



Grading the Benchmarks

April 2010

Executive summary

With its Sudan policy review, the Obama administration promised a diplomatic approach based on a clear-headed analysis of the situation on the ground across a variety of indicators. According to the strategy, the parties in Sudan would be held accountable for their actions, and incentives and pressures would be deployed in response to progress or backsliding on the ground. Now, almost six months after the policy review, an honest accounting of the “benchmarks” for progress in Sudan suggests how much important work remains to be done if broader conflict is to be avoided.

The national reforms for Sudan encompassed in the 2005 Comprehensive Peace Agreement have largely been jettisoned as the South’s ruling Sudan People’s Liberation Movement, or SPLM, and other opposition parties have been unable to overcome resistance by the regime to such reforms. While there have been major improvements in relations between Sudan and neighboring Chad, the security situation in both Darfur and South Sudan remains poor, with significant numbers of Sudanese still displaced and vulnerable. Humanitarian access in Darfur and in some key border areas between North and South Sudan remains highly limited as part of the Sudanese government’s continuing strategy to deliberately conceal the scale of human suffering in these areas. There has been an ongoing peace process in Darfur, accompanied by efforts to unify rebel groups. The efficacy and durability of this peace process, however, are sharply in question, all the more so given that the government of Sudan was engaged in a major offensive in Darfur as talks were underway.

The handling of the recently completed national elections is of particular concern. Despite overwhelming evidence that the environment surrounding elections was neither free nor fair, and a widespread opposition boycott, the Obama administration seemed reluctant to offer an honest assessment of the numerous obstacles to a free election in the run up to voting. The administration has since noted that the election did not meet international standards, but there has been no suggestion that the NCP would face a cost for subverting the will of the Sudanese people. Negotiators from the ruling National Congress Party in Khartoum and the SPLM have made some progress in laying the groundwork for the South’s independence referendum in January 2011, but the list of issues that need resolution to keep the referendum on track and manage the likely transition to independence is enormous.

Obviously, successfully negotiating the peaceful division of Africa's largest country while simultaneously resolving the conflict in Darfur is a Herculean task, rich with dangers at virtually every step. There will most certainly have to be intensive dialogue not only among the parties in Sudan, but among key international actors, to reach an acceptable outcome and avert widespread conflict. At times, difficult negotiations will entail unsavory compromises. That said, the Obama administration built a diplomatic approach to Sudan around periodic, hard-nosed policy assessments of the situation on the ground and the judicious deployment of incentives and pressures in response to the situation on the ground. Yet to date, there are virtually no indications that the administration has held any of the parties to account for their actions since the policy review was announced, and senior administration officials appear badly divided on their approach to Sudan. There is a pressing need for Secretary of State Clinton and President Obama to become directly involved, not only to signal that Sudan is a priority of the administration, but to get the inter-agency "deputies" review process and the overall approach to diplomacy back on track.

Introduction

In January 2010, nine organizations – the Enough Project, Humanity United, Human Rights Watch, the Save Darfur Coalition, Genocide Intervention Network, American Jewish World Service, Physicians for Human Rights, i-Act, and Investors Against Genocide – co-authored the report "Clear Benchmarks for Sudan." The report, noting the commitment of the Obama administration to conduct a quarterly review at a senior interagency level of indicators of progress in Sudan, spelled out many of the key factors that should be considered as part of any principled set of benchmarks over the course of the year.

Given that there is broad agreement among Sudanese and those concerned with the fate of Sudan that these benchmarks constitute the fundamental elements of a durable peace, it is imperative to revisit where the parties stand with respect to these key indicators. (While the Obama administration said it would hold the parties in Sudan accountable to benchmarks, it never clearly articulated exactly what would constitute these benchmarks or how they would be measured, thus the effort by the group of organizations which authored this and the previous benchmarks report.) This is all the more important given the critical issues facing Sudan on the eve of the South's independence vote. The Obama administration, despite having held its first "deputies meeting" charged with reviewing Sudan's benchmarks, appears to remain divided with respect to its own assessment of the situation on the ground and the degree to which it should rely on incentives and pressures respectively.

National reforms

Key Benchmarks: Discontinuation of the use of the national security law to arrest or otherwise intimidate civil society, human rights activists, and political actors; Peaceful demonstrations and other gatherings allowed without interference; Freedom for candidates for public office to campaign without intimidation; Concrete measures taken in Khartoum and Juba to ensure freedom of the press and freedom of association.

By and large, the ruling National Congress Party, or NCP, its southern counterpart the Sudanese People's Liberation Movement, or SPLM, and the international guarantors of Sudan's Comprehensive Peace Agreement have made an unfortunate collective decision to largely

overlook the elements of transformational national reform contained in the CPA. These key elements of the CPA were designed to change the fundamental dynamics of how Sudan is governed and help ease the center-periphery tensions that have been at the heart of the country's repeated conflicts. By largely sidelining implementation of these provisions in the interests of short-term deal making, all parties are making future conflict more likely. Worse still, the NCP was able to block these reforms with very little protest from international guarantors to the CPA and other international actors.

Agreements reached in December 2009 between the Sudanese parties over a package of legislation made it clear that the ideal of credible national reforms had been sacrificed for political pragmatism that would allow the parties to “check the box” of national elections and make forward progress on referenda preparations. The laws passed dealt with the referenda for the South and Abyei, popular consultations, and a draconian national security law which allows the NCP to continue using the security services as a blunt object of its political will. During the protracted negotiations between the NCP and SPLM last fall, and at other points during the CPA process, the SPLM fought for provisions in the CPA aimed at democratic transformation. However, the SPLM along with other northern opposition parties were stymied by NCP leadership in the presidency and the ruling party's majority hold on the National Assembly.

In its 2009 human rights report on Sudan, the U.S. State Department detailed a litany of human rights abuses and violations by the NCP, SPLM, and their respective security agents; these abuses ranged from extrajudicial killings by the Sudan People's Liberation Army, or SPLA, to incommunicado detention of suspected government opponents by Khartoum's security forces.¹ If the Obama administration has the resources and ability to document such abuses, then it should muster the courage to confront the Sudanese governmental parties responsible for them.

North

The National Security Act, which grants government security forces extensive powers to arbitrarily detain and arrest citizens without charge, remains the legal foundation of Khartoum's powers to control its population and has been regularly used to arrest and intimidate political actors seen as threatening by the ruling party in the North. The National Security Act passed only by mechanical majority of the NCP in the National Assembly, with SPLM and opposition parties voting against it. The failure of these reforms was not for lack of effort on the part of the SPLM or the opposition parties in the North. Unfortunately, the international community was notably silent and largely invisible during these negotiations, rather than making a clear statement that “verifiable progress” from Sudan required more substantial reform to these laws.

Security forces continue to arrest and detain activists that speak out against the NCP. On March 15, Sudanese security forces in the North detained and tortured an 18-year old member of the voter education group Girifna. The political activist was reportedly beaten by 13 men, including with electric wires, and interrogated about the campaign's activities.² Before being released, the activist was forced to sign a paper saying he would not participate in political activities and that he would report on Girifna's activities.³

Campaign gatherings and demonstrations were circumscribed and broken up by security forces in the North in the run up to the national elections. In early March, the National Elections Commission published new campaign rules that significantly limited political parties' abilities to

exercise their freedom of assembly. The new rule dictated that parties had to give 72 hours notice for rallies held inside party premises and obtain permission 72 hours in advance for meetings in public places. Political parties report that this law has been applied arbitrarily.⁴ There were also reports from members of the Popular Congress Party that national security officials had prevented the party from holding meetings and rallies on at least 10 occasions in Darfur.⁵

Press freedoms remain sharply curtailed in the North, and candidates' unequal access to and state censorship of the media remained critical problems throughout the electoral process. In one instance, the presidential candidate of the Umma Party Al-Sadiq Al-Mahdi was blocked from airing his 20-minute campaign program, as set out by election rules, because of several sensitive remarks the Sudanese state radio objected to—including those referencing Darfur and the current President Omer al-Bashir's ICC arrest warrant.⁶ Though state media have given candidates free air time, much of regular programming in Khartoum concerns the activities of NCP officials and could be considered campaigning for the ruling party.⁷ Also troubling, a prominent journalist and critic of the NCP, Alhaj Warraj was charged by the National Security Agency on April 6 with “waging war against the state” for an article that he wrote for the independent daily *Ajras al-Huriya*.⁸

South

In the South, the Government of Southern Sudan also took steps in the run up to the elections to limit the ability of opposition parties and “independent candidates” to campaign freely. Intimidation of local media and detainment of opposition party members by the ruling SPLM and its security forces—namely the army and the South Sudan Police Service—indicate that the SPLM has placed a low priority on reforms that could create more political space and freedom of expression for Sudan's population. In early March, South Sudanese military police harassed and detained the driver and campaign agent of an independent candidate for the Central Equatoria governor's seat, Alfred Ladu Gore. In January, three candidates of the Southern Sudan Democratic Forum were beat up, arrested, and detained long enough to make them miss the deadline for submitting applications for candidate nominations.⁹

There have also been numerous instances of South Sudanese authorities arresting and detaining members of opposition parties, especially those belonging to the NCP and the SPLM-Democratic Change, or SPLM-DC. In one instance, security forces arrested three members of SPLM-DC in February, held them at a military detention center, and questioned them about their political activities for several hours.¹⁰ In its preliminary report, The Carter Center stated that “the elections in the South experienced a high incidence of intimidation and the threat or use of force. There were numerous instances of the SPLA intimidating voters and being stationed too close to polling stations. State interference in the campaigns of opposition candidates was widespread in the South.”

The media environment in the South is particularly disconcerting given the lack of media laws in place, forcing campaigners and media outlets to operate in an arbitrary environment without clear rules.¹¹ In this environment, independent media has had to suffer from random crackdowns and raids. In early March, South Sudanese security reportedly raided the Bakhita FM and Liberty FM radio stations, while arresting and threatening the stations' two directors.

Security

Key benchmarks: Negotiation and implementation of a functioning ceasefire in Darfur; An end to all provision of weapons, training, or supplies of financing to paramilitary militia groups in the North, South, or Darfur; Full cooperation from all parties to facilitate U.N. peacekeepers' freedom of movement and other essential conditions to do their work effectively; Full compliance by all relevant parties with the U.N. arms embargo for Darfur; An end to unlawful aerial bombardment in Darfur; Increased peace-building efforts by the Government of Southern Sudan to prevent escalation of chronic interethnic fighting; Standard, clear policies by the SPLA on engagement in tribal conflict, including the respective roles and responsibilities of the army and police services; Disarmament campaign carried out responsibly by SPLA in consultation with local communities.

The security environment throughout Sudan has not improved in recent months. To varying degrees and through the use of differing tactics, both the NCP and the SPLM are responsible for exacerbating a number of security threats and failing to take proactive or preventive measures to reduce others.

Darfur

In Darfur, following a period of escalating violence and infighting between factions within the Sudan Liberation Army, the Government of Sudan launched a major military offensive, including aerial attacks, even while its negotiators were in Doha working out a shaky framework agreement with the Justice and Equality Movement, the most militarily significant Darfuri rebel group.¹² These attacks killed hundreds and displaced somewhere between 45,000 and 100,000 civilians.¹³ International officials offered virtually no condemnation of these attacks by the Sudanese government and peacekeepers continue to be blocked from reaching the site of these attacks. This latest offensive is an egregious act in violation of international humanitarian and human rights law and a clear impediment to the Darfur peace process.

Despite public denials, there were also indications that the Sudanese government facilitated the move of a contingent of Lord's Resistance Army fighters into South Darfur, signaling a continued willingness by the NCP to support proxy militias.

The overall security landscape in Darfur is characterized by low-level yet persistent and widespread insecurity. The heavy presence of nomadic groups who were formerly associated with the Janjaweed, armed by the Government of Sudan, and promised land by the government as reward for their participation in the conflict, offer the most serious threat to the average Darfuri. Continuing to bear arms, these groups secure land that does not belong to them, harass the displaced who return to try and reclaim it, and engage in general banditry. No attempt has been made by the Sudanese government at disarming these groups, despite repeated commitments in past peace agreements. In such a volatile security environment, it will be very difficult for the nearly 3 million people who remain displaced within Darfur or are living as refugees in neighboring Chad to return home safely any time soon. In spite of this, the NCP and some of its international partners continue to discuss efforts to close displaced camps, regardless of the residents' security concerns.

Freedom of movement for peacekeepers in Darfur remains limited, in contravention of the Status of Forces Agreement signed between the U.N./A.U. hybrid peacekeeping force, or UNAMID, and the Sudanese government. In November and January, the U.N. secretary general reported on

63 combined incidents in which a UNAMID patrol was denied passage by the Sudanese Armed Forces, its auxiliary forces, or armed rebel movements.¹⁴ UNAMID continues to be blocked from doing its job because of fighting perpetrated by rebel groups, government militias, and the military. It also continues to operate in an environment in which hijackings and abductions are too frequent. See the “Humanitarian Access” section for more on this topic. The secretary general’s report, which noted that violations of the U.N. arms embargo continue to be committed by most major armed actors, does not bode well for the future of effective peacekeeping in the region.¹⁵

South Sudan

U.N. officials in South Sudan have indicated that the number of internal conflicts has risen sharply in 2010, with 450 killed and 60,000 displaced within the first three months of the year. While a recent internal UNMIS assessment found that the situation in Jonglei state—site of much of the intertribal violence that wracked the South in 2009—is less tense than at the same time last year, the chronic drivers of insecurity in the South persist, and the broader political climate in Sudan in the run up to the southern referendum does not bode well for the likelihood of further violence this year. Much of the violence in the South continues to be associated with the civilian disarmament campaign led by the SPLA currently sweeping the South. The purported aim of this campaign was to bolster security in preparation for the elections by removing small arms from the hands of civilians. However, past disarmament campaigns in the South have proven that communities will resist giving up their weapons if they feel that their security cannot be guaranteed by the government’s armed forces, and many of the disarmament efforts to date in the South appear to have exacerbated insecurity and stoked tensions among rival and neighboring tribes. The goal of broader disarmament remains laudable, but should be pursued in the context of accelerated support for comprehensive reform of the security sector, including disarmament, demobilization, and reintegration programs and efforts to increase the effectiveness and accountability of the SPLA and the police. International actors should also closely monitor the flow of arms and weapons to militias operating in border areas.

Security along the 2,100 kilometer North-South border, where six sections remain disputed, is another cause for concern. The U.N. peacekeeping mission in Sudan, or UNMIS, has faced challenges in its ability to respond to violence and to prevent it, both due to its mandate (which is currently up for revision and renewal at the U.N. Security Council) and its understanding and interpretation of its mandate on the ground.¹⁶ Furthermore, UNMIS has not been granted full access by both the Sudan Armed Forces, or SAF, and the SPLA to certain critical and contentious areas along the border, most notably along the boundaries of Abyei, an oil-rich, contested border zone (see below for more on Abyei). The failure of both parties to enable UNMIS full access—per its mandate and per the parties’ CPA obligations—to these sensitive areas is cause for concern as the referendum approaches, with Sudan’s internal border still in dispute.

Humanitarian access

Key Benchmarks: Agreements to facilitate humanitarian access are being respected and implemented; Improvement in security for humanitarian organizations, and steps taken to investigate and prosecute attacks on these organizations; Delivery of sufficient aid, and access for new humanitarian NGOs, as

needed, to reach vulnerable populations. Freedom for humanitarian organizations to report honestly on conditions on the ground; Aid agencies allowed to fully implement programs offering “non-essential” services, such as those assisting women who have been survivors of sexual violence or other forms of abuse.

Seven months after President Bashir’s expulsion of 13 international aid agencies from Darfur and dissolution of three Sudanese organizations last March, the U.N. Panel of Experts observed a “widespread decline in the delivery of services to affected communities.”¹⁷ Thanks to major efforts by other international and Sudanese humanitarian organizations, Oxfam Great Britain noted in March: “A major humanitarian emergency has largely been averted at least in the sense that what is still one of the biggest crises in the world has not got substantially worse.”¹⁸ But it should also be noted that since the expulsion, support for “non-essential” services has suffered dramatically. The number of services available to survivors of sexual violence, for example, have massively declined even as sexual violence and assault remain prevalent in Darfur^{3/4}an unsurprising effect given that 14 of the 16 expelled or shut down organizations had projects working to support survivors of sexual violence. Emergency efforts by the humanitarian community to fill this gap in services have thus far failed to return the level of gender expertise in Darfur to that existing pre-expulsion.¹⁹

The U.N. secretary general has rebuked the Sudanese government for denying UNAMID access to sites of recent fighting and vulnerability, including camps for the displaced. In recent months, UNAMID, other U.N. personnel, and humanitarian aid agencies continue to have little to no access to vulnerable areas in Darfur because of high insecurity, or claims of high insecurity, largely perpetrated by the Sudanese government. Meanwhile, the gap in services for Darfur’s most vulnerable, including survivors of sexual violence and children, remains.

Aid and U.N. workers operate under the threat of hijackings, abductions, and harassment by armed actors, as well as fears of expulsion by the Sudanese government. There have been little or no serious efforts by the Government of Sudan to hold local actors accountable for attacks on the United Nations or humanitarian assets and property. Indeed, the Government of Sudan widely looted vehicles and other supplies from humanitarian agencies that were kicked out of Darfur in March 2009 and continues to use them with impunity. Since the expulsion of foreign aid agencies in March 2009, the number of foreign aid workers and U.N. personnel kidnapped has increased.²⁰ The insecurity of the current operational environment has forced many agencies to limit their presence to areas around large towns, leaving some of the most needy populations, in remote and rural areas, without access to critical services. On October 22, 2009, a staff member of the International Committee of the Red Cross, or ICRC, was kidnapped in West Darfur and kept hostage for 147 days. As a direct consequence, the ICRC scaled back its field activities in the region. The staff member was only recently rescued with the help of the Sudanese government, signifying cooperation on the part of Khartoum at least in this respect.

Harassment and abduction of U.N. personnel have become more blatant and frequent. On March 5, a UNAMID assessment patrol on its way to investigate the security and humanitarian situation in Deribat, in the Jebel Marra region, was ambushed by unidentified armed men. Alarming, about 60 peacekeepers were abducted and released the next day, stripped of their weapons, ammunition, and vehicles.²¹ In response, the Sudanese government chastised UNAMID for ignoring the advice of the military to not go into that area, underscoring the government’s unwillingness to facilitate UNAMID movement throughout the region.²²

Humanitarian access to areas of prolonged or recent fighting remains severely curtailed. In the aftermath of recent violence in Jebel Marra, neither the United Nations nor any other international humanitarian organization has had access to vulnerable populations in eastern Jebel Marra. The latest U.N. overview of the humanitarian situation in Sudan reports that “humanitarian partners have not been able to enter conflict-affected areas at all—a situation that leaves local civilians exposed to significant risks,” and the international community without an independent assessment of the level of need.²³ Violence in the area has already forced Medecins du Monde, the only medical organization with ground presence in eastern Jebel Marra, to suspend its operations.²⁴

Humanitarian organizations continue to operate under the threat of government expulsion, which occurs arbitrarily and for ambiguous reasons. Within such an environment, organizations are forced to self-censor for the sake of being able to stay in the country to continue providing services to vulnerable populations. Without the freedom to report honestly on conditions on the ground, the international community is without an important source of information and monitoring.

Darfur peace process

Key Benchmarks: Establishment of an inclusive peace process and free participation of credible and independent civil society groups in peace process; Pre-existing commitments made in earlier talks and agreements fulfilled by the parties; Practical steps on the ground taken by parties to promote peace and improve security; Concrete steps toward accountability for crimes committed in Darfur.

Though Darfur peace talks are currently underway between the Sudanese government, rebel factions, and the U.N.-A.U. Mediation team, the progress made thus far appears to lack credibility when contrasted with the government’s continued military actions on the ground. Khartoum’s continuation of violence against rebel groups and civilians, as well as the general lack of transparency throughout the peace process suggest that a concrete, inclusive, and sustainable peace agreement will not emerge at the talks’ conclusion. Preliminary agreements have been signed between the government and the Justice and Equality Movement, or JEM, as well as with the rebel coalition known as the Liberation and Justice Movement, or LJM, but these agreements have only secured limited ceasefires and represented promises that negotiations over substantial issues for the future of Darfur (including those relating to power and wealth sharing arrangements, restitution for survivors, and accountability) will take place. So far, no peace deal has emerged and the ceasefire appears to have already been broken.²⁵ The Government of Sudan has appeared more interested in further dividing rebel groups and pulling off a “successful” presidential election in Darfur than it has in securing a lasting peace. Equally corrosive to the process, the rebel movements engaged in the talks continue to bicker among themselves—while key leaders such as Abdel Wahid Al Nur refuse to participate at all in the talks. Like earlier failed peace talks for Darfur, little serious thought appears to have gone into the actual monitoring and implementation of the agreements, virtually assuring that they will remain hollow promises.

Of serious concern is the lack of transparency over the peace process itself, a fact that has prevented the negotiations from being truly inclusive. Civil society has thus far played a limited role in the current negotiations and sources on the ground say civil society representatives will continue to be sidelined in the substantive negotiation process moving forward.

In addition to the major offensive in Jebel Marra, the government also bombed the Jebel Moon area, a JEM stronghold, just prior to the start of peace talks. Humanitarian access to the two areas continues to be impossible, with no effort on the Sudanese government's part to facilitate aid workers' access to the vulnerable and newly displaced. If progress toward peace in Darfur is truly to be evaluated by the situation on the ground, as the administration indicated in its Sudan policy review, Khartoum's decision to renew fighting should be a red flag indicator that the regime remains intent on pursuing a military solution in Darfur, despite the lofty rhetoric of Doha. The administration has also shown no willingness to confront with its international partners the intransigence of spoilers and holdouts among the rebel leaders.

No steps have been taken by the Sudanese government to advance accountability for war crimes and crimes against humanity in Darfur. For more on the current situation, see the "Accountability" section.

Elections

Key benchmarks: Sudan's constitutional protections of freedoms of assembly and expression ensured by the NCP and SPLM in the context of the current electoral process in northern and southern Sudan, respectively; Sudanese media free to cover and report on election related events, trends, and developments; Effective response by Sudan's National Electoral Commission, or NEC, to concerns expressed by international and domestic monitoring bodies – including political party representatives – during the voter registration process in order to prepare for the polling period in April, including investigating claims of fraud; International and domestic monitors granted freedom of movement and freedom to report on election related activities in the coming months; Concerted steps by the NCP and SPLM to prevent electoral violence; Active measures by the NEC to educate Sudanese voters on the electoral process, particularly in areas with comparatively low levels of voter registration.

While the national elections were once seen as a cornerstone of the Comprehensive Peace Agreement and a major step forward in Sudan's democratic transformation, their ultimate reality was one of lost opportunity and disappointment. It was clear from previously cited concerns (see "National reforms" section) regarding the overall security environment and lack of national reforms, that free, fair, and credible elections were not possible in Sudan. Regrettably, the lack of an enabling environment for a free and fair election was largely publicly ignored by the U.S. special envoy for Sudan, and the Obama administration made clear early in the process that it was prepared to accept practically any process at the ballot box in favor of "checking the elections box" on the CPA list and moving on.

In the days leading up to the voting period, almost every major opposition party boycotted elections to various degrees, including the NCP's main political opponents, the SPLM. On March 31, the southern ruling party announced the withdrawal of its presidential candidate, Yasir Arman, as well as its decision to boycott elections in Darfur, citing continued violence and election irregularities in the region.²⁶ Most major northern opposition parties also boycotted the elections, citing the state's monopoly over the media, its manipulation of electoral legislation, and the oppressive media and campaigning environment in place. In advance of the elections, a large number of groups, including Human Rights Watch, the International Crisis Group, the Enough Project, and the Carter Center highlighted serious irregularities and the lack of a free environment for the ballot.

In Darfur, elections were engineered to consolidate NCP control over the region. NCP manipulation of the vote could be found in the counting of the 2008 census, the way in which electoral districts were drawn, the registration process, and the bribery of local leaders. Not only did the 2008 census not take into account a majority of Darfur's 2.6 million displaced, it inflated the proportion of pro-NCP groups, even counting new arrivals into Darfur. Electoral districts were drawn in a way that gave areas with greater NCP support more seats. The rebel stronghold of Jebel Marra, with an estimated population of 1 million, was allocated zero seats in the national assembly. Government security forces were frequently stationed outside of registration centers, creating an environment of intimidation during the registration process for Darfuris used to the harassment and abuses committed by these same authorities.²⁷ The NCP also offered money, gifts, and government positions to local leaders to solidify electoral alliances and put in place candidates that were pro-NCP.²⁸

The actual voting period was marred by a long list of technical irregularities and flaws. The confusion caused by last-minute changes to voter registry lists, mistakes on ballots, and arbitrary voter identification procedures discouraged voter participation, and has the potential to benefit one party over the others. The use of intimidation and force against voters, observers, polling staff, candidates, and party affiliates was also documented. In Darfur, a scheme to extort internally displaced voters to cast their ballot for NCP was exposed.²⁹ According to Carter Center and E.U. observers, the administration of the entire electoral period, from the installation of an environment hostile to free and fair elections to the logistically flawed election period itself, fell short of meeting international standards.³⁰

Both ruling parties, the NCP and the SPLM, should be held to account for their failure to support efforts to create an environment in which opposition parties could campaign freely and citizens could go to the polls without fear of intimidation or falling victim to violence. The parties did not invest early or substantially enough in setting up the National Electoral Commission, or NEC, to be a neutral governing body that had the capacity to conduct extensive voter education efforts, to pre-empt the myriad logistical failures that took place, and to be an arbiter between competing political interests of what the correct electoral environment and conduct of elections should be. Recent allegations by the SPLM that the NEC could have done more to anticipate and prevent the technical difficulties that marred the polling period particularly in the South may be well founded, but the SPLM is also at fault for not pushing the NEC into a more active role during the protracted electoral process.

Abyei

These include the following: Rapid and mutually agreed upon formation of the Abyei referendum commission; Full implementation of the Abyei Protocol and PCA's ruling; Unreserved support for demarcation of the border; Support for a process to develop guarantees for nomadic tribes to access traditional grazing lands; Development of the popular consultation process (see below) to promote popular political transition in Southern Kordofan; Improved monitoring of Abyei's oil revenues, payment of past arrears from Khartoum to Juba, and transparent functioning of the Unity Fund.

The situation in Abyei remains largely unchanged since last July's ruling by the Permanent Court of Arbitration, or PCA. The committee charged with overseeing the implementation of the ruling and the demarcation of the newly defined border have been impeded in their tasks by politi-

cal obstruction, security concerns, and a lack of funds desperately needed for development in Abyei and for dissemination of information about the ruling. Ignorance on the ground about the significance of the border has emboldened the Government of Sudan to prevent the demarcation as a pretense to argue to the Misseriya that they can still win back lands lost and will still be able to vote as an entire people in the Abyei referendum. This is not the case. The borders have been defined and are known to all regardless of whether the demarcation occurs or not. For its part, the SPLM has attempted to push the demarcation process forward, but the NCP has continuously refused to provide equipment or sufficient security support (as clearly requested by the SPLM members of the Abyei Oversight Committee, in large part because the Popular Defense Forces and other militias have been a major impediment to the demarcation team). For this and other reasons, the NCP is at fault for not summoning the political will to invest the necessary resources on the ground in Abyei to implement the PCA's ruling, as both parties repeatedly pledged to do in the immediate aftermath of the court's decision; the NCP may well see continued foot dragging as being in their best interest absent any international cost for doing so.

Although the Abyei administration was recently replaced with new leadership last month, much work will need to be done before the January referendum for the region in order to diffuse tensions that are bound to arise when the contentious issue of residency in Abyei is raised prior to the referendum. For one, the Abyei Referendum Commission—the body that will rule on the residency debate—has yet to be appointed. In addition, grazing rights for the nomadic Misseriya herders—a disenfranchised population frequently employed by Khartoum during the civil war as frontline troops in the South—must be secured prior to the referendum; this requires an honest commitment and willingness to compromise from both the NCP and SPLM which has been profoundly lacking to date on the emotionally and politically charged issue of Abyei.

Along the contested North-South border east of Abyei, tensions are escalating between the Misseriya and Dinka populations who both have a stake in the rich grazing land in northern Unity state in the South; the recent border conference in Unity's capital, Bentiu, did little to resolve the deep-seated fears of both the Misseriya based in Southern Kordofan and the Dinka populations in Unity state. It appears the agreement was pushed through by Unity state's SPLM leadership, who sought a win before the elections at all cost. Given that the agreement did not have the buy-in of key players such as the SPLA, who were conducting a disarmament campaign in Unity and were strongly opposed to allowing the Misseriya to enter Unity with their weapons (which the herders have traditionally carried in order to protect their cattle), this agreement is unlikely to promote stability in this already tense border area. In the weeks since the agreement was signed, SPLA and Misseriya have clashed near the contested North-South border, Misseriya elders have accused the SPLA of "ethnic cleansing," and the SPLA spokesman in Juba has called for the Misseriya to abandon their weapons before entering southern territory to graze, which contradicted the border agreement signed in March.³¹ The current situation along this section of the North-South border is reminiscent of the situation in the run-up to the May 2008 clashes in Abyei that sent the entire population of the town fleeing southward. Unless both the NCP and SPLM choose to stop making the situation on the ground worse through accusatory statements at the Khartoum and Juba levels, loss of life along the border is likely to continue as the referendum approaches.

Finally, improved monitoring of Abyei's oil revenues, a commitment made by both parties in the Trilateral Points, has not been implemented by the NCP or the SPLM. Both parties are at fault for not attempting to promote greater transparency into the functioning of the Unity Fund.³²

Popular consultation

Key Benchmarks: Necessary steps for peaceful and successful popular consultations, and sustainable peace in Southern Kordofan and Blue Nile, include the following: Progress on the demarcation of the Abyei and North/South borders, including resolution of border disputes on southern borders of Southern Kordofan and Blue Nile; Processes for broad engagement with constituencies throughout the two states; Improved integration of the Joint/Integrated Units, police, and state administrations; Political space and security for free and fair elections.

The popular consultation process will begin in earnest following the election of the state legislature in Blue Nile, but the process for Southern Kordofan will be more complicated, given that elections at the state level in Southern Kordofan have been delayed until another census can be conducted in the state.

Although some strides have been made by the parties, particularly in Southern Kordofan, in working together at a political level, sustainable peace in the Transitional Areas will require significant buy-in from local populations, who will need to be broadly engaged if the process of popular consultation is to live up to its name. Although it is too early to issue a verdict on the attempts by the parties to make these processes inclusive, successful, and peaceful, it is certain that sustained attention from the NCP and SPLM will be needed in the coming months if this region is avoid heating up before the likely separation of the North and South. Recent conferences in both Blue Nile and Southern Kordofan that brought together civil society, political parties, and traditional leaders are a welcome first step, and the need for civil society to begin education around the popular consultation process, and in general about accountability of their legislators (appointed or elected), remains crucial to the conduct of a genuine and inclusive process. The promise of Joint Integrated Units, or JIUs, under the CPA has not been met. Across the three border areas, including South Kordofan and Blue Nile State, SAF and SPLA soldiers remain under the distinct control of their armies. These forces have not only been ineffective in providing security, they have at times generated further insecurity.³³

Southern referendum

Key benchmarks: Rapid and mutually agreed upon formation of the southern Sudan Referendum Commission; Progress toward the full demarcation of the North-South border; No use of direct or proxy violence in an effort to derail the referendum; No actions that subvert the will of the people in casting their votes freely; Neither party negotiating in such a way that makes direct North-South violence more likely.

Despite the agreement reached in December between the NCP and SPLM on a package of laws related to the election and referenda, the South Sudan Referendum Commission has yet to be formed. At an Intergovernmental Authority on Development summit in mid-March 2010 in Nairobi, the parties committed to establish the Southern Referendum Commission by May. If this agreement is kept, the commission will have just over six months to prepare for the vote; the precedent of both the national census and the elections demonstrates that delays, distractions, and technical difficulties are the norm for Sudanese political processes. While substantial delays in the census and elections were tolerated, the referendum is a “redline” for the SPLM and the South; any delay in the holding of the referendum could immediately spark a return to war. It is important

to note that the process of selecting and approving the members of the Referendum Commission will significantly impact the preparation for the referendum and the technical process itself. The Obama administration must closely monitor the parties in the coming months in order to ensure forward progress and ample preparation for the referendum before it is too late, and this process starts with the appointment of a commission that can capably, credibly, and fairly prepare for and carry out the process.

The technical process of holding the referendum is arguably of least concern for the parties and the CPA's guarantors, although the recent national election underscores how much major work remains to be done on carrying out the logistics of elections in Sudan. Mismanagement at the administrative or procedural level (and the resulting disorganization, fraud, and possible manipulation) may in fact result in doubts about the results of the referendum, and leave the South and the international community in a very difficult position. Given the importance of a credible process that will not leave questions about the acceptability of the outcome and that will allow the South and international community to stand fully behind the results, the South and the international community need to focus on both the political and procedural framework for the referendum.

The need to come to agreement on a number of issues related to the referendum's outcome is the paramount concern if a peaceful transition is expected in 2011 and renewed hostilities are to be averted. Failure by the parties to engage seriously and in good faith in order to reach initial agreements related to wealth sharing, and assets and liabilities, among other issues, is a recipe for disaster before or after the referendum. But before these initial agreements can be reached, the crucial question of where the North-South border lies must be answered—although no single issue should hold the referendum itself hostage.

There are currently five distinct sections along the border that remain undemarcated. With tensions along various parts of this border already heightened over issues such as access to traditional grazing areas for pastoral groups, neither party can afford to leave this simmering issue unresolved. Absent concerted efforts by both sides to resolve the multiple border disputes, tensions will continue to rise.

The intercommunal violence in the South that has killed thousands of people and displaced hundreds of thousands more in the past year and a half is a direct threat to the referendum, but not only because the violence is having a destabilizing impact on the South. Another great concern is that the NCP could be involved in stoking local tensions or providing ammunition to disenfranchised populations; this tried-and-true tactic of proxy violence is not new for Khartoum. If this is the case, this strategy could impact the ability of the South to peacefully hold its referendum in a secure environment.

Accountability

Key Benchmarks: Cooperation with the ICC or agreement to a robust accountability mechanism, such as the African Union's recently proposed hybrid court for Darfur

The Sudanese government continues its complete noncooperation with the International Criminal Court arrest warrant for President Bashir. Since its inception in October, the African Union High Level Implementation Panel on Darfur, or AUHIP, has yet to make progress on implementing its

recommended hybrid court for Darfur. The panel has instead been devoting increased attention to issues around CPA implementation and the elections. The NCP has also stated, as expected, that Bashir's electoral victory will prove that the allegations against him are false and that the Sudanese, especially the people of Darfur, reject the International Criminal Court's efforts. The complete lack of accountability to date only makes it more likely that the NCP will be undeterred from committing violence and crimes against its civilian population in the future.

Conclusion

As the review of the benchmarks makes clear, the situation in Sudan remains one of considerable concern. The deputies committee of the U.S. government charged with reviewing the situation in Sudan on a quarterly basis does not appear to be functioning as designed, and has not resulted in clear policy choices being presented to President Obama, Secretary of State Clinton, and respective agency heads. Indeed, one of the few consistent trends in U.S. policy toward Sudan has been the deep divisions in perspective between that of the U.S. special envoy and the leadership of the State Department and the U.S. Mission to the United Nations.

While it is obvious, it bears repeating: Africa's largest country is likely to split into two in a matter of months, yet there is not a coherent policy approach from the U.S. government and that has undercut its ability to shape effective international diplomacy toward Sudan.

While the administration has made a calculated effort to avoid confrontational language with Sudan, it now appears the pendulum has swung too far in the other direction, and the ruling NCP has understandably interpreted the lack of condemnation for repeated abuses as either disinterest or acceptance. The time has come for President Obama and Secretary Clinton to own Sudan policy far more directly—or the risk of further missteps, miscalculation, and violence will only grow.

Endnotes

- 1 U.S. State Department 2009, "2009 Human Rights Report: Sudan" (2010), available at www.state.gov/g/drl/rls/hrrpt/2009/af/135978.htm.
- 2 See Africa Centre for Justice and Peace Studies, "ACJUPS Condemns the Silencing of Political Activists" (2010), available at <http://www.acjps.org/Publications/3-19-10ACJPSCondemnstheSilencing.htm>.
- 3 See Human Rights Watch, "Sudan: Government Repression Threatens Fair Elections" (2010), available at <http://www.hrw.org/en/news/2010/03/21/sudan-government-repression-threatens-fair-elections>.
- 4 See Carter Center, "Carter Center Welcomes Sudan's Elections Campaign, Urges Steps to Ensure Open and Inclusive Process," Statement, March 18, 2010, available at <http://www.cartercenter.org/news/pr/sudan-031810.html>.
- 5 See Human Rights Watch, "Sudan: Government Repression Threatens Fair Elections" (2010), available at <http://www.hrw.org/en/news/2010/03/21/sudan-government-repression-threatens-fair-elections>.
- 6 Sudan Tribune, "Sudan radio prevents candidate from addressing Bashir's ICC warrant," March 4, 2010, available at <http://www.sudantribune.com/spip.php?article34316>.
- 7 See Human Rights Watch, "Sudan: Government Repression Threatens Fair Elections" (2010), available at <http://www.hrw.org/en/news/2010/03/21/sudan-government-repression-threatens-fair-elections>.
- 8 See the Committee to Protect Journalists, "Sudanese journalist charged with 'waging war' against state," April 14, 2010, available at <http://cpj.org/2010/04/sudanese-journalist-charged-with-waging-war-against-state>.
- 9 See Human Rights Watch, "Sudan: Government Repression Threatens Fair Elections".
- 10 Ibid.
- 11 Sudan Tribune, "Media leader: South Sudan journalism 'a game of football without rules,'" March 6, 2010, available at <http://www.sudantribune.com/spip.php?article34335>.
- 12 Reuters, "Darfur rebel infighting drives 10,000 from their homes," February 5, 2010, available at <http://www.reuters.com/article/idUSLDE6132T4>. See also Julie Flint, "The War for Jebel Marra," March 11, 2010, available at <http://blogs.ssrc.org/sudan/2010/03/11/the-war-for-jebel-marra>.
- 13 See Médecins du Monde, "Fighting in the Jebel Marra: 100,000 Civilians Deprived of Access to Healthcare," Press Release, No date, available at <http://www.medicinsdumonde.org/gb/Press/Press-release/International/Combats-dans-le-Jebel-Mara-100-000-civils-prives-d-acces-aux-soins>.

- 14 United Nations Security Council, "Report of the Secretary-General on UNAMID" (2009), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/594/37/PDF/N0959437.pdf?OpenElement>, pg. 3
- 15 See United Nations Security Council, "Report of the Panel of Experts" (2009), available at <http://www.un.org/sc/committees/1591/reports.shtml>.
- 16 See Human Rights Watch, "No One to Intervene" (2009), available at <http://www.hrw.org/en/reports/2009/06/21/no-one-intervene-0>.
- 17 United Nations Security Council, "Report of the Panel of Experts," pg. 65.
- 18 See Relief Web, "Northern Sudan: 12 months since expulsion," available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MINE-839RXY?OpenDocument>.
- 19 See Physicians for Human Rights, "Action Agenda: Realizing Treatment and Support for Women and Girls in Darfur" (2010), available at <http://phrblog.org/blog/2010/03/22/women-in-darfur-one-year-on/>.
- 20 Ibid.
- 21 See Reuters, "Sudan's army says rebels ambushed UN-AU peacekeepers," March 9, 2010, available at <http://af.reuters.com/article/topNews/idAFJOE62800Z20100309>.
- 22 See Reuters, "Sudan rebukes UN-AU force over Darfur ambush," March 11, 2010, available at <http://af.reuters.com/article/topNews/idAFJOE62A02E20100311>.
- 23 See U.N. Office for the Coordination of Humanitarian Affairs, "Sudan Humanitarian Overview," 6 (2) (2010) available at <http://www.unsudanig.org/docs/Sudan%20Humanitarian%20Overview%20vol6%20no2%20Feb%202010.pdf>.
- 24 See Relief Web, "Sudan: Darfur team evacuated and mission on hold," available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/AZHU-83CQ5C?OpenDocument&query=Darfur%20aid>.
- 25 See Reuters "Sudan, Darfur rebels exchange blame over ceasefire," April 5, 2010, available at <http://www.reuters.com/article/idUSTRE6342A120100405>.
- 26 Reuters, "South Sudan party withdraws presidential candidate," March 31, 2010, available at <http://www.alertnet.org/thenews/newsdesk/LDE62U2AL.htm>.
- 27 See Carter Center, "Preliminary Statement on Sudan's Voter Registration," Statement, November 30, 2009, available at http://www.cartercenter.org/resources/pdfs/peace/democracy/Carter%20Center%20Sudan%20statement_113009.pdf.
- 28 To read a more detailed analysis of the NCP's management of elections in Darfur, see International Crisis Group "Rigged Elections in Darfur and the Consequences of a Probable NCP Victory in Sudan" (2010).
- 29 See Al-Jazeera, "Scam mars Darfur polls," April 13, 2010, available at <http://english.aljazeera.net/news/africa/2010/04/20104134594185402.html>.
- 30 See Carter Center "The Carter Center Election Observation Mission in Sudan Presidential, Gubernatorial, and Legislative Elections, April 2010," Preliminary Statement, April 17, 2010, available at <http://www.cartercenter.org/news/pr/sudan-041710.html>; Relief Web, "Preliminary Statement: Sudanese elections show significant deficiencies against international standards but pave the way for future democratic progress," available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-84N6YP?OpenDocument>.
- 31 See Sudan Tribune, "13 people killed after fresh fighting between SPLA and Misseriya," March 20, 2010, available at <http://www.sudantribune.com/spip.php?article34477>; Sudan.net Discussion Board, available at <http://www.sudanforum.net>.
- 32 For background on the Unity Fund, see International Crisis Group, "Sudan: Breaking the Abyei Deadlock" (2007), available at www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan/B047-sudan-breaking-the-abyei-deadlock.aspx.
- 33 Sudan Human Security Baseline Project, "Uncertain Future: Armed Violence in Southern Sudan." Sudan Working Paper 20 (2010). pg. 28.

Enough is a project of the Center for American Progress to end genocide and crimes against humanity. Founded in 2007, Enough focuses on the crises in Sudan, eastern Congo, areas affected by the Lord's Resistance Army, and Somalia. Enough's strategy papers and briefings provide sharp field analysis and targeted policy recommendations based on a "3P" crisis response strategy: promoting durable peace, providing civilian protection, and punishing perpetrators of atrocities. Enough works with concerned citizens, advocates, and policy makers to prevent, mitigate, and resolve these crises. To learn more about Enough and what you can do to help, go to www.enoughproject.org.

