel (UNSG 2021b, para. 10), but it has not yet become operational.

Based on the consideration of these several elements, the Darfur Agreement presents two hallmarks that are also relevant for an overall evaluation of the JPA. First, it follows the pattern of previous agreements, and must therefore be inscribed in a broader peace process which encompasses previous attempts to stop the conflict in Darfur. Second, it manages relations between former enemies

through the creation of a large number of transitional and permanent bodies, thereby opting for a high level of “institutionalization” of peace (Badran 2014).

Assessing the main achievements and potential challenges of the JPA

When evaluating the effectiveness of peace agreements – their ability to bring peace between formerly warring parties – two preliminary remarks should be taken into consideration. First, effectiveness depends in part on factors which are external to the agreement and relate to the interests and commitment of various stakeholders: former fighters, local communities, national decision-makers, the international community. Second, peace agreements should not be expected to meticulously govern all aspects of the political and economic life of post-conflict societies, but rather to provide a framework within which political bargaining and economic demands can continue through peaceful means and in pursuit of common goals (Easterday 2014). Therefore, trying to evaluate the effectiveness of a peace agreement based solely on its text can be misleading. Nevertheless, careful consideration of its critical provisions and design quality may still prove useful in assessing its durability and robustness, that is, its ability to support a peace process by creating conditions conducive to its implementation (Badran 2014, 194–195). The overview of the structure, legal nature, and salient features of the Juba Peace Agreement and the Darfur Agreement offered above provides sufficient data for an early analysis of the main achievements and potential challenges to be addressed in the implementation phase.

A first strength of the JPA is its twofold comprehensiveness. The agreement is materially comprehensive: it addresses the consequences and root causes of conflict, by delineating a program of reforms which spans a great number of policy domains. This is crucial to enhancing its peacemaking potential, as quantitative analysis shows that agreements that include reforms in many policy areas reduce the risk of civil war recurrence (Joshi and Quinn 2015). Moreover, the JPA is geographically comprehensive: it includes separate agreements with armed opposition groups from every region of the country. The multitrack negotiation allowed the Parties to adapt solutions to the needs of the different territories, while the Agreement on National Issues gave unity to the text.

Second, the agreement achieves substantial vertical and horizontal power-sharing. On the one hand, it devolves power and resources from the central government to regional authorities, remedying the political marginalization of peripheries and redressing an unequal path to growth. On the other hand, it includes former armed oppositions in the political process at the central level, dilating political space to neglected populations and avoiding centripetal pushes. The latter is critical to diversifying the country’s ruling class, shifting power away from the “riverine tribes” who inherited it from colonial authorities and dominated Sudan’s political game until the overthrow of Bashir (ICG 2021, 3).

A third element to be positively evaluated is ownership. The JPA was negotiated and agreed upon primarily by the Sudanese delegations, with little intervention from the South Sudanese mediation team and the international community in the negotiations. Moreover, as noted by one author, the

negotiations took place “between former comrades, in marked contrast to the confrontational atmosphere that prevailed during the Bashir era” (Marsden 2020). Indeed, the SRF had joined the FFC, the civilian component of the Transitional Government of Sudan, in November 2019: part of the delegations on both sides of the negotiating table were thus politically allied in the Sudanese Revolution. This helped overcome the traditional disconnect between urban revolts and peripheral revolutions that marked Sudan’s politics in the Bashir era (Gallopín et al. 2021, 22).

An additional strength of the JPA has been mentioned in relation to the Darfur Agreement but is common to the entire peace process: it opts for a high degree of “institutionalization” of peace, that is, it structures interactions between the parties according to predefined institutional patterns. This purpose can be pursued through mechanisms with varying degrees of cogency. The JPA presents two of the most compelling institutional mechanisms employed in peace deals. The first is the constitutionalization of its commitments, requiring that the text of the JPA be amended in the Transitional Constitutional Charter. The second is the creation of a high number of implementing bodies, tasked with either overseeing compliance with applicable clauses or carrying out reforms under the agreement. Both aspects could have a positive impact on the effectiveness of the agreement, as “the more dimensions of interaction that the agreement institutionalizes, the better the chances of a lasting peace” (Badran 2014, 214).

Finally, the above-mentioned achievements have also led to an improvement in Sudan’s international standing. In December 2020, the United States removed Sudan from the list of State sponsors of terrorism (Al Jazeera 2020b). This long-awaited move lifted severe export and investment restrictions and will prove critical in securing external funding. At the same time, four governments (Saudi Arabia, the United Arab Emirates, the United Kingdom, and the United States) committed to follow the democratic transition through a “Quad” coordination mechanism; the United Nations, the African Union and the European Union equally support the peace process (ICG 2021).

A thorough assessment of the JPA’s effectiveness, however, should also bring into focus a series of existing and potential challenges that are likely to affect implementation. These challenges nuance the positive judgment of the agreement’s major achievements and will have to be addressed in the early implementation phase to avoid disruptions to the peace process.

A first concern is that the JPA, while comprehensive, is not fully inclusive. The SPLM-N al-Hilu faction in the Two Areas and the SLM/A al-Nur faction in Darfur still refuse to sign the agreement and represent a security threat to populations living in areas outside of government control. They are perceived to have robust military capacity, hold large swathes of territory, and represent significant constituencies (Al Jazeera 2020a). Conversely, even the major groups among the agreement’s signatories are today militarily degraded, following a series of defeats by governmental forces in 2015 and 2016 (ICG 2021, 5); most of their troops are deployed in Libya, where they have fought as mercenaries on opposite sides of the conflict, increasing divisions within the SRF (Gallopín 2020). It is to be hoped, however, that the participation of all other groups in the peace process will increase

pressure on holdout rebels from their constituencies, preventing them from becoming spoilers and pushing them to share in the peace dividends. In July 2021, the SPLM-N al-Hilu and the SLM/A al-Nur showed positive inclination with a joint political declaration from Kauda, South Kordofan, which listed the conditions for a lasting peace (Dabanga 2021). Unfortunately, the October 2021 military takeover halted any progress, as both groups have always been extremely wary of the military's control over the peace process and readily denounced the coup (UNSG 2021d, para. 7).

Second: power-sharing can have unforeseen negative implications. A group of JPA provisions that received immediate implementation is the one requiring the appointment of senior rebel officers to leadership positions in Khartoum. One result of this horizontal power-sharing, however, was to dilute the representation of the FFC in national institutions. This unexpectedly weakened the civilian component of the Revolution, for two reasons. First, because rebel and armed force leaders share a common military background. Second, because by shifting power away from riverine elites, to which most FFC leaders also belong, horizontal power-sharing has paved the way to alliances unknown in Sudanese politics, such as those based on common regional origin. Given these two factors, it is not surprising that General Mohamed Hamdan Dagalo "Hemedti," head of the Rapid Support Forces, managed to bring some rebel leaders to his side, by invoking their common Darfuri origin and shared mistrust of riverine tribes (ICG 2021, 7). More generally, power-sharing is expected to lead to a broader reshaping of Sudan's "coalition of coalitions" (Gallopín et al. 2021). The military immediately tried to take advantage of this opportunity by creating a Council of Partners composed of all JPA signatories, with a vague mandate. This authority, not provided for in the JPA, was introduced into the TCC with the October 2020 amendment (Abdulbari 2020) and was appointed by Sovereign Council Decree no. 511 in December 2020 (UNSG 2021a, para. 1). The FFC unsuccessfully opposed both the constitutional amendment and the decree.

Third: although truly a Sudanese peace, the JPA is mostly a peace among Sudanese leaders. Commentators agree that the negotiations were a top-down process, with little or no involvement of civil society and many of the peace process's primary audience, such as displaced persons, rural communities, and women (Al-Ali 2021, 10–11; Marsden 2020). Women were recognized with only minor roles in the peace process, despite efforts from the UN to support their inclusion (see Abbas and Tønnessen in this special issue). This undermines the ownership and legitimacy of the agreement and, coupled with its structural complexity, prevents understanding of its content by the population.

Fourth: the JPA risks being overly institutionalized. Monitoring and implementation mechanisms are too many, very dispersed, with unclear rules about their composition and working methods, and with mandates that often overlap. Eventually, implementation will hinge on the political will of a few key actors, with the Armed Forces still placed at the center of Sudan's political marketplace (Gallopín et al. 2021). This will primarily affect security sector reforms. Clearly, the integration of former rebels into the military establishment and the downsizing of the defense sector run counter to the interests of the Armed Forces. They are, however, necessary to bring security to the peripheries, which

have so far suffered not only from rebellion but also from the violence of loosely controlled or uncontrolled government militias. Even economic power-sharing may face opposition from the military leadership in a country whose economy suffers a pervasive presence of industries controlled by the military (Gebrehiwot Berhe and Detzner 2020, 14).

Finally, Sudan will need massive external support to meet the economic commitments included in the JPA. The total worth of the agreement has been estimated at USD 13 billion over 10 years (ICG 2021, 4). Unlike previous agreements, which were implemented during periods of economic growth, the JPA entered into force amid a severe economic crisis that leaves transitional authorities no choice but to demand international donors to fund much of its implementation. In the present situation, the risk that expectations raised by the agreement remain unmatched is high.

All these challenges played a role in the military coup of October 25, 2021, when the armed forces announced the dissolution of the Sovereign Council and the Council of Ministers and declared a state of emergency. Significantly, General al-Burhan, Chief of Sudan's Armed Forces and Head of the Sovereign Council, provided reassurances on the continuation of the political transition, including the holding of elections in July 2023 and, most importantly, the implementation of the Juba Peace Agreement (UNSG 2021d, paras. 2–3). Indeed, the declaration of the state of emergency, which suspended key articles of the TCC, left untouched those related to the peace process, including the newly introduced article on the establishment of a Council of Partners. Unsurprisingly, different rebel groups such as the JEM and the SLM/A Minni Minawi have sided with the putschists, and their leadership has successfully bargained for representation on the newly appointed Sovereign Council, which excludes any member of the FFC (Español 2021). The reaction of the international community, including the coup's condemnation by the Quad, the African Union and the UN Security Council, and the suspension of aid by the World Bank, Germany, and the U.S. (UNSG 2021d, para. 23), cast a shadow over any reasonable prospect of successful implementation of the agreement.

Conclusions

Clearly, a definite evaluation of the Juba Peace Agreement will only be possible in light of its implementation record. This article has sought to offer only a preliminary assessment of its achievements and to examine how they interplay with existing and foreseeable challenges.

The JPA is certainly in line with the goals of the Sudanese Revolution and charts a credible roadmap to democracy. It designs a democratic and pluralistic system, based on five critical choices. First, the agreement is comprehensive in scope, as it addresses not only the consequences but also the root causes of conflict, and it does so by involving all regions of the country in the peace process. Second, it realizes serious power-sharing at all levels, including the political, territorial, military, and economic domain. Third, the agreement is the result of a demand for peace and democracy coming from Sudanese society and helped bring urban elites and peripheral movements closer together. Fourth, many

institutional mechanisms have been introduced to strengthen the stipulations and preside over implementation. Finally, the agreement has bolstered international political and economic support. The celebration of these achievements, however, is mitigated by an equal number of challenges, which risk slowing or hindering implementation if left unaddressed. The agreement is comprehensive, but not fully inclusive as two major armed groups refused to sign it. Power-sharing has reduced the political clout of civilians in transitional institutions and risks rebalancing political dynamics in favor of the military. Ownership of the agreement is weakened in part by the limited involvement of civil society, women, rural communities, and displaced persons in the negotiations. Institutional implementation mechanisms are too many and may face obstacles from the Armed Forces, which remain the biggest and most influential institution of the country. Finally, the impressive number of economic commitments included in the agreement risk remaining unimplemented without significant external support, which in turn depends on the adoption of proper methods for the budgeting of peacebuilding needs (for a proposal see Bah and Emmanuel 2020).

A successful outcome of the Juba peace process will inevitably require a combination of technical support and political will. The peace process and the democratic transition are in many respects mutually reinforcing. There can be no democratic transition without meaningful implementation of the Juba Peace Agreement. However, the opposite is also true: the JPA will not meet its objectives if democracy is not consolidated. A sincere commitment to its implementation should therefore drive all stakeholders to recommit to a civilian-led transition and support Sudanese institutions for the greater good of the Sudanese people.

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Short bio

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¹ The translated text can be found here: <https://www.dabangasudan.org/en/all-news/article/sudan-govt-splm-n-el-hilu-agreement-in-addis-ababa-rebels-to-retain-arms>.

² The analysis relies on the official English version of the JPA; the agreement clarifies that in case of disputes on the interpretation of any provision, the official Arabic text prevails (JPA, Title 8, art. 14).

³ See arts. 31-33 of the Vienna Convention on the Law of Treaties [VCLT], May 23, 1969, 1155 U.N.T.S. 331.

⁴ This is demanded by JPA, Title 1, art. 21(2); Title 2, ch. 1, art. 24; Title 3, ch. 2, art. 56, and ch. 3, art. 112; Title 5, art. 8.

⁵ For more on the relationship between the JPA and the TCC, see Lattanzi and Martinico in this special issue

⁶ Delimiting Abyei Area (Sudan v Sudan People's Liberation Movement/Army), Final Award, Permanent Court of Arbitration, Case no. 2008-07, July 22, 2009, para. 427.

⁷ See respectively JPA, Title 2, ch. 1, art. 25(6); Title 3, ch. 2, art. 43 and ch. 3 arts. 29-30; Title 4, art. 13.

⁸ See respectively JPA, Title 2, art. 27; Title 3, ch. 3, art. 50.

⁹ See respectively JPA, Title 2, art. 26; Title 3, ch. 3, art. 68; Title 4, arts. 14-15.

¹⁰ IHL requires that at the end of hostilities, the authorities endeavor to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, except for those suspected of, accused of, or sentenced for war crimes. See Rule 159 of the study on customary IHL by the International Committee of the Red Cross, <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/home>.

¹¹ See for example Title 1, arts. 1.14 and 1.15; Title 2, ch. 1, arts. 12 and 13; Title 3, ch. 2, art. 8.13.

¹² See Title 2, ch. 1, arts. 30-32; Title 3, ch. 3, arts. 9-12.

¹³ See Title 2, ch. 8, arts. 7.2 and 26.2; Title 3, ch. 4, arts. 2 and 6; Title 4, art. 85.

¹⁴ See Title 2, ch. 8, arts. 26-28; Title 3, ch. 4, arts. 64-95; Title 4, art. 86.2; Title 7, arts. 24-26.

¹⁵ See Title 2, ch. 8, art. 30; Title 3, ch. 4, arts. 61-63; Title 4, art. 86.1; Title 7, arts. 26.4-27.

¹⁶ See Title 2, ch. 2, arts. 30.1.3 and 30.1.7; Title 3, ch. 3, arts. 9.12 and 9.16.

¹⁷ See Title 2, ch. 2, art. 25; Title 3, ch. 3, art. 16; Title 4, art. 58.