



# Decisions and **Deadlines**

## A Critical Year for Sudan

A Chatham House Report

Edward Thomas



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# Author and Acknowledgments

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# Executive Summary

In January 2011, voters in Southern Sudan – one of the least developed and most war-damaged places in the world – will take a decision with far-reaching consequences for the peace and development of the whole country and its nine neighbouring countries, many of them conflict-prone. The decision will be taken through a referendum that gives Southern voters a choice between independent statehood and continued unity with the government in Khartoum. The referendum date is a deadline, marking the end of six years of transitions that were charted by the Comprehensive Peace Agreement (CPA). The CPA is a 2005 deal between the Southern-based former rebels of the Sudan People's Liberation Movement (SPLM) and the ruling National Congress Party (NCP) – a coalition of Islamist, commercial and security interests largely based in the developed core of Sudan, the Northern Nile Valley.

The CPA ended two decades of war between the centre and the South and aimed to restructure the former's wealth and power in order to make Sudan a freer and fairer place. It set up an autonomous government in the South with its own army, financed from Southern oil revenues which are shared between the two parties. In the referendum, Southern citizens will pass their own judgment on these arrangements. The SPLM is formally committed to the unity of Sudan, but its most senior leaders are voicing a preference for secession as the referendum deadline nears, accusing the NCP of delaying investment in development and holding on to mechanisms of coercion. The SPLM has focused political energy on securing a procedural law that will ensure a favourable referendum – and both parties spent nearly all of 2009 deadlocked on the content of that law. This has stalled progress on complex processes,

including the demarcation of the troubled, populous and oil-rich 2,100 km border, that are needed for the referendum to take place.

Southern Sudan's route to self-determination shapes the decisions and deadlines of the coming year. But it is not the only big question in the year ahead. The long war that started in the South spread to or inspired other conflicts in Northern peripheries neglected or abused by Sudan's powerful centre. Darfur and three areas along the troubled and populous border between North and South Sudan (Abyei, Blue Nile and Southern Kordofan) all have referendums or consultations aimed at letting them pass judgment on Sudan's unstable political order. And the NCP and SPLM will both face their first credible electoral test in April 2010. All these processes are supposed to answer the wider problem of self-determination in Sudan – whether the Sudanese state represents the interests of all Sudan's peoples, or only those of the elites in the powerful rich centre and their clients.

“The widespread Southern perception that the central government has failed to take the opportunity to transform itself has strengthened the hand of SPLM leaderships favouring secession – and many of them privately express the opinion that any attempt to postpone the referendum will be a cause for war”

Successive central governments withheld investment from Sudan's Northern and Southern peripheries and pushed ordinary people towards antagonistic ethnic identities when violence was needed to manage the situation. The democratic processes envisioned by the CPA were supposed to transform these antagonisms for both North and South, and make the state responsive and accountable.

But both parties have neglected and delayed the engagement with ordinary life that is required for this transformation. This engagement is needed for resolution of the conflict in Darfur – which requires a government that invests in its people, supports reconciliation and ends impunity.

So processes that were intended to help Sudanese people determine their own future freely now run the risk of perpetuating violence. But they must be completed in time, because the big deadline of the Southern referendum cannot be altered without enormous risks. The widespread Southern perception that the central government has failed to take the opportunity to transform itself has strengthened the hand of SPLM leaderships favouring secession – and many of them privately express the opinion that any attempt to postpone the referendum will be a cause for war.

In order to avoid this risk, and secure their interests, Sudan's elites are likely to manage the run-up to the referendum through high-level, last-minute deals. Such deals are possible: both parties need each other to maintain oil revenues; the NCP wants the legitimacy that an election and a peaceful transition could provide; and the SPLM wants the referendum to happen. But both parties have a history of bad faith and delay in negotiations. This means that vital and complex questions about what comes after the referendum are postponed – and extremists on both sides will be tempted into unilateral measures that could make instability more widespread.

If Southern Sudan chooses unity in January 2011, its army needs to be integrated with that of the central government within 90 days – a daunting task, given that the two armies now confront each other along the length of the border. If it chooses secession, an independent state will be born as soon as the vote is announced. But independence is more than secession. Independence cannot happen without a whole range of agreements on fraught questions. Assets need to be divided – oil revenues, water, national infrastructure and other assets. Nationality needs to be defined. Any new currency will need to come into circulation at a price that is sensitive to the interests of many different economic groups. Somaliland and Eritrea are two nearby political entities that have recently fought

wars after secession, in part because these issues were not addressed.

But these precedents and warnings are not being discussed, as the two elites turn their backs on their constituencies and the wider regional history in order to engage in brinkmanship over procedural questions. This poses challenges for the many international actors who sponsored the CPA and who still have an important role in supporting Sudanese elites to bring it to a peaceful conclusion. A new US policy on Sudan, announced in October 2009, balances the need for an end to violence in Darfur with the need to avert a violent ending to the CPA. US engagement is welcome, but the fact that so much of Sudan's future will be decided at the highest level may perpetuate the politics of exclusion into the post-referendum period. US mediation may mean that Sudan is not seeking to redefine itself through engagement with its peoples or its neighbours, but is looking to the superpower to set out a solution.

US engagement is not enough – other actors including the United Nations, the African Union and other regional bodies, Arab and European supporters of the CPA, and countries with large investments in Sudan should also support Sudan as it negotiates its big decisions and deadlines. Regional bodies have a role in promoting local and national dialogue that will mitigate the exclusionary politics of the moment. The UN has made enormous investments in peace-keeping and mediation in Sudan: it needs to show that it can help limit violence, encourage dialogue and protect Sudan's long-suffering citizens in the critical year ahead.

This report makes several recommendations for Sudanese leaders and international actors:

- **Engagement with people:** Sudan's powerful elites need to reach agreement on a wide range of complex processes in the coming year. They also need to start an engagement with the country's diverse populations, if they are to avoid perpetuating the politics of exclusion and conflict and help citizens participate in the big decisions facing the country.
- **International engagement:** The CPA's international and regional supporters need to work together to

support the final act of the CPA, paying attention to local as well as national and international dimensions of the peace process.

- **Security:** Breakdowns in security in Darfur, Kordofan and most states of Southern Sudan undermine popular engagement in elections, referendums and other processes. Both parties need to address the urgent need for local peace in the coming year, and the UN and other international actors should support them.
- **Support for elections:** International actors need to provide adequate support for elections, Popular

Consultations and the referendums while recognizing that these processes will complicate politics in regions of Sudan that are not at peace.

- **Post-referendum arrangements:** In the event of Southern secession, the two parties to the CPA need to reach deals on security arrangements, oil revenues, nationality and a host of other issues. In the event of unity, some of these issues may need review. Primary responsibility for these processes lies with the two parties. But both CPA supporters and foreign investors need to work together to limit the possibility of failure.

---

# Acronyms and Abbreviations

|       |   |
|-------|---|
| AU    | African Union   |
| CPA   | Comprehensive Peace Agreement                             |
| DoP   | Declaration of Principles                                 |
| DPA   | Darfur Peace Agreement                                    |
| FFAMC | Fiscal and Financial Allocations Monitoring<br>Commission |
| GNU   | Government of National Unity                              |
| GOSS  | Government of Southern Sudan                              |
| GPA   | Global Political Agreement                                |
| ICC   | International Criminal Court                              |
| IGAD  | Intergovernmental Authority on Development                |
| INC   | Interim National Constitution (2005)                      |
| JEM   | Justice and Equality Movement                             |
| JIU   | Joint Integrated Unit                                     |
| NCP   | National Congress Party                                   |
| NCRC  | National Constitutional Review Commission                 |
| NEC   | National Elections Commission                             |
| PCA   | Permanent Court of Arbitration                            |
| PDF   | Popular Defence Forces                                    |
| SAF   | Sudan Armed Forces  |
| SLM/A | Sudan Liberation Movement/Army                            |
| SPLA  | Sudan People's Liberation Army                            |
| SPLM  | Sudan People's Liberation Movement                        |
| UDI   | Unilateral declaration of independence                    |

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# Chronology of Key Events in Sudan

- 1956** Sudan granted independence.
- 1969** Coup brings Jaafar Muhammad el-Nimeiri to power.
- 1972** Addis Ababa conference ends civil war. Southern Sudan granted autonomous status.
- 1983** Shari'a (Islamic law) introduced. Unified Southern Sudanese government divided into provincial governments, war between SPLM/A and central government begins, John Garang takes leadership of SPLM/A.
- 1985** Nimeiri deposed.
- 1986** Coalition government led by Umma Party formed following elections.
- 1989** Coup brings Omar al-Bashir to power.
- 1994** IGAD adopts a declaration of principles for the resolution of the conflict in Sudan.
- 2001** US peace envoy John Danforth dispatched to Sudan, renewed US engagement.
- 2002** The US brokers agreements between SPLM/A and Government of Sudan on some aspects of the conflict. Supporting IGAD begins wider negotiations lasting three years that lead to CPA.
- 2003** With negotiations progressing in Kenya between central government and the South – longstanding violent tensions in Darfur turn into full-scale rebellion.
- 2005** NCP and SPLM/A sign the CPA in Nairobi, Kenya. John Garang sworn in as First Vice-President of Sudan (9 July); he is killed later that month in a helicopter crash, and is replaced as First Vice-President by Salva Kiir Mayardit. Power-sharing Government of National Unity formed. Autonomous Government of Southern Sudan formed. UN Security Council refers situation in Darfur to ICC. Interim National Constitution and Interim Constitution of Southern Sudan adopted.
- 2006** SLM/A (Minnawi) signs the Darfur Peace Agreement with the central government; JEM and the SLM/A (Abdel Wahed) do not sign. Eastern Front rebels agree Eastern Sudan Peace Agreement with central government.
- 2007** SPLM temporarily suspends participation in Government of National Unity.
- 2008** National census begins. JEM rebels from Darfur advance on Khartoum. Fighting between SPLA and SAF in the Abyei region.
- 2009** The ICC issues an arrest warrant for President al-Bashir on charges of war crimes and crimes against humanity. Census completed (was to have been completed by July 2007). Fighting between SPLA and SAF in Malakal. The Permanent Court of Arbitration in the Hague rules on Abyei border four years after initial report was rejected. Southern Referendum Law, Abyei Referendum Law and Law on Popular Consultations passed.
- 2010** North–South border to be demarcated (was to have been demarcated July 2005). April – elections to be held (were to have been held by July 2009).

Sudan – provinces, main towns and CPA boundary



Source: Reproduced with permission from Wendy James, *War and Survival in Sudan's Frontierlands: Voices from the Blue Nile*, Map 1 (Oxford University Press, 2007). ISBN: 978-0-19-929867-9.

The boundaries and names shown and designations used on maps in this report do not imply endorsement or acceptance by the author or Chatham House.

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# 1. Introduction: The Referendum in Southern Sudan

In January 2011, the people of Southern Sudan will vote in a referendum that will determine the political future of the whole country. Southerners will have the following choice on their ballot papers:

- (a) confirm unity of the Sudan by voting to sustain the system of government established under the Comprehensive Peace Agreement and the Constitution, or
- (b) vote for secession.<sup>1</sup>

Both the date and the question are established in the 2005 Interim National Constitution (INC), and based closely on the Comprehensive Peace Agreement (CPA) ratified earlier that year. These two documents set out detailed transitional arrangements over a six-year interim period, which began after the CPA was signed and runs to July 2011. During the interim period, wealth and power are divided between the two former adversaries who signed the agreement: the Southern-based former rebels of the Sudan People's Liberation Movement (SPLM); and the central government, dominated for the past two decades by the National Congress Party (NCP). The agreement aimed to redress the historical dominance of the centre over the South and other under-developed peripheries. The CPA set out a course to make Sudan a fairer and freer place, to make the unity of North and South attractive, so that Southern voters would choose unity, not separation.

The referendum imposes a non-negotiable deadline on this transition. The CPA's aims, flaws and achievements have shaped the country political scene for the past five years (see Box 1). The careful balance of power between the two parties has given Sudan a brittle experiment in constitutionalism. It is an unprecedented kind of constitutionalism, of two governments without popular mandates, based on and backed by two armies that fought each other for two decades and that are now funded from revenues from oil-fields in the borderlands of the North and the South – where both armies now face each other. But the new constitutional balance of power largely gave new resources and representation to only one of Sudan's many impoverished peripheries – Southern Sudan.

Other actors were excluded from the CPA, and did not enjoy the new resources and representation of Southern Sudan – nor share the Southerners' right to opt out of the Sudanese political order. Opposition politicians, activists on the fringes of influence, and armed groups in Darfur and elsewhere, have attempted to fight or negotiate their way in to the new political order. Some groups have concluded bilateral deals with the central government: both the wars and the deals are an indication that the CPA did not inaugurate a comprehensive peace for the country.

The new order was set up in a burst of institution-formation in 2005. It is a resilient order – it survived the shock of the death of SPLM leader Dr John Garang in 2005, just after his inauguration as First Vice-President of Sudan; and it also survived the 2009 indictment of President Omar al-Bashir by the International Criminal Court, on charges of war crimes and crimes against humanity in Darfur. To outsiders, it appears to encapsulate neatly the state of flux that characterizes Sudanese politics. And it is attractive to investors, providing enough peace for the exploitation of resources, while distracting the two governments with high politics and military spending. But it is no longer capable of making good the broader transformations that would make Sudan freer and fairer, and make unity attractive to Southern Sudan.

Those transformations require Sudanese state elites to relinquish coercion and engage with the people of Sudan. The CPA's sponsors hoped that general elections, scheduled for April 2010, might lead to this kind of transformative engagement. All legislative and executive posts at all levels of government are currently filled by appointees, and elections

might link governors and ministers to constituencies, making them more responsive to the country's enormous diversity of cultures, interests and groupings.<sup>2</sup>

Many commentators express more modest expectations. Some believe that an elite deal is the best that can be hoped for: a perfunctory electoral process which perpetuates the alliance between the two parties until the 2011 referendum. This is sometimes presented as a means of

avoiding the enormous political crisis that would ensue from the failure to deliver a referendum, and also a way to focus political energy on preparations for a possible secession.<sup>3</sup> But a focus on political intricacies may distance elites from ordinary people in the year ahead, and may perpetuate Sudan's traditions of exclusionary politics. There is no alternative but to meet the referendum deadline. It may nonetheless prove to be a costly business.

#### Box 1: An outline of the Comprehensive Peace Agreement<sup>a</sup>

The CPA aimed to restructure wealth, power and security arrangements in Sudan, by sharing them between the two parties to the CPA – the SPLM and the NCP.

In a burst of activity in 2005, the CPA established the conditions for power-sharing:

- a Government of National Unity (GNU) in Khartoum and an appointed National Legislature. One-third of posts in those institutions were assigned to historically under-represented Southern Sudanese.
- a Government of Southern Sudan (GOSS), financed with half the revenue from Southern oil.
- special power- and wealth-sharing arrangements for three contested areas on the Northern side of the North–South border (Abyei, Blue Nile and Southern Kordofan), including special arrangements for the war-affected people of those areas to evaluate the agreement.

The CPA recognizes three legal armies:

- the Sudan Armed Forces (SAF) under the command of the President of the Republic;
- the Sudan People's Liberation Army (SPLA) under the command of the President of Southern Sudan;
- Joint Integrated Units (JIUs), intended as the nucleus of a future united army, if Sudan itself remains united.

Other elements of the CPA aimed to address the causes of conflict in Sudan, by

- investing resources in Sudan's impoverished peripheries;
- developing fair systems for the use of land and natural resources;
- subjecting the leaderships of North and South Sudan to their first real national electoral test;
- consulting people in the war-affected North–South borderlands about their future and physically demarcating the border;
- changing political and security structures in order to make a reality of Sudan's constitutional commitment to human rights;
- creating an inclusive national bureaucracy;
- addressing the traumas and injustices of war through a process of national reconciliation.

Delayed elections are due in April 2010, but few measures to address the causes of the war have been implemented or in many cases even begun.

a. For more information on the CPA, see the author's *Against the Gathering Storm: Securing Sudan's Comprehensive Peace Agreement*, Chatham House, London, 2009.

## 2. Sudan's Big Decisions

### Three referendums and more

The referendum on self-determination for Southern Sudan is not the only referendum scheduled for next year. Sudan's complex and sometimes competing peace processes require the holding of three referendums:

1. for Southern Sudanese voters to decide on unity or independence;
2. for citizens of Abyei – an enclave administered since 1905 by the Northern State of Southern Kordofan but historically linked to Southern Sudan – the opportunity to choose to return to Southern Sudanese administration;
3. for Darfur voters, another administrative question: do they want to unify the three Darfur states and reconstitute the Darfur region that existed in the 1980s? This referendum is required by the near-defunct 2006 Darfur Peace Agreement (DPA).

In addition, there will be Popular Consultations in two areas of Northern Sudan affected by the war between the Southern Sudan and the central government: Blue Nile and Southern Kordofan. After the general elections, commissions from the state parliaments of these two war-affected areas will ascertain whether the CPA has met the aspirations of the people in those two states.

Why do so many Sudanese people want to be consulted on the nature of the Sudanese state? One way of answering that question is to go back to the first referendum scheduled in Sudan. In 1953, Sudan's British and Egyptian colonizers promised Sudan's people a referendum on self-determination. The choice was between an independent Sudan (the British preference) and a union with Egypt (the Egyptian one). The referendum never happened – Sudan's narrow nationalist movement played its colonizers off against each other and then declared independence unilaterally in 1956, through a unanimous parliamentary vote, which both colonial powers accepted.

Sudan's nationalist movement was made up of a small class of people from the Northern Nile Valley, where nearly all colonial investment was concentrated. Nationalists did not have to fight for liberation, they just made some astute judgments about the balance of power between the two colonizers, and persuaded the small bloc of reluctant Southern parliamentarians that their region's autonomy and interests would be given due consideration (after two years of 'due consideration', parliament rejected Southern autonomy).<sup>4</sup> The nationalists alienated the South, but from the start they could hold on to the North because of their alliances with two or three big Islamic movements which had built up bases across rural Northern Sudan in the nineteenth century. The leading families of these Islamic movements had married into the tribal families that the British had sponsored. Allying with these Islamic movements, the nationalists entangled politics in religious faith and tribal relationships, and oriented Sudan towards their version of modernity, which was inspired by the cities of the Arab Middle East.

That old Sudan of the nationalist elite usually had a war going on in the South, and usually maintained the colonial neglect of the periphery. War and regionalized poverty have also been features of the current regime, but in other respects Sudan has been changing. The NCP, an alliance made up of an Islamist party and military, security, and financial interests, took power in 1989. It remains a minority government (it has avoided credible electoral

**Box 2: John Garang and self-determination**

'Many Sudanese are asking a serious question, whether the present Sudanese State as inherited from 1956 at independence represents their interests in their various groupings and regions. The present crisis and wars in the Sudan spring from the fact that many Sudanese do not associate with the present Sudanese State, although many identify with a Sudanese entity or homeland.'

*John Garang, SPLM Chairman's Address on the Occasion of the Third Conference on Federalism, Brussels, 5 March 2005*

tests for over 20 years), but it has invested in infrastructure in Sudan's centre, integrating production and markets in the Northern Nile Valley while maintaining the remoteness of the periphery. It has also made some progress in broadening old Sudan's narrow elite, creating or organizing new client groups by extending elite privileges such as financial credit or higher education. The SPLM succeeded in moving the war out of the South and into the Northern peripheries, redefining the problem of Sudan as the problem of central dominance. The NCP's astute investments in provincial universities and Islamic banks, and the SPLM's ability to develop constituencies in the North, both contributed to a new culture of aspiration and resistance across Sudan. But both parties have missed the opportunity to let aspiration or resistance reshape Sudan – although the CPA, at the outset, appeared to make that a possibility.

The CPA has offered both parties an opportunity to revisit the nationalist settlement and reopen the question of self-determination for a diverse country. It sets up mechanisms aimed at disentangling wealth and power from the Khartoum elite, still inspired by the versions of modernity in the cities of the Mediterranean and the Arabian Gulf. The elections, the Popular Consultations and the referendums all contribute to this redefining of Sudan (see Box 2).

Only one referendum is a referendum on secession. The other processes – elections, consultations, referendums – are less far-reaching acknowledgments of the need to revisit the terms of Sudan's independence settlement. These processes are supposed to give Sudanese

voters a chance to determine or influence the political structures that govern them and their route to economic, social or cultural development – with special processes for the people of Sudan's diverse and war-impooverished peripheries. This is sometimes described as 'internal self-determination': not the kind that leads to independent statehood, but the kind that recognizes that states are sometimes made up of more than one people, and that all peoples have a right to a say in the way they are governed. Sometimes 'internal self-determination' means allowing people to choose special cultural or legal frameworks – the Islamic Shari'a courts in Hausa areas of Nigeria are one example of this kind of self-determination.<sup>5</sup>

### Self-determination and the CPA

The original sponsors of the CPA recognized the existence of different routes to self-determination when they began to look at the case of Sudan a few years after the end of the Cold War. The Intergovernmental Authority on Development (IGAD), a body bringing together the countries of the Horn of Africa, proposed a solution for Sudan's long-running civil wars in 1994.<sup>6</sup> The IGAD Declaration of Principles (DoP) promised 'extensive rights to self-determination on the basis of federation, autonomy etc, to the various peoples of Sudan' (see Box 3, Principle 3.3). Concise and hopeful, the DoP was inspired by the (then) peaceful precedent of Eritrea's 1993 secession from Ethiopia.

Secession and independence constitute one route to self-determination – but the DoP presents this as conditional on the failure of other possibilities. First, the peoples of Sudan had to try to construct an inclusive democracy, a fair economic order and a secular state – structures that would allow, in the view of IGAD, for those peoples to determine the way that their lives were lived. If these conditions were not achieved, then secession and independence would become a possibility (Principle 4). Secularism – a political order that allows the state to include and mediate between diverse religious identities – was viewed as a condition of self-determination by the DoP's drafters (Principle 3.4). Many Sudanese Islamists, in contrast, view secularism as a kind of denial of identity, the opposite of self-determination, and they rejected the DoP when it first appeared.

IGAD mediation made little progress until 2001, after the United States got involved, and after the September 2001 attacks on the US mainland transformed its policies in the Middle East and Africa. The NCP was emerging from a damaging split in its ranks and feared military attack from the US: it returned to negotiations with renewed seriousness. Unlike IGAD, the US accepted Islamist claims to represent and articulate a unified Muslim identity of Northern Sudan. Some in the US leadership at that time believed that Islam was a monolithic entity that defined political communities.

The CPA accepted this view of Sudan. Islamic Shari'a law remained a source of law in the North, and custom (not Shari'a) was formally recognized as a source of law for the South. So the question of whether Northern

### Box 3: IGAD Declaration of Principles, 1994 – Principles 1–4

1. Any comprehensive resolution of the Sudan conflict requires that all parties to the conflict fully accept and commit themselves to the position that
  - 1.1 The history and nature of the Sudan conflict demonstrate that a military solution cannot bring lasting peace and stability the country.
  - 1.2 A peaceful and just political solution must be the common objective of the parties to the conflict.
2. The right of self-determination of the people of south Sudan to determine their future status through a referendum must be affirmed.
3. Maintaining unity of the Sudan must be given priority by all parties provided that the following principles are established in the political, legal, economic and social framework of the country:
  - 3.1 Sudan is a multi-racial, multi-ethnic, multi-religious and multi-cultural society. Full recognition and accommodation of these diversities must be affirmed.
  - 3.2 Complete political and social equalities of all peoples in the Sudan must be guaranteed by law.
  - 3.3 Extensive rights of self-determination on the basis of federation, autonomy, etc, to the various peoples of the Sudan must be affirmed.
  - 3.4 A secular and democratic state must be established in the Sudan. Freedom of belief and worship and religious practice shall be guaranteed in full to all Sudanese citizens. State and religion shall be separated. The basis of personal and family laws can be religion and customs.
  - 3.5 Appropriate and fair sharing of wealth among the various people of the Sudan must be realized.
  - 3.6 Human rights as internationally recognized shall form part of this arrangement and shall be embodied in constitution.
  - 3.7 The Independence of the Judiciary shall be enshrined in the constitution and laws of the Sudan.
4. In the absence of agreement on the above principles referred to in 3.1 to 3.7, the respective people will have the option to determining their future including independence through a referendum.

Sudan needed to determine itself, to decide on its political status and its social and cultural development, was neatly folded away into the books of Islamic law, the mainstay of legitimacy for the minority regime in Khartoum. Instead of self-determination for the whole country, it offered an opt-out for part of it – the people of Southern Sudan.

‘ Many national and local political movements are publicly considering an election boycott, because of the failure to enact constitutional freedoms ’

The Abyei referendum gives Abyei people the opportunity to accompany Southerners in secession. But other arrangements for consulting Northern Sudanese people about their future are subject to delay and uncertainty. The DPA referendum on the reunification of Darfur states is unlikely to happen at all. Many national and local political movements are publicly considering an election boycott, because of the failure to enact constitutional freedoms. Yet the Popular Consultations in Blue Nile and Southern Kordofan depend on the integrity of elections in those still-divided and militarized areas, because the consultations are carried out by commissions established by elected state parliaments. The outcome of those consultations is a report, and the government need only ‘consider’ the report, in an echo of the ‘due consideration’ cynically given

to Southern autonomy by Sudan’s first independent parliament. The CPA states:

Should any of the legislatures of the two States, after reviewing the Agreement, decide to rectify, within the framework of the Agreement, any shortcomings in the constitutional, political and administrative arrangements of the Agreement, then such legislature shall engage in negotiations with the National Government, with a view to rectifying these shortcomings.<sup>7</sup>

If the people of Southern Sudan decide for independence, their referendum will only partially resolve the questions posed by Sudan’s diversity and flux. Unlike the Popular Consultations, or the Darfur referendum, the Southern referendum on secession promises a tangible change to political structures – independence, statehood. The political changes on offer in Darfur and Southern Kordofan or Blue Nile can only work if the concentration of wealth and power at Sudan’s centre is reversed. The CPA offered mechanisms for doing so – it promised to address the causes of conflict through new investment in the periphery, people-friendly systems for organizing land and natural resources, national reconciliation, an inclusive state and state bureaucracy, and constitutionally guaranteed freedoms backed by an elected government. But the experience of the peripheral areas in Northern Sudan is continued conflict and economic neglect. One group – the Southerners – can opt out. Other Sudanese people seeking to change the coercive structures of everyday life may have to stand back and watch as the deadlines imposed by the Southern referendum become the focus of attention.

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## 3. Deadlines

The objective of many Southern political elites – and many foot-soldiers – has always been to establish an independent Southern Sudan. But the SPLM leadership committed itself to promoting the unity of Sudan when it signed the CPA. This means a transformed Sudan, not two Sudans.<sup>8</sup> The purpose of the referendum, in the SPLM's official discourse, was to give the Southern electorate the right to judge whether the transformation of Sudan had occurred. So when senior SPLM figures began to question publicly the value of unity in late 2009, some in the NCP accused them of backtracking on the agreement, while others quietly hoped for a velvet divorce.<sup>9</sup>

For the SPLM, the Southern referendum outweighs all other political processes. But many complex processes need to be completed in order to run a referendum by the January 2011 deadline. The territory of Southern Sudan needs to be defined, and that requires the demarcation of the North–South and Abyei borders. The (thrice-delayed) elections need to be held. Some electoral processes (including constituency delimitation) depend in part on the 2008 population census – an enormous and complex enterprise whose results were rejected by the GOSS leadership and constituencies in Darfur and elsewhere (see Box 4). The preoccupations of the SPLM (the junior partner in the central government and the main potential challenger to the NCP) – has limited the political possibilities of other groups seeking to influence or reform political structures and delayed action on Popular Consultations and other agreed measures aimed at making the state more inclusive.

The election has been delayed and is now due in April 2010. The wear and tear on the constitution caused by

these delays could aggravate future crises – without timely elections, mandates for the legislature and executive will expire as the most difficult constitutional decisions in Sudan's history are made. Legal solutions to such crises can be found, as long as there is a political agreement – but political agreement is currently in short supply in the GNU. Some groups within the SPLM are unconcerned about the elections. They calculate that the SPLM will win an overwhelming victory in Southern Sudan, making pre-referendum elections redundant; and that it need not seriously contest the North, where in any case, the NCP would be likely to deploy all the advantages of its patronage and security apparatus. For these groups, 2010 is a set of potential crises requiring strong leadership, not a chance for democratic change.

Many in the NCP believe that elections would buttress the legitimacy of the ruling party. It was once revolutionary: now it lacks the ability to rotate leadership, or envision change, and it has never faced a real electoral test. Legitimacy would be useful: the Islamist movement from which it originated is deeply divided, and the NCP leadership is under external pressure, from the indictments of the International Criminal Court, and from Sudan's high exposure to international oil prices, on which the NCP's shrewd patronage system currently relies. It believes it can win the elections, but recognizes that elections without SPLM participation will lack legitimacy. It is seeking to link SPLM support for elections to its own support for a law setting out the procedures for holding a referendum in Southern Sudan. The SPLM, in turn, has skewed all its Khartoum tactics around its overwhelming political priority – the referendum law.

Tactical manoeuvring means that delays are now threatening the possibility of holding a referendum on time. For some senior officials, the precedents are gloomy: the delayed National Election Law of 2008 required the appointment of a National Electoral Commission (NEC). It took four months just to appoint the commissioners, and eight months before they started work. In late 2009, as the referendum law discussions stalled, one official made a stark assessment:

There's not much time. There's negative time. The referendum law, if it comes out in two to three weeks, will be 28 months late. UDI [a unilateral declaration of independence in Southern Sudan] will be increasingly likely because the referendum is virtually impossible. You will need to get referendum work underway [in early 2010] when NEC is in full operational mode. Running two systems at once has big budget implications.<sup>10</sup>

When referendum discussions stalled in mid-2009, some senior SPLM figures threatened UDI. If the Government of Southern Sudan decides to declare independence unilaterally, it will present Khartoum's politicians and its diplomatic corps with the most desperate of ultimatums. 'UDI is a possibility, but it means war, along a long border,' commented one veteran Southern politician.<sup>11</sup>

#### Box 4: Census, border demarcation and elections

The census, border demarcation and the elections are all processes that need to be completed before the referendum. Some processes are stalled or delayed, and some have yet to begin:

- The *census results* have been used to delimit geographical parliamentary constituencies. They may be used to revise CPA formulas for dividing government posts between Northern and Southern Sudan, which assumed the Southern population to be one-third of the total. Initial results of the census (published in April 2009, one year after enumeration) indicated the Southern population made up 21% of 39 million Sudanese. Reducing Southern parliamentary representation to 21% would have major political consequences: the SPLM currently has 28% of seats, just over the 25% threshold that allows for a veto on changes to the constitution. The SPLM's response has been disorderly: reported endorsement of census results in May 2009 followed by rejection in June 2009.<sup>a</sup> UN organizations providing technical support for the census broadly endorsed its results.
- The Border Commission is required to produce a technical report that will delimit the 2,100km *North–South border*. Mineral-rich pasturelands in South Darfur and an oil-rich enclave in Southern Kordofan are due to be transferred to the South. Demarcation pillars will need to be erected at 500-metre intervals, and the process explained to local people.
- *Abyei* became an administrative part of Northern Sudan in 1905, and the delimitation of its border is a prerequisite for the Abyei referendum, due on the same day as the Southern one. An international Abyei Boundaries Commission (ABC) delimited the border in 2005. The NCP rejected the ABC report, claiming that its experts, by exceeding their mandate, had defined the oil-rich enclave's borders too generously. More restricted borders for Abyei, were subsequently decided by the Permanent Court of Arbitration (PCA), an international court in the Hague in 2009. Progress on Abyei border demarcation has stalled.
- *Elections for state and national legislatures*: governors and the three-person presidency will be among the most complex in Sudan's history. Southern Sudan will have additional elections, for the Southern presidency and legislature. A mixed voting system and a women's list means that voters will have to complete up to twelve ballot papers. The complexity of the process has led some to call for postponement, although the process is already far behind schedule: the CPA required elections to be completed before July 2009.

a. Speech of First Vice President Salva Kiir in the Southern Sudan Legislative Assembly, 14 June 2009. Kiir appeared to accept the results in May 2009; see UN Security Council, *Report of the Secretary-General on Elections in Sudan*, 28 Jul 2009, S/2009/391, paragraph 19.

The SPLM believes that it cannot begin discussions on independence – on what comes after the referendum – until a law setting out the procedures for the referendum is in place (the law was adopted at the end of December 2009). To do otherwise would be to risk making the referendum conditional on other agreements, and the referendum needs to be unconditional, or else the CPA will be one of ‘too many agreements dishonoured’.<sup>12</sup> The dominance of tactics over strategy is not unusual in Sudanese politics, and to some extent, the problems that arise from this dominance are mitigated by extreme Sudanese flexibility over deadlines and delays – the late John Garang joked that Sudanese would go neither to heaven nor to hell, because they would turn up so late on judgment day.

An inflexible deadline is unusual in Sudan, as is a single, tangible political objective in a country of multiple conflicts and peace processes. Sudan’s different peace processes, to some extent, compete with each other. This is one consequence of the CPA’s focus on the relationship between Sudan’s centre and only one of its many peripheries – the South. The CPA’s preamble expresses the hope that it will be a ‘concrete model for solving problems and other conflicts in the country’.<sup>13</sup> But its ratification was an acknowledgment that the

resolution of other conflicts could be postponed or put on another timeline.

‘ If the Government of Southern Sudan decides to declare independence unilaterally, it will present Khartoum’s politicians and its diplomatic corps with the most desperate of ultimatums ’

Next year, other pressing priorities – such as peace in Darfur, or the Popular Consultations, or elections and the creation of democratic space in the urban North – may be overlooked or partially bargained away for the sake of the referendum deadline. Some political actors seeking objectives other than the secession of the South are resigning themselves to relegation – but others, particularly armed actors, may be watching for opportunities that might present themselves in the fraught year of tactics and deadlines that awaits Sudan.

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## 4. Engagement in the Borderlands

Tactical manoeuvring is not the only reason for the delays in processes like the elections, the census and the demarcation of the border, which are preconditions for the referendum. These processes present different challenges to those of 2005: the establishment of GOSS, the reshaping of the central government, and the division of Sudan's oil rents required a combination of audacity and pragmatism, rather than an ability to articulate, aggregate and act for the interests of Sudan's many constituencies. But some processes – fair elections, or the peaceful demarcation of a populous and troubled border that intersects millions of lives and livelihoods – require state elites to engage with the population, many of whom have entirely coercive experiences of the state. These are *human* processes – they depend on millions of people understanding, calculating, speaking and acting for them to work.

The failure to complete these processes is often presented as an example of the suspicions of the two parties. They are also examples of the state's structural inability to relinquish coercion and engage with wider populations (rather than client groups) to help them articulate and attain their interests. This structural inability is embedded in the complex, coercive, inexpensive system for managing Sudan's rural periphery. The following section looks at the way in which this system has worked in one part of that periphery – the oil-rich borderlands between north and south. It aims to show the historical failure of central governments to engage constructively with the peoples there, and how that failure will complicate the elections and other processes in Sudan's critical year ahead.

### The militarization of rural life

Rural administration in Sudan's peripheries is based on traditional, kinship structures. Tribal leaders were used as low-cost administrators and taxmen by the colonial state and the first independent Sudanese regimes. They managed communal use of natural resources, the basis of the subsistence economies of the periphery (tribes are much less important in the developed core of Sudan because land has been largely privatized there). In Southern Sudan, post-independence regimes used war to deal with the contradictions caused by unequal development. But for many years, unequal development in Northern Sudan was managed without violence. The big Islamic movements used tribal structures as a basis for national organizations linked to political parties – the Mahdist Umma and the Khatmiya's Democratic Unionist Party. The Mahdi family married into leading tribal families, especially among the Baggara (Arabic-speaking cattle-herders) who live along the Bahr al-Arab, the river that forms the western end of the border between Northern and Southern Sudan.

Baggara tribal lands, recognized by the state, are in the rangelands north of the river, which provide ephemeral forage after the brief northern rains. For the rest of the year, Baggara pastoralists take their herds to the richer pastures south of the river, in the tribal lands of different Dinka groups of Southern Sudan and the Ngok Dinka of Southern Kordofan. Some Baggara pastoralists in Southern Kordofan, belonging to a group called the Misseriya, traverse another set of tribal lands in order to reach the Southern pastures. These lands belong to the Nuba farmers of Southern Kordofan, who speak ancient Sudanese languages as well as Arabic, and who are less Islamized than Baggara people.

When the civil war between the SPLA and the central government broke out, these nomadic groups were viewed as a military resource and deployed against neighbours with perceived ethnic links to the SPLA. In 1985, at the outset of the civil war, a defence minister from the Umma party supplied weapons to Misseriya

leaders. The militias created as a result extended across the Baggara groups in Kordofan and Darfur and were called Popular Defence Forces (PDF). A 1989 law recognized the PDF as a state force, after the Umma-led parliamentary regime was replaced by the current NCP leadership. The NCP appealed to the Islamic beliefs and Arabism to mobilize these groups. They were generally unpaid but were allowed to loot property and abduct people from Dinka areas south of the river (in an echo of the nineteenth-century slave trade which decimated Nuba and Dinka areas). Baggara groups were drawn into a separate war in Southern Kordofan's Nuba Mountains in the 1980s, when the central government dispossessed Nuba farmers of their lands. The lands were leased to domestic or foreign allies of the government, leading many Nuba to join the SPLA's rebellion in 1985. Baggara groups were mobilized to participate in their dispossession.<sup>14</sup> In the 1990s, the economic foundations of the war shifted from accumulation-by-dispossession to oil. Baggara militia were used to depopulate oil-fields across the Muglad Basin, which stretches from Southern Kordofan (the only oil-producing state in Northern Sudan) into the South.<sup>15</sup>

‘ Rural structures developed to implement a colonial policy of neglect were now managed by military intelligence officers, where once they had been managed through unhappy elite marriages ’

The NCP-led government divided and militarized Baggara groups in order to prosecute a war, and also worked to detach their leaders from their historical alliance with the Umma party, by reworking tribal hierarchies and creating a Baggara client-elite in Khartoum. (A similar policy of tribal militarization was adopted to deal with the conflict in Darfur). Rural structures developed to implement a colonial policy of neglect were

now managed by military intelligence officers, where once they had been managed through unhappy elite marriages.

### The CPA's prescription for rural peace

The CPA offered a number of possibilities to reverse this. Elections at state level are a prelude to local elections, where rural people may choose to replace leaders selected to implement the central government's military objectives with leaders who can articulate local interests. New financial allocations to states were intended to reverse decades of neglect. But elections are delayed, and financial allocations (which lack transparency) appear to be used to support current expenditures – salaries in towns, rather than services and development projects in the countryside (see section on the future of the constitution in Chapter 9).

Building up a provincial salaried class in this way may be linked to the development of patronage systems. Both the NCP in Northern Sudan and the SPLM in Southern Sudan structure their support around patronage, and this may be a valid route to development if patronage leads to the creation of politically coherent client groups. But the evidence from many of Sudan's peripheries indicates the opposite of political coherence (see Box 5).

Instead of a coherent order, ethnically defined rural clients are implicated in many acts of violence across rural Sudan. The CPA ceasefire between the SPLA and the SAF has largely held in spite of this local violence. But there have been three major breaches, in Abyei (2008) and Malakal (2006 and 2009). The SAF and SPLA have a significant presence around Abyei, and both Malakal and Abyei are oil areas. JIUs are deployed in both towns. Violence in both places involved militias mobilized around ethnicity during the civil war. This may indicate that tribes are still seen as a military resource – and may create incentives for political leaders to maintain a rural policy that privileges state military objectives over the local search for peace and development.

**Box 5: Lethal conflicts**

- **Southern Sudan's** ethnic conflicts currently affect eight of its ten states. Over 2,500 people were killed in these clashes, and an estimated 350,000 people were displaced in 2009.<sup>a</sup> More than 1,000 were killed in violence in Jonglei State in March and April alone.<sup>b</sup> The SPLM leadership accused the NCP of responsibility for February 2009 clashes in Malakal and Nasir, two towns in Upper Nile state – a claim rejected by the NCP.<sup>c</sup> However, there is a long history of local violence and war in this region. The SAF used the traditional structures of Southern Sudan as the basis for ethnic militias during the war, and the SPLM used them for recruits and provisioning. At the end of the war, these structures, sometimes influenced or led by people selected or maintained for their compliance with military authorities, or dependent for their authority on armed youth, have become the basis of local governance in Southern Sudan. Southern politicians seeking to build constituencies use and politicize these local structures, and this has led to a situation of frequent conflicts over border demarcations and access to natural resources.
- **In Darfur**, the NCP has sought to use tribal structures as the basis for military formations. Some members of Baggara groups in South Darfur, who were used as a military resource during the civil war in the South, have resisted pressure to join in the counter-insurgency, and some have even joined the SPLA. But fighting has broken out between Baggara groups over ethnic borders within Darfur – one study of fatalities in Darfur for the 18 months to July 2009 found that almost one-third of 1,909 killings came in the context of fighting between South Darfur's Arabized and Islamized tribes (such as the Baggara groups).<sup>d</sup>
- **Border fights in Kordofan and Darfur** broke out from May 2009 over a stretch of undeveloped land between Kordofan and Darfur. Well-supplied fighters from the Rizeigat Baggara of Darfur reportedly attacked Misseriya Baggara of Southern Kordofan – both groups fought for the central government in the Southern civil war. The fighting may have been motivated by the belief that the area has oil reserves, and that the demarcation of a tribal border (as opposed to the administrative border) would advantage one group in any future claims.

a. UN Security Council, *Report of the Secretary-General on the United Nations Mission in the Sudan*, S/2009/545, 21 October 2009, paragraph 52.

b. Human Rights Watch, *No One to Intervene: Gaps in Civilian Protection in Southern Sudan*, Human Rights Watch, New York, June 2009, p. 4.

c. International Crisis Group, *Sudan: Justice, Peace and the ICC*, ICG, Nairobi/Brussels, 2009, p. 25.

d. Peace and Security Council, *Report of the African Union High-Level Panel on Darfur*, African Union: Addis Ababa, 29 Oct 2009, PSC/AHG/2(CCVII), Appendix B; see paragraph 24.

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## 5. Where Local and National Politics Meet

Tribal authorities that have been manipulated, militarized and sometimes even criminalized are still the main rural administrative presence in the peripheries. They need to be engaged in the complex processes established by the CPA to deal with the crises on the North–South borders: the Abyei referendum; the Popular Consultations (which are an outcome of elections); state Land Commissions and shares in oil revenue for the state administration and for the two tribal groups in Abyei, the Ngok and the Misseriya.

All these processes required the SPLM and NCP elite to engage with their constituencies in the borderlands. The census, and the decisions around the Abyei border, offer some clues to the way this engagement worked. In Darfur, many people displaced by the conflict refused to cooperate with the census, believing that it might be used to deny their residency in the villages that they had left, with implications for their rights to return and property restitution. In spite of this widespread non-compliance, South Darfur's population increased by over 90%. Northern Sudan's nomad population increased by over 300%. One official expressed doubts about the results:

In South Darfur we thought the population was inflated. The increase in population was over 90%, in an area where in some camps there was no access for enumerators. It's the same with nomads ... a 324% increase in nomadic population from 1993 census. All previous censuses showed a decline in nomadism.<sup>16</sup>

Because results will shape the geographical constituencies in the forthcoming elections, much speculation focuses on the electoral consequences of these results – South Darfur is home to groups like the Habbaniya and Rizeigat Baggara, large groups who identify as Arabs and who may be a potential constituency for the government in Darfur elections, where ethnicity is seen as a major factor in voting decisions. In these groups traditional leaders help to enumerate nomads: unlike other leaders, they may be quietly allowed to provide lists of voters rather than requiring them all to present themselves in person. Elections in nomadic constituencies are thus less transparent than elsewhere. In the Nuba Mountains of Southern Kordofan some areas were not enumerated. High nomad populations there will shape constituencies in elections that will determine the parliament that will undertake the Popular Consultation evaluating the progress of the CPA there.

Some observers interpret these developments in terms of conspiracy. The NCP, in this view, is using its bureaucratic advantages to manage the proliferation of constituencies full of nomads with a cultural predisposition to the NCP's Islamist and Arabist rhetoric, thereby defeating the purposes of the CPA arrangements intended to restructure power in an oil-rich area that has been contested by rebel groups configured around non-Arab ethnicities. But the situation may be more chaotic than that.

The 'ethnization' of the population in rural Sudan and people's limited access to information together fuel the current crisis in the borderlands. The demarcation of the North–South border – an unavoidable precondition for the referendum on the future of one of the territories it will define – will need even better information management to succeed. But neither the SPLM nor the NCP has invested in explanation, to its own or to other constituencies. Misseriya groups are resisting the compromise on the Abyei borders, and the SPLM, which sees itself as the party that compromised the most, is not reaching out. One intellectual with Misseriya links explained:

The NCP and Misseriya elite in the NCP who were handling the case did not explain the deal to the Misseriya, they misled them, they promised total victory rather than a

50-50 deal. Misseriya will continue to reject the deal but their position will soften if SPLM allows the Ngok Dinka to sit with them. It's the SPLM who's saying No Arabs, This Is Our Land, not the Ngok. The Misseriya were told that the [PCA decision] preserves traditional rights of grazing, they want SPLM guarantees, they want a paper to say, look, we've got it now, to give to young extremists. A grazing policy.

The NCP and the SPLM both use traditional authorities in tribal systems as a principal means for engaging with the rural periphery. This system has left ordinary people who

are in these structures with impossible choices: what should the Misseriya do? Some remain NCP clients, some seek alliances with the SPLM. Some young men migrate to harsh new urban labour markets, some have joined small new militias linked to the conflict in Darfur which is now spilling over into their land. The evidence points to the possibility of unmanageable crises in the borderlands: both the NCP and the SPLM, preoccupied with the high politics that will frame the last dramatic year of the CPA's interim period, appear to be neglecting the thwarted politics of everyday life.

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## 6. The Elections and National Politics

Many diplomats say that there is no time for the state to start engaging with its citizens. A deal between the two elites who signed the CPA is the most straightforward way to manage the high politics of the coming year in Sudan. This is how they believe it can work:

- The SPLM supports the NCP during the elections, with a formal or informal alliance, helping it to victory, bringing it new legitimacy and letting it shape the future of Northern Sudan.
- In return, the NCP gives the SPLM a referendum law which organizes the plebiscite in a way likely to bring about secession – and the SPLM gets to shape the future of the South.
- A deal on sharing oil wealth provides the necessary disincentive for either party to resort to violence.

For people who hold this view, the main enemy is time. Many diplomats believe that if Sudan's two governing elites can overcome mutual suspicions and internal divisions, they can together decide on a peaceful path to the referendum – and both can keep hold of power.

But for Sudanese people seeking a change to the country's many violent, unequal relationships, it is the substance of the coming year's decisions, not their timing, that counts. The sponsors of the CPA hoped that the elections would be the mechanism that would give the agreement (itself an elite deal) popular backing, and establish a legislature and executive that could mitigate the exclusivity of the current political system (which assigns four-fifths of all posts to the

two unelected signatories of the CPA), and begin the process of reorienting state structures towards solving the political problems of everyday life.

In the rural peripheries that have been transformed by the North–South civil war and the conflict in Darfur, fair elections might allow local people to select leaders who have an interest in limiting local violence – and to replace those installed because of their links to military intelligence. It would also be a way for Sudan to come to terms with the 'regionalization' of its politics – the fact that political and military groupings representing constituencies based on ethnic groups or regionalized identities from the troubled peripheries now have more traction than the parties that dominated Sudan during its three parliamentary regimes. Their younger leaders could use the elections to legitimate their position in the legislature. Finally, fair elections might begin reconciliation between the NCP and those political parties, formerly the parliamentary opponents or coalition partners of the Islamist party from which the NCP originated.

“ Many diplomats believe that if Sudan's two governing elites can overcome mutual suspicions and internal divisions, they can together decide on a peaceful path to the referendum – and both can keep hold of power ”

The NCP leadership's strategy, on taking control of the state in 1989, was to destroy the power of the traditional parties and the Communist Party. In the first years of the regime, the NCP leadership dealt with the Umma party by undermining its power base in the Western tribes; and with the Communist Party by banning trade unions (which had twice overthrown military regimes by organizing the Khartoum street), setting up its own client civil society, and increasing supervision and control through security forces and new legislation. The NCP can manage

votes in rural areas through its policies of coercion and inexpensive alliances with leaderships of impoverished groups. A different repressive apparatus is needed to win the towns – and Sudan’s pace of urbanization is one of the highest in the region. (Urban electorates were much smaller under Sudan’s three parliamentary regimes – in 1985, just before the last credible election in Sudan, 22% of the population were estimated to be living in the towns, half the projected figures for 2010.<sup>17</sup> Freedom of expression, assembly and association mean different things to nomads and to urban dwellers, and patronage works differently in the urban sphere.

‘ An electoral deal between SPLM and NCP elites, smoothing the way to the referendum, is still the best hope for many diplomats – but it would limit political competition in Sudan, and disappoint many of the 15 million people who registered to vote in late 2009 ’

Traditional opposition parties attach particular importance to the enactment of constitutional freedoms, which will allow them to campaign in urban areas (most no longer have the resources or the influence to manage the rural campaigns that used to determine Sudanese elections). NCP laws used to weaken urban opposition in more authoritarian days have not been amended to reflect new constitutional freedoms. These include the National Security Forces Act which gives the National Intelligence and Security Service practically unlimited powers of detention and turns it into a force for local intimidation rather than an agency gathering information on threats to the nation (a new law adopted in late December 2009 did not abolish the security forces’ powers of arrest and detention). They also include the Criminal Procedures Act, which routinely limits freedom of association and

assembly; the Press and Publications Act, public order laws and the Trade Union Act. These laws form part of an apparatus that helped bring about the NCP’s dominance of the Northern urban scene. The NCP is required to repeal many of these laws in order to make a reality of the bill of rights in the CPA and the constitution, but it resists making major changes. Opposition parties, in contrast, feel that they cannot hope to contest the election without substantial changes to these laws.

The CPA’s sponsors hoped that elections would bring political groups excluded from the negotiations for the agreement into the new political order it created, and subject that order to the verdict of voters. In that respect, the elections are part of Sudan’s route to internal self-determination, to the setting up of a more inclusive state. But an absence of constitutional freedoms limits the possibilities of the elections. SPLM parliamentarians in Khartoum were arrested in December 2009, while protesting against the NCP’s delays in enacting laws implementing these freedoms. But in Southern Sudan, some in the SPLM leadership see no need to submit the GOSS leadership to an electoral test. Secessionists in the SPLM do not want any diversions from what they see as the movement’s paramount task – the referendum – and believe that no party can seriously challenge them in the South. Forgoing democratic accountability for national objectives, secessionists run the risk of taking Southern Sudan’s voters for granted.

An electoral deal between SPLM and NCP elites, smoothing the way to the referendum, is still the best hope for many diplomats – but it would limit political competition in Sudan, and disappoint many of the 15 million people who registered to vote in late 2009. Yet the diplomats may have a point. All parliamentary regimes in Sudan’s history have been coalitions of different parties. Elections could still promote the kind of alliance-building that would bring the interests and perspectives of previously excluded groups into government. But Northern Sudan is now chronically divided, and an NCP-SPLM alliance would do little to help excluded groups articulate and organize their interests. The NCP is a minority party that emerged from the now-divided Islamist movement in Sudan. Few officials see a possibility of reunifying that movement in time for the elections. Likewise, few estab-

lished parties seriously want an alliance with the NCP, which has resorted to a strategy of factionalizing existing parties in order to create allies.

So in spite of shared interests in Sudan, it is difficult to see how political alliances could be built to serve them. For many observers, the SPLM largely remains the only national political movement – the only group which could conceivably mobilize support in the North, the South and Darfur. It is also the preferred ally for most political forces. SPLM support for Omar al-Bashir, who has been formally adopted as his party's presidential candidate, would resolve the party's legitimacy problem neatly. 'The SPLM is the partner of choice for the NCP,' said a senior figure in the ruling party, in November 2009.

But in October 2009 the SPLM had withdrawn from the parliament. Its withdrawal was linked to another alliance it had concluded in Juba in September 2009 with most of the country's opposition political parties. The SPLM and the opposition parties declared joint support for a referendum law, constitutional freedoms and a resolution to the crisis in Darfur. In December 2009, these demands were not met, and ensuing opposition protests in the national capital led to the arrest of senior SPLM parliamentarians, on the grounds that permission for their demonstrations had not been granted.<sup>18</sup> Darfur rebel movements and political parties publicly declared their support for the arrested leaders.<sup>19</sup>

An SPLM alliance with urban opposition parties or Darfur groups in the run-up to the elections would restore competition to Northern Sudanese politics and might help address the exclusionary nature of the CPA and the political order that it created. However, that still leaves open the problem of political organization in rural Sudan. Many in the SPLM see the elections as an irrelevant prelude to the referendum. In Southern Sudan, the SPLM believes it can overwhelm all its electoral opponents, but at

the same time replicates NCP tactics. Several parties (some linked to the NCP) complain of restrictions on freedom of expression, harassment from security forces and arbitrary arrest and detention.

SPLM groups that are sceptical about the value of elections do not believe that they can match the NCP's rural organization or can monitor rural elections in Northern Sudan. The SPLM frittered away goodwill in Darfur, by allowing the NCP to take most of the decisions on the conflict there. And in the troubled borderlands, memories of ethnic and religious discord overwhelm pragmatic calculation. While some Misseriya people interviewed for this report expressed hope of an alliance with the SPLM, most SPLM interviewees dismissed the possibility. An SPLM alliance with the Baggara groups whose livelihoods lie half in the South would transform Sudanese politics. Even if Southern Sudan secedes, the alliance would help secure its borders and give a new Southern state powerful leverage over the North. But one international observer with good links to some Baggara leaders said there was no time, unless they urgently started developing a shared pastoralist border institution.<sup>20</sup>

Sudanese political structures make any coalition of Sudan's marginal peoples an elusive prospect. The vision of this coalition was at the heart of the SPLM's New Sudan project – a Sudan where the marginalized majority took control of the state.

Instead, an unlikely, pragmatic alliance has temporarily managed to frame the flux that is Sudan – between a liberation movement and Islamist revolutionaries, both linked more or less to security and commercial interests. The competitive politics that spilled out in street protests in the capital in December 2009 was important. But many in the SPLM will be tempted to stick with an elite deal that will deliver a referendum and, in all likelihood, secession.

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## 7. The Referendum Law

The suspicious allies in the Government of National Unity lack a vision for Sudan's future. That is one reason why both parties have displaced political energy into delaying tactics on procedural questions. Delays and lack of faith have made secession more attractive: many SPLM leaders, and many Southerners, sought secession from the outset of their struggle. Others have come to support secession for a long list of reasons: the continuing conflict in Darfur; the lack of central government investment in Southern development; alleged NCP support for violence and instability in Southern Sudan; or the failure to make good the transformative aspects of the CPA. One SPLM idealist still seeking transformation put the case for secession like this:

SPLM's agenda has been transformation into a new society. SPLM is neither unionist nor separatist, it wants transformation, a just society. If North doesn't transform, SPLM will stand with the people and implement what they have voted for. Southerners are looking for freedom and they see it in separation.<sup>21</sup>

But even those in the SPLM supporting unity – such as the Northern Sudanese cadres who joined the movement out of a desire to transform the North – are resorting to secessionist positions as the deadline for the referendum draws near, and the possibility of attractive unity fades. Because the CPA requires the SPLM to promote the unity of Sudan, secessionist positions are garbled into a call for a referendum law whose procedures will make secession inevitable.

Many in the NCP accept the likelihood of secession and acknowledge that for it to be smoothly effected will require generosity from both sides. But for now, inflexibility appears to be the tactic of choice for both sides. The SPLM spent nearly all of 2009 insisting on a procedural bill for the referendum as a precondition for political progress – fearing that otherwise, Southern Sudan's right to self-determination will become a hostage to the other agreements. NCP tactics unsurprisingly included stalling on the procedural law, on which all political calculation is centred.

### Box 6: NCP and SPLM positions on the referendum law

*The majority needed for secession:* The NCP initially proposed a super-majority to pass the secession vote: 75% of all voters on a 75% turnout. The SPLM called for a simple majority in turnout and in the vote. The law adopted in December 2009 required a simple majority vote on a turnout of 60%.

*Voter eligibility:* The SPLM initially wanted to restrict eligibility to voters of Southern origin in the territory of Southern Sudan. This is in some respects a secessionist position – many in the SPLM believe that Southerners resident in Southern Sudan would vote overwhelmingly for an independent state, while Southerners outside the South might be more open to the possibility of unity. The NCP proposed that people of Northern origin in Southern Sudan should be enfranchised. The NCP also proposed that all persons of Southern origin outside Southern Sudan – those in the North and those overseas – should have a vote.

The law, adopted on 29 December 2009, was long overdue. The CPA scheduled its adoption by July 2007. By the middle of 2009, the parties had reached consensus on most articles. But several controversies remained: including whether the law would require a simple or a qualified majority for secession to take place; the composition of the Referendum Commission and the location of its headquarters; and voter eligibility (see Box 6).

‘You can’t define a Southerner. No one can,’ said a leading Southern Sudanese constitutional lawyer. The definition in the Interim Constitution of Southern Sudan, which will probably be used to determine eligibility in the South, is problematic because it has both vague and precise elements. It states that:

For the purposes of the referendum ... a Southern Sudanese is

- (a) any person whose either parent or grandparent is or was a member of any of the indigenous communities existing in Southern Sudan before or on January 1, 1956; or whose ancestry can be traced through agnatic or male line to any one of the ethnic communities of Southern Sudan; or
- (b) any person who has been permanently residing or whose mother and/or father or any grandparent have been permanently residing in Southern Sudan as of January 1, 1956.<sup>22</sup>

Membership of ‘indigenous’ or ‘ethnic’ communities is straightforward to determine in Southern Sudan, because tribes there are largely built up from kinship structures. An individual belongs to a family, an extended family and then a small local administrative kin-unit, that comes under the (usually elected) leadership of a local leader. The Interim Constitution of Southern Sudan (2005) incorporates traditional authorities into governing structures. Their kin-relationship with local people means that they are the principal means for establishing identity in Southern Sudan, and the memories of the kin-leaders of the smallest units are the basis for birth registration systems. Kin leaders can easily register the vast majority of people within the kinship system, even if they are not resident in their home villages.

However, their long experience of forced displacement means that some Southern Sudanese have primary affiliations other than kinship, and some may not even know their kin. Many families have been separated, sometimes irreversibly (in Western Equatoria, 4.9% of children under 17 have lost both parents, one national survey showed).<sup>23</sup> Some orphans, displaced persons and urban migrants lose contact with kinship structures. Traditional authorities exist outside the South (they even have customary law courts in Khartoum), but they occupy a complex political space, open to persuasion and influence from the SPLM and NCP, migrant and displaced communities and home communities. Judgments about ethnicity that would be self-evident in a village might become politicized in a Northern city.

The SPLM wanted to limit voter eligibility in Northern Sudan to areas with concentrations of 20,000 Southerners or more: an indication of the SPLM’s anxieties about its weakness outside the major towns in Sudan – an anxiety that could be heightened if eligibility is politicized there. In the 2008 census, enumerators asked respondents ‘Are you a Southerner or a Northerner? What’s your region of origin?’ It found that there were about half a million Southerners in Northern Sudan (an unexpectedly low figure: at the end of the civil war, most people accepted an estimate of 4 million displaced Southerners in the North). Only five localities in Northern Sudan had more than 20,000 Southerners, according to the census.<sup>24</sup>

The voter registration process for the elections has not captured ethnicity and this means that there will have to be a separate registration for the referendum. A referendum where voter eligibility is defined around a regional origin that is coloured by ethnicity will present many problems for the Referendum Commission, quite apart from the enormous challenges of completing the work in the time between its establishment and January 2011. Who will determine the ethnicity of people who call themselves Southerners? Self-determination, after all, is about peoples having the right to decide who they are: the political, social and economic structures that organize their lives. But in a referendum on the question of secession that involves ethnic and regional identities, a state body decides who individuals are – and some of their decisions will be contested.

### Box 7: International experience of referendums

Referendums can provide peaceful and legitimate resolutions for controversial or irreversible public decisions, including self-determination. But where international and domestic elites do not recognize the legitimacy of the process, ethno-nationalist referendums can exacerbate conflict – as they did in the former Yugoslavia in 1992–3.

- *Voting eligibility outside the territory at issue:* East Timor and Eritrea both allowed voting outside their respective territories. Eritrea adopted a nationality law two years in advance of the referendum.
- *Referendum commissions:* The CPA requires a referendum commission and an ad hoc monitoring commission with international experts. International practice is that the commission's members must not be overtly political figures, such as judges. Procedures requiring consensus decisions can limit conflict over partisan representation.
- *Qualified majorities:* Turnout is seldom low in self-determination referendums and turnout requirements are rare (see Box 6). Quorum requirements are also rare: Montenegro required a 55% majority and Israel requires a 60% majority in any referendum to relinquish the occupied Palestinian territories.
- *System of voting:* One former Sudanese president, Jaafar Nimeiri, used referendums on the extension of his mandate as a substitute for elections. Sudanese referendums used two ballot boxes, with a token (not a ballot) that could be put in a 'Yes' or 'No' ballot box. This method is supported by the SPLM but is inadvisable because of the ease with which tokens can be smuggled and sold.
- *Literacy and ballots:* Referendum ballots can be adapted for non-literate societies. In Eritrea, people chose between red or blue; in East Timor, they chose between flags.
- *Referendum security:* Giving the UN a key role in security can help avoid major problems.
- *Information and broadcasting rights:* Educating voters on procedures, countering disinformation and giving equal or proportionate coverage to different arguments will all require commitment from the parties.

Source: Mads Qvortrup, *International Standards for Conducting Referendums: An Overview*, unpublished paper, 2009

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## 8. Deciding the Future of Blue Nile, Southern Kordofan and Abyei

The Popular Consultations present a different set of problems from those of the referendum. The April 2010 election will frame the consultations, and the problems that they present need to be resolved in the run-up to those elections. If the elections go ahead on time, it is almost certainly too late to resolve them.

The Popular Consultations will take place in two areas which had a particularly divisive experience of war, and they are supposed to ‘ascertain the views of the people of Southern Kordofan/Nuba Mountains and Blue Nile States’ on the CPA; and to ensure that ‘this comprehensive agreement shall be subjected to the will of the people of the two States through their respective democratically elected legislatures.’<sup>25</sup> The state legislatures will each establish a commission which will ‘assess and evaluate the implementation of the CPA.’<sup>26</sup> Their reports, alongside the reports of a separate commission already established by the presidency, will be presented to national and state governments, so that they can ‘rectify any procedure that needs to be rectified in order to ensure *faithful implementation* of the agreement’. According to the CPA: ‘Once this Agreement is endorsed by the people through the legislature of any of the two States as *meeting their aspirations*, then the agreement becomes the final settlement of the political agreement in that State’ (italics added).<sup>27</sup>

Will the commissions ask if the CPA been *faithfully implemented*? Or will they ask if it *meets voters’ aspirations*? The CPA is not clear. And if people’s representatives decide that either implementation or substance is flawed, they can raise these assessments with central government – but it need only give these suggestions its consideration, and has no need to act on them.<sup>28</sup>

‘The April 2010 election will frame the Popular Consultations, and the problems that they present need to be resolved in the run-up to those elections. It is almost certainly too late to resolve them.’

The populations of Blue Nile and Southern Kordofan have special consultation rights because the civil war was fought in those states: they are still divided and impoverished by its after-effects. Ethnicity was a factor of the war in those areas: groups speaking African languages, who had been separated from Northern Sudan during the British period, such as the Uduk peoples of Blue Nile or the Nuba of Southern Kordofan, used SPLA support to fight central governments, and central governments armed people from the Misseriya and Rufa’a (a Blue Nile pastoralist group) to fight them. Many people were displaced outside these areas as a result, either through forced migration or through impoverishment, and want a say in future political arrangement for their area – after all, past political arrangements were unsatisfactory enough for some of their compatriots to fight a war for two decades to change them. But in order to influence the Popular Consultations, displaced or migrant Rufa’a and Nuba people need to register to vote in Blue Nile or Southern Kordofan. Nobody has told them this. Election observers noted in November 2009 that registration officials do not inform registrants of the requirement of citizens to vote where they register – and voter registration was to end in December 2009.<sup>29</sup> It will be very

difficult to extend eligibility for the Southern referendum outside the South, but it is impossible to extend it to people from Southern Kordofan or Blue Nile outside their home areas without rethinking the electoral voter registration.

A rethink has been suggested. Census enumerators did not reach some parts of the Nuba Mountains – and the census may have over-counted the nomad population of Northern Sudan, which means that constituencies of the historical allies of the central government there may outnumber those of the historical allies of the SPLM. The All Political Party Conference that brought together traditional opposition parties and the SPLM in Juba in September 2009 made the holding of elections conditional on a set of democratic reforms and on peace in Darfur. They called for a [new] ‘credible population census [in the two states] to ensure the elected Legislatures truly expresses the will of the people in the two States.’<sup>30</sup>

The Popular Consultations are a route to self-determination, in the broader sense of the right that all peoples have to decide their political status and route to social, economic and cultural development. An October 2009 conference in Blue Nile state came up with some recommendations on what it termed ‘issues of [self-] determination.’ The conference was organized by Malik Agar, the SPLM governor of Blue Nile, one of the most senior Northerners in the movement, and it brought together all parties in the state, including the NCP. The conference called for the Popular Consultations to take place even if the elections do not.<sup>31</sup>

The fact that the CPA leaves so much to state parliaments creates additional complexity. If the NCP does not win the state legislatures, local politicians might choose to

interpret the CPA very broadly. One politically aware Blue Nile citizen interviewed for this report explained:

My view is we have the right to choose whether we go to the South. I hope the Southerners do not separate, but if they do, I prefer to go South. The CPA does not give us the right to separate, but the Popular Consultation gives us the right to separate.<sup>32</sup>

The NCP is calculating that it will win state elections, and it may do so – although the appointment in May 2009 of Ahmed Haroun, a capable NCP loyalist indicted by the International Criminal Court, as governor of Southern Kordofan was a signal that Kordofan politics is heating up. Flawed Popular Consultations will complicate relationships between the two parties to the CPA and their constituencies in sensitive areas with high levels of military deployment just before the referendum.

Flawed Popular Consultations may undermine the Abyei referendum too. In the view of the SPLM, ethnicity rather than regional affiliation or residence will be paramount for voter eligibility in the Abyei referendum. For them, only one group – Ngok Dinka people – will have a right to vote. But voting will take place in January, when many Misseriya pastoralists will be resident in Abyei – and President Omar al-Bashir promised Misseriya people a vote in the Abyei referendum. In Abyei, ethnic eligibility for voting will be relatively easy to ascertain, but the ethnic politics behind the referendum will be hard to manage. Substantive discussions on the law for the Abyei referendum were postponed for most of 2009 because of the delay in reaching an agreement on the Southern referendum.

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## 9. After the Referendum

### The future of the constitution

Just getting to the referendum requires a census deal, elections, border demarcation, a law for the referendum on the administrative future of Abyei, and an agreement on the Popular Consultations. All awaited the referendum law deal, reached in the last days of 2009. And all are necessary for the parties to maintain respect for the constitution, so battered by delays and exhausted mandates. But the constitution offers almost no guidance for the post-referendum arrangements. Its final article explains unhelpfully:

If the outcome of the referendum on self-determination favours secession, the parts, chapters, articles, sub-articles and schedules of this Constitution that provide for Southern Sudan institutions, representation, rights and obligations shall be deemed to have been duly repealed.<sup>33</sup>

Officials working on constitutional law privately express concern at this article. If there is secession, it might be taken to mean the repeal of vast sections of the constitution, which is based closely on the CPA and refers to Southern Sudan throughout. The only other guidance given in the founding documents of Sudan's current order for the post-referendum period is a CPA requirement to form a united army from the JIUs, the SAF and the SPLA, *within* 90 days of the referendum if the South votes for unity.<sup>34</sup> The constitution offers no guidance on any other changes that might be required in the case of unity or secession.

The constitution's lack of vision past the interim period is reflected in the SPLM-NCP coalition that it frames. Politics is interim and tactical; Darfur and other troubled Northern regions are neglected; survival and legitimacy are traded between untrusting elites. But the risks are enormous. Secession could take place in 12 months' time – the SPLM believes that if the referendum leads to secession, then secession would begin the moment the vote is announced. A smooth secession would require advance deals much more complex than the yet unreached deals on the census, the elections and the borders (see Box 8). The CPA has high-level bilateral institutions that could address two of these issues – the Joint Defence Board is a coordination forum for Sudan's two armies; and the National Petroleum Commission (NPC), co-chaired by the president and Vice-President Salva Kiir, is supposed to provide strategic direction for the oil industry. Neither institution is able to carry out its functions because of the differences between the parties.

It is worth remembering that currency, trade and financial arrangements were major reasons for the war that erupted between Eritrea and Ethiopia in 1998, after their velvet divorce in 1993. In Somaliland, the adoption of a new currency in 1993 was a factor in the outbreak of civil war, two years after its unilateral declaration of independence from Somalia. None of these issues can be managed carelessly or negotiated at the last minute. Two issues will be examined here: wealth-sharing (including the sharing of oil revenues), and nationality.

### Wealth-sharing

The reliance of both parties on the oil industry is the structural reason for the belief that secession can happen without a major conflict – both economies and both governments are dependent on its revenues. The parties and their diplomatic interlocutors are well aware of this, and although the complex deal is unlikely to be reached early, it is definitely reachable.

What are the components of the deal? About 80% of Sudan's proven reserves and production are in Southern Sudan. Estimates of future reserves are based on comparisons with similar geological systems in other countries,

**Box 8: Post-referendum arrangements still to be discussed**

1. *Security arrangements:* Sudan has three armies – the SAF, the SPLM and the JIUs, made up of personnel from the first two. The CPA requires that the JIUs become the national army within three months if the referendum leads to unity, but SAF and SPLM contingents of the JIUs have engaged in armed conflict with each other in the past two years.
2. *Sharing oil revenues:* Agreement is needed on revenue shares of both current and future oil production. Agreement is also needed on the share of Northern oil revenue for the South and the share of Southern oil revenue for the North.
3. *Water:* The Nile has often been a source of conflict: but the Nile basin could also provide a means for the economic integration of its nine countries that stretch from the Great Lakes to the Mediterranean. The 1959 Nile Waters Agreement gave downstream Egypt a much bigger allocation of water than upstream countries. Even so, Sudan loans Egypt part of its smaller allocation, and leases land taken from small farmers for Egyptian companies to grow thirsty crops like wheat – another way of exporting Sudan's water. Many Nile tributaries run through Southern Sudan.
4. *Assets:* Sudan's national infrastructure needs to be divided up between the two parties. Most is in Northern Sudan, and there may be a case for compensation for lost access to the South. Overseas assets include embassies.
5. *Liabilities:* Sudan's current debt stands around US\$34 billion, more than projected oil revenues. Little debt-financed investment reached the South, and some debt financing funded the war there. Southern Sudan may assume central government debt in return for concessions on other issues, calculating that its diplomatic position will encourage debt-forgiveness, which remains a distant prospect in the North.
6. *Treaties:* Ratifications and reservations.
7. *Foreign relations:* Relations with neighbours, relations with intergovernmental bodies (IGAD, the African Union, the League of Arab States and the East African Community); relations with countries with investments in Sudan (China, India, the European Union and the United States).
8. *Currency and banking:* There is at present a single currency, but Northern Sudan has a Shari'a-compliant banking system, while Southern Sudan has a conventional one. Revenues transferred from Northern Sudan are now in Sudanese currency; at the beginning of the interim period they were in US dollars.
9. *Nationality:* The NCP has said that Southerners in Northern Sudan will lose their citizenship if the South secedes. Rights of work, ownership, residence and entry may be jeopardized without a deal (see section on Nationality below).
10. *Pastoralism:* Many Northern pastoralists depend on Southern pasture. The SPLM has said that it will continue to allow pastoralists to use this.
11. *The national capital:* The CPA provided non-Muslims in the national capital with special rights, including an exemption from canonical Islamic or *hadd* punishments.
12. *National reconciliation:* The CPA requires the parties to initiate a 'comprehensive process of national reconciliation and healing throughout the country'.<sup>a</sup> There has been no progress whatsoever on this. In the case of separation, there may be a need to address national reconciliation within Southern Sudan and Northern Sudan, even if reconciliation between North and South is evaded.

a. CPA, Protocol on Power-Sharing, Article 1.7.

but exploration in some areas, such as Jonglei, is hampered by local violence. An understanding of future reserves may be necessary for the deal to happen, because the North receives half the current revenue from oil extracted from the South, and the South receives no revenue from Northern oil. In the case of secession, the parties would need to agree on revenue shares from current production, and also from future production. The South's share of Northern production could also be an issue. Problems around future revenues could be mitigated through securitization: this would mean that an international consortium would buy tomorrow's oil production with today's cash, which would be divided between Northern and Southern accounts in accordance with an internationally agreed formula. However, the possibilities of these kind of instruments may have disappeared into the bonfires on international financial markets over the past two years.

The NCP controls both the Ministry of Finance and National Economy and the Ministry of Energy and Mining, and has been frequently accused of manipulating service and sales contracts as well as production figures.<sup>35</sup> Both parties need to resolve the problems caused by this mistrust and make the high-level NPC into a place for developing a strategic direction for the oil industry, rather than what it is today – a place to ventilate political grievances.

The borders are also an important component of an elite deal on oil. Most Northern oil is extracted from Abyei, which may revert to the South; and other Northern oil is extracted from Heglig, a part of Southern Kordofan which is claimed by both parties.<sup>36</sup> The parties may be tempted to take the risk of imposing a borderline on the complex societies of the borderlands in order to resolve these problems on time (see above, Chapter 4). But there are other proposals, such as turning the whole border into a special joint economic zone, which might mitigate these risks.

The oil deal, on which so many hopes for peace depend, is possible if there is a greater measure of good faith from both parties. It is vital for securing the peace in the short term. However, in the medium term oil economies often tend towards instability, which will probably be exacerbated in a country as inequitable as Sudan – among the

most inequitable in the world, according to a 2003 World Bank report.<sup>37</sup> A sustainable wealth-sharing deal probably needs to look beyond oil towards the kind of economic cooperation that would redress Sudan's stark regional inequality.

Both the NCP and the SPLM are revolutionary parties, and both have transformed Sudan's society and economy. Successful revolutionary regimes often choose a route to development that transforms the main economic sector – in Sudan's case, agriculture – in a way that aligns individual and family economic interests with the goal of the revolution, in order to create a new kind of citizen. The NCP has made some progress on the rate of agricultural growth, but Sudan remains highly dependent on imported and relief food. Agricultural investments have been almost exclusively in the mechanized sector, and the vast majority of investment has gone on dams that have displaced traditional cultivators.<sup>38</sup> It has cut off funds for agricultural development to the subsistence sector, and taxes subsistence farmers at higher rates than most mechanized farmers, through the Islamic *zakat* tax on assets.<sup>39</sup>

This combination of oil dependence and inattention to the development needs of small farmers is a route to development that separates elites from society and often brings corruption. This problem will outlast the referendum, and is worse in Southern Sudan (the Southern economy is the most oil-dependent in the world).<sup>40</sup> It is difficult to see how it could be addressed within current negotiating frameworks.

## Nationality

The worst-case scenario in Sudan is the partition of India, said one senior GOSS minister.<sup>41</sup> In referendum law discussions, the NCP is pushing for all Southerners in Northern Sudan to have a vote in the referendum – and also arguing that they will be stripped of their citizenship if the South decides on secession. 'You don't need to send them back. You just need to say – priority in employment for nationals,' said one journalist commenting on the NCP plan.<sup>42</sup>

Many Southerners came to Northern Sudan under the most terrifying circumstances and many lived through the war in insecure jobs and shanty towns, dependent in

the worst of times on foreign aid. Southerners (alongside Darfurians) are a large part of the workforce in Khartoum: some NCP elements have spoken about a 'black belt' surrounding Khartoum, a reference to the perception of some people in the Northern Nile Valley that Southerners (and Darfurians) are darker-skinned, and to the fear that the periphery might strangle the centre.

Since the nineteenth century and for much of the twentieth, coerced migration has been a principal means to mobilize urban labour. The colonial era shanty towns of Khartoum, called the Dayms, were a means of drawing ex-slaves into labour markets, and they are now respectable places to live. A similar process has happened more recently in Khartoum – some Southerners displaced to the capital by attacks on villages or the military manipulation of famine have slowly built themselves up into small property owners, people with a daughter in college or a son in the US. Some, of course, still live a marginalized existence. The NCP threat to strip Southerners of citizenship might push some of them to register and vote for unity: the threat is part of a campaign to make separation unattractive, a last-minute alternative to the hard political work of making unity attractive. It might backfire – Southerners may decide not to register to vote, because of the risk that registration might lead to expulsion. During the referendum on Eritrean independence in 1993, fewer than 60,000 Eritreans voted in Ethiopia – although the estimates of people of Eritrean descent living in Ethiopia were much higher.<sup>43</sup>

Southerners could be expelled from Sudan in the case of secession. This happened in Ethiopia, when war broke out between Ethiopia and Eritrea in 1998 – Ethiopia, which had encouraged Eritrean registration for the referendum, retrospectively regarded that registration as treasonous. It told the Permanent Court of Arbitration in the Hague that:

Ethiopian security officials were said to be deeply concerned about the potential security threats posed by over 66,000 Ethiopian residents who had shown a significant attachment to the now-enemy State by acquiring Eritrean nationality in order to register for the Referendum or otherwise.<sup>44</sup>

However, high labour costs in Khartoum and an influx of foreign workers points to the economic importance of the Southern population in the North.

Deals on issues such as wealth-sharing, nationality and pastoralism will be needed if Southern voters are to have a clear idea of what they are voting for when they choose unity or independence

Many Southerners believe that the NCP conceives of the rich borderlands mainly in terms of their natural resources and not in terms of the intricacy, enmity and interdependence of the millions of human relationships along the border. There is a belief that the NCP accepted the PCA decision because it appeared to give Northern Sudan some Abyei oil-fields (where production is in decline) but left the large pastoralist population of the area without guarantees of access to pasture. If Southerners are expelled from Northern Sudan, pastoralists could be barred from the South – pushing both North and South towards renewed conflict and instability.

### The need for explanation and persuasion

Deals on issues such as wealth-sharing, nationality and pastoralism will be needed if Southern voters are to have a clear idea of what they are voting for when they choose unity or independence, and discussions on these deals will support either transition. None will be straightforward for the elites who make them, or for their diplomatic interlocutors. But many of them need elites to engage in popular explanation and persuasion if they are to work – and there is a significant risk that preoccupied elites will neglect political engagement with their constituencies. The situation in Darfur, discussed below, shows the limitations of this approach.

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## 10. Deciding the Future of Darfur

The signing of the Darfur Peace Agreement (DPA) in 2006 was supposed to lead to the agreement's incorporation into the Interim National Constitution. This has not happened, and the region itself has not made its way into the constitutional order established by the CPA. Darfurian leaders have no influence on post-referendum arrangements: many Darfurian opposition leaders try to wish away the possibility of Southern secession, which they calculate will probably increase NCP dominance over Northern Sudanese politics.

'Sudan was built by Darfurians,' said one Darfurian intellectual. There was almost no development in the region during the colonial era, and the region exported its labour to the Northern Nile Valley, to meet the labour needs of construction and agricultural enterprises. Post-independence Sudan saw little improvement: in 1967 and 1982, two years for which figures are available, family incomes in Darfur were a little more than a third of those in Khartoum, and under the NCP government, investment in the region remains among the lowest in Sudan.<sup>45</sup> The first Darfurian political movements of independent Sudan called for development and investment to redress this – although they had an independent state as recently as 1916, Darfurians never called for secession. Since the late 1980s, the region has been drifting into political violence – the NCP-led government initially had some support there but has aggravated this drift.

A 1999 split in the NCP leadership led to the departure of many Darfurian Islamists from the ruling party. This contributed to growing instability in Darfur, which came to international attention in 2003 after a rebel raid on the

state capital of Al-Fashir led to a counter-insurgency and massive displacement. Displaced groups, mostly farmers, are linked by tribe or ethnicity to rebel leaderships; and the government made ethnic appeals to recruit irregular forces from landless nomadic tribes to carry out the worst atrocities. This ethnic factor led the US government to characterize the situation as genocide in 2004. Since then, patterns of violence have shifted – widespread access to arms; rapid, displacement-led urbanization; social relations and political objectives brutally reconfigured around ethnicity have all contributed to a situation of pervasive violence where there is no clear vision for the future, whether among rebels, civil opposition or government supporters. Are there any mechanisms by which the people of Darfur can reverse their historical marginalization and current disorder?

The DPA promises a referendum on the future status of Darfur by the middle of 2010 (see Box 9) and also presents the elections as a peaceful means for change. The DPA is not functioning and international mediators are working to replace it with another peace agreement. This mediation might also be a starting-point for Darfurians to set out a common future for themselves. The core demands of the opposition – for viable representation in the state, compensation for war damage, justice for war victims, investment – are all in principle achievable. But there is a serious likelihood that none of these mechanisms will be able to provide Darfur with an exit from its current predicament next year. No one believes the referendum will take place: can elections take place without a resolution of the conflict?

Many Darfurian armed movements, displaced persons and civil actors want a boycott. The NCP may calculate that it can win elections without a Darfur peace deal, and this will complicate matters for the region, which is highly armed, and distorted by massive displacement. The 2008 census provides some clues to these NCP calculations – over half of the population live in South Darfur state. These results will shape constituencies – the census means that there will be more constituencies in areas where the NCP hopes it can mobilize Baggara voters through its Baggara supporters in the military and political elite in Khartoum and through an appeal based on its versions of Arab culture and Islamic religion. Some Baggara groups successfully

### Box 9: Darfur's referendum

In 2006, the signatories to the DPA agreed to a referendum that would give Darfurians the chance to reunite the three states of Darfur into one region, making the Transitional Darfur Regional Authority established to implement the DPA into a permanent political structure. The deadline for holding the referendum is July 2010.<sup>a</sup>

When the NCP leadership took power in 1989, Darfur was a single region. In 1990, the leadership decided to divide it, largely for security and political objectives: the committee recommending division noted that it would probably intensify tribal conflicts, which is what happened.<sup>b</sup> The reunification of Darfur might create a higher-level authority in Darfur with the power and political will to mediate the conflicts, linked to the region's history of 'ethnified' access to natural resources. Reunification would make Fur people a majority – they are currently minorities in each of the three states. One senior Rizeigat Baggara politician from the NCP has presented the referendum in starkly ethnic terms, a bid for tribal dominance by the Fur-dominated faction of the SLM/A: 'The idea of a single region is based on the principle of dedication of this region to the ownership of one tribe ... and aims at [creating] first-class and second-class groups.'<sup>c</sup> His views were reflected in comments by other regime hardliners. But they may be over-stating the case. Administrative arrangements in Darfur are a contributing factor to the conflict, but there had been little popular demand for the referendum before the agreement.

a. DPA, Article 56.

b. Report quoted in Yousif Takana, *The Politics of Local Boundaries and Conflict in Darfur: The South Darfur Case*, Chr. Michelsen Institute, Bergen, 2008, p. 7f.

c. 'Presidential Adviser Massar: volcanic lava statements' [mustashar al-ra'is massar fi ifadat kal-humum al-burkaniya], *al-Intibaha*, 8 December 2008.

resisted involvement in the current conflict; other Arabized or non-Arabized groups in the region were pitched into it. These groups may have become reliant on the NCP because of their deep alienation from their neighbours. And finally, the NCP believes that it can mobilize the urban vote – government forces have retreated from many parts of the countryside, but its powerful security apparatus still exercises control over the burgeoning towns.

Other political actors have few options. The SPLM has representation in state parliaments (in accordance with the CPA) and it could still conceivably try to challenge the NCP in Baggara areas and in the towns. But this would require a political decision to compete with the NCP in the elections, and that would cost it dearly in its negotiations on the referendum law. The displaced population is estimated by the UN at 2.6 million (government estimates are 470,000).<sup>46</sup> Many refused to take part in the census and this was taken by many commentators to indicate that they will probably refuse to vote (although voter registration in Darfur was unexpectedly high in December 2009). 'A boycott is a gift to the government,' said one official from the Minawi faction of the Sudan Liberation Movement (SLM) that signed the DPA.<sup>47</sup>

The alternative to a boycott is a protest vote – which would be difficult to organize in Darfur. But the enthusiastic reaction of Darfurian parties and armed movements to the December 2009 demonstrations in the national capital that led to the arrest of senior SPLM parliamentarians may be an indication that they are still hoping for an electoral competition between the NCP and its most serious potential challenger (see above, Chapter 6).

But an election that pits the SPLM against the NCP will cost the SPLM dear: it will further delay the referendum law and surround any discussions on post-referendum arrangements with mistrust or worse. There are strong reasons for the SPLM to stick with an elite deal. In that case, the armed movements may try to disrupt the elections, but like the SPLM, their eyes will be on the Southern referendum instead. Some Darfurian armed movements may calculate that a failed Southern referendum will lead to war, possibly with violence along the southern border of Darfur, which will be transformed into a military front or an international border. War in the southern borderlands will provide the armed movements with opportunities that the current military stalemate in Darfur cannot.

**Box 10: Recommendations of the AU's High-Level Panel on Darfur**

The Panel called for a comprehensive approach to peace – its recommendations focused on Darfur but could be extended to include other or all areas of Sudan. Peace negotiations would need to be inclusive – the DPA and CPA both excluded all civil actors – and take into account the lack of peace across the wider region. They should lead to a Global Political Agreement (GPA). Unlike the CPA, the proposed GPA will address human rights abuses in the context of conflict, through the establishment of hybrid courts that include international judges, and a truth, justice and reconciliation commission with controversial powers to pardon abusers. The Panel set out some proposals for social and economic justice through the GPA – but these focused on issues of compensation and humanitarian assistance rather than structural changes to the distribution of resources in Sudan, which were a feature of both the DPA and CPA.

International mediation is the only other political process that might let Darfurians find a way out of their current impasse. The senior mediator, Djibril Bassolé, is appointed by the UN and the African Union (AU). Scott Gration, the new US special envoy to Sudan, also deals directly with some rebel groups, alongside a large number of other special envoys, and the Qatari and Libyan governments. Finally, the AU's Peace and Security Council commissioned South Africa's former president Thabo Mbeki to lead a High-Level Panel on Darfur, tasked to examine ways to address the issues of accountability and reconciliation. This was partly linked to the AU's response to the International Criminal Court's March 2009 indictment of President al-Bashir for crimes against humanity and war crimes in Darfur.

The Panel reported in October 2009, and its recommendations included a proposal for another political process – the Global Political Agreement (see Box 10). The GPA and other internationally sponsored processes in Sudan are discussed in the next section. The Panel's recommendations for ending impunity were based on the proposal to set up hybrid courts, which may help strengthen the Sudanese judiciary's response to the crisis and allow for the prosecution of individual abusers. The central government set up special courts in Darfur, in response to the UN Security Council's referral, but they have failed to prosecute any breach of international humanitarian law. One Panel member claimed that the report was intended as a means for the Sudanese president to escape prosecu-

tion.<sup>48</sup> This weakened the report in the eyes of Darfurians seeking unequivocal commitment to addressing Sudan's problem of impunity which is deeply entrenched in its legal culture. And some elements within the NCP fear that justice for local functionaries with everyday responsibility for managing violence would allow the regime to scapegoat Darfurian implementers, while leaving Khartoum elites untouched – a case of justice aggravating the causes of conflict.<sup>49</sup>

Sudan needs elections and it needs deals between its two governing elites. But the elections and the deals could fatally complicate the situation in Darfur. There are, however, two potentially hopeful factors. Darfur's problems have been internationalized in an unprecedented way. All the international diagnoses of the problems stress that solutions there lie in measures such as ending impunity; compensation for suffering; state accountability; reconciliation; people-to-people dialogue; fair systems for allocating land and other natural resources; investment in development – that is to say, all the elements of the CPA that were aimed at addressing the causes of the conflict, and that have been discarded by the current focus on elite deals. Neither Sudanese nor international actors have ready proposals for returning to these fundamentals of sustainable peace; but the fact that ending impunity and compensation are such important demands for Darfurians may be a cause for hope. The expectation of justice from the central government has not yet been discarded.

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# 11. Managing the End of the Interim Period

The CPA's interim period will come to an end in July 2011, six months after the scheduled date for the referendum on self-determination in Southern Sudan. Will the last phase of the interim period be managed in time? In some respects, 'management' is the problem – the two parties' lack of an articulated vision for the future forces them to seek hectically paced administrative solutions over the next twelve months. The two elites have a taste for brinkmanship: with luck, that taste will serve them well when they come to make deals on the census, border, elections, and the host of post-referendum arrangements that are crucial for the future of Sudan's people.

The Sudanese people will presumably have to wait for announcements from the political leaderships that will define their realities. The census and the borders will both probably have negotiated outcomes, and the elections may also be a negotiated product – the examples of Kenya, Zimbabwe and Afghanistan have all set precedents for some of Sudan's elites and for some Western policy-makers.

According to this view of the world, the best hope for Sudan is for administration to displace politics, for the elites to come to their senses and do the deal. Where would that politics get displaced to? Ordinary people, denied the information they need to interpret their situation, take refuge in simplifications about ethnic or religious identities. Official historical memories are selected for their ability to support this process of simplification; the secondary school history syllabus in Southern Sudan does not cover the Middle East or

the Arab world at all; and in the Northern secondary syllabus the coverage of Africa is almost entirely taken up with the history of Islam on its Northern and Eastern coasts.<sup>50</sup> The selection of unofficial historical memory sometimes seems even more traumatic – people of the periphery remember the humiliations and suffering of an enormously cruel long war; and middle-class people in Khartoum recount unexpectedly topical folk-histories of the tortures and sexual violence of the Mahdist period, when the security forces were made up of slave troops from the South or from Darfurian groups forcibly moved to the national capital.

The best way to approach the pre- and post-referendum processes would of course be to have a massive programme of state engagement with the population, and to promote the kind of political dialogue that would allow people to begin to work through suspicions and bitterness and consider and participate in future choices. There is not enough time for that to happen.

## International engagement

Yet Sudan's peace process has a new source of energy. US President Barack Obama's administration announced its Sudan policy in October 2009, ten months after his inauguration. The new US policy was seen in many quarters as a welcome departure from that of the previous administration, which did not seem to have made good on its initial successes. George W. Bush's administration had engaged closely with the CPA negotiations, and US leadership was a critical factor in reaching agreement. In 2004, many in the NCP believed that the US would overlook the new war in Darfur and normalize its relations with the regime, in return for its signature on the agreement – the US has listed the Sudan as a state sponsor of terrorism since 1993, and has imposed sanctions on companies and individuals with alleged links to the violence in Darfur.<sup>51</sup> Within four months of the signing of the CPA, the US supported the UN Security Council resolution referring the situation in Darfur to the International Criminal Court. Civil society groups calling for an end to impunity in Darfur were able to overwhelm US support for the CPA. But the policy did not work – the NCP's opponents invoked the threat of regime change; hardliners in the NCP and the Darfur rebel

movement deferred negotiations in hope or fear of a regime change that was never going to happen; progress on CPA implementation slipped; and both sides indulged in belligerent rhetoric that satisfied domestic constituencies while doing nothing to avert the suffering of people in Darfur or to support the cause of peace.

The new US Special Envoy, Scott Gration, has decisively changed the tone of diplomatic exchange in Khartoum and begun contacts with Darfur's highly fragmented rebel movements, and the competing forums where they discuss peace. He has pushed the NCP and SPLM into negotiations on what the US policy calls 'unimplemented elements of the CPA', such as border demarcation, census and elections.<sup>52</sup> And he has engaged with neighbouring states and CPA supporters such as Norway and the UK. The policy is intended to balance the need for strong, multilateral support for a still viable peace process between North and South with a commitment to end conflict and abuse in Darfur.

In spite of this promising start, the new policy has its critics. Groups seeking to isolate or overthrow the NCP have been angered by Gration's conciliatory approach to the unelected ruling party. UN and foreign diplomats express misgivings about US leadership at a time when it is still entangled in Iraq and Afghanistan. Negotiations to end the conflict in Darfur have been at a dead-end for some time. Rebels, mediators and even the NCP are divided among themselves, unable to envision a peaceful future or even formulate policy. It is not yet evident how the advantages that US diplomacy enjoys can be brought to bear on this situation.

US involvement has structural implications for the politics of the coming year too. This report has argued that a fundamental component of the crises in Sudan is the inability of elites to engage with their constituencies, and to communicate possibilities and alternatives to war. Instead, the unlikely partners in the Government of National Unity engage in high politics under the shadow of their confronting armies. The US can play an important role in bringing the partners together, and applying the kind of pressure that will bring about the elite deals that need to be made. Sometimes it may bring its worldview or blind-spots or interests into their outcome (as it did during the negotiations for the CPA). By engaging an external power to sort out their problems, the SPLM and the NCP are once again turning away from their

constituencies, and the deals (needed so badly) will be done in a way that may perpetuate the politics of exclusion into the post-referendum period. The US may even encourage this – its account of the unimplemented CPA does not mention any of the measures that the CPA proposed for addressing the causes of the conflict, such as measures to invest in the periphery, address conflicts over land and national reconciliation, all of which would be a necessary part of any genuine engagement with Sudan's long-suffering citizens.

The US will energize the process – but US mediation means that Sudan is not looking so much to its neighbours to understand what it means to be Sudanese, not seeking to redefine itself through regional bodies such as the East African Community (see Box 11) or the League of Arab States or IGAD. 'Sudan-exceptionalism' – the notion that Sudan is different from absolutely everywhere else – is a widely held belief of many Sudanese people and of many foreign students of Sudan. It sometimes draws the country into futile introspections that are blind to the lessons of the region and the wider world. It is a particularly damaging delusion at the moment – Sudan could resolve some of the most complex problems of the anticipated Southern secession if it fitted its economy and visa regime into wider movements for regional unity. The SPLM should be particularly cautious of overstating the uniqueness of the (admittedly unusual) situation of Southern Sudan. It would do well to send its study teams to Somaliland rather than sentimentalizing its relationship with the US. The US has clear interests in Sudan and in Southern Sudan, and has even gone to the trouble of stating some of them in public documents on its new policy.

These criticisms of US engagement are not the kind that come with ready alternatives – indeed, there is probably no alternative to vigorous US involvement just now, with the stakes so high. But this is not to say that US involvement is enough. What more could be done? The US and the two CPA partners both acknowledge the need for a multilateral approach and for engagement with the region. There are a number of structures that could assist, including the Assessment and Evaluation Commission, a commission which draws together international supporters of the CPA. It may have a role in coordinating international engagement – but it is limited by the fact that it comes under the Sudanese presidency rather than an international structure.

**Box 11: Views of neighbouring states and trading partners**

An unstable transition in Sudan will present its conflict-prone neighbours with many challenges, as well as opportunities to compete over interests there. But Sudan's tricky neighbourhood also offers possibilities for peace. The Four Freedoms Agreement, a partially implemented 2004 treaty between Sudan and Egypt that gives citizens of each country freedom of movement, residence, ownership and work in the other country, could offer a model for a system that would allow Northern and Southern citizens to deal with the possibility of secession. Sudan has applied to join the East African Community, an association of Tanzania, Kenya, Uganda, Burundi and Rwanda that aims for economic integration in the region. Sudan's membership could mitigate some of the economic risks of separation. IGAD's Conflict Early Warning System is one of several programmes that support cross-border pastoralism (the Horn of Africa has one of the biggest pastoralist populations in the world). Attention to these regional frameworks could help to turn Sudan away from fractious introversion.

- *Egypt's* long commitment to Sudan's unity is linked to calculations about the security of Nile waters and the Arab-Muslim vision of Sudan's first nationalists. The labour markets of both countries are closely connected. Egypt has given up outright opposition to Southern secession and has invested in development projects in the South. Investment from the Arabian Gulf has eclipsed Egypt's economic importance, however.
- *Ethiopia* borders both North and South Sudan and has benefited from Sudan's oil boom. Ethiopia's support for the SPLM outlasted the Cold War, but it probably prefers a united Sudan, partly because it believes unity will limit Sudan's Islamist expansionism.
- *Eritrea* has an activist foreign policy and wants influence. It has allied with the SPLM during periods of tension with Khartoum. Eritreans contrast the SPLM's organization of society unfavourably with Eritrea's tightly disciplined liberation struggle. Eritrea and Ethiopia were opponents of the Khartoum government until the war that broke out between them in 1998. Since then, they have sought good relations with Sudan.
- *Libya* also seeks influence, particularly in Darfur, on whose borders both Libya and Eritrea have stationed military observers. Libya also has a long-standing relationship with Southern Sudan, and the Libyan leader Mu'ammarr al-Qadhafi has reportedly stated that he will support independence for Southern Sudan (he has also denied it).<sup>a</sup>
- *Kenya* and *Uganda* are the main external destinations of Southern Sudan's extremely poor road network and both benefit from its economic orientation away from Khartoum. British policy in the 1920s sought unsuccessfully to integrate the South into its East African empire, and some East African diplomats would like to see Sudan (or a future Southern Sudan) join the East African Community.
- *The Democratic Republic of Congo* and the *Central African Republic* border Southern Sudan and are preoccupied with internal conflicts.
- *Chad* supports the Justice and Equality Movement (JEM), a militarily effective Darfur movement with Islamist links and an extremely narrow ethnic base – JEM's political leadership seeks to transform the whole of Northern Sudan rather than address specific Darfur grievances. In turn, Chadian opposition forces based in Darfur threaten the regime in N'Djamena. If the referendum leads to the division of Sudan this would have wide, unpredictable consequences for the Darfur rebellion and Chadian relations.
- *China* and *India* have large investments in Sudan. Although China helped Sudan to develop its oil industry during a particularly bloody war, it now depends heavily on Sudanese petroleum and has no desire for instability. It has direct relations with GOSS and provided it with direct budgetary support (through loans) during the recent downturn in oil prices. Sudan is under US trade sanctions and UN and EU arms embargoes; foreign investors benefit from these sanctions.

a. 'Libyan leader says independent South Sudan would be "very weak!"' *Sudan Tribune*, 25 August 2009, <http://www.sudantribune.com>.

## African engagement

The SPLM and officials of some IGAD member states would like IGAD to reconvene at the highest levels to support the final act of the process it initiated – IGAD helped to shift Sudan’s political centre to the position of the SPLM. IGAD appointed a special envoy to Sudan in 2008, but some IGAD member-states reportedly believe that it is currently too divided for such a task (Ethiopia, Somalia and Eritrea are all members). The NCP and some neighbouring countries would prefer Thabo Mbeki to lead an AU intervention: the AU provided diplomatic support to the Sudanese government in the face of International Criminal Court indictments. The two parties appear to share a discouraging belief that there is still time to go shopping for sympathetic forums.

The Mbeki panel’s report proposed a Global Political Agreement that would resolve the crisis in Darfur and that could be extended to address the wider crises in Sudan – indeed the report deliberately used the phrase ‘the Sudanese crisis in Darfur’ to emphasize the need for an all-Sudan solution to the Darfur problem. To some, it sounded like a call to re-run the CPA under a different name. But the GPA would be unlike the CPA and the DPA; it would require wide state engagement with local populations and civil actors as well as armed groups. The AU Peace and Security Council, in a communiqué welcoming the report, created a High-Level Implementation Panel for its recommendation, made up of the three former presidents who served on the panel.<sup>53</sup> The Council also extended the mandate of this panel to cover the CPA.<sup>54</sup> The new mandate is intended to present an analysis based on findings from the region, provide crisis management and engage with people – the original High-Level Panel conducted about six public hearings in Darfur and Khartoum. The new Implementation Panel could extend this work to public hearings that discuss the future of the CPA and the post-referendum arrangements, from which so many Sudanese citizens have been excluded.

AU structures also have limitations. The former Egyptian foreign minister, Ahmed Maher, a member of the original High-Level Panel, claimed in an Egyptian newspaper that the Panel had aimed to help President al-Bashir escape indictment. The Panel had carefully skirted the issue of the

indictment, and other Panel associates rejected Maher’s remarks. But his intervention undermined the work of the Panel among rebel groups, which was denounced by ‘Abd al-Wahid al-Nur, the leader of the faction of the SLM most closely associated with the Fur ethnic group and many displaced people. He claimed that ‘Mbeki and his commission were out there to save Bashir from the ICC’.

South Africa gave strong support to GOSS when it was set up, and Mbeki was one of the heads of state who attended the funeral of John Garang. But relations between him and the SPLM appear to have deteriorated – he may be seen as too supportive of Khartoum, or as an instinctive Sudan-unionist. His experience of the ability of the South African state to transform itself and engage with the population may not transfer easily to a Sudan built on state coercion. The Implementation Panel will need to address the perception that they are supporters of the narrow state elite. They will also need to coordinate with other groups involved in mediation – the UN/AU Joint Mediator for Darfur; the two big UN missions in Sudan; and the envoys of different countries.

If the AU can address perceptions of partiality, the new Implementation Panel could complement the UN/AU mediation. Most notably, it could initiate a process of popular dialogue in Sudan that could mitigate the last-minute, exclusive deal-making politics that now appear to be an unavoidable remedy for the carelessness and delays of the interim period. It might even be able to help Sudan set up a constitutional convention – a key demand of opposition parties and probably a necessity to deal with the complex constitutional rearrangements that secession or union will require for both North and South. The CPA interim period ends six months after the referendum, and there still may be a possibility for such a conference to be held.

Senior US officials dismiss the possibility of such a convention before the referendum – there is too much going on as it is. But other groups are desperate for a dialogue. A group of left-wing intellectuals called in late 2009 for an extension of the interim period to address the economic and political crisis that they diagnose in Darfur and across the country, by widening participation of political parties and social movements in decision-making and in the assessment of CPA implementation.<sup>55</sup> Any such

extension could force the hand of powerful Southern secessionists who believe that any retreat from the referendum deadline is a prelude to the repudiation of the CPA, which can only be answered with war. But an AU intervention might help provide the broader participation that many in the Northern opposition seek.

## The United Nations

The UN is involved in Sudan partly because it was invited there. The UN has made enormous peace-keeping investments in the country, where it runs two billion-dollar missions (one is a joint UN/AU mission in Darfur, UNAMID). It is also involved because the situation there affects international peace and security. Sudan is enmeshed in wider conflicts – the Great Lakes conflict, present in Sudan in the shape of the Ugandan rebel Lord's Resistance Army and its Ugandan army pursuers; the Western Sudan conflicts that stretch from Darfur to Southern Libya, Chad, Central Africa and Niger; the Horn of Africa conflicts that draw in Ethiopia, Eritrea and Somalia and which affect Eastern Sudan; and the Middle East conflict – Israeli bombers reportedly attacked lorries carrying weapons destined for Gaza in Eastern Sudan in 2009.

What is the UN's role? 'The UN will take the blame, it's our job,' said one senior UN official, referring to the risks of a breakdown in the peace process.<sup>56</sup> It may well do so – the UN Mission in Sudan (UNMIS), mandated to support the CPA, has a 10,000-strong military component, and UNAMID is authorized to have almost 20,000 (it has not yet reached full strength). These armies are far too small and ill-equipped to provide protection to the civilian population if there is an outbreak of violence. In any case, UNMIS does not have the mandate to provide protection except where its forces encounter a direct threat to civilians that they have the military capacity to repulse. Nowhere does UNMIS have an army that can match the heavy weapons of the SAF and SPLA.

The UN has considerable resources that it can invest in averting a conflict. Apart from military resources, the UN has many officials working on political analysis and the protection of human rights. They could promote discussions

with local populations, which would help them develop a better understanding of the political complexities ahead. Both missions also have agreements with the government allowing them to operate radio stations across Sudan. But the NCP has resisted allowing UN radio to broadcast in central Sudan in spite of an agreement entirely lacking in ambiguity.<sup>57</sup> A number of international radio stations have operating licences in Sudan – the BBC, Deutsche Welle and Radio France Internationale – all of which could consider making and broadcasting special programmes to help Sudanese people participate in discussions about their future.

Some UN officials are reluctant to use the organization's expensive military and political presence for local talking shops, and would like to see a more forthright commitment to protecting civilians – in spite of limitations of capacity and mandate. In the South, this would require the development of Southern security forces, human rights organs and judiciary to enable acts of violence to be met with a coordinated state response. The UN's forces could play a more active role in supporting the deployment (and not just the training) of police forces. The violence in Darfur and in Southern Kordofan is covered by two different missions and two different peace agreements. In Darfur, the UN is seeking the disbandment of some security forces and the reform of others. In both Darfur and Southern Kordofan, UNMIS and UNAMID face movement restrictions from the Northern security forces: there is no viable political framework for security force reform in Northern Sudan. In any case, civilian protection needs political frameworks if it is to go beyond counter-insurgency tactics.

The political frameworks that are needed for civilian protection must span the local and the national dimensions if they are to work – paying attention to local contradictions as well as recognizing the importance of elite bargaining, which is taking place in the shadow of the CPA deadlines, and on which many hopes for a peaceful transition depend. At the end of the interim period, the mandate of UNMIS will be reviewed, and any future version of the mission needs to be able to mediate local conflicts, while mobilizing the support of member states and the Security Council to mediate conflict at the national level.

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## 12. Conclusion and Recommendations

The state in Sudan is not inclusive and does not have the resources to control its vast territories. This combination of exclusion and incapacity has caused and complicated its wars, and the combination will probably outlast the CPA. Sudan's big decisions and intractable deadlines next year will preoccupy its rulers and they will probably keep intact the root causes of Sudan's wars. Sudanese and international actors who want to see a peaceful transition in Sudan need to use political processes to guide the state away from violence and inequality.

But the hoped-for peaceful transition cannot take place without a sequence of deals between the country's two governing elites. These deals can work because the two elites both share an interest in maintaining their revenue from oil, and they need each other to do so. The NCP appears to want to trade its support for the referendum – which may amount to support for secession – in return for the SPLM's support in an election; this amounts to support for its continued control over the North. But delays, bad faith and lack of vision mean that the two parties are not reaching this deal, and are wasting political energies on delaying tactics and brinkmanship, turning their back on Sudan's many marginal constituencies and on the many harsh lessons of their own and their region's history in the process.

The responsibility for a peaceful transition lies principally with the NCP and the SPLM. Both of these parties invited neighbouring countries and regional organizations, as well as the UN and Western powers, to sign the CPA and support its implementation. In the critical year ahead, well-orchestrated international support could play

an important role. But the job of internationals is not to find a fix that keeps Sudan together, or that grants the NCP control of the North and the SPLM control of the South. They need to support the kind of elite deals – particularly the oil deal – that could do much to prevent the outbreak of a war between Sudan's two biggest armies. But equally, they should press the NCP and SPLM parties to commit – belatedly – to processes that make the state more accountable, responsive and engaged with its people. This includes pressing for long-term investment in Sudan's many remote and violent peripheries. The final act of the CPA's interim period will otherwise set new precedents for the policies that separate elites from ordinary people.

### Recommendations

**Engagement with people:** Sudan's powerful elites need to reach agreement on a wide range of complex processes in the coming year. They also need to start an engagement with the country's diverse populations, if they are to avoid perpetuating the politics of exclusion and conflict and help citizens participate in the big decisions facing the country.

- The parties to the peace agreement need to show commitment to public information about the critical processes of the coming year.
- The two parties need to take steps to remove obstacles to the enjoyment of constitutional rights, including through the repeal of repressive legislation.
- A UN radio station for all Sudan would signal a clear NCP commitment to free information in the run-up to the elections. The parties need to explain how processes such as the census and border demarcation will work.
- The UN should invest in information dissemination through popular meetings. The AU Implementation Panel has a role in initiating these meetings, and its high-level representatives should play an active role in initiating these meetings. Particular attention should be paid to meetings in areas where Popular Consultations are due to be held. The international community should support dialogue in these areas at the highest level.

**International engagement:** The CPA's supporters need to work together to support the final act of the CPA, paying attention to local as well as national and international dimensions of the peace process.

- The US should continue building a coalition of support for a peaceful transition in the country, and recognize that its support for elite deals needs to be complemented by local engagement. US engagement is not enough; it needs to be orchestrated with that of other actors.
- The AU's proposal to support a new Global Political Agreement is based on the principle of inclusion that this report identifies closely with sustainable peace in Sudan. There is no peaceful alternative to inclusive politics in Darfur at the moment. However, the Implementation Panel led by former president Thabo Mbeki quickly needs to address perceptions that they are partisan if they are to be accepted by other political actors.
- Different mediators – including the UN, AU, IGAD and the US – need to coordinate their work. No prospective mediator in Sudan can afford to create the impression that parties can go shopping for sympathetic forums.
- International mediators should support processes which allow elites and ordinary people to learn about the experiences of the region; and regional organizations should convene high-level meetings to support the peace process. They should seek to learn from the experience of Eritrea and Somaliland.

**Security:** Breakdowns in security in Darfur, Kordofan and most states of Southern Sudan undermine popular engagement in elections, referendums and other processes. Both parties need to address the urgent need for local peace in the coming year, and the UN and other international actors should support them.

- In order to build trust between the parties, the UN should investigate claims that the NCP is supporting violence in Southern Sudan. The UN should also take steps to support the deployment of accountable security forces in Southern Sudan.
- The UN needs to make clear what protection it can offer civilians in the case of local or wider breakdowns

in Darfur and Southern Sudan, and it should report to the Security Council on the protection of civilians.

**Support for elections and plebiscites:** International actors need to provide adequate support for elections, Popular Consultations and the referendums while recognizing that these processes will complicate politics in regions of Sudan that are not at peace.

- Delays in reaching political agreements and adopting laws on referendums and Popular Consultations will put impossible pressures on electoral bureaucracies in the coming twelve months. Donors should commit now to mitigating those pressures with their resources.
- Donors and regional organizations should provide unstinting support for monitoring and reporting on the elections and other plebiscites at every stage of preparation. This means a significant increase in current commitments.

**Post-referendum arrangements:** In the event of Southern secession, the two parties to the CPA need to reach deals on security arrangements, oil revenues, water, assets and liabilities, currency, nationality and a host of other issues. In the event of unity, some of these issues may need review. Primary responsibility for these processes lies with the two parties. But both CPA supporters and foreign investors need to work together to limit the possibility of failure:

- CPA supporters, neighbouring countries and countries with major investments in Sudan need to support stable and durable arrangements, and avoid seeking their short-term interests from what will be a heated series of discussions.
- CPA supporters should work to include political parties and social movements from all areas of Sudan in discussions on post-referendum arrangements
- Sudan's two governing parties need to find means to include groups that have been so far excluded from the politics of the centre. A constitutional convention scheduled immediately after the referendum is one way to achieve this. International actors should help Sudanese actors – particularly opposition groups – to come up with their own proposals.

## Notes

- 1 Republic of the Sudan, Ministry of Justice, *Interim National Constitution of the Republic of Sudan 2005*, Article 222 (2).
- 2 All Political Party Conference, *Juba Declaration on Dialogue and National Consensus*, Juba, 30 September 2009; Peace and Security Council, *Report of the African Union High-Level Panel on Darfur*, African Union: Addis Ababa, 29 October 2009, PSC/AHG/2(CCVII), paragraphs 359ff; UN Security Council, *Report of the Secretary-General on Elections in Sudan*, 28 July 2009, S/2009/391, paragraph 77.
- 3 Jort Hemmer, *Ticking the Box: Elections in Sudan*, Clingendael Institute: The Hague, September 2009.
- 4 Abel Alier, *Southern Sudan: Too Many Agreements Dishonoured*, Abel Alier, Khartoum 2003, p. 38.
- 5 Michael K. Addo, 'Political Self Determination within the Context of the African Charter on Human and Peoples' Rights,' *Journal of African Law*, Vol. 32, No. 2 (Autumn 1988), p. 190.
- 6 At the time, IGAD was known as the Intergovernmental Authority on Drought and Desertification. It brings together Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda.
- 7 CPA, Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States, Article 3.6.
- 8 CPA, Machakos Protocol, Articles 1.1 and 1.5.5.
- 9 'Sudan's Kiir calls on Southerners to choose independence,' Sudan Tribune, 1 November 2009; 'Sudan's ruling NCP slams secession calls by Kiir,' *Sudan Tribune*, 2 November 2009, <http://www.sudantribune.com>.
- 10 Interview, October 2009.
- 11 Interview, October 2009.
- 12 Abel Alier, the former vice-president of Sudan, wrote a book on Southern Sudan with that phrase in its title (see note 4 above), and the frequency of its repetition has now itself become a useful indicator of levels of Southern suspicion.
- 13 CPA, *Chapeau*.
- 14 Guma Kunda, 'The denied land rights of the indigenous peoples and their endangered livelihood and survival: the case of the Nuba of the Sudan,' *Ethnic and Racial Studies*, 2007, Vol. 31, No. 5, pp. 1002ff.
- 15 See Human Rights Watch, Sudan, *Oil and Human Rights*, Human Rights Watch, New York, 2003.
- 16 Interview, October 2009.
- 17 *World Urbanisation Prospects: 2007 revised population database*, UN Department of Economic and Social Affairs.
- 18 Interview with NCP official, November 2009.
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