



# Against the Gathering Storm Securing Sudan's Comprehensive Peace Agreement

A Chatham House Report

Edward Thomas



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# Acknowledgments

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## List of Acronyms

<b>AEC</b>	Assessment and Evaluation Commission	<b>NDA</b>	National Democratic Alliance
<b>AECSK</b>	Assessment and Evaluation Commission for Southern Kordofan	<b>NEC</b>	National Electoral Commission
<b>AMIS</b>	African Mission in Sudan	<b>PDF</b>	People's Defence Forces
<b>AU</b>	African Union	<b>SAF</b>	Sudan Armed Forces
<b>CPA</b>	Comprehensive Peace Agreement	<b>SLM/A</b>	Sudan Liberation Movement/Army
<b>DoP</b>	Declaration of Principles	<b>SPLA</b>	Sudan People's Liberation Army: the SPLA split into a number of hostile factions after 1991, some of which took different names, but they are described as 'SPLA dissident factions' throughout this report.
<b>DPA</b>	Darfur Peace Agreement	<b>SPLM</b>	Sudan People's Liberation Movement
<b>FFAMC</b>	Fiscal and Financial Allocations Monitoring Commission	<b>UNAMID</b>	United Nations African Union Mission in Darfur
<b>GoNU</b>	Government of National Unity	<b>UNCOI</b>	United Nations Commission of Inquiry
<b>GoSS</b>	Government of Southern Sudan	<b>UNMIS</b>	United Nations Mission in Sudan
<b>ICC</b>	International Criminal Court		
<b>IGAD</b>	Inter-Governmental Authority on Development (formerly the Inter-Governmental Authority on Drought and Desertification)		
<b>JEM</b>	Justice and Equality Movement		
<b>JIU</b>	Joint Integrated Units		
<b>NCP</b>	National Congress Party: a party created in 1998 by the leaders of the 1989 National Salvation Revolution, which was inspired and led by the former National Islamic Front. The same leadership personalities have used different political vehicles throughout their two decades of power: this report anachronistically uses the term 'NCP' to describe all governments led by Omar al-Bashir		

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# Executive Summary

Sudan's Comprehensive Peace Agreement (CPA) was signed in 2005, ending two decades of war between Sudan's central government and the Southern-based Sudan People's Liberation Movement/Army. The CPA shares wealth and power between Sudan's powerful centre, a newly autonomous South, and Sudan's other vast, diverse, impoverished peripheries. The bold peace gave new legitimacy to the two parties, who agreed to face their first competitive elections in 2009. Southern Sudan will have a referendum on self-determination in 2011.

Four years into the CPA's six-year interim period, the ceasefire holds. A new Government of Southern Sudan is financed from Sudan's oil wealth. At the centre, former adversaries share power in a Government of National Unity. But the CPA's flaws are now conspicuous. It was an exclusive bilateral deal between the country's biggest military-political groups. Elections should include excluded groups, but stalled progress on election planning and restrictions on constitutional freedoms have limited expectations of the vote. Ambitious plans to invest in the impoverished periphery have not created tangible changes. National reconciliation has been shelved. And the violence in Darfur has not been resolved.

The Darfur crisis has diverted the attention of the CPA's many international sponsors and led to perceptions that their commitment is an inadequate guarantee. The two parties have instead sought military guarantees to preserve gains, using oil wealth to build armies. Delays in implementing preconditions for the elections – such as a census and the demarcation of the North–South border – have bunched together complex processes at the end of the interim period.

If the troubled relationship between Sudan's powerful centre and its periphery is not resolved, the South can opt out of Sudan. The referendum is becoming the agreement's centrepiece. Peripheral areas of Northern Sudan, however, have no opt-out. If the agreement fails to create a fairer Sudan they will have to negotiate new relationships with the powerful centre. For two decades, the governing National Congress Party (NCP) aggravated the contradictions of the peripheries to mobilize for war in the South. At the centre, it swept away traditional parties that had managed neglected margins without violence, and had given Northern Sudan a kind of cultural coherence that has been replaced with embattled, often violent, ethnically constructed regional groupings.

The CPA's prescriptions for a fairer Sudan could still arrest trends towards fragmentation. But the possibilities for political progress are shifting away from the agreement's thoughtfully constructed institutions. The crisis in Darfur and the possible indictment of the President, Omar al-Bashir, by an international court have forced the governing party to re-examine domestic alliances and consider previously unpalatable deals, outside CPA processes.

“The international community needs to recognize the serious risks that civilians will face if Sudan's ambitious project for peace fails, and make clear how it will respond”

Failure now could lead to the sort of breakdown seen in Darfur, and time and opportunities are running out. But international commitment to the CPA can help carry the peace past the 2011 referendum, and help spread it to Darfur and all of Sudan. Progress on the agreement's prescriptions for the fairer division of power and wealth in Sudan in the remaining thirty months of the interim period will create resources for Sudan's future, while reverses now will impose heavy future costs. The main conclusions of this report are:

- International supporters of the CPA need to recommit urgently and thoughtfully to help secure its implementation across the whole of Sudan. To succeed, they need to work multilaterally, and they must understand and exploit the unavoidable connection between progress on the CPA and progress in Darfur.
- Neglected provisions of the CPA, such as land reform, local development and reconciliation, need to be addressed for peace to work in Darfur and in regions of emerging conflict.
- The SPLM needs to take elections seriously, promote stability and democracy in Northern Sudan, and fully engage with peace processes between the central government, Darfur and other peripheral areas of Northern Sudan.
- President Omar al-Bashir's NCP is prepared to make changes in order to survive. These changes must reduce the tensions between the centre and the periphery, and to do this they must address the need for a fairer division of wealth and power. International supporters of the CPA should mobilize their diplomatic resources to encourage the NCP to align its interests with the wealth- and power-sharing processes of the CPA.
- Civil actors excluded from the CPA's drafting need to be included in the electoral process. Fair, competitive elections are a key process for inclusion – and the international community must work to address the many obstacles facing those elections.
- The international community needs to recognize the serious risks that civilians will face if Sudan's ambitious project for peace fails, and make clear how it will respond.
- The international community has specific roles: monitoring CPA outcomes in daily life; making clearer political judgments about CPA implementation; disseminating information; and explaining clearly what it can do to protect civilians.

## Outline of the report

This report is divided into four sections. The Introduction sets out the main provisions of the CPA and briefly assesses progress on these provisions. The second section highlights some of the main issues in the drafting and implementation of the CPA. The third section looks at existing trends towards fragmentation in Sudan, and tries to assess how they will play out in the next few years. The final section contains recommendations for international supporters of the CPA. One of the report's main assumptions is that conflicts in Sudan arise from an unbalanced relationship between the centre and many of its peripheries. The report focuses on three or four areas of current or former conflict in Southern Sudan, Southern Kordofan and Darfur. There are important lessons to draw from conflicts and peace processes in other areas, such as Eastern Sudan, Blue Nile and parts of the Northern Nile Valley affected by dams. Rather than giving a tally of progress in these different peripheries, the report focuses on the often overlooked problem of the centre.

Sudan – provinces, main towns and CPA boundary



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

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

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# 1. Introduction

On 9 January 2005, the rebel Sudan People's Liberation Movement/Army (SPLM/A) and the Government of Sudan signed the Comprehensive Peace Agreement (CPA). The agreement was the culmination of thirty months of negotiations and a much longer period of conflict, reflection and dialogue that included neighbouring states and political forces in Sudan. It ended more than two decades of war between the largest military and political group in Southern Sudan, the SPLM/A, and a government led by the National Congress Party (NCP), a party that brings together Islamists with Northern Sudanese military, security and commercial interests. The NCP leadership has ruled Sudan since 1989.

The root causes of the war between the South and the central government lay in policies of separate, unequal and sometimes exploitative development. These policies were developed by Sudan's colonizers and the elites whom they sponsored and who inherited the Sudanese state. They kept the South isolated and underdeveloped, and enriched the Northern Nile Valley, the populous heartland of the state. Sudan's territory expanded in the colonial period, and peripheral areas were drawn into a system with a dominant centre, unfamiliar laws and powerful markets.

Since the birth of independent Sudan in 1956, this system of government has usually required the use of war to control and exploit Southern Sudan. In the late 1980s, the conflict spread across the northern border of Southern Sudan to peripheral areas in the North. Conflicts in the North were the result of the central state's divisive policies over the past three decades, and followed the example of Southern resistance to those policies. These peripheral

areas of Northern Sudan had previously been managed through patronage systems that could work without extreme violence.

All of Sudan's rulers during the violent nineteenth and twentieth centuries shaped its diverse identities for their own purposes. They used the modernizing potential of Islamic *shari'a* law to replace common wealth with market systems, as a means to control societies at the centre: they used ethnic and religious identities to divide and control societies at the periphery. For that reason, Sudan's conflicts are often portrayed and experienced as religious or 'racial' wars – an African periphery versus an Arab centre, or a Christian or Animist South versus a Muslim North.<sup>1</sup>

## Outline of the CPA

The CPA addressed the problems of mismanaged diversity and unequal development and has provided the political framework for a ceasefire for the war in Southern Sudan and its borderlands in the North. It created an autonomous Government of Southern Sudan (GoSS), with a Southern constitution based on customary laws and values, and not on Islamic *shari'a* law, which remains a source of law for the North.

The agreement restructured the centre of the state. A Government of National Unity (GoNU) divides military, political and economic power between the SPLM and the NCP, and gives Southern Sudanese representation in state institutions in proportion to the size of Southern Sudan's population. Elections scheduled for 2009 will give state institutions shaped by two decades of unchanging NCP leadership a mandate from citizens. Sudan's constitution and citizenship are reframed around international standards of human rights. The national government will initiate a process of national reconciliation. Special measures apply in three areas of Northern Sudan drawn into the war because their politics and culture were similar to those of the South: Abyei, Southern Kordofan and Blue Nile.

Over a six-year interim period, this restructuring aims at ending the marginalization of Southern Sudan and at allocating new resources to other marginalized areas. Sudan began exporting oil in 1999, and oil receipts now

account for over half of central government revenues. According to the agreement, oil revenues are to be shared between Northern and Southern Sudan; more financial resources from the centre will be allocated to states; and local conflicts over natural resources will be addressed through new institutions.

The agreement recognized the former rebel army, the SPLA. The SPLA and the central government's Sudan Armed Forces (SAF) have been largely redeployed, the SAF to the north and the SPLA to the south of the border, drawn in colonial times, that demarcates Southern Sudan. Joint Integrated Units (JIUs), made up of SPLA and SAF components, are intended to form the nucleus of a new, national army and symbolize joint sovereignty in the interim period.

Finally, international actors and a United Nations peace-keeping mission monitor the whole process. These measures, according to a key phrase in the CPA, are aimed at 'making the unity of Sudan attractive' to the people of Southern Sudan. Nonetheless, Southern Sudanese have the opportunity to vote in a referendum for their own independent state at the end of the interim period, in 2011.

The CPA's prescriptions for systemic change are intended to remake an unstable giant of a country. If Sudan can use the agreement to create a stable and fair society, it could transform itself and the militarized Horn of Africa. The human rights discourse and the ambition of the agreement may sound wordily familiar to a liberal governance expert, but the agreement was a product negotiated and to a large extent formulated by Sudanese politicians. At the outset, the CPA appeared to set the limits of possibility for political progress for the whole of Sudan. The boldness of the peace granted new legitimacy to the two adversaries, both of whom had abused civilians during a bitter war. The preamble to the final document expressed the hope that it would be a 'concrete model for solving problems and other conflicts in the country'<sup>2</sup>

## The CPA four years on

Over the last four years, the two armies have largely redeployed over the North–South border, and the ceasefire has survived two serious breaches, although violence persists

in some border areas and parts of Southern Sudan. Together, the NCP and the SPLM have made far-reaching (but reversible) changes to the central state, setting up the Government of National Unity. The GoNU has an in-built majority for the NCP but also significant representation of the South in the Presidency and the Council of Ministers. The Government of Southern Sudan has been established with financial resources that dwarf those of larger neighbours.

‘For many of the people interviewed for this report, the CPA no longer represents a hope for fundamental change in Sudan’

But the mood in Khartoum and Juba, the Northern and Southern capital cities enriched and transformed by the agreement, was downbeat and sour at the end of 2008. Slippage in implementation of the CPA led to an SPLM walkout from the GoNU in late 2007. The SPLM returned to government but crises continued into 2008. All but a few Southerners expect separation, and many Northerners are resigned to or even supportive of a split. The referendum, intended by the CPA's international sponsors as a last-resort guarantee, has become the non-negotiable centrepiece of the whole peace process, overshadowing the elections that were supposed to seal the agreement with a popular mandate. If unity no longer looks attractive, the costs of separation are not being discussed. Instead, resources and planning are being poured into the SPLA and SAF, which are seen as guarantors of each party's gains from the CPA.

For many of the people interviewed for this report, the CPA no longer represents a hope for fundamental change in Sudan. The possibilities of political progress have shrunk, shifting away from the CPA institutions that have been grafted on to Sudan's historically weak state. The preambular paragraph expressing hope that the CPA would resolve other conflicts was an admission that

comprehensive peace was already eluding Sudan in 2005. The CPA did not address the conflicts outside the South–centre axis, and did little to address the conflicts within the South itself. In 2003, before most protocols were finalized, a long period of instability of Darfur had become a war. This war was not discussed in the negotiations, the most important political process in the country.<sup>3</sup>

The CPA still confers legitimacy on the NCP and the SPLM. In spite of disappointments and painful concessions, both parties have stuck with the agreement. But implementation is stalling. Many interlinked, critical processes are bunched at the end of the interim period (from January 2009 to July 2011). Delays to implementation have made the schedule for the next two years hectic.

The UN Security Council’s decision to refer the situation in Darfur to the International Criminal Court (ICC) has made the situation unpredictable. Nonetheless, constructive engagement by both parties could still make the agreement work, or at least prevent major reverses. The international community played a major role in the drafting of the CPA, and in the decision to exclude Darfur from what could have been an all-Sudan agreement. It retains a major role in supporting its implementation. If domestic and international actors neglect these roles, Sudan will continue a drift towards fragmentation. The following two sections of this report look at how the CPA was drafted and implemented, and the risks of failure.

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## 2. The Drafting and Implementation of the CPA

A number of key problems in the drafting and implementation process stand out:

- The CPA's drafters presented a detailed account of the hard political work needed to make unity a success. Self-determination, in contrast, was presented much more tersely, as a medium-term opt-out. Political energy is being spent on guaranteeing the opt-out, and the long-term goals of either self-determination or unity are being neglected as a result. Other conflict-ridden parts of Sudan do not have the same opt-out, and this is a factor for instability.
- The CPA was a two-way deal between the two biggest military-political groups in the country. It excluded all regions of Sudan and all actors that had not taken part in the war between the SPLM and the NCP-led government, including all practitioners of civil politics. As elections approach, that exclusion has been exacerbated by the failure to enact the guarantees of free expression required by the agreement.
- Lack of political will and misuse of bureaucratic procedure have stalled progress on restructuring many key elements of the state, overshadowing early achievements.
- In four years of peace, the ceasefire between the parties was seriously breached twice. Peace-keepers and ceasefire institutions were able to limit the fallout but not able to protect civilians from violence.

- The division of oil rents between GoSS and GoNU has been taken as the principal measure of success in the area of wealth-sharing. Longer-term structural issues, such as fair access to land and natural resources, or fair distribution of state resources across rich and poor areas of Sudan, have received scant attention.
- Finally, the crisis in Darfur has diverted international attention from the CPA. With less attention and less of a sense of international guarantees for the CPA, the two sides have sought military guarantees to preserve gains. The possibility that the ICC may indict the head of state has upended many political incentives and calculations.

### The drafting of the CPA: self-determination or state transformation?

The problems of mismanaged diversity and unequal development were recognized from the outset by the countries which sponsored the process that led to the CPA. In 1994, a group of Horn of Africa states under the umbrella of the Inter-Governmental Authority on Development (IGAD) produced a draft Declaration of Principles (DoP) after negotiations with Sudan's government and the two main SPLM/A factions (the SPLM/A was fragmented at the time).<sup>4</sup> The DoP proposed the establishment of a secular democracy and fair sharing of wealth in Sudan – failing that, the South could exercise its right to self-determination through a referendum. Eritrea's 1993 referendum was an important precedent.

The United States engaged briskly in the peace process after 2001, as part of a coalition of Western states made up of Italy, the Netherlands, Norway and the United Kingdom. The NCP engaged too: it was looking for strategies to deal with internal divisions, and was eager to cooperate with the US after the 2001 al-Qaeda attacks – Sudan had hosted al-Qaeda training camps until 1996. A US envoy brokered a deal between the NCP government and the SPLM that led to agreements on the protection of civilians in Southern Sudan. He endorsed a Swiss-brokered ceasefire for the Nuba Mountains in Southern Kordofan, and proposed a North–South oil-sharing deal.<sup>5</sup> The 'transformational diplomacy' that characterized the early years of the administration

of George W. Bush had little success elsewhere, but it set the pace of far-reaching change in Sudan.

When IGAD negotiations restarted in Kenya in 2002, views on self-determination had changed. All major national political groups, including the NCP, acknowledged the right of Southern Sudan to a referendum on its future status. Most Southerners probably wanted independence. But an independent South was not the SPLM's stated objective – its leadership wanted a whole-Sudan solution. John Garang, one of the founders of the SPLM, who became its leader in 1983 and whose ideas helped shape the CPA, was not a separatist. In 1983, he had called for the destruction of the Old Sudan, and the creation of a New Sudan that would be just and democratic.<sup>6</sup>

Garang's views chimed with those of the DoP – it proposed a secular, democratic and equitable Sudan. The right to a referendum, according to the DoP, would only be exercised if the reconstruction failed to take place.<sup>7</sup> In the first protocol of the CPA, signed in 2002, these priorities shifted. Only the South would have a secular system; the North would retain Islamic *shari'a* as the basis for law. And the right to secession through a referendum was no longer conditional on the failure of reconstruction: it could be exercised whether or not the state had been restructured.<sup>8</sup>

“The main lesson of Northern Sudan's recent history is that diverse but mismanaged religious and ethnic identities are fragmenting under the pressures of a dominating centre”

This shift made secession more likely and the referendum more important. The creation of two polities in one country would not prolong the unity of North and South Sudan. Creating a single, Islamically-oriented polity in Northern Sudan prolonged the rule and legitimacy of the NCP, a party with Islamist origins. The international sponsors of the CPA

accepted NCP claims to represent the whole of Northern Sudan, a claim based on the fact that Northern Sudan is almost entirely Muslim. This acceptance entrenched the NCP's version of Sudan as a country with a static Muslim identity expressed through an Islamist ideology.

This version runs counter to historical experience – the main lesson of Northern Sudan's recent history is that diverse but mismanaged religious and ethnic identities are fragmenting under the pressures of a dominating centre.<sup>9</sup> Northern Sudanese who do not fit into the NCP's version of Sudan have no referendum on staying or going: they can only use the political opportunities of the moment to try to restructure the state. The fact that Southern Sudanese can opt out of Sudan makes the task of these Northerners harder: under the CPA, state restructuring is less likely than it might have been if the terms of the DoP had been kept to.

The Blue Nile, Abyei and the Nuba Mountains in Southern Kordofan are areas of the North with large populations culturally that are contiguous with the South and that were drawn into some of the bitterest fronts of the war between the South and the central government in the 1980s. (They are referred to collectively as the Transitional Areas.) The populations in these areas mostly supported the SPLM/A because their lands faced encroachment from allies of the NCP, and because their indigenous religions and folk-Islam were directly targeted in a war that the NCP's leaders described as a *jihād*.<sup>10</sup> They were receptive to the SPLM/A's policies on secularism, democracy and the recognition of the commons, a cornerstone of African customary land law. Armed groups on the eastern border with Eritrea sought alliances with the SPLA in 1993. Separate but related examples of Sudan's fragmentation emerged in the conflicts in Eastern Sudan in the 1990s and in Darfur, which turned into war in early 2003 as the negotiations got under way. In a rare interview, IGAD's Kenyan chief negotiator commented:

But of course the CPA itself is not comprehensive. Comprehensive in my understanding would be the whole of Sudan. That was never on the table: the government would not allow it. Every time I tried to raise it they said, 'Oh, you want to come and resolve all our conflicts? Come to Darfur, come to Eastern Sudan, we have enough problems. Come to the north; we have a lot of problems!'<sup>11</sup>

Rather than address regional problems in Sudan comprehensively, IGAD created a precedent for hard-fought bilateral deals. In the end, the SPLM insisted Abyei (an area formerly part of Southern Sudan that was incorporated into the North in 1905) got a referendum. It was prepared to forgo an opt-out clause for Blue Nile and Southern Kordofan, not historically part of Southern Sudan.<sup>12</sup> Instead, members of local legislative assemblies will have the right to reopen negotiations with the government on the terms of the peace agreement in a process called ‘popular consultation’. The perfunctory treatment of the problems of Southern Kordofan and Blue Nile was seen as an acceptable compromise for the sake of a bilateral deal.

### The drafting of the CPA: a bilateral agreement between two military-political structures

The negotiations were conducted between the SPLM, the largest military-political group in the South, and a government dominated by the NCP’s security-commercial elite. Southern politics had been militarized by many years of war. Civil institutions that still existed – such as churches and traditional authorities – had little influence in the negotiations. Other armed groups in Southern Sudan were excluded, and depicted to the international community as potential spoilers of the agreement. The SPLM’s erstwhile allies in the Northern opposition parties and allies in Darfur were also excluded: policies adopted after the NCP-led coup had greatly weakened them in any case. The sponsors of the agreement, chief among them the US, pressed ahead with a bilateral agreement, because the costs of the war in the South were so heavy, and they believed that the flaws of the agreement would be addressed in the implementation.

The CPA allowed both parties a grip on power, allocating them 80% of seats in the national legislature. The NCP retains a veto – it has a two-thirds share in the Presidency, and 52% of the seats in the National Assembly. The SPLM’s share in national institutions is 28%, and the remaining 20% is divided between opposition parties.

### It takes three to tango

‘A very bad agreement ... A bipartisan conspiracy. But all its opponents see it as a starting line.’<sup>13</sup> This view, expressed by an NCP official who works in the Presidency, aptly communicates the equivocal endorsement of the agreement expressed by nearly everyone interviewed for this report.

John Garang became a veto-holding First Vice-President of a new three-man Presidency, along with President Omar al-Bashir and Vice-President Ali Osman Mohamed Taha. ‘It takes three to tango,’ one NCP official joked at the time, perhaps a wry admission that Garang was the one man in Sudan who could out-dance two of the most powerful and wily men in the country. The parties were able to conclude the agreement in a relatively short thirty months because both sides believed that the Presidency could resolve problems. Garang’s untimely death in a helicopter accident in July 2005 created the first big crisis for the agreement. The agreement was strong enough to survive him, but the SPLM was robbed of a powerful negotiator.

Garang was seen as a possible contender for the presidential elections which the CPA stipulates must take place before mid-2009. His name on the ballot would have made those elections more competitive. Although Garang was not an instinctive democrat, a Garang–Bashir contest would be a vivid demonstration of the enormous political space in Sudan, revealing the distance between its extremes. Democratic elections are supposed to turn the ‘bilateral conspiracy’ into a national project. They are intended to create a parliament which can amend the 2005 Interim National Constitution, a legalized version of the CPA, possibly even extending its provisions to other conflicts that were overlooked in its drafting.

Garang’s death altered expectations of the elections. Without him, unity is less attractive and Southerners are more likely to vote for independence. His successor, First Vice-President Salva Kiir, has been tactically ambiguous about his candidacy for the national Presidency. But it is unlikely that Kiir will run – he has to give up his position as President of GoSS to do so.<sup>14</sup> So the CPA’s provisions for

**Box 1: Is there a peace dividend? Some positive outcomes of the CPA in Southern Sudan****Mobility**

Conflict imposed heavy restrictions on mobility in Southern Sudan. The ceasefire has allowed people to move, and has ended some of the cruel separations that became a part of everyday life for many war-affected people in Southern Sudan and the Transitional Areas.

**Health**

Accurate reporting of trends in morbidity and mortality does not yet exist in Southern Sudan. A 2006 survey showed that Southern Sudan's child and maternal mortality rates were very poor (maternal mortality is the worst recorded internationally). There have been new investments in maternal care.<sup>a</sup> Immunization coverage and distribution of mosquito nets have increased significantly. Southern Sudan now has adequate pharmaceutical supplies for the first time.

**Education**

Primary enrolment was under half a million in 2005–6, but by 2007–8 had reached 1.5 million students. Although there are severe personnel and infrastructure shortages, there have been significant improvements in teacher recruitment and training, and construction of classrooms.<sup>b</sup>

**Conflict killings**

The ceasefire brought an end to Southern civil wars and the war between the South and the centre. These wars killed huge numbers of people: deaths are estimated in the millions.<sup>c</sup> There is a continuing problem of violence between armed civilians.

**Displacement**

Forced displacement of civilians, sometimes through the creation of famine, was a major weapon of war and a policy that has shaped Sudan's rapid path to urbanization. The UN estimates that 2.37 million persons out of more than four million displaced by the wars in the South and Transitional Areas had returned to their homes by mid-October 2008.<sup>d</sup> With little outside assistance, families have been reunited and new ideas brought to a very isolated part of the world.

**Notes**

- a. GoNU, GoSS, *Sudan Household Health Survey – 2006*, December 2007, p. 166; interview with World Bank official, Juba, October 2008.
- b. Interviews with World Bank and GoSS Ministry of Education officials, Juba, October 2008.
- c. Mortality estimates are critically reviewed in Douglas H. Johnson, *The Root Causes of Sudan's Civil Wars* (Oxford: James Currey, 2007), p. 143; and Abel Alier, *Southern Sudan: Too Many Agreements Dishonoured*, Khartoum, 2003, p. 301.
- d. *Report of the Secretary-General on the Sudan*, UN Security Council, 20 October 2008, p. 9.

a referendum are trumping its complex and thoughtful proposals for state restructuring. Northern opponents of the NCP express understanding for the SPLM's preoccupation with a Southern opt-out: they also express dismay.<sup>15</sup> They fear that if elections are contested without vigour and are quickly followed by Southern secession,

emerging and active conflicts in Northern Sudan will be aggravated.

The drafters of the CPA correctly diagnosed the problem of conflict in Sudan as a problem of an over-dominant centre and therefore proposed a restructuring of the centre. But they applied the diagnosis to one group

of conflicts, on the country's North–South axis, and ignored political fragmentation and emerging conflicts within the North and South. They made secession less costly than the hard political work of democratic transformation. The drafters created many institutions; indeed the agreement has been criticized for over-institutionalizing the peace process. But in the end, the CPA relied heavily on one personality: Garang. His death set unexpected limits on the implementation of the agreement.

### The implementation of the CPA: initial achievements

The agreement is difficult to monitor, because it sets up so many institutions and processes across multiple levels of government across a vast country (resources cited in note 16 provide details).<sup>16</sup> The implementation modalities provided for a burst of initial activity which succeeded in maintaining the momentum of peace and met some minimum conditions for both parties – a constitutional framework, a financially viable GoSS, and a ceasefire. The constitution withstood the enormous shock of John Garang's death at the end of July 2005, and ceasefire institutions have more or less managed two serious breaches.

The NCP and the SPLM put in place the minimum operating requirements of the CPA in the first year of the agreement, 2005. The parties set up a new constitutional framework that divided legislative and executive power between the NCP and the SPLM. New structures to monitor or implement the CPA were established. Ceasefire monitoring institutions and the United Nations Mission in Sudan (UNMIS), a peacekeeping mission, were established, and preparations for redeployment moved forward (albeit slowly). The international Assessment and Evaluation Commission was established. The first transfers of oil revenues to Southern Sudan took place. (Progress on sharing Sudan's oil wealth was rapid but contested: GoSS has frequently complained that the process of determining shares is not transparent.)

### The implementation of the CPA: stalled progress

CPA implementation requires a large number of interlinked processes to succeed. The burst of activity at the outset of the interim period shows how these processes could be orchestrated. The current period, in contrast, shows how delays or obstructions might cause the collapse of the agreement.

The CPA stipulates the holding of a general election before mid-2009. The election is the mechanism whereby the people of Sudan endorse the peace, and change the composition of the National Legislature so that the constitution can be amended. State governors, state assemblies and the President and Legislative Assembly of Southern Sudan will also be elected. Elections will replace the current appointees with mandated and empowered governors and legislators.

A number of conditions need to be fulfilled for the election to go ahead – the demarcation of the border between North and South Sudan, a census, the adoption of an electoral law, the appointment of a National Electoral Commission (NEC) and creation of an electoral roll, and laws guaranteeing freedom of expression. The CPA's implementation timetabled these as follows:

- Border demarcated July 2005
- National election law early 2006
- NEC within one month of the election law
- Census completed July 2007
- Election completed July 2009

The census results have yet to appear, but will show whether the CPA-mandated quota of official posts for Southerners – around a third – reflects their share of Sudan's population, which includes millions of internal migrants and displaced people. Constituencies need to be weighted to local populations. Many people believe that border demarcation is also necessary for constituencies to be drawn, although this is not an explicit CPA provision.

All these processes were delayed until 2008, and some are not yet completed. The Electoral Law was adopted in July 2008 and the co-chairs of the NEC were appointed in

November 2008. In that month, the technical commission for border demarcation submitted a consensus report to the Presidency, which is likely to be disputed. Border demarcation may have been delayed across the South and frustrated in Abyei (see below) because it directly affects the division of oil revenues. Southern Sudan gets a share in the revenues from oil extracted from Southern Sudan, not a share of all oil revenues. Small variations in border demarcation can change the number of wells in the South or North and seriously affect revenue distribution between them. The border is supposed to be demarcated by concrete pillars before April 2009, and local populations may protest against changes that affect livelihoods. These protests could easily spark violence; the redeployment of forces has led to a massive military build-up along the border.

Because some rights (such as the right to vote in the referendum) are restricted to Southerners, the SPLM took the view that the census needed to give a clear account of ethnicity and religion. A clear picture of Sudan's ethnic and religious make-up would probably show the demographic dominance of the people of the periphery – the 'Africans' – over the indigenous people of the Northern Nile Valley, who control the state – the 'Arabs'. That was a factor in the NCP's decision to exclude these issues from the questionnaire. GoSS continued to express concerns about the questionnaire and the impact of the security situation on coverage. It cited these concerns when it walked out from the GoNU in October 2007, and tried to postpone the census at the last minute. Heavy international pressure led to a change of policy, and enumeration started in April. GoSS's concerns about coverage and security were borne out in serious incidents of local violence in Lakes State. In Darfur, the GoNU announced coverage rates of 85–90%, even though many in the huge population of displacement camps refused to take part, because the census would not count missing persons or refugees.

The census will probably not appear before February 2009. Widely trailed rumours suggest it will indicate that the population of Southern Sudan is smaller than the proportion used in the CPA. Many Southern institutions, including the Southern Sudan Legislative Assembly, have warned that they may reject its results. A low population would be a reminder of the enormous loss of life and displacement that the South suffered during the war, and might even jeopardize the refer-

endum. A Referendum Law, whose adoption was timetabled for July 2008, has not yet appeared, and this aggravates fears in the South of the worst-case scenario, as follows:

- ***The census finds that the population of the South is under 25%, and Southern representatives no longer have enough seats in the National Assembly to be able to reject constitutional amendments, which require a three-quarters majority in separate sittings of both chambers of the national legislature. (Currently, the SPLM has 28% of seats in the appointed National Assembly and other Southern political forces have 6%, against the NCP's 52%.) The non-enumeration of displaced persons in Darfur leads to their disenfranchisement, depriving the SPLM of a possible constituency in the elections. The NCP then uses the legislature to revoke key elements of the CPA, including the right to self-determination, or to extort an unacceptably high price for it.***

For elections to be free and fair, other conditions are needed. The CPA and the Interim National Constitution require the transformation of the security services into a body for information-gathering and analysis.<sup>17</sup> To implement this, the current broad powers of the security services to arrest and detain people without charge for up to nine months need to be abolished. The director of the security services can grant security officers immunity from criminal proceedings and this has created a situation of near-total impunity for abuse.<sup>18</sup> This impunity needs to be replaced with a commitment to end abuses in Darfur and other areas of conflict. The Council of Ministers has not yet proposed a law to enact these changes.

Progress is needed on other areas of human rights. The National Constitutional Review Commission has drafted a law enabling the establishment of the Human Rights Commission (timetabled for July 2005), but the Council of Ministers has not yet passed it to the National Assembly. The 2004 Press and Printed Materials Act has not yet been reviewed (in February 2008 the government reinstated direct censorship on newspapers, and many journalists have been arrested for their resulting protests). The session of the appointed National Assembly was due to end in December 2008 but has been extended to cope with this legislative backlog.

There is now widespread discussion of the possibility of postponing the elections. Any talk of postponement of the referendum, however, is unacceptable to the South. Putting the elections so near to the referendum will limit the ability of elected parliamentarians and governors to make the CPA work, or to use it to address conflicts that have emerged or deepened since it was signed.

## The unimplemented CPA

Delays have introduced considerable stress into the peace process. Other key processes have been frustrated. Provisions that could make interim progress on national unity – such as the Joint Integrated Units of the two armies, or the proposals for an inclusive civil service – have been undermined. JIU formation was delayed and joint doctrines were not formulated. In one of the two major ceasefire breaches, the SAF and SPLA components of the JIUs fought each other, and in the other, the JIUs imploded. The commission for the civil service is supposed to ensure that 20–30% of posts in the GoNU, including senior posts, are filled by Southerners. An inclusive bureaucracy would create a constituency of Southerners strongly committed to unity. But progress has been almost non-existent.

“The problem is not really an over-ambitious peace agreement, but the fact that sustainable peace for Sudan is an enormously ambitious political project that demands more commitment than it has so far been given.”

Finally, some provisions of the CPA that are needed to make a reality of peace appear to have been more or less abandoned. The CPA provided for a review of land policy,

in a country where land conflict had been a starting-point for war in many areas. Laws drafted to set up the National Land Commission have not been adopted. The same applies to the Human Rights Commission. There has been no progress in the initiation of national reconciliation.<sup>19</sup> The extremely ambitious nature of these provisions has led some officials and observers to be privately dismissive of the possibility of their implementation. However, the provisions set out those CPA processes that are unavoidable components of a peace agreement for Darfur: indeed, all feature in the largely unimplemented Darfur Peace Agreement of 2006. The problem is not really an over-ambitious peace agreement, but the fact that sustainable peace for Sudan is an enormously ambitious political project that demands more commitment than it has so far been given.

## Violations of the CPA

In some cases, one or other party has chosen to flout the agreement. The crucial issue of border demarcation in Abyei was not resolved during the negotiations, but passed to an international commission. The commission produced a report promptly, but it was rejected by the NCP, leaving the area without a civilian administration and infiltrating tense national political considerations into everyday decisions. Troop redeployments on both sides led to a build-up of forces along the North–South border. In May 2008 one of many incidents ignited violent clashes in Abyei. Eighty-nine people were killed; more than 50,000 persons were displaced.<sup>20</sup> Many of Abyei’s Ngok Dinka citizens, part of the largest ethnic group in Southern Sudan, had fled during the war between the South and the central government, and many of the displaced people were returnees, whose calculations about peace suddenly proved wrong. Neither the SPLA nor the UN was able to protect them. A ceasefire was agreed within a fortnight, and a roadmap for political progress within a month. The roadmap referred the findings of the Abyei Boundary Commission for international arbitration and assigned a JIU battalion to replace the SAF and SPLA troops that were mostly

drawn from the area. The incident shows how local feelings about borders can shape and be shaped by national politics.

In July 2008, the SPLA brought 18–20 tanks across the Ethiopian border into Blue Nile State. The Permanent Ceasefire Agreement defines a ceasefire zone that covers the theatres of war between the SPLA and its allies, and the centre; and prohibits unauthorized replenishment of military supplies in that zone. The SPLA action was a violation, and according to one military source, the SAF made a serious threat to bomb the tanks, which it did not carry out.<sup>21</sup>

UNMIS was harshly criticized for failing to protect civilians in Abyei.<sup>22</sup> In a rebutting press release, UNMIS stated that it does not have the mandate or the capacity to protect civilians in its area of operations.<sup>23</sup> The UNMIS mandate is to support the implementation of the CPA and monitor the ceasefire, not to enforce the peace. Only a part of the mission's mandate comes under Chapter VII of the UN Charter, which allows the Security Council to authorize the use of force. The relevant resolution mandates peacekeepers to take 'necessary action, in areas of deployment of its forces and as it deems within its capabilities ... to protect civilians under imminent threat of physical violence' while recognizing the overall responsibility of the government to protect its civilian population.<sup>24</sup> The limitations of this mandate became very clear in Abyei – UNMIS has no heavy weapons and could not hope to engage the tanks and warplanes that the SAF had deployed; nor is the Security Council likely to give UNMIS that mandate. UNMIS cannot fight the SAF or the SPLA: its contribution is to provide the ceasefire institutions and monitoring framework that helped end the violence in two weeks. In this view, the CPA 'worked' in Abyei.

However, some Abyei civilians caught up in the violence expressed deep disappointment with the UN response.<sup>25</sup> And while the UNMIS-chaired ceasefire institutions have managed two serious ceasefire breaches, they could not hope to manage any more frequent and intense violations. Civilians along the border are aware that there may be further disputes related to border demarcation or oil extraction, and some may still imagine that the CPA includes some guarantees for their safety.

## Wealth-sharing: a core problem in implementation

CPA optimists like to point out that the 'minimum operating conditions' for the agreement have been secured – constitutional forms, government structures, government-to-government revenue-sharing and troop redeployments. CPA ceasefire institutions work: although Abyei's civilian population was not protected in the conflict of May 2008, CPA institutions managed to bring a very dangerous situation under control. Optimistic reports about the CPA typically point out that the CPA's wealth-sharing agreement has brought Southern Sudan a bigger annual budget than that of Kenya.

The ceasefire has indeed allowed both parties to benefit from shared oil rents, and this share-out was a major factor in both the signing of the agreement and subsequent delays on implementation in Abyei and in border demarcation. About 75% of current production comes from the South and another 15% from areas of Abyei claimed by the South.<sup>26</sup> Most proven Southern reserves are near the border, and this is a factor in its militarization.

Shortly before its October 2007 walkout from the GoNU, the SPLM reportedly proposed to the NCP that the two issues of the border and the oil wealth be negotiated separately. The NCP reportedly rejected the SPLM offer, because of the lack of guarantees.<sup>27</sup> De-linkage would allow for a border incorporating (for example) Abyei's Ngok Dinka people into Southern Sudan while granting a share of Abyei's oil production to Northern Sudan. Some donors have discreetly produced revenue projections under different scenarios for borders and different sharing systems. Discussions like these might be able to reduce the risks of violence along the border in the difficult run-up to the referendum.

Oil-revenue-sharing is often taken to be the only component of wealth-sharing, rather than the component of the CPA's wealth-sharing agreement that is most vital to the two governments, which need the wealth to spend on their own security. Sudan's oil is important – it makes up over half of the revenue of GoNU and over 95% of that of GoSS. Oil is certainly a minimum operating requirement for the CPA, but like the other minimum operating requirements, it affects state functioning rather than ordinary life.

For most of Sudan's rural majority wealth is linked to land, livestock and natural resources, and the CPA has not brought solutions to conflicts over land that were exacerbated by the war. Sudan has contradictory legal regimes for land ownership. In the Northern Nile Valley, land ownership is relatively stable and market-based. Elsewhere in Sudan it is linked to ethnic affiliation, although the state can allocate tribal lands to leaseholders – most frequently in the rain-fed land along the border between North and South. The land-ownership regime in Darfur has been completely distorted and undermined by massive displacement. For Darfur and border regions where customary land has been alienated during conflict, peace means a resolution of land problems. Without resolution, opponents of peace have many opportunities to create ethnicized conflicts over land, particularly in areas in the oil-rich borderlands. Yet plans for a National Land Commission have not progressed, and the CPA's vague promise to establish a process to resolve the issue of land ownership has gone nowhere.<sup>28</sup>

Other CPA measures for wealth-sharing important for ordinary people are the development funds that are supposed to bring investments to conflict-affected areas, in a country where investment is often concentrated in big projects at the centre. Sudan is fortunate in that its oil revenues are much larger than the multi-billion-dollar donor pledges for reconstruction, and it could hope to finance its own post-conflict transformation. But in conflict-affected areas of Northern and Southern Sudan the peace dividend is seldom visible.

The most important wealth-sharing measure may be the commitment to transfer more central resources to states, rather than the sharing of oil rents. This is a key part of the CPA's promise to remedy the economic dominance of the central state over the country, which is a root cause of Sudan's wars. Allocations from the centre have seen real, sustained increases in North and South Sudan – in 2000, 8% of total government expenditure was disbursed by states, and today the figure for Northern states and GoSS combined is 35%.<sup>29</sup> But there are concerns about the transparency of these allocations.

Unequal development is at the heart of Sudan's problems. The CPA's wealth-sharing arrangements offer a thoughtful

framework for dealing with this. Most international actors have focused attention on reaching agreements on the sharing out of oil rents. This is correct: the share-out is a part of almost all political and military calculations of both the NCP and the SPLM. However, it also misses important points. Oil rents are likely to decrease, because production from existing wells is probably peaking, and because international prices are in decline. The loss of revenue will put even more pressure on non-military budgets in 2009. This will postpone peace dividends in war-affected areas as newly allocated resources to states will decline. Much of this new money goes on new wage bills, which may be used to create a bureaucratic cadre financially dependent on the NCP, continuing the practice of routing development funding through patronage networks. (Southern Kordofan's local expenditure from these new central government resources is reviewed below.)<sup>30</sup> Both development and patronage systems may suffer as a result. Finally, the diversion of attention from land issues in war-affected areas is short-sighted, because land could set the stage for new conflicts, configured around ethnicity. Some observers believe that these conflicts are imminent or even under way.

## Guarantees of the CPA

In October 2007, the SPLM suspended participation in the GoNU citing the problems in Abyei, oil-sector management, the wording of the population census questionnaire, and the lack of progress in reform of the national security service, among other issues. The walkout was an appeal to international sponsors of the CPA to renew their engagement with a stalled peace process that was overshadowed by problems in Darfur. The SPLM returned to government in December 2007 under some international pressure, but the atmosphere of crisis was renewed during the serious flare-up in Abyei in May 2008. The walkout may have been an indicator of the limited options available to the SPLM in its dealings with the NCP. It was also a test of the guarantees of the CPA.

The CPA is legally guaranteed by the 2005 constitution. The elections are a means to ensure that the CPA has a popular mandate and that it is subjected to a review by the many groups that were excluded from its drafting. The

**Box 2: International guarantees of the CPA**

The CPA is made up of different agreements and protocols signed over a thirty-month period. The chapeau or introduction to the CPA calls on the organizations and states that witnessed the agreement to support its implementation. These organizations and states were: IGAD, the African Union, the European Union, the League of Arab States, the UN; and Egypt, Italy, the Netherlands, Norway, the United Kingdom and the United States. Article 2.4 of the July 2002 Machakos Protocol – the first part of the CPA to be signed – establishes an independent Assessment and Evaluation Commission, drawn from these organizations and states, to monitor implementation and produce a mid-term evaluation of the CPA. Article 2 of the September 2003 Agreement on Security Arrangements requires international monitoring for the ceasefire. The nature of that monitoring is elaborated in articles 14 and 15 of the December 2004 Permanent Ceasefire Agreement: ceasefire institutions would be chaired by the UN, but come under a Ceasefire Political Commission chaired by the parties to the agreement, which means that parties have the final say. UN Security Council Resolution 1574 of November 2004 endorsed the nascent CPA, and Resolution 1590 of March 2005 mandated UNMIS.

referendum gave the GoNU a strong incentive to make unity attractive to Southern Sudan, and the maintenance of two armies during the interim period meant that both parties could still resort to a military option if the process failed. The presence of a UN peacekeeping mission gave credibility to the ceasefire and required regular political progress reports to the UN Security Council. Finally, the CPA required the establishment of an Assessment and Evaluation Commission (AEC) made up of the two parties to the CPA and representatives of the US and four European nations, along with a number of observers.

The CPA's international guarantees are limited. The AEC is an international body, but its members are appointed by the Presidency. It makes consensus assessments and presents them to the Presidency, and has no power to enforce its views. In practice, consensus has meant that the AEC has monitored outputs rather than outcomes – its first report described laws adopted and institutions created, rather than looking critically at the way these institutions were able to change the lives of Sudanese citizens. A second report that was published in 2008 was more analytical but stopped short of describing many of the changes – or the lack of change – in everyday life brought about by the peace agreement.

Many governments and intergovernmental bodies have appointed high-level special envoys to Sudan, often with the aim of pressing for a resolution of the Darfur conflict.

These envoys seldom engage with the AEC although it is the one forum where international supporters of the CPA have been invited by parties to give their views on progress on the peace agreement.

UNMIS is a major commitment to peace and stability in Sudan. Its monitoring institutions have helped the parties maintain the ceasefire, but it has faced restrictions. Peacekeeping missions limit the sovereignty of any country, and the governments in most countries concerned claw back sovereignty by bureaucratic methods – slowing down supplies, restricting movement or expelling personnel. The NCP-led government followed this line, expelling the head of UNMIS in 2006 (it did not consult the SPLM about the expulsion). The Security Council did not protest against his expulsion with much vigour. UNMIS was linked to sensitive negotiations on a new peacekeeping mission in Darfur. Its attempts to adopt constructive approaches in the face of provocations may have been construed as weakness. Both of these factors have limited the mission's ability to challenge lapses of the peace agreement.

Many people interviewed for this report stated that they thought the CPA would benefit from a more rigorous audit, which looks at outcomes and peace dividends and gives a clear political judgment on delays and flaws in implementation. However, neither the AEC nor UNMIS is in a position to provide this kind of rigour. As a result, the

other guarantees – the referendum and the military guarantee – have gained in importance. Neither is a factor for stability. The prominence of the referendum guarantee has created a situation where the costs of hard engagement in democratic transformation were described much more clearly than the costs of secession. Secession is a way of reframing the problems of uneven development in Sudan, not a solution for them.

One way of making the institutional guarantees of the CPA more effective would be to improve the quality of public information. CPA institutions and international monitors could communicate to ordinary Sudanese the outcomes of the peace process. Sudan is a country that lives on rumour and unattributable briefing. Clear, bilaterally agreed descriptions of problems and processes would help foster a free exchange of views that might mitigate trends towards conflict and help government become more accountable. It would empower civil society and the political opposition to engage in the detail of CPA implementation. For example the Assessment and Evaluation Commissions for Southern Kordofan (AECSK) and the Blue Nile report to the Presidency on progress on implementation of the protocol for their areas, and these reports will eventually form part of a popular consultation that will decide the future of the two regions. Likewise, the Fiscal and Financial Allocations Monitoring Commission (FFAMC) is supposed to bring new transparency to allocations of resources across states. It reports to the Presidency and the National Assembly. Neither body makes reports public. UNMIS, with its large network of political, security, human rights and humanitarian staff, could play a key role in helping local people understand how the CPA can address conflicts in their area.

## The shadow of Darfur

The increasing importance of military guarantees means that the enormous mineral wealth of Sudan is being diverted from development into an arms race that undermines the security of ordinary people. Official figures suggest that 40% of total GoNU expenditure went on defence, security and public order in 2006, and 30% of

GoSS expenditure went on security and defence in 2008.<sup>31</sup> Unofficial figures put the percentages as high as 60%.<sup>32</sup>

Neither the referendum nor the military guarantee applies to people in the Transitional Areas. On the contrary – the redeployment of forces out of Southern Sudan has led to a sustained military build-up all along the border. At one point in the oil-fields of Unity State, the two armies have been 300 metres apart since April 2008.<sup>33</sup> Without adequate international or constitutional guarantees for the limited gains that peace has brought, leaderships and ordinary people in these tense Transitional Areas are more inclined towards confrontation. Southern Kordofan borders Darfur, and some Darfuri armed groups have already begun organizing there.

International sponsors of the CPA hurried it through in the belief that peace in the South would create momentum for peace in Darfur. There is a risk in Southern Kordofan that the opposite will be true: that conflict in Darfur will undermine the CPA's gains. Part of the reason for this is the diversion of international attention to the armed conflict and humanitarian crisis in Darfur. The engagement of the US and its European allies in the CPA negotiations allowed for real progress on one of Sudan's most intractable conflicts, and it was hoped that the CPA would be a model for the resolution of the Darfur conflict. This was not to be, and as a result robust engagement has been replaced with contradictory policies.

A 2004 US report found that the situation in Darfur was a genocide. That finding, and the NCP's intransigent response, have led to an implied, and non-credible, set of regime change threats from US officials, supported by US domestic constituencies. At the same time, US experiments in regime change in other countries have led many of its officials to reject the policy – there is a drift towards accommodating rather than destroying 'Arab' elites.<sup>34</sup> The security men at the top of the NCP have cooperated closely with the US and its allies on counter-terrorism: one newspaper report in 2006 even claimed that NCP agents in the Islamist insurgency in Iraq were providing the US with information.<sup>35</sup> The use of allies by both the NCP and the US to pursue strategies of public mutual denunciation may even be of help in this trade in information.

## Unity and fragmentation

Some of the flaws in the planning and execution of the CPA have been examined here, but the processes of wealth-sharing and power-sharing that it prescribes for Sudan are unavoidable. The agreement itself is still the most important political framework in Sudan, and both parties recognize that the costs of renegeing on the agreement far outweigh the costs of continuing support.

But the hectic schedule of deadlines in the remaining thirty months of the interim period is likely to generate crises. The elections, which will give the CPA and Sudan's rulers their first popular mandate, have been caught up in the two parties' calculations about the division of oil rents along the North-South border, at a time when those rents are being used principally for an arms build-up that has militarized that border and aggravated the conflict in

Darfur. That conflict, in turn, is threatening to spill over into other western regions of Sudan. The Darfur crisis has split the attention of many of the CPA's international supporters and this has limited the effectiveness of their diplomacy and contributed to a situation where some necessary but ambitious parts of the agreement are being delayed or avoided. The neglect of the CPA has serious consequences for Darfur – the agreement's provisions on land, national reconciliation and fairer sharing of national resources are all key components of a durable settlement there. The CPA is a serious attempt to address the problems of unequal development and mismanaged diversity that have caused and continue to cause so much violence and suffering. It was intended to make the unity of Sudan attractive. If it fails, existing trends towards fragmentation will accelerate and will probably become more violent.

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## 3. Fragmentations in Sudan

‘Weak but fierce’ – Sudan’s well-organized central state has managed to dominate a vast periphery through the inherently divisive processes of patronage and violence.<sup>36</sup> The CPA may have been an acknowledgment that coercive politics has reached its limit in Sudan; that it cannot enjoy development or security without a fairer division of the nation’s wealth and power. However, if the CPA prescriptions for a fair and inclusive Sudan cannot be implemented, there will probably be an intensification of coercion and division. Sudanese politics has become more regionalized under the rule of the NCP, and some of the factors unifying Northern Sudan have been seriously weakened. The following section examines how Sudan’s fragmentations have developed and suggests where they might lead.

### Routes to fragmentation in Northern Sudan

Sudan’s dynamic and divisive Islamist revolution modernized the centre of the state and from the mid-1990s led the economy through several years of growth, super-charged with oil profits from 1999 on. But at the periphery the revolution destroyed a traditional political system that was flawed but allowed for some management of conflict in rural areas, and replaced it with something much worse. Northern Sudan is fragmented along regional and tribal lines as a result.

Some of the roots of Sudan’s conflicts lie in colonial policies that concentrated investment in areas most

likely to yield high returns. These areas, around the Northern Nile Valley, have become a lower-middle-income market economy. The rest of Sudan has the welfare indicators of a least-developed country. Resources and people are pulled into the centre by coercive policies such as forced migration and asset-stripping; because of the lack of economic alternatives; or because of the attractiveness of the version of modernity at the centre.

For most of the twentieth century, the peripheral areas of Northern Sudan were not managed through armed conflict. They were organized by political parties linked to Sufi religious movements, and led by prestigious families that had established durable bases across the country in the nineteenth century. The elites that led these movements had commercial interests in the centre but were able to manage rural politics away from the Northern Nile Valley through patronage systems administered by tribal leaders. The powers of these tribal leaders to regulate land use are the cornerstone of their judicial power. This combination of tribal and religious authority, as reshaped in the early twentieth century by colonialism and market economies, allowed for the management of inequality in the North without the resort to extreme violence such as that routinely deployed in the South. Darfur was a case in point – it was violently incorporated into Sudan in 1916, but managed with little violence or economic development until the 1980s.

This ‘neo-traditional’ system kept Northern Sudan a coherent political entity even while the central state fought long civil wars in Southern Sudan. But it was swept away by the 1989 coup that brought the NCP’s leadership to power – a coalition of Islamists and military men, who had created new constituencies through a powerful Islamic financial system. (The regime was called the *ingaz*, or National Salvation Revolution, at the time, but is referred to as the NCP-led government in this text.) The NCP revolutionaries banned neo-traditional parties and replaced their supporters in the army and civil service with their own cadres. They used the Islamic banking system to refashion business: many members of the regime’s security forces benefited from this process.

In rural Sudan, NCP leaders undermined the power of the tribal clients of the old parties. Tribes that recognized the authority of one paramount chief suddenly found they had a plethora of new sub-chiefs given the Islamic-sounding title of *amir* (prince or commander). The war in the South escalated, and in 1992 NCP leaders announced that the war was a *jihad*. *Amirs* were given explicit roles in the *jihad*, including the task of mobilizing tribal levees for war in the South.<sup>37</sup> These militias turned against neighbours whose resource base they had once shared through negotiation.

‘It was divide, divide, divide and rule,’ commented a former official from the Umma party.<sup>38</sup> The NCP-led government was able to fight the war in the South and restructure power at the periphery. Similar policies were adopted in the Darfur crisis in 2003: landless tribes were armed and set against tribes with land and resources but whose membership included rebels who violently protested about the lack of development in the region. All these groups had voted *en masse* for the Umma party since independence, but its patronage and brokering services have no relevance in Darfur any more.

At the centre, the NCP followed a different set of innovations, shifting power from the state’s weak, formal institutions to informal commercial networks and visible and invisible security services. The People’s Defence Forces (PDF) were formed in 1989 and recruited people from urban centres with ideological motivations, or with a need to access services or resources controlled by the state. PDF ideologues control tribal militias in rural areas and are guarantors of regime survival in the towns – Sudan’s two previous regimes fell after popular urban protests, and the NCP wanted to avoid repetitions of history.<sup>39</sup> Families of martyrs who fell in PDF battles gained access to credit from NCP-aligned banks and now form one of the constituencies supporting the regime.<sup>40</sup>

A split at the top of its leadership in 2000 led to the departure of Hasan al-Turabi, the leader of the Islamist party that inspired the regime’s vision of an Islamist Sudan – one in which contradictions would be resolved by imposing reworked Islamic identities on all its citizens. Turabi had support at Sudan’s periphery – he had organized in Darfur and other marginal areas, and his monocultural vision for Sudan paid at least negative attention to Sudan’s diversity.

Turabi’s departure led to the regime losing support among radical groups, younger people and some tribal elements in the PDF, as well as in Darfur and the West. The regime’s base narrowed – it now depends heavily on the client groups it has created and on the perception of some people in the Northern Nile Valley that the economic advantages of the centre can best be maintained by their support. And the huge oil rents that followed the first export of oil in 1999 gave the regime new confidence to maintain and expand its client base. Cadet members of the big families leading the opposition can maintain their wealth and keep their jobs in the big conglomerates linked to the security services, even when their patriarchs are in jail; and when deals are done to return to the NCP, sons are given posts in the security forces.

‘The two main outcomes of NCP rule are a regionalized, tribalized and unsustainable periphery and a still-dynamic commercial-security nexus at the centre that is flexible enough to create incentives and niches for former adversaries’

The two main outcomes of NCP rule are a regionalized, tribalized and unsustainable periphery and a still-dynamic commercial-security nexus at the centre that is flexible enough to create incentives and niches for former adversaries. The NCP’s acceptance of the CPA may have been an attempt to include the SPLM in its system and so prevent the emergence of an alternative model: that is the view of some SPLM officials committed to Sudan’s unity. Or it may have been an attempt to come to terms with the contradictions in Sudan it has aggravated so deeply, and reinvent itself through the CPA’s vision for political and economic democracy. The NCP appears to be declining the opportunity.

Is there any reason for optimism? Some NCP leaders admit that their decision to destroy the neo-traditional system has left it exposed. One NCP official in the

Presidency admitted Northern identities linked to the previous patronage system had been ‘a better basis for creating political communities than regionalism or tribalism.’<sup>41</sup> The NCP has reached the limits of coercion, and mismanaged rural politics may destroy it. ‘Sudan-optimists’ may conclude that the regime’s resourceful security services will recognize this and will seek to make its system more inclusive and to find a managed end to the violence at the periphery. The CPA provides models for the NCP to do this. ‘Sudan-pessimists’ would respond that the NCP’s model of inclusiveness does not amount to the CPA’s prescriptions for democracy and NCP ‘inclusion’ will be managed in the shadows of the NCP’s informal networks rather than the public and accountable institutions envisaged by the CPA.

## Southern Sudan

The CPA is the biggest political achievement of the NCP (it shares that achievement with the SPLM). No other regime in Sudan’s history has been able to come up with a political framework to match its practicality, maturity and vision. The NCP’s other legacy for Sudan is of course its informalized, opaque systems for organizing security and economic life at the centre, and a destabilized, tribalized periphery.

For the last legacy, the SPLM shares some responsibility. Its successful military interventions in Blue Nile, Southern Kordofan and Eastern Sudan, and an unsuccessful one in Darfur, led to the coalescence of regionalized, ethnically based armed groups. One SPLM member of the GoNU explained the SPLM’s legacy of regionalism and its creation of precedents for the mounting of armed challenges from the periphery:

What can you do? Governments in Sudan have been brutal and coercive because of the attitude of people, and the failure to stand up and challenge. The emergence of a culture of resistance is a start.<sup>42</sup>

Although the SPLM’s legitimacy drew heavily on its rejection of discrimination and division, the movement and its army used ethnically targeted violence and patronage to recruit soldiers and run the war in Southern Sudan.<sup>43</sup>

Ethnically inflected splits in the movement emerged in 1991 after Garang lost the support of major patrons in Ethiopia and were exploited by the NCP government to promote a South–South civil war. Southern militias aligned to the SAF were excluded from the CPA negotiations, and there was widespread apprehension that Garang would use coercive measures to disarm them after the CPA was signed in 2005.

Garang’s death changed the situation. His successor, First Vice-President Salva Kiir, focused political energies on uniting the South, rather than transforming the centre. He concluded a deal with dissident SPLA factions in January 2006 (averting a possible Southern civil war), and has restructured the SPLA into formed units that are ethnically mixed.<sup>44</sup> Kiir included many militia leaders in his administration. This was unwieldy, but a wise decision that limited potential enemies’ ability to destabilize the South.

Kiir’s focus on averting conflict in the South was achieved in part by shifting attention and energy away from the CPA and its institutions, and from the transformation of the centre. The CPA’s drafting process had excluded the Northern opposition, but many in the North hoped that Garang’s presence in the three-man Presidency would serve as a counter-weight to the NCP, or even ‘liberate’ Northern Sudan. Enormous crowds of people from all parts of Sudan welcomed Garang on his visit to Khartoum in June 2005. Kiir’s focus on the South has disappointed these hopes, and reduced the SPLM’s influence in the GoNU. The SPLM does not feel it can compete with the NCP in Northern-style patronage politics and has not built a coalition of the marginalized in Northern Sudan. The diversion of political energy from the centre is understandable. Setting up GoSS poses daunting challenges: since 1820, Southern Sudan has known only three or four decades of peace, and has had almost no infrastructural investment. Qualified senior SPLM personnel are needed to run ministries in the South. Those who are sent to Khartoum to work in the GoNU and the CPA commissions have often come from military careers that involved the partial sacrifice of their educations, and cannot match the diplomatic and bureaucratic skills of the large cadre of the NCP. The informalization and opacity of the NCP system make it difficult for any outsider to influence.

Garang was not a separatist, but probably the overwhelming majority of Southerners are. For SPLM separatists, the logic of a deal with the leading military-security actor that had the capacity (if not always the will) to deliver on commitments was more compelling than trying to rally a fragmented opposition. Southerners who favour independence are focused on securing political guarantees for a referendum, or failing that, military guarantees for separation. For them, the task of restructuring Northern Sudan is an ambitious irrelevance. Many officials and analysts in Southern Sudan believe that the SPLM might accept the indefinite postponement of the election, as long as they can ensure that the referendum on self-determination goes ahead. SPLM officials closely involved in planning election strategies also indicated that they would consider an electoral alliance with the NCP, in order to guarantee the referendum. This may be a sign of lowered SPLM expectations of democratic transformation at the centre of Sudan, as well as exhaustion with the bureaucratic processes of the CPA. An electoral alliance with the NCP would indicate the NCP's strength, and the Southern turn towards secession.

## An independent Southern Sudan?

SPLM Presidential Adviser Mansour Khalid led one of the first public discussions on the post-referendum period in Juba in October 2008. On the whole, though, it is tactically too costly for either the NCP or SPLM to discuss what happens after the referendum. Public endorsement of the slogan of 'making unity attractive' sits uneasily with widespread private acceptance that unity is increasingly unlikely. This report does not set out to pre-empt the choice of the people of Southern Sudan and Abyei: but the following section presents some of political possibilities and costs ahead.

What would an independent Southern Sudan look like? GoSS budgets give some idea about national priorities. The budget increased from a negligible amount in the pre-CPA system to US\$800 million in 2005. US\$1.5 billion was budgeted for 2008. Most of GoSS's revenues come from its share of oil wealth. In 2008, donor grants made up less than 5% of budgeted expenditure, and oil revenues more than

91%. About 45% of revenue was budgeted for salaries, and 28% for development expenditures. (The creation of this huge payroll has made allegations of corruption commonplace: a few people, including a former minister of finance, have faced prosecution for this.) The budget appears to replicate the centralism of Khartoum, with most money going to the centre and not the states: almost 90% of the salaries and over 67% of the development expenditure were assigned in 2008 to the central government, based in Juba, a capital with well under half a million inhabitants.<sup>45</sup> As stated above, 30% of government expenditure went on security and defence in 2008 according to the approved budget – additional funds were voted for the SPLA in October 2008, and unofficial estimates are much higher.<sup>46</sup>

'These people will squander what they are given. Two-thirds is going to the army, and the army is all Dinka,' remarked a senior member of the NCP.<sup>47</sup> His statement reflects a widespread Northern view that Southern Sudan is on the brink of ethnic warfare and that Southerners are incapable of governing themselves. The idea of Southern ungovernability is a potent taunt in the racist repertoire, and one that overlooks the complex systems of democracy and accountability in many Southern tribes. While Northern national identity is losing cohesion, Southern national identity may be going the other way. The SPLM is still seen as a liberation movement. It has political confidence that is sometimes lacking in Northern Sudan: for example, there has been no progress in the North on the national reconciliation required by the CPA. In Southern Sudan, in contrast, First Vice-President Salva Kiir apologized in January 2008 to all Sudanese for 'whatever actions taken by our SPLA forces during our liberation struggle that might have affected you personally or members of your family'.<sup>48</sup>

The SPLA brought together people from different parts of Southern Sudan in a long struggle, and although it has fought local ethnically inflected civil wars, it has also been able to assimilate ethnic factions when politics required. Churches also play an important role in determining Southern identity: an enormous number of Southern Sudanese have been baptized – a region of rich indigenous religious traditions turned to Christianity during the civil war, perhaps as a riposte to coercive conversions to Islam in the 1990s and 1960s.<sup>49</sup>

But although the experience of national struggle has generated national consciousness, tribal affiliation remains an extremely important political marker in Southern Sudan. A central political demand outside Juba is the creation of more and more ethnically defined localities. This is an outcome of local anxieties about security of land rights, and also a result of the decision to continue a land-ownership system that allocates land through tribal leaderships, which makes tribal affiliations and prerogatives vital for livelihoods. The incidence of violence between armed civilians from different tribes, or from different sections of the same tribe, appears to have increased since the signing of the CPA. A November 2008 conference of SPLM and Southern opposition parties noted these problems as well as the presence of large private armies maintained by ‘individuals in the government’ and the continuing threat from the Lord’s Resistance Army, a Ugandan armed group which was formerly linked to the SAF’s intelligence wing.<sup>50</sup>

## The costs of secession for Northern and Southern Sudan

The referendum, and the possibility of secession, give the South an opt-out not shared by its disappointed allies and sympathizers in the North. But SPLM personnel who still believe in unity caution against complacent routes to separation. One person close to Garang said:

Many Southern separatists think if you allow the NCP to have its way ultimately you get secession. They point to the fact that some Islamists hope for secession. No! This is a misguided opinion. If the South wants to secede, it needs to get more and more involved in national issues, which will threaten the political longevity of the Islamists. If you go back to your shell, the Islamists will come after you. The contradictions in the South have been used before.<sup>51</sup>

The costs of secession would be high for the South. Separatists accept that the South would need to concede some oil wealth to the North. As noted above, about 75% of current revenues originate from Southern wells, and

another 15% from areas of Abyei claimed by the South.<sup>52</sup> Southern oil is pumped through a pipeline running through Northern Sudan, and its revenues come from Khartoum. These revenues could be cut off in one month if the South left unilaterally. An acrimonious split might mean a violent contest over the amount of oil conceded, spreading instability along the North–South border. The population in oil-rich areas would be drawn into the violence, and without a dramatic reshaping of the UNMIS mandate, its peacekeepers would not be able to do much to protect civilians.

‘Without the ideological direction that the SPLM has provided, these groups would find it more difficult to articulate legitimate grievances and deal with the NCP – they might become localized movements, dismissed as ‘bandits’

The costs of Southern secession for the North would also be high, and the population of the borderlands would be drawn in. Regional groups in the North mobilized by the SPLM which do not have the same opt-out would have fewer political choices. Unresolved disputes over land could be used to mobilize ethnic groups to fight along the 2,000 km border, which is too long for either the SPLA or SAF to control. Without the ideological direction that the SPLM has provided, these groups would find it more difficult to articulate legitimate grievances and deal with the NCP – they might become localized movements, dismissed as ‘bandits’.

The NCP itself might retreat to the Northern Nile Valley. Abdul Rahim Hamdi, a former foreign minister and founder of several Islamic banks, argued in a 2005 paper that the NCP should focus investment on entrenching its support in an Arab-Islamic constituency in the Northern Nile Valley in order to win the CPA-mandated elections, and that it could survive alone if other

parts of Sudan secede from it.<sup>53</sup> Millions of migrants and displaced persons from the periphery who do not share the NCP's view of an Arab-Islamic centre remain there by choice or necessity – part of Hamdi's argument is that Sudan's centre has a power to attract or compel their support. Groups displaced from the periphery to the centre have played revolutionary roles in Sudan's past. The SPLM's drift away from Northern politics has weakened them, but they may organize for recognition of their rights. Many of them make up a cheap labour force at the centre (urban labour market needs have always been implicated in Sudan's long history of displacement) and they will no doubt have to contest their rights with another potentially revolutionary group at the centre – the business elite with links to the security forces.

## Other areas of Northern Sudan

Instability has re-emerged in former conflict areas in Eastern Sudan and the North–South borderlands; and new conflicts over natural resources have emerged in the Northern Nile Valley. The CPA still offers both parties an opportunity to address the problems of these areas, by tackling the root causes of conflicts and setting up new and inclusive institutions – or even by using those institutions to negotiate a peaceful end to the unity of Northern and Southern Sudan. However, the CPA's complex institutions and processes no longer seem to be at the forefront of political progress. The slippage of attention away from elections – a condition for political development – is symptomatic of a wider complacency about parts of the peace agreement that are seen as too ambitious to succeed. The CPA was supposed to provide a concrete model for the resolution of other conflicts in Sudan, but provisions for wealth-sharing and national reconciliation that could help resolve these conflicts are being sacrificed. Power is being more securely entrenched in the informal and inaccessible networks of security men and businessmen that run the NCP, and in the regional actors that take up arms against the state. The next section looks at the consequences of this for one part of Sudan.

## Southern Kordofan: the risks of failure

Southern Kordofan is a state of about 82,000 square kilometres near the geographical centre of Sudan, with an estimated population of 2.2 million people, fertile rain-fed lands, and the only proven oil reserves in Northern Sudan.<sup>54</sup> It has a mixed population – Nuba groups who have cultural affinities with Southern Sudan, and groups of Arabic-speaking transhumant cattle pastoralists. It experienced some of the worst fighting during the war.

Most of Southern Kordofan's huge tracts of arable land are not under cultivation. Badly mismanaged land policies helped make it one of the poorest states in Northern Sudan. Changes to land law initiated by Jaafar Nimeiri's modernizing leftist regime in 1971 overturned customary rights to land, that recognized farmers' rights and allowed passage for pastoralists. The state acquired new powers to alienate land from customary owners and grant it to people with access to capital. In practice these were usually regime clients who introduced semi-mechanized farming systems. Farmers displaced from their land sometimes ended up as low-paid labour on these mechanized farms. These farms improved Southern Kordofan's extremely low agricultural productivity, but most food benefits were taken out of a still-malnourished state, and at the cost of dispossession of many farmers and disruption of pastoral stock-routes.<sup>55</sup>

The losers of the changes to land systems were divided along ethnic lines: Nuba farmers, who spoke African languages and were not universally Muslim; and Arabic-speaking Misseriya Humr pastoralists. The tensions that emerged in the area in the mid-1980s were soon given an ethnic colouring. By 1987 the SPLA had bases in Nuba areas, and transitional Khartoum regimes with links to the Misseriya Humr's Umma patrons armed them as tribal militias.<sup>56</sup> The NCP-led government that succeeded the Umma party declared a *jihad* against the Nuba in December 1991.<sup>57</sup>

Some of the bitterest fighting of the war took place in Southern Kordofan, and it was the first area involved in the civil war to agree a ceasefire. Nuba representatives took part in Swiss-brokered negotiations that led to the Nuba Mountains Ceasefire Agreement in January 2002. During

the IGAD-sponsored negotiations in Kenya later that year, Nuba representatives advised an SPLA delegation rather than negotiating directly. Southern Kordofan and Blue Nile did not get a referendum from the CPA, and the SPLA was required to deploy out of the area, to be replaced by JIUs – this meant that CPA implementation in Southern Kordofan does not have the same organic guarantees that it has in the South. (SPLA withdrawal is conditional on the full formation of JIU units, and neither has yet happened.)

Progress on development in Southern Kordofan has been poor. Although the Nuba Mountains lost some military and political guarantees in the CPA, the state as a whole was due to benefit from oil revenues – oil-producing states are entitled to 2% of total revenues. The new FFAMC increased the transfer of national revenues to all states: transfers to Southern Kordofan increased from around US\$10 million in 2002 to over US\$50 million in 2007. Southern Kordofan received an additional US\$20 million of oil revenue, and is due even more oil revenues that accrue to the Misseriya people as a tribe, under the terms of the Abyei protocol. In addition, the state benefited from special development transfers for states affected by conflict as well as an estimated US\$69 million in external assistance in 2007, a figure that is likely to increase when funds from the CPA's Multi-Donor Trust Fund belatedly arrive.<sup>58</sup> In spite of increased revenues, there appears to have been strikingly limited progress on development, in an area that badly needed a peace dividend.

Why is development lagging? World Bank studies in several states have shown that most of the new funds go on increased wage bills.<sup>59</sup> The increase in wage bills is partly linked to increased state bureaucracies mandated by the CPA's provisions for federalism. Southern Kordofan inherited two bureaucracies at the end of the war – a largely unpaid SPLM one and a paid one that was linked to the NCP. Lack of progress on civil service reform means that these bureaucracies have not been integrated, and the paid one is close to the NCP.<sup>60</sup> So increased federal transfers that were a key part of transforming the economic dominance of the centre – the root cause of Sudan's wars – are being used to set up a bureaucracy whose interests are linked to those of the NCP. There is also the risk of the politicization of contracts. According to

the SPLM co-chair of the Assessment and Evaluation Commission for Southern Kordofan (AECCK), contracts for development projects are made outside the state, with little transparency.<sup>61</sup>

The use of national resources to create dependent political constituencies is not a uniquely Sudanese phenomenon (a similar process in Ethiopia is better studied).<sup>62</sup> But in Southern Kordofan such a process will undermine a fragile peace in an area about to take part in a crucial election. The CPA does not grant Southern Kordofan a referendum on its future – instead, it set up an interim Assessment and Evaluation Commission under the Presidency. After the elections, this is to be replaced by a Parliamentary Assessment and Evaluation Commission which will have the power to negotiate rectification of shortcomings in the CPA with the Presidency. (The Presidency, however, is not bound to accept the views of the people of Southern Kordofan as expressed through their elected representatives.)

The NCP may need to invest in a new Southern Kordofan constituency. During the war it used its divide-and-rule tactics to turn members of the Misseriya and other tribes into a militia to fight the SPLA in Bahr al-Ghazal State and the Nuba Mountains – as oil became a more prominent issue in the war, the militias drawn from the Misseriya Humr were also used to clear oil-fields in the borderlands of their civilian population. The government created 22 new *amirs* for the tribe, undermining the authority of the paramount chief and allowing outsiders entry points for manipulating decisions. At the end of the civil war, some Misseriya felt that the gains they had fought for in Abyei had been handed back to the SPLM. They were due a 2% share of oil revenues from the Abyei area (which generates about 15% of Sudan's oil revenues), but the many failures in implementation of that protocol has left those dues unpaid. The state of West Kordofan, a Misseriya-majority state created after the 1989 coup, was reincorporated into Southern Kordofan, possibly to ensure that the SPLM's Nuba supporters are in a minority, in advance of the elections. Some of the *amirs* who had mobilized the *jihad* joined the SPLM, and some have set up their own factions that engage in banditry or engage in alliances with Darfur rebel groups – the Justice and Equality Movement claims to have representation across Southern Kordofan.<sup>63</sup>

Many in the SPLM's constituencies in Southern Kordofan – including Nuba people who fought in the SPLA during the war – feel that the SPLM has failed them. An SPLM appointee held the governorship of Southern Kordofan for the first eighteen months of the CPA, but made little progress on post-conflict development and reconstruction. The prospect of Southern secession would leave the Nuba within a Northern Sudan possibly dominated by the NCP, and some former SPLA soldiers have reportedly set up armed groups protesting at the re-marginalization of the Nuba in the CPA.<sup>64</sup>

Both of the major parties have failed to represent their clients' interests there adequately and will need to use patronage to win the elections, because neither provides the basic political service of mobilization to protect the interests of the people they represent. The Umma party, which used to have Southern Kordofan in its pocket, cannot offer a political solution for these problems.

The CPA offered a framework for addressing most of these grievances. The CPA Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States requires the establishment of a State Land Commission, which has not been set up. Much of the relatively generous resources for post-conflict development has not arrived yet – and there are many questions about the use of the resources that have. The international AEC and the national AECSK do not monitor the outcomes of the CPA in people's lives, because they work by consensus, so there is little accountability for failures in implementation. The security problems of the state were supposed to be resolved by the setting up of JIUs and through demobilization and reintegration: both processes are failing. The fact that the Nuba and the Humr – wartime enemies – now share a common set of problems in peacetime might be a starting point for reconciliation work, but there is little progress. The elections should allow each party to ensure popular consultation on the CPA and renegotiate unacceptable or unworkable elements, but there is a real risk that elections will be managed through patronage systems that no longer provide meaningful political services for their people. In the end, Kordofan may be reshaped by a spill-over of the Darfur conflict, rather than by the CPA.

## Darfur and the CPA

Even before it was signed, the CPA was overshadowed by the crisis in Darfur. The CPA negotiations served as an example to the Darfur rebels of the need to challenge the NCP militarily before negotiations. The NCP's response to the insurgency in Darfur may have been driven by a fear that it was conceding too much in its negotiations with the SPLM – some hardliners in the party believe that the CPA implies the dissolution of the NCP system. NCP-commanded security forces forcibly removed a huge population of people with the same ethnic affiliations as the rebel leaders from farming villages, arming a set of mostly landless ethnic groups to support its army in a well-documented campaign of village-burning, rape and killing.<sup>65</sup> By late 2004 a huge proportion of its ethnically defined adversaries were impoverished and neutralized in urban displacement camps. Tactics were similar to those used throughout the North–South civil war.

The breakdown in Darfur is one outcome of letting Northern Sudan fragment. The Umma party once linked it to the centre, but now has few resources to mobilize local people. The Turabi faction of the NCP built bases there, and its vision of an Islamic basis for Sudanese citizenship created opportunities for some Darfurians at the centre of the state. After Turabi's 2000 expulsion from the NCP, the Darfurian Islamists of the Justice and Equality Movement (JEM) produced the 'Black Book', a detailed account of the domination of people from the Northern Nile Valley over the central state. JEM drew inspiration from Islamism: the Sudan Liberation Movement/Army, which has its origins in the local defence militias of villages of agrarian tribes, drew inspiration from the SPLM's discourse on marginalization and SPLM strategy of regional insurrection. But both discourses – marginalization and Islamism – have been entangled with ethnicity, a vivid predictor of future fragmentations in Sudan. Tribal divisions in the SLM/A led to a split in 2005–06, and JEM draws on the clan of its leader for much of its support.

The Darfur Peace Agreement (DPA) of May 2006 was not able to address the breakdown arising from Darfur's fragmentation. Only one (ethnically affiliated) rebel group signed. The DPA's provisions for power-sharing and

wealth-sharing imitated those of the CPA, but had fewer guarantees. Its ceasefire was unimplementable and may have led to an increase in violence. The combination of political impasse and humanitarian crisis led the international community into engagement on the details of the flailing implementation, rather than a reframing of the political process. Attention drifted from the CPA (which had some real guarantees) to questions about peace-keeping structures and logistics, as if helicopters or blue helmets alone could deal with the regional politics of ethnicity and marginalization and the stalled progress on democratization. Rather than reinforcing the CPA, the NCP and the international community managed to turn the CPA into one of a string of bilateral deals with the centre: it was preceded by a Cairo Agreement with the NDA, and followed by the Eastern Sudan Peace Agreement. Each bilateral deal undermined the possibility of a comprehensive approach to Sudan's problems, entrenching the dominance of the centre and aggravating its imbalance with the periphery.

The DPA probably weakened the CPA, incorporating CPA processes that were not working, such as its proposals for land reform or national reconciliation, in an agreement that was even less likely to make them work. Land reform, reconciliation, investment in development and credible sharing of central resources at local level are fundamental components of a solution in Darfur as they are in other parts of Sudan. But repeatedly invoking them in peace agreements without trying to implement them turns them into tokens.

The international community's role was contradictory and difficult to follow. It had accepted the exclusion of Darfur from the CPA deal in the belief that this would accelerate progress towards peace and democratic transformation. Instead, it created new precedents for non-comprehensive, bilateral peace agreements that could not even deliver a ceasefire, let alone a political process. Instead of politics, the international community ended up proposing a prosecution.

In 2004, the UN Security Council established a UN Commission of Inquiry (UNCOI) into violations of human rights and international humanitarian law, around the time that the violence in Darfur was reaching its

climax. UNCOI submitted its report two weeks after the signing of the CPA. It presented evidence that crimes against humanity and crimes of war had taken place in Darfur. A secret list of names linked to these alleged crimes was passed to the Security Council. The NCP has faced many international denunciations in the past, and may have believed that this process was another ritual. The US reportedly promised the NCP that it could be rehabilitated by signing the CPA.<sup>66</sup>

But instead of dropping the issue, the Security Council referred it to the newly formed International Criminal Court (ICC). The UNCOI report presented a clear description of command responsibility in Darfur, and similar descriptions were used in the ICC's indictment of two middle-ranking figures in 2007.<sup>67</sup> The NCP rejected cooperation with the court. In July 2008, the ICC Prosecutor applied to the Court for the indictment of Sudan's President, Omar al-Bashir. This application for an indictment (henceforward 'the Application') has dramatically changed the political scene in Sudan in a number of ways.

First, the indictments and the Application have emboldened rebels not to return to the negotiating table. The ICC allowed them to hope that the international community would change the Sudanese regime for them, when the international community was mainly committing rhetorical weapons to that objective. Secondly, the NCP took some important symbolic steps, including a presidential acknowledgment of the suffering in Darfur. Thirdly, senior regime figures began a desperate campaign to defer or evade the indictment, but were not able to mobilize allies in the Security Council. Finally, the NCP began to look for allies at home. It made concessions to the SPLM and Umma party. It set up a Peoples of Sudan Forum in November 2008. This roped in political partners from the SPLM and the Northern opposition parties and the durable but malleable representatives of the tribal system in Darfur, but no rebels. The Forum conceded some rebel demands, including the establishment of a compensation fund, the unification of the three states of Darfur and (subject to the approval of CPA partners) the creation of an additional Vice-President in the Presidency, representing Darfur. The Forum revealed splits in the NCP: hardliners

had publicly rejected some of these demands shortly before the talks concluded (although the rejection may have been choreographed). But its ceasefire reportedly lasted less than two days.<sup>68</sup>

In a confused and deadlocked situation, the Application has introduced new volatility. Most Western diplomats cannot see anything positive in this volatility – the application has made normal incentives and threats irrelevant and thereby made their lives impossible. But although Sudan's political and economic fortunes have always been highly exposed internationally, change in Sudan comes from within, and the Application has forced the NCP to reassess the domestic front. Some hardliners may prefer isolation and defiance – if they get their way, there will be more conflicts in Sudan, and a higher chance of a return to war. A reshuffle or betrayal is also possible, but both would leave NCP power structures intact. The president now has no alternative but to contest elections, given that elections returning him as head of state will provide him with a measure of immunity. In order to win, the NCP needs to consider all alliances seriously, and seek favours from political actors in Sudan.

The Application and its aftermath also illustrate the way that the CPA has been marginalized. It was supposed to be the framework for political progress in Sudan. Now the

possibilities for political progress have shifted from its thoughtfully constructed institutions to a Peoples of Sudan Forum created for NCP survival. This is not the democratic transition outlined in the CPA – the NCP probably cannot have that kind of transformation without disinvesting itself. But it can use the resources of its dynamic and flexible security-finance nexus to create incentives for former opponents. Clever opponents can bargain for more, but they probably cannot bargain for an end to NCP rule.

The regime's search for survival will shape the politics of the centre for the next few months and this offers some important opportunities. The Umma party and the SPLM have expressed reservations about the Application, but they have also used the NCP's need for internal support to extract concessions. In the SPLM's case, concessions include a speeding up of the implementation of agreements on Abyei, and a green light to engage as a mediator in Darfur. The NCP has resisted SPLM mediation in the past because of the fear that it might help create a new SPLM constituency in the region. The costs of failure in Darfur now appear to outweigh the costs of excluding the SPLM from Darfur politics, and an SPLM role in Darfur may draw the movement into renewed commitment to the wider politics of Northern Sudan.

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## 4. An All-Sudan Approach

### Crisis management and time management

Sudan's political leaders are adept at crisis management – in fact, it might be more accurate to say that Sudan is managed by the creation and maintenance of crises and impossibilities. But even the most seasoned Sudanese politicians must feel that the impending clutch of crises might overwhelm them and their country. This would be a tragic outcome for the CPA, which with all its flaws remains the most thoughtful, considered and far-reaching document in Sudanese history. Its ideas for sharing wealth and power address the core problems of mismanaged diversity and unequal development, and offer a model for other countries in the Horn of Africa.<sup>69</sup> They still offer Sudan an alternative to permanent crisis, fragmentation or breakdown. This alternative still lies within the limits of possibility in Sudan, if only because it offers a way out of policies of coercion that may at last have reached the end of their political utility.

Changing unfair political and economic structures peacefully is slow work in any country. But in Sudan, time is critical: the CPA's interim period ends in thirty months. Progress towards a fairer division of power and wealth in Sudan in those thirty months will create precedents and resources for Sudan's future, and reverses now will likewise bring heavy future costs. For progress to happen, actors across Sudan need to identify their interests with the core principles that make the CPA a document of such significance. International supporters of the CPA need to orientate their diplomatic resources to support a fairer, more stable Sudan.

### Recommendations

*International supporters of the CPA need to recommit urgently and thoughtfully to help secure its implementation across the whole of Sudan. To succeed, they need to work multilaterally, and they must understand and exploit the unavoidable connection between progress on the CPA and progress in Darfur.*

The next few months in Sudan may see the emergence of one or more crises related to election deadlines, to Abyei, Kordofan and Darfur, or to the ICC, that have the potential to create widespread human suffering. International supporters of the CPA need to respond adroitly to these crises. But they need to keep in mind the less visible drift towards the fragmentation of Sudan and the need for an all-Sudan approach. This approach would draw together the problems in Southern Sudan and the Transitional Areas that are discussed here, as well as the problems in Darfur and Eastern Sudan. It must take into account the regionalization of politics in Sudan, and the limitations of regional actors (that is, an over-dependence on armed force, and a tendency to fragmentation).

Sudan policy is not coherent at the moment: it is divided between the needs in Darfur and the need for comprehensive peace; it denounces the NCP while cooperating with its security forces on counter-terrorism; and it no longer has the close coordination between international actors that allowed for real progress during CPA negotiations. The start of a new US administration is an opportunity for a shift in approach. A new approach must link the need for urgent progress in Darfur with the equally pressing need for progress on the CPA in Darfur and all other regions of Sudan.

*Neglected provisions of the CPA, such as land reform, local development and reconciliation, need to be addressed for peace to work in Darfur.*

Resolving the conflict in Darfur is a key component of an all-Sudan approach. The drafting process for the CPA marginalized Darfur, and at the negotiations for the DPA, the CPA was used to limit the ambitions of rebel negotiators. Now, there needs to be a return to the notion of comprehensive peace. In the case of Darfur, peace means inclusive politics at the centre of the state, addressing the contradic-

tions of land ownership, national reconciliation and fair allocations of wealth to the periphery, including development funding for conflict-affected states that are part of both the CPA and the DPA. Many Sudanese and foreign officials in Sudan dismiss these processes as over-ambitious. But the situation in Darfur will deteriorate without them.

***Conflict is emerging in other regions of Sudan. Careful local readings of the failures and achievements of the CPA in these regions are needed for peace to work there and in the rest of Sudan.***

Comprehensive peace is eluding Sudan, in part, because the CPA did not address Darfur. But the CPA is still needed as a framework, because unlike the DPA and the Eastern Sudan Peace Agreement, it has provisions for all of Sudan. There will be no peace in Sudan if progress on wealth- and power-sharing only takes place in regions where there has been an armed challenge to the central state. Making the CPA work in Southern Kordofan or other areas of emerging conflict will require a close reading of its achievements and failings at the local level. The parties to the CPA do not adequately represent the interests of their historical clients in Southern Kordofan, and institutions charged with monitoring and supporting the CPA need to be aware of how patrons and clients communicate or fail to communicate. This may require new approaches to monitoring: some are discussed below.

***The SPLM needs to take elections seriously, promote stability and democracy in Northern Sudan, and fully engage with peace processes between the central government, Darfur and other peripheral areas of Northern Sudan.***

Southern Sudan is part of an all-Sudan solution. International supporters of the CPA need to recognize that the referendum has become the centrepiece of the CPA for most Southerners. This has placed limits on the agreement's ambitions. But the CPA is still the best hope for comprehensive peace in Sudan, and as one of the two parties to the CPA, the SPLM needs to be closely engaged in other peace processes. Whatever the results of the referendum, the SPLM needs to promote stability and democracy in Northern Sudan. It can do this by taking the elections seriously and trying to build constituencies and represent interests there.

***At the centre of Sudan, the NCP is prepared to make changes in order to survive. These changes must reduce the tensions between the centre and the periphery, and to do this, they must address the need for a fairer division of wealth and power.***

An all-Sudan approach is needed because Sudan's problems are still entangled around the unhappy relations between the centre and the periphery. At the centre, diplomatic actors need to look for opportunities in the NCP's responses to international pressures such as that from the ICC. The NCP is now focused on survival: the nature of the deals that it makes to survive will shape the next thirty months. At the moment, the NCP is setting the limits of political progress, and there will be little progress on the crucial wealth- and power-sharing processes of the CPA unless the NCP's interests are aligned with that progress. International supporters of the CPA should continue to make clear the cost of failing to implement provisions that will make Sudan a fairer place and of failing to reduce the tensions in the fraught relationships between the centre and the periphery.

***Civil actors excluded from the CPA's drafting need to be included in the process. Fair, competitive elections are a key process for inclusion – and the international community must work to address the many obstacles facing those elections.***

The CPA was not comprehensive: it was a bilateral deal between the most powerful groups in the country. This set an unfortunate precedent for other bilateral deals between armed actors, which now overshadow institutions for civil politics. Peace deals do not work in Sudan at the moment because too many of the fragmented interests of the periphery are represented at these bilateral forums. The elections are the most important opportunity for including civil actors at the centre of the state, such as opposition parties and regional groups that are being pushed from civil into militarized politics. The elections must also be an opportunity for organizations such as religious groups, the media, educational institutions and externally funded non-governmental organizations to articulate a vision of peace for Sudan. International supporters of the CPA need to review with the NCP and the SPLM the minimum

conditions for free and fair elections, and press for the implementation of CPA provisions that will make the elections more credible. They must continue to press for reform of laws restricting constitutional freedoms.

***The international community needs to recognize the serious risks that civilians will face if Sudan's ambitious project for peace fails, and make clear how it will respond.***

The conflict in Abyei showed the inadequate limits on the capacity of the UN and the security forces of both parties to protect civilians. The UN needs to clarify what level of protection it can offer civilians in the event of violent fragmentation of Sudan's border zones, taking into account its experience in Darfur.

***The international community has specific roles: monitoring CPA outcomes in daily life, making clearer political judgments about CPA implementation, disseminating information and explaining clearly what it can do to protect civilians.***

- Monitoring of the CPA needs to look more at the impact of the agreement on ordinary lives, and make connections between land, livelihoods, local politics and national politics, and financial resources. UNMIS and UNAMID (the UN African Union Mission in Darfur) need to provide political evaluations of the successes and failures of CPA implementation.

Special envoys should take an all-Sudan approach and look at ways in which CPA processes or principles can be implemented in Darfur. Members of the AEC should consider holding periodic ministerial-level meetings to review implementation.

- International donors should consider funding studies to fill information gaps. A study of the politics of land and natural resources in Sudan would help address the problems in implementing the wealth-sharing agreement. Better outcome monitoring of financial allocations to states would help the parties to quantify the peace dividend in ordinary life.
- The international community already has considerable resources to study Sudan in the UN and the AEC. The information that they gather can help ordinary people articulate their problems and concerns. Having a set of locally agreed and disseminated accounts of what is happening along the length of the North–South border would help make the elections more credible, improve freedom of information and increase the accountability of the CPA partners to local constituencies.
- If the referendum goes ahead, it may lead to an independent Southern Sudan. Diplomats in Khartoum are understandably reluctant to anticipate the outcome of the referendum and be seen to be talking up separation. But they have an important role in providing discreet forums for technical discussions about post-referendum dispensations.

## Notes

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