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## Negotiating Sudan's Post-Referendum Arrangements

### Summary

- With Southern Sudan's referendum on whether to remain part of Sudan or secede approaching, it is vital that the international community encourage and support negotiations on post-referendum arrangements, which include issues ranging from wealth sharing to citizenship rights to security arrangements. Good coordination among the international community will be essential.
- A single mediator with a clear and strong mandate should lead negotiations on post-referendum arrangements, supported by a contact group or group of friends that can insert targeted pressures and incentives into the process. The mediator needs to be strong enough to prevent "forum shopping" and contain or co-opt spoilers.
- States and non-state actors that wish to play a central role in negotiations on post-referendum arrangements should demonstrate a long term commitment to Sudan and to overseeing implementation of any agreement.
- Negotiations on post-referendum arrangements and the ongoing negotiations on Darfur should be kept separate.

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Sudan is less than one year away from a landmark event: the referendum on whether Southern Sudan will remain part of a united Sudan or secede. As many have acknowledged, including some leaders in the North, Southerners are likely to vote to secede, leading to the first new, internationally recognized state created in Africa since Eritrea. Managing this probable divorce thus takes center stage, but who will orchestrate this process? Who will mediate between Khartoum and Juba? How can the international community help, rather than hinder, the possible division of Africa's largest country into two?

The answers to all these questions start with good international coordination and cooperation. Any negotiations concerning what are widely referred to as "post-referendum arrangements" risk devolving into chaos if they are not properly planned and coordinated. Sudan's two main political parties and signatories to the Comprehensive Peace Agreement (CPA)—the National Congress Party (NCP) representing many in the North, and the Sudan People's Liberation Movement (SPLM) representing much of the South—have agreed, in the legislation governing the referendum, that there are at least nine post-referendum issues that need to be sorted through: citizenship; currency; public service; status of the Joint Integrated Units (military units comprising soldiers from both Northern and Southern armies); agreements and international covenants (the primary issue being what happens to treaties and other agreements to which Sudan is a signatory); debts and assets;

oil concessions and production, transportation and exporting; water; and ownership (largely of land). Negotiations on these issues could result in an amendment to the CPA (a "CPA-plus") or an entirely new agreement. Regardless of the nature of the document produced, it is the coherence of the process for negotiating these issues that could, if there is a vote for secession, be the difference between a peaceful divorce and return to war.

It is vital that negotiations happen under the auspices of a single lead mediator. Candidates may include the U.S. Special Envoy to Sudan, General Scott Gration, and former South African President Thabo Mbeki. Whoever the mediator, he or she needs to be realistic about the size of the task at hand; negotiating these complex issues will require substantial time, technical expertise and human resources.

The identity of the mediator may be less important than maintaining a broad consensus within and outside Sudan that he or she is in the lead, and that other states and non-state actors are prepared to fall in line and support the mediator. The challenge is that many states and non-state actors have massive stakes in Sudan's future, from Sudan's nine neighboring countries, to China and its thirst for Sudanese oil, to the U.S. and its vocal advocacy community, to the African Union and its unfulfilled promise of African solutions to African problems, to the United Nations Mission in Sudan.

All of these players will want to be involved in, and influence the outcome of, negotiations on post-referendum arrangements. A lesson learned from the CPA negotiations should not be forgotten: "when possible use the same internal and external actors during the negotiations and implementation phase, in order to keep the momentum of the signing."<sup>1</sup>

One of the reasons CPA implementation went off track was the wandering eye of the states that made the CPA possible; some assumed that their work was done with the signing, while others turned their attention to Darfur.

The lead mediator will need to be strong enough to say when interested states and non-state actors can be involved in negotiations, and when they need to back off. Equally important, he or she will need to be able to deter any competing initiatives, so there is a single forum for negotiations. One of the most destructive aspects of the multiple Darfur peace processes has been the "forum shopping" dynamic by which some of the negotiating parties have been able to play various initiatives against each other, resulting in little progress. Only recently has a general consensus developed that Doha is the single venue for Darfur negotiations.

The mediator will also need to be strong enough to contain or co-opt outside spoilers. For example, some neighboring states may try to act as spoilers if they don't feel sufficiently involved in negotiations, or that their interests aren't being considered (a good reason for neighboring states not to serve as mediators themselves). The Sudanese parties may encourage spoilers if they see an opportunity to gain from the disruption. The mediator will need the support of the international community to deter such efforts.

A key difference between the Darfur negotiations and negotiations on post-referendum arrangements is that while artificial deadlines have been placed on Darfur negotiations, negotiations on post-referendum arrangements face a fixed deadline: the January 2011 referendum (aligned with the expiration of the CPA). The SPLM makes clear that the referendum will occur regardless of progress in negotiations, and the CPA makes no provisions for delaying the referendum.

Thus there is little time to waste in defining the negotiation process and roles. With nationwide elections scheduled for April, there is a brief window for defining the process and roles before negotiations are likely to begin in earnest. As those elections approach (assuming they occur—still not a certainty), the parties will be increasingly consumed with campaigning. Their capacity to multitask is limited, so it is unlikely the parties will be able to meaningfully engage in negotiations

on post-referendum arrangements until after April (and maybe later, depending on the fallout from the election). This gives the international community a two- to three-month period that can be used to plan their part of the negotiation process and settle on roles.

Of course, such planning cannot be done in a vacuum; the NCP and SPLM must drive the process in collaboration with the lead mediator, with his or her mandate ideally coming from the parties themselves (with buy-in from the African Union and United Nations). Getting them to agree on the mediator may be difficult, as the SPLM favors renewed engagement by east African countries through the Intergovernmental Authority on Development (IGAD), while the NCP seems to favor a robust role for President Mbeki, who has an ambiguous mandate from the African Union to engage on CPA implementation. Between now and the elections, a focus of international engagement with the parties should be on reaching agreement on the mediator and his or her responsibilities.

The parties and mediator will also need to agree on the order in which post-referendum issues will be negotiated. Clearly some are more important than others: oil, citizenship and security arrangements rise to the top of the list. It is difficult to envision a smooth post-referendum period without the fundamental aspects of agreements on these issues in place before the referendum. Some issues need to be sorted out prior to others. For example, in order to have meaningful conversations about how to handle the public service (the most pressing issue is the fate of Southerners working for the Government of National Unity in Khartoum in the event of secession) and land ownership (the key issue being land owned by Southerners in the North and vice versa if there is secession), citizenship issues must be sorted through first.

What role for states not directly involved in the mediation? A contact group or group of friends comprising states committed to supporting Sudan through the referendum and well beyond can be a useful tool for inserting targeted pressures and incentives into negotiations and providing technical assistance. The troika, comprised of the U.S., U.K. and Norway, was effective in this role during the CPA negotiations (Norway is an important actor in Sudan because of its expertise in oil sector management). More recently, the "E6"—the special envoys from the five permanent U.N. Security Council countries, plus the European Union special envoy—have met periodically to coordinate efforts, but there may be significant differences between the western countries, China and Russia. The troika may serve as a foundation for a contact group or group of friends; the committed engagement of its three members is essential. A contact group or group of friends will likely be larger than three members, but should not grow so large that it becomes unwieldy. The Assessment and Evaluation Commission, a monitoring body created by the CPA, can also be a useful resource for the mediator and contact group or group of friends, but is sometimes hindered by its composition (members include NCP and SPLM officials). As with the choice of mediator, any members of a contact group or group of friends should demonstrate a long-term commitment to Sudan, whether it is one country or two. Membership should not be open to all.

Finally, some have suggested that negotiations on post-referendum arrangement be merged with the ongoing Darfur negotiations in Doha, in an effort to address some of Sudan's fundamental challenges, especially relations between Sudan's core (Khartoum and its environs) and periphery.

But these two negotiation tracks are in very different phases right now, with the Doha process possibly nearing success or failure (the NCP asserts that negotiations should conclude prior to the elections), and negotiations on post-referendum arrangements in their nascent stage.

For the latter to have a chance of success the issues need to be simplified and isolated to the extent possible, not complicated by dynamics in Darfur. Keeping these negotiating tracks separate will not help solve Sudan's underlying challenges, but may help limit fallout from the coming referendum.

## ABOUT THIS BRIEF

This Peace Brief was written by Jon Temin, USIP's Sudan Program Officer, and is based on meetings in Khartoum, Juba, Washington and elsewhere between August 2009 and January 2010.

## Endnote

1. Johan Brosche. "Sharing Power—Enabling Peace?" Department of Peace and Conflict Research, Uppsala University. [http://www.pcr.uu.se/pcr\\_doc/other\\_pub/Sharing%20Power.pdf](http://www.pcr.uu.se/pcr_doc/other_pub/Sharing%20Power.pdf)



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