RENEWING THE PLEDGE:

RE-ENGAGING THE GUARANTORS TO THE SUDANESE COMPREHENSIVE PEACE AGREEMENT

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The clock is ticking fast towards what might be the most important date in modern Sudanese history – two referenda in Sudan that are likely to result in the breakup of Africa's largest state. With six months remaining until 9 January 2011, the scheduled date of the referenda, the run-up to, and outcome of, the vote must be managed with extreme care. The Guarantors to the Comprehensive Peace Agreement (CPA), who invested considerable effort in obtaining the CPA on 9 January 2005, have both a responsibility and an ability to help Sudan implement the CPA and prevent further conflict. It is imperative that the Guarantors urgently redouble their efforts to ensure adequate preparations for the referenda, and help secure agreements on sensitive issues such as border demarcation and oil sharing.

The experiences of recent years have demonstrated that focusing on one part of Sudan at the expense of another complicates the situation in both. Focusing too narrowly on the challenges of securing a peaceful post-CPA transition in Southern Sudan could backfire. The CPA Guarantors must not relegate the situation in Northern Sudan - especially the conflict in Darfur, where violence in May 2010 claimed the highest number of lives since 2008 - to the second tier of priorities.

As the Guarantors step up their political involvement, we hope to see generous donor support. More needs to be done now to bring in the requisite diplomatic, financial, and technical resources to put in place the requirements for the referenda and, after the vote, to improve Sudan's stability and dire state of human development.

We welcome the recent intensification of efforts by the Guarantors, particularly through the African Union (AU)-created Consultative Forum. We urge the Guarantors to:

1. Use the upcoming Consultative Forum meeting in Khartoum on 17 July 2010 to agree to an urgent expansion of international efforts to prepare for peaceful, credible and timely referenda in Southern Sudan and Abyei.

2. Restate publicly, clearly and collectively the internationally recognized right of the people of Southern Sudan to self-determination. At the July 2010 AU Summit in Uganda, African Heads of State should reaffirm their unequivocal support for this right and pledge to recognize the outcomes of two free and fair referenda. The League of Arab States and the Intergovernmental Authority on Development (IGAD) should follow suit, and be encouraged to do so by the Troika (US, UK and Norway) and the UN Secretary-General.

3. Appoint a high-level individual to travel to Abyei, Blue Nile, and Southern Kordofan consistently over the next six months to ensure adequate preparations for the referendum in Abyei and the popular consultations in Blue Nile and Southern Kordofan.

4. Call on the UN Mission in Sudan (UNMIS) to build up its civilian capacity in Abyei and facilitate inter-communal dialogue on the future of the area and call on the UN Development Program (UNDP) to consider extending its Southern Kordofan conflict prevention program to Abyei.

5. Persuade the National Congress Party of Sudan (NCP) and the Sudan People's Liberation Movement (SPLM), the two parties to the CPA, to make public commitments that the rights to freedom of movement, residence and property currently afforded to all Sudanese citizens will be preserved regardless of the outcome of the referenda.

6. Provide technical assistance to the CPA parties to reach an equitable agreement on oil sharing, to be backed up by independent third party monitoring.

7. Encourage UNMIS to carry out a careful assessment of its civilian protection capabilities, including identification of the weakest links, leading to preventive UNMIS deployments in flashpoint areas to deter future violence.

8. State clearly and publicly that international human rights standards must be respected in Northern as well as in Southern Sudan, and that the Guarantors will uphold their commitment to the goals of democratic transformation in Sudan.

9. Call on the African Union/UN Hybrid operation in Darfur (UNAMID) to focus on its primary objective of protecting civilians and to increase and make public its human rights reporting.

10. Call on donors to Sudan to revisit the present plan to hold a large donor conference only after the announcement of the referenda results and consider additional closed-door resource mobilization meetings to ensure adequate resources are available in time. Guarantors should encourage investment in renewed South-South dialogue, conflict prevention and strengthening local peace-building capacities.

1 Introduction

Six months remain until 9 January 2011, the scheduled date of two referenda that will determine the future of Sudan, Africa's largest country. In accordance with the Comprehensive Peace Agreement (CPA) that brought Sudan's civil war to an end in 2005, a self-determination referendum will decide whether Southern Sudan will secede, likely leading to the break-up of the Sudanese state. In Abyei, a second referendum will be held simultaneously. In it, Abyei residents will choose whether to retain the area's special administrative status in the north or join Southern Sudan. Regardless of the outcome of the vote, Sudan will be fundamentally changed once the interim arrangements set by the CPA lapse six months later, in July 2011, and the Interim National Constitution of 2005 is renegotiated.

Managing the final year of the CPA and the ensuing transition is a daunting task. Unfortunately, neither Sudanese actors, nor the so-called international Guarantors who have formally pledged to support them to implement the CPA, are well prepared.[1] Recent developments, such as the formation of a national commission to oversee the preparation and conduct of the Southern referendum, are welcome. However, many important deadlines, particularly regarding the demarcation of the North-South border and the establishment of the Abyei referendum commission, have slipped. Unless international efforts are immediately redoubled, the peace process could be derailed at this juncture and tensions could rise. In the worst case scenario, the parties could return to war. Key international actors have recognized that Sudan's conflicts must be "addressed seriously and simultaneously," engaging "with allies and with those with whom we disagree."[2] Indeed, the onus is now on the Guarantors to prove that they will not repeat the past mistake of focusing on one aspect of Sudan's conflicts at the expense of others.

2 A Comprehensive Approach to Sudan

In the past year, international attention has focused on Southern Sudan, neglecting the most important lesson of the past years: that Sudan's multiple conflicts are best addressed holistically. During the first years of the CPA, the pendulum of primary policy concern went too far in the direction of Darfur, resulting in inadequate attention to CPA implementation. Unfortunately, it has now swung the opposite way, just as unhelpfully. As a result, international actors have paid less attention to other important issues, such as democratic transformation, the unresolved conflict in Darfur, and other marginalized parts of Sudan, including Eastern Sudan and the Three Areas.

Making virtue out of necessity, the Guarantors have noted the primacy of local, Sudanese players in ensuring a peaceful transition after the expiration of the CPA.[3] While accurate, this conclusion should be coupled with a reaffirmation that international actors can and will play a positive role to support peace in Sudan. In addition to the priorities for political engagement outlined below, the Guarantors should bolster local civil society by supporting their efforts to prepare for and monitor the referenda.

Because no single international party can tackle the task at hand alone, recent efforts to improve coordination among the Guarantors are welcome.However, they need to be accelerated by cohesive and sustained engagement through the African Union (AU)-created "Consultative Forum",[4] including at the upcoming meeting of the Forum in Khartoum on 17 July 2010. International actors should also support the AU High Level Implementation Panel (AU HIP) and the Intergovernmental Authority on Development (IGAD) to help mediate negotiations between the two parties to the CPA over post-referenda issues, as per the request of the National Congress Party of Sudan (NCP) and the Sudan People's Liberation Movement (SPLM).

1 Guarantors of the CPA include the Intergovernmental Authority on Development (IGAD), African Union (AU), European Union (EU), Arab League, United Nations, Egypt, Italy, the Netherlands, Norway, United Kingdom (UK) and the United States (US).

2 United States, Department of State Office of the Spokesman, "Sudan: A Critical Moment, A Comprehensive Approach," Press Statement, 19 October 2009, http://www.state.gov/r/pa/prs/ps/2009/oct/130672.htm

3 United States, Department of State Office of the Spokesman, "Sudan Troika Joint Statement on the Sudanese Elections," Press Statement, 19 April 2010, http://www.state.gov/r/pa/prs/ps/2010/04/140408.htm Senate Foreign Relations Committee, "Testimony of Jonathan S. Gration, Maj Gen, USAF (Ret) U.S. Special Envoy to Sudan," 12 May 2010, p. 4, http://foreign.senate.gov/imo/media/doc/GrationTestimony100512a.pdf

4 The "forum, which will be co-chaired by the AU and the United Nations, will bring together the neighboring countries of the Sudan, IGAD, the League of Arab States, AU partners, including the Organization of the Islamic Conference, the EU and relevant bilateral partners, and will serve as a coordinating mechanism to support the efforts of the Sudanese parties in the implementation of the CPA, negotiation of post-referendum agreements and the achievement of an inclusive political settlement in Darfur in the context of a holistic approach to the challenges facing Sudan" (African Union, "Communiqué on the Consultative Meeting on Sudan," 8 May 2010, paragraph 11, http://www.splmtoday.com/docs/SPLM%20AU%20Communique%2008%20May%202010.pdf

3 The Referenda

The referenda in Southern Sudan and Abyei are arguably the most momentous events to happen in Sudan since its independence in 1956. Alarmingly, the current level of preparation is poor and the possibility of holding two free, fair and peaceful referenda in January 2011 is becoming more difficult as each day passes. While the national referendum commission has just been established, it has only until September to supervise the completion of the voter registration process, if this is to be concluded three months ahead of the vote, as per the referendum law.[5] Worryingly, the Abyei referendum commission has still not been established.

Preparations should start immediately to ensure that the process is fair, legitimate and credible and provides for robust monitoring from local civil society. Sudanese civil society monitors have called for the early invitation of international monitors and observers for the duration of the referenda processes. Six months before the referenda, the UN Mission in Sudan (UNMIS) has yet to deploy the required personnel to support their technical aspects and to take on a considerable proportion of their logistical burden. Additionally, the UN and relevant Sudanese authorities should have in place joint security plans for the referenda and popular consultation processes, particularly because incidents of post-election violence could spread and intensify over the coming months if unaddressed.[6]

Preparations for the referenda will benefit from a careful review of the November 2009 voter registration process and the April elections. These processes, deemed to have fallen short of international standards, had to grapple with many of the same political, logistical, and technical challenges that will be faced by the referenda.[7] As documented by Sudanese civil society, the registration process for the April elections took place in a contentious environment marked by obstruction of peaceful political activity, manipulation of constituencies and voter registration, and the tightening of restrictions on civil and political freedoms that persisted during and after the elections.[8]

The Guarantors should request public commitments from relevant Sudanese authorities that they will seek an environment free from intimidation and harassment both before and during the referenda and the popular consultations. The Guarantors should also support civil society efforts to monitor implementation of the Referendum Act and the National Election Act and bring timely pressure to bear on the Referendum Commission and the National Election Commission in the event of delay or obstruction.

5 In January 2010, the Assessment and Evaluation Commission (AEC) wrote, "implementation, including in particular a complex voter registration process, will be time consuming" (Assessment and Evaluation Commission, "January 2010 Evaluation Report," January 2010, p. 4, http://www.aec-sudan.org/docs/aec/2010_AEC_January_Evaluation-en.pdf).

6 Human Rights Watch, Democracy on Hold: Rights Violations in the April 2010 Sudan Elections, June 2010, http://www.hrw.org/en/reports/2010/06/29/democracy-hold-0

7 According to international observers from the Carter Center and the EU, both the NCP and the SPLM engaged in activities that made the elections neither free nor fair. The South, as the Carter Center has noted, "experienced a high incidence of intimidation and the threat or use of force . . . State interference in the campaigns of opposition candidates was widespread" (Carter Center, The Carter Center Election Observation Mission in Sudan Presidential, Gubernatorial, and Legislative Elections Preliminary Statement, Press Statement, 17 April 2010, http://www.cartercenter.org/news/pr/sudan-041710.html

8 African Center for Justice and Peace Studies, Sifting Through Shattered Hopes: Assessing the Electoral Process in Sudan, May 2010, p. 10, http://www.acjps.org/Publications/Reports/2010/Assessing_Elections_in_Sudan.pdf

Transgressions in Southern Sudan that may have been overlooked during the elections will be scrutinized during the referenda, potentially casting doubt on the outcome and escalating tensions. An urgent expansion of national and international efforts to secure credible and timely referenda is required to avoid such a potentially violent scenario. It is also necessary to guarantee the people of Southern Sudan and Abyei their internationally recognized right to decide freely on their own future. Such expanded efforts should entail an acceleration of practical arrangements for the referenda, including voter registration and preparation of security plans to ensure civilians are not endangered.

These efforts should be complemented by a simple but important confidence-building measure that could be taken by the CPA Guarantors: restating publicly, clearly and collectively the internationally-recognized right of the people of Southern Sudan to self-determination. While all Guarantors have gone to great lengths to avoid statements that may be taken to prejudge the outcome of the referenda, the AU in particular has had to grapple with the question of its own impartiality. That has arisen as a result of the AU's existential dilemma – on the one hand as a Guarantor of the CPA and on the other as an organization representing mostly post-colonial states deeply uncomfortable with any changes in sovereign borders.[9] The resulting climate of suspicion must be alleviated in order for the AU HIP to play the mediator role most effectively.

At the July 2010 AU Summit in Uganda, Heads of State should reaffirm their unequivocal support for the right of the people of Southern Sudan to self-determination, and pledge to recognize the outcomes of two credibly-conducted referenda. The League of Arab States and the IGAD should follow suit, and be encouraged to do so by the Troika (the United States (US), the United Kingdom (UK) and Norway) and the UN Secretary-General. Such steps are important to assuage Southern fears of concealed motives and to assure the people of Southern Sudan and Abyei that their democratic choice will be respected. In the event of a Southern vote for independence, they will be imperative to pave the way for a smoother recognition process. Any extensive delays in recognition would not just be politically damaging, but could also leave Southern Sudan in a financial limbo if it proves unable to rely on the full assistance of international financial institutions.[10]

9 International Crisis Group, Sudan: Regional Perspectives on the Prospect of Southern Independence, 6 May 2010, p. 19-20, http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan/159-sudan-regional-perspectives-on-the-prospect-of-southern-independence.aspx

10 In the case of Kosovo, still unrecognized by most UN members, the IMF and the World Bank took over two years following Pristina's declaration of independence to issue their first loans. Kosovo declared independence on 17 February 2008 yet only joined the World Bank and the IMF on 29 June 2009.

4 The Three Areas

For all the re-invigorated attention to CPA implementation, a number of related questions remain unresolved. Three of the most prominent examples are the Three Areas and the issues of citizenship and oil. Of the so-called Three Areas – Southern Kordofan, Blue Nile and Abyei – Southern Kordofan and Blue Nile are perhaps the two most neglected areas covered by the CPA. The CPA provides for a web of interim arrangements in these two regions, which are to be confirmed or amended during a process of "popular consultations" following national and state elections. Regardless of the outcome of these consultations, Southern Kordofan and Blue Nile will remain part of Northern Sudan.[11]

The popular consultations are a key element of the CPA. Local and international NGOs should engage in extensive public information campaigns to dispel widespread confusion about the popular consultations and their potential impact. Supportive actions by the Guarantors will be particularly helpful. Allowing the popular consultations to slip would send the wrong message at this critical time, once again devaluing the voice of the Sudanese people. Moreover, Southern Kordofan and Blue Nile were sites of some of the heaviest and most violent conflict during the war and, as recently stated by the Sudanese Church, "failure to address the aspirations of the people in these two states could derail any peaceful post-2011 transition."[12] In addition to the Popular Consultations, state assembly elections are due in Southern Kordofan, which could fuel violent conflict if compromised. Sudanese civil society organizations are calling for international observers to be present during the elections and for international support for their own monitoring efforts.[13]

In Abyei, the question of residency, that is, who is entitled to vote in the referendum, has not been fully addressed, and the border, though agreed, remains to be demarcated. These unresolved issues are stoking tension and creating mistrust between the two CPA parties and the two major communities in the Abyei area (Ngok Dinka and Misseriya). This is further exacerbated by confusion and misinformation about the border demarcation process and anxiety around the residency criteria. The Abyei referendum commission is yet to be established. Once operational, it will need international support to perform "the most sensitive task" of developing the residency criteria.[14]

The Guarantors should need no reminder that Abyei is prone to outbursts of conflict. As recently as May 2008, fighting between the Sudan Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA) displaced over 60,000 people, virtually destroying the town of Abyei. To help prevent a similar crisis in the future, UNMIS should build up its civilian capacity in Abyei and facilitate inter-communal dialogue on the future of the area, working to build trust and dispel myths and misapprehension.[15] Public information campaigns by UNMIS, explaining how people might be affected by the potential post-referenda scenarios, could prove critical in communicating clearly and transparently to the population, especially to the Misseriya regarding their grazing rights.[16] In addition, the UN Development Program (UNDP) should consider extending its Southern Kordofan conflict prevention program into Abyei.[17]

With regard to the Three Areas, the Guarantors should appoint a high-level individual to travel to Abyei, Blue Nile, and Southern Kordofan consistently over the next six months to ensure adequate preparations for the referendum in Abyei and the popular consultations in Blue Nile and Southern Kordofan. The Three Areas not only reflect the larger dynamics of the NCP-SPLM relationship but also constitute a potential stumbling block to resolving other contentious issues. Ensuring progress before the referenda is therefore not just desirable but necessary.

11 The Resolution of the Conflict in Southern Kordofan/Nuba Mountains and Blue Nile States, 26 May 2004, http://ocha-gwapps1.unog.ch/rw/RWFiles2004.nsf/FilesByRWDocUNIDFileName/SZIE-5ZJRBQ-gossplm-sdn-26may2.pdf/$File/gossplm-sdn-26may2.pdf.

12 The Sudanese Church has pleaded for focusing on Southern Kordofan and Blue Nile (Sudanese Church, Choose Life: A Vision for a Peaceful Sudan, Sudanese Church Position Paper on the Current Political Situation, the referenda and Popular Consultation in 2011 and Beyond, 5 May 2010, p.3, http://cpn.nd.edu/assets/25352/choose_life_scc_position_paper.pdf).

13 TAMAAM, Sudan Domestic Election Monitoring and Observation Programme (SuDEMOP), and African Center for Justice and Peace Studies Open Letter to the African Peace and Security Council and Special Envoys, 5 May 2010, http://www.acjps.org/Publications.html

14 In addition, the AEC "recommended that the international community stand ready to provide expert assistance in helping to formulate such criteria should the Commission so request" (Assessment and Evaluation Commission, "January 2010 Evaluation Report," January 2010, p. 9, http://www.aec-sudan.org/docs/aec/2010_AEC_January_Evaluation-en.pdf).

15 According to recent reports, UNMIS has only one civil affairs officer in Abyei. NGO Interviews, Abyei.

16 According to the AEC, "a migration management framework, including a policy on arms control, should be developed and agreed as a matter of urgency with the Ngok Dinka and Misseriya communities. This could involve UN or AAA-supported reconciliation conferences, and some stepping up of DDR" (Assessment and Evaluation Commission, "January 2010 Evaluation Report," January 2010, p. 9, http://www.aec-sudan.org/docs/aec/2010_AEC_January_Evaluation-en.pdf).

17 UNDP, "Recovery of Abyei Area through Good Governance and Poverty Reduction," http://www.sd.undp.org/projects/cp5.htm.

5 Citizenship

The question of citizenship is particularly vexing, especially in light of rumblings in Khartoum that Southerners in Northern Sudan might be deported or stripped of their citizenship if Sudan breaks up.[18] With 1.5 to 2 million Southern Sudanese in Northern Sudan, and a considerable number of Northerners in Southern Sudan, this issue must be addressed before the referenda. In the short time remaining, confidence building measures should be considered to reduce tension. In consultation with Sudanese civil society, the Guarantors should work to persuade the NCP and SPLM to make public commitments that the rights to freedom of movement, residence and property currently afforded to all Sudanese citizens will be preserved regardless of the outcome of the referenda. While acknowledging the sovereign right of states to define their own citizenship criteria, international actors must insist on full conformity to international law, including regional human rights obligations and customary practice. The Guarantors should ask for a commitment from the NCP and SPLM to prevent statelessness and to accede to the two international Conventions relating to Statelessness. [19]

The Guarantors and the UN system have a responsibility to prepare for the worst case scenario. Such contingency planning has already begun but the process needs to move from developing scenarios to planning out concrete courses of action. Contingency planning must especially emphasize the Three Areas and Southern internally displaced persons (IDPs) in and around Khartoum and must be coordinated between international actors in Northern and Southern Sudan.[20] The Guarantors should also solicit a plan of action from the negotiating teams in Addis Ababa.

6 Oil Sharing

The oil wealth sharing agreement of the CPA, by which the Government of Southern Sudan (GOSS) gets 98 percent of its income, comes to an end in January 2011.[21] New oil arrangements must be made whatever the outcome of the referenda. If the result is unity, Southern Sudan will need to be allocated a fair share of the country's revenues. If the outcome is independence, the new country will be landlocked and dependent upon Northern Sudan to export its oil, something that Khartoum could refuse or make prohibitively expensive. Exporting oil via Kenya in the short term will not be possible as it will require construction of a pipeline.

An agreement needs to be reached before the referenda on how Northern and Southern Sudan will cooperate to export oil when current arrangements end with the lapse of the CPA in 2011. Whether an equitable agreement can be reached is arguably the single biggest factor that affects the prospects for peace. Hope derives from the fact that both Northern and Southern Sudan need each other in order to maintain oil production. However the risks are high: it will be politically difficult for both sides to negotiate away oil revenues. If no compromise is reached, a return to conflict is possible.

18 Refugees International, Sudan: Preventing Violence and Statelessness as Referendum Approaches, June 29, 2010, p. 2, http://www.refugeesinternational.org/policy/field-report/sudan-preventing-violence-and-statelessness-referendum-approaches

19 Senate Committee on Foreign Relations, Subcommittee on African Affairs, Assessing Challenges and Opportunities Facing Sudan, Testimony of David Mozersky, 111th Cong. 26 May 2010, p.3, http://foreign.senate.gov/imo/media/doc/MozerskyTestimony100526p.pdf ; See also Refugees International, Sudan: Preventing Violence and Statelessness as Referendum Approaches, June 29, 2010, http://www.refugeesinternational.org/policy/field-report/sudan-preventing-violence-and-statelessness-referendum-approaches Convention Relating to the Status of Stateless Persons (Signed 26 April 1954; Entry into force: 6 June 1960); Convention on the Reduction of Statelessness, (Signed 30 August 1961, Entry into force: 13 December 1975).

20 Refugees International, Sudan: Preventing Violence and Statelessness as Referendum Approaches, June 29, 2010, http://www.refugeesinternational.org/policy/field-report/sudan-preventing-violence-and-statelessness-referendum-approaches ; NGO Interviews, Sudan and New York.

21 Government of Southern Sudan, Ministry of Finance and Economic Planning, "Approved Budget 2010," 3 February 2010, http://www.goss-online.org/magnoliaPublic/en/ministries/Finance/mainColumnParagraphs/0/content_files/file20/Budget%20 2010%20-%20Final.pdf.

To avoid a worst-case scenario, the CPA Guarantors should provide technical assistance to the negotiating parties and work to persuade the parties to reach an equitable agreement. In the current negotiations between the NCP and SPLM, there are several oil-related issues that will need to be addressed, including agreements as to:

- how the oil resources will be divided between Northern and Southern Sudan (whether via pipeline fees, sharing of revenues or other mechanisms);
- carrying out a financial audit of the country's oil sector;
- what happens to the current concessions, some of which straddle the likely North-South border;
- issuing new concessions; and
- the equity stakes held by state-owned oil companies.[22]

Any proposed revenue sharing between Northern and Southern Sudan after 2011 needs to be backed up by independent third party monitoring, funded by Sudan's donors, so that both sides can trust that the arrangement is being carried out fairly.[23] The current wealth sharing agreement has not engendered mutual trust and demonstrates the need for a verification mechanism.

7 The United Nations Mission in Sudan (UNMIS)

While UN Security Council Resolution 1919 of 30 April 2010 usefully directed UNMIS to "implement a mission-wide civilian protection strategy, comprehensively throughout the mission area,"[24] the gap between Security Council instructions regarding civilian protection and UNMIS capabilities remains ill-defined and is therefore difficult to close. It is imperative that a careful assessment is carried out and the weakest links identified. Such an assessment should lead to preventive UNMIS deployments in flashpoint areas to deter future violence through active patrolling and presence. The Security Council should, in keeping with the responsibility to protect the people of Sudan from future atrocities, address the issue by sending clear messages to parties to the CPA and others not to resort to violence. It should also ensure that UNMIS has adequate resources for the job.

The two parties should clarify the role UNMIS will be expected to play before, during and after the referenda. It is yet unknown whether a UN presence will remain in Southern Sudan and the Three Areas after the end of the Interim Period in July 2011. This uncertainty must also be addressed, as it could have negative implications on operational plans of UNMIS and other actors, and affect UNMIS' ability to gain the full trust of the population it has been mandated to protect.

22 Both the Government of National Unity (GoNU) and the Government of Southern Sudan (GOSS) have agreed to carry out such an audit [NCP-SPLM points of agreement, August 2009, a document arising from the trilateral talks hosted by the US] and the Norwegians have drafted Terms of Reference for the audit. There is unlikely to be time to undertake the audit prior to the referendum, but the parties should agree the Terms of Reference for the audit during the post-2011 negotiations and should agree how the findings of the audit will be dealt with after the referendum.

23 For example, if the arrangement involves Northern Sudan charging Southern Sudan a per barrel fee for use of the Northern pipelines, there should be an independent company employed to verify the volumes of oil being transported. See Global Witness, Fuelling Mistrust: The Need for Transparency in Sudan's Oil Industry, September 2009, http://www.globalwitness.org/fuellingmistrust.

24 UN Security Council, Security Council Extends United Nations Presence in Sudan Until 30 April 2011, Calling on Missions to Take Lead in Preparations for Next Year's Referendum, 26 April 2010, http://www.un.org/News/Press/docs/2010/sc9916.doc.htm.

8 The Situation in Northern Sudan

For all their magnitude and importance, focusing too narrowly on the challenges of securing credible referenda and a peaceful post-CPA transition in Southern Sudan could backfire. The last years have shown that concentrating attention on one part of Sudan at the expense of another can complicate the situation in both. The CPA Guarantors must not relegate the situation in Northern Sudan, especially the conflict in Darfur where recent violence claimed the highest number of lives since 2008, to the second tier of priorities.[25] The precedent set by the elections – of sacrificing the spirit of the CPA for the sake of political expediency – is of concern. Unfortunately, the Guarantors ignored numerous shortcomings in the elections and implicitly acknowledged that the elections were acceptable according to "African standards."[26]

In reality, the elections did very little to put in place a sustainable framework for a more democratic Sudan. Repressive laws remained in place, or were revised in ways that did not fully address human rights concerns, in clear contravention of the CPA and Sudan's 2005 Interim National Constitution. This promoted a restrictive environment marked by harassment, intimidation, arbitrary arrests and other human rights violations.[27] Although they should not be easily dismissed, the limited gains of the first multi-party election in 24 years remain fleeting and quickly reversible.[28]

Placing a clear premium on short-term "stability" over promotion of respect for human rights and democracy does not bode well for the post-CPA future of Northern Sudan, should Southern Sudan choose independence. It spares policy makers from difficult decisions today that will only compound future challenges. Under the secession scenario, there is a risk that the NCP may trade cooperation on post-referenda arrangements for minimized scrutiny of democratic transformation and human rights issues. The CPA Guarantors must state clearly and publicly that they will not engage in such bargains, that international human rights standards must be upheld and that they will maintain their commitment to the goals of democratic transformation in Northern Sudan.[29]

The Guarantors should also encourage debate about Northern Sudan's post-CPA development, including adopting a new national constitution following the end of the Interim Period, planning for future democratic elections, promoting greater transparency in public spending and supporting efforts at national reconciliation.

25 Alex de Waal, "Sharp Increase in Lethal Violence in Darfur," Social Science Research Council Blog, 5 June 2010, http://blogs.ssrc.org/sudan/2010/06/05/sharp-increase-in-lethal-violence-in-darfur/.

26 According to Russia's Special Envoy on Sudan, See Sudan Tribune, "Russia says Sudan Elections Fair by African Standards," 20 April 2010, http://www.sudantribune.com/spip.php?article34819; Human Rights Watch, Democracy on Hold: Rights Violations in the April 2010 Sudan Elections, June 2010, http://www.hrw.org/en/reports/2010/06/29/democracy-hold-0.

27 Human Rights Watch, Sudan: Flawed Elections Underscore Need for Justice, 26 April 2010, http://www.hrw.org/en/news/2010/04/25/sudan-flawed-elections-underscore-need-justice

28 Human Rights Watch, Sudan: End Post-Election Repression, 24 May 2010, http://www.hrw.org/en/news/2010/05/24/sudan-end-post-election-repression

29 The tension is evident, for example, in the US White House statement on the Sudanese elections. While the US recognizes that, "In the months and years ahead it will be critical to continue pressing for progress for the civil and political rights of all of the Sudanese people [...and t]his priority will not expire with the CPA," it merely lists the many problems with the elections, expresses nothing beyond "regret" (United States, White House, "Statement by the Press Secretary on Elections in Sudan," Press Statement, 20 April 2010, http://www.whitehouse.gov/the-press-office/statement-press-secretary-elections-sudan.).

9 Darfur

Following a spike of international attention on Darfur between 2004 and 2007, the region is once again competing, largely unsuccessfully, for sufficient diplomatic concern. While the latest episode of Chadian-Sudanese rapprochement is still holding, over 2.3 million IDPs remain in camps without any imminent prospect of returning home.[30] Together with the 300,000 refugees in Chad and the Central African Republic, they constitute, according to the African Union/UN Hybrid Operation in Darfur (UNAMID), "a time bomb" and are leading to "radicalization of the population and some extremism."[31] The humanitarian situation has deteriorated during the course of 2010, with the United Nations Children's Fund (UNICEF) reporting that global malnutrition rates throughout Darfur have reached the emergency threshold.[32]

After fits and starts, and despite intensive efforts to secure an agreement, the Doha peace process is struggling, as the mediation process is now attempting to secure a ceasefire agreement with a rebel faction (the Liberation and Justice Movement) that does not have a major presence in Darfur.[33] The current strategy to secure a comprehensive settlement is based on two assumptions that are far from certain: that a planned Darfur-Darfur Conference will succeed where the previous process failed, and that its potential success will indeed force the major belligerents in Darfur back to the negotiating table.

Meanwhile, UNAMID, the largest and most expensive international peacekeeping operation in the world, is finally near full deployment in Darfur, after three years of serious travails.[34] It has improved the security environment where deployed but, not surprisingly, has had no beneficial impact on areas where its access has been restricted or cut off by the Sudanese authorities or rebel movements.[35] Lack of access has been an increasingly worrisome problem in recent months, as the security situation in Darfur has deteriorated.

The most glaring recent example of such a pattern has been the situation in Jebel Marra and Jebel Moon, where Sudanese government forces have clashed with elements loyal to the Sudan Liberation Army (SLA) leader Abdul Wahid (in Jebel Marra) and with the Justice and Equality Movement (JEM) (in Jebel Moon). As a result, access to those areas by UNAMID and humanitarian agencies has been restricted since February 2010. Additionally, UNAMID reported inter-tribal "Arab" fighting (Misseriya and Nawaiba-Rizeigat) in South and West Darfur. According to the head of UNAMID, Joint Special Representative (JSR) Ibrahim Gambari, "these clashes have resulted in substantial civilian fatalities and the displacement of communities, and have hampered the delivery of humanitarian assistance."[36] A leaked UNAMID report has confirmed 597 fatalities from armed violence for the month of May alone.[37] Regrettably, neither the Mission nor the UN Secretary-General managed to lobby successfully for timely humanitarian or UNAMID access to these most affected areas.

30 USAID Sudan Monthly Update May 2010, p. 2, http://www.usaid.gov/locations/sub-saharan_africa/countries/sudan/docs/may10_monthly_update.pdf.

31 United Nations Security Council, 6318 meeting, Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (S/2010/213), 20 May 2010 (S/PV.6318).

32 Eric Reeves, "Humanitarian Conditions in Darfur: An Overview (Part 1)," Sudan Tribune, 24 June 2010, http://www.sudantribune.com/spip.php?article35480.

33 Julie Flint," Going Nowhere in Doha," Social Science Research Council Blog, 15 June 2010, http://blogs.ssrc.org/sudan/2010/06/15/going-nowhere-in-doha/.

34 Facts and Figures, 2010, http://www.un.org/en/peacekeeping/missions/unamid/facts.shtml.

35 UNAMID Information Note, "Statement by UNAMID JSR to the United Nations Security Council," 14 June 2010, http://unamid.unmissions.org/Default.aspx?ctl=Details&tabid=899&mid=1072&ItemID=9218; United Nations Security Council, 6318 meeting, Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (S/2010/213), 20 May 2010 (S/PV.6318).

36 UN News Centre, "Darfur: Security Council Warned of 'Significant Challenges to Peace Process," 20 May 2010, http://www.un.org/apps/news/story.asp?NewsID=34761&Cr=darfur&Cr1

37 BBC News, "Darfur Death Toll Rises to Two-Year High in Sudan," 7 June 2010, http://news.bbc.co.uk/2/hi/world/africa/10259604.stm; UN News Centre, "UN Relief Chief Sounds Alarm on Darfur's Dire Humanitarian Situation," 29 May 2010, http://www.un.org/apps/news/story.asp?NewsID=34855&Cr=darfur&Cr1.

UNAMID's current leadership has publicly reaffirmed the Mission's core mandate of protection of civilians and humanitarian personnel.[38] However, it remains inadequately resourced, according to JSR Gambari, "to fulfill its full potential as envisaged in the founding Security Council resolutions," in no small part because "critical enabling units such as military utility helicopters and aerial surveillance units have not yet been pledged by anyone to the Mission."[39] These handicaps notwithstanding, UNAMID must persevere in focusing on its primary objective to protect civilians and resist, privately and publicly, any attempts to limit its operations in this regard by the Sudanese government or the rebel movements. Political support from the UN Security Council and the AU Peace and Security Council is required to ensure the Sudanese government's full cooperation in permitting UNAMID forces to interpret and implement their mandate to protect civilians and humanitarian personnel adequately. Concurrently, UNAMID needs to take the initiative to robustly implement the applicable rules of engagement.

Moreover, UNAMID's limited capacity should not be further depleted by a premature shift towards a policy of supporting development and early recovery in Darfur. Whilst UNAMID has a place in such conversations, programming in that regard should only be explored if it does not blur humanitarian lines. UNAMID's first preoccupation must remain its core mandate: civilian protection, providing security and securing humanitarian access to areas that require aid. Furthermore, there are fears that the peacekeeping force has become "domesticated," increasingly unwilling to investigate and make public any information criticizing the Sudanese Government. In response, UNAMID and the Office of the High Commissioner for Human Rights should increase and make public their human rights reporting.

38 United Nations Security Council, 6318 meeting, Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (S/2010/213), 20 May 2010 (S/PV.6318).

39 UNAMID, "JSR Gambari briefs UN Security Council on the Situation in Darfur," 20 May 2010, http://unamid.unmissions.org/Default.aspx?tabid=888&ctl=Details&mid=1062&ItemID=8886

10 The Missing Link: Southern Sudan after the Referenda

Sudan's problems have a shelf life that will far outlast any uptick in international attention to the country as a result of the referenda alone. External assistance to resolve them has considerable financial implications. Unfortunately, even when assistance has been promised, it has often failed to arrive. As the Assessment and Evaluation Commission (AEC) has noted, while in 2008 donors pledged nearly 5 billion dollars for Northern and Southern Sudan, including humanitarian assistance in Darfur, "delays in disbursement have also impacted on delivery of CPA related programs" which are "in many cases far behind schedule."[40]

In addition to delivering on their promises, donors must tackle the scourge of corruption and promote institutional reform, better governance and respect for human rights in Southern Sudan. Moving toward more effective governance in Southern Sudan will also require tremendous political will by Juba and local authorities. Its manifestations should be encouraged and its absence censured. A newly sovereign Southern Sudan could be expected to be keenly sensitive to such pressures. More thought should be given to the most appropriate ways to make good use of what may well be a short window of opportunity for donors. If it becomes independent, Southern Sudan should take a first step of signing up to the Extractive Industries Transparency Initiative, a coalition of governments, companies and civil society groups that aims to strengthen governance by improving transparency and accountability in the extractives sector.

As the US Special Envoy to Sudan has noted, Southern Sudan will also need "strengthened capacity to undertake effective and accountable governance, provide security, and deliver services to its citizenry. A robust, concerted international effort will be required to assist in this capacity-building effort."[41] The "Juba Diplomatic Expansion" he has announced in that regard is welcome but, at an initial size of about ten additional officers, it pales in comparison to the needs of Southern Sudan. While the US cannot be expected to shoulder the burden alone, it should set a stronger example for the other Guarantors to emulate.

Indeed, according to USAID, reconstruction in Southern Sudan is "severely under-resourced" and technical assistance provided to GOSS is a small fraction of what the international community previously provided elsewhere. In Mozambique, for example, the number of international technical experts deployed was thirty times greater than that in Southern Sudan at present, while tiny Timor Leste received thirteen times more help.[42]

The uncertainty over Southern Sudan's political future after the referenda should not be allowed to affect either current assistance or longer-term donor funding. All donors, bilateral and multilateral, should develop strategies for sustained engagement regardless of the outcome of the referenda and should seek to coordinate their efforts more effectively. The present plan to hold a large donor conference only after the announcement of the referenda results should be revised. In addition, more should be done in the interim to ensure adequate resources are available in time, such as through additional closed-door resource mobilization meetings among top donors. Also, involving UNMIS is vital, given that an international presence will likely remain in Southern Sudan after the referenda.[43]

Finally, donors should acknowledge that their investment in Southern Sudan requires addressing the underlying causes of insecurity and violence, often linked to deep-seated communal grievances and competition for scarce resources. Additional investment will be needed in renewed South-South dialogue, conflict prevention and strengthening local peace-building capacities. The long-term project of reforming the Southern security services (both the SPLA and the Southern Sudan Police Service) must focus on the people of Southern Sudan and put their protection at its core. Paying insufficient attention to local conflicts could result in Southern Sudan remaining fragile and vulnerable to external interference, potentially erasing painstaking gains made through the overarching CPA process.

40 Assessment and Evaluation Commission, "January 2010 Evaluation Report," January 2010, p. 14,http://www.aec-sudan.org/docs/aec/2010_AEC_January_Evaluation-en.pdf

41 Senate Foreign Relations Committee, "Testimony of Jonathan S. Gration, Maj Gen, USAF (Ret) U.S. Special Envoy to Sudan," 12 May 2010, p.3, http://foreign.senate.gov/imo/media/doc/GrationTestimony100512a.pdf.

42 USAID, Government of Southern Sudan Functional Capacity Prioritization Study: Consultative Draft, 3 December 2009. p. 9; Joint NGO Briefing Paper, Rescuing the Peace in Southern Sudan, 7 January 2010, p. 25, http://www.oxfam.org/sites/www.oxfam.org/files/rescuing-peace-southern-sudan.pdf.

43 For example, at present coordination among UNMIS and the World Bank is in its infancy. NGO Interviews, New York.

11 Conclusion

Over the last few years, international appreciation for the complexities and inter-connectedness of Sudan's multiple conflicts has grown. What is now required, at this eleventh hour of the CPA, is translating this awareness into policy. The current international approach remains deficient in three primary ways.

First, the justified preoccupation with the upcoming referenda has unfortunately come at the expense of much-needed attention to the situation in Northern Sudan, in particular to the deteriorating security environment in Darfur and the worsening state of human rights and freedoms throughout Northern Sudan. Notwithstanding all claims to the contrary, the CPA Guarantors have shown an inability to work simultaneously on multiple tracks and leverage each of them positively against the other.

Second, the focus on Southern Sudan has been wide but shallow. Few of the outstanding areas of CPA implementation have been resolved. The outpouring of verbal support has not adequately translated into the necessary diplomatic, financial, and technical resources to enable two free and fair referenda to be held on time and to improve Southern Sudan's stability or human development.

Third, the Guarantors have allowed the two parties to come precariously close to a point at which the 9 January 2011 date for the holding of two free and fair referenda becomes practically impossible yet is politically difficult to move. While neither party to the CPA seems to want war, both have been preparing for its possibility. The time to pull back is limited and Sudan could descend into conflict again.

It is not too late to correct these shortcomings. The CPA offers a rare opportunity in modern Sudanese history to peacefully challenge Sudan's ruling structure and to secure equitable treatment through the ballot box, not through the barrel of a gun. Its promise should not be extinguished with the referenda or the end of the Interim Period. The Guarantors should act now, and in concert, to live up to the role to which they committed solemnly in Naivasha.

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